



## PHILIP SANTUCCI

*Bachelor of Civil Law – University of Oxford*

*Bachelor of Laws - University of Technology Sydney*

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**in** [Philip-Santucci](#)

### Admitted to the legal profession

2010

### Admitted as a barrister in NSW

2016

### Also entitled to practise in

Australian jurisdictions (Commonwealth, State and Territory)

Philip has a broad commercial and public law practice, with both led and unled work. His appearances in the High Court, and intermediate appellate courts have involved principles of private law, administrative law, conflicts of law, and the interpretation of treaties.

He is briefed frequently in insolvency, infrastructure and general commercial disputes, and is a favoured junior for matters raising private and public international law, investor-state arbitration, and the enforcement of foreign arbitral awards and judgments. Philip's deep understanding of principle is matched by well-honed forensic judgment from extensive experience on his feet.

Philip has been recognised in Legal 500 as a Leading Junior for Commercial Disputes.

## SELECTED CASES

### Commercial

***Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.*** [2023] HCA 11 led by C S Ward SC, acting for the Kingdom of Spain asserting foreign State immunity to resist recognition and enforcement of an ICSID Award. Whether entry into the ICSID Convention amounted to a waiver of foreign State immunity. Consideration of customary international law of foreign State immunity, and interpretation of ICSID Convention in light of equally authoritative French and Spanish texts.

### Corporations and Insolvency

***Wells Fargo (as trustee) v VB Leaseco (admins appoint)*** [2022] HCA 8; 96 ALJR 314 led by B Walker SC, interpretation of treaty, consideration of the insolvency provisions in Article XI of the Cape Town Aircraft Protocol as applied to the administration of Virgin Australia Airlines, first time an ultimate appellate Court of any Contracting State to the Cape Town Convention on international security interests in mobile aircraft assets has considered the extent of a lessor's or insolvency administrator's obligations to 'give possession' of an aircraft to a secured creditor.

### Private and Public International Law / Arbitration

***Berry v CCL Secure Pty Ltd*** [2020] HCA 27(2020) 381 ALR 427 led by J T Gleeson SC, C S Ward SC successful appeal to High Court of Australia in respect of damages for misleading and deceptive conduct considering the principles applicable to onus and proof of a counterfactual lawful termination of contract.

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***Southern Han Breakfast Point v Lewence Construction Pty Ltd*** (2016) 260 CLR 340 led by S Robertson, administrative law, statutory construction, High Court's first consideration of the Building and Construction Industry Security of Payment Act 1999 (NSW).

***Hankuk Carbon Co v Energy World Ltd*** [2024] FCA 232; [2024] FCA 366 enforcement of international arbitral award, novel application seeking entry of orders for enforcement and stay of orders on first return (unled).

***Kingdom of Spain v Infrastructure Services*** [2024] FCA 234; [2024] FCAFC 113; assertion of consular immunities in respect of application for security for costs (unled before primary judge, led by S Robertson SC on appeal).

***North Queensland Pipeline No 1 Pty Ltd v QNI Resources Pty Ltd*** [2022] QCA 169 led by D F Villa SC gas transportation agreement take or pay contract, guarantee, good faith and penalties doctrines.

***Nyunt v First Property*** [2022] NSWCA 249 led by C S Ward SC appeal against registration of Singapore default judgment, competing judgments of Myanmar Court, availability of res judicata, issue estoppel in context of foreign judgments.

***Melbourne Aircraft Leasing (UK) Ltd v Algeri atf the Project Volar Creditors' Trust*** [2022] NSWSC 443, claim for rent by aircraft lessors in respect of use of aircraft by administrators of Virgin Australia, whether principle in *Re Lundy Granite Co* (1871) LR 6 Ch App 462 applied to treat rent for use during administration 'as if' it were an expense in the administration (led by G Rich SC)

***In the matter of ACN 152 546 453 Pty Ltd (formerly Hemisphere Technologies Pty Ltd) (in liq)*** [2022] NSWSC 974 breach of directors duties, voidable transactions, unreasonable director related transactions (unled).

***In the matter of Australian Wine Consumer Co-Op*** [2020] NSWSC 1437 application on behalf of liquidator for directions to apply provisions of the Corporations Act to the external administration of a co-operative governed by the Co-operatives (Adoption of National Law) Act 2012 (NSW) (unled).

***In the matter of Community Work*** (FCA) 7 days of liquidator's examinations of former directors of a charity (unled).

***In the matter of DX Solutions*** (FCA) led by A Leopold SC injunction application to restrain breach of director's duties, misuse of confidential information, oppression.

***In the matter of Epic Entertainment (in liquidation)*** (NSWSC) 3 days of liquidator's examinations of directors of collapsed tour operator for Nelly, Lupe Fiasco (unled).

***Parnell Manufacturing v Lanza*** [2017] NSWSC 562 led by C S Ward SC anti-suit injunction against proceedings in Delaware, resisting stay on forum non conveniens grounds, and Codelfa argument

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regarding use of surrounding circumstances to construe jurisdiction clause. Subsequent appeal filed but settled before oral argument.

**Berry v Innovia Security Pty Ltd (formerly Securrency)** [2017] FCA 1546; on appeal [2019] FCAFC 81 appeal led by C S Ward SC evidence taken in London under Foreign Evidence Act 1994 (Cth), termination of agency agreement for introduction of polymer banknotes in Nigeria, fraud, estoppel.

**Saab Aircraft Leasing v QBE** (2016) 93 NSWLR 166 (NSWCA) led by D L Williams SC, C S Ward SC, section 45 of the Insurance Contracts Act. [2017] HCATrans 057 unsuccessful special leave application.

