

James Leabeater KC

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James has a general commercial practice with particular expertise in the following areas:

- Insurance and reinsurance
- Shipping, shipbuilding and offshore construction
- Commercial disputes
- Construction and engineering
- Energy
- Professional negligence

A large part of James' practice is international, and he is regularly instructed in arbitrations around the world, particularly London, Dubai, Qatar, Hong Kong and Singapore.

Insurance & Reinsurance

Insurance and reinsurance work is a core area of James's practice. He is regularly instructed in coverage and avoidance disputes and subrogated and other insurance claims. He has been instructed to act in and advise on several reinsurance arbitrations both with leaders and on his own. James also has experience of working closely with the in-house legal team of a major insurance and reinsurance group in the City.

Featured Insurance & Reinsurance cases

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- Instructed on reinsurance arbitration in relation to long tail recoveries on 1953 treaty.
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- Instructed for the claimant on a policy where insurers defended by relying on a "basis of contract" clause in the proposal form: *Genesis Housing Association Ltd v Liberty Syndicate Management Ltd* [2013] EWCA Civ 1173.
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- Instructed on two reinsurance disputes arising out of long tail losses in the US.
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- Instructed on very large dispute in the Commercial Court about the reinsurance of performance guarantees and bonds issued by shipyards.
- Instructed by a Lloyd's Syndicate in relation to a jurisdictional dispute on an excess of loss treaty with an American reinsured where there is an arbitration clause but no choice of law clause.
- Significant experience of property insurance cases: in particular, tree root and other subsidence claims; flood damage; storm damage; fire damage; negligent remedial works carried out by contractors instructed by insurers; and various claims, both for insurers and insureds, in relation to hurricane damage.
- Experience of business interruption claims consequent upon property damage.
- Acted on arbitration brought against insurers' agents for negligent retention of motor insurance certificate.
- Professional indemnity and D&O policies; advising on coverage disputes, in particular in relation to claims made and notification provisions.
- Advising in relation to aggregate clauses in particular arising out of claims from World Trade Center collapse, WorldCom and Enron.

Shipping, shipbuilding and offshore construction

James is recommended by Chambers & Partners and the Legal 500 for shipping work and regularly appears in LMAA arbitrations and the Commercial Court on disputes about charterparties, bills of lading and contracts for the sale of vessels. James was nominated as Shipping Junior of the Year in the Chambers & Partners UK Bar Awards 2018.

The crossover between James' recognised experience in shipping and construction work makes him particularly well suited for shipbuilding and offshore construction disputes.

Featured Shipping, shipbuilding and offshore construction cases

- James has worked on many arbitrations relating to new build vessels, for both buyers and yards, including tankers, cargo and container vessels and specialist offshore vessels. For example, James is currently instructed for a large Chinese yard to defend a claim relating to a dispute about a failed deal to purchase a Suezmax tanker.
- James has been instructed on a number of arbitrations relating to the sale of second hand vessels on the Norwegian Saleform MOA, including the arbitration which later became *The Union Power* [2012] EWHC 3537 (Comm); and an arbitration in which there were allegations of fraudulent misdescription.
- James was instructed on an arbitration about a shipbuilding contract allegedly procured by a bribe, and later successfully resisted an attempt to set aside the award for want of jurisdiction: *ESSA v Corretaje Maritimo Sud-*

Americano Inc [2018] 1 Lloyd's Rep 399.

- James was instructed on a dispute about brokers' commission arising out of a collapsed \$450m shipbuilding project.
- Instructed on a very large claim against marine engineering and project management consultants arising out of the conversion of two cargo ships into cable laying vessels.
- Working for two years on the *Solitaire* arbitration, concerning a dispute over the conversion works for the world's largest pipe laying vessel. Worked as part of the counsel team with responsibility for arguing discrete parts of the case.
- Acted for claimants in successful claim against marine surveyor in relation to high performance rigid inflatable boat: *Nicolle v Saunders Morgan Harris* [2009] PNLR 8.

Shipping

James has worked on numerous LMAA arbitrations in relation to charterparty disputes, including early termination of time charters, cargo claims and claims for demurrage and detention.

