"The Free Sea"

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1. At school my favourite subject was History. I had a history teacher who loved Dutch paintings from what is sometimes called the Golden Age: roughly, the 17th century from 1600 to 1700. Once a week, three of us had an extra lesson with this teacher. He usually showed us slides of Dutch paintings. This view of Harlem by Jacob van Ruisdael was one of his favourites.[1] He did not say much about the pictures or the artists. For example, if he showed us this slide,[2] he might say: "Carel Fabritius - the best painter ever of a white wall". Or if he showed us a portrait like this by Frans Hals,[3] he might say: "You think of black as a single colour, but do you know how many different shades of black Frans Hals used in his paintings?" The answer, I believe, was 27. It was in fact a very good method of teaching; for 50 years later I can still remember those lessons well. This year you will be living in a town which - as well as being the home of a great university - is the birthplace of perhaps the greatest artist of them all: Rembrandt van Rijn, born here in Leiden in 1606.[4] The two greatest collections of Dutch 17th century paintings are just short journeys away, at the Rijksmuseum in Amsterdam and the Maurithuis in the Hague. I hope that, while you are here, you will find time to visit those marvellous museums and to enjoy, as I continue to do, the incredible variety, virtuosity and vitality of the pictures on display.

2. If you do, you might also think about the society that you see reflected in those paintings and on the conditions which made this great art possible. An extraordinary number of pictures were painted in the Dutch Republic during the 17th century: some 70,000 every year.[5] Over the course of the century a small country with a population of fewer than 2 million people supported more than a

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1 Jacob van Ruisdael, View of Harlem (Maurithuis).

2 Carel Fabritius, The Goldfinch (Maurithuis).

3 Franz Hals, Portrait of Jacob Olycan (Maurithuis).

4 Rembrandt, Self-Portrait (Leiden Collection).

5 Michael North, *Art and Commerce in the Dutch Golden Age* (1997), p 1.

thousand artists.[6] Clearly, owning original works of art is not one of life's necessities. It is a luxury. Someone has to pay for the time and skill that it takes to paint a picture like this.[7] (In this case the wealthy Amsterdam lady who employed Rembrandt to paint her portrait.) In the Dutch Republic in the 17th century, for the first time in European history, the buyers of art were not just princes, aristocrats and churches: they included the middle classes. Many travellers remarked on the number of pictures to be found in middle class Dutch households. For example, one English visitor in 1641 wrote that "pictures are very common here, there being scarce an ordinary tradesman whose house is not decorated with them".[8]

3. The reason why even ordinary tradesmen could afford to decorate their homes with pictures was the wealth of the Dutch Republic. Income per person was the highest in Europe and much higher than in neighbouring countries.[9] Uniquely in Europe, almost half the population lived in cities.[10] Wealth was no longer centred on ownership of land. It was generated through industry and trade, in particular international trade. The 17th century was the first period in history when trade became global; and the Dutch became the dominant international trading power. The Dutch had the biggest fleet of merchant ships in the world - with more than 2,000 ships, around half the total number in Europe.[11] The Dutch East India Company and the Dutch West India Company were formed to coordinate trade with Asia in one direction and with America and the Caribbean in the other. The Dutch East India Company, the Vereenigde Oostindische Compagnie or VOC, was one of the first companies ever formed with shares that could be bought and sold and at its height was the world's biggest commercial enterprise - the Amazon or Apple of its day. Dutch ships dominated global trade in luxury goods, such as spices from Indonesia, porcelain and silk

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6 National Gallery of Art, Washington, *Painting in the Dutch Golden Age: A Profile of the Seventeenth Century* (2007), p 32.

7 Rembrandt, Portrait of Catrina Hooghsaet (1657).

8 Simon Schama, *The Embarrassment of Riches: An Interpretation of Dutch Culture in the Golden Age* (1987), p 318.

9 Jonathan Israel, *The Dutch Republic: Its Rise, Greatness and Fall 1477-1806* (1995), pp 351-353.

10 North, p 20.

11 Tim Blanning, *The Pursuit of Glory: Europe, 1648-1815* (2007), p 96.

from China, silver from Japan and cotton textiles from India, as well as coffee, tea, sugar and tobacco.

