

# SYDNEY JACOBS

Barrister

Thirteen Wentworth Selborne Chambers

Level 13, 181 Phillip Street

Sydney NSW 2000

DX 394

P + 61 2 9232 7658

F + 61 2 9232 4071

E sjacobs@wentworthchambers.com.au

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With over 20 years' experience as a barrister, Sydney possesses specialist knowledge and expertise in the areas of commercial law and equity, real property and building and construction law. He has acquired considerable experience in the area of easements and covenants and regularly appears in proceedings where urgent interlocutory relief is sought.

His experience in large-scale litigation extends to providing complex advice and appearing at trial and appellate level in various Australian jurisdictions, including the Federal Court of Australia, New South Wales Court of Appeal, Supreme Court of New South Wales, District Court of New South Wales and other inferior courts. Sydney has also appeared before tribunals, such as the Consumer Trader & Tenancy Tribunal, NCAT and before the Industrial Relations Commission, Crime Commission and Independent Commission Against Corruption. With the broad spectrum of forums in which disputes can be resolved, Sydney also has appeared in technical references, mediations and arbitrations.

Sydney holds a Master of Laws from University of Cambridge and a Bachelor of Laws and Bachelor of Arts from the University of Cape Town, South Africa. He also completed a Higher Diploma in Company Law and is an expert determiner approved by the NSW Bar Association. Prior to being called to the Bar, Sydney gained considerable experience as a solicitor in the Construction Departments of top-tier firms Minter Ellison Morris Fletcher (now MinterEllison) and Deacon Graham & James (now Norton Rose Fullbright), during which time he acted for clients in complex and high profile matters. Such experience has served to give Sydney an understanding as to the needs and expectations of solicitors and their clients and to this end, he is committed to working as a team player with his instructing solicitors to develop the best strategies to achieve the best results for his clients.

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## ADMISSIONS

- 1997 Admitted to the Bar of New South Wales
- 1994 Admitted as a Solicitor of the Supreme Court of New South Wales, Federal Court of Australia and High Court of Australia

## PROFESSIONAL QUALIFICATIONS

- 1990 Higher Diploma in Company Law: University of Witwatersrand, South Africa
- 1986 Master of Laws: Cambridge University, UK
- 1984 Bachelor of Laws: University of Cape Town, South Africa
- 1982 Bachelor of Arts: University of Cape Town, South Africa

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## PROFESSIONAL EXPERIENCE

- 1999 - present Barrister, 13 Wentworth Selborne Chambers, Sydney
- 1995 - 1997 Senior Associate, Deacons Graham & James (now Norton Rose Fulbright) - Construction Department
- 1994 - 1995 Solicitor, Levingstons - Commercial Litigation and Maritime Law Department
- 1991 - 1994 Solicitor, Minter Ellison Morris Fletcher (now MinterEllison) - Construction Department

## PRINCIPAL AREAS OF PRACTICE

Appellate	Equity & Trusts
Building and Construction Law	Inquiries (ICAC; Parliamentary)
Commercial Law	Intellectual Property
Competition and Consumer Law	Local Government, Planning and Environmental Law
Corporations Law	Real Property Law
Easements and Covenants	Retail and Commercial Leasing

## PROFESSIONAL MEMBERSHIPS

- Member New South Wales Bar Association

## ACADEMIA

- Sydney is a former part-time lecturer on the topic of *Damages and Equitable Remedies*, as part of the Master of Laws Program at the University of Technology, Sydney

## PUBLICATIONS

- 2008 - present Commercial Damages: Thomson Reuters, loose-leaf Service
- 2005 - present Injunctions: Law & Practice: Thomson Reuters, loose-leaf Service
- 2000 Damages in a Commercial Context (Law Book Co)

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Sydney has also published articles on various topics, including the following. Links to Sydney's papers can be made available upon request.

Easements (e.g. s88K <i>Conveyancing Act</i> ; Old System; unreasonable interference/nuisance)	Cases and Developments in Commercial Leases
Recurring issues for Property Lawyers	Calderbank Offers
Assigning Contracts in Property matters	Liability of Councils in Tort and s149 EP&A Certificates
Structuring Mixed Use Development	Preparing and Drafting Applications
Briefing Experts and Expert Evidence	Repudiation, Rescission and Termination

## SPEAKING ENGAGEMENTS

Sydney regularly delivers presentations through TEN Network, Legalwise, BenchTV and has also presented for University of New South Wales on various occasions.