Featured Shipping cases

- James appeared in *The Tai Prize* [2021] EWCA Civ 87; [2021] 2 Lloyd's Rep. 36 (Court of Appeal) [2020] EWHC 127 (Comm) [2020] 2 Lloyd's Rep. 333 (Commercial Court), the leading case on implied indemnities in voyage charters.
- James appeared in *The Elin* [2019] EWHC 1001 (Comm); [2020] 1 Lloyd's Rep. 111, the leading case on excluding liability for deck cargo.
- James is currently instructed in two large arbitrations about liabilities arising from delivery of cargoes against letters of indemnity without presentation of bills of lading.
- James was instructed in the high profile superyacht case *Hirtenstein v Hill Dickinson* [2014] EWHC 2711 (Comm), in which the Judge disagreed with part of the reasoning in the *Union Power* [2012] EWHC 3537 (Comm), in which James had also appeared in the underlying LMAA arbitration.
- James was instructed in *Oceanbulk v TMT*, a major piece of litigation in the Commercial Court in relation to FFAs, including in a successful appeal to the Supreme Court, which established a new exception to the without prejudice rule: [2011] 1 A.C. 662.
- James was instructed in *Knightsbridge Leasing Ltd v Sunseeker*, a Commercial Court action about damage to a

yacht caused by fire.

- James has been instructed to act on a claim in respect of damage caused to vessel by an explosion during discharge of cargo.
- James was instructed in a Singapore arbitration about the alleged contamination of a cargo of ammonia.
- James was instructed by owners of a ferry in a claim against bareboat charterers for failure to maintain the vessel in good repair.
- James was instructed on two disputes arising out of bareboat charterparties agreed as part of financing arrangements.
- James was instructed on a dispute arising out of the termination of a tanker pool.
- Instructed in speed and consumption disputes in LMAA arbitrations, especially in relation to bottom fouling and engine defects.
- Instructed in dispute in Commercial Court in relation to general average claim in respect of costs incurred as a result of grounding.
- Claims alleging failure to maintain vessels including claim for delays caused by damage allegedly caused by stevedores; also claims relating to liability for drydock costs.
- Instructed on various cases in the Commercial Court relating to alleged short delivery of oil or contamination of oil.

Commercial disputes

James has experience of a wide range of commercial disputes in litigation and arbitration, including freezing relief, anti-suit injunctions, enforcing arbitral awards and foreign judgments, appealing against arbitration awards and appearing in and advising on contractual and other commercial claims.

Featured Commercial disputes cases

- James has experience of the ISDA 1992 Master Agreement arising from work on forward freight cases, including *Pioneer Freight Futures Co Ltd v TMT Asia Ltd (No. 1)* [2011] 2 Lloyd's Rep. 96 and *No. 2* [2011] 2 Lloyd's Rep. 565 and *TMT Asia Ltd v Marine Trade SA* [2011] 1 C.L.C. 976.
- James has a good deal of experience of appeals or challenges under the Arbitration Act 1996 including *Essa v*

Corretaje Maritimo Sud-Americano [2018] 1 Lloyd's Rep 399 and *Wah v Grant Thornton International Ltd* [2013] 1 Lloyd's Rep. 11.

