

Angus James Macauley

Barrister – 12 Wentworth Selborne Chambers

Level 12, 180 Phillip Street, Sydney NSW 2000

T: (02) 8029 6217 – F: (02) 9221 7183 – Email: amacauley@12thfloor.com.au

EDUCATION

2011 – 2012 **University of Oxford**

▪ ***Bachelor of Civil Law (Dist.)***

Read: restitution of unjust enrichment; corporate insolvency law; comparative public law; and evidence

2005 – 2009 **University of New South Wales**

▪ ***Bachelor of Laws (Hons. I)***

- Third out of graduating cohort of ~ 240
- Academic prizes for *Issues in Equity* and *Strata and Community Title Law*
- Exchange semester to Boston College Law School on Endeavour Scholarship

▪ ***Bachelor of Commerce (Dist.) (Finance)***

PROFESSIONAL QUALIFICATIONS

Apr 2013 Admitted to the New South Wales Bar

Dec 2010 Admitted as a legal practitioner to the Supreme Court of New South Wales

RELEVANT WORK EXPERIENCE

2013 – Present **Barrister – 12 Wentworth Selborne Chambers**

▪ Practice areas:

- Appellate (civil)
- Banking and finance
- Commercial law
- Competition and consumer law
- Corporations law
- Equity
- Insolvency & Bankruptcy
- Real property

▪ A list of selected cases is included below

2012 **Herbert Smith Freehills (Sydney)**

▪ Solicitor in the Sydney commercial litigation team

2011 **UBS AG (Sydney)**

▪ Analyst in the Investment Banking Division – Leveraged finance, debt advisory and restructuring team

▪ Transactional experience included:

- LBO acquisition of Ausco by TDR Capital
- LBO acquisition of QSR Holdings by Archer Capital

2010 **Associate to the Honourable Justice Perram**

▪ Federal Court of Australia

2007 – 2009 **University of New South Wales: School of Banking & Finance**

▪ Senior tutor in finance – teaching in the areas of portfolio management and advanced techniques in security valuation

PUBLICATIONS

- “Defining deprivation: The anti-deprivation and *pari passu* principles post Belmont” (2013) 21 *Insolvency Law Journal* 225-241
- “Contracts against public policy: Contracts for meretricious sexual services” (2018) 40 *Sydney Law Review* 527-556

SELECT DETERMINED CASES

HIGH COURT OF AUSTRALIA

- *Toyne v Stokes* [2023] HCATrans 147 (led by D R Pritchard SC and M Castle – for the special leave applicant – stay of proceedings as an abuse of process)
- *Yang v Nashco Pty Ltd* [2023] HCATrans 16 (led by B W Walker SC – for the special leave applicant – assignment of guarantees and privity of contract)
- *Gujarat NRE India Pty Ltd v Wollongong Coal Ltd* [2019] HCATrans 226 (led by J T Gleeson SC – for the special leave applicant – construction of a deed of guarantee containing a provision pre-emptively waiving a right to indemnity)

INTERMEDIATE APPELLATE COURTS

- *McMillan v Coolah Home Base Pty Ltd* [2024] NSWCA (reserved) – (unled – for second to fourth and seventh respondents – purchase of lots in company title; shareholder oppression and remedies)
- *Bestari v Henley* [2024] FedCFamC1A 12 (led by N J Beaumont SC – for the appellant – judicial disqualification arising from knowledge of proposed settlement orders)
- *Kim v Wang* (2023) 298 FCR 337; [2023] FCAFC 115 (led by D R Pritchard SC – for the respondent – class action for misleading and deceptive conduct; allegation of knowingly concerned in contraventions)
- *McMillan v Coolah Home Base Pty Ltd* [2023] NSWCA 172 (unled – for second to fourth and seventh respondents – purchase of lots in company title; shareholder oppression and remedies)
- *Aust-One Investment Pty Ltd v New World Investments Pty Ltd* (2023) 111 NSWLR 39; [2023] NSWCA 22 (leading F G Di Lizia – for the appellant – whether burden of positive covenant in an easement binds successor in title)
- *Gilmore Finance Pty Ltd v Aesthete Pty Ltd* [2022] NSWCA 279 (led by D Pritchard SC – for the first to third respondents – replacement of trustee; whether leave to appeal required)
- *Nashco Pty Ltd v Yang* [2022] NSWCA 137 (leading S J Murray – for the respondents – construction and scope of a guarantee in the hands of an assignee)
- *Edwin Davey Pty Ltd v Boulos Holdings Pty Ltd* (2022) 20 BPR 42,355; [2022] NSWCA 65 (led by N J Beaumont SC – for the appellant – damages for breach of sale of land contract arising from paying money to vendor’s mortgagee to secure clear title; restitution for the same)
- *Turner v O’Bryan-Turner* (2022) 107 NSWLR 171; [2022] NSWCA 23 (led by D R Pritchard SC – for the respondents – second limb of *Barnes v Addy* claim; discretion as to equitable relief)
- *Mualim v Dzelme* (2021) 157 ACSR 367; [2021] NSWCA 199 (led by D R Pritchard SC – for the respondent – action to rectify shareholder register; proof of consent to issuance of shares; defence of laches)
- *Stanizzo v Badarne* [2021] NSWCA 195 (unled – for the second respondent – malicious prosecution claim against a witness)

