



MARK CLEARY

Qualifications: -

1990-1994	Combined Bachelor of Commerce/Laws Degree (B.Comm/LL.B (1 st Class Honours)) from Macquarie University (1994: ASIC Prize for Commercial and Corporate Law)
1998-2000	Master of Laws Degree (LL.M) from UNSW (major: Commercial and Corporate Law)

Professional History: -

1996	Year of admission as an Australian Lawyer
1996-2000	Graduate, Solicitor and then Senior Associate at Corrs Chambers Westgarth
2001	Year of admission to NSW Bar

Principal areas of practice: -

I accept briefs from law firms, and corporate in-house counsel, throughout Australia in the following practice areas: -

Administrative Law	Employment Law and Restraint of Trade
Appellate	Equity and Trusts
Banking and Securities	Insolvency
Commercial Law	Professional Negligence
Competition and Consumer Law	Real Property Law
Contracts	Wills, Family Provision and Succession Law
Corporations Law	

Selected appearances as counsel: -

NSW Court of Appeal and NSW Supreme Court: -

- *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2018] NSWCA 118 – appellate litigation/Corporations Law/Barnes v Addy claim/breach of fiduciary duties/fraud/remedial constructive trusts/equitable compensation.
- *Kearney v Williams, Optimisation Australia Pty Ltd & Ors* [2018] NSWSC 31 & [2018] NSWSC 280 – Corporations Law/Shareholder Oppression/internet company/derivative claims against directors/breach of director’s duties/accessorial liability for directors /company valuation law as it applies to technology sector/buyout orders.
- *Dawngrange Pty Ltd & Ors v Arnautovic & Ors* [2017] NSWSC 1201 – Corporations Law/insolvency/multiple appeals from liquidator’s decisions heard together/contract law.
- *SAMM Property Holdings Pty Ltd v Shaye Properties Pty Ltd* [2017] NSWCA 132 & [2016] NSWSC 362 –Property law/large commercial property contract/rectification/injunctions/specific performance.
- *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSWSC 412 – Corporations Law/Barnes v Addy claim/breach of fiduciary duties/fraud/remedial constructive trusts/equitable compensation.
- *Kearney v Williams, Optimisation Australia Pty Ltd & Ors* [2016] NSWSC 1518 – Corporations Law/Client Legal Privilege in employee emails/Waiver of Privilege under s122 of the Evidence Act.
- *In the matter of Urban Purveyor Group Pty Ltd* [2015] NSWSC 1705 – Corporations Law/varying a statutory demand/contract law.
- *Landa v Perpetual Trustees Victoria* [2013] NSWSC 1685; [2014] NSWCA 245 & [2014] NSWCA 393 – appellate litigation/banking and mortgage law/fraud by mortgage broker/Contracts Review Act /agency law.
- *Hills Industries Ltd v Australian Financial Services Pty Ltd* [2012] NSWSC 1004 & [2012] NSWCA 380 – appellate litigation/restitution/recovery of money paid by mistake/change of position/equity/finance law/fraud.
- *In the matter of Amazon Pest Control Pty Ltd* [2012] NSWSC 1568 – winding-up on the just and equitable ground/shareholder oppression claim/Corporations Law.
- *Beck v NSW* [2012] NSWSC 1483 and *NSW v Beck* [2013] NSWCA 846 – intentional torts/ malicious prosecution/exemplary damages/administrative law/judicial review/jurisdictional error.
- *Pritchard (Law Cover) v DJZ Constructions Pty Ltd & Ors* [2010] NSWSC 1024 & [2012] NSWCA – commercial litigation/appellate litigation/professional negligence/tort liability/Civil Liability Act.
- *Calwell-Smith v D.G. Dept. of Finance* [2012] NSWSC 43 – Associations Incorporation Act /review of an external administrator by Department of Fair Trading/breach of directors duties.