## SELECT CASES

Sydney has extensive experience acting for clients in complex hearings and appeals in a wide variety of jurisdictions. Significant matters in which he has appeared are as follows.

### New South Wales Court of Appeal

- *Bahadori v Permanent Mortgages Pty Ltd* [2008] NSWCA 150 – Consumer Credit Code; prerogative relief; whether provision of credit for personal, domestic or household purposes.
- *Zahos v Industrial Relations Commission of NSW & Ors* [2005] NSWCA 427 – Restaurant partnership dispute concerning jurisdictional limits of IRC's remedial power under s106 (5) *Industrial Relations Act*.

### South African Court of Appeal

- *Makie v The State* [Proceedings 414/89] – Successful appeal against the death sentence.

### Federal Court of Australia

- *Trend Imports Pty Ltd v PW Inventory Pty Ltd* [2012] FCA – Trademark dispute concerning the importation by Paul's Warehouse of clothing with labels affixed with a trademark asserted to be owned by Trend Imports. Injunctions granted.
- *Salim v Loh* [2005] FCA 372 – Pleadings; strike out; security.

### Supreme Court of New South Wales

- *Spark Property Pty Ltd v Mammone & Cristofaro* - SC proceedings 2017/64574 – Successful application to declare Vendor's Notice of Termination of a contract for sale of land, invalid. True construction/rectification of contract.

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- *Crawford v Crawford & Morris* NSWSC Equity Division Proceedings, 2016/71897 – Freezing/Mareva Orders, worldwide freezing orders regarding properties in Australia and Malta.
- *Wang & Ors v Kaymet Pty Ltd* [2015] NSWSC 1058 – Admissibility of an expert’s report on the basis of whether the opinion shown to be based on the expert’s specialised knowledge.
- *Pisano v Williams* [2014] NSWSC 1070 – Building and construction dispute; sale of a residence and a claim for damages for misleading or deceptive conduct and breach of duty of care.
- *Aussteel v Marcon* [2014] NSWSC – Preliminary discovery application.
- *Barangaroo Development* [2013] NSWSC – Urgent application for order under section 88K of the *Conveyancing Act* to allow temporary easement for access to erect scaffolding.
- *Wang & Ors v Kaymet Pty Ltd* [2015] NSWSC – Proceedings involving purchasers of units “off the plan” and question of whether builder/developer used reasonable efforts to register the strata plan.
- *Kocagil v Chen* [2012] NSWSC – Successful easement application pursuant to section 88K *Conveyancing Act*.
- *Zahos v Michael* [2012] NSWSC 1110 – Successfully resist strike out in claim for alienation of assets with intention to defeat creditors (section 37A of the *Conveyancing Act*).
- *Tony Stepanoski v Zhimin Chen* [2011] NSWSC 1573 – Order sought under section 88K of the *Conveyancing Act* regarding an easement dispute.
- *McGrath v Beumer* [2010] NSWSC 892 – Construction of Settlement agreement – whether settlement effected in light of subsequent events.
- *Peisley v Maddrell Management Pty Ltd* [2010] NSWSC 1477 – Appeal on point of law against decision of magistrate; denial of natural justice.
- *Portolesi v Tsaloukas* NSWSC Proceedings No. 2009/287619 – Order sought under section 88K of the *Conveyancing Act* regarding an easement for stormwater.
- *Gee v Burger* [2009] NSWSC 149 – Consideration of whether one can one plead an actionable right to privacy where one has an easement for right of way.
- *Gee v Burger* [No 2]; [2009] NSWSC 1152 – Easement and privacy issues.
- *Gee v Burger* [No 3]; [2009] NSWSC 1153 – Easement, privacy issues and costs regarding amendment application.
- *Bank of Western Australia v Love* [2009] NSWSC 1421 – Procedure & Judgement orders – amending, varying and setting aside.
- *Randi Wixs Pty Ltd v Kennedy* [2009] NSWSC 933 – Lease prepared which did not reflect determination of ADT – rent erroneously stated in lease – transfer of property to third party – successful defence that plaintiff has no personal equity against defendant third party and any personal equity plaintiff

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may have cannot be enforced against registered proprietor.