**Moran Health Care Group v Nedzink BV** (NSWSC) advising Dutch supplier of fire retardant panels on jurisdiction of Supreme Court in respect of claims under Australian Consumer Law.

**Hock v BPH** [2019] NSWDC 559 application to stay proceedings in favour of Western Australia as natural forum, WA exclusive jurisdiction clause (unled).

**Swedish Board for Study Support v Seidevall** advice on justiciability of claim by foreign governmental authority (unled).

Co-author of Chapter 11 “The effect of ‘ordre public’ and mandatory forum law on the work of the HCCH: reflections from the Australian common law” in Elgar Companion to the Hague Conference on Private International Law (eds) T John, R Gulati, B Kohler (2020).

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## Public law

**Babet v Electoral Commission** [2023] FCA 1126 at first instance, and on appeal [2023] FCAFC 164; 300 FCR 81 leading H Cooper at first instance (against senior counsel for the AEC); led by L Livingstone SC on appeal; challenge to the administration of the referendum in respect of counting informal votes registered by ticks and crosses on the basis it was inconsistent with the authorising legislation, issues as to standing, and whether standing can be “assumed” or whether there is a discretion not to consider standing in the course of exercising judicial power of the Commonwealth.

**Witthahn v DG of Queensland Health; Johnston v Comm of Police** [2021] QCA 282; 9 QR 642; 404 ALR 536; led by C S Ward SC, availability of statutory grounds of review for non-jurisdictional error under Judicial Review Act (Q), whether ousted by industrial relations legislation.

**Baxter v Chief Health Officer** [2022] QCA 263, led by C S Ward SC, whether chief health officer’s direction was a decision of an “administrative character” so as to fall within the jurisdiction of the Judicial Review Act (Q).

**Zistis v Zistis** (2018) 97 NSWLR 782 constitutional law, challenge to legislation that purported to confer judicial power on NCAT which was not a Court and had no power to hear disputes between residents of different States, Residential Tenancies Act read down and Supreme Court held to have jurisdiction to grant vacant possession (unled against NSW Attorney-General intervening).

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***BWO19 v Minister for Immigration etc*** [2020] FCAFC 181 (led by L T Livingstone) judicial review whether the AAT failed to warn the appellant he was entitled to assert legal professional privilege, whether the AAT acted in excess of power by asking questions that called for the disclosure of communications the subject of legal professional privilege.

***Newman v Minister for Health and Aged Care*** [2021] FCA 517 (led by C S Ward SC) challenge to Minister's determination under Biosecurity Act 2015 (Cth) prohibiting persons who had been in India in from re-entering Australia by air travel, illegality, and extraterritoriality.

***Saini v Royal Australia and New Zealand College of Radiologists*** (FCA) led by A Moses SC, judicial review of determination of private body, justiciability, consideration of applicability of English Datafin approach to common law judicial review.

***DFP16 v Minister for Immigration and Border Protection*** [2018] FCA 1901, appeal from Federal Circuit Court, jurisdictional error in assessment of refugee application (unled).

Numerous matters in State tribunals contesting jurisdiction to hear claims against a telecommunications company (unled).

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## Construction

***MTR Corporation (Sydney) NRT Pty Ltd v Thales Australia Ltd*** (NSWSC and NSWCA) led by F Hicks SC, dispute concerning works as part of Sydney Metro.

## Infrastructure

***Shade Systems v Probuild Constructions Pty Ltd*** (No 2) (2016) 344 ALR 355; [2016] NSWCA 379 (before a bench of five), led by S Robertson, s 69 Supreme Court Act, jurisdiction to quash adjudication under Security of Payment Act for non-jurisdictional error of law on the face of the record.

## Security of Payment Act

***Ottoway Engineering v Pooncarie*** (NSWSC) led by M Christie SC acting for principal in construction dispute, allegations of implied duty to award extension of time, prevention.

***Probuild Constructions v DDI Group Pty Ltd*** (2017) 95 NSWLR 82; [2017] NSWCA 151, led by S Robertson judicial review, procedural fairness, obiter in respect of prevention principle.

***Transaction Network Services v Optus*** (NSWSC) led by I Pike SC trespass, telecommunications network.

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## Equity / Real Property

***Lyn v Cardinal*** (NSWSC) led by A G Bell SC acting for trustee of trust and owner of real property, continuation of interlocutory injunction to restrain registration of subsequent purchaser, allegations of fraud against vendor. Numerous unled appearances on contested freezing order applications in respect of dissipated proceeds of sale.

***El-Semarani by his tutor Samarani v El Samrani*** [2020] NSWSC 1724 breach of trust, failure to account (unled).

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*Raynish v Shine* [2018] NSWSC 1021 led by I Pike SC unconscionable conduct, constructive trust, whether interim distribution from significant estate assets should be made.

*Perpetual Trustee Company* [2016] NSWSC 1273 led by B A Coles QC, S Robertson judicial advice, charitable will trust.

*Baris v H K Arista Investments ATF Arista Family Trust* (NSWSC), acting for beneficiary of trust, urgent injunction to restrain proceeds of sale of real property sold for improper purpose (unled).

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## PRINCIPAL AREAS OF PRACTICE

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### COMMERCIAL LAW

Administrative Law

Conflict of laws

Insurance and Reinsurance

Arbitration

Corporations and Securities

Mining resources and energy

Bankruptcy and Insolvency

Cross Boarder Insolvency

Trade Practices

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### EQUITY

Trusts

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### PUBLIC AND ADMINISTRATIVE LAW

Constitutional Law

Proceeds of crime

Public Law