LSLC is pleased to present the Lord Mustill Inaugural Lecture

LORD MUSTILL –
THE LEGACY

Middle Temple Hall, Temple, London, 14th June 2018
ESSEX COURT CHAMBERS IS A LEADING SET OF BARRISTERS’ CHAMBERS, SPECIALISING IN COMMERCIAL AND FINANCIAL LITIGATION, ARBITRATION, PUBLIC LAW AND PUBLIC INTERNATIONAL LAW. ITS MEMBERS ADVISE AND ACT IN A BROAD RANGE OF DISPUTE RESOLUTION WORLDWIDE.

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THE LEGAL 500
THE LORD MUSTILL INAUGURAL LECTURE

PROGRAMME

5.30pm
Champagne Reception sponsored by Clyde & Co.

6.15pm
Guests take their seats

6.20pm
Tribute
by the Founder of the LSLC, Dr Aleka Sheppard

The Lecture
Lord Mustill – The Legacy

Chairman
The Right Honourable The Lord Clarke of Stone-cum-Ebony

Speakers
The Right Honourable The Lord Phillips of Worth Matravers KG PC
Stewart Boyd CBE, QC
The Right Honourable Sir Richard Aikens

Reflections, reminiscences from guests

Vote of Thanks

8.00pm – 10.00pm
Drinks and Canapé Reception sponsored by Essex Court Chambers
LORD MUSTILL’S LIFE AND LEGACY TO THE LEGAL PROFESSION

Michael Mustill was one of the finest lawyers of his generation, as Queen’s Counsel at the Commercial Bar, as a Judge of the Queen’s Bench Division, as a Lord Justice of Appeal and, as a Law Lord, a member of the Judicial Committee of the Privy Council. Like all great judges, his distinction was not confined to one area of the law. He brought equal qualities to the criminal law, personal injury law and administrative law. In these areas, he wrote penetrating and memorable judgements which remain influential today.

Born in Leeds in 1931, Michael Mustill was educated at private boarding schools: the Wells School, Ilkley; Stancliffe Hall, Derby; and Oundle. At the latter, he discovered a talent for shooting and tennis and conducted the School orchestra, having learned to play cello and piano. He spent his two years’ national service with the Royal Artillery (1949-51), was commissioned second lieutenant and became ADC to a general.

He went on to St. John’s College, Cambridge (1951-54) to read mathematics but changed his mind and switched to law. He was awarded the George Long Prize for Jurisprudence and a McMahon Law Studentship to help with his studies for the Bar.

After graduation, he worked for Slaughter & May, which gave him an insight into the life of a working solicitor which stood him in good stead as a barrister and judge.

He was called to the Bar by Gray’s Inn in 1955 and became a pupil of Michael Kerr, at 3, Essex Court Chambers.

Although the Commercial Bar was pursued by relatively few chambers and practitioners in the late 1950s and early 1960s, Mustill was taken on as a tenant at the end of his pupillage. He was soon busy attending cases in the Commercial Court and in the Court of Appeal. In 1961, the Lord Chancellor required No.3 Essex Court to split and Michael moved to No. 4. with Michael Kerr QC, Robert McCrindle QC, Anthony Evans, Anthony Diamond, Mark Saville and Anthony Colman – what a distinguished bunch! Mustill became pupil master to
a whole generation of barristers, including Nicholas Phillips who later became Master of the Rolls and President of the Supreme Court.

By the time Michael took silk in 1968, his practice had become enormous. Within a few years, he was among the top commercial silks. In 1972, he was appointed Recorder of the Crown Court, a precursor to being made a High Court Judge of the Queen’s Bench Division in 1978, aged only 47. He was Presiding Judge on the North Eastern Circuit (1981-84) and Judge in charge of the Commercial Court (1984-85). In 1985, he was appointed Lord Justice of Appeal and admitted to the Privy Council.

In the same year, Mustill was appointed Chairman of the Interdepartmental Advisory Committee on Arbitration, which contributed to the drafting of the UNCITRAL Model Law on Arbitration. Under Mustill, and later under Lord Steyn and Lord Savile, the Committee’s work led to the drafting and enactment of the Arbitration Act 1996. His paper Multi-party arbitrations: an agenda for law makers set new ground rules for the discussion and improvement of this aspect in a comprehensive and ordered framework. In 1992, he was elevated to the House of Lords, taking the title of Lord Mustill of Pateley Bridge.

