

Duncan McCombe

Call 2012

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Duncan specialises in commercial litigation and arbitration. He regularly appears in the Business and Property Courts of England and Wales, particularly in the areas of Commercial Law, Civil Fraud, Company Law and Insolvency. Such cases often involve jurisdiction disputes and applications for urgent interim relief. Duncan also has a strong Chancery background, receiving regular instructions on matters involving trusts, estates and real property, as well as intellectual property disputes. Duncan's cases often involve international parties and, having read Chinese at Cambridge, he has extremely rare expertise in relation to China-related disputes and is able to work with untranslated Chinese documents. Duncan has represented and advised a number of extremely high-profile clients including Chelsea FC, the BBC and the Spice Girls, the latter two as sole Counsel.

Notable cases in which Duncan has been involved include the Supreme Court appeal of *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45, now the leading case on bribes and secret commissions taken in breach of fiduciary duty, and an appeal to the Privy Council from the BVI (*Smith v Molyneaux* [2016] UKPC 35) concerning adverse possession. He was also involved in the issues arising from the Supreme Court's judgment in *Wood v Sureterm Direct Ltd* [2017] UKSC 24, the latest word on contractual interpretation at the highest level. Duncan has particular expertise in proceedings involving states or state entities, having advised and represented nation states, state-owned bodies and those seeking to make claims against states. Most recently, this has involved advising a state on the possibility of a party being able to enforce against it in the English courts a foreign judgment in excess of £1 billion. Other high value matters in which Duncan has been involved include a shareholder dispute concerning the Russian social network VK.com which settled for a cash sum of \$1.47 billion and a high profile £850 million claim by a hedge fund against Barclays Bank

As well as acting as part of a team on larger matters, Duncan is regularly instructed to provide advice and advocacy as sole Counsel. Duncan has been instructed as the trial advocate for numerous High Court trials, including two multi-day trials against QCs, his client being successful in both actions. Duncan also has particular expertise in urgent injunction applications having appeared led and unled in numerous such applications, both for applicants and respondents. Unled applications in the High Court include successfully applying to the Commercial Court for a without notice freezing injunction against a BVI company in support of an arbitration, and appearing for the successful respondent in an application in the Chancery Division to set aside an interim injunction obtained without notice.

Duncan was Chair of the Young Bar of England and Wales in 2017 and also sits on the Bar Council's Brexit Working Group. As part of his membership of the latter, Duncan co-authored the Jurisdiction and Judgments section and assisted with the Arbitration section of the, extremely well-received, *Brexit Papers*. The Jurisdiction and Judgments Brexit Paper was one of only two papers cited by the UK Government in its position paper on the subject.

Duncan's clerks would be happy to discuss the terms on which Duncan will act, including the contractual terms agreed between the Commercial Bar Association (COMBAR) and the City of London Law Society (CLLS). In the absence of express agreement in writing to the contrary, Duncan accepts instructions on the basis of the Bar Standards Boards' Standard

Contractual Terms for the Supply of Legal Services By Barristers to Authorised Persons 2012 (updated for the GDPR in 2018).

Recent and notable cases

Commercial (please also see arbitration experience below):