4. The English writer, Daniel Defoe, best known for his story of Robinson Crusoe, described the basis of Dutch economic success well, when he wrote:

> "The Dutch are the carriers of the world, the middle persons in trade, the factors and brokers of Europe; they buy to sell again, take in to send out; and the greatest part of their vast commerce consists in being supplied from all parts of the world, that they may supply all the world again."[12]

5. The hub of this global trade was the port of Amsterdam: an entrepôt to which goods were shipped and where goods were processed, stored, traded and reexported. Amsterdam also became the leading centre of banking and finance. When shareholders in the VOC started actively to trade their shares, this gave rise to the world's first stock exchange.

6. In the modern world we have come to take the benefits of international trade for granted. In all the richer nations we expect to be able to buy an astonishing range of goods sourced from all around the world. But it is worth taking a moment to think about how commerce vastly enriches our lives by creating wealth and opportunity. It does so through two fundamental mechanisms: voluntary exchange and the division of labour.

7. One way of acquiring another person's property is of course simply to take it, for example through theft or seizing it in war. This amounts to what is sometimes called a "zero-sum game", in which one person's gain is the other person's loss. By contrast, trade involves a voluntary exchange from which both parties benefit. I grow apples and would like sometimes to eat oranges. You have only oranges but would like some apples. If I can freely exchange some of my apples for some of your oranges, we both gain. The same is true if, instead of apples, I have money and pay you for your oranges. Again, the transaction benefits us both. And the acceptance of money as a token of value enormously

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12 Daniel Defoe, *A Plan of the English Commerce* (1728), quoted by North at p 19.

expands the opportunities for voluntary exchange which increases the total sum of human wealth.

8. Voluntary exchange in turn makes possible and encourages the second way in which wealth is generated - through the division of labour. In a subsistence economy where everybody has to find or make their own food, clothing and shelter, only a very limited range of skills can be developed. Compare that way of life with a city in which labour is divided among a whole variety of different tasks. By specialising in a particular activity - say baking bread, making pottery or designing clothes - a person develops expertise through practice and experience. They can use their time more efficiently and they have an incentive to innovate and to invent new techniques which save labour or improve quality. Think how many specialists have contributed to the design of my laptop computer from which I am showing you slides, to work out how to manufacture integrated electronic circuits or to control a program using a mouse and an arrow that moves around the screen.

9. Every human occupation apart from being a hunter-gatherer or a subsistence farmer is made possible only through commerce. And the same is true of all but the most basic leisure activities. There would, for example, be no professional musicians, writers, actors or sports players, let alone doctors, scientists, teachers, entrepreneurs, architects, engineers, coders, aid workers - or any other occupation you care to name, including of course lawyers - without commerce.

10. The artistic achievements of Dutch artists in the 17th century were made possible by Dutch commercial success. I do not suggest that there is a simple relationship between money and art. Other social and cultural factors clearly play an important part. But the extraordinary wealth generated and the desire to spend and display it fuelled a huge demand for works of art. This in turn encouraged more people to train as artists and to compete to sell their work. The fact that, for the first time, the middle classes could afford and wanted to buy pictures also encouraged more wide-ranging styles and subject matters of painting: for example, pictures like this in which buyers might see an image of their own home.[13] Competition encouraged artists to specialise in particular types

[13] Jan Steen, The Feast of St Nicholas (Rijksmuseum).

of painting to try to develop a distinctive reputation and the expertise needed to produce the high-quality works that fetched the highest prices.[14] Competition also encouraged innovations in painting technique, which reduced the time needed to produce a painting. For example, the invention of a new tonal style in painting landscapes allowed artists like Jan van Goyen to increase their output, so that a painting like this[15] would apparently take him only a day to produce.[16]

