

PROFESSOR ROBERT MERKIN QC

PERSONAL

DATE OF BIRTH 5th May 1953

STATUS Married, 3 daughters

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Boughmore Lane
Sidmouth
Devon
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United Kingdom
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EDUCATION: University College, Cardiff, 1971-1974, LLB
Queen Mary College, London, 1975, LLM
Cardiff University, 2014, LLD

EMPLOYMENT 1975 - 1979 Lecturer, John Moores University
1979 - 1985 Lecturer, Lancaster University
1985 - 1986 Lecturer, Centre for Commercial Law Studies, QMW
1986 - 1989 Director of Research, Richards Butler
Senior Visiting Fellow, QMW
1989 - 1991 Professor of Law, University of Sussex
1991 - 1995 Bracton Professor of Law, University of Exeter
1996 - 2000 Professor of Commercial Law, Cardiff Law School
2000 - 2012 Research Professor of Commercial Law, Southampton University
2013 - 2019 Lloyd's Professor of Commercial Law, University of Exeter
2019 – 2021 Part-time Professor of Commercial Law, Exeter University
2019 - Distinguished Professor, School of Comparative Law, China University of
Political Science and Law, Beijing
2020 - Part-time Professor of Law, University of Reading
2021 - Honorary Professor, University of Auckland

TEACHING Over the years, all aspects of commercial law. At undergraduate level: contract and tort, company law, intellectual property, competition, sale of goods, consumer protection, insurance. At postgraduate level: marine insurance, insurance, competition, arbitration and dispute resolution. Successfully supervised over 30 PhD students in my career. A number have converted their PhDs into books, and five of those books have won the annual book prize from the British Insurance Law Association.

PUBLICATIONS

BOOKS *Competition Law* 1985, Sweet & Maxwell
Essays for Professor Lawson (1986, with Prof P Wallington), Butterworths
Reinsurance Law (first published 1986, looseleaf, 3 updates per year, with John Butler, 2

vols), Sweet & Maxwell – this book won the inaugural British Insurance Law Association prize for best insurance law book in 1986

Encyclopedia of Competition Law (1986, looseleaf, two updates per year, general editor, 3 vols), Sweet & Maxwell (I resigned from the editorship in 2007)

Latent Damage (1986) LLP

Guide to the Consumer Protection Act 1987 (1988), Blackstones

Colinvaux and Merkin's Insurance Contract Law (2002, replacing *Insurance Contract Law* first published in 1989, looseleaf 3 updates per year, 3 vols)

Merger References (1989) Longmans Intelligence Reports

Copyright, Designs and Patents: The New Law (1989), Longmans

Arbitration Law (1993, looseleaf, 3 updates per year. 2 vols), Informa

Copyright and Designs Law (1993, looseleaf, two updates per year, 2 vols), Sweet & Maxwell

Colinvaux's Law of Insurance (6th ed 1994), Sweet & Maxwell, 421 pp plus appendices and Index (supplement published 1996)

Tolley's Insurance Law Handbook (1994), 263 pp

Arbitration Act 1996: An Annotated Guide (1996), LLP Ltd, 145 pp plus appendices and index

Compendium of Insurance Law (1996, looseleaf, 2 updates per year 2 vols, now discontinued), Informa

Colinvaux's Law of Insurance (7th ed 1997), Sweet & Maxwell, (1998, supplement to 7th edition), Sweet & Maxwell

EC Insurance Law (1997, co-author with Angus Rodger), Longmans

What is Reinsurance? (1997), LLP

Annotated Marine Insurance Legislation (1997) LLP

Limitation of Actions (1998, co-author with David Oughton and John Lowry), LLP

Intermediaries (1998 editor), published in two volumes by Association Internationale du Droit des Assurances for Xth World Congress, May 1998 (Marrakech)

Insurance Disputes (1999, looseleaf, with Lord Mance and Iain Goldrein QC, general editors)

Annotated Marine Insurance Legislation (2nd ed 2000), LLP

The Arbitration Act 1996: An Annotated Guide (2nd ed 2000), LLP

Follow the Settlements AIDA/LLP Ltd, (2000)

Privity of Contract: The Contracts (Rights of Third Parties) Act 1999, LLP, (2000)

Arbitration Forms and Precedents (with Julian Critchlow) (2001), looseleaf, LLP Ltd

Halsbury's Laws of England (2004 - insurance volume - consulting editor)

