

ROBERT DUBLER SC
12 WENTWORTH SELBORNE CHAMBERS

Dr Robert Dubler SC

Barrister Mediator

12 Wentworth Selborne Chambers

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Sydney NSW 2000

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ADMISSIONS

Solicitor: July 1986

Barrister: February 1990

Appointed Senior Counsel in October 2004

DEGREES AND ACCREDITATIONS

B Ec LLB (1st Class Hons) (University Medal) University of Sydney (1986)

Awarded prizes for study in equity, succession, constitutional law (the Pitt Corbett prize), industrial and employment law (Sir Alexander Beattie prize) and prizes for study in government, economics and industrial relations

LL.M (1st Class Hons) University of Cambridge (1994)

Awarded Churchill Scholar prize and Commonwealth Trust Scholarship (major areas of study included intellectual property, international commercial law and arbitration, international public law, and international human rights law).

Ph D University of Sydney (2008)

LEADR Accredited Mediator (2012)

APPOINTMENTS

Senior Member of the NSW Civil and Administrative Tribunal (2017)

Adjunct Professor, Western Suburbs University

AREAS OF PRACTICE

Robert practiced in a wide range of commercial law and related areas including:

- Corporations law
- equity
- class actions
- Property law
- Professional negligence
- Banking law
- Administrative law
- Alternative Dispute Resolution (including mediation and arbitration)

Biography

After graduating with First Class Honours and the University Medal from the University of Sydney, Robert commenced work as a solicitor with Blake Dawson Waldron. He worked in the areas of intellectual property and commercial litigation, whilst lecturing part time at the University of Sydney.

In 1990, after three years as a solicitor, including as a Senior Associate, Robert was called to the Bar. Robert read with James Allsop (now Chief Justice of the Federal Court of Australia) and Peter Jacobson (former Justice of the Federal Court). Robert maintains a wide practice in commercial law and related areas such as equity, class actions, Corporations law and real property law.

Robert took time off from his practice at the bar in 1993 to take up a Commonwealth and Churchill Scholarship to complete a LL M in Cambridge University where Robert graduated with First Class Honours. His subjects were international commercial arbitration, intellectual property and international human rights law. Robert resumed practice in 1994.

Robert was appointed Senior Counsel in 2004 and completed a PhD in law (International criminal Law – crimes against humanity) at the University of Sydney in 2008 which he undertook part-time whilst at the Sydney Bar. Robert continues to practice in a wide range of commercial and related areas, including an extensive appellate practice, where he has appeared in the High Court, the NSW Court of Appeal, and the Full Court of the Federal Court. High Court cases include:

- *Tambree v the Travel Compensation Fund* (Trade Practices);
- *Perpetual v Heperu* (restitution, cheque law – matter settled before judgment);
- *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* (good faith in commercial leases);
- *Zhang v Zemin & Ors* (international law)
- *Dimitrov v the Supreme Court of Victoria* (class action 2017)

Appeals in the NSW Court of Appeal and the Full Court of the Federal Court include:

- *Donnellan v Woodland* [2012] NSWCA 433 (Advocate's Immunity);
- *Li v Zhou* [2014] NSWCA 176 (international law);
- *Russell Gould Pty Ltd v Ramangkura* [2014] NSWCA 310 (company law, agency)
- *Barnes v Forty Two International Pty Limited* [2014] FCAFC 152 (Trade Practices);
- *Austral Masonry (NSW) Pty Ltd v Cementech Pty Limited* [2014] FCAFC 72 (Intellectual Property);
- *Jingalong Pty Limited v Todd* [2015] NSWCA 7 (contract);
- *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* [2015] NSWCA 323 (good faith in commercial leases);
- *Pavlovic v Universal Music Australia Pty Ltd (No 2)* [2016] NSWCA 31 (Intellectual Property);

At the trial level, Robert has appeared in numerous lengthy and complex commercial cases. Recent cases include:

- *Dimitrov v the Supreme Court of Victoria* (2017-2019), a class action following the collapse of the great southern vineyard investment scheme
- acting for the plaintiff in *Australian Retirement Group v Commonwealth Bank* (2017-2018), a class action of borrowers arising from the Commonwealth Bank's acquisition of Bankwest;
- *Sherwood v CBA* (2013-2015)(acting as lead counsel), a class action against the Commonwealth Bank in respect of the collapse of the financial adviser Storm which occupied many months of hearings;

- shareholder class actions in respect of the companies: Ion, Compass and Babcock and Brown;
- Forty Two International v Barnes [2014] FCA 85 a lengthy Federal Court commercial and trade practices case.

One of Robert's major commercial cases includes a long-running Supreme Court proceedings concerning the unlawful termination of a 103 year lease to build a private hospital and car park adjacent to the Royal Prince Alfred Hospital (*Macquarie International Health Clinic Pty Ltd v Sydney Local Health District*). The initial proceedings were the subject of appeals to the New South Wales Court of Appeal and the High Court. The subsequent inquiry as to damages and related proceedings in the Supreme Court were conducted over more than 100 hearing days from 2015 to 2019.

In 2016, following a surfing accident, Robert sustained a high spinal cord injury which has confined Robert to a wheelchair. Robert returned to practice in 2017 where he has:

- conducted hearings including in the Supreme Court of New South Wales (*Macquarie International Health Clinic Pty Ltd v Sydney Local Health District*) and the High Court (*Dimitrov v the Supreme Court of Victoria*) – a class action following the collapse of the great southern vineyard investment scheme,
- conducted mediations; as well as
- sat on the New South Wales Civil And Administrative Tribunal as a Senior Member.

Sitting on the Appeal Panel of the Tribunal, as well as in its Administrative and Equal Opportunity Division, Robert has heard numerous cases in areas such as building claims, commercial and consumer claims, anti-discrimination, administrative and occupational appeals. A recent example includes the claim of Racial Vilification against Channel Nine: *Ekeramawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29.

MEDIATION & ALTERNATIVE DISPUTE RESOLUTION

Robert is a LEADR and NSW Bar Association accredited mediator. He has acted as a commercial Arbitrator. Robert acted as part of the Board of Arbitrators in the long running (over 12 months) Sea Containers dispute over a series of ship building contracts following the removal of the previous board (see [lct Pty Ltd v Sea Containers Ltd \[2002\] NSWSC 77](#)). The Board's award was upheld following challenge in the courts.

Robert is a LEADR and NSW Bar Association accredited mediator, having conducted numerous meditations since 2012.

Robert's skills as a barrister enable him to quickly identify the key issues in dispute and appreciate the positions of each party. His extensive experience in a broad variety of matters provides valuable assistance towards helping parties resolve their disputes fairly and efficiently.

As a member of 12 Wentworth Selborne Chambers, Robert is able to provide mediation facilities in the Floor's specialised mediation rooms in Selborne Chambers on Phillip Street.

ACADEMIC LECTURING

Robert is an Adjunct Professor at Western Suburbs University in the law school.

Robert has conducted postgraduate programs at Sydney University in Anti discrimination Law and Industrial Law.

For many years he has been a judge at the Sydney University Jessup Moot Competitions and has assisted in coaching the Sydney University Moot Team.

Robert has conducted guest lectures at University of Sydney in the areas of International Criminal Law and International Human Rights, most recently in February 2020 at Sydney University's international law conference hosted by the Sydney Centre for international law. Robert delivered a paper on developments at the International Criminal Court in 2019.

Robert has also presented guest lectures in International Humanitarian Law for the International Red Cross.

AREAS OF INTEREST

Robert maintains a keen interest in anti-discrimination law, international human rights law and international criminal law. He has appeared pro-bono in several cases in these areas such as the Aboriginal Stolen Generation constitutional law case in the High Court, refugee cases, anti-discrimination law hearings, the refugee status of the East Timorese living in Australia, and as Counsel for the relatives of Mr Brian Peters, one of the 'Balibo five' of Australian journalists killed in East Timor in 1975, at his coronial inquest before the New South Wales

Deputy Coroner. He assisted in preparing submissions and a brief to the Australian Federal Police in respect of the persons suspected of killing the Australian journalists.