- *Jagatramka v Wollongong Coal Ltd* [2021] NSWCA 61 (led by D R Pritchard SC – for the appellants – breach of directors’ duty concerning the acquisition and development of a residential property)
- *GR Capital Group Pty Ltd v Xinfeng Australia International Investment Pty Ltd* [2020] NSWCA 266 (led by D R Pritchard SC – for the appellants – implied waiver of privilege)
- *Pham v Gall* (2020) 102 NSWLR 269; [2020] NSWCA 116 (led by D R Pritchard SC – for the appellant – application to set aside final orders made in the absence of a party)
- *XL Insurance Company SE v BNY Trust Company of Australia Ltd* [2019] NSWCA 215 (led by T M Faulkner SC – for the first respondent – construction of a policy of insurance in respect of liability for a negligently prepared valuation)
- *Wollongong Coal Limited v Gujarat NRE India Pty Ltd* (2019) 100 NSWLR 432; [2019] NSWCA 135 (led by N C Hutley SC and D R Pritchard SC – construction of a deed of guarantee containing a provision pre-emptively waiving a right to indemnity)
- *Park v Murray Irrigation Limited* [2018] NSWCA 166 (led by D R Pritchard SC – for the appellant – action to recover termination fees paid upon the sale of water entitlements)
- *Mastronardo v Commonwealth Bank of Australia t/as BankWest* [2018] NSWCA 136 (led by D R Pritchard SC – for the appellants – asserted unconscionable conduct contrary to s 12CB of the *ASIC Act 2001* (Cth) in relation to loan facilities)
- *Precious 1 Pty Ltd v Chamberlain Early Learning Centre Pty Ltd* [2017] NSWCA 259 (unled – for the appellant – construction of s 117 of the *Conveyancing Act 1919* (NSW); security for costs)
- *Taouk v Assure (NSW) Pty Ltd* [2017] NSWCA 227 (led by D R Pritchard SC – for the appellant – construction of building contract and contract of variation)
- *Saravinovski v Saravinovska* [2017] NSWCA 85 (led by D R Pritchard SC – for the appellant – validity and enforceability of a mortgage; proof of existence of secured indebtedness)
- *Arab Bank of Australia Ltd v Sayde Developments Pty Ltd* (2016) 93 NSWLR 231; [2016] NSWCA 328 (led by D R Pritchard SC – for the respondent – whether increase in interest rate a penalty)
- *The Bankstown Trotting Recreational Club Ltd v Chisholm* (2016) 218 LGERA 428; (2016) 18 BPR 36,219; [2016] NSWCA 274 (led by D R Pritchard SC – for the fourth respondent – whether an easement to park cars was in derogation of a lease)
- *Perry v Anthony* [2016] NSWCA 56 (led by D R Pritchard SC – for the respondent – scope of an indemnity; principles concerning contractual consideration)
- *Kumar v Legal Services Commissioner* [2015] NSWCA 161 (led by D R Pritchard SC – for the appellant – appeal against order removing a legal practitioner’s name from the Roll)
- *Ekes v Commonwealth Bank of Australia* (2014) 313 ALR 665; [2014] NSWCA 336 (led by D R Pritchard SC – for the appellant – consideration of the principles of issue estoppel, *Anshun* estoppel, abuse of process and the *Prudential* principle)
- *GM Amalgamated Investments (Dulwich Hill) Pty Ltd v Mills* (2014) 17 BPR 33,133; [2014] NSWCA 202 (led by D R Pritchard SC – for the appellants – construction of easement to drain water; obligation to restore land to former state)
- *Britten-Norman Pty Ltd v Analysis & Technology Australia Pty Ltd* (2013) 85 NSWLR 601; [2013] NSWCA 344 (led by A W Street SC and J S Emmett – for the appellant – evidence required to set up an offsetting claim for an application to set aside a statutory demand)

