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Admitted to the legal profession

2013

Admitted as a barrister in NSW

2013

Also entitled to practise in

Australian jurisdictions (Commonwealth,
State and Territory)

David practises principally in the areas of commercial equity, corporations and insolvency, real property, planning, and administrative law.

David has appeared both led and unled in a range of matters in the Federal Court of Australia, New South Wales Supreme Court, New South Wales Land and Environment Court, and lower courts and tribunals.

PROFESSIONAL EXPERIENCE

2010-2011: Associate to the Hon WMC Gummow AC, High Court of Australia

PROFESSIONAL MEMBERSHIPS

New South Wales Bar Association

Commercial Law Association of Australia

Australian Association of Constitutional Law

Australian Restructuring Insolvency and Turnaround Association (ARITA)

SELECTED CASES

Selected reported decisions

- **Piety Developments Pty Ltd v Cumberland City Council [2023] NSWSC 480; (2023) 256 LGERA 195** – Planning and environment; Local government; Compulsory acquisition of land; Whether land compulsorily acquired by local council held on trust by council (led by P Tomasetti SC; instructed by Clyde & Co)
- **Sydney Metro v Expandamesh Pty Ltd [2023] NSWCA 200; (2023) 256 LGERA 174** – Planning and environment; Compulsory acquisition of land; Substratum land compulsorily acquired for construction of underground rail facilities; Whether any compensation payable (led by T Hale SC; instructed by ClarkeKann Lawyers)
- **McMillan v Taylor [2023] NSWCA 183; (2023) 111 NSWLR 634; (2023) 257 LGERA 374** – Planning and environment; Judicial review; Review of decision of Commissioner of the Land and Environment Court; Application for review by objector in Class 1 proceedings (non-party); Whether procedural fairness owed to non-party objector; Whether jurisdictional constraints on power of Commissioner to make agreed orders pursuant to s 34 of LEC Act (led by P Tomasetti SC; instructed by Colin Biggers & Paisley Lawyers)
- **Fulton v Chief of Defence Force [2023] FCAFC 134; (2023) 300 FCR 623; (2023) 411 ALR 528; (2023) 180 ALD 109** – Administrative law; Judicial review of decision of delegate of CDF to terminate the appellant's service in the Defence Force (led by G del Villar KC; instructed by Australian Government Solicitor)
- **Sims v Commonwealth [2022] NSWCA 194; (2022) 109 NSWLR 546; (2022) 372 FLR 374; (2022) 410 ALR 46** – Constitutional law; Whether ss 81 and 83 of the Constitution provide an implied basis for recovery of ultra vires payments made by the Commonwealth; Restitution; Limitation periods; Whether s 14 of the Limitation Act 1969 (NSW) applies to a claim by the Commonwealth for recovery of ultra vires payments (led by J Hogan-Doran SC; instructed by Australian Government Solicitor)
- **Frost v Northern Beaches Council [2022] NSWSC 1214; (2022) 110 NSWLR 265; (2022) 20 BPR 42,589** – Real property; Private nuisance; Where large boulder on defendants' land posed threat to plaintiff's land; Whether plaintiff entitled to mandatory injunction requiring the defendants to abate the nuisance at their cost (unled; instructed by Mills Oakley)
- **Della Franca v Lorenzato [2021] NSWCA 321; (2021) 250 LGERA 136** – Professional liability; Local government; Claim against local council for alleged negligent misstatements in planning certificate issued by the council for a property pursuant to s 149 of the Environmental Planning and Assessment Act 1979 (NSW) (led by M Wright SC; instructed by Matthews Folbigg)

