

Curriculum Vitae

Admitted: 2002; Called to the Bar: 2006

Principal Areas of Practice

- Appellate
- Building and construction
- Commercial
- Competition and Consumer Law / Trade Practices
- Computers, science and technology
- Constitutional and Administrative law
- Equity
- Intellectual property
- International and domestic arbitration
- International law and conflict of laws
- Media and Telecommunications law

Notable and Selected Recent Matters

Appellate

- *Talacko v Talacko* (2021) 95 ALJR 417; [2021] HCA 15 (with O'Sullivan QC) [deceit and unlawful means conspiracy]
- *Commonwealth of Australia v Sanofi and another*, Full Federal Court (with J Gleeson SC; 2020-21) [usual undertaking as to damages]
- *Kraft Foods Group Brands LLC v Bega Cheese Limited* (2020) 377 ALR 387; (2020) 151 IPR 369; [2020] FCAFC 65 (led by J Gleeson SC and Caine QC) [assignment of unregistered trade marks]
- *Commissioner of Patents v ROKT Pte Ltd* (2020) 277 FCR 267; [2020] FCAFC 86 (led by Shavin QC) [patentability of computer software]
- *Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited* (2018) 265 CLR 480 (led by J Gleeson SC) [deed of company arrangement and ss 438A, 439A, 444A, 445G of the Corporations Act]
- *Live Board Holdings Ltd v Cody Live Pty Ltd* [2017] NSWCA 302 (unled) [security for costs]
- *Fitz Jersey Pty Ltd v Atlas Construction Group Pty Ltd* [2017] NSWCA 53 and [2017] NSWSC 72 (with Christie SC) [duty of candour in ex parte applications for garnishee order]
- *Friend v Brooker* (2009) 239 CLR 129 (led by Newlinds SC) [equitable contribution]
- *Lumbers & Anor v W Cook Builders Pty Ltd (In Liquidation)* (2008) 232 CLR 635 (led by Reynolds SC) [restitution and quantum meruit]
- *MW v Director-General, Department of Community Services* (2008) 82 ALJR 629; (2008) 244 ALR 205; [2008] HCA 12 [international child abduction]

Building & Construction

- Acting for Australian construction company against foreign joint venture partner in international arbitration seated in Singapore before Constable QC, the Hon Robert French AC and the Hon Susan Crennan AC QC (led by S D Hughes QC; 2019-)
- Acting for Australian construction company against foreign corporations in international arbitration seated in Singapore (2021-)

- *CPB Contractors Pty Ltd v DEAL S.R.L.* [2021] NSWSC 820
- Acting for foreign manufacturer of high voltage electrical equipment in international arbitration seated in Sydney before the Hon Robert McDougall QC (unled; 2018–2021)
- *G&S Engineering Services Pty Ltd v MACH Energy Australia Pty Ltd (No 3)* [2020] NSWSC 1721 (with Christie SC)
- *J Hutchinson Pty Ltd v Glavcom Pty Ltd* [2016] NSWSC 126 (led by Christie SC) [fraud; voidability of adjudications; voidness of contractual provisions for non-compliance with sec 34]
- *Nu-Line Construction Group Pty Ltd v Fowler* [2014] NSWCA 51 (led by Hale SC) [restitution]
- Acting for a State-owned corporation in relation to defective performance under a construction contract for construction of a pipeline (2013-2014; unled) [settled]
- Acted for a multinational corporation in relation to defective performance under a construction contract for construction of a road (2013; unled) [settled]
- Acted for an instrumentality of the State of New South Wales in relation to apprehended litigation under a major construction contract (2012; led by Christie SC)
- Acted for a multinational corporation in relation to defective performance by a sub-contractor for design of a sewage treatment plant (2012; led by Christie SC)
- Acted for a major contractor in relation to a significant dispute relating to a shopping centre [settled]
- *John Holland Pty Limited v Roads & Traffic Authority of New South Wales* (2007) 23 BCL 205; [2007] NSWCA 19 (led by Christie) [good faith and natural justice in adjudications]

