

## Summary

James Barber SC practises in commercial litigation mainly in cases involving equity & trusts, sale of land, leases, restitution, corporations & securities, insolvency and banking & finance. Before his call to the Bar he practised as a commercial litigation solicitor for eight years in Melbourne and London and spent some months seconded to the litigation department of a major bank. He has an LLM from University College, London.

James is co-author, with Nimal Wikramanayake KC, of *Voumard – The Sale of Land* (published by Thomson Reuters). He is also the Deputy Chair of the Victorian Bar Ethics Committee.

## Experience:

Significant or interesting matters include:

*China Insurance Group Finance Company Ltd v Kingston (No 3)* [2023] VSC 6 (led by Penny Neskovic KC); loan agreement, foreign law, estoppel, unconscionable conduct;

*Northgate Park Pty Ltd v Floyd* [2022] VSC 783 (represented minor beneficiaries): lost trust deed;

*Aviation 3030 Pty Ltd (in liquidation) v Lao* [2022] FCA 458 (represented 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> defendants the claims against whom were resolved after 10 days of trial): unreasonable director-related transaction, directors' duties, fiduciary duties, knowing assistance and knowing receipt;

*Chan v Valmorbida Custodians Pty Ltd* S CI 2017 03211 (led by Allan Myers QC, leading Joseph Carney, represented plaintiffs whose claims were resolved after 8 days of trial): removal of trustees, breach of trust;

*Troiano v Voci* [2021] VSC 851: breach of contract, fiduciary duties, knowing receipt;

*Australian Fast Foods Pty Ltd v Kameel Pty Ltd* [2021] VCAT 921: retail lease, appointment of valuer;

*Chan v Valmorbida Custodians Pty Ltd* [2020] VSC 633 (led by Carolyn Sparke QC, leading Joseph Carney): amendment of pleadings;

*Chan v Valmorbida Custodians Pty Ltd* [2020] VSC 590 (led by Carolyn Sparke QC, leading Joseph Carney): beneficiary's application to inspect trust documents;

*Teen Entertainment Enterprise Network Pty Ltd v A&H Natoli Pty Ltd* [2020] VSC 388: appeal from the Victorian Civil and Administrative Tribunal (VCAT);

*Carbone v Melton City Council* (2020) 60 VR 539; [2020] VSCA 117: statutory interest;

*Chan v Chan* [2020] VSCA 40: Summary recovery of possession of land;

*Troiano v Voci* (2019) 61 VR 511: security for costs;

*Hampshire Automotive Pty Ltd v Centre Com Pty Ltd* (2019) 60 VR 579; [2019] VSCA 77 (led by Ian Upjohn QC): easements by prescription, doctrine of lost modern grant, whether dominant tenement landlord's consent is required for tenant's enforcement of easement;

*Red Pepper Property Group Pty Ltd v S 3 Sth Melb Pty Ltd* [2019] VSC 41: appeal from VCAT, retail leases, construction, alleged landlord's repudiation;

*Chan v Valmorbida* [2018] VSC 336 (led by Carolyn Sparke QC): construction and rectification of Will;

*Guildford International Group Pty Ltd v Aviation 3030 Pty Ltd* [2018] FCA 600; *Guildford International Group Pty Ltd v Aviation 3030 Pty Ltd (No 2)* [2018] FCA 1486: security for costs;

*CellOS Software Pty Ltd v Huber* (2018) 132 ACSR 468 (led by Daniel Crennan QC): diversion of business opportunity, capital raising and secondary market, application by a company to recover profits made in trading in its own shares;

*ASIC v Hochtief AG* (2016) 117 ACSR 589 (led by Neil Young QC): insider trading;

*Rees v Rees* [2016] VSC 452; [2016] VSC 579: deed of settlement set aside for mistake, indemnity costs;

*Versus (Aus) Pty Ltd v ANH Nominees Pty Ltd* [2015] VSC 515: appeal from VCAT, retail leases, landlord's statutory obligation to repair during renewed term, repudiation;

*Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd* (2014) 108 IPR 52; [2014] VSC 455 (led by Sam Horgan QC): confidential information, restitution, quantum meruit, success fee;

*CNM Investments Pty Ltd v Greek Orthodox Community of Victoria & Melbourne* [2013] VCAT 1969: application to restrain counsel from continuing to act;

*Westpac Banking Corporation v The Bell Group Ltd (in liq) (No 3)* (2012) 44 WAR 1; 270 FLR 1; 89 ACSR 1; [2012] WASCA 157 (led by Neil Young QC): directors' duties, breach of fiduciary duties, duty to exercise powers for a proper purpose, relief under the rule in *Barnes v Addy*, dispositions with intent to defraud creditors, equitable relief, compound interest;

*RDN Developments Pty Ltd v Shtrambrandt* (2011) VSC 130: compensation for lodgement of caveat without reasonable cause;

*Re D W Marketing Pty Ltd (in liq)* [2009] VSC 663: liquidator's examination enjoined for abuse of process;