11. It was by no means only pictures on which the Dutch middle classes spent their money. We can see in many pictures of the interiors of houses other evidence of newly affordable luxury goods, including expensive items imported from overseas. Take, for example, this famous picture by Vermeer.[17] In the foreground you can see a Turkish carpet on which rests a dish made from Chinese porcelain. Chinese porcelain was highly prized for its quality, which no European craftsmen could match.[18] During the first half of the 17th century VOC ships imported to Europe a total of well over 3 million pieces of Chinese porcelain.[19] This picture and many similar domestic scenes are visual evidence of the fruits of international trade.

12. In taking the example of Dutch commerce in the 17th century to celebrate the value of trade, and particularly international trade, I do not want to mislead you or hide inconvenient historical truths. I am not suggesting that all commerce is good. It goes without saying that some forms of commerce are morally deplorable - for example, trafficking in hard drugs or rare animal species or - to take the most extreme instance - human beings. We cannot ignore the fact that, along with other trades that I have mentioned, the Dutch were heavily involved in the slave trade.[20] Nor did the Dutch confine their overseas ventures to trade. Colonies were founded, local populations exploited and in some places

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14 See Israel, pp 555-556.

15 Jan van Goyen, River Landscape (1652, Cologne).

16 North, p 101.

17 Johannes Vermeer, Young Woman Reading a Letter at an Open Window (Dresden).

18 See Timothy Brook, *Vermeer's Hat: The Seventeenth century and the dawn of the Global World* (2008), pp 60-63.

19 Brook, p 69.

20 See eg Speech by Prime Minister Mark Rutte about the role of the Netherlands in the history of slavery (19 December 2022).

slaughtered, and wealth extracted by forced labour as well as created through trade.

13. The same can of course be said about other European nations, including the British, who in the 18th and 19th centuries overtook the Dutch as the leading maritime and colonial power. There is nowadays, in Europe, much greater consciousness of this darker side of European expansion to other parts of the world. But it is not my purpose today to discuss this fraught subject, important as it is. Recognising harm that was done should not prevent us from appreciating the virtues of commerce when it rests - as it did, for example, in the case of Dutch trade with China and Japan - on voluntary exchange. It also highlights the importance of the topic to which I will now turn, which is the role of law in facilitating peaceful and legitimate trade.

Grotius: Mare Liberum

14. At the turn of the 17th century the Dutch Republic was at war with Spain, from whom it had only recently won independence. The king of Spain was also the king of Portugal, and Spain and Portugal between them claimed to be entitled to a monopoly of all European maritime trade with Asia and America. In expanding their overseas trade, Dutch ships came into conflict with the Spanish and Portuguese. In 1603 a Portuguese merchant ship called *Santa Catarina* was seized by ships belonging to the VOC off the coast of Singapore and was brought to Amsterdam. The ship's cargo included raw Chinese silk, chests filled with damasks, cloth woven with gold thread, around 60 tonnes of porcelain, substantial quantities of sugar, spices and musk, furniture ornate with gold, and (in the words of a contemporary account) "a thousand other things that are produced in China".[21] All this was sold at auction by the VOC for a huge sum of money. The incident caused a major controversy, not only with Portugal but also among the VOC's own shareholders about the morality of the seizure. Representatives of the VOC engaged a brilliant young scholar and lawyer to write a defence of their actions. The full work was not published. But an extract from it was, in 1609, under the title *Mare Liberum,* meaning *The Free Sea*. The author is

[21] Peter Borschberg, "The Seizure of the Sta. Catarina Revisited: The Portuguese Empire in Asia, VOC Politics and the Origins of the Dutch-Johor Alliance (1602-c.1616)" (2002) 33 Journal of Southeast Asian Studies 31, 38.

best known by his Latin name of Hugo Grotius. Grotius was precocious. He was educated here at Leiden University and was admitted to the university when he was only 11 years old. He published his first scholarly work at the age of 16 and he was only 21 years old when he wrote *The Free Sea*. He wrote in Latin, which was then the common language of European scholars - just as English has become such an international common language today.

