



## David Brynmor Thomas KC

Year of call: 2011 | Silk: 2019

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*“His ability to identify flaws in the other side’s case is marvellous.”*

### The Legal 500 2022

David Brynmor Thomas KC is an advocate and arbitrator who specialises in high-value, complex commercial disputes domestically and internationally. Before he was called to the Bar, David had more than 20 years’ experience as a solicitor. During a longstanding career at Herbert Smith, he was a litigation partner, focused on heavy construction and infrastructure disputes, and a founding partner of its international commercial arbitration group.

David’s cases principally arise from the energy, infrastructure and construction and engineering sectors. He also has significant experience of shareholder and joint venture disputes, disputes arising from international investments and collaborations, aircraft leasing and maintenance, shipbuilding and offshore engineering and commodities.

In addition to his practice as counsel, David is recognised as an experienced international commercial arbitrator, having sat as sole, party-appointed or presiding arbitrator in more than 60 institutional and ad hoc arbitrations.

David is co-Chair of the Combar India subcommittee. He is an honorary professor of law in the School of International Arbitration, Queen Mary University of London where he teaches international construction arbitration, and co-edits Global Arbitration Review’s Guide to Construction Arbitration. He regularly speaks on construction disputes in commercial arbitration and serves as an advocacy trainer for Middle Temple. He was Chair of the Board of Trustees of the Chartered Institute of Arbitrators and a member of Working Group II of the United Nations Commission on International Trade Law (UNCITRAL) for recent work on both the Arbitration Model Law and Arbitration Rules. His first degree was in medicine, which he practised for a short time before requalifying as a lawyer.



# Areas of expertise

Commercial

Construction

Energy and Natural Resources

Alternative Dispute Resolution

## Commercial

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*"A confident advocate and rises to the demands of complex cases with great charm." The Legal 500 2022*

David has acted in significant commercial arbitrations arising from joint ventures, breach of warranty on M&A transactions, the mis-sale of financial services products, aircraft leasing and the shareholder and commercial aspects of major projects.

He has also acted in litigation before the Commercial Court arising from arbitrations, in particular challenges to awards and their enforcement and anti-suit injunctions in support of arbitration. He also has experience of shareholder actions, unfair prejudice petitions and injunctions to prevent the calling or payment of bonds.

### Cases of note:

- Acted for the successful European party in a joint venture dispute as to the control of a manufacturing company in India. The LCIA arbitration, seated in London but subject to Indian law, was referred to on enforcement in India as "Karia".
- Acted for the minority shareholder in formulating and successfully settling a claim for unfair prejudice under s994 of the Companies Act 2006, arising from the conduct of the business of a Fintech company.
- Acted for the claimant in obtaining an anti-suit injunction in support of arbitration in London, in response to litigation brought in India in breach of an arbitration agreement.
- ***T v V & W [2018] EWHC 1492 (Comm) and T v V & Ors [2017] EWHC 565 (Comm)*** - Acted for an arbitrator in resisting applications under sections 24 (for their removal) and 68 (to have their award set aside) of the Arbitration Act 1996, in each case based on allegations of bias against the arbitrator.
- ***A v B [2016] EWHC 3003 (Comm) (25 November 2016)*** - Acted for the successful award creditor in resisting a challenge an arbitration award, on the basis that the creditor had ceased to exist following a merger subject to Indian company law that had taken place during the course of the arbitration.
- ***Emirates Trading Agency Llc v Sociedade De Fomento Industrial Private Ltd [2015] EWHC 1452 (Comm) (20 May 2015)*** - Acted for the successful award creditor to resist a challenge to an award, made on the basis that the tribunal had reopened issues of jurisdiction decided in an earlier award. The case raised issues of the res judicata and functus officio effects of partial final awards in International Chamber of Commerce arbitrations and their consequences.
- ***Emirates Trading Agency Llc v Prime Mineral Exports Private Ltd [2014] EWHC 2104 (Comm)*** - Acted for the successful party in resisting a challenge (one of a number) to an award on jurisdiction under section 67 Arbitration Act 1996. The challenge was based on the meaning, effect and performance of an escalating dispute resolution clause. Also acted for the vendor in two parallel International Chamber of Commerce arbitrations, arising from the breach of contracts for the long-term sale and purchase of iron ore.

## Recommendations

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David is ranked as a leading practitioner by all of the major directories, including:

- Who's Who Legal – as a thought leader for arbitration, a global leader for arbitration, commercial litigation and construction, and as a national leader at the UK bar for arbitration, construction and energy.
- The Legal 500 - for construction, international arbitration as arbitrator and international arbitration as counsel.

Chambers and Partners – as one of the most in demand arbitrators.

- *"His ability to identify flaws in other side's case is marvellous."*The Legal 500 2022
- *"... very experienced, cool, calm and collected throughout."*Chambers and Partners UK Bar 2022
- *"David is a very strong construction lawyer with excellent cross examination skills and can come up to speed in very short time."*The Legal 500 2022
- *"He is very bright and very hard-working."*Chambers and Partners UK Bar 2022
- *"A confident advocate and rises to the demands of complex cases with great charm."*The Legal 500 2022
- *"An insightful, practical arbitrator."*The Legal 500 2022
- *"A hands-on, commercial and strategic individual ... who is ... very passionate about arbitration ... and ... really excellent in the field."*Who's Who Legal 2022

## Memberships

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- Commercial Bar Association (COMBAR)
- Panel of neutrals of the International Centre for Dispute Resolution (ICDR)
- London Court of International Arbitration (LCIA)
- Chartered Institute of Arbitrators (CIArb)
- Commercial Bar Association (COMBAR)
- Worshipful Company of Arbitrators (WCoA)
- International Council for Commercial Arbitration (ICCA)
- American Arbitration Association
- Editorial Board, Global Arbitration Review

## Qualifications

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### Education

- 1990–91 - College of Law – Law Society Finals – First Class Honours
- 1989-90 – College of Law – Common Professional Examination
- 1982–87 – University of Edinburgh – Bachelor of Medicine, Bachelor of Surgery (MB, ChB)

## Additional information

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### Appointments

- 2023 - Part II of the DIFC Courts' Register of Legal Practitioners
- 2015 to date – Honorary Professor of Law, School of International Arbitration, Centre for Commercial Law Studies, Queen Mary University of London

- 2016 – Chair, Board of Trustees, Chartered Institute of Arbitrators
- 2011-16 – Trustee, Chartered Institute of Arbitrators
- 2000 – 2011 – Partner, Herbert Smith solicitors

## Languages

- English
- Conversational French

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