Robert is a member of the International Commission of Jurists. Robert has also conducted observer missions overseas on behalf of the International Commission of Jurists including in 2009 to Sri Lanka in respect of the trial of senior journalist Mr Tissanaiyagam who was charged with terrorist related offences over articles he wrote.

He was chairman of the Sri Lankan Evidence Project which assembled evidence of war crimes which has formed the subject of a brief to the Australian Federal Police.

Robert has also acted for victims of torture in China before the Committee Against Torture in Geneva and in the New South Wales Supreme Court and Court of Appeal. He acted for one such plaintiff before the High Court of Australia.

Robert has concluded writing a major work in the field of international criminal law, "Crimes Against Humanity In The 21st Century" published by Brill/Nijhoff, in 2018.

In *Crimes Against Humanity in the 21st Century*, Dr Robert Dubler SC and Matthew Kalyk provide a comprehensive analysis of crimes against humanity in international criminal law. The text tracks the crime from its conceptual origins in antiquity, to its emergence in customary international law at Nuremberg, to the establishment of the 'modern definition' at the Hague with the ICTY, ICTR and ICC, and finally to recent state practice and jurisprudence. The text sets out conclusions about the legal elements of the crime and contends that the *raison d'être* of the crime is located not in the inhumanity of its authors' actions but in the extent to which its authors threaten international peace and security so as to justify international intervention. <https://brill.com/view/title/35007>

ANTI-DISCRIMINATION LAW/DISABILITY DISCRIMINATION

In 2019, Robert was appointed chairman of the newly created Accessibility Panel of the NSW Bar Association. The Panel is aimed at removing barriers which may prevent persons (judges, barristers, solicitors, parties and witnesses) from accessing the justice system due to their current state of physical or mental well-being. Robert, with the assistance of the Accessibility Panel, accepts pro bono briefs in the field of disability discrimination and disability related issues such as NDIS.

In 2019, Robert was also appointed "advocate for change" with special emphasis on promoting inclusion in the justice system for those with physical and mental impairments.

PUBLICATIONS

Includes:

- “War crimes in Afghanistan: investigation of the situation in Afghanistan at the ICC”, to be published in the Australian Law Journal
- [“Crimes against humanity in the 21st century”](#) published by Brill/Nijhoff, August 2018
- "Torture as Tort" Paper presented at the International Law Association Human Rights Committee meeting Bellagio, June 2012
- *‘Putting Rebel Leaders And Groups On Trial For Crimes Against Humanity: Recent Developments In International Humanitarian Law’* Paper for the International Committee for the Red Cross, February 2011.
- [“The international law aspect of the Balibo five case’ Vol. 11, no. 1, May 2010 Melbourne Journal of International Law](#)
- [“Kaing Guek Eav Duch, Judgment, ECCC Case No 0001 \(2010\) 17 Melbourne Journal of International Law 68 \(1 May 2010\)](#)
- [‘What is in a name? A theory of crimes against humanity’ \(2008\) 15 Australian International Law Journal 85.](#)
- Submission to the Australian Government in 2008 on behalf of the relatives of Mr Brian Peters.
- 'Crimes Against Humanity Defy Definition' Law Society Journal of New South Wales July 2008, volume 46, page 24
- Peters on the need for the Commonwealth Government to seek the extradition of those named by the NSW Deputy Coroner as being suspected of killing the 'Balibo five' in East Timor in 1975
- Case not on the Dutch judgment before the Cambodian Tribunal in the 2011 Australian Journal of International law.
- Paper "A theory of crimes against humanity" presented to the Sydney Centre for International Law at University of Sydney in May 2008.
- 'Direct Discrimination and a Defence of Reasonable Justification' (2003) 77 *Australian Law Journal* 514 (cited by McHugh and Kirby JJ in *Purvis v New South Wales (Department of Education and Training)* (2003) 217 CLR 92).
- 'Race and the Constitution' (2002) 76 *Australian Law Journal* 456-465
- *Australian Iron & Steel Pty Ltd v Banovic & Ors*, High Court of Australia (1990) 18 *Australian Business Law Review* 410