Commercial Law

- Acting for Qantas group companies, including Qantas Airways and JetStar, in litigation with Perth Airport (unled; and led by Sheahan QC; 2019–) [restitution]
- Acting for Mineral Resources Limited for claims brought by it for breach of contract and breach of fiduciary duty (unled; 2020–)
- Acted for Spectrum Metals in litigation brought by Venus Metals Corporation (led by Penglis SC) [alleged breach of confidence and fiduciary duties]
- *Mighty River International v Hughes and Bredenkamp as deed administrators of Mesa Minerals Ltd (Subject to Deed of Company Arrangement) [No 2]* [2018] WASC 368 (led by Penglis SC) [challenge to deed of company arrangement]
- Acted for the McTaggart claimants in the GetSwift class selection litigation, including *Perera v GetSwift Limited* [2018] FCA 732 (unled, and led by Brereton SC)
- *Live Board Holdings Ltd v Cody Live Pty Ltd* [2017] NSWCA 302 (unled)
- *Addenbrooke Pty Limited v Duncan (No 3)* [2017] FCAFC 166 (led by Newlinds SC)
- *Mighty River International Ltd v Hughes & Bredenkamp* [2017] WASC 69, and appeals to the Court of Appeal of Western Australia and the High Court (led by Gleeson SC) [validity of deed of company arrangement]
- *Cape Lambert Resources Ltd, in the matter of Kupang Resources Ltd (Subject to Deed of Company Arrangement)* [2017] FCA 1342 (unled) [security for costs in liquidator's examination]
- Advised corporation in relation to claim against member (2017; unled) [settled]
- Advised plaintiff in misleading and deceptive conduct claim against real estate vendor (2017)
- Acted for former investors in failed tax-effective schemes (2013–2017; led by Newlinds SC) [settled]
- Acted for social media company in a preliminary discovery application (unled; 2016) [settled]
- Acted for McDonalds Australia Limited and Toll Transport Pty Ltd in dispute regarding Bankstown Airport (unled; 2016) [settled]
- Advised startup company in respect of claim against funder (unled; 2015)
- *Cody v Live Board Holdings Ltd* [2015] NSWSC 1790 and *Cody v Live Board Holdings Pty Ltd (No 2)* [2017] NSWSC 308 (unled) [security for costs]
- Advised company in respect of corporate restructure and international expansion (unled; 2014)
- *Cody v Live Board Holdings Limited* [2014] NSWSC 78 (led by Newlinds SC) [validity of share issue in public company]
- *Onesteel Manufacturing Pty Ltd v BlueScope Steel (AIS) Pty Ltd* (2013) 85 NSWLR 1 (led by Dick SC) [sale of goods under iron ore supply contract]
- Acted for a company against its former officers for breach of fiduciary duty claims involving amounts in excess of \$25m (2013; led by F Gleeson SC and Newlinds SC) [settled]
- Acted for a major resources corporation in relation to a contractual claim for sale of goods in excess of \$90m (2012; led by J Gleeson SC and Bell SC) [settled]
- Advised resources company in respect of tenements (2012; led by Walker SC)

Competition and Consumer Law / Trade Practices

- Acted for Revlon Australia in relation to claims brought by Unilever Australia regarding consumer deodorant products and their chemical properties (led by Hall SC) [2014-2015; settled], including multiple interlocutory decisions
- *Australian Competition and Consumer Commission v Dateline Imports Pty Ltd* [2015] FCAFC 114 (led by Hutley SC)
- *Australian Competition and Consumer Commission v Dateline Imports Pty Ltd* [2014] FCA 791 (unled) [claims under sec 52 and 53 of the *Trade Practices Act* brought by the ACCC seeking pecuniary penalties regarding the advertising and chemical composition of a cosmetic product]
- *Application by APA GasNet Australia (Operations) Pty Ltd (No 2)* [2013] ACompT 8 (led by Moore SC)

