

## **Common Law in Europe Conference 2024**

**14 June 2024**

**Speech of Sam Townend KC**

**Chair of the Bar Council of England and Wales**

Welcome to the “Common Law in Europe” Conference 2024.

My name is Sam Townend KC, I am the Chair of the Bar Council of England and Wales, the representative body of the nearly 18,000 specialist advisors and advocates of my country.

It gives me great pleasure to welcome you, alongside my colleague President Michael Vorkas, the President of the Cyprus Bar Association, to the second such conference for legal professionals practising the common law in Europe, here in the beautiful town of Limassol.

First, some acknowledgements and thank yous. The Bar Council of England and Wales are delighted to continue collaborating with our colleagues in Cyprus to organise today’s conference. This event builds on the success of the first Common Law in Europe Conference hosted in 2022 and draws from the wealth of experiences shared in the bilateral conferences conducted between my Bar Council and the Cyprus Bar Association between 2016 and 2019.

I would like to express my sincere gratitude to the Cyprus Bar Association and their dedicated team for their invaluable effort, to Pavlos Panayi KC for his unstinting dedication to both this event and that of 2022, to my colleagues at the Bar Council for their sustained support; to all the speakers gracing today’s event; and, importantly, to all of you in attendance, for what promises to be an enlightening day.

It is appropriate and gives me particular pleasure to be able to join you for this Conference given my own professional background. I am a specialist in building, construction, engineering and energy law, with a strong international focus. As well as also being called to the Bar of England and Wales, I am called to, and practise in, the Courts of Northern Ireland. About 40% of my work is international in nature, having acted as counsel in international commercial and construction arbitrations under institutional as well as ad hoc rules, acted for parties under FIDIC dispute resolution boards, and as counsel, mediator and adjudicator in a host of common law or what I might call common law sympathetic locations, places as far afield as Australia, Singapore, Dubai and Abu Dhabi.

With attendees to an international conference such as you, I know that this kind of professional background and experience is not unusual. Indeed, I venture to suggest that it is typical. This is because we here are just examples among thousands of barristers and other lawyers from England and Wales, from here in Cyprus and elsewhere in Europe, whose career has been made by our experience and expertise in the common law. I am a single but palpable example of the economic and professional growth that has come from the international acceptance and adoption of the common law.

The common law underpins 27% of the world's jurisdictions and serves as the foundation for vast numbers of international contracts and commerce.

This trend is complemented, of course, by the fact of the English language being the language of choice for trade and commerce: 80% of the World's commercial transactions are conducted in English.

What then are the features of common law which has made it such a success story?

The common law is clear, fair and predictable and based on precedent. It respects the bargain struck by the parties. When planning a transaction or having to deal with a situation that has gone wrong, businesses and individuals know where they stand under the law and can predict outcomes based on a common understanding of the principles and the approach that a court or tribunal is likely to take.

The common law respects party autonomy as to the terms of a contract, and will not imply, or impose, terms into the parties' bargains unless stringent conditions have been met.

Law in our jurisdictions is based on precedent, giving it the predictability that is so important to commercial expectations, however, it is also agile and flexible, not frozen in time like the Constitution of the United States now appears to be. The common law develops as the business context develops. By way of example, in the Commercial and Technology Courts in London we have had a spate of cases on cyber-related matters. The common law is leading the way in FinTech, Digital Ledger Technology and Artificial Intelligence.

That balance between precedent based-law with flexibility means that the common law develops in a measured way. You will have seen the more conservative approach taken by common law jurisdictions to climate change-related litigation. I would venture to suggest that where there are successful claims with climate change issues as the subject-matter they may be more conservative, but they have a greater prospect of being adhered to, than, say, cases emanating from the civil system. The *Klimaseniorinnen v Switzerland*

case might be said to be a victory of a civil system approach to human rights issues over that of the common law world. However, the dissenting judgment of the English Judge on the ECHR, who argued that the majority judgment constituted an activist or overreaching approach that was not likely to effect change, but simply to multiply litigation, has some evidence in support of it, with the rejection, two days ago, by the Lower House of the Swiss Parliament of the majority ruling of the ECHR. It may be that this will be raised in the first panel session today, “ECHR in the common law world”.

Common law jurisdictions have strong judiciary, drawn from the highly experienced ranks of the senior legal profession. They are structurally and practically independent from both the executive and the legislature. This ensures fair and predictable dispute resolution.

It also means that common law jurisdictions lead the World in specialist jurisprudence- underpinned by the excellence of specialist judges. Just look at how often English, Australian, Hong Kong and Singapore cases are cited around the World and in international commercial dispute resolution forums. The influence of international legal forums founded on common law understandings, such as the Commonwealth Law Association and SIFOCC, the Standing International Forum of Commercial Courts, now with 58 member jurisdictions countries represented in the membership, created to cultivate and spread excellence in common law throughout the world.

Common law courts are also at the vanguard of procedural developments and innovation, with specialist procedures for the resolution of financial market disputes, or leading the way with joint expert discussions, joint expert discussions, and even “hot-tubbing”, the taking of concurrent evidence of

experts by judges. All as means to get to the root of a dispute in the quickest, most efficient way.

Common law jurisdictions tend to have similarly well-developed legal frameworks within which Arbitration takes place. In England and Wales this is set out in the Arbitration Act 1996, which has been undergoing a refresh following a detailed review by our Law Commission. Subject to amending legislation - parked at present due to our imminent General Election - these changes are politically uncontroversial and I am confident that it will return whoever is in Government.

Common law jurisdictions are associated with liberal legal services markets in which new and foreign lawyers are welcome to practice. For example, subject only to visa requirements, any lawyer from any jurisdiction can come to London to advise on any law, including English law, and to act in any non-court based dispute resolution, including, in particular, international commercial arbitrations. So far as Courts are concerned, and putting the United States aside, there is usually simple provision of a means by which to gain ad hoc membership of the Bar and, then, to have rights of audience in the domestic courts. I have in mind Hong Kong, Australia, New Zealand, Singapore, Ireland as well as England and Wales.

The liberalism of the common law legal services framework also creates a benign environment in which alternative dispute resolution can flourish. London, and elsewhere, in the English Common Law world, create the easiest environment in which international parties can conduct the resolution of their disputes using the lawyers they wish, in the forums and before the arbitrators they wish, applying the laws that they wish. This is why London is the world's

most commonly selected seat in arbitration. The presence of the London Court of International Arbitration and other renowned arbitral bodies in London is clear evidence of this.

Enforcement is generally straight forward in common law jurisdictions. I accept, of course, the damage that Brexit has done and we at the Bar Council continue to seek that the Government adopts the Hague Convention.

In today's ever-changing global landscape, with the UK navigating its post-Brexit position, the English Bar's commitment to strengthening ties within the common law community has never been more important. Its role in upholding global legal standards remains imperative. Today presents a unique opportunity to gain insights from expert practitioners on the latest developments across crucial areas of mutual interest within the common law world, including, I note, panel sessions on Suspicious Activity Reports, legal privilege, sanctions and alternative dispute resolution. We are grateful to all who have volunteered their time to contribute to what will be a worthwhile and engaging day of discussions, and I hope many of you will join us for lunch afterwards, offering a chance to network, thank our speakers, and share insights from the sessions.

Thank you for listening.

I hope you will now all join me in welcoming President Vorkas from the Cypriot Bar Association to the podium.