SELECTED RECENT CASES

- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 12\) \[2019\] NSWSC 916](#) (Wrongful termination of lease – damages – costs)
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- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 10\) \[2016\] NSWSC 1587](#) (Wrongful termination of lease – calculation of mesne profits)
- [Lee v Westpac Banking Corporation \(No 2\) \[2016\] FCA 901](#) (Class action – contravention of ASIC Act and Corporations Act, application for leave to amend statement of claim)
- [Jingalong Pty Limited v Todd \[2016\] NSWCA 131](#) (contract law, equity, ‘Slip rule’)
- [Commonwealth Bank of Australia v Rafidi \[2016\] NSWSC 381](#) (pleadings – multiple attempts to amend, embarrassing pleadings)
- [Cairncross v Anderson t/as ERA Legal \[2016\] NSWSC 258](#) (Negligent legal advice – advocate’s immunity, standover pending HCA decision)
- [Pavlovic v Universal Music Australia Pty Ltd \(No 2\) \[2016\] NSWCA 31](#) (unlawful termination – costs of interlocutory hearing, whether order for costs to be payable before proceedings concluded)
- [Allan & Allan and Ors \(No 4\) \[2015\] FamCA 1081](#) (Family Law – appointment of trustees, order for consent of property settlement)
- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 8\) \[2015\] NSWSC 1830](#) (Costs – no issue of principle, relisting)
- [Allan & Allan and Ors \[2015\] FamCA 985](#) (Family Law – resignation of trust appointer, declaration of valid revocation)
- [Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service \[2015\] NSWCA 323](#) (Application to discharge stay order made by Court of Appeal, whether discharge of stay order should be deferred for a short period of time)
- [Pernice v Jingalong Pty Limited & Anor \[2015\] HCATrans 227](#) (Application for special leave – compromise agreements reached at mediation)

- [Douglas v James \(No 2\) \[2015\] NSWSC 969](#) (Testamentary trust – costs)
- [In the matters of Beechworth Land Estates Pty Ltd \(Admin Apt\) and Griffith Estates Pty Ltd \(Admin Apt\) No 2 \[2015\] NSWSC 336](#) (Corporations Act; Duties Act – appointment of administrators)
- [Douglas v James \[2015\] NSWSC 299](#) (Testamentary trust – appointor's powers)
- [Barnes v Forty Two International Pty Limited \(No 2\) \[2015\] FCAFC 19 \(24 February 2015\)](#) (Calderbank offer)
- [Russell Gould Pty Ltd v Ramangkura \(No 2\) \[2015\] NSWCA 14](#) (restitution - application by appellant to re-open)
- [Jingalong Pty Limited v Todd \[2015\] NSWCA 7](#) (Contract – Heads of agreement; settlement agreement)
- [Li and Ors v Zhou and Anor \[2014\] HCATrans 281 \(Application for special leave – Public international law, case against Chinese officials for damages for torture against Falun Gong practitioners in China\)](#)
- [Barnes v Forty Two International Pty Limited \[2014\] FCAFC 152](#) (contract – breach of implied term, Trade Practices Act; misleading deceptive conduct)
- [The Owners - SP69567 v Landson Alliance Australia \[2014\] NSWSC 1592](#) (Trade Practices Act – misleading and deceptive conduct, false representations)
- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 6\) \[2014\] NSWSC 1549](#) (application to amend pleadings)
- [Jingalong Pty Ltd v Todd \[2014\] NSWCA 330](#) (subdivision of land, joint venture)
- [Russell Gould Pty Ltd v Ramangkura \[2014\] NSWCA 310](#) (Restitution – company directors)
- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 5\) \[2014\] NSWSC 1105](#) (expert opinion – distinction between proof of assumed primary facts and knowledge)
- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 4\) \[2014\] NSWSC 930](#) (Expert evidence - Proof of matters relied upon by expert)