- *Gujarat NRE Coke Ltd v Coeclerici Asia (Pte) Ltd* (2013) 304 ALR 468; [2013] FCAFC 109 (led by D R Pritchard SC – for the appellant – application to resist enforcement of arbitral award)

GENERAL COMMERCIAL MATTERS

- *Wonderful Ornamentation Pty Ltd v Sweet Lu (City) Pty Ltd* [2024] NSWDC (reserved) (unled – for the defendant – whether building contract an entire contract; defects)
- *Zhou v Jing* [2023] NSWSC 214 (unled – for the defendant – resisting enforcement of Chinese judgment in Australia pursuant to common law principles; denial of procedural fairness)
- *Kim v Hodgson Faraday Ltd* [2022] FCA 1190 (unled – for the third respondent – class action for misleading and deceptive conduct; allegation of knowingly concerned in contraventions)
- *Gillespie v Gillespie Cranes Nominees Pty Ltd* [2022] NSWSC 1184; [2022] NSWSC 1286 (led by H K Insall SC – for the plaintiff – derivative action in equity to enforce rights reposed in trustee; questions of leave and/or preliminary hearing required)
- *PA Putney Finance Australia v Aalder* [2022] NSWSC 607 (led by D R Pritchard SC – for the plaintiffs – enforcement of settlement agreement; damages for foregone opportunities)
- *Gilmore Finance Pty Ltd v Aesthete Pty Ltd* [2022] NSWSC 557 (led by D R Pritchard SC and A Fernon SC – for the first to third defendants – misleading and deceptive conduct; removal of trustee for alleged wrongdoing and breach of trust)
- *Li v Tang* [2021] NSWSC 1011 (unled – for the plaintiff – debt recovery and judicial sale)
- *Grand Metal Pty Ltd v Nashco Pty Ltd* [2021] NSWSC 1005 (leading S J Murray – for the second to fifth cross-defendants – action on assigned guarantee)
- *de L’Isle v Knight* [2021] NSWSC 809 (unled – for the plaintiff – debt recovery and construction of executory accord in agreement terminating joint venture)
- *GR Capital Group Pty Ltd v Xinfeng Australia International Investment Pty Ltd* [2021] NSWSC 614 (unled – for the defendants – application to set aside consent orders; private international law; illegality under foreign law)
- *Axis Bank Ltd v Gujarat NRE India Pty Ltd* (2020) 149 ACSR 561; [2020] NSWSC 1711 (led by D R Pritchard SC – for the defendant – action to enforce guarantee; claim for misleading and deceptive conductive and unconscionable conduct)
- *Yu v Wei* [2020] NSWDC 647 (unled – for the plaintiff – action to recover money paid)
- *Maestri Tower Investment Group Pty Ltd v Al Maha Pty Ltd* [2019] NSWDC 92 (unled – for the plaintiff – recovery of agent’s commission; operation of ss 47, 48 and 55 of the *Property, Stock and Business Agents Act 2002* (NSW))
- *Edgewater Pty Ltd v Donohoe* [2019] NSWSC 44 (led by D R Pritchard SC – for the defendant – whether a release of an accessory to a breach of fiduciary duty operates in favour of the errant fiduciary)
- *Gujarat NRE India Pty Ltd v Wollongong Coal Ltd* (2018) 130 ACSR 133; [2018] NSWSC 1459 (led by D R Pritchard SC – for the plaintiff – construction of clause pre-emptively waiving guarantor’s right to indemnity; action for money had and received)
- *Qiang v Raxigi Pty Ltd t/as V Hovanessian & Associates* (2018) 28 DCLR (NSW) 154; [2018] NSWDC 87 (unled – for the plaintiff – debt claim arising from failed backdoor ASX listing)
- *Wollongong Coal Limited v NRE Resources Pty Ltd (No 2)* [2017] NSWSC 1552 (led by D R Pritchard SC – for the defendant/cross-claimant – guarantor’s right to indemnity)
- *Park, Boucher and Pratt v Murray Irrigation Limited* [2017] NSWSC 1268 (led by D R Pritchard SC – for the plaintiffs – action to recover termination fees upon sale of water rights)

