

# Henry Byam-Cook KC

SILK: 2020 | CALL: 2000

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## Overview

Henry practises in a range of commercial disputes, principally shipping, energy, IT/telecoms, banking, fraud and insurance. He frequently represents clients as sole counsel, but also has considerable experience working as part of a larger team.

Clients and the directories highlight his advocacy ("*his oral advocacy is superb*"), depth of analysis ("*has a very sharp mind*") and user-friendly approach ("*absolute pleasure to work with*").

He is regularly instructed on cases in the English High Court (Commercial Court, TCC and Chancery Division) and has also appeared in the Supreme Court and Court of Appeal. He has extensive experience of jurisdictional disputes and interim applications (including obtaining and resisting urgent injunctive relief, anti-suits and freezing orders), together with acting in trials, often with a complex, technical dimension.

Henry also has a strong commercial arbitration practice. He represents clients in all forms of international arbitration – ad hoc, institutional and trade arbitrations. In addition, he has considerable experience of applications to court in support of arbitral proceedings, appeals against arbitration awards, jurisdictional challenges and enforcement. He accepts appointments to sit as an arbitrator.

## Publications

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- 'What counts as a claim for "loss of profits" – have exclusion clauses grown new teeth?' Insurance Day (March 2021).
- 'Norwich Pharmacal orders in support of foreign proceedings' Asset Recovery (November 2020).
- 'Could the English Courts Give Judgments in Bitcoin?' Computers & Law (August/September 2018).

## Professional memberships

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- LMAA: Supporting Member
- Commercial Bar Association
- Society for Computers and Law
- London Common Law and Commercial Bar Association
- Fraud Lawyers Association

## Lectures/talks

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Henry frequently delivers talks to clients. Recent topics include:

- 'Jurisdiction Issues in Arbitrations'

## Education

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- Inns of Court School of Law, London: Bar Vocational Course (2000)
- City University, London: Diploma in Law (1999)
- University of Oxford, Lincoln College: Classics (1998)

- 'Enforcement in an arbitration context'
- 'Privilege under English law'
- 'Arbitrator independence and challenges to arbitrators'

## Example cases

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- *Clearlake Chartering USA Inc v Petroleo Brasileiro SA* [2023] Lloyd's Rep Plus 6: acted for Petrobras on US\$80 million dispute arising under letters of indemnity for discharge of cargo without production of original bills of lading – leading case on the scope of obligations under Lols to put up security and the effect of the Shellvoy "deemed" Lol mechanism (Commercial Court).
- *Medsted v Canaccord Genuity Wealth* [2019] 1 WLR 4481: acted for successful appellant on questions concerning imposition of fiduciary duties on an introducing broker, the scope of the informed consent defence, and whether a breach of fiduciary duty engaged the doctrine of illegality (Court of Appeal).
- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- *Kezen (in liquidation) v Barclays Bank Plc* (2020): acted for liquidators in multi-million pound Commercial Court claim for breach of bank's Quincecare duty as part of asset recovery strategy following fraud by company's director.
- *The "Golden Victory"* [2007] 2 AC 353: acted for successful appellants in the leading case on the assessment of contract damages and the compensatory principle (House of Lords).
- *Caresse Navigation v Office Nationale de l'Electricite* [2015] QB 366: acted for successful respondents upholding an anti-suit injunction; decision is leading case on the incorporation of arbitration agreement from a charter into a bill of lading (Court of Appeal).
- *SAP (UK) Ltd v Diageo Great Britain Ltd* [2017] EWHC 189 (TCC): represented SAP in £54 million software licence dispute with Diageo – leading case on the meaning of "indirect use or access" of software (TCC).
- LCIA arbitration: acted for software provider in arbitration proceedings related to the installation of an automated warehouse system in Moscow.

## Commercial dispute resolution

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Henry has a broad commercial disputes practice, often involving cases with a multi-jurisdictional aspect. His instructions include disputes about sale of goods, joint ventures, SPAs, commission agreements, distributorships, commercial agencies, loans, guarantees, letters of credit and trade & asset-finance structures.

