



## MARK CLEARY

### Professional History: -

---

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

### Qualifications: -

---

1995	B.Comm/LL.B (1 <sup>st</sup> Class Honours) (Macquarie University)
2000	LL.M (major: commercial and Corporations law) (UNSW)

### Principal areas of practice: -

---

I appear in all Courts and Tribunals throughout Australia. My main practice areas: commercial law, corporations law, shareholder oppression litigation, insolvency, equity, property, trusts, succession law, administrative law, regulatory compliance, employment law, and ADR.

### Selected appearances as counsel: -

---

#### *NSW Court of Appeal and NSW Supreme Court: -*

- *In the matter of Oneoz Pty Ltd (subject to DOCA)* [2019] NSWSC 1406 – Corporations Law/application to set aside orders for examination/production/construction of a DOCA/duties of deed administrator.
- *Midcoast Petroleum Pty Ltd v Keldros Pty Ltd* [2019] NSWSC 970 – Breach of contract/breach of lease/damages for breach of contract and lease.

- *Aligned Investment Management Pty Ltd v Aligned FM Pty Ltd* [2019] NSWSC 1051 & [2018] NSWSC 1852 – Corporations Law/shareholder Oppression/breach of directors duties/breach of confidentiality/diversion of business opportunity claim/buy out order claim.
- *Luo v Windy Hills Australia Game Meats Pty Ltd* [2018] NSWSC 1139 – security for costs against foreign plaintiffs/large international contract dispute/consumer law/misleading and deceptive conduct.
- *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/ accessory liability for directors.
- *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/human rights 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 in: -***

- Numerous 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, sexual discrimination and harassment claims, that have resolved through mediation or ADR.
- Hundreds of administrative and regulatory reviews and appeals in the Federal Circuit Court and Federal Court and in the AAT for and against Federal regulatory agencies such as the ATO, ASIC, ASQA, Dept of Agriculture, and the Dept of Home Affairs, including more recently appearing for the Commonwealth in connection with a regulatory review in the AAT of a number of live sheep export licences in WA.

**Publications: -**

---

I am a contributing author of the LBC 2002, 2<sup>nd</sup> 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: -**

---

Address: 8<sup>th</sup> Floor, Selborne Chambers, 174 Phillip Street, Sydney, NSW, 2000

Email: mcleary@eightselborne.com.au

Website: eightselborne.com.au