

Justin Hewitt
Barrister
Eight Selborne Chambers
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BAR ADMISSION

Admitted as a barrister in New South Wales, April 2004

AREAS OF PRACTICE

Principally banking and finance, bankruptcy and insolvency, commercial law, competition and consumer law, corporations and securities, equity, property, trusts and wills.

OTHER ADMISSION

Admitted as a legal practitioner of the Supreme Court of New South Wales in April 1996

Admitted to the Supreme Court of the State of New York in July 2000

Admitted to the United States District Court for the Southern District of New York in March 2007

EDUCATION

UNIVERSITY OF SYDNEY

Bachelor of Laws (First Class Honours), December 1994

Bachelor of Science, December 1992

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, New York

Master of Laws (LL.M.), May 1999

Awards: Law Council of Australia, Business Law Fellowship
University of Sydney Travelling Scholarship

PROFESSIONAL BACKGROUND

HIGH COURT OF AUSTRALIA

Canberra, August 1996 – February 1998

Associate to the Honourable Justice W M C Gummow, AC

FREEHILL HOLLINGDALE & PAGE (NOW HERBERT SMITH FREEHILLS)

Sydney, January 1996 – August 1996; February 1998 – August 1998

Solicitor, Litigation and Projects Groups.

SHEARMAN & STERLING LLP

New York, USA, 1999-2004, 2007

Attorney, Bank Finance and Bankruptcy and Restructuring Groups.

SELECTED CASES

NSW Supreme Court

- Counsel for national property management company in proceedings brought by ASIC for alleged contraventions of the Corporations Act in operating a financial services business without a licence: *ASIC v Park Trent Properties Group Pty Ltd (No 3)* [2015] NSWSC 1527 (final hearing); (2015) 106 ACSR 460 (admissibility of tendency evidence); (2015) 105 ACSR 565 (waiver of privilege)
- Junior counsel (with Hutley SC) in dispute over implied terms of contract reached at a mediation: *Yulema Pty Ltd v Simmons* [2015] NSWSC 640
- Counsel for beneficiaries in will construction suit: *Bates v Trustees of the Redemptorist Fathers* [2015] NSWSC 539
- Junior counsel (with Lockhart SC) in proceedings concerning construction of bond deed and valuation of shares into which A\$1.6 billion in bonds were exchangeable upon maturity: *International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea* [2014] NSWSC 1289
- Junior counsel (with Sheahan SC and Hillman) for Allco receiver in proceedings brought relating to claims for breach of statutory and fiduciary duties by former officers of Allco: *Allco Funds Management Ltd ((receivers and managers appointed) (in liq)) v Trust Co (Re Services) Ltd* [2014] NSWSC 1251
- Junior counsel (with Stoljar SC) in proceedings brought against purchasers for breach of contract for the sale of land: *Kelly v Galafassi* [2013] NSWSC 680; (2013) 17 BPR 32,123
- Junior counsel (with Jackman SC) in proceedings relating to force majeure claim under electricity hedging agreement: *Ausgrid v Redbank Project Pty Ltd* [2013] NSWSC 1596
- Counsel in proceedings concerning interference to easement: *Buckley v Timbury* [2013] NSWSC 1009; (2013) 17 BPR 32,187
- Counsel for retirement village operator challenging jurisdiction of tribunal to determine question relating to rights attached to preference shares: *Re Australian Property Custodian Holdings Ltd (in liq) (recs and mgrs apptd) (controllers apptd)* [2012] NSWSC 1298; (2012) 271 FLR 381
- Counsel for directors and investors in joint venture in proceedings relating to dispute over rights to commercial lease held by insolvent company: *In the Matter of Oliver Brown Pty Ltd (No 2)* [2012] NSWSC 1222; (2012) 17 BPR 32,253
- Counsel for Lend Lease in proceedings relating to the collapse of the Prime Trust: *Re Australian Property Custodian Holdings Ltd (in liq) (receivers and managers appointed) (as responsible entity of the Prime Retirement Aged Care Property Trust)* [2012] NSWSC 679

- Counsel for mining company successfully resisting application by shareholder to bring derivative suit: *Mathews Capital Partners Pty Ltd v Coal of Queensland Holdings Ltd* [2012] NSWSC 462
- Counsel for company resisting inspection of confidential documents: *Lenark Pty Ltd v Thechairmen1 Pty Ltd and Ors (No 2)* [2012] NSWSC 415
- Junior counsel (with Jackman SC) in proceedings by unitholder of trust seeking to remove and replace trustee: *Everest Capital Ltd as Trustee of EBI Income Fund v Trust Co Ltd* [2010] NSWSC 231; (2010) 77 ACSR 371
- Counsel in proceedings concerning possessory title and claim for adverse possession of land held under the Real Property Act: *South Maitland Railways Pty Ltd v Satellite Centres Australia Pty Ltd* [2009] NSWSC 716; (2009) 14 BPR 26,823