- *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45: Appeal in the Supreme Court (with Matthew Collings QC), now the leading case on proprietary remedies and constructive trusts for bribes and secret commissions taken in breach of fiduciary duty. A webinar on the case which Duncan gave for the Society of Trusts and Estates Practitioners can be viewed by clicking [here](#).
- *Wood v Sureterm Direct Ltd* [2017] UKSC 24: Duncan was involved (with Andrew Twigger QC) in the issues arising following the Supreme Court's judgment in this case, which is the latest word from the Supreme Court on contractual interpretation.
- *Red Kite Management Ltd v Barclays Bank PLC*: Duncan was instructed as part of the Counsel team in a £850 million claim for breach of contract, breach of confidence and breach of fiduciary duty brought by a hedge fund against Barclays Bank concerning trading on the London Metal Exchange.
- *GBM Minerals Engineering Consultants Ltd v GB Minerals Holdings Ltd* [2015] EWHC 2954 (TCC) and *GB Minerals Holdings Ltd v Short* [2015] EWHC 1387 (TCC): Claim (appearing with Richard Slade QC of Brick Court) in the High Court (TCC) involving allegations of breach of contract, negligence and bribery as well as the initiation of contempt proceedings.
- *HRH Prince Mohammed Al Saud v Back Talent Ltd*: Duncan represented (as sole counsel) an English company in a shareholder dispute brought by a Saudi Prince.
- *Trant v (1) Commerx Ltd (2) Kulhawy*: Claim in the Queen's Bench Division of the High Court concerning payments under a Share Purchase Agreement. Duncan represented the successful Claimant against Defendants represented by a silk.
- *Nomad International Shipping Corp v DST Shipping Group SA*: Claim (led by Andrew Ayres QC) in the Commercial Court arising out of a series of joint venture agreements concerning the ownership of a number of ships. The case involved an urgent application for interim injunctive relief with complex jurisdictional and arbitration issues.
- *Sribaskaran v Kunapalan*: Duncan was instructed as sole counsel in this multi-day trial concerning a dispute over the sale of a business and its premises.

Arbitration:

- *Exportadora de Sal SA de CV v Corretaje Maritimo Sud-Americano Inc* [2018] EWHC 224 (Comm): Duncan acted (with Dominic Chambers QC) for a Mexican state-owned salt mining company seeking to challenge an arbitrator's substantive jurisdiction under s.67 Arbitration Act 1996 on the basis that his client had no capacity under Mexican law to enter into the arbitration agreement.
- Advising and drafting proceedings on behalf of an investor in relation to a potential investment treaty claim (led by Paul Key QC of Essex Court).
- *Ad hoc*-arbitration (led by Richard Morgan QC) involving claims and counterclaims worth hundreds of millions pounds involving issues of breach of contract, fraud and defamation. This case also involved the analysis of a large number of untranslated documents in Chinese.
- Representing Chinese clients (with Timothy Fancourt QC, now Mr Justice Fancourt) in an *ad hoc* arbitration concerning the proposed purchase of a large residential property in London. This included successfully applying (unled) to the Commercial Court for a freezing injunction against a BVI company in aid of the arbitration.
- LCIA arbitration (with Andrew Ayres QC) concerning a shareholder dispute in relation to a joint venture established for the purposes of a real estate development in Eastern Ukraine.
- LCIA arbitration (led by Michael Gibbon QC) in relation to the shareholder dispute concerning the Russian social network VK.com. This not only involved an arbitration in London, but also proceedings in the BVI and New York, settling for a cash

sum of \$1.47 billion.

- Duncan has also taught at a course on International Arbitration organised by the Bar Council and CIETAC at Renmin University in Beijing.

Company, Insolvency and Partnership:

- Duncan has recently been instructed to appear (unled) at a number of hearings on instructions from the Official Receiver seeking the appointment of special managers over a number of companies in the Carillion group, which was the subject of one of the UK's largest ever insolvencies.
- While on secondment at a law firm in Jersey, Duncan assisted with a scheme of arrangement which effected a merger between Barrick and Randgold creating the world's largest gold-mining company.
- Further high profile matters include appearing for the petitioning creditors in the bankruptcy proceedings of Craig Whyte, the former owner of Rangers Football Club.
- *Barham v Johnson*: Duncan was instructed as sole trial advocate in his client's successful application to rectify a company's register of shareholders under s.125 Companies Act 2006. The hearing extended over a number of days involving extensive cross-examination and allegations of dishonesty.
- *Bammant v Bammant*: Duncan successfully appeared (as sole Counsel) in this claim in the Chancery Division concerning the dissolution of a family partnership with assets in the millions of pounds.
- Advised (with Matthew Collings QC) on the potential effects of a Russian bankruptcy on the affairs of a wealthy Russian client in London.
- Currently advising on a funds dispute concerning an LLP established to invest in residential property.
- Duncan regularly represents creditors, debtors and office holders in the County Court and High Court in both corporate and individual insolvency-related matters.

