



LONDON ARBITRATION WITH CHINESE PARTIES-keeping a level playing field

SPECIAL JOINT EVENT - LMAA & LSLC

Chairman: Stephen Hofmeyr QC – 7KBW

Speakers: Mark Sachs - Thomas Cooper
Minli Tang - AllBright Law Offices (Shanghai)
Nick Vineall QC - 4 Pump Court
Wenhao Han - Norton Rose Fulbright

22ND February 2018

The Baltic Exchange, 38 St. Mary Axe, London, EC3A



RECEPTION SPONSOR

LSLC - MARITIME BUSINESS FORUM
Quadrant House
10 Fleet Street, London, EC4Y 1AU
T: 020 7936 3417
E: shipping@shippinglbc.com
E: Chairman – asheppard@shippinglbc.com
W: www.shippinglbc.com

THE LONDON MARITIME ARBITRATORS ASSOCIATION
The Baltic Exchange
38 St. Mary Axe, London, EC3A 8BH
T: 020 7283 7701 ~ F: 0207283 7702
E-mail: info@lmaa.london
W: www.lmaa.london

Introduction

Disputes involving mainland Chinese parties have increased dramatically in recent years and will likely continue to rise as Chinese investment outside China increases. Chinese shipyards seem destined to increase their already significant market share. For London to remain pre-eminent as a maritime arbitration centre it needs to ensure its arbitration services offer as level a playing field as possible to all parties. Cross-cultural barriers can arise and this event seeks to address these head-on by informing practitioners and users of London arbitration of potential misconceptions as well as dos and don'ts for witnesses, parties and counsel.

- Hear practitioners share experiences of cases involving Chinese parties and witnesses
- Participate in a reasoned debate whether change is needed in how London arbitration addresses issues such as preliminary issues, foreign language witnesses, simultaneous interpretation, videoconferencing, disclosure and lawyers participating from differing systems and backgrounds
- Discuss recent experience of shipbuilding disputes involving Chinese parties

Part A

Mark Sachs

China and the English Legal System: Working with Chinese Evidence and Witnesses

Part B

Nick Vineall QC

Chinese Parties Arbitrating in England

Part C

Minli Tang and Wenhao Han

London arbitrations – The Chinese perspective

Part D

CURRICULA VITAE

LSLC - MARITIME BUSINESS FORUM

Quadrant House

10 Fleet Street, London, EC4Y 1AU

T: 020 7936 3417

E: shipping@shippinglbc.com

E: Chairman – asheppard@shippinglbc.com

W: www.shippinglbc.com

THE LONDON MARITIME ARBITRATORS ASSOCIATION

The Baltic Exchange

38 St. Mary Axe, London, EC3A 8BH

T: 020 7283 7701 ~ F: 0207283 7702

E-mail: info@lmaa.london

W: www.lmaa.london

Part A

Mark Sachs

China and the English Legal System: Working with Chinese Evidence
and Witnesses

THOMAS COOPER

"The quality and breadth of Thomas Cooper's expertise is truly vast... Professional, excellent communicators who are 'in tune with the industry.'"
Chambers & Partners Legal Directory

China and the English Legal System: Working with Chinese Evidence and Witnesses

Mark Sachs, Partner
February 2018

London
Madrid
Paris
Piraeus
São Paulo
Singapore
www.thomascooperlaw.com

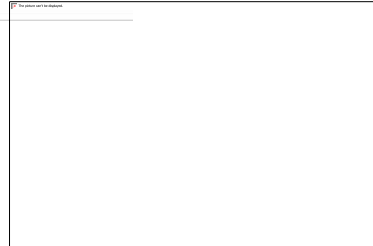
THOMAS COOPER

Part 1

Contextual Comments

The Advantage of English Law

- Unified jurisdiction
- Historical underpinnings (to the extent still relevant)
- Advantages over federal systems.



English Law and the International Order

- Available to all comers
- Equality before the law
- Mindful of avoiding parochialism
- Experience of other cultures.

“...My Lords, with all respects, that seems to me to recall the good old days, the passing of which many may regret, when inhabitants of this island felt an innate superiority over those unfortunate enough to belong to other races...”

Lord Reid's speech in 1973 from the "ATLANTIC STAR"

Context of Comments

- Not preaching cultural relativism
- Not asking the English system to compromise on principles
- Difficult to avoid stereotyping when attempting to generalise about differing cultural norms.

Our Own Cultural Baggage

- It's not them, it's us who are strange
- English legal history (champions and religion)
- What we teach our children.



China and the Rule of Law - Ancient History

- The legacy of Confucianism
- The intellectual defeat of the Legalist School.



www.thomascooperlaw.com

7

China and the Rule of Law - Modern History



- The overlay of Communism and its decline
- Chinese education system.



www.thomascooperlaw.com

8

China and the Managing Change

- Stunning development (and disruption to the social order).



www.thomascooperlaw.com

9

Growing Up in China

- Living without historically fully-developed system of law
 - How business is done
 - Social relationships
 - Social harmony.

www.thomascooperlaw.com

10

Getting on in China

- Attitudes towards rules and regulation
- The social contract
- The attitude towards courts
- What one sees on TV.

