

SIMON FITZPATRICK

ADMISSIONS

New South Wales Solicitor (2001), Barrister (2010)
New York Attorney (2003), Federal District Courts (2005)

EDUCATION

Sept. 2001-June 2002 **HARVARD LAW SCHOOL**
Master of Laws
Frank Knox Memorial Fellowship, University of Sydney Travelling Scholarship

Feb. 1995-Nov. 1999 **UNIVERSITY OF SYDNEY**
Bachelor of Arts & Bachelor of Laws (Hons I & University Medal)
Nancy Gordon Smith, R.G. Henderson and Walter Reid prizes
Winner, University of Sydney Law School Paper Presentation
International Quarter-Finals, Philip C. Jessup International Law Moot

EXPERIENCE

Oct. 2010-present **7 WENTWORTH SELBORNE**
Practice areas: Appellate, Representative proceedings, Administrative, Commissions and Inquiries, Corporate and Commercial, Defamation and Media, Equity and Trusts, and Intellectual Property
Reader: Harrison Grace (2016-2017)

Mar. 2008-Aug. 2010 **ROPES & GRAY, New York**
Associate focusing on intellectual property litigation

Oct. 2002-Mar. 2008 **FITZPATRICK, CELLA, HARPER & SCINTO, New York**
Associate focusing on intellectual property litigation

Feb. 2001-July 2001 **MALLESONS STEPHEN JAQUES**
Solicitor and Law Clerk focusing on competition law

July 2000-July 2001 **UNIVERSITY OF SYDNEY LAW SCHOOL**
Part-time Lecturer (Jessup Moot coach) and Associate Lecturer (Contracts)

Feb. 2000-Feb. 2001 **HIGH COURT OF AUSTRALIA**
Associate to the Hon. A.M. Gleeson AC, QC, Chief Justice of Australia

PUBLICATIONS

“Prospects of Further Copyright Harmonisation?” [2003] *European Intellectual Property Review* 215
“The Death of the Recording Industry?” (2002) 7 *Media and Arts Law Review* 279
“Torts or Tort? The Imperial Expansion of Defamation” (2000) 8 *Tort Law Journal* 263
“Protecting Australian Culture in the 21st Century: Television Content Regulation in a Globalising World” (2000) 5 *Media and Arts Law Review* 223
“Copyright Imbalance: US and Australian Responses to the WIPO Digital Copyright Treaty” [2000] *European Intellectual Property Review* 214

PROFESSIONAL

Director, Marrickville Legal Centre (2016-present)
Best Lawyers in Australia – ‘Litigation’ (9th ed, 2017; 10th ed, 2018; and 11th ed, 2019)

SELECTED MATTERS

Appellate

Sanofi-Aventis v Apotex Pty Ltd [[2015](#)] [HCATrans 300](#)

(with Bret Walker SC and Scott Nixon) (special leave application regarding patent revocation)

Krelichwost v The Queen [[2012](#)] [HCATrans 294](#)

(with Wendy Abraham QC and Nicolas Kirby) (special leave application regarding breach of directors' duties)

Woolworths Ltd v Randwick City Council, [[2017](#)] [NSWCA 179](#)

(with Adrian Galasso SC) (statutory construction)

Wingecarribee Shire Council v De Angelis [[2016](#)] [NSWCA 189](#)

(with Adrian Galasso SC) (statutory construction)

Wilmar Sugar Australia Ltd v Mackay Sugar Ltd (2017) 345 ALR 174; [[2017](#)] [FCAFC 40](#)

(with Jeremy Giles SC) (oppression)

Mackay Sugar Ltd v Wilmar Sugar Australia Ltd (2016) 338 ALR 374; [[2016](#)] [FCAFC 133](#)

(with Jeremy Giles SC) (oppression)

Community Housing Ltd v Clarence Valley Council [[2015](#)] [NSWCA 327](#)

(with Adrian Galasso SC) (rates exemption for charities, statutory construction)

Krelichwost v The Queen [[2012](#)] [NSWCCA 101](#)

(with Wendy Abraham QC) (criminal contravention of directors' duties)

