

Singapore Academy of Law Distinguished Speaker Lecture

Friday, 28 August 2015

Welcome Address by Chief Justice Sundaresh Menon

1. Good afternoon, ladies and gentlemen and a warm welcome to today's distinguished speaker lecture. We are greatly honoured and privileged to have The Right Honourable the Lord Mance of Frogdal, Justice of the Supreme Court of the United Kingdom as our speaker. The title of today's lecture is "Arbitration and the Law: A Jigsaw Relationship?"
2. Lord Mance hails from one of the most important jurisdictions in international arbitration. Arbitration has had a long history in London which remains one of the world's leading centres of arbitration, and a thriving location of choice for the resolution of international disputes. It is therefore no surprise that the jurisprudence of international arbitration is often shaped by the decisions of judges from the UK.
3. One such judge is of course Lord Mance himself, who has played a key role in shaping the jurisprudence of international arbitration. Perhaps among the most famous of the many judgments that he has rendered in arbitration matters is *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* ("Dallah"),¹ the first arbitration judgment of the then-newly constituted UK Supreme Court, and a decision which his

¹ [2010] UKSC 46.

judicial colleague Lord Collins, who wrote a concurring judgment, describes as one of “international importance”. *Dallah* resulted in the refusal of enforcement in the UK of an ICC arbitral award issued by an eminent tribunal,² and various commentators have remarked that among other things, it offered a much-needed clarification that the doctrine of kompetenz-kompetenz is a rule of priority in favour of arbitrators, rather than a rule that arbitrators’ decisions on jurisdictional issues should escape any form of judicial review.³ Indeed, Lord Mance’s views on this point have proven to be instructive and were endorsed locally by our Court of Appeal in *PT First Media TBK v Astro Nusantara International BV*.⁴

4. It is little known that in a sense, Lord Mance’s involvement and contributions in the field of arbitration find their roots very early in his life, when he developed an interest in insurance. As a boy, he was brought by his father, the late Sir Henry Mance, former chairman of Lloyd’s⁵ to visit the Room at Lloyd’s of London, where he saw “the casualty lists brought in (handwritten in copperplate) and heard the Lutine bell ring”.⁶ This interest later developed into a life-long passion, that would lead him to arbitrate many insurance cases as both counsel and arbitrator.

² Gary Born and Michael Jorek, “Dallah and the New York Convention” (Kluwer Arbitration Blog, 7 April 2011), available at <<http://kluwerarbitrationblog.com/blog/2011/04/07/dallah-and-the-new-york-convention/>> (accessed on 12 August 2015).

³ See for example: Magaret Tofalides, “The right challenge” (New Law Journal, 9 March 2012) (available on: <<http://www.newlawjournal.co.uk/nlj/content/right-challenge>>); PLC Arbitration: Dallah Supreme Court decision full update (available on: <<http://uk.practicallaw.com/3-503-8421>>) (all accessed on 12 August 2015)).

⁴ [2010] 1 SLR 372.

⁵ Lord Mance’s keynote speech to Association internationale de Detroit des Assurances, Copenhagen “In the beginning is the market, in the end it is the law” (12 June 2015) at para 2.

⁶ “The very model of a modern judge” (2004) Vol 351 No 6286 Fairplay International Shipping Weekly (22 July 2004) p 30.

5. Lord Mance had this to say of his choice to read law in an interview with *Fairplay International Shipping Weekly*.⁷

“It appealed to me as something practical, something I could ‘sniff and feel’ (as old-time arbitrators used to say), and something that, as it turns out, I’ve been able to shape. I’ve never regretted it.”

6. Indeed, after Lord Mance read law at the University College, Oxford, where he graduated with first class honours in 1964, he embarked on an accomplished and distinguished journey first at the commercial bar and then on the Bench. Lord Mance first spent time with a Hamburg law firm and then practised not just in England, but also in the Bahamas and Hong Kong, in the course of which he also had the opportunity to sit frequently as arbitrator in maritime and insurance matters.⁸

7. At 39, Lord Mance took silk and thereafter was appointed first as a recorder, and subsequently as a High Court Judge of the Queen’s Bench Division, then as a Lord Justice of Appeal, before his elevation to the House of Lords in 2005. He represented the United Kingdom on the Council of Europe’s Consultative Council of European Judges from 2010 to 2011, being elected its first chair from 2000 to 2003 and currently chairs the Executive Council of the International Law Association and the Lord Chancellor’s Advisory Committee on Private International Law. He is also a member of the Judicial Integrity

⁷ *Ibid.*
⁸ *Ibid.*

Group and of the seven-person panel set up under the Treaty on the Functioning of the European Union to give an opinion on candidate's suitability to perform the duties of Judge and Advocate-General of the European Court of Justice and General Court.

8. In today's lecture, Lord Mance will, amongst other things, examine problems plaguing arbitration's efficacy and appropriateness as a dispute resolution mechanism, and the need for the world to develop better inter-related systems for the administration of law in this age of globalisation.⁹ These are matters that are of especial importance, at a time when there is evidence of disenchantment on the part of users of arbitration, stemming from various concerns such as rising costs, and a resurgence of alternatives to arbitration such as mediation.¹⁰ Concrete steps must be taken lest arbitration loses its lustre as a dispute resolution mechanism of choice. It is in this spirit that I welcome Lord Mance, who with his wealth of commercial experience as a judge, practitioner and arbitrator in both common law and civil law jurisdictions, will have many valuable insights to share with us in this area.

9. Ladies and gentlemen, it gives me great pleasure to invite Lord Mance to deliver his lecture.

⁹ Lecture Synopsis.

¹⁰ See for example, Patron's Address delivered at the Chartered Institute of Arbitrators London Centenary Conference delivered on 2 July 2015 and Keynote Address delivered at the Chartered Institute of Arbitrator's International Arbitration Conference delivered in Penang on 22 August 2013.