15. The full title of the book (in English) was *The Free Sea, Or the Right which belongs to the Dutch to take part in the East Indian trade*. It is a remarkable work. It makes several novel and bold claims. This is how it begins:

> "I propose to demonstrate briefly and clearly that the Dutch … have the right to sail to the Indies, as they are now doing, and engage in commerce with the people there. I will lay the foundation of my argument on this first and most certain principle of the law of nations, for which the rationale is self-evident and immutable: The people of every country are free to go to every other country and to trade with them."[22]

16. *The people of every country are free to go to every other country and to trade with them*. It is a powerful claim. All people have the right to trade. If citizens of two states wish to trade with each other, no one has the right to prevent them. And if people are to be free to trade, they must be free to use the sea for the purposes of trade. Hence no nation is entitled to claim sovereignty over the sea or to exclude ships of other nations from using the sea for passage and to transport things from one place to another. The right to navigate the seas belongs to everyone.

17. Undoubtedly, Grotius had a political agenda. It may seem ironical that, to justify the capture of a Portuguese merchant ship and what might be regarded as the theft of its cargo, he relied on a principle of freedom to use the seas for trade. The thrust of his argument was that, if you unjustly try to prevent the Dutch from trading with Asia, then our ships may legitimately retaliate by seizing your ships until the right of the Dutch to sail to Asia themselves and to trade with the people

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22 My translation.

there is recognised. We may not be impressed by that argument, but this does not diminish the intellectual importance and novelty of *The Free Sea*.

Public international law

18. That importance and novelty lay not just in the principles of freedom of trade and freedom of the seas which Grotius asserted - fundamental as those principles were and still are today. It lay in the very nature of his arguments. Underlying the claims that Grotius made was the idea that international relations are governed by law: law which applies to all nations. Of course, it had long been recognised that states could enter into agreements (treaties) with one another which they would then be expected to honour. But Grotius appealed to legal rights and principles which were not part of any treaty. To justify these laws, he did not appeal to received religion. He saw them as natural laws, meaning that they applied universally to all human beings. We can discern here an emerging concept of public international law.

19. Public international law is a subject for which this university is world famous. Some of you will, I know, be studying it this year. In the 20th century, particularly following the Second World War, public international law acquired a new dimension: concern with protection of human rights. International human rights law has become a major field in its own right, which some of you will also be studying.

The problem of trust

20. I have referred to the role of public international law in aiding global commerce. But commerce also depends crucially on private law - law which operates not at the level of nation states, but between private parties.

21. Of course, people traded with each other long before there was any system of law to govern their transactions. But once commerce becomes more complicated than a simple simultaneous exchange, there is a structural problem that needs to be overcome. It is a problem of trust. If I perform my side of the bargain first, how can I be confident that you will perform your side of the bargain when your turn comes? Suppose I pay you now for a crate of oranges that you promise to deliver to me tomorrow. What happens if you don't deliver them? Or

if you do deliver them, but some of the oranges are rotten? Or suppose that you supply me with the oranges now against my promise to pay you for them next week; but then I fail to pay you.

22. It is not just the failure to perform agreements which impedes commerce: it is the fear or anticipation of it. If I am the party who needs to perform first - for example, by providing finance for a business venture - I am not going to risk doing so if I cannot trust you to fulfil your side of the bargain when the time comes. If trust is lacking, the bargain will not be made in the first place and no exchange will take place - even though, if it did take place, we would both profit from it.

23. How is the trust that is essential for commerce created? One way is through personal relationships. By getting to know each other people can develop mutual trust and a sense of moral and social obligation which makes them want to please the other person and feel bad if they let them down. Another way is through reputation. In a marketplace, if I prove unreliable and particularly if I cheat you, not only will I likely lose your future custom, but word may get around that I am not someone who can be trusted. And that will be bad for my business. Nobody wants to deal with a trader who has a reputation for cheating or breaking their promises.

