

## Arfan Khan

Call 2001

Telephone [020 7831 0222](tel:02078310222)

Email [clerks@42br.com](mailto:clerks@42br.com)



### Introduction

Arfan Khan has a high profile specialist appellate practice in Chancery, Commercial and Public law. He is instructed in exceptionally difficult appeals. He has led and argued landmark appeals in the Court of Appeal, the High Court, and in the UK Supreme Court for over close to two decades. He appeared successfully as sole Counsel in *Day v Haine* [2008] BCC 84, a landmark appeal where the Court of Appeal reversed the Court at first instance, holding that protective awards were provable debts in a company liquidation. The Court of Appeal decision in *Day v Haine* paved the way for the UK Supreme Court decision in *Re Nortel* [2013] UKSC, where the correctness of his approach in *Day v Haine* was confirmed. He was instructed on appeal to the Court of Appeal in a widely reported case concerning the gifted drawings of the late Francis Bacon. Recently, when leading a tax barrister, and a tax litigator on appeal to the Court of Appeal, he persuaded the Upper Tribunal to grant permission to appeal against its own decision on a point of law.

He has also appeared in landmark public law cases. In *Wokuri v Kassam* [2013] Ch 80, he succeeded in contending that the diplomat was not entitled to immunity. He successfully led the intervention for 4A law in the Court of Appeal, and in the UKSC in *Benkharbouche v Libya & Others* [2018] IRLR 123, where the UK Supreme Court upheld the Court of Appeal's decision to set aside the State Immunity Act 1978, in order to give effect to certain claims falling within the material scope of EU law. He has also appeared successfully as lead or sole Counsel in other high profile cases raising free speech and national security issues such as *Geert Wilders v SSHD* [2010] INLR 337, and *Geller & Anor v SOS* [2015] All ER (D) 54. He appears in litigation against or for the government with appropriate security clearance. In 2009, Arfan Khan was named Times Lawyer of the Week.

Whilst the core of his practice is appeals, where he is increasingly instructed to lead, or appear as sole Counsel, he is frequently instructed as sole or lead Counsel in the High Court. These include trials, and interlocutory disputes, where the sums involved are substantial.

He regularly participates in the Bar Council's outreach scheme to encourage children from social groups currently underrepresented at the Bar to consider a career as a barrister. He was a spokesperson for the Bar Council in a speech to the College of Law entitled "Changes to the Bar", outlining amongst other issues, the issue of retention and attrition in the case of women at the Bar.

## Independent judicial comments on Arfan's advocacy in reported cases

- “extremely well argued”: Penelope Reed QC in PPL v Balogun [2018] EWHC (Ch)
- “able submissions both orally and in writing”: Lloyd LJ in Secretary of State v Property Investors Courses Ltd & Anor [2009] EWCA Civ 104.
- “ably represented by Mr Arfan Khan”: Vos LJ, Sullivan LJ, and Briggs LJ in Michael v Official Receiver [2014] EWCA Civ 1590.
- “advanced cogent arguments”: Rimer LJ in Gaurilcikiene v Tesco Stores [2013] EWCA Civ 1612
- “It is said with force that the decision cannot be allowed to stand”: Rimer LJ in Michael v Official Receiver [2014] EWCA Civ 534.
- “Focused, helpful and concise.. document”: Patten LJ, Tomlinson LJ and Floyd LJ.
- “very properly relies on fundamental principles”: Arden LJ, Clarke LJ and Barling J in Gaurilcikiene v Tesco Stores [2014] EWCA Civ 1213.
- “ingenious and spirited”: Longmore LJ in NB v SSHD [2011] EWCA Civ 887.
- “full and careful” [skeleton]: Thorpe LJ, Wall LJ, and Coleridge J in Moore v Moore [2010] 1 FLR 1413.

## Comments from the legal profession on Arfan

He is highly regarded by the profession with solicitors and barristers describing him as follows:

- “easily as good as a top QC”, “one of those old school totally professional gentleman barristers”, who is “incredibly nice” (Head of Chambers at a tax Chambers).
- “possessor of an exceptional general capability allied to an unparalleled commitment” (Commercial, Chancery and Public Law Silk).
- “exceptionally hard working and gifted advocate of the highest integrity” (Partner in a top ranked City firm).

