

# Lord Marks KC

Call 1975 Silk 1995



Jonathan Marks KC has a wide ranging civil practice.

Jonathan has a wide ranging international civil practice. He has a reputation as a formidable and versatile advocate, particularly in cross-examination. He appears before a wide range of courts and tribunals and appears frequently in arbitrations in England and Wales and other jurisdictions, particularly in the Middle East. He is often instructed in cases involving highly technical material and regularly deals with sophisticated expert evidence.

Jonathan also has extensive experience of representing clients at mediations. He is a qualified arbitrator and mediator and is happy to accept appointments. He has wide experience of complex negotiations, often involving related disputes in different jurisdictions and areas of law.

He has particular expertise in:

- Construction & Engineering
- Commercial Dispute Resolution
- Professional Negligence

## Construction & Engineering

Jonathan is highly regarded in this field and has developed an extensive construction and engineering practice in England and Wales and overseas, particularly in the Middle East. He regularly appears before arbitrators and judges in the Technology and Construction Court and has considerable experience of conducting arbitrations in the Middle East, remotely as well as in person. He is frequently instructed in cases involving highly technical material.

Jonathan's clients include major corporations, government departments and agencies, national and international companies, contractors and developers.

### Featured Construction & Engineering cases

Conducting a substantial arbitration in the UAE under ICC rules, representing an employer in a dispute arising out of the construction of a large mixed use (residential, office, retail and medical) development in the UAE under a FIDIC contract.

Serious technical issues concerned the construction of the basement and the ability of the floor slabs to withstand hydrostatic pressure and contractual issues included rights to terminate under the FIDIC contract and their interplay with UAE Law.

Representing a German client in a long international arbitration under ICC rules concerning the supply and installation of all the plant and processing equipment in a substantial new factory in the UK. Case involved detailed engineering and process evidence, as well as lengthy and complex factual evidence and consideration of the concept of “willful default”.

Representing the main Contractor in a major dispute with an employer arbitrated under DIAC rules arising out of a FIDIC contract for the construction of four blocks of flats. The arbitration, in the UAE, involved two evidentiary hearings and detailed consideration of construction delays and their causes and allegations of defective construction. There were substantial technical issues and the Tribunal appointed an independent engineering expert of their own, in addition to the parties’ own experts.

Appearing for the Respondent M and E contractors in successfully resisting an appeal to the TCC by the main contractor against an award by an arbitrator on points of law, involving legal arguments about the burden of proof, a “global costs” claim.

Representing a major construction company in a substantial Defective Premises Act action in the TCC, brought by multiple claimants, arising out of the construction of two blocks of flats in Leeds, and a further related action; the claims involved novel points of law on class actions and the measure of damages in Defective Premises Act cases.

Representing contractors in the Court of Appeal in a construction case involving points of law on appeal on the status of an adjudication award and the effect of Calderbank letters on costs; brought in to conduct appeal after adverse decisions below.

Acting for structural engineers in successfully resisting a claim arising out of the design and installation of the concrete floor for a major warehousing operation, following extensive failure of the floor and involving difficult technical questions of causation.

Acting for a multinational train contractor in a dispute with an international electronics company; the client claimed damages for the supply of defective electronics systems; the case involved a series of arbitrations and many technical issues.

Instructed by a government agency in an arbitration concerning the contract administration of a major flood relief tunneling project, involving an investigation of the performance of sophisticated tunneling machinery.

Acting for the contractor in a dispute involving the delays to a substantial railway bridge building project.

Acting for the main contractor in a long-running dispute concerning construction works involved in implementing a city centre pedestrianisation project.

Acting for major national cleaning contractors in a case involving a fire at Waterloo Station, London; the case raised technical questions concerning the causes of the start and spread of the fire; the case settled after mediation.

Acting for a major train contractor on an underground network in an adjudication fought under the terms of a PFI contract; the case involved difficult contractual issues as to entitlement to extra monies under the terms of contract for removing asbestos from equipment on tube line.

# Commercial Disputes

Jonathan's work in this area involves a wide variety of contractual and other commercial disputes, many with an international dimension, litigated or arbitrated in England and Wales and other jurisdictions, particularly in the Middle East. He is very experienced at undertaking cases with sharp disputes of fact requiring rigorous cross-examination and the close examination of documents, inauthentic as well as genuine. He regularly handles contractual disputes involving the interpretation and application of the law of different jurisdictions.

## Featured Commercial Disputes cases

---

Currently representing an international supplier of equipment for public and private sector use in arbitration proceedings in the UAE (proceeding remotely) arising out of the supplier's termination of a national non-exclusive distributorship, involving allegations of wrongful termination of the agreement and counter-allegations of failure to observe non-compete and minimum purchase obligation provisions.

---

Successfully representing a UAE distributor in an arbitration concerning disputes arising out of the termination of an international exclusive distribution agreement. The case involved issues of contractual interpretation under DIFC law, particularly relating to common intention, good faith, the assessment of outstanding accounts and the implementation of termination and post-termination provisions. The pre-hearing review, the evidential hearing and submissions were all held remotely, with participants in three jurisdictions.

---

Representing the wife of an Iranian businessman against whom a substantial Iranian company had obtained a multi-million dollar judgment in the High Court in England arising out of a dispute in Iran involving the acquisition of an oil rig. The Iranian judgment creditors brought proceedings in the High Court to enforce their judgment against real property in England owned by the wife. The virtual trial took place in open court and judgment is awaited.