Insurance Law and Practice in Hong Kong (2004 - author of five chapters and consulting editor)

Insurance Disputes (bound volume version 2003), co-editor with Lord Justice Mance and Iain Goldrein QC

The Law of Motor Insurance Sweet & Maxwell 2004, with Jeremy Stuart-Smith

Arbitration Law (bound volume version), Informa, 2004

The Arbitration Act 1996: An Annotated Guide 3rd edition, 2005

Annotated Marine Insurance Legislation, 3rd Edition 2005

Chapters on conflict of laws and on reinsurance in Lowry and Rawlings, *Insurance Doctrines and Principles* (2nd ed 2006)

Halsbury's Laws of England (2006 – copyright volume – consulting editor)

Colinvaux's Law of Insurance, 8th edition, 2007

A Guide to Reinsurance Law (ed), 2007

A Guide to Insurance Law (ed), 2007

Compendium of Insurance Law (with Johanna Hjalmarsson) 2007

Halsbury's Laws of England (2008 - arbitration volume – consulting editor)

Halsbury's Laws of England (2008 – limitation of actions volume – consulting editor)

Arbitration Act 1996: An Annotated Guide (with Louis Flannery) 4th edition 2008

Colinvaux's Law of Insurance, supplement to 8th edition, 2008

Singapore Arbitration Law (with Johanna Hjalmarsson) 2009

Colinvaux's Law of Insurance, second cumulative supplement to 8th edition, 2009

Colinvaux's Law of Insurance in Hong Kong, 2009

Annotated Marine Insurance Legislation, 4th ed, 2009

Colinvaux's Law of Insurance, 9th edition, 2010

Halsbury's Law of Insurance in Hong Kong, reissue, November 2010
 Lowry, Rawlings and Merkin, *Insurance Doctrines and Principles*, 3rd ed 2011
Insurance Disputes, with Lord Mance and Iain Goldrein QC, 3rd edition, 2011
Halsbury's Laws of England (2012 – insurance volume – consulting editor)
Colinvaux's Law of Insurance in Hong Kong, second edition, June 2012
Colinvaux's Law of Insurance, supplement to 9th edition, December 2012
Halsbury's Laws of England (2013 – copyright volume – consulting editor)
Arnould's Law of Marine Insurance 18th edition, with Jonathan Gilman QC, 2013
Insurance and the Law of Obligations, with Professor Jenny Steele, 2013
Arbitration Act 1996: An Annotated Guide (with Louis Flannery) 5th edition 2014
Annotated Marine Insurance Legislation, 5th edition 2014
Colinvaux's Law of Insurance 10th ed, 2014, supplement 2015
Halsbury's Laws of Hong Kong, Insurance Volume, 2014 reissue
Sutton's Law of Insurance in Australia, 4th edition, 2014, with Ian Enright and Michael Kirby, updated twice a year online
Insurance Law of New Zealand, 2014, with Chris Nicoll
Law of Motor Insurance, 2nd ed 2015, with Maggie Hemsworth (BILA prizewinner)
Singapore Arbitration Law, 2nd ed 2016, with Johnna Hjalmarsson
Colinvaux's Law of Insurance, 11th ed, 2016, supplements 2016 and 2017
Colinvaux's Law of Insurance in Hong Kong, 3rd ed 2017
Insurance Law of New Zealand, 2nd ed 2018, with Chris Nicoll, updated twice a year online
Essays in Memory of Professor Jill Poole, co-editor with James Devenney, 2018
Halsbury's Laws of Hong Kong, Insurance Volume, 2018 reissue
Poole's Law of Contract with Severine Saintier, 14th ed 2019
Poole's Casebook on Contract, with Severine Saintier, 14th ed 2019
Colinvaux's Law of Insurance, 12th ed November 2019
Arbitration Act 1996: An Annotated Guide, with Louis Flannery, 6th edition December 2019
Maritime Law in Hong Kong 2nd edition, co-editor with Dr Kyriaki Noussia, 2020
Poole's Law of Contract with Severine Saintier, 15th ed 2021
Poole's Casebook on Contract, with Severine Saintier, 15th ed 2021
Law of Insurance in Hong Kong 4th ed, August 2021
Marine Insurance: A Legal History 1756-1906, Edward Elgar, 2 vols, November 2021