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- **Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council [2020] NSWCA 292; (2020) 103 NSWLR 834; (2020) 246 LGERA 321; (2020) 19 BPR 40,937** – Real property; Easements; Application for imposition of easements pursuant to s 88K of the Conveyancing Act 1919 (NSW); Whether purported easements sought by the applicant were valid easements known to the law (led by M Wright SC; instructed by Maddocks)
 - **Olsen v Olsen [2019] NSWCA 278; (2019) 101 NSWLR 225** – Succession; Family provision claim; Whether judge’s comments at pre-trial directions hearing conveyed actual or apprehended bias against the plaintiff (led by M Condon SC; instructed by Robertson Saxton Osborne)
 - **Darzi Group Pty Ltd v Nolde Pty Ltd [2019] NSWCA 210; (2019) 100 NSWLR 394; (2019) 19 BPR 39,563** – Real property; Lease dispute; Whether the parties had entered into a binding lease or agreement for lease in the absence of a signed and exchanged written lease (led by M Condon SC; instructed by O’Brien Connors & Kennett)
 - **Caason Investments Pty Ltd v International Litigation Partners No 3 Ltd [2018] FCAFC 176; (2018) 265 FCR 487** – Constitutional law; Class actions; Whether a dispute between the lead applicant and the litigation funder in a class action proceeding constitutes a “matter” within federal jurisdiction (unled; instructed by Mills Oakley)
 - **Re Courtenay House Capital Trading Group Pty Ltd (in liq) [2018] NSWSC 1918; (2018) 133 ACSR 451** – Corporations law; Insolvency; Application by liquidator for freezing orders against assets held by the respondents which were suspected to be held on trust for the company (led by R Scruby SC; instructed by Colin Biggers & Paisley Lawyers)
 - **Silversea Cruises Australia Pty Ltd v Abellanoza [2018] NSWSC 1565; (2019) 131 ACSR 436** – Commercial law; Equity; Breach of fiduciary duty; Knowing receipt of property to which fiduciary obligations attached; Requisite content of knowledge (unled; instructed by Robertson Saxton Osborne Lawyers) (see also on appeal **Silversea Cruises Australia Pty Ltd v Abellanoza [2019] NSWCA 306**)
 - **Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd [2018] NSWCA 304; (2018) 236 LGERA 176** – Planning and environment; Judicial review; Contamination of land; Whether the requirements of SEPP 55 apply to a decision of a delegate of the Minister to make a gateway determination in respect of a planning proposal to rezone land under the Pt 3 Div 4 of the EP&A Act 1979 (led by T Hale SC; instructed by MinterEllison)
 - **Chief of the Defence Force v Gaynor [2017] FCAFC 41; (2017) 246 FCR 298; (2017) 344 ALR 317** – Constitutional law; Implied freedom of political communication; Whether the decision of the CDF to terminate the applicant’s service in the Defence Force infringed the implied
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freedom of political communication (led by J Gleeson SC, Commonwealth Solicitor-General, and J Kirk SC; instructed by Australian Government Solicitor)

- **Hunters Hill Council v Minister for Local Government [2017] NSWCA 188; (2017) 224 LGERA 1; (2017) 346 ALR 31** – Planning and environment; Local government; Judicial review of Minister’s decision to order the amalgamation of councils under the Local Government Act 1993 (NSW) (led by T Robertson SC and A Galasso SC; instructed by Pikes & Verekers and by Matthews Folbigg)
- **Oneflare Pty Ltd v Chernih [2016] NSWSC 1271; [2016] Aust Torts Rep 82-303** – Professional liability; Claim against search engine optimisation (SEO) expert; Scope and terms of retainer; Duty of care; Whether duty extended to warn sophisticated client about particular SEO strategies and techniques (unled; instructed by Robertson Saxton Primrose Dunn) (see also on appeal **Oneflare Pty Ltd v Chernih [2017] NSWCA 195**)
- **Attwells v Jackson Lalic Lawyers Pty Ltd [2016] HCA 16; (2016) 259 CLR 1; (2016) 90 ALJR 572; (2016) 331 ALR 1** – Professional liability; Advocates’ immunity; Whether a solicitor was immune from suit for settlement advice provided by the solicitor (led G Reynolds SC; instructed by Muriniti Lawyers)
- **Ashton v Pratt [2015] NSWCA 12; (2015) 88 NSWLR 281; (2015) 318 ALR 260** – Equity; Promissory estoppel; Contract; Trusts; Whether promises made were capable of constituting a binding contract or alternatively founding a promissory estoppel (led by G Reynolds SC; instructed by David Legal)
- **Magaming v The Queen [2013] HCA 40; (2013) 252 CLR 381; (2013) 87 ALJR 1060; (2013) 302 ALR 461** – Constitutional law; Chapter III judicial power; Whether the mandatory imposition of prison sentences for certain people smuggling offences contravened Chapter III of the Constitution (led by N Williams SC; instructed by Legal Aid Commission of NSW)