*The Bell Group Ltd (in liq) v Westpac Banking Corp (No 10)* (2009) 39 WAR 930; (2009) 71 ACSR 300 (led by Michael Corboy QC): equitable relief, compound interest;

In 2009 (with Byrne J and Philip Solomon, now Philip Solomon KC), drafting a new practice note for the Commercial Court of the Supreme Court of Victoria;

*The Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 39 WAR 1; (2008) 225 FLR 1 (2008) 70 ACSR 1 (led by Ross Robson QC and Jim Peters QC): relief under the rule in *Barnes v Addy*, dispositions with intent to defraud creditors;

*Allstate Exploration NL v QBE Insurance (Australia) Ltd* (2007) 14 ANZ Ins Cas 61-743; [2007] VSC 380; [2008] VSCA 148 (led by Neil Young QC): construction of insurance contract;

*Beaconsfield Gold NL v Allstate Prospecting Pty Ltd* [2006] VSC 320 (led by Allan Myers QC and Peter Collinson QC): joint venture agreement, right of pre-emption;

*Tarongo Land Pty Ltd v Lyons* [2005] VSC 491 (led by Peter Vickery QC): construction of option agreement;

*Alinta DEGP Pty Ltd v Wellington Shire Council* (2005) 141 LGERA 187; [2005] VSC 307 (led by Jim Delany QC): rating;

*Creasy's Grain Enterprises Ltd v Clarke and Barwood Lawyers Colac Pty Ltd* [2004] VSC 77 (led by Nemeer Mukhtar QC): priority dispute between first and second mortgagees;

*Oversea-Chinese Banking Corporation Ltd v Malaysian-Kuwaiti Investment Co* [2003] VSC 495; [2004] VSC 351 (led by Nimal Wikramanayake QC): priority dispute between purchaser and mortgagee, rule in *Hopkinson v Rolt*; costs;

*Crowe v Stevedoring Employees Retirement Fund Pty Ltd* [2003] VSC 316: superannuation fund member's right to documents and information from trustee;

*Logue v Hansen Technologies Ltd* (2003) 125 FCR 590 (led by Robin Brett QC): security for costs;

*Andrew Shelton & Co Pty Ltd v Alpha Healthcare Pty Ltd* [2002] 5 VR 577 (led by Peter Vickery QC): restitution, free acceptance.

Representing, on many occasions throughout the period of the cases above, persons required to attend for examination under s 19 of the *Australian Securities and Investments Commission Act 2001*.

### **Victorian Bar Committee memberships**

- Ethics Committee (currently Deputy Chair).
- Insurance Committee.

### **Professional Qualifications:**

- Barrister and Solicitor of the Supreme Court of Victoria (admitted 23 April 1992);
- Barrister and Solicitor of the High Court of Australia (admitted 23 October 1992);
- Solicitor, England and Wales (admitted 1 August 1997);
- Member of the Victorian Bar (signed Bar Roll 24 May 2001)'
- Senior Counsel in and for the State of Victoria (appointed 3 November 2022).

### **Academic Qualifications:**

- **LLB (Honours) (Melbourne)**: qualified 1990, conferred 1991
- **LLM (Merit) (University College, London)**: 1996  
Subjects: Law of Credit and Security, Restitution, Commercial Conflict of Laws and Theory of Civil Procedure.

## **Previous Employment:**

### **November 1998 to February 2001:**

Senior Associate/Solicitor Commercial Litigation Department  
Blake Dawson Waldron, Solicitors  
101 Collins Street Melbourne  
(Appointed Senior Associate 1 July 1999)  
(including 5 months seconded to the litigation department of a major bank)

### **September 1996 to October 1998:**

Solicitor  
Litigation Department  
Freshfields, Solicitors  
65 Fleet Street, London

### **September 1995 to August 1996:**

Full-time student  
LLM programme  
University College, London

### **April 1992 to August 1995:**

Solicitor  
Blake Dawson Waldron, Solicitors (now Ashurst Australia)

### **March 1991 to March 1992:**

Articled Clerk  
Blake Dawson Waldron, Solicitors (now Ashurst Australia)

Before being called to the Bar, major matters as a solicitor included:

- a 5-month secondment to the litigation department of a major bank involving either direct conduct or instructing external firms in a wide range of matters including claims for alleged breach of contract, defamation, misrepresentation or misleading and deceptive conduct, breach of confidentiality, breach of fiduciary duty and breach of trust, as well as capital markets disputes and disputes over cheques;
- acting for IAMA Limited in a merger dispute with subsidiaries of Futuris Limited involving litigation before the Supreme Court of South Australia;
- acting for the victim in proceedings to recover the fruits of a multi-million-dollar fraud, involving claims for knowing assistance with breach of fiduciary duty against a firm of accountants and restitutionary causes of action.
- acting for a major law firm in the successful defence of a \$1.6 million claim for alleged negligence brought by a property management company;
- acting for a senior executive of a listed Australian company who was the subject of an inquiry by an industry regulator, resulting in no further action being taken;
- acting for the International Air Transport Association in a series of successful challenges to UK Government attempts to tighten aircraft noise limits at the London airports.