

# Can Yeginsu

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*He has the gravitas of a natural leader and possesses a giant intellect.*

- Chambers & Partners, 2019

**Can Yeginsu is a leading barrister practising in commercial litigation and international arbitration, civil fraud, professional liability, public law and human rights, and both private and public international law.**

Can is consistently ranked by Chambers Global, Chambers UK Bar, and Legal 500 as an outstanding junior in five practice areas: (i) commercial litigation; (ii) international arbitration; (iii) administrative and public law; (iv) civil liberties and human rights; and (v) public international law.

In 2019, Can was shortlisted for the '*International Arbitration Junior of the Year*' by Legal 500 and appointed to the independent High-Level Panel of Legal Experts on Media Freedom, convened by the former President of the UK Supreme Court, Lord Neuberger, and the UK's Special Envoy on Media Freedom, Amal Clooney, at the request of the UK and Canadian Governments.

Frequently appearing in the Commercial Court, Administrative Court, and the Chancery Division, Can has also acted in over 30 cases in the Court of Appeal, UK Supreme Court and the European Court of Human Rights. In addition, he has experience acting as co-counsel in proceedings before the ECOWAS Community Court of Justice, the Inter-American Court of Human Rights, the Federal Court of Malaysia, the Turkish Constitutional Court, and the Supreme Court of The Gambia. Can is admitted to the Bar of the DIFC Courts.

In his arbitral practice, Can is regularly instructed to act in commercial disputes under the LCIA, ICC, LMAA, and CIArb Rules, as well as in ad-hoc arbitrations under the UNCITRAL Rules. Can also has particular expertise in investor-state arbitration, including claims brought under the ICSID Rules and the ICSID Additional Facility Rules. He has received, and continues to accept, appointments as sole and co-arbitrator.

Can is **Adjunct Professor of Law** at Georgetown Law (Washington D.C.) and Koç University Law School (Istanbul) where he teaches investor-state arbitration. Can is also **Lecturer-in-Law** at Columbia Law School (New York) where he teaches international human rights law. He is the co-author of *The Protections for Religious Rights: Law and Practice* a leading practitioners' text, published by Oxford University Press, and **Partner Fellow** at the Lauterpacht Centre for International Law, University of Cambridge.

In 2013, Can was recognised as one of ten "Stars" practising at the Commercial Bar by Legal Week Magazine where he was identified as possibly one of "*the Bar's true polymaths...able to advocate in a wide variety of legal areas, with seemingly effortless fluency*".

## Privacy Policy



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## Transparency Statement

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# Areas of Expertise

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## Commercial Litigation

**“You know when you give him a piece of work, be it a pleading, evidence or skeleton, that it will come back in a state of perfection and that any issues he identifies will be matched by clever solutions – a dream junior barrister.”** *Legal 500, Commercial Litigation, 2021*

**“A polymath who can turn his hand to any area of litigation, he has the judgement of a far more senior counsel.” “He has the gravitas of a natural leader and possesses a giant intellect.”** *Chambers & Partners, Commercial Dispute Resolution, 2019*

**“An outstanding advocate with impeccable judgement and formidable brainpower.”** *Legal 500, Commercial Litigation, 2019*

**“Very user-friendly and meticulous” “As an advocate, he’s very confident due to his awareness of his own intellectual abilities”** *Chambers & Partners, Commercial Dispute Resolution, 2018*

**“Insightful and sharp with excellent strategic and legal drafting skills”** *Legal 500, Commercial Litigation, 2018*

**“A first-class international advocate...in a class of his own”** *Chambers Global, Dispute Resolution, 2017*

**“His serious legal brainpower is accompanied by a deft touch with clients”** *Legal 500, Commercial Litigation, 2017*

**“Our clients want him, listen to and trust him”** *Legal Week, Stars of the Bar, 2013*

Can has a thriving practice across a broad range of commercial litigation, including significant trial experience in the Commercial Court and the Chancery Division. He is now regarded as one of the top juniors at the Commercial Bar, nominated in 2019 as **Junior of the Year** for International Arbitration by *Legal 500*, and recognised in 2013 as one of Legal Week’s ten “Stars of the Bar”. Interviewees commented *“he has an excellent mind with a real talent for picking out the key issues” “very persuasive...inspiring confidence”* and that he *“regularly acts on million-pound litigation cases as sole counsel”*.

