

# Clementine Makower

Call 2020



Clementine Makower has experience in a broad range of commercial disputes in litigation and arbitration.

Clementine is regularly instructed in matters spanning Chambers' practice areas including shipping, shipbuilding, commodities and construction and infrastructure, insurance, professional negligence and banking, both in her own right and as part of a team of barristers. Clementine has been instructed in several substantial international arbitration hearings, led by silks in Chambers.

Clementine has a highly international practice. She has experience working for clients based in Europe, the Middle East and the Asia Pacific region. Before coming to the Bar, Clementine studied Chinese at Tianjin Foreign Studies University, where she also gained experience in a Chinese law firm specialising in shipping and insurance law. In August 2023 Clementine completed a secondment at Nordisk, a leading defence club based in Oslo.

Clementine is part of the Attorney General's Junior Juniors Scheme and is currently instructed on a high-value and complex government case.

Clementine is ranked as a 'rising star' in shipping in the Legal 500, with the recommendation: 'her written-advocacy is first class and she is always on top of the issues and ahead of the witnesses'.

## Shipping, shipbuilding and international trade

Clementine has particular interest and experience in shipping law. She is regularly instructed in LMAA and other arbitrations on her own and as a junior, as well as in shipping work in the High Court. Clementine has experience in charterparty disputes, cargo claims, commodities disputes, shipbuilding and jurisdictional issues.

### Featured Shipping, shipbuilding and international trade cases

In August 2023 Clementine spent five weeks on secondment at Nordisk, a leading defence club based in Oslo, where she gained experience in a wide range of issues and developed her understanding of the shipping industry. The disputes Clementine was involved included bills of lading issues, demurrage and laytime, the new BIMCO CII clause, contracts

involving FSRUs, off-specification cargo and redelivery issues.

Instructed as sole counsel in four parallel commodities disputes proceeding in the Commercial Court with a combined value of over USD 500 million.

Acted with Christopher Hancock KC and Alexander Wright KC in a technically and legally complex three-week shipping arbitration. The arbitration led to a section 69 application for permission to appeal, in which Clementine acted for the successful respondent (permission was denied).

Acted with Sean O’Sullivan KC in a multi-million dollar unsafe port dispute, culminating in a two-week Hong-Kong seated arbitration.

Acted with Alexander Wright KC in a four-day arbitration in a shipbuilding dispute about the sale and purchase of offshore equipment.

Instructed with Alexander Wright KC in a charterparty dispute involving the imposition of sanctions.

Instructed with Sean O’Sullivan KC in a section 69 appeal on a point of law from an arbitration award involving novel issues about the arrest of a vessel and the application of the Supreme Court decision in *The Global Santosh* [2016] UKSC 20.

Advised (with Ed Jones) on a case involving complex questions of marine insurance following damage to a yacht.

Instructed as junior to Sean O’Sullivan KC in an LMAA arbitration in a shipbuilding dispute, successfully obtaining an award for specific performance of the obligation to deliver the vessel.

Advised (with Alexander Wright KC) on issues of jurisdiction and enforcement arising out of a charterparty dispute.

Frequently instructed in time and voyage charterparty disputes. Recent experience includes claims relating to freight, hire and off-hire, laytime and demurrage, detention, the exercise of a lien and shipment of dangerous cargo.

Instructed as sole counsel in a charterparty dispute which turned on the interpretation and application of the BIMCO Infectious or Contagious Diseases Clause in relation to delays due to Covid-19 testing and quarantine, and secured a successful outcome.

Frequently instructed in marine insurance claims. Previous experience includes advising on frustration in relation to a fire on a yacht, shipbuilding/defects disputes and professional negligence.

Assisted with *Argos Pereira Espana SL & anor v Athenian Marine Ltd (mv “Frio Dolphin”)*, including on the novel issue of whether the doctrine of transferred loss applies to equitable compensation claims.

## Construction

Clementine’s construction experience includes litigation, arbitration and adjudication, and ranges from very heavy infrastructure projects to commercial developments and domestic construction disputes. She is instructed in disputes involving international projects as well as those in the UK. In 2023 Clementine spoke to the Society of Construction Law about the challenges of adjudicating hybrid contracts under the Construction Act 1996 (with James Bowling and Matthew Thorne).

