

David Stewart

Barrister

Curriculum vitae

Level 9 Wentworth Chambers
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From 5 May
2008 to date

Barrister

Experience:

The Estate of Roger Christopher Currie, late of Balmain [2015]
NSWSC 1098

- Appeared for the defendant that was successful in propounding an informal computer Will.

Sadiq v NSW Trustee & Guardian [2016] NSWCA 62

- Appeared for the defendant where the plaintiff claimed that he was the de-facto of the deceased.
- Special leave to the High Court of Australia refused on 25 August 2016.

Bibby Financial Services Australia Pty Ltd v Sharma [2014] NSWCA
37

- Case involving the construction of a written contractual clause of good faith, sexual harassment and serious misconduct.
- Junior at first instance and on appeal.

Michael Zannetides v Tracey Spence [2013] NSWSC 2032

- Appeared for the defendant in a case involving a claim for family provision made out of time.

Bindaree Beef Pty Ltd v Riley [2013] NSWCA 305

- Decision on the interpretation of the injured employee provisions under the *Workers Compensation Act 1987* (NSW) and their interaction with workplace health and safety legislation.
- Appeared at first instance, and then as junior before the Full Bench of the NSW Industrial Relations Commission; the NSW Court of Appeal; and on the Special Leave Application before the High Court of Australia.

Britten-Norman Pty Ltd v Analysis & Technology Australia Pty Ltd [2013] NSWCA 344

- Construction and application of s.459G of the *Corporations Act 2001* (Cth).
- Appeared at first instance and on appeal.

Grace v Grace - [2010] NSWSC 1513; [2010] NSWSC 1514; [2010] NSWSC 1526; [2010] NSWSC 1527; [2012] NSWSC 976; (No 2) [2012] NSWSC 1321; (No 3) [2012] NSWSC 1623; (No 4) [2013] NSWSC 385; (No 5) [2013] NSWSC 601; (No 6) [2013] NSWSC 897; (No 7) [2013] NSWSC 1745; (No 8) [2014] NSWSC 419; [2014] NSWCA 86

- Case involving the equitable doctrines of undue influence and

unconscionable conduct; administration of estates; the *Family Law Act 1975* (Cth); oppression under the *Corporations Act 2001* (Cth); and experts on property and share valuations.

- Appeared at first instance, as well as junior at first instance and on appeal.

The Owners-Strata Plan 62658 v Mestrez Pty Ltd & Ors [2012] NSWSC 1259; *The Owners-Strata Plan 62658 v Black No Sugar Pty Ltd* [2010] NSWSC 408

- Appeared for a professional indemnity insurer in proceedings commenced in the Building & Construction List of the Supreme Court of Australia with respect to a flood at premier residential apartments in Sydney.

Australian Meat Industries Employees' Union v Wingham Beef Exports Pty Ltd [2013] FWCFB 909

- Appeal with respect to the construction of an Enterprise Agreement.
- Appeared on appeal before the Full Bench of the Fair Work Commission.

Malaarachchi v UnitingCare NSW.ACT

- Appeared for the respondent in a case involving allegations of misconduct against the applicant.

Hanson v Johnston & Ors [2011] NSWSC 621

Jones v Pearson & Anor [2015] NSWSC 1324

- Appeared in the Court of Disputed Returns for Mr Sean Castle, the author of an email to Ms Pauline Hanson concerning the conduct of NSW elections.
- Appeared in the Court of Disputed Returns for Mr Peter Jones

concerning the conduct of NSW elections.

Also, appearing for examinees pursuant to Chapter 5, Part 5.9 of the *Corporations Act 2001* (Cth).

Appearing in proceedings under the *Succession Act 2006* (NSW), including estate disputes over informal testamentary documents, and family provision claims.

Advising, drafting and appearing in matters involving partnership disputes; restraint of trade; confidential information; distributorships; directors' duties; lent workers; shareholder agreements; employment contracts; dismissal; termination; total and permanent disablement; discrimination and harassment; workplace health and safety; importation of heavy equipment; and prosecutions under Chapter 4 of the *Fair Work Act 2009* (Cth).

January 2001
to 21
December
2007

Harmers Workplace Lawyers

Team Leader and Partner

Experience:

- Advising and acting in corporate and commercial matters, constitutional law, contract, trade practices, administrative law, directors' duties, corporate governance, restraints, confidential information, share schemes, employment and industrial law, discrimination and human rights, and occupational health & safety.
- For clients including Australian Bankers' Association, Choice, CMC Markets, Coca-Cola, Egis, Elizabeth Arden, EnergyAustralia, Gough & Gilmour, Hawker Pacific, Mayne Group, McDonalds, RailCorp, Ricoh, Roche Pharmaceuticals, State Transit Authority, State Water, Spruson & Ferguson, Talent2, Tennis NSW, and a number of law firms as well as individuals.