- *George Maurice Norman Farkas v Northcity Financial Services Pty Ltd* [2004] NSWSC 206 – Whether an insurer was liable to pay terminal illness benefits to the Plaintiff – application for setting aside of default judgement for possession – doctrine of benefits and burdens – unconscionable conduct.
- *G & E Avakoumides Pty Ltd v Commonwealth Funds Management* [2004] NSWSC 711 – Commercial leases; negotiations to lease different premises; where series of offer documents “subject to ...approval...contract and availability”; whether alleged oral acceptance of written offer sufficient to create contract; section 54A of the *Conveyancing Act*.
- *Adler Mallach Holdings Pty Ltd v Robertson* [2001] NSWSC 692; [2002] NSWSC 1176 – Defendants using fake names, establish a business in competition with business sold to the Plaintiff. Election as to remedies. Damages – basis for assessment.
- *Hilton Hotels (Australia) Pty. Ltd. v. Sunrise Resources (Australia) Pty Ltd* [2000] NSWSC 46 – Consent by lessor of Hilton Hotel to placement of signs by lessee (the Hilton); equitable easements; conventional estoppel pursuant to *Eslea v Butts*.

## District Court of New South Wales

- *Dionys v National Australia Bank*, 12 June 2015 – Successful claim against bank regarding the transfer of funds without authority. Proceedings involved question of whether bank had contractual defences (upheld on appeal [2016] NSWCA 242).

## Local Court of New South Wales

- *Snowy River Shire Council v Adaminaby Craft Group Inc* [2014] NSWLC – Successful claim for return of a valuable decorative curtain involving the doctrine of accession as a basis for asserting ownership.
- *Marcon v Lombardo* [2013] NSWLC – Application pursuant to Access to *Neighbouring Land Act* 2000 (NSW) by developer to insert rock anchors and scaffolding. Settled pre-hearing.

## Administrative Decisions Tribunal (ADT) / NSW Civil and Administrative Tribunal (NCAT)

- *Littles v J&K Homes Pty Ltd* [2017] HB16/04988 – NCAT Appeals Panel – Appeal with respect to an error of law – home building – did the member misapply *Brewarrina Shire Council v Backhaus* in dismissing proceedings for specific performance, when contract still on foot?
- *Well Garnished Pty Ltd v Chaos Investments Pty Ltd* [2013] NSWADT 256 – Successful application to strike-out based on accord and satisfaction (i.e. prior “settlement” of the issues).
- *Randi Wixs Restaurant Pty Ltd v Kennedy* [2006] NSWADT 177 – Retail Lease – Sec 8 *Retail Leases Act*.

## Parliamentary Inquiries and Commissions of Inquiry

- ICAC: *Operation Spicer* [2014] - Represented the Free Enterprise Foundation.

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- Parliamentary Inquiry [2004] - Represented Gazcorp's Solicitor into the approval of the Designer Outlet Centre in Liverpool.

## Supreme Court of Western Samoa and Court of Appeal

Sydney's international experience extends to appearances in actions for defamation on behalf of the former Prime Minister of Samoa and an allied action for criminal libel. These related matters raised significant considerations of the limits of free speech in the context of legitimate political discourse, including constitutional challenges on that ground. Also, consideration of the use of Hansard reports in defamation actions.

- *Malifa v Sapolu and Tofilau Eti Alesana* [1999] WSSC 47 (as Junior before Moran J) – Action on behalf of former Prime Minister, who was subject to an alleged campaign of vilification in the press; criminal libel; common law defences; right to freedom of speech and expression; political statements.
- *Malifa v Sapolu and Tofilau Eti Alesana* [1998] WSCA 5, 6 March 1998 (as Junior before Lord Cooke of Thorndon, Sir Casey, and Sir Ian Barke) – Criminal libel action for (then) Prime Minister; whether matters specified by the information, reasonably capable of being regarded as so serious as to warrant the application of the law of criminal libel.
- *Alesana v Samoa Observer Company Ltd* [1998] WSSC 6, 21 April 1998 (as Junior before Sir Gordon Bisson) – Defamation; ruling as to who should go into evidence first at final hearing.
- *Alesana v Samoa Observer Company Ltd* [1998] WSSC 7, 6 July 1998 (as Junior before Sir Gordon Bisson) – Action for defamation on behalf of Prime Minister of Western Samoa, against news paper and its editor-in-chief. Prime Minister claimed *inter alia* that he had been defamed by article imputing large-scale corruption to him; malice; plea in mitigation; whether in itself aggravating. Credit of witness. Parliamentary Privilege; scope of *Prebble*. Defences of qualified privilege and Constitutional right to free speech in relation to political affairs. Limits of the defence of free speech; good faith. Aggravated damages.

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