IN PRESS

Reinsurance after the Insurance Act 2015, BILA Journal
 “The Warranty of Seaworthiness after the Insurance Act 2015”, to be published in *Modern Issues in Marine Insurance* vol 5, 2022
Reinsurance: Finding the Balance between Reinsurers' and Reinsureds' Interests, with Michael Mendelowitz in Research Handbook on International Insurance Law, 2nd ed (2021) eds Julian Burling and Kevin Lazarus

IN PREPARATION

Sutton's Law of Insurance in Australia, 5th edition, 2022
Colinvaux's Law of Insurance, 13th ed, 2022
 Lowry, Rawlings and Merkin, *Insurance Doctrines and Principles*, 4th ed 2021 (sole author)
Annotated Marine Insurance Legislation, 6th edition 2022
International Encyclopedia of Insurance Law (general editor), 3 volumes, scheduled for 2024

ARTICLES

Numerous chapters in books, and articles in major refereed journals, mainly on insurance, reinsurance and commercial law matters. The most important include:

Reinsurance under the Insurance Act 2015, British Insurance Law Association (BILA) Journal, Issue 134

Substantive Jurisdiction and the Arbitration Act 1996 [2021] JBL 273
 Takings at Sea, [2020] Exeter Law Review
 Insurers' Liability for Defective Repairs [2020] NZBLQ
 Alabama: The Devil Fools with the Best Laid Plans (2019) 30 Ins LJ 65
 Privity of Contract: Statutory Developments, with Severine Saintier, in *Essays in Memory of Professor Jill Poole*, eds Merkin and Devenney 2018, 137-156
 Criminals, Fraudsters and Idiots: Are They Uninsurable? [2018] NZBLQ 3
 Arbitration Awards in *Singapore International Arbitration Law and Practice*, ed Joseph and Foxton, 2nd ed 2018, 311-334
 Causation and Proportionate Recovery, with Jenny Steele, in *Apportionment in Private Law*, eds Grantham and Barker 2018, 293-321
 Placement of Insurance and the Role of Brokers, in *Carter v Boehm and Pre-Contractual Duties in Insurance Law*, eds Han and Pynt, 2017
 Insurance and Reinsurance in the Fairchild Enclave, 36 Legal Studies 302 (2016),
 What Does an Assured "Know" (2016) 27 Ins LJ 157
 Insurance Terms after the Insurance Act 2015, with Ozlem Gurses, 132 LQR 445 (2016),
 Insurance Act 2015, with Ozlem Gurses 78 MLR 1004 (2015)
 Marine Insurance Act 1906: Magnificent Achievement or Monstrous Aberration, with Sarah Derrington, in *Modern Law of Marine Insurance*, 2015, vol 4, ed Rhidian Thomas, 1-41
 Emirates Trading, Good Faith and Pre-Arbitration ADR Clauses, with Louis Flannery QC, (2015) 31 *Arbitration International* 63-106
 Arbitration Awards in *Singapore International Arbitration Law and Practice*, ed David Joseph and David Foxton, 2014, 323-349
 Policing Tort and Crime with the MIB, with Jenny Steele, in *Unravelling Tort and Crime*, ed Matthew Dyson, 2014, pp 22-57
 Tort Law and Compulsory Insurance, with Sheila Dziobon, in *Tort Law and the Legislature*, eds Steele and Arvind, 2013, pp 303-325
 The Christchurch Earthquakes (2102) 18 Canterbury LR 119
 Unfair Terms in Insurance Contracts: A Solution in Search of a Problem (2012) 23 Ins LJ 272
 Fraudulent Claims, with Aysegul Bugra, *British Insurance Law Association Journal* 2012
 Tort, Insurance and Ideology: Further Thoughts, (2012) 75 MLR 302
 Piracy in Marine Insurance, with Kate Lewins, (2011) 35 *Melbourne University Law Review* 717
 Arbitrating Insurance and Reinsurance Disputes 2012 *Asian Dispute Review*
 Reinsurance: Finding the Balance between Reinsurers' and Reinsureds' Interests, with Michael Mendelowitz in *Research Handbook on International Insurance Law* (2012) eds Julian Burling and Kevin Lazarus
 Australia: Still a Nation of Chalmers? [2011] UQLJ 189 (the lecture on which this paper is based is available online)
 "Marine Insurance" in *Maritime Law*, IML, Sweet and Maxwell, 2011
 Compensating Mesothelioma Victim (with Jenny Steele), 127 LQR 329 (2011)
 Historic Asbestos Exposure and Liability Insurance (with Jenny Steele) in *Mass Justice*, ed Willem van Boom and Jenny Steele, 2011, 208-235
 The Lehmann Brothers Collapse [2011] BILA Journal
 Tort and Insurance: some insurance law perspectives (2010) 26 JPN 194-218
 D&O Insurance and the Global Financial Crisis [2009] BILA Journal, 2-42
 Fraud and Insurance Agents, in *The Modern Law of Marine Insurance* (vol 3), ed Prof Rhidian Thomas (2010), 59-79
 Commercial Certainty in the Reinsurance Market 126 LQR 24 (2010)
 The Rome I Regulation and Reinsurance [2009] JPIL 85
 Reinsurance and the Law Commission, in ed Soyer, *Reform of Insurance Law* (2008)
 The Full Reinsurance Clause, with Ozlem Gurses [2008] LMCLQ 366
 Reform of Insurance Law, with John Lowry, (2008) 71 *Modern Law Review* 95
 Advocates' Immunity, with Jenny Steele [2008] *New Zealand Business Law Quarterly* 45
 Fairchild and Insurance 120 LQR 233 (2004)
 Incorporation and Reinsurance, in *The Modern Law of Marine Insurance* (vol 2), ed Prof Rhidian Thomas (2003)
 The Duties of Marine Insurance Brokers, in *The Modern Law of Marine Insurance*, ed