Highlights include:

- *Salt Ship Design v Prysmian Powerlink Srl* [2022] FSR 16: mixed contractual / IP dispute under design agreement for highly specialized cable-laying ship – claims made for breach of contract, breach of confidence and breach of trade secrets regulations (Commercial Court).
- *ProPharma Group MIS Holdings v Underwriting Members of Axis Syndicate 1686* (2022): acted for buyers on their claims against insurers under Buyer-Side Warranty & Indemnity insurance policy for breaches of warranty under share sale and purchase agreement (Commercial Court).
- *Medsted v Canaccord Genuity Wealth* [2019] 1 WLR 4481: acted for successful appellant on questions concerning the imposition of fiduciary duties on an introducing broker, the scope of the informed consent defence, and whether a breach of fiduciary duty engaged the doctrine of illegality (Commercial Court, Court of Appeal).
- *Kezen (in liquidation) v Barclays Bank Plc* (2020): acted for liquidators in multi-million pound Commercial Court claim for breach of bank's 'Quincecare' duty as part of asset recovery strategy following fraud by company's director (Commercial Court).
- *Bank of Baroda v Nawany* [2017] 2 All E.R. (Comm) 763: jurisdictional dispute arising from suite of loan documents for US\$18 million facility – considered the inter-action between Indian and English proceedings and their effect on the

parties' unilaterally non-exclusive jurisdiction clause (Commercial Court).

- Ad hoc arbitration: US\$20m dispute arising out of the dissolution of a 12-year joint venture, giving rise to issues concerning reflective loss, derivative actions and breaches of fiduciary duties.
- *Mirador v MF Global UK Limited* [2012] EWCA Civ 1662: appeal and detailed quantum proceedings concerning an introducing broker agreement covering F/X, CFD and futures and options trading (Commercial Court, Court of Appeal).
- *WS Tankship II BV v The Kwangju Bank Ltd* [2012] C.I.L.L. 3155: defended claims against banks under a series of refund guarantees issued in connection with a shipbuilding contract raising issues of rectification, estoppel, non-disclosure and variation (Commercial Court).
- *The "Golden Victory"* [2007] 2 AC 353: acted for successful appellants in the leading case on the assessment of contract damages and the compensatory principle (Commercial Court, Court of Appeal and House of Lords).

## Arbitration

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Henry has been named by the directories for many years as a leading barrister in the field of international commercial arbitration. He has appeared as counsel in arbitrations seated around the world, with a particular focus on London and Singapore. His cases often involve disputes with a heavy, technical dimension and he has extensive experience of cross-examining expert witnesses.

Highlights include:

- SIAC arbitration: successfully acted for sellers under a contract for the sale of coal, resisting argument that pricing mechanism was unenforceable for lack of certainty.
- LMAA arbitration: successfully acted for respondents resisting US\$10m claim under an indemnity contract with complex issues of contractual construction.
- LCIA arbitration: acted for software provider in arbitration proceedings related to a 4 year project to install an automated warehouse system in Moscow.
- Ad hoc arbitration: acted for electronic components manufacturer in disputes arising from the termination of a commercial agency; issues concerning fraudulent misrepresentation, and the assessment of compensation under EU directive.
- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- ICC arbitration: acted for buyers of components for an industrial plant following the sellers' refusal to perform on the basis that the contract was unenforceable for illegality (accusations that the plant sought to exploit technology obtained by industrial espionage).
- LMAA arbitration: acted for US hedge fund on disputes arising under a charter for a specialized dive-support vessel (the charter was part of a wider asset-finance package) – US\$15m dollar claims and cross-claims following alleged failure of dynamic positioning system.
- LCIA arbitration: acting for insurers on US\$400m claims made under a political risks insurance policy in respect of the alleged expropriation of a utility company by a State.
- Ad hoc arbitration: US\$20m dispute arising out of the dissolution of a 12-year joint venture giving rise to issues concerning reflective loss, the ability to bring a derivative action in arbitration and breaches of fiduciary duties.

## Shipping and commodities

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Prior to taking silk, Henry was listed in Chambers & Partners and The Legal 500 as one of only two juniors in Band 1 in the fields of shipping and commodities. In 2018, he was the winner of 'Shipping Junior of the Year' at the Chambers UK Bar Awards.

He has extensive experience in dry shipping matters, and has appeared in a number of the leading cases in the area and numerous LMAA and other trade arbitrations. His instructions cover the full range of charterparty, bill of lading and international sales of goods disputes, with many of his cases arising from casualties (unsafe ports, dangerous goods, fires, improper stowage). He also regularly acts on cases concerning MOAs, shipbuilding, marine insurance and towage contracts. His experience further extends to disputes concerning the building and chartering of superyachts.