- [Wenkart v Warren Pantzer-Former Trustee of the Estate of Thomas Richard Wenkart & Anor \[2014\] HCATrans 141](#) (application for special leave to appeal – remuneration of trustees)
- [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District Sydney Local Health District v Macquarie Health Corporation Ltd \(No 3\) \[2014\] NSWSC 828 \(Expert opinion\)](#)
- [Austral Masonry \(NSW\) Pty Ltd v Cementech Pty Limited \[2014\] FCAFC 72](#) (patent infringement, contractual scheme for enforcement)
- [Li v Zhou \[2014\] NSWCA 176](#) (Public international law, case against Chinese officials for damages for torture against Falun Gong practitioners in China)
- [Bryant v Bryant \[2014\] NSWSC 374](#) (Family law – estoppel)
- [Forty Two International Pty Limited v Barnes \[2014\] FCA 217](#) (discretion to apportion costs)
- [Eastmark Holdings v The Owners Corporation Strata Plan No 74602 \[2014\] NSWSC 134](#) (strata redevelopment, requirements for summary judgment)
- [Forty Two International Pty Ltd v Barnes \[2014\] FCA 85](#) (contract, misleading or deceptive conduct, whether there was a breach of duty for non-disclosure of personal interest in transactions). See also: [Forty Two International Pty Limited v Barnes \(No 4\) \[2012\] FCA 1059](#); [\(No 3\) \[2011\] FCA 427](#); [\(No 2\) \[2011\] FCA 210](#); [\[2010\] FCAFC 87](#); [Campaign Master \(UK\) Limited v Forty Two International Pty Ltd \(No 5\) \[2010\] FCA 545](#); [\(No 4\) \[2010\] FCA 398](#); [\[2010\] FCA 397](#)
- [Bryant v Bryant \[2014\] NSWSC 374](#) (Estoppel, declarations concerning interests held in a family home)
- [Jones v Hirst \[2013\] NSWSC 163](#) (Trusts and trustees, application for judicial advice)
- [Li v Zhou \[2013\] NSWSC 12](#) (Public international law, case against Chinese officials for damages for torture against Falun Gong practitioners in China)
- [O'Neill v Piscopo \(No 3\) \[2012\] FCA 1036](#) (bankruptcy, application to remove trustee in bankruptcy)
- [In the matter of UGL Process Solutions Pty Ltd \[2012\] NSWSC 1256](#) (Corporations Act, statutory demand)
- [Romeo v Papalia & Ors \[2012\] NSWCA 221](#)

- [Donnellan v Woodland \[2012\] NSWCA 433](#) (Negligence – Solicitor’s duty of care, scope of advocates’ immunity)
- [Investec Bank \(Australia\) Limited -v- Giuseppe Romeo \[2012\] NSWSC 1043](#) (banking law, Contracts Review Act)
- [Cyclopet Pty Ltd v Australian Nuclear Science and Technology Org \[2012\] FCA 1326](#) (restrictive trade practices)
- [Break Fast Investments Pty Ltd v Perikles Giannopoulos \(also known as Perry Giannopoulos\) & Anor \(No 6\) \[2012\] NSWSC 286](#); (commercial, breach of fiduciary duties, restitution)
- [Romeo v De Chiara Constructions Pty Limited \[2012\] NSWCA 190](#) (bankruptcy, building contract)
- [Romeo v The Trust Company \(PTAL\) Ltd \[2012\] NSWCA 62](#) (mortgage, contracts review act)
- [Romeo v Papalia \[2012\] NSWCA 221](#) (agency, setting aside judgments)
- [Tadrous v Tadrous \[2012\] NSWCA 16](#) (contract and equity)
- [Goritsas & Ors v Barakat & Ors \[2012\] NSWSC 36](#) (Solicitor misconduct, fiduciary duties)
- [Macquarie International Health Clinic Pty Limited v Sydney Local Health Network \[2011\] NSWCA 231](#) (commercial lease, contract law, final hearing on damages to be heard in 2014)
- [Zhang v Zemin & Ors \[2011\] HCATrans 134](#) (international law, High Court special leave)
- [Sydney South West Area Health Service v Macquarie International Health Clinic Pty Ltd \[2011\] HCATrans 155](#) (good faith in commercial leases, High Court special leave application)
- [Perpetual Trustee Australia Limited v Romeo \(No. 2\) \[2011\] NSWSC 1190](#) (Mortgage & possession, Contracts Review Act)
- [Zel Management Pty Limited v JGS Holdings Pty Limited \[2011\] NSWSC 1237](#); [Zel Management Pty Limited v JGS Holdings Pty Limited \(No 2\) \[2011\] NSWSC 1293](#) (Mareva Injunction, building joint venture)
- [Atlas Financial International Ltd v Nortbale Pty Ltd; Atlas Financial International Ltd](#)