Prof Rhidian Thomas (1996), pp 275-304
Commercial Law, in *All England Annual Review* 1989 to date
Reinsurance Aggregations 114 LQR 390-394 (1998)
The Continuing Duty of Utmost Good Faith (1998) 10 SA Merc LJ 135-144
The Future of the Duty of Disclosure in New Zealand [1999] IJIL 243-259
Predatory Pricing or Competitive Pricing: Establishing the Truth in UK and EEC Law
[1986] OJLS
Transferred Agency in Insurance Law (1985) 13 Anglo-American Law Review 33
The Legality of Effective Competition in EEC Law (1984) 6 Liverpool Law Review 139
Restitution by Withdrawal from Executory Illegal Contracts (1981) 97 Law Quarterly
Review 420
Gambling by Insurance - a Study of the Life Assurance Act 1774 (1980) 4 Anglo-
American Law Review 331
Non-disclosure and Breach of Warranty (1979) 42 Modern Law Review 544

EDITORSHIPS

Insurance Law Monthly 1989 to date
Arbitration Law Monthly 2001 to date
Journal of Business Law 1989 to date (refereed)
British Insurance Law Journal 2013 to 2017
Lloyd's Law Reports, 2004 to date
Lloyd's Law Reports Insurance and Reinsurance 1999 to date
Lloyd's Law Reports Reporter Service 1998 to date
Legal Studies (journal of the Society of Legal Scholars) – co-editor with Profs Jill Poole
and Jenny Steele), 2005 to 2011
Editorial Board of *Assicurazioni* and *New Zealand Business Law Quarterly*
Editorial Board of Hong Kong Encyclopedia of Forms and Precedents

CITATIONS

Works have been cited in well over 250 decisions in England and in a number of other
jurisdictions including the High Courts of Australia New Zealand, Hong Kong, India and
Singapore, and the US Supreme Court. I have not checked citations in academic works, but
I know anecdotally that there are many.

COMMITTEES

Presidential Council, AIDA, 1991 to date, elected Vice-President May 2010-2018

Honorary Life President AIDA, 2018 -

AIDA Reinsurance Working Party, 1994-2018

President, British Insurance Law Association, 2010-2012; Vice-President 2008-2010,
Honorary Life Member 2021 -

Executive Committee, British Insurance Law Association, 1992-1995 (elected honorary
member of BILA, March 2005 and appointed trustee June 2006)

Law Commission Advisory Panel on Reform of Insurance Law, August 2006. Prepared a
lengthy paper on Australian Insurance Law for the Law Commission March 2007
(published on LC website)

Australian Law Insurance Association Geoff Masel Memorial Lecturer, October-November
2009 (lectures in each Australian state capital)

Winner of Australian Insurance Law Association prize 2010 for contribution to Australian
insurance law

PROFESSIONAL

Member of City Disputes Panel team (mainly Law Lords) set up to assess outstanding
claims against Lloyd's prior to establishment of Equitas in 1996

Arbitrator: member of the arbitration panel of the Xi'an Arbitration Centre, the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre; the Japanese Commercial Arbitration Centre and the Arbitrators and Mediators Institute of New Zealand. Currently chairing a tribunal in Istanbul. Sat as sole arbitrator on a number of insurance arbitrations, and also as a panel arbitrator.