He was made Judge of the Appellate Committee of the House of Lords and appointed Lord of Appeal in Ordinary. After Mustill retired as a Lord of Appeal in 1997, he was much in demand as an arbitrator in international commercial and investment disputes and as a writer and lecturer.

**Publications**

Michael Mustill acted as junior editor of the 17th edition of *Scruton on Charterparties and Bills of Lading*, published in 1964. He worked with two High Court judges, Sir William McNair and Sir Alan Mocatta. Mustill did a great deal of work on the text, particularly in the Notes relating to the major propositions of law and the summaries of exemplifying cases. The 17th edition remains an excellent starting point for researching principles of general contract law and for checking propositions on shipping law. His contribution to the evolution of the law on carriage of goods was considerable.

Mustill remained an editor of *Scruton* for the 18th edition in 1974 and the 19th in 1984. The heyday of litigation on charterparties and bills of lading was the 1970s to the mid-1990s. *Scruton* was then in everyday use in the Commercial Court and in arbitrations.
He was the senior editor of the 16th edition of *Arnould on Marine Insurance*, which appeared in 1981. The 15th edition had appeared 20 years earlier, so the text had to be carefully revised and updated. The 16th edition is full of learning, with Mustill contributing particularly to the sections on War Risks.

*The Law and Practice of Commercial Arbitration in England and Wales* (short title, *Commercial Arbitration*), co-authored with Stewart Boyd QC, was published in 1982 after a 15-year gestation. It had to reflect a context whereby the great majority of charterparties and many bills of lading contain arbitration clauses and provide for arbitration in London.

*Commercial Arbitration* analysed in thorough and scholarly fashion, for the first time, the fundamental and legal principles of arbitration and showed how those principles fitted into the framework of the 1979 Act. The book gained considerable momentum from this Act which did away with the much criticised special case procedure, until then the main but clumsy and expensive method of inviting the courts to decide questions of law arising from an award. It had been a major wellspring for the development of maritime law.

Mustill’s great experience as counsel in shipping, insurance and commodity arbitrations, frequently involving parties from abroad, gave him the impetus for the task. The starting point was a re-reading of the Lloyd’s List maritime and insurance reports since 1919. The book goes well beyond reported decisions by discussing important and fundamental matters of principle while giving guidance to participants in arbitrations on matters of practice.

The book summarised English arbitration law, essentially for non-lawyers; and for foreign lawyers involved in arbitration in London and those abroad, conducted under English arbitration law. For lawyers and arbitrators, it considered a definition of arbitration, highlighted areas where a conflict of laws might arise in relation to arbitration agreements; discussed the residual jurisdiction of the court to take over disputes where an arbitration has broken down; and reflected on the doctrines of abandonment, frustration and repudiation. It covered the powers of courts to enforce arbitration agreements and to ensure arbitration was properly conducted; and the requirement for arbitrators to act impartially and fairly.

Which commercial lawyer, during the 1980s and 1990s, did not carry his ‘Mustill and Boyd’ to any arbitration hearing or to any Commercial Court case involving arbitration?

With the second edition in 1989, sales of the book overseas were as great as those in England. Mustill built up a considerable profile abroad, delivering addresses and taking part in arbitration colloquia in perhaps 20 countries. His monograph *The new Lex Mercatoria: the first 25 years* had perhaps the greatest influence of all his published addresses on the theory of international arbitration law.

**Approach to his work**

Throughout his career, Michael Mustill’s method as a lawyer was at the very best level of his contemporaries. He was dedicated to the exposition of the law. It was never enough for Mustill just to decide a case. He needed to know where a decision would lead and why.

He never assumed that the answer to any particular problem lay in arguing from the propositions decided by the reported cases. His instinct was to treat the immediate question as part of a wider set of questions, to which an answer could only be found by resorting to norms other than those derived from legal precedents. This would in turn lead to legal norms of more general application and consistency in deciding cases in different but related fields of law.

He would break down a legal problem by analysing every possible permutation of circumstances in contrast to the usual forensic method of the advocate of concentrating on arguments to defeat the other side. This skill served to anticipate contrary contentions. His own arguments were clearly articulated and led to intellectually convincing conclusions.

Mustill turned a questioning eye on the conventional view that the Common Law was the best system of law, being based on decisions in individual cases and not on speculative reasoning - as were other systems of law, particularly systems of civil law in Europe and elsewhere.
His view was that legal decisions arising from practical questions could not be divorced from a systematic and logical analysis of the underlying legal principles. The Common Law depended on the chance offered by particular cases which was not a satisfactory basis for the systematic development of principles of law. Civil or Roman law could more readily absorb ideas based on principle, as they depended mainly on the work of legal scholars rather than the decisions of judges.