---

Representing an overseas insurer in an action brought by solicitors challenging the right of insurers to settle road traffic claims directly with road traffic claimants without incurring a liability to meet the solicitors' costs. Appeared at first instance in the Mercantile Court in Wales, then in the Court of Appeal and finally in the Supreme Court.

---

Successfully representing a UAE joint stock public company and its major shareholder in resisting a claim brought by a minority shareholder relating to his shareholding in an arbitration in the UAE under DIAC rules. Contracts subject to UAE law. Wide ranging factual disputes and expert evidence on UAE law and company valuation.

---

Advising the guarantors of Chinese charterers in respect of an appeal to the Court of Appeal against a Commercial Court judgment to the effect that a charterparty was enforceable notwithstanding the conviction of the General Manager of the shipowner for bribery in procuring the charterparty, which would have rendered the charterparty unenforceable. The case involved complex issues of criminal law and the law of evidence and of recognition of the decisions of foreign courts.

---

Representing a UK investor in injunction proceedings against a Far Eastern investment banking and stockholding company concerning the misuse of shares pledged as security and the proceeds of sale thereof.

---

Representing the owner and operator of commercial helicopters in an international dispute about the acquisition of a helicopter and the misuse of funds placed in escrow for the purpose of the purchase.

---

Representing a county council in resisting multiple substantial negligence claims arising out of a major warehouse fire in the North of England.

---

Representing the controlling shareholder of a removals company in successfully resisting a contractual and equitable claim in the Chancery Division to be entitled to a shareholding in the company brought by a former executive.

---

Representing the insurers of multiple Claimants in the TCC in respect of a fire claim arising out of the destruction of a substantial warehouse and all its contents; the case involved factual disputes plus technical fire questions and difficult points on vicarious liability.

---

Representing a major waste contractor, SITA, in the QB and the Court of Appeal (though the other side abandoned its appeal), in successfully resisting a commercial claim arising out of the cancellation by a local authority of a long running refuse contract to provide waste services.

---

## Professional Negligence

Jonathan represents both claimants and defendants in a wide range of professional negligence actions involving lawyers, accountants, pension brokers, architects, surveyors, valuers, engineers, and members of the medical profession.

### Featured Professional Negligence cases

---

Representing a major clearing bank in an action in the TCC and then in the Court of Appeal against a firm of projects monitor arising out of a substantial redevelopment of North London.

---

Acting for estate agents in major professional negligence and breach of fiduciary duty litigation arising out of an office, retail and residential development in the Midlands; successfully resisted an extension of time for service of Particulars of Claim in the TCC, resulting in the clients escaping liability.

---

Acting for the largest car wash company in Europe in a solicitors' negligence action arising out of the acquisition of a German subsidiary; complex acquisition and mergers procedures and questions concerning allocation of contractual responsibility.

---

Acting for the largest car wash company in Europe in a solicitors' negligence action arising out of the acquisition of a German subsidiary; complex acquisition and mergers procedures and questions concerning allocation of contractual responsibility.

---

Acting for claimants and defendant solicitors in cases involving the financing, acquisition, development and refurbishment of property.

---

Instructed by claimants and defendant solicitors in cases involving allegedly mishandled property transactions and the conduct of litigation.

---

Acting for claimants and defendant solicitors in cases involving allegedly mishandled ancillary relief proceedings on divorce; Jonathan also has considerable experience of handling "big money" family law cases.

---

Acting in accountants' negligence cases involving advice on complicated tax provisions such as relief on loans to closed companies, building society taxation, partnership taxation, as well as advice on corporate acquisitions and company accounts.

---

Acting for both claimants and defendants in numerous major clinical negligence cases including a dental operation severing a nerve; osteotomy in the foot causing disability; loss of babies at term because of errors in obstetric care; a patient awake during a Caesarian because of badly administered anaesthetic; Cauda equina lesion of the back caused by failure of diagnosis and failure to operate; defending an osteopath alleged to have damaged back during manipulation.

---

## Regulatory

Jonathan has experience of professional regulatory tribunals and the Adjudication Panel for England. He has chaired a number of disciplinary hearings for the General Council of the Bar.

### Featured Regulatory cases

---

Representing a surveyor before an RICS Disciplinary Panel in proceedings arising out of the insolvency of his partnership attributable to the defaults of his partner.

---

Representing a solicitor before the Solicitors Disciplinary Tribunal in proceedings arising out of a client's improper property transactions.

---

Representing a councillor before the Adjudication Panel for England arising out of complaints about her conduct of council business.

---

Representing the Inns of Court in an appeal to the Visitors against a Barristers Disciplinary Tribunal.

---

Chairing Summary Procedure Panels and appeals from Adjudication Panels, as well as sitting on adjudication panels, for the Bar Standards Board and the Council of the Inns of Court.

---

## ADR

As counsel, Jonathan has extensive experience in arbitration, adjudication and mediation. He is a fellow of the Chartered Institute of Arbitrators and accepts appointments as arbitrator, adjudicator and mediator.

## Appointments

- TECBAR approved adjudicator
- Trained mediator
- Part II of the DIFC Courts' Register of Legal Practitioners

## Memberships

- FCI Arb

## Education

- BA (Oxon) Jurisprudence

## Languages

- French (working knowledge)
- Greek (working knowledge)