24. These social forces can be effective within a small community, in which information that affects someone's reputation spreads easily and rapidly. In such markets merchants can themselves often enforce standards by boycotting or ostracising someone who violates them. But such sanctions become increasingly inadequate as commerce becomes more complex, markets more global, and market participants more numerous, geographically spread and socially and culturally diverse. In developed economies most commercial exchange does not involve repeated face-to-face interactions between members of a tight-knit social group. Some further agency is needed to create the mutual trust on which commerce depends. This is where law plays a vital role. It is not that commercial parties want or expect to rely on the legal system for redress. That is usually the very last resort. But the <u>possibility</u> of doing so - and the knowledge that legal enforcement would be available if necessary - gives both parties an incentive to perform their agreement, as well as the knowledge that the other party has such

an incentive. That creates the conditions in which commercial parties can establish the trust needed for successful commercial dealing.

25. To see what happens when there is no or no effective legal system to fall back on, you need only look at how commerce operates in even the best regulated societies in markets where contracts cannot be legally enforced. Take, for example, the market for illegal drugs. A drug dealer cannot go to court to recover money owed. Without law to govern their affairs, drug dealers frequently resort to violence to enforce debts and gangs and vendettas are common. Similar patterns of behaviour tend to be more widespread in societies which lack well-functioning legal systems.

26. What are the key features of an effective legal system? I suggest that they are: a set of standards that are understood to have the normative force of law; access to a court or tribunal that will decide disputes impartially by reference to those standards; and means of ensuring that judgments of the court or tribunal are complied with. Ultimately, effective enforcement usually requires the coercive power of the state.

Private international law

27. When commerce is international, recourse to law becomes more complicated. To illustrate, take the facts of a case in which I was once involved.[23] A seller based in Kolkotta in India ships goods to a Dutch buyer in Rotterdam. The goods (a consignment of leather gloves) arrive damaged by mould that developed during the voyage, and the Dutch buyer demands compensation. The Indian seller maintains that the goods were shipped in sound condition and that any damage occurred without its fault. Before the dispute can be decided, there is a preliminary question. Where can the buyer bring a claim, and what law applies?

28. We can imagine a world in which there is a single transnational system of commercial law that governs transactions wherever in the world they take place and which courts in all countries apply. Something like that, or which aspired to operate in that way, existed in mediaeval Europe in the 11th and 12th centuries. It was known as lex mercatoria, or merchant law.[24] This law evolved from the

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23 *TM Noten BV v Harding* [1989] 2 Lloyd's Rep 527; [1990] 2 Lloyd's Rep 83, CA

24 See eg Leon Trakman, *The Law Merchant: The Evolution of Modern Commercial Law* (1983).

custom and practice of merchants and was enforced through a system of merchant courts along the main trade routes. But it was never a stable system, because it depended on ostracism from the merchant community as a sanction, and it could not survive the emergence of nation states.

29. Instead, a different solution was developed. Its intellectual foundations were laid in the 17th century by Dutch scholars such as Ulrich Huber, whose short but influential treatise on the conflict of different laws in different states was published in 1689.[25] The basic idea of what we now call private international law is to recognise that different states have their own different laws and legal systems but to find principles through which they can be coordinated and operate harmoniously with each other.

30. It has increasingly been accepted as a general principle of private international law that the parties to a contract should be free to choose what system of law will govern their rights and obligations and in what place any dispute is to be resolved. Such freedom allows parties, if they wish, to choose a system of law or a forum which has no connection with their transaction or their own national affiliations, but which is chosen purely because they believe that it will provide a fair and impartial method of settling any dispute that might arise. The result is that there is nowadays an international market for systems of law and dispute resolution.

English law and jurisdiction

31. This freedom of choice helps to create mutual trust and therefore fosters global commerce and prosperity just as Grotius' principles of freedom to trade and to use the seas for trade do. It is also, I confess, a freedom from which I have personally benefited. That is because I have spent most of my career working as a lawyer in London, specialising in commercial law.