- *Aalders Finance v ANZAX Finance Australia Pty Ltd* [2011] NSWSC 756 – construction of contractual provisions/options contracts/declarations/damages for breach of contract.
- *Sekers v Sekers* [2010] NSWSC 59 – Succession Act/family trusts/Corporations Law/family provision order claim over large estate/complex estate litigation.
- *Perpetual Trustees Victoria v Longobardi* [2009] NSWSC 654 – banking and mortgage law/securities/no-doc, low-doc loans/Contracts Review Act/consumer law.
- *Re Rubicon Asset Management Ltd* (2009) 77 NSWLR 96/(2009) 74 ACSR 346 – Corporations Law/leading case on winding-up managed investment scheme on the just and equitable ground.
- *Bodikian v Sproule* (2009) 72 ACSR 578 – Corporations Act/directors meetings/equity/estoppel.
- *Barbagallo v Clifton Fletcher Pty Ltd t/a Ray White Real Estate* [2004] NSWSC 699 – Corporations Law/shareholder oppression claim/specific performance of shareholders agreement.
- *Scharer v State of NSW* (2001) 53 NSWLR 299 – property/equity/proprietary estoppel.

High Court and Federal Court of Australia: -

- *Ryan v Vizovitis* [2017] ACTCA 3 – large commercial appellate litigation in the ACT.
- *Marmax Investments Pty Ltd v Spanline Weatherstrong Building Systems Pty Ltd & RPR Maintenance Pty Ltd* [2015] FCAFC 127 & [2014] FCA 514 & [2014] FCA 409 & [2012] FCA 681 - franchise law/injunctions/obligations of good faith/competition and consumer Law/ restraint of trade.
- *Australian Financial Services Pty Ltd v Hills Industries Ltd & Bosch Security Systems Ltd* [2014] HCA 14 – leading High Court case on restitution law in Australia/recovery of money paid by mistake/fraud.
- *Wilkie v Woolworths Ltd* [2013] FCCA – large sexual discrimination and sexual harassment trial/claim against senior executive under the Sex Discrimination Act/employment law.
- *Spanline Weatherstrong Building Systems Pty Ltd v Tabelz Pty Ltd* [2013] FCA 1019 – passing-off/competition and consumer law /secondary meaning/misleading and deceptive conduct.
- *Uniting Care NSW v Hancock* [2014] FCA 391 – appellate litigation against trade union/Fair Work Act/multiple claims for breach of employment contract.
- *Moody Kiddell & Partners v Arkell, Brooke and Broolend Pty Ltd* [2013] FCA 1066 – complex commercial litigation/injunctions/restraint of trade/Corporations Law/breach of confidentiality.
- *Manildra Flour Mills (manufacturing) Pty Ltd v National Union of Workers* [2012] FCA 1010 – appellate litigation/employment law/multiple claims for damages brought by trade union.

- *Wecker v Secretary, Department of Education* [2008] FCAFC 108 – Full Court appeal/judicial review of an AAT decision/employment law.
- *Shanahan v AIRC (no. 2)* [2006] FCAFC 175 – Full Court appeal from ARIC/employment law/errors of law.
- *Collins Debden Pty Ltd v Cumberland Stationery Co Pty Ltd* [2005] FCA 1398 – intellectual property/misleading and deceptive conduct/passing-off/injunctions/declarations.
- *Anscor Pty Ltd v Clout (Trustee)* [2004] FCAFC 71 – Full Court appeal/Bankruptcy Act/voidable property transactions/trust law/appeal from Federal Court.
- *ACCC v IMB Group Pty Ltd* [2003] FCAFC 17 – Full Court appeal/ACCC prosecution/ Trade Practices Act/exclusive dealing/competition and consumer law/accessorial liability for directors.

I have also appeared, or provided advice, in: -

- Liquidator's examinations in the NSW Supreme Court and Federal Court, including more recently a 12-month examination of directors, officers and auditors of an investment bank, Lewis Securities, which collapsed in 2012, which led to recovery proceedings in the NSW Supreme Court against various parties.
- A significant number of complex commercial disputes, including shareholder oppression claims, contract claims, commercial property disputes, negligence claims, family provision claims, employment and sexual discrimination and harassment claims, that have settled through mediation.
- Hundreds of administrative decision reviews and appeals in the Federal Circuit Court and Federal Court.

Publications: -

I was a contributing author of the LBC 2002, 2nd edition, of P Parkinson's **The Principles of Equity**. I published a paper in the March/April 2008 edition of **Precedent** titled '*Appeals From Tribunals and Inferior Courts on Questions of Law*'. I also regularly deliver CPD papers on areas on current issues in law.

Personal details: -

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