## Chancery & Commercial Litigation

- Phonographic Performance Ltd v Balgun t/a Mama Africa v [2018] EWHC 1327 (Ch). Correct approach to setting aside summary judgment and authorised infringement under s.16 of the Copyright Designs & Patents Act 1988.
- Loson v Brent [2018] EWCA Civ 803; Times, April 26, 2018; [2018] B.P.I.R 1085 (CA). Appeal on the correct applicable test to vary payment of a judgment under CPR r 40.9A. Currently on appeal to the Supreme Court.
- Yaddy Marketing v Secretary of State for the Home Department [2017] 1 WLR 1041 CA. Correct approach to the computation of a statutory limitation period. Appeal allowed.
- Michael v Official Receiver [2014] EWCA Civ 534. Succeeded in obtaining permission to appeal in a second appeal. The Court of Appeal held that the predetermination test, in a planning context, did not apply to an allegation of judicial bias.
- A v G [2014] EWHC 3800 (Ch). Successfully resisted an application for judgment in the sum of £2.5 million and other disclosure orders.
- Chilab v King's College London & Anor [2013] 2 Costs L.R. 191. Successfully opposed an application by KCL for security for costs against a wife on appeal.
- Chamberlin v Revenue & Customs Commissioners [2010] S.T.C.2782; [2011] S.T.C.1237. Successful on appeal which held that an erroneous VAT return does not give rise to a debt. Judgment overturned in the

Court of Appeal.

- *Nortel Networks UK Ltd (In Administration) v Unite the Union* [2010] 2 B.C.L.C. 674. Succeeded in the argument that the Court should hear an application to lift the moratorium.
- *Osuji v Holmes* [2011] R.V.R. 228; *Times*, April 19, 2011. Obtained permission to appeal on a second appeal. The Court of Appeal held permission to discontinue was not required where a High Court injunction was obtained pending the issue of proceedings, and the claim had been subsequently issued in the County Court.
- *Integral Memory Plc v Haines Watts* [2012] S.T.I.1385. Successfully obtained permission to appeal on the papers. The Court dealt with the issue of time bar in the context of claims for breach of contract and negligence.
- *Chilab v King's College London & Anor* [2013] 2 Costs L.R. 191. Successfully opposed an application by KCL for security for costs against a wife on appeal.
- *Attorney General of Zambia v MCD* [2008] Lloyd's Rep FC 587. Appeared in an appeal involving findings of vicarious liability, dishonest assistance and knowing receipt. Appeal allowed.
- *G v J* (2017-2018) (Ch). Claim for the recoveries of monies in excess of \$8 million. Illegality defence raised based on South African Law. Claim involves a claim for a breach of trust and fiduciary duties.

## Arbitration

- *Marsdon Equities v Global Iron Ore Ltd* (2014) (Commercial Court). Successfully obtained permission to enforce a New York arbitration award in the sum of £49 million.
- *Global Steele v Fawaz* (2007). Successfully enforced an arbitration award in the sum of £3 million.

## Banking & Finance

- *V v DB* (2017-2018) (Business & Property Courts of England & Wales). Challenge to the enforcement of a bond worth US\$ 75 million.
- *Bank v B* (2016) (Ch). Trial involving a claim in excess of £8 million for recoveries under a demand guarantee. Successfully settled.
- *Axia FX Ltd v RBS* (2012-2016) (QBD). Five day trial involving alleged unlawful termination of banking facilities without notice and breach of fiduciary duties. Appeal settled.
- *Bank of Ireland v G* [2014] B.P.I.R. 156 (Ch). The Court allowed an application to lift a stay in the interests of creditors where there was deliberate flouting of a Court order.
- *Qadir v RBS* (2011-2013) (QBD). Successfully settled a claim in excess of £4 million.
- *The Governor and the Company of the Bank of Ireland v J & G* [2012] EWHC 1377 (Ch); CA. Instructed in an appeal involving first instance findings of breach of fiduciary duty and dishonest assistance against a banker. The appeal settled.
- *The Government of Equatorial Guinea v H* (2007) (QBD). Instructed as sole Counsel on behalf of the Government of Equatorial Guinea in a claim for professional negligence against a bank. The claim successfully settled.

## Company & Partnership

- Olsen v Griffin & Anor [2019] EWHC 78 (QB).