Selected recent unreported decisions

- **Take Off Investments Pty Ltd atf The Clear Runway Trust v Susan Quinn Pty Ltd atf The Susan Amelia Quinn Trust [2025] NSWSC 231** – Commercial law; Contractual dispute; Unit trust sale agreement; Assessment of damages (Unled; instructed by RSO Lawyers)
- **Piety Developments Pty Ltd v Cumberland City Council [2024] NSWCA 173** – Commercial law; Contractual dispute; Alleged contract for sale of land; Requirement for written memorandum or note of contract for purposes of s 54A of the *Conveyancing Act 1919* (led by A McInerney SC; instructed by McCabes)

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- **Bolton v Atanaskovic Hartnell [2024] NSWSC 833** – Costs; Costs assessment; Appeal from appeal panel’s decision; Effect of non-disclosure on solicitor’s right to recover costs (unled; instructed by Atanaskovic Hartnell)
 - **The Uniting Church in Australia Property Trust (NSW) v Crowe [2024] NSWSC 1387** – Real property; Trespass to land; Proprietary estoppel; Injunctive relief (led by G Sirtes SC; instructed by Maddocks)
 - **Dickson v Petrie [2024] NSWSC 972** – Real property; Easements; Validity of easement for gardening & storage purposes (led by P Tomasetti SC; instructed by Dentons)
 - **Re Riverina Solar Pty Ltd (admins apptd) [2024] FCA 1047** – Corporations; Administration; Application for extension of convening period for second meeting of creditors (unled; instructed by Pinsent Masons)
 - **Fox v Planning Ministerial Corporation [2023] NSWLEC 109** – Planning and environment; Compulsory acquisition of land; Determination of compensation; Determining the public purpose for which the land was acquired (led by P Tomasetti SC; instructed by Dentons)
 - **Potts v Potts [2023] NSWSC 1344** – Real property; Property held on trust; Declaration for transfer of legal ownership of property (unled; instructed by RSO Lawyers)
 - **Forza Marketing Pty Ltd v Sie [2023] NSWSC 658** – Commercial law; Sale of business; Accounting for receipt of monies of business (unled; instructed by Lexmerca Solicitors)
 - **Willoughby City Council v Blanc Black Projects Pty Ltd [2023] NSWLEC 54** – Planning and environment; Appeal against Commissioner’s decision to decline to impose a condition for the provision of affordable housing; Statutory construction (led by M Wright SC; instructed by Maddocks)
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PRINCIPAL AREAS OF PRACTICE

COMMERCIAL LAW

Administrative Law	Building, Construction and Technology	Partnership disputes
Alternative Dispute Resolution	Competition and Consumer	Professional liability
Appellate	Contracts	Real property
Banking and Financial Services	Corporations and Securities	Restraint of trade
Bankruptcy and Insolvency	Environment and Planning	Trade Practices

COMMON LAW

Professional indemnity	Professional liability
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EQUITY

Alternative Dispute Resolution	Family provisions	Trusts
Appellate	Property	Wills and estates

INDURTRIAL / EMPLOYMENT

Restraint of trade

PUBLIC AND ADMINISTRATIVE LAW

Administrative law	Appellate	Judicial review and administrative law
Alternative Dispute Resolution	Constitutional law	Public law

SECTORS

Banks and Financial institutions	Technology, Media and	Real Estate
Government	Telecommunications	Transport and Infrastructure