Highlights include:

- *Fastfreight PTE Ltd v Bulk Trident Shipping Ltd (The "Anna Dorothea")* [2023] 2 Lloyd's Rep 446: successfully acted for

owner of a time chartered vessel enforcing a “pay now, argue later” clause restricting charterer’s right to make deductions from hire (Commercial Court).

- *Clearlake Chartering USA Inc v Petroleo Brasileiro SA* [2023] Lloyd’s Rep Plus 6: acted for Petrobras on US\$80 million dispute arising under letters of indemnity for discharge of cargo without production of original bills of lading – leading case on the scope of obligations under Lols to put up security and the effect of the Shellvoy “deemed” Lol mechanism (Commercial Court).
- Hong Kong arbitration (2022): successfully acted for owners on 2-week hearing of US\$40million unsafe port claim relating to grounding and loss of vessel in remote Pacific location.
- *Salt Ship Design v Prysmian Powerlink Srl* [2022] FSR 16: mixed contractual / IP dispute under design agreement for highly specialized cable-laying vessel – claims made for breach of contract, breach of confidence and breach of trade secrets regulations (Commercial Court).
- *Glencore Energy UK Limited v OMV Supply & Trading Limited* [2018] 2 Lloyd’s Rep 223: case concerned a contract for the sale of crude oil and gave rise to a number of novel legal arguments relating to time spent waiting by the vessel during the voyage (Commercial Court).
- *Caresse Navigation v Office Nationale de l’Electricite* [2015] QB 366: acted alone in the Court of Appeal in relation to an anti-suit injunction – appeal focused on whether or not a jurisdiction clause had been incorporated into a bill of lading from a voyage charter and the extent to which the Court could manipulate the words of the bill of lading to effect the incorporation (Court of Appeal).
- *National Shipping Company of Saudi Arabia v BP Oil Supply Company (The “Abqaiq”)* [2012] 1 Lloyd’s Rep 18 – acted alone on a two-day hearing before Court of Appeal – issue concerned whether a demurrage claim was precluded by reason of a settlement agreement or the contractual time bar in the BPVoy form.
- *ENE Kos 1 v Petroleo Brasileiro SA (The “Kos”)* [2012] 2 A.C. 164 – leading case on the operation of the implied indemnity under a time charter, and recoverability of the costs of putting up security as legal costs in a subsequent court action (Commercial Court, Court of Appeal and Supreme Court).
- *The “Golden Victory”* [2007] 2 AC 353: assessment of damages for repudiatory breach by charterer of long term time charter – leading case on the compensatory principle and contract damages (Commercial Court, Court of Appeal and House of Lords).

## Civil fraud and asset tracing

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Henry has considerable experience of both making and defending civil fraud claims, including obtaining and resisting applications for urgent injunctive relief at the outset of proceedings or as part of strategies to enforce judgments and arbitration awards.

Recent cases include:

- *Chowgule & Company Private Ltd v Pratap Shirke* (2023): acted for two defendants to US\$130m fraud claim alleging deceit and breaches of fiduciary duty against backdrop of high net worth family disputes, related freezing injunction and jurisdictional applications (Commercial Court).
- *Kezen (in liquidation) v Barclays Bank Plc* (2020): acted for liquidators in multi-million pound Commercial Court claim for breach of bank’s Quincecare duty as part of asset recovery strategy following fraud by company’s director (Commercial Court).
- *Medsted v Canaccord Genuity Wealth* (2020): successfully acted for introducing broker on its recovery of multi-million pound commissions on CFD trades which had been deliberately hidden from the broker by the defendant wealth manager – lead counsel in 2019 on successful appeal concerning fiduciary duties and defence of informed consent and in 2020 in detailed quantum proceedings raising novel points about the correct counterfactual when assessing damages (Commercial Court, Court of Appeal).
- LCIA arbitration (2019): acted for respondent, defending US\$10m claim under share sale agreements giving rise to issues about the fabrication of documents and sham transactions.
- *Net Insurance SpA v Torzi and others* (2019): acted for defendants (including on freezing injunction) to alleged fraud concerning the misappropriation of €25m of Italian Treasury bonds by brokerage companies and custodians (Commercial Court).

## Energy and natural resources

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Henry regularly acts on disputes relating to both offshore and onshore energy and associated commercial structures, including joint ventures and agency / commission agreements.