NSW Court of Appeal

- Counsel in proceedings relating to claim against the Estate of the late Richard Pratt brought by Ms Ashton concerning escort services provided by her: *Ashton v Pratt* (2015) 88 NSWLR 281; [2015] NSWCA 12 (appeal hearing); [2013] NSWCA 400 (joinder of parties)
- Junior counsel (with Stoljar SC) in proceedings brought against purchasers for breach of contract for the sale of land: *Galafassi v Kelly* [2014] NSWCA 190; (2014) 87 NSWLR 119
- Counsel in proceedings relating to fraudulent misuse of power of attorney in conveyancing transaction: *Despot v Registrar General* [2013] NSWCA 313
- Counsel in proceedings relating to dispute concerning the sale of a business: *Moon v Mun* [2013] NSWCA 217
- Junior counsel (with Reynolds SC) in proceedings concerning contempt prosecution for breach of freezing orders: *Sigalla v TZ Ltd* [2011] NSWCA 334
- Junior counsel (with Street SC) in proceedings concerning relevance of post-contractual conduct to identification of terms of contract: *Pegela Pty Ltd v Oates* [2010] NSWCA 186
- Junior counsel (with Pritchard SC) in proceedings concerning breach of fiduciary duty and fraudulent conveyance arising from property development transaction: *Chen v Marcolongo; Chen v Lym International Pty Ltd* [2009] NSWCA 326; (2009) 260 ALR 353
- Junior counsel (with Leeming SC) in proceedings concerning application to bring derivative proceedings for breach of directors' duties: *Oates v Consolidated Capital Services Ltd* [2009] NSWCA 183; (2009) 76 NSWLR 69
- Junior counsel (with Reynolds SC) for 2UE, John Laws and Steve Price in relation to homosexual vilification action brought under the Anti-Discrimination Act: *Attorney-General (NSW) v 2UE Sydney Pty Ltd* [2006] NSWCA 349; (2006) 236 ALR 385

Federal Court of Australia

- Junior counsel (with Finch SC and Rees SC) for Standard & Poor's in representative proceedings brought in relation to rating of financial products: *City of Swan v McGraw-Hill Companies Inc.* [2014] FCA 442; (2014) 314 ALR 665 (summary dismissal application considering proportionate liability legislation); (2014) 223 FCR 328 (amendment of group definition); (2014) 226 FCR 462 (discovery dispute)
- Junior counsel (with Leeming SC) in proceedings alleging breach of directors' duties and oppression in conduct of the affairs of special purpose vehicles used for aviation leasing transactions: *HNA Irish Nominee Ltd v Kinghorn (No 2)* [2012] FCA 228; (2012) 290 ALR 372; (2012) 88 ACSR 427
- Junior counsel (with Myers QC) in proceedings concerning the setting aside of a settlement deed on the grounds of misleading and deceptive conduct: *Pihiga Pty Ltd v Roche* [2011] FCA 240; (2011) 278 ALR 209
- Junior counsel (with Leeming SC) in appeal concerning rights attached to preference shares in structured finance vehicles used in aviation leasing transactions: *HNA Irish Nominee Ltd v Kinghorn* [2010] FCAFC 571; (2010) 78 ACSR 553
- Junior counsel (with Bannon SC and Leeming SC) for Optus in the C7 litigation throughout the trial and interlocutory stages of the proceedings: *Seven Network Limited v News Limited* [2007] FCA 1062
- Junior counsel (with Jackman SC) for representative body for property management companies in action brought by operators of factory outlets alleging anti-competitive conduct: *Direct Factory Outlets Homebush Pty Ltd v Property Council of Australia Ltd* [2005] FCA 1438; (2005) 148 FCR 12

High Court of Australia

- Junior counsel (with Reynolds SC) in proceedings considering implied freedom of political communication: *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3; (2013) 249 CLR 1
- Junior counsel (with Reynolds SC) in proceedings considering implied freedom of political communication: *Monis v R* [2013] HCA 4; (2013) 249 CLR 92
- Junior counsel (with Walker SC and Potts) in proceedings considering dispute relating to rights of unitholders under a managed investment scheme: *Westfield Management Ltd v AMP Capital Property Nominees Ltd* [2012] HCA 54; (2012) 247 CLR 129
- Junior counsel (with Reynolds SC) in proceedings considering consequences of trial judge being asleep during trial: *Cesan v R; Mas Rivadavia v R* [2008] HCA 52; (2008) 236 CLR 358

- Junior counsel (with Reynolds SC) in proceedings considering correct approach to application to strike out pleadings: *Favell v Queensland Newspapers Pty Ltd* [2005] HCA 52; (2005) 221 ALR 186
- Junior counsel (with Reynolds SC) in proceedings considering scope of liability in negligence of public authorities in respect of obvious risks: *Mulligan v Coffs Harbour City Council* [2005] HCA 63; (2005) 223 CLR 486

Interstate Courts

- Counsel in Queensland Supreme Court proceedings for the receivers of Octaviar Ltd: *Fletcher v Fortress Credit Corporation (Australia) II Pty Limited* [2015] QSC 51
- Counsel in Victorian Supreme Court proceedings for Lend Lease opposing application brought by liquidator for approval of litigation funding agreement: *Australian Property Custodian Holdings Ltd v Capital Finance Australia Ltd & Ors* [2012] VSC 124

Arbitrations

- Junior counsel (with Jackman SC) in arbitration before The Hon Michael McHugh AC QC in relation to successful claim by electricity generator to pass through costs of carbon tax onto electricity retailer

Australian Competition Tribunal

- Junior counsel (with Hutley SC and Moore SC) for Telstra in proceedings seeking review of ACCC decision to reject an access undertaking: *Application by Telstra Corporation Limited* [2010] ACompT 1

ASIC matters

- Counsel in various matters relating to ASIC investigations and administrative proceedings including proceedings seeking orders disqualifying persons from managing a corporation, orders banning persons from providing financial services and examinations under s 19 of the ASIC Act.