## Featured Construction cases

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Instructed as a junior to Alex Hickey KC and Thomas Crangle in a substantial arbitration involving a large infrastructure project in the Middle East.

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Acted (with Sanjay Patel) in an adjudication about a commercial development in the UK, which involved defects across a range of disciplines and a termination dispute.

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Advised as sole counsel in a residential property dispute involving professional negligence and potential liability under the NHBC warranty and limitation issues in contract and tort.

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Instructed to assist in drafting Particulars of Claim in a multi-million pound construction dispute involving cladding, fire safety issues and compliance with the Building Regulations 2010.

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Assisted in an expert determination regarding a local authority recycling agreement, which concerned various contractual issues and the effect of a duty to act in good faith.

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Assisted in advising a building contractor on whether it was entitled to an extension of time and/or prolongation costs in relation to delays to construction projects caused by Covid-19 and associated lockdowns.

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Assisted in drafting position statements for two mediations involving claims against building contractors.

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Assisted with trial preparation on a multi-million pound construction dispute involving alleged fraudulent misrepresentations about the methodology a contractor would employ throughout a building project.

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## Insurance

### Featured Insurance cases

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Frequently instructed in subrogated claims, particularly involving P&I clubs in relation to charterparty disputes. Recently acted in an arbitration involving issues about the impact of a P&I club's subrogation on the recoverability of loss claimed.

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Frequently instructed in maritime insurance claims.

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Instructed to advise on a coverage dispute involving the interpretation of various exclusion clauses.

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Instructed as sole counsel to defend a health insurance claim involving alleged fraudulent representations.

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## Other commercial litigation

### Featured Other commercial litigation cases

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Instructed by an energy company in multiple cases involving issues relating to brokers' commission and fiduciary duties.

Instructed as a junior in a multi-million pound lending dispute to research a novel issue of mitigation of loss by a special purpose vehicle established for a specific transaction.

Instructed to advise on whether brokers retaining commission amounts to a conflict of interest and/or breach of fiduciary duties.

Instructed in various disputes involving gambling and betting.

Instructed as sole counsel to defend a claim for management time brought by an independent financial adviser against a pension provider.

Frequently instructed by banks in relation to PPI disputes.

Assisted with submissions to the Court of Appeal in a fraud case, in relation to whether an innocent party that receives cash from a fraudster should have to give credit for the "time value" of that cash as a "benefit received" from the transaction: *Tuke v Hood* [2022] EWCA 23.

Assisted with and observed a summary judgment hearing in relation to a gambling case, on the issue of whether a gambling company should pay "winnings" won by a player due to a software glitch in an online game.

## IT

### Featured IT cases

Worked on a claim brought by a software development company against a large retailer for money due in relation to the building of a website. The dispute concerned the scope of the contractor's obligations to service and upgrade the website and the extent to which problems were caused by customisations demanded by the retailer.

Worked on a case involving intellectual property licenses for hydrogen fuel cell technology, including drafting an advice on whether the license was terminable on reasonable notice.

## Awards

- BPTC: Barstow Scholarship (third highest mark in year), William Rose Drafting Prize (City Law School)
- Exhibition Award, Inner Temple
- McMahon Law Studentship (St John's College, University of Cambridge)
- Undergraduate prizes: George Aldridge Prize (highest mark in year), William Vaughan Lewis Prize (dissertation) (Department of Geography, University of Cambridge), McAuley Scholarship, Wright Prize and Hughes Year Prize (St John's College, University of Cambridge)

## Publications

- “Still Waiting” – Refugee Rights Data Project (field researcher for a report on the Calais Jungle refugee camp, August 2016).
- “Learning from the Nepal earthquake for preparedness through transboundary collaboration among experts of Himalayan countries”, Current Science, July 2016 (article written during internship at an environment and development NGO in India).

## Memberships

Inner Temple

## Education

- Bar Practice Training Course (Outstanding), The City Law School
- Graduate Diploma in Law (Distinction), The City Law School
- BA in Geography (Double First Class), St John’s College, University of Cambridge

## Languages

- Chinese – intermediate (HSK 4)
- French – intermediate