A considerable amount of Can’s work includes an international or cross-border dimension and he has particular expertise in conflict of laws issues (including jurisdiction challenges under Part 11 of the CPR). Can’s experience ranges across:

- Applications for pre-action disclosure and urgent injunctive relief (including freezing and proprietary injunctions).
- Bringing and resisting applications for security for costs.
- Enforcement proceedings (including the enforcement of arbitral awards).
- Claims giving rise to issues of choice of law and/or jurisdictional disputes.
- Civil fraud, with particular experience in conspiracy and economic tort claims, and frauds arising in the investment context, shareholder disputes, and agency contracts, as well as advanced fee frauds.
- Technology and IT disputes.
- Disputes between franchisors and franchisees.

- Wrotham Park, or Licence Fee, Damages.
- Bringing substantial claims for damages under s. 8 of the Human Rights Act 1998, alternatively commercial just satisfaction claims in the European Court of Human Rights, for violation of property rights under Article 1 of the First Protocol to the European Convention.
- The Sale of Goods Act 1979 and Supply of Goods and Services Act 1982.
- Matters concerning the enforcement of loans and guarantees.

Can has also given evidence in various jurisdictions as an expert in English commercial law.

Can is a member of the Commercial Bar Association (COMBAR) and the IBA Litigation Committee.

## Cases

### • **Bazhanov v Fosman (Commercial Ct)**

High profile successful jurisdiction challenge, led by Stuart Ritchie Q.C. of Fountain Court Chambers: permission to serve proceedings on Russian defendants was set aside as there was no good arguable case that binding agreements had been made for the provision of services to refinance a Russian company, or that English law and jurisdiction was to apply.

**Background:** The second claimant, Morrins, owned a group of companies for the ultimate benefit of the first claimant Alexey Bazhanov, a former Russian Minister of State, who had fled to England following criminal charges of fraud against him in Russia. The group was placed into an insolvency process. Mr Bazhanov arranged to meet the first defendant Russian businessman in London in June 2014 to discuss a plan to refinance the group. It was agreed that the first defendant would liaise with the Russian authorities and work on funding, and the first claimant would effect introductions and provide important documentation. They met a further two times in England, and in Russia in May 2015 when a document was signed. The claimants began proceedings in England claiming that there had been an agreement that the first defendant would buy-out the first claimant's interest in the group, the agreement would be governed by English law and jurisdiction and the third defendant had since come to own the group at a very favourable price. The claim alleged breach of contract, alternatively unjust enrichment. The claimants were granted permission to serve the proceedings on the defendants in Russia.

**Held:** Application granted.

**Was there a good arguable case that each contract claim fell within a jurisdictional gateway in CPR PD 6B?** No. The claimants were unable to satisfy the absolute standard to be met under CPR PD 6B of having "some substance" to their contract arguments, let alone satisfying the "relative plausibility test" discussed in *Brownlie v Four Seasons Holdings Inc [2015] EWCA Civ 665, [2016] 1 W.L.R. 1814, [2015] 7 WLUK 125, Brownlie* considered. That was so even if the gloss originating from *Canada Trust Co v Stolzenberg (No.2) [1998] 1 W.L.R. 547, [1997] 10 WLUK 543* did not apply, namely that the good arguable case test reflected that one side had a "much better argument on the material available", *Canada Trust* considered. The content of the discussions and the document had not been sufficiently certain to amount to binding contracts. The claimants had also failed to establish a good arguable case that it had been expressly agreed that the June 2014 agreement was to have been governed by English law. In the absence of an express agreement they had to rely on Regulation 593/2008 art.4 to confer jurisdiction but, as the agreement contemplated that services would be provided by both individuals, under art.4 it would have been governed by the law of the country with which it was most closely connected, which was Russia (see paras 51- 55, 60, 64 of judgment).

**Was there a serious issue to be tried in relation to unjust enrichment?** No. No such claim was available under Russian law, and it was not arguable that English law applied as a choice of law under Regulation 864/2007 art.14 . Even if there was a good arguable case for an express agreement that English law should apply, there was no suggestion that that agreement applied to non-contractual obligations and no circumstances were relied on to support an implied choice. Further, as the unjust enrichment claim was advanced as an alternative to a contract claim art.10 could not apply; if there was no contract there was no governing law that could be derived from it for the purposes of art.10 (paras 73, 75, 77).