- *Starwhist Pty Ltd v Tonge* [2017] NSWSC 963; [2017] NSWSC 1084; [2017] NSWSC 1625 (led by D R Pritchard SC – for the plaintiff – enforcement of loan and mortgage)
- *Chi Man Li v Hanson Property Developments Pty Ltd* [2016] NSWSC 1870 (led by D R Pritchard SC – for the defendant – application to set aside final orders made in the absence of a party; application to vary orders of which a party is in contempt)
- *Jetobee Pty Ltd (in liq) v Smith & Young Pty Ltd (No 3)* [2015] NSWSC 1526 (unled – for the defendant – debt recovery and mortgage enforcement)
- *Marzec v Lysiak* [2015] NSWSC 647 (unled – for the plaintiff – winding up of partnership and taking of accounts)
- *British Marine PLC v Wollongong Coal Ltd* [2015] FCA 403 (led by A M Stewart SC – for the cross-defendant – recovery of shipping freight; misleading and deceptive conduct; breach of warranty of authority; breach of directors’ duties)
- *Nefiko Pty Ltd v Statewide Form Pty Ltd (No 2)* [2014] NSWSC 840 (unled – for the defendant – review of adjudication determination made under the *Building and Construction Security of Payment Act 1999* (NSW))

CORPORATIONS AND INSOLVENCY MATTERS

- *Re Balamara Resources Ltd* [2024] NSWSC (led by D L Williams SC – for the plaintiff – shareholder oppression from discriminatory share issuances; conduct of bilateral investment treaty arbitration)
- *Commissioner of Taxation v Iannuzzi* [2024] FCA 45 (led by D R Pritchard SC – for certain debtor respondents – power to make an order pursuant to s 601AH(3)(d) of the *Corporations Act 2001* to exclude days from the reckoning of time under s 588FF(1))
- *CDPP v Cameron* [2023] TASLC (led by L Crowley QC – for the prosecution – failure to disclose substantial holding in a publicly listed company)
- *Re Wonga Pastoral Development Co Pty Ltd* [2023] NSWSC 133 (led by D R Pritchard SC – for the second defendant – application for leave to bring statutory derivative proceedings)
- *OLI 1 Pty Ltd (in liq) v OLG 1 Pty Ltd (No 2)* (2022) 164 ACSR 171; [2022] NSWSC 1199 (leading F G Di Lizia – for the plaintiff – debt recovery; breach of directors’ duties for improvident loan)
- *Re Pacific Springs Pty Ltd* (2020) 148 ACSR 454; [2020] NSWSC 1240 (led by D R Pritchard SC – for the defendants – action to rectify shareholder register; proof of consent to issuance of shares; defence of laches)
- *Wollongong Coal Limited v Gujarat NRE Properties Pty Ltd* [2020] NSWSC 254 (led by D R Pritchard SC – for the second and third defendants – breach of directors’ duties)
- *Re Micron Manufacturing Pty Ltd and Micron Group Pty Ltd* [2017] NSWSC 289 (unled – for the plaintiff – shareholder oppression suit; production of documents)
- *Anglican Development Fund for the Diocese of Bathurst Board v Hurford* (2015) 336 ALR 372; [2015] NSWSC 1856 (led by C R C Newlinds SC and J S Emmett – for the defendants – breach of directors’ duties)
- *ACN 104 635 369 (formerly known as Total Plant Services Pty Ltd) (in liquidation) v Combined Group Management Pty Ltd* [2014] FCA 1402 (unled – for the liquidator – approval of opposed compromise of debt pursuant to s 477(2A) of the *Corporations Act 2001* (Cth); determination of liquidator’s remuneration pursuant to s 511 of the Act)

PROPERTY LAW MATTERS

- *Pang v Cao* [2023] NSWSC 773 (unled – for the defendant – extension of caveat; sale of land subject to trust)