- Instructed (with Nigel Tozzi KC) on an important case on the distinguishing performance guarantees from on-demand bonds: *Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA* [2013] BLR 74.
- Instructed to defend claim in Commercial Court brought by affiliate of Deutsche Bank in relation to structured liquidity enhancement derivative scheme based on Russian energy shares.
- Instructed in claim for damage caused to an aircraft raising an issue about incorporation of terms and conditions: *Rooney v CSE Bournemouth Ltd (t/a CSE Citation Centre)* [2010] EWCA Civ 1364; (2010) 107(25) L.S.G. 17.
- Other commercial fraud, including a case concerning the payment of receivers' costs from assets frozen pursuant to the Proceeds of Criminal Conduct Law of the Cayman Islands.
- Conflict of laws: significant experience of advising in relation to disputes upon choice of law and jurisdiction, including anti-suit injunctions.
- Injunctive relief: experience of seeking and resisting freezing orders and other forms of interlocutory relief including *IOT Engineering Projects Ltd v Dangote Fertilizer Ltd* [2014] EWCA Civ 1348, on the extent to which difficulties of enforcement may be relied upon in relation to evidence of dissipation.
- James successfully had a freezing order discharged on the basis of material non-disclosures at the *ex parte* hearing: *Banca Turco Romana SA v Cortuk* [2018] EWHC 662 (Comm).
- Evidence for foreign proceedings: advising in relation to requests for evidence from foreign courts and arbitrations.
- Insolvency cases: acting for liquidators of various companies attempting to recover sums from directors and shareholders; and in relation to insolvency proceedings arising out of various collapsed investment funds.
- James has been instructed twice to appear on appeals to the Privy Council from the Cayman Islands; the second time without a leader.

Construction & Engineering

James is recommended in Chambers & Partners and the Legal 500 for construction disputes in England, the Middle East and in Chambers & Partners Global. He was nominated as Construction Junior of the Year in the Chambers & Partners UK Bar Awards 2016. In addition to appearing in the TCC, he has particular experience of construction arbitrations in Dubai, Oman, Qatar, other parts of the GCC, Hong Kong and Singapore. As well as appearing at hearings all around the world, he has appeared in a number of remote (online) evidentiary and other hearings.

Featured Construction & Engineering cases

- Instructed by the contractor in *Oger Dubai LLC v Daman Real Estate Capital Partners Limited*, a dispute about the construction of a large building in the DIFC, which is at the forefront of the developing jurisprudence relating to the jurisdiction of the DIFC Court.
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- Appeared in *SRS Middle East FZE v Chemie Tech DMCC* [2021] 1 Lloyd's Rep. 371 – a dispute about the construction of oil storage terminal facilities in the UAE.
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Appeared in two Doha seated arbitrations arising out of an airport project.

- Appeared in an Oman seated arbitration about the construction of import facilities.
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- Appeared in a Dubai seated arbitration about the construction of a new luxury beach resort in the UAE.
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- Instructed on an ICC arbitration about the construction of a hospital in the Middle East.
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- Instructed on a five week SIAC arbitration about the construction of onshore infrastructure for a very large new gas field.
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- Appeared in *Aviva Investors Ground Rent Group GP Ltd v Shepherd Construction Ltd* [2021] EWHC 1921 (TCC); [2021] BLR 666 in which the claim was struck out for failure to comply with JCT assignment provisions.
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- Appeared (led by Sean Brannigan KC) in *Almacantar (Centre Point) Ltd v Sir Robert McAlpine Ltd* [2018] EWHC 232 (TCC) on construction of term in pre-construction services agreement.
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- Appeared in *Amec Foster Wheeler Group Ltd v Morgan Sindall Professional Services Ltd* [2016] EWHC 902 (TCC), a dispute arising out of the construction of the Liverpool Malmaison hotel.
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- Instructed on a number of disputes about the fire safety of cladding and other building elements.
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- Instructed for engineers in large TCC multi party dispute in relation to the Selfridges Birmingham building.
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- Instructed on a dispute arising out of a project to construct Nigeria's largest fertilizer plant which included seeking urgent interim relief: *IOT Engineering Projects Ltd v Dangote Fertilizer Ltd* [2014] EWCA Civ 1348.
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- Instructed for builder in *Millharbour Management Ltd v Weston Homes Ltd*, a large TCC claim relating to a block of flats in East London.
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- Instructed in relation to very large claim arising out of the construction of a major new hotel in London.
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- Instructed by employer in relation to defects in car part painting plant installed at Halewood by defendant.
- James has appeared in a number of adjudication enforcement hearings.

Energy

James is recommended by Chambers & Partners for energy work, which is a large and growing part of James' practice.