Examples:

- advising Mayne Group Limited on demerger

- advising on impact of new IFRS/AASB standards on share options and bonus schemes
- Federal and Supreme Court proceedings involving *Corporations Act* and directors' and fiduciary duties and winding up
- submissions to the Federal Remuneration Tribunal for the Judges and Judicial Registrars of the Family Court of Australia
- acting for Dr Edna Hardeman in the first case testing the meaning of "constitutional corporation" in relation to the *Workplace Relations Act* and the State unfair contracts jurisdiction
- acting for a developmentally disabled man in employment proceedings against Australia Post
- acting for Gough & Gilmour in unfair contract proceedings against Caterpillar
- acting for an individual in unfair contract proceedings involving share options
- advised on industrial strategy for RailCorp
- acted in federal and state industrial actions including strikes, boycotts and award and agreement negotiations
- acted for labour hire provider in Mobil dispute in South Australia
- acted for CSR in truck contractor matter
- involved in industrial strategy for brick and tile manufacturer in New South Wales
- advised on strategy and entitlements for redundancy programme for computer manufacturer
- advice on a range of outsourcing matters
- advising on implementation of redundancy programmes for clients, including dotcom companies, a consultancy company and an advertising company
- advising a number of senior executives in the banking & finance and the media & music industries
- occupational health and safety and injured employee compliance advice for Amalgamated Holdings
- defending McDonalds against occupational health and safety prosecution for a fatality
- defending Kosciusko Thredbo against occupational health and safety prosecution
- acted for individual and corporate clients in state and federal discrimination and human rights matters including sexual harassment
- development and implementation of compliance programmes

December
1999 to July
2000

Freshfields

Manager and Solicitor, London office.

Corporate and commercial work on large scale multi-jurisdictional transactions.

The main types of work involved:

- corporate transaction work primarily on behalf of the bidder in acquisitions
- corporate work on mergers, joint ventures and IPOs
- specialist due diligence and reporting on liabilities arising from transactions, including executive service contracts and share option schemes
- drafting sections on employment and share schemes for offer documents and listing particulars
- the establishment of employee share option schemes for companies
- undertaking negotiations and drafting the termination of executive contracts and drafting letters to option holders under share schemes

Experience:

- proposed joint venture between EMI and Time Warner
- subscription by Soros in a listed company
- purchase by Pearson of Dorling Kindersley
- proposed purchase of a soup business by Campbells
- purchase of a number of newspapers by Gannett
- purchase of a steel making business by Henkel
- setting up schemes for Caradon, Anglian Water, Hewlett Packard, First Leisure and RJB Mining
- potential purchase of Welsh Water by Nomura
- purchase of a manufacturing business by Jefferson Smurfit

Negotiated approval of schemes with the Inland Revenue, where required. Involved in drafting documentation to establish trusts for the satisfaction of shares under schemes. Involved in the provision of related general advice at Board level, particularly on financial assistance for employees to buy company shares.

July 1998 to
October 1999

Michael Harmer & Associates

Team Leader

Experience:

- advised Coca Cola on their employment and industrial arrangements for the Sydney 2000 Olympics
- advised the State Transit Authority in relation to an enterprise agreement with their ferry staff
- acted for senior executives including the editor of a major daily newspaper, editor of a fashion magazine, the CEO of a publicly listed internet company, senior executives of a leading music company and executives in the financial and mining industries
- advising a food manufacturing company on injured employee issues
- defending occupational health and safety prosecutions for Coca Cola, Smiths Snack Vending and McDonalds
- involved in occupational health and safety compliance programme for aluminium manufacturing company
- assisted Kosciusko Thredbo in the inquest arising from the landslip
- advising and providing training seminars for clients on sexual harassment
- acted for a sixteen year old boy on a pro bono basis who was physically abused on a work site
- acted for a woman who was held against her will by her manager
- advising a large financial institution on employee entitlements on a takeover
- advising a manufacturing company on the restructuring of their plant
- conducting a due diligence programme for a prospective purchaser in the shipping industry

August 1993
to June 1998

Moray & Agnew

Solicitor

Experience:

- commercial and corporate advice
- commercial litigation including in relation to an aeroplane crash
- advising and drafting of awards, enterprise agreements, Australian Workplace Agreements, and the establishment of an Industrial Committee
- drafting and negotiating specific executive employment contracts, as well as drafting standard letters of appointment

- providing advice on the legitimate grounds for termination and the proper handling of dismissals
- conducting litigation with an emphasis on unlawful terminations, unfair dismissals, unfair contracts and workers' compensation.
- assisting clients with apprenticeship matters before the Vocational Training Board
- experience in defence of prosecutions under occupational health & safety legislation
- experience in anti-discrimination law, including defending harassment and equal opportunity claims
- defending a variety of personal injury claims

Other related work experience

Sydney University Law Library, Assistant, March 1992 - July 1993

Norton Smith & Co, Summer Clerk, December 1991 - January 1992 - included arresting a ship, dealing with a stowaway and preparing the document list in *Baltic Shipping v Dillon*

Publications and papers

Presented papers and seminars and published articles on issues ranging from change management to effective performance appraisal systems and interviewing.

Other positions and memberships

Member, NSW Bar Association

Member, Costs Committee, NSW Bar Association

Former Member of the New South Wales Netball Appeals Panel

Qualifications

Masters University of Sydney, Master of Labour Law and Relations

Tertiary University of Sydney, Bachelor of Arts, conferred 1991
 University of Sydney, Bachelor of Laws, conferred 1993
 University of Technology, College of Law, Graduate Diploma in Legal Practice, completed June 1993

Secondary James Ruse Agricultural High School
 Higher School Certificate, conferred 1986