In 2019 I established – with the help of practitioners in Hong Kong – the Asia Insurance and Reinsurance Arbitration Service (Arias Asia), affiliated to AIDA. It became operative in January 2020

Expert witness in a number of overseas judicial and arbitral proceedings, most recently including the US, Finland, The Netherlands, US Virgin Islands, Chile, Norway, Lithuania and France

Advice to insurance companies and brokers worldwide on a variety of issues

Witness to the House of Lords Special Committee on the Third Parties (Rights against Insurers) Bill (two memoranda of written evidence, and oral evidence, online on the House of Lords website, 2010)

Special adviser to the House of Lords Special Public Bills Committee on the Insurance Bill 2014

Prepared background papers for the Australian Royal Commission on Banking and Financial Services, report published February 2019

Member of the Disciplinary Committee of the New Zealand Financial Services Council, May 2019 - (the only overseas member of the panel of five)

Consultant to New Zealand Government on reform of insurance law, January 2019 -

APPOINTMENTS

I teach LLM courses as Visiting Professor at the University of Sydney, University of Queensland, Hong Kong University and City University Athens campus

Distinguished Visitor, Singapore Academy of Law, January 2009

Australian Insurance Law Association Annual Lecturer 2010

Hotung Fellow, University of Canterbury, New Zealand, May 2012

Honorary Professor of Law, Auckland University, 2012-2015

QC (honoris causa), February 2015

New Zealand Insurance Law Association Annual Lecturer 2018

PRESENTATIONS

Regular speaker on insurance/reinsurance matters at conferences in UK and abroad. I deliver around 30 lectures and seminars annually, for both Universities and practitioners. Recent talks include: include National University of Singapore, Singapore Management University, Singapore Insurance Law Association, Israeli Insurance Law Association, Indiana University, Australian Insurance Law Association, South African Insurance Law Association, New Zealand Insurance Law Association, Hong Kong Insurance Law Association; Hong Kong University, BCA University Athens; Bermudan reinsurance market. I have undertaken various lecture tours in China and Turkey in the past few years,

Regular in-house courses for leading London solicitors firms, insurers and brokers, including lectures at Lloyd's of London. Also regular in-house seminars for lawyers, insurers and brokers in Australia, New Zealand, South Africa, Hong Kong and China. A regular speaker at international conferences worldwide. In March 2012 I organised an academic insurance conference in London funded by a grant of £5000 from the Modern Law Review and sponsorship from Norton Rose, and I co-organised, with the Law Commission and the British Insurance Law Association, a major conference in London in June 2012 on reform of insurance law. I organised the International Maritime Law Moot, which took place in Exeter and London in July 2016

General Reporter, AIDA World Congress, Marrakech, May 1998 (topic – intermediaries)

General Reporter to AIDA World Congress in Argentina, October 2006 (topic – Insurance, Reinsurance and Terrorism)

General Reporter to AIDA World Congress, Rio, September 2018 (topic – New Technologies in Insurance)

CONSULTANCIES

Consultant to the English and Scottish Law Commissions on Insurance Law Reform, 2006-2018

Consultant to English Law Commission on the reform of Arbitration Law 2022-

Special Counsel, Duncan Cotterill NZ. Work requires the giving of general advice and detailed opinions on all aspects of insurance and reinsurance law, publications, lectures both in-house and for clients. Clients include all of the leading insurance companies in NZ as well as the industry body, the Insurance Council of New Zealand. In the past I have been consultant to various international law firms, including Norton Rose Fulbright and DLA Piper.

2018 to date: consultant to New Zealand Ministry of Business on proposals for insurance law reform, expected to become law in 2022

EXTERNAL

Acted as external examiner for undergraduate and postgraduate courses, and PhD vivas, at a large number of English and overseas universities. Recent appointments include Liverpool University, Newcastle University, Oxford Institute of Legal Practice, University of Birmingham, Hong Kong University, Aston University, University College London, Southampton University, University of Wellington NZ, Oxford University, University College Dublin, King's College London, University College Cork and the University of the West Indies.

Acted as REF external assessor for five institutions in the last and current REF rounds.