**Was there a good arguable case that the unjust enrichment claim fell within a jurisdictional gateway in CPR PD 6B?** Yes. If there was a serious issue to be tried, the claimants had demonstrated a good arguable case that a substantial part of the acts in question were committed within the jurisdiction and therefore fell within gateway para.3.1(16). Although the assistance said to have been provided by the first claimant was translated into concrete actions in Russia, that only took place because he, whilst based in England, had given his consent or instructions. Although the defendants' acts were committed in Russia, more weight

should be given to the first claimant's acts in view of the nature of the unjust enrichment claim, *Sharab v Prince Al-Waleed Bin Talal Bin Abdul-Aziz Al-Saud* [2012] EWHC 1798 (Ch), [2012] 2 C.L.C. 612, [2012] 6 WLUK 737 applied (para.85).

**Was England the proper place for resolution of the dispute?** No. The case was overwhelmingly connected with Russia and there was no grave risk of an unfair trial in Russia. The court would not have exercised its discretion to grant permission to serve out (paras 94-95, 103).

**Conclusion** – Permission to serve out of the jurisdiction was set aside and a declaration granted that the English court had no jurisdiction to hear the claim (para.106).

The claimants appealed to **the Court of Appeal** but permission was denied them in late 2018.

- **Marathon Asset Management v Seddon & Ors (Commercial Ct)**  
5 week trial between asset management professionals, listed by *The Lawyer* as one of the Top 20 cases of 2016-7. Led by Stuart Ritchie Q.C. of Fountain Court Chambers for lead D. Leggatt J awarded nominal damages.  
  
See also other reported decisions: [2017] EWHC 479; [2017] 2 Costs LR 255 (Costs).
- **Stirling Mortimer (Commercial Ct)**  
Commercial Court claim for €59m brought by Guernsey fund, including allegations of fraud. Led by David Turner QC.
- **Breyer Group v Department of Energy and Climate Change (Commercial Ct)**  
Led by Patrick Lawrence QC, in a £195 million claim for damages under s. 8 of the Human Rights Act 1998 for violation of the Claimants' rights under Article 1 of the First Protocol (ECHR), following the government's proposed retrospective changes to the feed-in-tariffs scheme for solar photovoltaic installations. Successful in the trial of preliminary issues at first instance ([2014] EWHC 2257) and in the Court of Appeal ([2015] EWCA Civ 408). Trial settled in 2017.
- **Patel v Barrowfen (Companies Ct)**  
Acting (unled) for two family members of a leading conglomerate in a substantial dispute involving multiple commercial vehicles and spanning multiple jurisdictions, involving allegations of fraud and interests in excess of US \$120 million.
- **Pivdenny Bank (Commercial Ct)**  
Sole counsel, representing a Ukrainian Bank in the Commercial Court in a claim for declaratory relief (and linked enforcement proceedings) relating to rights under a number of ship mortgages, following arrests of the vessels in foreign waters. The case is part of the multiple proceedings relating to the hundreds of millions of pounds of state assets believed to have been owned or used by the ousted Ukrainian President Viktor Yanukovich and his circle.
- **InnovatorOne Plc (Commercial Ct)**  
Junior Counsel (led by John Powell QC and Graham Chapman QC) in a 18 week trial in the Commercial Court in a c.£50m complex claim involving multiple tax avoidance schemes and allegations of fraud against individuals and professional advisors. Issues arising included breach of trust, dishonest assistance, conspiracy, insurance and coverage points, and causes of action under the Financial Services and Markets Act 2000. One of *The Lawyer's* Top 20 cases of 2012, 2011, 2010.
- **Ludsin Overseas Ltd v Eco 3 Capital Ltd and Ors**  
Junior Counsel (led by Jamie Smith QC) acting for Part 20 Defendants in a claim in the Chancery Division of the High Court featuring complex arguments on agency and fraudulent misrepresentation in the investment context. The Part 20 claims were settled on the morning of the start of the trial. The terms of the settlement were not disclosed but the Court was informed that they did not involve the payment of any money by the Part 20 Defendants to the Defendants in the main action.
- **Araci v Fallon (CA)**  
Leading Court of Appeal authority on prohibitory injunctions [2011] EWCA Civ 668; [2011] LLR 440.

In a case where a jockey had entered into an agreement with a racehorse owner that placed him under a positive obligation to ride that owner's horse when asked, and a negative obligation not to ride a rival horse, the court granted an interim injunction



preventing him from breaching his obligations by riding a rival owner's horse in the Epsom Derby.