32. It so happens that, for historical and other reasons, English law is, currently at least, the most popular choice of law for international commercial contracts. It is particularly dominant in some areas such as shipping, oil and gas contracts, commodities trading, swaps and derivatives, insurance and reinsurance and

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25 Ulrich Huber, *De Conflictu Legum Diversarum in Diversis Imperiis*.

global mergers and acquisitions.[26] International arbitration has become a popular method of resolving cross-border commercial disputes and London has long been the most popular place for international arbitrations, although it is now matched by Singapore.[27] And when parties choose the courts of a neutral country as the forum in which disputes will be resolved, they often choose the courts of England and Wales.

33. Those courts include a specialist Commercial Court based in London. Its work is truly international. A survey of judgments given in the Commercial Court in the year to March 2023 showed that 60% of the litigants were foreign litigants from a total of 78 countries - more even than the 52 countries represented in this room today.[28]

34. The United Kingdom is the largest legal services market in Europe and the second largest in the world after the US.[29] All the 40 biggest law firms in the world have offices in London and 8 of the top 20 in the world have their main base there.[30] Most advocacy in English courts, however, is not conducted by lawyers working in big law firms but by self-employed barristers - who are instructed individually on a case by case basis to advise and act as advocates.

35. I believe it to be a major asset of the English legal system that being a judge is not - as it is in many places - a separate career that you can enter as a young lawyer. The judges who hear cases in the Commercial Court and other branches of the High Court of England and Wales, which deals with the most substantial cases, are drawn from the ranks of senior practising lawyers, usually barristers. That means that, by the time they are appointed, the judges have acquired not only expert knowledge of the law but also extensive practical experience of litigation and of the expectations of parties involved in legal disputes, gained from advising and representing them as clients. In the case of commercial disputes, the knowledge gained also includes practical understanding of different fields of commerce.

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26 See eg Report on Economic Value of English law, prepared for LegalUK by Oxera, 5 October 2021, section 4.

27 See The Queen Mary University / White & Case 2021 International Arbitration Survey.

28 The City UK, "Legal excellence, internationally renowned: UK legal services 2023", p 41.

29 Ibid, pp 7, 33.

30 Ibid, pp 7, 33.

My career

36. My own career has followed this pattern. After a short period working in the United States, I practised as a barrister in London for 28 years. I specialised mainly in commercial law, in areas which included: shipping; insurance and reinsurance; banking and other financial services; sale of goods; disputes arising out of international company acquisitions; energy; information technology; claims of professional negligence against lawyers, accountants, insurance brokers and others; and claims concerning international commercial fraud. A high proportion of the cases in which I acted involved international transactions. As well as arguing cases in court and before arbitrators, later on I was sometimes engaged to act as an arbitrator myself.

37. Twelve years ago, at the age of 54, I became a judge in the High Court of England and Wales. Up to half of my time was spent in the Commercial Court, hearing and deciding cases of the kind that I had previously argued as a barrister. To give you an idea of their international scope, I have picked out 10 examples which I think are fairly representative. In brief, these cases were:

(1) A claim by a Portuguese investment company that it had received negligent investment advice from a global financial services company when it purchased a high-risk investment.[31]

(2) A dispute arising out of the cancellation of four shipbuilding contracts between a shipyard in the People's Republic of China and a buyer in Singapore.[32]

(3) A claim by Thai Airways, the national airline of Thailand, against a Japanese company which manufactured and supplied aircraft seats found to be defective.[33]

(4) A dispute between three Greek businessman about the sale of shares in a company which owned a fleet of ships. The share sale contract was made in

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31 *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm); [2020] 1 CLC 428

32 *Zhoushan Jinhaiwan Shipyard Co Ltd v Golden Exquisite Inc* [2014] EWHC 4050 (Comm); [2015] 1 Lloyd's Rep 283.