Featured Energy cases

- James is appearing in an arbitration about the price payable for electricity and water supplies in a GCC state.
- James was instructed in relation to a \$90m dispute about the early termination of the charter of a semi-submersible drilling rig.
- Instructed in relation to a \$250m dispute about an offshore gas pipeline off the west coast of Africa.
- Instructed on a five week SIAC arbitration about the construction of onshore infrastructure for a very large new gas field.
- Instructed in relation to disputes arising on related contracts for jack up drilling rigs in Singapore arbitration.
- Instructed for insurers on the loss of an oil rig caused by explosion.
- Instructed by charterers of a drilling rig in a Commercial Court action about underperformance.
- Instructed on a dispute about an offshore wind farm.
- Instructed on a dispute about a waste to energy plant.
- Instructed on a dispute about oil exploration farm out agreement.

Professional Negligence

James is recommended by Chambers & Partners and the Legal 500 for professional negligence disputes and has particular experience in respect of claims against engineers, architects, quantity surveyors, project managers and valuers. Outside the construction field, he is instructed in relation to claims against lawyers, insurance intermediaries

and accountants.

Featured Professional Negligence cases

- James was instructed in claims against a firm of engineers in relation to two high end residential developments in Mayfair.
 - Instructed for engineers in large TCC multi party dispute in relation to the Selfridges Birmingham building.
 - James acted for solicitors who successfully defended a high profile claim arising out of the sale of a superyacht: *Hirtenstein v Hill Dickinson* [2014] EWHC 2711 (Comm).
 - James was instructed to defend a £10m claim against solicitors and barristers arising out of unsuccessful construction litigation.
 - Instructed on major claim against engineers arising out of a waste to energy facility.
 - James was instructed on a claim in respect of the design of a new bridge in Wasdale, the Lake District.
 - James has particular experience of valuers' negligence cases, including cases about the valuation of development sites.
 - Acting for and against valuers and solicitors in numerous mortgage fraud cases.
 - Appearing as advocate in and advising in relation to numerous claims against engineers and architects, including two cases in which James successfully applied for claims brought in negligence against engineers to be struck out on the basis of no duty of care.
 - Instructed on behalf of quantity surveyors in cases involving allegations of negligent certification, project management and advice in relation to contract formation.
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Appointments

- Trained mediator
- Registered as an advocate in the Dubai International Financial Centre Courts (DIFC)

Publications

- Co-author of “Civil Appeals: Principles and Procedure” (Sweet and Maxwell 2010; second edition 2014), described by Lord Dyson MR as “without doubt an essential work for both lawyers and judges” and “the leading work in the field”
- Author of chapter on professional indemnity insurance in the Architect’s Legal Handbook
- “Ignorance the Lowest Common Denominator for Spiral Formation”: Reinsurance Magazine April 2008
- “When should a Court Probe an Insured’s Mind?” Lloyd’s List 24 December 2008
- “Jurisdictions: Choose with care”: Global Reinsurance 28 January 2009
- “Being certain it’s certain enough” (2013) 24 3 Construction Law Journal 14

Education

- MA (Oxon) Modern History
- Dip Law (Leeds Metropolitan)

Recommendations

James Leabeater is recommended for shipping, construction, energy and professional negligence disputes by Chambers & Partners and the Legal 500 where recent comments include:

- James is very talented, fiercely intelligent, and inspires confidence in clients with an incisive and ruthless cross-examination style.
- His cross-examination is absolutely devastating – he’s very meticulous and he pays great attention to detail, packing a real punch with his questions.
- He is a phenomenal advocate – so efficient and good at getting across the issues. He is very good at dealing with high-pressured scenarios.
- James is a superb barrister, a real fighter who you want in your corner. He is also a deep strategic thinker – he identifies and deals with the other side’s best points before they have thought of them.
- He is an exceptional counsel, with the intellect and approach of a more seasoned KC, and he has the ability to distil complex matters by identifying critical issues in record time.
- James Leabeater KC is a pleasure to work with. He is meticulous, commercial and client-focused.

Prior to taking silk in 2019, James was nominated as “Junior of the Year” in two different areas of law at the Chambers & Partners UK Bar Awards: construction (2016) and shipping (2018).