As an advocate, he was not a great orator. He sought to persuade by strength of argument and skill in handling evidence. As advocate and judge, he maintained an exemplary purity of language and thought. His prose style was beyond reproach and maintained a freshness and fluidity which few lawyers in modern times have equalled.

This characterised his academic writing which he regarded as a quest for the correct—or at least the best—answer to every foreseeable variation of a given question. For questions requiring multiple answers, he would often construct elaborate algorithms and spreadsheets. They enabled him to cover the subject from every angle and to glean the general principles underlying a seemingly disorganised set of legal rules.

In the latter stages of his career, Michael Mustill accumulated an impressive range of honours, awards and fellowships.

As a result of his work on arbitration law, Mustill was awarded a Doctor of Laws degree by Cambridge University. This was not an honorary degree but reflects the original and extensive academic work in Commercial Arbitration. He was appointed an Honorary Fellow of St John's College, Cambridge; the Yorke Distinguished Visiting Fellow and Arthur Goodhart Visiting Fellow of Legal Science, Cambridge, and Honorary Professor of English Law at Birmingham University. He was Honorary President of the Chartered Institute of Arbitrators, a Vice-President of the International Chamber of Commerce and a President of the International Law Association. He was elected a Fellow of the British Academy in 1996.

His skill and intellectual rectitude in deciding questions with legal, ethical and moral dimensions led to his appointment as a member of the House of Lords Select Committee on Medical Ethics. His maiden speech in the House of Lords concerned mentally disturbed offenders. He had been particularly troubled in sentencing such offenders, given the seriously inadequate treatment in the penal system. He was involved in organising, through the Mental Health Foundation, conferences which pulled together the professionals to find ways of improving the system.

Mustill had hoped to write a book analysing the principles of the criminal law but ill health and overwork prevented him. His experience of the criminal law, very wide by any standard, was not greater than a good many other judges but his intellectual capacity to make sense of it all was unrivalled. He died in April 2015, just short of his 84th birthday.

Mustill’s special contribution, as a judge in many fields, lay in being a systematic analyst of the law. He never hesitated to offer an opinion on questions to which reported cases gave no answer.

After the great earthquake in the Ionian Isles in 1953, the young Mustill, still an undergraduate, went alone and at his own expense to Kefalonia to help, supported later by charitable funds. He was thanked for his services by the Greek Government. Throughout his life, he had a great affection for the country and its inhabitants and later had many Greek shipowners as his clients.

This profile is derived from material contained in an article 'Lord Mustill and Maritime Law' by Sir Richard Aikens published in Lloyd’s Maritime Law Quarterly (2017), and an extract from the biographical memoir of Lord Mustill as a Fellow of the British Academy by Stewart Boyd CBE QC, (2017).
LORD MUSTILL EXCITED BY THE CENTRE’S REMIT

Dr. Aleka Sheppard met Michael Mustill in 1995 and asked him to become the first President of the London Shipping Law Centre.

“I was immediately struck by his huge intellect, humility, humanity and unfailing kindness. Straightaway, he grasped the importance of the Centre’s wider purpose: to bring together maritime professionals and to promote London as a commercial centre of excellence through education. He was excited by the originality of the Centre’s remit.

“Looking back more than 20 years, there was no movement or organisation which did this. We set out to pull together all sectors of the shipping industry to exchange knowledge so that legal people could learn from technical and commercial practitioners; while these practical people, as Michael called them, could in turn learn from lawyers, arbitrators and judges.”

“The law and practice of shipping have always been closely entwined. There can surely be no other branch of commerce where the practical people know, and need to know, so much of the law; and where professionals know, and need to know, so much of the practice. The skills and qualifications of those who occupy the broad spectrum between the judge and the master mariner merge almost imperceptibly.”

“Lord Mustill, President, at the Centre’s inauguration, April 1997

“Our overriding purpose is to bridge the gap between maritime professionals and to enhance their awareness of all types of maritime activity, focusing on how legal risks interweave with commercial, technical, scientific and financial ones. We encourage, endorse, and promote high-quality of maritime services through education, suitably structured for all maritime sectors, thereby supporting the shipping industry. We facilitate the development of business relationships and promote the talents of our industry.”

