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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 accepts briefs in a wide range of areas across commercial and public law. He has appeared as both junior counsel, and as sole counsel in significant reported decisions. His appearances in the High Court, New South Wales Court of Appeal and Full Court of the Federal Court have involved principles of private law, administrative law, and the interpretation of treaties.

Before coming to the bar, Philip was a solicitor at Freshfields in London and Paris where he worked on international arbitrations including investor-state disputes. After obtaining a masters from the University of Oxford, he returned to work in Sydney as a senior associate at a boutique litigation practice.

SELECTED CASES

Commercial,
Corporations and
Insolvency

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.

VB Leaseco Pty Ltd (Admins Apptd) v Wells Fargo Trust Co (trustee) (2020) 384 ALR 378 [2020] FCAFC 168 led by C S Ward 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 a 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.

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).

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.

North Queensland Pipeline No 1 Pty Ltd v QNI Resources Pty Ltd [2021] QSC 190 (led by D F Villa SC) gas transportation agreement take or pay contract, guarantee, good faith and penalties doctrines.

Elmo Software Limited v Civmec Constructions led by Hodge QC wrongful termination of software as a service agreement.

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

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 (NSWSC) led by A G Bell SC, E Beechey voidable transactions, breach of directors duties; (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 ACN 152 546 453 Pty Ltd (formerly Hemisphere Technologies Pty Ltd) (in liq) [2018] NSWSC 1224 acting for special purpose liquidator, approval of funding deed. Unled liquidator's

examinations including examination of general liquidators (unled); [2020] NSWSC 270 application to expand SPL's powers and extend time for bringing of claims under s588FF (unled).

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).

Construction / Security of Payment Act

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.

Cockram v Fulton Hogan (2018) 97 NSWLR 773 [2018] NSWCA 107 led by S Robertson, failure of adjudicator under Security of Payment Act to apply contract, absence of reasons.

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.

Private International Law

Parnell Manufacturing v Lonza [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 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.

Nyunt v First Property (NSWCA) led by C S Ward SC appeal against registration of Singapore default judgment. Unled application to stay appeal pending application to set aside judgment in Singapore.

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 (NSWLC) 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).

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).

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.

Brown v Gibbs (NSWSC) specific performance of loan agreement, equitable estoppel (unled).

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).

Public law

Zistis v Zistis (2018) 97 NSWLR 782 constitutional law, successfully argued legislation 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).

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, successful 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).

PRINCIPAL AREAS OF PRACTICE

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

EQUITY

Trusts

PUBLIC AND ADMINISTRATIVE LAW

Constitutional Law

Proceeds of crime

Public Law