The Chinese Language

- No verb conjugations (minimal markers for tense)
- Chinese grammar
- Being literate in China.

Part 2

Practical Application

www.thomascooperlaw.com

13

Written Evidence

- Chinese business records
- Open vs. Closed information
- Non-transparent society
- The role of technology
- The Eight-legged Essay.



www.thomascooperlaw.com

14

Witnesses

- The individual vs. the collective
- Direct questions
- Language
- Witness statements.



Disclosure

- Rules in China
- Professional obligations.



Trial

- Preparation of witnesses
- Cross examination
- Interpreters.

Conclusion

“For the want of a nail the kingdom was lost”



Contact

Sources highlight Thomas Cooper's quality lawyers and international reach....

Chambers & Partners Legal Directory

For further information or advice, please contact:

Mark Sachs - Partner

Email: mark.sachs@thomascooperlaw.com

Direct: +44 20 7390 2235

Mobile: +44 07713 488 020

London

Madrid

Paris

Piraeus

São Paulo

Singapore

www.thomascooperlaw.com



Part B

Nick Vineall QC

Chinese Parties Arbitrating in England

NICK VINEALL QC

CHINESE PARTIES ARBITRATING IN ENGLAND

Some areas where misunderstandings or problems can arise

Factual witnesses

1. Understanding the purpose of factual witnesses.
2. Choosing appropriate factual witnesses.
3. The clash between direct (rude?) and indirect (polite?) modes of expression.
4. The hazards of translation and evidence by videolink.

Expert witnesses

5. Understanding the role of an expert.

Attitudes to the finality of decisions and to the role of the arbitrators

6. Enforcement, insolvency, the rule of law, rule by law.
7. The role of party-appointed arbitrators.

Attitudes to compromise and to admissions

8. Difficulties sometimes in getting instructions.

Record keeping and disclosure

9. Attitudes to record keeping differ.
10. Growing understanding (eg in Belt and Road project cases) that contractors have a lot to gain from well documented control of variations, costs and delaying events, and need contemporaneous documents to show critical path

The particular case of shipbuilding arbitrations following the 2009 crash

11. Chinese shipyards undoubtedly fared badly. But why?
 - 11.1. All shipyards, whether in China or elsewhere, generally fared badly;
 - 11.2. Running cases buys time under RGs, so yards encouraged into defending very difficult cases;
 - 11.3. All over the world yards ran into difficulties as boom (and high prices, full order books and delay - tolerated by Buyers) turned to bust (and low prices and cancellation by Buyers - looking for reasons to buy elsewhere).
12. More recently – *delay* cases remain difficult, but in *quality* cases yards have had more mixed outcomes.

Some suggestions for arbitrators

13. Be sensitive to cultural differences.
14. Be particularly sensitive to language barriers.
15. Be sensitive to time zones.
16. Consider venue being somewhere that is not the seat.

NICHOLAS VINEALL QC

4 PUMP COURT

14/2/2018

Part C

Minli Tang and Wenhao Han

London arbitrations – The Chinese perspective



London arbitrations - the Chinese perspective

Minli Tang

dual-qualified in China and New York State, USA
AllBright Law Offices

Wenhao Han

dual-qualified in England and Wales and China
Norton Rose Fulbright

22 February 2018

- ❖ **Unconscious and stereotyping bias**
generations, regions, and educational backgrounds
- ❖ **Difficulties in disclosure**
how Chinese conduct business
disclosure in domestic legal system
- ❖ **Role of the party appointed arbitrators**
influence from the concept of litigation
- ❖ **Factual witness**
uncomfortable; hesitant; credibility; sense of frustration
- ❖ **Expert witness**
competency; independency; ultimate duty & purpose
- ❖ **Cross-examination**
Confucianism approach
advocacy in domestic litigation and arbitration
- ❖ **Translation**
hit & miss; inaccuracies in interpretations at hearings
- ❖ **The rule of law in China**
past and current conditions of our country
recent development

Part D

CURRICULA VITAE



STEPHEN HOFMEYR QC

"a heavyweight in this field" widely regarded as "one of the nicest insurance silks at the Bar"

Please access full CV [here](#).

www.7kbw.co.uk

Stephen Hofmeyr QC is a leading commercial barrister, arbitrator and judge with an acknowledged international practice - with particular emphasis on contractual disputes of all kinds, energy and natural resources, shipping, insurance and reinsurance, commercial fraud, share valuations and professional negligence. In each of the last three years, Stephen has received more than 50 appointments as arbitrator (ICC, LCIA, LMAA and ad hoc).