Dr. Aleka Mandaraka-Sheppard, Founder and Chairman

Lord Mustill addressing guests at the LSLC’s Inaugural Reception at the House of Lords in 1997
Anthony Clarke has recently retired after being a Justice of the Supreme Court since its inception in 2009 when he was awarded a life peerage. He was also appointed to the Court of Final Appeal of Hong Kong in 2011 as a non-permanent judge from other common law jurisdictions.

Educated at Oakham School and King’s College, Cambridge, he was called to the bar in 1965, where he specialised in commercial and maritime law. He became a Queen’s Counsel in 1979 and was a Recorder sitting in criminal and civil courts from 1985 to 1992.

He became a High Court judge in 1993 and was allocated to the Queen’s Bench. He soon succeeded Mr. Justice Sheen as the Admiralty Judge. He sat in the Admiralty, Commercial and Crown Courts.

He was promoted to the Court of Appeal in England and Wales in 1998 and was appointed to the Privy Council. He took charge of the Thames Safety Inquiry and the judicial inquiry into the Marchioness disaster. He was appointed Master of the Rolls and Head of Civil Justice in England and Wales in 2005.

Lord Phillips is a retired Law Lord and Past President of the Supreme Court of England and Wales.

After national service as a Royal Navy officer, he read law at King’s College, Cambridge. In 1962, he was called to the Bar at the Middle Temple where he was a Harmsworth Scholar. He specialised in Commercial Law and Admiralty Law and took silk in 1978. He was appointed a Recorder in 1982 and from 1987 served as a Judge of the Queen’s Bench Division where he sat in the Commercial Court. In 1999, he was elevated to the Court of Appeal, was appointed Master of the Rolls in 2000 and Lord Chief Justice in 2005.

Lord Phillips was appointed as senior Law Lord in 2008 and oversaw the transition of the House of Lords to the Supreme Court in 2009, serving for three years as the Court’s first President. He remains a non-permanent judge of the Court of Final Appeal in Hong Kong and President of the Qatar International Court & Dispute Resolution Centre.

Lord Phillips has presided over some of the most celebrated legal cases, including the complex prosecutions relating to the Maxwell pension funds and Barlow Clowes. He conducted the public inquiry into the outbreak and effects of BSE.
Steward Boyd has a half century of experience as counsel and arbitrator in courts and arbitral proceedings in England and Wales.

After Trinity College, Cambridge, he was called to the Bar in 1967 and took silk in 1981. He was a Recorder of the Crown Court (1992-99), Deputy Chairman of the Financial Services Authority (1999-2004) and was awarded the CBE in 2005.

From 1968 to 2017, he appeared as counsel in the English and Commonwealth courts and in the European Court of Justice. He participated in many arbitrations in England and overseas, including the United States, Bermuda, the Netherlands, Singapore and Hong Kong. These concerned a range of international and commercial disputes under ICC, ICSID, LMAA, LCIA and UNCITRAL Model Rules.

These arbitrations have involved disputes in agency, banking, shipbuilding, offshore construction, oil and gas, international carriage and sale of goods, competition, information technology and other fields. He has assisted in drafting arbitration legislation, including the Arbitration Act 1996 and has given expert evidence on English law to courts and arbitrators in the United States, Australia, Europe and Asia.

He has been co-author with Lord Mustill of Commercial Arbitration and senior editor of Scrutton, Charter Parties and Bills of Lading.

Sir Richard Aikens is a retired Lord of Appeal who has enjoyed a wide career in the law as a commercial practitioner, arbitrator, academic and author. Having read history and law at St John’s College, Cambridge, he was called to the English Bar by Middle Temple in 1973 and practiced at Brick Court Chambers (1974-99), largely in commercial law. He was appointed Queen’s Counsel in 1986. He was appointed judge of the High Court in 1999.

He was Presiding Judge of the South East circuit (2001-04), judge in charge of the Commercial Court (2004-05), and was appointed to the Court of Appeal and sworn a Privy Councillor in 2008. He served as Lord Justice of Appeal in charge of extradition cases (2013-15).

He was UK Representative to the International Association of Judges (2000-10) and on the Consultative Council of European Judges (2011-15), being Vice President for the last two years. He was President of the British Insurance Law Association (2012-14) and is a Vice-President of the British Maritime Law Association.

He is co-author of Bills of Lading (first edition 2006, second edition 2015) and co-editor of Dicey, Morris and Collins on The Conflict of Laws.