Trusts, Probate, Charities and Private Client:

- *Choudhury v Stepney Shahjalal Mosque and Cultural Centre Ltd* [2015] EWHC 743 (Ch): Appeared unled for the respondent to a without notice injunction application in the Chancery Division concerning the management of a charity. Duncan successfully obtained an order staying the proceedings and discharging the injunction. He also successfully resisted a further application to the Court for permission to bring Charity Proceedings under s.115 *Charities Act 2011*.
- Advised (with David Mumford QC) a well-known private bank's trustee business in proceedings for an account brought by a beneficiary.
- *Rogers v Lampo*: Duncan was instructed by an executor to resist claims from an alleged creditor, successfully applying for summary judgment.
- Duncan has spent two periods of two months on secondment to a firm in Jersey working on a number of high-profile and high-value offshore trusts and company disputes.

Property:

- Over the past twelve months Duncan has been instructed on a number of matters involving large scale real estate developments. This has included both seeking and resisting (as sole counsel) injunctive relief in relation to overage and boundary disputes.
- Duncan was also instructed (with John McGhee QC) by Chelsea FC in relation to a right to light dispute involving the Club's proposed new stadium.
- Currently advising on a funds dispute concerning an LLP established to invest in residential property.
- *Smith v Molyneaux* [2016] UKPC 35: Duncan assisted Catherine Newman QC who acted for the successful appellant in this appeal to the Privy Council from the BVI concerning adverse possession.

- *TCG Pubs Ltd v The Master and Wardens or Governors of the Art or Mystery of the Girdlers of London* [2017] EWHC 772 (Ch): Claim (acting with Christopher Pymont QC) involving the interpretation of an assignment provision in a lease. The case also involved seeking the permission of the Court to bring forfeiture proceedings against a company in administration.
- *Skelwith (Leisure) Ltd v Armstrong* [2015] Ch. 345: represented (with Thomas Grant QC) the purchaser from a mortgagee of a golf course in Yorkshire. The case involved complex questions as to the exercise of a mortgagee's power of sale and resulted in a successful application to strike out the claim.
- Representing Chinese clients (with Timothy Fancourt QC, now Mr Justice Fancourt) in an *ad hoc* arbitration concerning the proposed purchase of a large residential property in London. This included successfully applying (unled) to the Commercial Court for a freezing injunction against a BVI company in aid of the arbitration.
- LCIA arbitration (with Andrew Ayres QC) concerning a shareholder dispute in relation to a joint venture established for the purposes of a real estate development in Eastern Ukraine.
- *Ellis v Mussett and Others*: Duncan represented as sole trial advocate the successful Defendant in this action concerning the sale of a property. The claim involved allegations of undue influence and conspiracy and the Claimant was represented by a silk.

Intellectual property:

- Duncan represented the Spice Girls as sole Counsel in their successful application to strike out a claim against them for breach of copyright.
- He is also currently advising a software developer in relation to possible claims for breach of its intellectual property rights arising out of the copying of its software by a customer.

Education and Qualifications

MA (Cantab) Oriental Studies (Chinese)
GDL (Distinction)
BPTC (Very Competent)

Duncan read Chinese at St John's College, Cambridge. His studies included a year abroad in Beijing studying at China's most prestigious university for the study of the arts, Peking University, as well as two months at Taiwan Normal University in Taipei on a scholarship from the Taiwanese government.

After graduating from Cambridge, Duncan studied for the Graduate Diploma in Law at City University in London gaining the grade of distinction after coming third in the year overall and top of the year in equity and trusts. During that year he also won the Lincoln's Inn mooted competition. He obtained a number of scholarships for his legal studies including Lord Haldane, Hardwicke and Lord Denning scholarships from Lincoln's Inn and the McMahon Law Studentship from St John's College, Cambridge.

Languages

Chinese, French, German

Publications

Journal of International Banking and Finance Law (March 2015): "*The safety of mankind*": the civil consequences of bribery
Civil Jurisdiction and Judgments section of the Bar Council's *Brexit Papers*.

Memberships

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CHAMBERS

COMBAR

Chancery Bar Association

Young International Arbitration Group

International Chamber of Commerce Young Arbitrators Forum

Financial Services Law Association

Inter Pacific Bar Association