33 *Thai Airways International Public Company Ltd v KI Holdings Co Ltd* [2015] EWHC 1250 (Comm); [2015] 1 CLC 765.

Athens and drafted by a Greek lawyer but provided that any dispute should be decided the courts of England and Wales in accordance with English law;[34]

(5) A claim against former officers of companies carrying on various businesses in Kazakhstan with a parent company in the Isle of Man alleging that they had embezzled funds;[35]

(6) A claim by the governing body of cricket in New Zealand under an agreement with an Indian broadcasting company which had purchased rights to broadcast cricket matches played in New Zealand on two Indian TV channels;[36]

(7) A dispute between a company incorporated in the Bahamas and a bank in Bahrain about whether or not a contract had been concluded to provide finance for the purchase of a commercial aircraft to be leased to Malaysian Airlines;[37]

(8) A dispute between the Republic of Djibouti and a construction company which was employed to build a new container terminal in Djibouti;[38]

(9) A contract between an Equadorian company and a Venezuelan company to charter ships for the carriage of oil cargoes;[39]

(10) A dispute about the validity of finance agreements entered into by a regional gas company incorporated in the United Arab Emirates involving an allegation that the finance agreements were unenforceable because they were not compliant with Shari'a law.[40]

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34 *Tartsinis v Navona Management C*o [2015] EWHC 57 (Comm).

35 *Kazakhstan Kagazy Plc v Zhunus* [2016] EWHC 2363 (Comm); [2017] 1 WLR 467.

36 *New Zealand Cricket (Inc) v Neo Sports Broadcast Pvt Ltd* [2016] EWHC 3615 (Comm).

37 *Novus Aviation Ltd v Alubaf Arab International Bank BSC(c)* [2016] EWHC 1937 (Comm); [2017] 1 BCLC 414.

38 *Soprim Construction Sarl v Djibout*i [2016] EWHC 3864 (Comm).

39 *Flota Petrolera Ecuatoriana v Petroleos De Venezuala SA* [2017] EWHC 3630 (Comm); [2017] 2 CLC 759 .

40 *Dana Gas PJSC v Dana Gas Sukuk Ltd* [2018] EWHC 278 (Comm); [2018] 2 Lloyd's Rep 16.

38. In all but two of those cases English law applied only because the parties had chosen English law to govern their transaction. In the case about embezzlement of funds in Kazakhstan, the English court had to apply Kazakh law.

39. In the 5 years or so that I worked as a judge of the High Court, I did not deal only with commercial cases. My cases also included, for example, serious criminal cases. And I was given an important and challenging assignment which may be of interest to you. I was put in charge of all litigation involving the British armed forces arising out of the British military involvement in Iraq and Afghanistan. The first such case that I had to decide raised the issue of whether British armed forces in Afghanistan had any legal right to detain suspected insurgents and, if so, for how long. Deciding that issue required analysis of English national law, the European Convention on Human Rights, public international law including international humanitarian law and United Nations resolutions, Afghan law, and the interrelationship between these different legal systems. The cases arising from the conflict in Iraq raised issues of equal importance and legal difficulty. One group of such cases comprised well over a thousand claims asserting a right to have allegations of ill-treatment or unlawful killing of Iraqi civilians by British soldiers investigated. A second group comprised almost a thousand claims brought by Iraqi civilians seeking compensation for alleged ill-treatment and unlawful imprisonment by British armed forces. There were also claims brought against the British government by the families of British soldiers killed in Iraq.

40. The civil compensation claims brought by Iraqi civilians resulted in a trial of test cases. The claimants and their witnesses travelled from Iraq to testify in court in London and former British soldiers also gave evidence. The judgment given in that case led to a settlement of the entire litigation. It must, I think, be unusual, if not unprecedented, for a court of a country whose armed forces have invaded a foreign state to hear and decide legal claims brought by citizens of that foreign state seeking compensation for breaches of international humanitarian law.