Highlights include:

- *Salt Ship Design v Prysmian Powerlink Srl* [2022] FSR 16: mixed contractual / IP dispute under design agreement for highly specialized cable-laying ship – claims made for breach of contract, breach of confidence and breach of trade secrets regulations (Commercial Court).
- Ad hoc arbitration: US\$20m dispute arising out of the dissolution of a 12-year joint venture giving rise to issues concerning reflective loss, the ability to bring a derivative action in arbitration and breaches of fiduciary duties.
- LCIA arbitration: dispute between main contractor and sub-contractor in relation to operation of jack-up rigs and other heavy lift equipment under a Well Drilling Services Contract for development wells.
- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- London arbitration: acted for owners of LNG carrier after engine breakdown which disrupted the trading schedule of major energy company which had chartered the vessel for carriage of parcels under its long-term LNG purchase contracts.
- ICC arbitration: acted for buyers of components for an industrial plant following the sellers' refusal to perform on the basis that the contract was unenforceable for illegality (accusations that the plant sought to exploit technology obtained by industrial espionage).

## Information technology

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Henry has considerable experience of complex IT implementation project disputes and software licensing claims, and has appeared in a number of the major Court cases in this area.

Highlights include:

- *SAP (UK) Limited v Diageo* [2017] EWHC 189 (TCC): represented SAP in £54 million software licence dispute with Diageo – leading case on the meaning of “indirect use or access” of software (4-day liability trial in TCC).
- LCIA arbitration: acted for respondent software provider in arbitration proceedings which culminated in a nine-day hearing of disputes related to the installation of an automated warehouse system in Moscow.
- *T-Systems Ltd v EE*: represented T-Systems against Everything Everywhere in £80 million IT services dispute regarding the migration and management of Orange and EE's legacy IT infrastructure (Commercial Court).
- *Atos Consulting Ltd v Avis Europe Plc*: dispute over the termination of a master services agreement for the pan European implementation of an ERP financial software package and Shared Service Centre. Case raised issues of fraudulent misrepresentation and expert points relating to repudiation (9-week trial in TCC which settled during hearing).
- *Peregrine Systems Ltd v Steria Ltd* [2004] All ER (D) 447 (Feb) – helpdesk outsourcing – software development and implementation contract – termination clause and common law termination – misrepresentation – meaning of “remediable” breach – documentation and training requirements – ITIL compliance (8-day trial in TCC and 2-day appeal in Court of Appeal).

## Insurance

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Henry has considerable experience acting for insureds and insurers in the marine, H&M, D&O and other indemnity insurance fields, and of related professional negligence claims.

Highlights include:

- *ProPharma Group MIS Holdings v Underwriting Members of Axis Syndicate 1686* (2022): acted for buyers on their claims against insurers under Buyer-Side Warranty & Indemnity insurance policy for breaches of warranty under share sale and purchase agreement (Commercial Court).
- LCIA arbitration (2020): acting for insurers on US\$400m claims made under a political risks insurance policy in respect of the alleged expropriation of a utility company by a State.
- Ad hoc arbitration (2019): represented Lloyd's Syndicate on its professional negligence claim worth in excess of €60 million against its coverholder under a sequence of binding authority agreements in relation to the latter's poor performance of claims handling role.
- *Elta Systems v New India Assurance* (2016): acted for insured under marine cargo specific voyage policy in relation to damage of cargo of ground radar power systems and associated equipment – dispute focused on interpretation of warranties and exclusion clauses (Commercial Court).
- *Navigators Insurance Company v Marwan*: case concerning a Protection & Indemnity insurance policy – insurers seeking

to avoid liability relying on grounds of breach of warranty, misrepresentation and non-disclosure (Commercial Court).

## Banking and financial services

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Henry has acted on a wide variety of disputes in the banking and financial services fields, including claims related to CFD and F/X trading, loans (and associated guarantees) and trade & asset finance structures.

Recent cases include:

- *Medsted v Canaccord Genuity Wealth* (2020): successfully acted for introducing broker on its recovery of multi-million pound commissions on CFD trades which had been deliberately hidden from the broker by the defendant wealth manager – lead counsel in 2019 on successful appeal concerning fiduciary duties and defence of informed consent and in 2020 in detailed quantum proceedings raising novel points about the correct counterfactual when assessing damages (Commercial Court, Court of Appeal).
- *Kezen (in liquidation) v Barclays Bank Plc* (2020): acted for liquidators in multi-million pound Commercial Court claim for breach of bank's Quincecare duty as part of asset recovery strategy following fraud by company's director (Commercial Court).
- *Bank of Baroda v Nawany* [2017] 2 All E.R. (Comm) 763: jurisdictional dispute arising from suite of loan documents for US\$18 million facility – considered the inter-action between Indian and English proceedings and their effect on the parties' unilaterally non-exclusive jurisdiction clause (Commercial Court).
- *Mirador v MF Global UK Limited* [2012] EWCA Civ 1662: appeal and detailed quantum proceedings concerning an introducing broker agreement covering F/X, CFD and futures and options trading (Commercial Court, Court of Appeal).