## Qualifications & Memberships

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### Memberships & Committee Positions

- Investment Treaty Forum, British Institute of International and Comparative Law.
- Vice Chairman, British Turkish Lawyers' Association.
- Bar Liaison Committee, International Committee, and Library Committee, Inner Temple.
- Co-Editor-in-Chief, The Turkish Commercial Law Review.
- Memberships: IBA, COMBAR, LCIA, ICC, ICCA, ASA, BICCL, ALBA, ILI, IPBA, and Lawyers for Liberty.

### Education, Qualifications & Prizes

- **University College, Oxford:** Double First Class B.A. in English Language and Literature; College Scholar, Master's Scholar, and the Stephen Boyd Memorial Prize recipient for the top First in Finals.
- **Princeton University:** Jane Eliza Procter Fellow.
- **City University, University of London:** First Class LL.B. (1st in year).
- **Harvard Law School:** LL.M. and Cravath International Scholar.
- **Inner Temple:** Treasurer's Prize, Major Scholar, and Princess Royal Scholar.

**Languages:** Turkish (native speaker), French (working knowledge)

## Insights

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### **GCHQ, encrypted chats and IPA 2016**

18 July 2019

This article was first published on Lexis®PSL on 8 July 2019. Corporate Crime analysis: An open letter signed by over 50 organisations, including Apple, WhatsApp, Liberty and Privacy International, recently called on the UK Government Communications Headquarters (GCHQ) to abandon a proposal to eavesdrop on encrypted chats. Can Yeginsu and Anthony Jones, barristers at 4 New Square Chambers, explain the background to the proposal and consider some of the related legislation in this area.

### **Covered Investment in International Investment Law – Chapter in Investment Treaty Arbitration Review (Ed. Barton Legum, 2019)**

1 July 2019

Can Yeginsu (4 New Square Chambers) and Ceyda Knoebel (Gibson Dunn) examine the definition of “investment”, often a critical threshold question of jurisdiction in investor state arbitration.

### **Criminalizing Speech to Protect Religious Peace?**

28 November 2018

Can Yeginsu and John Williams analyse the recent decision of the European Court of Human Rights in *E.S. v. Austrian* an article for Just Security.

### **Covered Investment in International Investment Law – Chapter in Investment Treaty Arbitration Review (Ed. Barton Legum, 2018)**

5 October 2018

Can Yeginsu (4 New Square Chambers) and Ceyda Knoebel (Gibson Dunn) examine the definition of “investment”, often a critical threshold question of jurisdiction in investor state arbitration.

### **The emerging human rights liability of banks? - B.J.I.B. & F.L. 2016, 31(6), 353-355**

1 June 2016



NEW SQUARE

Discusses potential risks and liabilities facing banks regarding their involvement in breaches of human rights. Notes the report "Banks and Human Rights: A Legal Analysis" produced by the UN Environment Programme Finance Initiative and law firm Foley Hoag LLP in December 2015. Considers examples of circumstances in which banks might be subject to criminal prosecutions or civil claims regarding human rights violations.

### **Book: Jackson & Powell on Professional Liability (Sweet & Maxwell, 6th, 7th, 8th editions)**

13 December 2016

The definitive text on professional liability and a comprehensive guide for every practitioner. Can edit the Litigation Chapter (Group Actions and Expert Evidence) with Jonathan Hough QC.

### **Book: The Protections for Religious Rights: Law and Practice (Oxford University Press)**

31 October 2013

The first practitioner work to offer a full and systematic treatment of the law as it pertains to religious rights in the UK and abroad. A practical working aid to a sensitive and important area of increasing litigation and public debate, this text examines the applicable legal instruments, considers the current state of the law, and reviews domestic, comparative, and international case law to provide a comprehensive reference resource that informs on all matters of significance in this area.

### **Londongrad calling: jurisdiction battles in the English courts - D.R.I. 2014, May, 25-36**

10 May 2014

Examines the circumstances when the English courts may accept jurisdiction over a commercial dispute served from outside the jurisdiction against a defendant who is not domiciled in the EU. Outlines the applicable principles. Discusses the Court of Appeal judgment in *Cherney v Deripaska*, and subsequent case law, on whether England could be found to be the appropriate forum for the dispute even when the applicant had conceded that it was not the natural forum.

### **Cross-border challenges**

5 August 2013

Explores the reasons behind the continuing popularity of England as a forum for the resolution of commercial disputes between foreign parties.