Constitutional and Administrative Law

- Acting for the National Disability Insurance Agency in numerous applications for review in the AAT (unled), including:
 - matters 2020/5978, 2020/6004 and 2020/5985 [supported independent living];
 - *Loadsmen and National Disability Insurance Agency* [2021] AATA 1990 [home modifications]
 - *QXDY and National Disability Insurance Agency* [2020] AATA 4180 [reasonable and necessary supports]
- *Buurabalayji Thalanyji Aboriginal Corporation v Onslow Salt Pty Ltd (No 2)* [2018] FCA 978 and *(No 4)* [2019] FCA 1275 [interference with native title rights]
- Acted for Innovation and Science Australia regarding applications under the *Industry Research and Development Act 1986* (Cth)
- Acting for the Department of Health against a company challenging a decision by the Therapeutic Goods Administration not to list a drug on the ARTG (unled; 2016–)
- *McCloy v The Honourable Megan Latham & Ors* [2015] NSWSC 1782 (led by Williams SC) [apprehended bias]
- *Qarase v Bainimarama* HBC 60 of 2007; HBC 398 of 2007 [High Court of Fiji] (led by Reynolds SC) [constitutional law; reserve powers and executive power; justiciability of dismissal of elected government and appointment of interim government]

Equity

- *Commonwealth v Sanofi-Aventis* (2020) 151 IPR 237; [2020] FCA 543 (led by Brereton SC for the Commonwealth) [usual undertaking as to damages]
- *Sigma Pharmaceuticals (Australia) Pty Ltd v Wyeth* (2018) 136 IPR 8; [2018] FCA 1556 (led by Brereton SC for the Commonwealth) [usual undertaking as to damages]
- *Nexdius Pty Ltd v Exposure Scientific LLC* [2017] NSWSC 1608 (unled) [ex parte interlocutory injunction]
- Advising beneficiaries in relation to claims under testamentary trusts (unled; 2016–2017)
- *Grimaldi v Chameleon Mining NL [No 2]* (2012) 200 FCR 296 (led by Hutley SC) [directors' duties at common law and under statute; Full Federal Court]
- *Friend v Brooker* (2009) 239 CLR 129 (led by Newlinds SC) [equitable contribution]

Intellectual Property; Computers, Science and Technology

- *ViiV Healthcare Company and Shionogi & Co Ltd v Gilead Sciences Pty Limited* (2020) 152 IPR 31; [2020] FCA 594 and (2020) 155 IPR 490; [2020] FCA 1455 (led by Shavin QC; 2019–) [small molecule pharmaceutical patent infringement and validity]
- *Rokt Pte Ltd v Commissioner of Patents* [2018] FCA 1988 (led by Shavin QC)
- Acted for The a2 Milk company in litigation against Lion Nathan (2017–2018; led by Moore SC) [settled]
- *Rokt Pte Ltd* [2017] APO 34 and *Rokt Pte Ltd* [2016] APO 66 (unled) [application challenging refusal to grant software patent]
- Acted for United States software corporation in relation to tortious and potentially unlawful accesses to its servers for the purposes of unfair competition (2014; unled) [settled]
- Acted for Optiver in relation to breach of confidence and infringement of copyright in computer source code against Tibra (2014; led by Hutley SC and Lancaster SC) [settled]
- Acted for a company against former senior employee in relation to breach of confidence and infringement of copyright in engineering drawings (2012; unled) [settled]
- *CA Inc v ISI Pty Ltd* (2012) 201 FCR 23 (led by Ireland QC) [breach of confidence and infringement of copyright claims in computer source code]

International and Domestic Arbitration

- Approved BarADR arbitrator with NSW Bar Association
- Currently appearing in two international arbitrations listed under Building & Construction above
- Acted in international arbitration 2018-2021 listed under Building & Construction above
- Advising a listed Australian resources company in a challenge to an expert determination (unled; 2017)
- Acted for an Australian resources company against a Chinese corporation in an arbitration seated in Singapore involving Western Australian substantive law, including in relation to provisional measures (led by Hutley SC) [2013-2014; settled]
- Acted for an Australian power company against an international supplier (led by Rudge SC and Christie)