## Private international law

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Many of Henry's cases have a multi-jurisdictional element and he has considerable experience of making and resisting challenges to the jurisdiction of the English Courts and of anti-suit injunction applications.

Highlights include:

- *Lotus Cars v Marcassus Sport* [2019] EWHC 3128 (Comm): acted for Lotus on its claims against a French distributor – successfully resisted challenge to English Court's jurisdiction which raised issues concerning the Service Regulation and Articles 29 and 30 of Brussels Recast (Commercial Court).
- *Bank of Baroda v Nawany* [2017] 2 All E.R. (Comm) 763: jurisdictional dispute arising from suite of loan documents for US\$18 million facility in respect of a ship purchase – considered the inter-action between Indian and English proceedings and their effect on the parties' unilaterally non-exclusive jurisdiction clause (Commercial Court).
- *Caresse Navigation v Office Nationale de l'Electricite* [2015] QB 366: acted alone in the Court of Appeal in relation to an anti-suit injunction – appeal focused on whether or not a jurisdiction clause had been incorporated into a bill of lading from a voyage charter and the extent to which the Court could manipulate the words of the bill of lading to effect the incorporation (Court of Appeal).

## Recommendations

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Henry is very clever and a really nice guy who is an unflappable and persuasive advocate with a real eye for detail. [The Legal 500 UK Bar 2024](#)

He is a really true expert specialised in shipping law. [Chambers UK Bar 2024](#)

He is not only able to process a lot of information quickly and to comprehensively advise on the legal issues but is also a commercially astute lawyer. [The Legal 500 UK Bar 2024](#)

Henry is a great lawyer who is always a pleasure to work with. [Chambers UK Bar 2024](#)

He is incredibly helpful, experienced and comfortable in complex legal environments. [Chambers UK Bar 2024](#)

His advice is very good, very articulate and his cross-examination is a masterclass. [Chambers UK Bar 2024](#)

He's very calm and measured. Tribunals like him. [Chambers UK Bar 2023](#)

He is a pleasure to work with, is detail-oriented and has an appealing bedside manner. In difficult circumstances he provides neat solutions [Chambers UK Bar 2023](#)

He excels in particular in distilling complex technical points into readily understandable soundbites. [The Legal 500 UK Bar 2023](#)

He is a team player who can add a different perspective while always respecting your opinion [Chambers UK Bar 2023](#)

A very able silk with meticulous attention to detail, unrivalled knowledge of the law and a commercial attitude to advice. [The Legal 500 UK Bar 2022](#)

The quality that really sets Henry apart from other QCs is that he is truly a team player, in addition to all the attributes that go without saying. I trust Henry to both challenge me and to be receptive to challenge in return. [Chambers UK Bar 2022](#)

The advice was on point and realistic, but also thorough and focused on maximizing the chances of success for our client. In summary, all that you expect from a top notch barrister. [The Legal 500 UK Bar 2022](#)

An impressive performer in the arbitration field. [The Legal 500 UK Bar 2021](#)

He is incredible: he works phenomenally hard, he's very rigorous and he has excellent judgement. [Chambers UK Bar 2021](#)

A very good new silk who is very well regarded and is an impressive performer in this field. [The Legal 500 UK Bar 2021](#)

He has a very sharp mind and a refreshingly modern approach. He is cool, calm, collected and an absolute pleasure to work with. Henry's written advice and pleadings are always spot on. [Chambers UK Bar 2020](#)

Not only is he phenomenally intelligent and hardworking, he is also a delight to work with. [The Legal 500 UK Bar 2020](#)

He is very down to earth and good at getting down to the complex issues. He also shows real enthusiasm and is a subject matter expert. [Chambers UK Bar 2020](#)

Bright, thorough, and has a keen eye for the essential legal and commercial points in a matter. [The Legal 500 UK Bar 2020](#)

He is universally considered to be first rate. His written advocacy is second to none and his oral advocacy is superb. [Chambers UK Bar 2020](#)

He knows how to win cases. His written drafts are extraordinarily persuasive. [Chambers UK Bar 2019](#)