### **The first successful judicial review on Cart principles: R. (Kuteh) v Upper Tribunal - J.R. 2013, 18(1), 134-139**

14 January 2013

Discusses the Administrative Court ruling in *R. (on the application of Kuteh) v Upper Tribunal (Administrative Appeals Chamber)* on whether the refusal of permission to appeal the First-tier Tribunal decision upholding the inclusion of a nurse on the Protection of Children and Vulnerable Adults lists was amenable to judicial review as: (1) the First-tier Tribunal had committed a serious procedural irregularity in ignoring evidence supporting the applicant's claim that he had assaulted a patient in self defence; and (2) the threat to his career was a "compelling reason" to allow the challenge.

### **Inquests and the "detachable" article 2 obligation: In Re McCaughey - J.R. 2011, 16(3), 290-296**

12 September 2011

Discusses the Supreme Court judgment in *Re McCaughey's Application for Judicial Review* on whether the House of Lords decision in *Re McKerr's Application for Judicial Review*, ruling that an inquest into deaths occurring before the Human Rights Act 1998 entered into force need not meet the procedural requirements of the European Convention on Human Rights 1950 art.2, should be overruled as a consequence of the European Court of Human Rights ruling in *Silih v Slovenia* (71463/01) that, in certain circumstances, art.2 imposed freestanding procedural obligations.

### **The business of sport after the Bribery Act 2010 - S.L.A. & P. 2011**

1 August 2011

Discusses the implications for sport of the coming into force of the Bribery Act 2010 on July 1, 2011. Outlines the key provisions of the Act and comments on its scope. Provides a comparison between the Act and the US Foreign Corrupt Practices Act 1977. Provides illustrative case examples of the Act's potential significance in terms of awarding the rights to stage events and corporate

hospitality and entertainment at sporting events. Advises on steps that can be taken to minimise the risk of incurring liability.

## **Conditional fee agreements and human rights: MGN Limited v United Kingdom - J.R. 2011, 16(2), 151-155**

15 March 2011

Comments on the European Court of Human Rights judgment in MGN Ltd v United Kingdom (39401/04) on whether: (1) the award of damages to the model Naomi Campbell for breach of confidence, following a newspaper's publication of details and photographs relating to her treatment for drug addiction, was a disproportionate interference with the applicant's rights under the European Convention on Human Rights 1950 art.10; and (2) the success fees claimed by Ms Campbell's solicitors and counsel on top of their base costs under the terms of a conditional fee agreement breached art.10.

## **Smith (Oxfordshire Coroner) in the Supreme Court - J.R. 2010, 15(4), 356-365**

10 December 2010

Comments on the Supreme Court judgment in R. (on the application of Smith) v Oxfordshire Assistant Deputy Coroner on whether British service personnel serving overseas remained within the UK's jurisdiction for the purpose of determining if they retained the rights conferred by the European Convention on Human Rights 1950. Considers whether the death of a soldier should have been made subject to an inquest satisfying the procedural and investigative standards implicitly required by art.2 of the Convention.

## **Turkey Packs the Court - The New York Review of Books**

22 September 2010

Discusses the 12 September 2010 constitutional referendum in Turkey.

## **Storm in a teacup: domestic and international conservatism from the Corner House case - J.R. 2008, 13(4), 267-272**

12 December 2008

Considers the House of Lords decision in R. (on the application of Corner House Research) v Director of Serious Fraud Office on whether the respondent's submission to the threat that Saudi Arabia would no longer assist the UK with counter-terrorism intelligence if a corruption investigation was not discontinued had been unlawful on the ground that it had not shown that there had been no alternative. Discusses whether this standard unduly restricted the respondent's discretion. Assesses the court's jurisdiction to consider whether the decision complied with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 art.5.

## **Religious Liberty in British Courts: A Critique and Some Guidance - 49 HARV. INT'L L.J. 28 (2008)**

11 April 2008

For centuries, religious liberty in Britain existed as a broad-ranging but principally negative freedom at common law. Individuals were permitted to do as they pleased in matters of faith, unless the law stated otherwise. Religious liberty, thus conceived, was more passive toleration of religion than any active promotion of religious freedom as a fundamental right. All that changed on October 2, 2000...

## **Deep in the texture: The trials of Orhan Pamuk and of Turkey - The Times Literary Supplement**

3 February 2006

Willingly or not, Orhan Pamuk has become as much a political symbol as a man of letters. February 7, next week, was the date set for Turkey to try its foremost novelist for the crime of "publicly denigrating Turkishness"...