[v Nortbale Pty Ltd; Atlas Financial International Ltd v John Palasty \[2011\] NSWSC 815](#) (Commercial law, guarantees and contract)

- *Nathan Tinkler v Something Fast & Anthony Cummings* (breach of fiduciary duty/sale of stud and racing horses. The matter was resolved before the conclusion of a hearing in the Supreme Court of New South Wales)
- [Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service \[2010\] NSWCA 268](#) (contracts, commercial leases, duty of good faith) (leave to appeal dismissed)
- *Heperu Pty Limited & Ors v Perpetual Trustees Australia Ltd* [2010] HCATrans 127 (restitution, cheque law – matter settled after argument in the High Court);
- [Perpetual Trustees Australia Ltd v Heperu Pty Ltd & Ors \[No 3\] \[2010\] NSWCA 3](#) (corporations law, managed investment scheme)
- [Bechara v Sotrip Pty Limited \[2011\] NSWSC 252](#) (Equity, trust, real property)
- *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service (No 3)* [2010] NSWSC 1139 (Contract, good faith in leases)
- [Amanda Duncan-Strelec & Ors v Thomas Richard Tate & Ors \[2010\] NSWSC 872](#) (Joint venture, real property, restitution)
- [Falzon v Perpetual Limited; Venacom Pty Limited v Perpetual Limited \[2010\] NSWSC 582](#) (Cheque and banking law)
- [Singh v Newridge Property Group Pty Ltd \[2010\] NSWSC 411](#) (Contract/guarantee)
- [ACN 113 137 397 v Winterbottom \[2010\] NSWSC 421](#) (equity/leases/mortgages)
- *NA Retail Solutions Pty Ltd v St George Bank Limited* [2010] FCA 290; *N A Retail Solutions Pty Limited v St George Bank Limited* [2010] FCA 259 (Trade Practices, unconscionability)
- *Australian Equity Investors, An Arizna Limited Partnership v Colliers International (NSW) Pty Limited* [2010] FCA 254 (Trade Practices/misleading conduct)
- *Simpson v RBM and Ors (No 2)* [2010] NSWSC 166; *Simpson v Monteith and Ors* [2009] NSWSC 156 (professional negligence, trustee duties)
- [Perpetual v Heperu \(2009\) NSWCA 84](#); 78 NSWLR 195 (cheque law, restitution, conversion) (matter settled after argument in the High Court)

- [Mirzikinian v Tom & Bill Waterhouse Pty Ltd \[2009\] NSWCA 296](#) (Deeds)
- *Gould v Companies Auditors and Liquidators Disciplinary Board (No 3)* [2009] FCA 1017; [\[2009\] FCA 846](#) (judicial review, administrative law, professional misconduct)
- *Cassaniti v Tax Agents' Board of New South Wales* [2009] FCA 619 (Judicial review, Administrative law, professional misconduct)