He is now working as an arbitrator in international commercial and investment disputes. He is Visiting Professor at King’s College, London and Queen Mary, University of London, teaching commercial law and arbitration.
KEEPING UP-TO-DATE WITH WHAT’S HAPPENING IN THE MARITIME INDUSTRY

How do you keep abreast of developments in arbitration, particularly funding aspects and the possibility of bias? What are the most important aspects for maritime arbitration? How can arbitration support the wider field of maritime services in London? Dealing with Chinese parties in arbitration often presents concerns so how can a level playing field be assured?

How do you cope with the increasing importance of technology in providing evidence and resolving disputes? Should law firms be hiring people who are not just legally qualified but proficient in the application of information technology to the bringing and conduct of cases? How should lawyers and other maritime professionals cope with the increasing computerisation of shipboard functions which play such a huge role in disputes? How will conventional processes of law accommodate Artificial Intelligence?

What about the pitfalls of insuring offshore projects: what’s included nowadays and what is not? Developments in Bills of lading are a constant concern so what’s the latest position? What’s the latest on contractual anti-suit injunctions? What can the New Flamenco case tell us about the courts’ changing approach to damages awards? How do changes in the London Interbank Offered Rate affect a wide range of shipping finances?

There can be scarcely a shipping lawyer or any other maritime professional who can afford to turn a blind eye (or deaf ear) to what is happening in these areas—and in many others as the above are just samples from a very extensive menu of concerns.

Clearly, the best way to keep up to date on such matters is to hear what the experts have to say. So, where do they come together to dispense their exceptional wisdom?

Look no farther than the seminars run by the London Shipping Law Centre Business Forum and hosted by leading law firms in the UK capital. All the subjects touched on above have been examined under LSLC auspices in the past year or so.
Well over 240 seminars have been staged since 1995 with a supplement of special events and workshops.

The Education & Events Committee choose the subjects, having regard to significance and topicality. Some subjects keep forcing themselves to the front, such is the speed of significant changes. The next step is to get the best people to present by searching among their worldwide contacts.

Typically, around 80 to 120 shipping professionals come together at each seminar to listen and to ask questions, with judges, senior lawyers and other maritime professionals chairing proceedings. Attendance attracts CPD points. Generous hosts dispense post-presentation hospitality to fuel networking.

At any LSLC event, you could find shipowners, charterers and shipbrokers; mariners, marine engineers, naval architects and surveyors; hull and protection & indemnity insurers; classification society and trade and professional association representatives; law makers, enforcers and regulators; commercial and academic lawyers, accountants and financiers; and representatives from government and non-governmental organisations with shipping briefs; and, always, students and those just starting their careers.

The Cadwallader event, named after Francis Cadwallader, a pioneer in legal education, is the Centre’s flagship occasion. Lectures and presentations focus on major shipping industry concerns, with the next event scheduled for 27th November 2018.

The London Shipping Law Centre was founded in 1994 by Dr Aleka Sheppard and was based at University College, London, where she was Head of the Shipping Law unit. It was relocated to the City of London in 2009 and is now housed in an office at Quadrant Chambers in Fleet Street.

The Centre is a not-for-profit organisation which derives its income from membership subscriptions, seminars and other events, bespoke courses, and corporate sponsorship and donations. It is led by its Governing Body and Council. The President is Lord Clarke of Stone-cum-Ebony and the Chairman is Dr. Sheppard. The Directors and Council Members are drawn from a wide range of maritime professions.
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## THE JUDGMENTS OF LORD MUSTILL

A selection of Lord Mustill’s reported judgments in the House of Lords, Privy Council, Court of Appeal and High Court was compiled by the LSLC as a gift to Lord Mustill and was presented to him at the Cadwallader Dinner held in 2012.

### HOUSE OF LORDS AND PRIVY COUNCIL JUDGMENTS OF LORD MUSTILL

1. **Standard Chartered Bank v Pakistan National Shipping Corp (No.2) 2002** [2002] UKHL 43
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3. R. (on the application of RBNB) v Warrington Crown Court [2002] UKHL 24
4. S (Children) (Care Order: Implementation of Care Plan) [2002] UKHL 10
5. Christchurch Pavilion v Deloitte & Touche Tohmatu Trustee Co Ltd [2002] NZ UKPC 4
6. Murphy (Marvin) v Queen, The Privy Council (Bahamas) [2002] UKPC 3
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