41. In 2018 I was promoted to the Court of Appeal of England and Wales and in 2020 to the Supreme Court of the United Kingdom. There are 12 judges on our Supreme Court: nine (including me) from England and Wales, two from Scotland (which has its own legal system) and one from Northern Ireland (which also has a separate legal system). We also sit as judges of the Judicial Committee of the

Privy Council. This court is a legacy of the British Empire. In the early part of the 20th century it was the final court of appeal for over a quarter of the world's population.[41] Today its role is obviously much diminished, but it still hears appeals from 29 jurisdictions around the world. These include some remaining British overseas territories that are popular offshore financial centres, such as the Cayman Islands, British Virgin Islands and Bermuda, and several independent countries which have chosen to retain the Privy Council as their final court of appeal including Jamaica, Trinidad and Tobago, Brunei and Mauritius.

42. The appeals which I hear as a judge of the UK Supreme Court and of the Privy Council can be in any field of law. They include international commercial cases. They also include cases raising questions of public international law. I would like to tell you briefly about two of those. In a case in 2021, we had to decide who, following a disputed election, was the President of Venezuela.[42] The issue arose because the Central Bank of Venezuela had gold reserves deposited with the Bank of England worth around US$ 2 billion and the two rival candidates who each claimed to be the President had appointed a board of directors which claimed the right to give instructions in relation to those reserves on behalf of the Central Bank.

43. The second case raised issues about modern slavery and diplomatic immunity.[43] Regrettably, slavery still exists in the modern world, though today it does not usually involve claims of ownership of other human beings; but rather forms of exploitation where someone is completely controlled by and forced to work for someone else, without being able to leave. It is a plight suffered by many migrant domestic workers around the world. In the case we heard, the claimant was a migrant domestic worker from the Philippines who was brought to London to work in the household of a Saudi Arabian diplomat. She eventually escaped. With the help of a charity, she tried to bring a claim against the diplomat for wages which she said had been promised to her but never paid. The defendant relied on diplomatic immunity. There is an exception where the diplomatic agent is exercising a "commercial activity" outside his official functions. The question

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41 See Norman Bentwich, *The Practice of the Privy Council in Judicial Matters* (1912), p ix.

42 *Maduro Board of the Central Bank of Venezuela v Guaido Board of the Central Bank of Venezuela* [2021] UKSC 57; [2023] AC 156.

43 *Basfar v Wong* [2022] UKSC 20; [2023] AC 33.

was whether the facts fell within that exception. We decided by a majority that they did. I was one of the authors of the majority judgment. The essence of our reasoning was that systematic exploitation of a domestic worker under conditions of modern slavery which generates a substantial financial gain in the form of services obtained without payment is properly characterised as "commercial activity".

Your course

44. I could carry on much longer telling you about some of the many legal questions and cases which have made my career so stimulating and fulfilling. But it is time to finish. I have spoken to you about the benefits of commerce, how commercial exchange depends on trust and the role of law in creating trust and aiding commerce. I have emphasised the international dimension of law and commerce and told you a little about my own professional experience of it.

45. Some of what I have said about the benefits of commerce can, I think, be applied to the programme which you are about to start. A great university such as this is a place of learning; but it is also a centre of what might be called intellectual commerce - a place where ideas are exchanged. As with other forms of voluntary exchange, the free exchange of ideas can make both parties richer - in this case richer in knowledge and understanding. All the more so when the people taking part in the exchange come from all over the world and have such very varied and diverse backgrounds, experiences of life and perspectives as you clearly do.

46. So let me end by returning to Grotius and the fundamental principle that he proclaimed in *The Free Sea*: "The people of every country are free to go to every other country and to trade with them." It seems to me that this principle could serve as a motto for the Advanced Masters Law Programme here in Leiden. Students are welcomed here from every corner of the world. You have come here to learn but also to interact and to exchange ideas with your teachers and with each other. It is an incredible opportunity from which you can gain benefits that will be valuable to you for the rest of your lives. I wish all of you a richly rewarding experience here in Leiden. And don't forget to go and see the art.