Stephen has acted for and against numerous Far-Eastern shipyards and shipping companies, including, HHI, STX, STX Pan Ocean, DSME, DHSE, Hanjin, Cosco, STX Dalian, Guangzhou, Jiangxi Jiangshou, Imbari and Parakou Shipping and dealt with a range of disputes relating to shipbuilding, ship repair, charterparties, bills of lading, contracts of affreightment, ship finance and marine insurance. He also has extensive energy experience dealing with disputes concerning pipelines, rigs, supply vessels, FPSOs and power plants. Although operating primarily out of London, he has an acknowledged international practice, having appeared and given evidence in Singapore, the Bahamas, the Eastern Caribbean, France, Switzerland, Holland and the USA.



Mark Sachs is a partner of Thomas Cooper in London having previously headed Thomas Cooper's Singapore office for 10 years. Mark has over 25 years of experience in the maritime legal field in Asia and mainland China. He studied at Beijing University before studying law at the University of British Columbia in Canada (1986) and is a fluent Mandarin speaker. He practiced in Shanghai for several years (1988-1991) principally in shipping and insurance disputes.

Mark has acted for parties in a wide range of maritime and shipping law disputes across jurisdictions. He has represented clients in international arbitration forums and court proceedings including London, Singapore, Stockholm and Beijing.

Mark has acted for a number of Chinese entities in arbitration and litigation in London in significant cases as: *CR Sugar Trading Ltd. v. China National Sugar & Alcohol Group Corp* [2003] 1 Lloyd's Rep 279, and *Pioneer Freight Futures Company Ltd. v Cosco Bulk Carrier Company* [2011] EWHC 1692, [2012] EWCA 419 and *Essar v. Bank of China* [2016] 1 Lloyd's Rep. 427.



Nick Vineall QC

Nick Vineall QC is joint head of chambers at 4 Pump Court. He took silk in 2006 and practises in commercial law including shipping, shipbuilding, oil and gas and offshore engineering claims. He acts as counsel in arbitration and litigation, and sits as an arbitrator and as a Deputy High Court Judge. He is authorised to sit in the Commercial Court. He has appeared at all levels of the UK court system. He is recommended in the directories for shipping, shipping and commodities, construction, energy and natural resources, and financial services.

He has long enjoyed good links with Chinese lawyers and 4 Pump Court has for many years supported the Chinese lawyers who come to London on the exchange scheme now run by the Bar Council and previously run by the Lord Chancellor's Department.

He has acted as counsel, or been appointed arbitrator, in many arbitrations involving Chinese shipyards.

He recently acted, with Neil Henderson of 4 Pump Court, for Sinocore in its successful claim to enforce a CIETAC arbitration award in London, instructed by HFW: [Sinocore International v RBRG Trading \(UK\) Ltd \[2017\] EWHC 251 \(Comm\)](#).

Pump Court International has offices at 2 IFC in Hong Kong.



Minli Tang, Associate

AllBright Law Offices

Dual qualified in New York State and PRC, Ms Tang practices in dispute resolution and specializes in shipping, international trade, and general commercial sectors. Over the years, Ms. Tang has represented and advised clients in arbitrations under ICC, LMAA, CIETAC, CMAC (China Maritime Arbitration Commission) rules as well as litigations in UK high court and domestic courts in China. In addition to advocacy, Ms. Tang also does a range of advisory work for foreign clients regarding Chinese law issues.

After receiving her Juris Master degree in China, Ms. Tang further pursued her study in the United States and obtained her LLM degree from University of Wisconsin. Ms. Tang is now doing her PhD degree in City Law School, City, University of London and was a trainee under British Bar Council Chinese Lawyer Training Scheme. Ms. Tang has rich overseas experience and has established good relationships with local barristers, solicitors, in-house counsels, and law professors.

AllBright Law Offices is one of the leading full-service law firms in China. It is headquartered in Shanghai and has 19 branch offices all over China (including Hong Kong). On 15 March 2018, AllBright Law Offices will open its London representative office in Bird & Bird's City office at New Fetter Lane.

Wenhao Han

Solicitor of England and Wales

Norton Rose Fulbright LLP

Tel: +44 (0)20 7444 2402

Email: wenhao.han@nortonrosefulbright.com



Wenhao is a dispute resolution lawyer based in London. He has a wide range of experience in advising international clients in pursuing and defending different types of shipping and insurance claims in both the P.R. China and the UK through litigation and arbitration.

Wenhao is an alumnus of Dalian Maritime University where he obtained his LLM and the University of Southampton for his PhD.

Wenhao qualified in both the P.R. China and in England and Wales. He had also worked in Shanghai and Hong Kong before starting his legal career in London.

Membership

British Insurance Law Association

China Maritime Law Association

LMAA, Supporting Member

Publications

Lloyd's Research Handbook on International Insurance Law and Regulation, 2011, author of China chapter

Insurance law in China, 2014, author of chapter on jurisdiction and dispute resolution

Colinvaux's Law of Insurance in Hong Kong, 2018 (upcoming), author of China chapter, Sweet & Maxwell