## Construction & Engineering

- Peak Construction v Savva (2016-2017) (Ch). A restitutionary claim where defence of illegality raised. Claim settled with costs in clients favour.
- Peak Construction v Savva [2016] EWHC 1295 (Ch) (breaches of court orders/extensions of time).
- F v C (2017) (QBD). Permission to appeal granted on a construction of 108 (3) of the Housing Grant, Construction and Regeneration Act 1996. Lead Counsel.
- SA Builders v Holm [2016] EWCA Civ 712. Permission to appeal granted in a construction dispute on the meaning of any document purporting to be a defence within the meaning of paragraph 1.1 of Practice Direction 12. Appeal settled. Lead Counsel.

## Insolvency & Restructuring

- Day v Haine [2008] B.C.C.845. Succeeded on appeal in the argument that a protective award was a provable debt in in a corporate liquidation.
- Nortel Networks UK Ltd (In Administration) v Unite the Union [2010] 2 B.C.L.C. 674. Provability of protective awards in a company administration.

## Professional Negligence

- B v B (2018) UKSC. Instructed on appeal to the UK SC raising issues of causation in a case involving solicitor's negligence

## Property & Trusts

- O v D [2009] EWHC 1764 (Ch). Succeeded in the contention that property was not held on trust

## Public Law

- Benkharbouche v Embassy of Sudan, 4A Law & Others intervening [2018] IRLR 123. Article 6 of the ECHR and 47 of the EU Charter/international law. Permission to intervene granted by the UK Supreme Court on the papers. Lead Counsel for the intervener 4A Law. Submissions successful.
- Nwankwo v Secretary of State for the Home Department & Others [2018] 1 WLR 2641; 6 February 2018, The Times; CPN (2018) 2 Feb 4. Succeeded in arguing that the test that applies on appeal from a judicial



review is the first appeals test, and not the second appeals test. The Presidential Guidance on the second appeals test disapproved. Lead Counsel.

- *KM Algeria v Secretary of State for the Home Department & Others* [2017] EWCA Civ 2662. Substantive appeal involving a reasons challenge to the deportation of a foreign national. Lead Counsel.
- *Benkharbouche v Embassy of Sudan, 4A Law & Others intervening* [2015] I.R.L.R 301 (CA). Permission to intervene granted on the papers. S.4 and s.16 of the State Immunity Act 1978 set aside in order to give effect to employment claims falling within the material scope of EU law. Lead Counsel for the successful intervener 4A Law. Submissions identified the case of Mahamdia which had not been argued below, and which the Court of Appeal applied.
- *Almalki v Reyes, 4A Law & Others intervening* [2015] I.R.L.R. 289 (CA). Diplomat not immune from a claim where he/she acts for personal gain. Lead Counsel for the successful intervener 4A Law.
- *R (on the application of Geller) v Secretary of State for the Home Department* [2015] All ER (D) 54. Succeeded in obtaining permission to appeal on the papers by arguing that the government policy to exclude foreign nationals was unlawful. Appeal raised free speech issues under Article 10 of the ECHR. Lead Counsel for the Appellant.
- *Geert Wilders (Netherlands) v Secretary of State for the Home Department* [2010] I.N.L.R 337. Successful in an appeal, which held that the exclusion of a EU national from the UK was unlawful.
- *Wokuri v Kassam* [2013] Ch 80. Successful in the submission that a diplomat is not immune from an employment claim.

## Qualifications & Scholarsips

- LLM: University College London. Distinction in Insolvency Law.
- LLB (Hons): Sheffield. First Class in part 1 and 2 subjects, including highest first in Jurisprudence. Recipient of the University Moot Court Award for exemplary oral and written advocacy.
- Recipient of the Potts Scholarship UCL for excellence in the All UK Universities Post Graduate Essay Competition in Commercial Law
- Times Lawyer of the Week, 2009.
- Hardwicke Scholar, Lincoln's Inn.
- Mitchell's Scholar (for Participation in the Quarter Finals of the World Universities Debating Championships).
- Nathanson Scholar (for first place in the Nabarro Nathanson Mooting Competition).

## Publications

- *Setting Aside Statutory Demands: A Revisit*, *The Law Quarterly Review*, (2007), 123 (January), 42 (Sweet & Maxwell).
- *The Commencement of Laytime in a Voyage Charter Party*, *The Journal of Business Law*, May (2003), 284, 294.

## Memberships

- Member of the United Kingdom Association of Jewish Lawyers and Jurists