- *McMillan v Coolah Home Base Pty Ltd (No 4)* [2022] NSWSC 584 (unled – for the first to fourth & seventh defendants – claims of interest in land; proprietary estoppel; shareholder oppression in respect of operation of caravan park)
- *ASIL Foundation (Lending) Pty Ltd v Blue Mountains Development Pty Ltd* [2022] NSWSC 480 (unled – for the defendant/cross-claimants – mortgage granted to secure deposit payable under contract for sale of land; validity of termination of contract)
- *Bai v Watson Elite Pty Ltd* [2022] NSWSC 318 (leading S J Murray – for third defendant – principles of indefeasibility and whether option in a mortgage void as a clog on the equity of redemption)
- *Aust-One Investments Pty Ltd v New World Investments Pty Ltd* (2022) 20 BPR 42,503; [2022] NSWSC 137 (leading S J Murray – for the plaintiff – construction of easement and whether positive covenant binding upon successors in title to dominant tenement)
- *Boulos Holdings Pty Ltd v Edwin Davey Pty Ltd* [2021] NSWSC 689 (unled – for the defendant – construction of obligation in contract for sale of land; cross claim for damages/restitution arising from purchaser of land needing to pay money to the vendor’s mortgagee in order to secure completion of the contract for the sale of land)
- *McNamee v Martin (AFMF McNamee)* [2021] NSWSC 568 (led by D R Pritchard SC – for the plaintiff – severance of a joint tenancy over a chose in action; appointment of a statutory trustee for partition)
- *Liao v LNG Properties Pty Ltd* [2019] NSWSC 1846 (unled – for the plaintiff – rescission of a contract to purchase a residential unit off-the-plan due to decrease in internal area)
- *Charter Pacific Corporation Limited v Securicom (NSW) Pty Ltd* [2018] NSWSC 1246 (unled – for the defendant – specific performance of a share sale agreement; discretionary factors)
- *Chamberlain Early Learning Centre Pty Ltd v Precious 1 Pty Ltd* (2017) 18 BPR 36,895; [2017] NSWSC 189 (led by F M Douglas QC – for the defendant – principles of set-off in relation to a landlord’s claim for rent; s 117 of the *Conveyancing Act 1919* (NSW))
- *Fan v Han* [2016] NSWSC 1488 (unled – for the plaintiff – enforceability of an oral contract for the sale of an interest in land; consideration of principles of resulting and constructive trust; contribution claims between joint tenants upon sale of property)
- *Perception Investire Pty Ltd v Bassal Holdings Pty Ltd* [2015] NSWSC 1954 (led by D R Pritchard SC – for the defendants – validity of option to purchase land; forged signatures)

FAMILY LAW MATTERS

- *Antoun & Antoun (No 2)* [2024] FedCFamC1F 354 (led by A Horvath SC – for third party – joinder and pleadings)
- *Willmann & Willmann (No 3)* [2022] FedCFamC1F 827 (unled – for the Husband – order of separate determination of estoppel claim against third parties)
- *Willmann & Willmann* [2022] FedCFamC1F 232; [2022] FedCFamC1F 305 (led by N J Beaumont SC – for the Husband – joinder of third parties and costs)
- *Mendicino v Mendicino* [2014] FamCA 692 (led by N J Beaumont SC – for the Husband – costs)

MISCELLANEOUS MATTERS

- *Stanizzo v Badarne* [2020] NSWSC 402 (unled – for the defendant – malicious prosecution claim against a witness)
- *Eshow v Bishop Mar Meelis Zaia* [2019] VSC 465; [2018] VSC 110 (unled – for the defendant – defamation claim arising from Facebook posts made under a fake profile)

- *SZULW v Minister for Immigration and Border Protection* [2018] FCA 1335 (unled – for the appellant – judicial review of a refusal to grant a protection visa)
- *Fair Work Ombudsman v Valuair Ltd (No 2)* (2014) 224 FCR 415; [2014] FCA 759 (led by C S Ward – for the third respondent – application of *Fair Work Act 2009* (Cth) to work performed by Singaporean and Bangkok based cabin crew on Australian registered aeroplanes in Australian air space)
- *AA v Vevers* [2013] NSWSC 1799 (led by H El-Hage – for the plaintiff – judicial review of a decision to remove a person’s name from the NSW Housing Register because of status as a registered sex-offender)

COMMISSIONS

- *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (led by N J Beaumont SC – for TAL Group – Round 6: Insurance – August/September 2018)

COMMITTEES & OTHER

2022 – Present Member – NSW Bar Association Professional Conduct Committee 3