Restitution

- Acting for Qantas group companies in litigation against Perth Airport listed under Commercial Law above
- *Nu Line Construction Group Pty Ltd v Fowler* [2014] NSWCA 51 and *Nu Line Construction Group Pty Ltd v Fowler (No 2)* [2014] NSWCA 188 (led by Hale SC) [recovery of partial payments in anticipation of contract for sale of land]
- *Lumbers & Anor v W Cook Builders Pty Ltd (In Liquidation)* (2008) 232 CLR 635 (led by Reynolds SC) [restitution and quantum meruit]
- *Fitzsimons v TAB Limited* [2008] NSWSC 782 (led by Sheahan SC) [illegality; restitution; administrative law]

Previous Experience

2001-2006: Solicitor and Senior Associate, Freehills, Sydney.

- Commercial Litigation Section, 2001-2003 and 2004–2006
- Intellectual Property Section, 2003–2004

2000-2001: Associate to the Hon Justice Gummow AC, High Court of Australia, Sydney and Canberra.

1997: Organic Chemistry Research Student, Department of Chemistry, University of Sydney

Education

1997-2001: Doctorate of Philosophy in Law, Magdalen College, University of Oxford, thesis topic: "Illegal Transactions".

1995-1996: Bachelor of Laws degree with First Class Honours and the University Medal in Law, University of Sydney.

1991-1994: Bachelor of Science degree with First Class Honours and the University Medal in Organic Chemistry, University of Sydney.

Awarded prizes including the 1995 University of Sydney Convocation Medal for exceptional contribution to the University and academic excellence.

Winner, World 1996 Phillip C Jessup International Law Moot (Washington DC) with award for Best Oralist in the International Rounds; Winner, Australian national round 1996 Phillip C Jessup International Law Moot (Canberra).

Publications

"Equity and the Common Counts: The Development of the Action for Money Had and Received", *Equity and Law: Fusion and Fission* Goldberg, Smith and Turner (Cambridge University Press, 2019)

"Equity and monetary remedies for patent infringement: The development of the account of profits" (2018) 12 *Journal of Equity* 168

Book Review: "Mason & Carter's Restitution Law in Australia" (3rd ed), Mason, Carter and Tolhurst (2017) 91 *Australian Law Journal* 858

"Lord Mansfield", *Historical Foundations of Australian Law*, vol 2, (Federation Press, 2013)

Book Review: "Restatement (Third) of Restitution and Unjust Enrichment" (2011) 35 *Melbourne University Law Review* 1197

Book Review: "Law and the Human Body: Property Rights, Ownership and Control", Hardcastle (2008) 82 *Australian Law Journal* 876

"Open Source Software: What is it, and how does it work?" (2004) 55 *Computers & Law* 16

(with Rebecca Davies) "Pre-Trial Discovery: Order 15A of the Federal Court Rules" (2004) 24 *Australian Bar Review* 235

(with Adam Liberman) "Australia-United States Free Trade Agreement: Time to Rethink the Law Regarding Exclusive Licences of Patents and Copyright?" (2004) 17 *Australian Intellectual Property Law Bulletin* 28

"Restitution and Unconscientiousness: Another View" (2003) 119 *Law Quarterly Review* 188

"The Action for Money Had and Received" (2001) 17 *Journal of Contract Law* 93

"Recovering Money Paid Under Void Contracts: 'Absence of Consideration' and Failure of Consideration (2001) 17 *Journal of Contract Law* 37.

"Copyright Protection of Computer Programs" [2000] 6 *European Intellectual Property Review* 292

"Estoppel and Illegal Contracts" (1999) 26 *Journal of Malaysian and Comparative Law* 149

"Copyright and Computer Programs: *Data Access v Powerflex* Before the High Court" (1997) 20 *Syd Law Rev* 296

"An 'Unruly Horse' in a 'Shadowy World'?: The Law of Illegality after *Nelson v Nelson*" (1997) 19 *Syd Law Rev* 240

"27th International Chemistry Olympiad, Beijing 1995", *Chemistry in Australia* February 1996, p. 105