Representative proceedings

Giabal Pty Ltd v Gunns Plantations Limited, NSW Supreme Court, No. 2018/76580

(with Alan Sullivan QC) (breach of trust, responsible entity liability, auditor liability)

ASIC v Storm Financial Limited (Receivers and Managers Appointed) (In Liquidation); *Richards v Macquarie Bank Ltd*, Federal Court of Australia, QUD 577/2010, QUD 590/2010

(with John Sheahan SC and Adam Pomerence) (unregistered management investment scheme, breach of contract, unconscionable conduct, liability as a linked credit provider)

Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq) (2012) 301 ALR 1; [[2012](#)] [FCA 1028](#)

(with John Sheahan SC, Scott Nixon, and James Hutton) (negligence, breach of contract, breach of fiduciary duty, misleading conduct)

Kirby v Centro Properties Ltd; *Kirby v Centro Retail Ltd*; *Stott v PricewaterhouseCoopers Securities Ltd*,

Federal Court of Australia, VID 326/2008, VID 327/2008, VID 1028/2010

(with Noel Hutley SC, Michael Lee SC, and William Edwards) (continuous disclosure, misleading conduct)

Abbott v Zoetis Australia Pty Ltd, Federal Court of Australia, NSD 406/2018

(with Lachlan Gyles SC) (negligence, misleading conduct, product liability)

Coffs Harbour City Council v McGraw-Hill Financial, Inc; *Coffs Harbour City Council v ANZ Banking Group Ltd*,

Federal Court of Australia, NSD 1020/2014, NSD 1021/2014

(unled) (negligence, misleading conduct, proportionate liability)

Commissions and Inquiries

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2018

(SME lending round – acting for a retail bank)

(Insurance round – acting for a 'big four' bank)

New South Wales Ombudsman, [Investigation into water compliance and enforcement](#), 2018

(unled) (acting for a witness)

Independent Commission Against Corruption, [Operation Greer](#), 2016

(with Michael Henry SC) (counsel assisting the Commission)

Independent Commission Against Corruption, [Operation Acacia](#), 2013

(with Jeremy Kirk SC and Matthew Darke) (acting for John Maitland AM)

Administrative

Marshall Rural v Basscase Pty Ltd [\[2015\] NSWLEC 197](#)

(with Adrian Galasso SC) (judicial review of grant of development consents – Class 4)

Ocean Shore Community Association Inc. v Byron Shire Council [\[2015\] NSWLEC 171](#)

(with Adrian Galasso SC) (injunction, judicial review of grant of development consent – Class 4)

Riverstone Parade Pty Ltd v Blacktown City Council [\[2015\] NSWLEC 137](#)

(with Adrian Galasso SC) (appeal on questions of law – Class 1)

Nexidus Pty Ltd v Minister for Health [\[2017\] AATA 2295](#)

(with Jeremy Kirk SC) (review of decision regarding advertisement for therapeutic goods)

F. Hannan (Properties) Pty Ltd v Minister for Planning, NSW Land and Environment Court, No. 40669/2010

(with Jeremy Kirk) (judicial review – Class 4)

King v The University of Notre Dame, NSW Supreme Court [\[2015\] NSWSC 309](#)

(unled) (judicial review of University's decisions to fail and terminate student)

Corporate and Commercial

Britten-Jones v International Litigation Partners No. 5 Ltd, NSW Supreme Court, No. 2015/278325

(with Alan Sullivan QC) (injunctive relief, breach of contract)

AMP Capital Investors Ltd v Parsons Brinkerhoff Pty Ltd, NSW Supreme Court, No. 2009/00290489

(with Noel Hutley SC and Nicholas Owens) (misleading conduct, professional negligence)

Sungrow Pty Ltd v Sanctus One Pty Ltd, NSW Supreme Court, No. 2017/165177

(with Mark Ashurst SC) (breach of contract)

Thoreb Australia Pty Ltd v Barwick, Federal Court of Australia, NSD 1323/2014

(with Jeremy Kirk SC) (directors' duties, equitable remedies)

Willis Australia Group Services Pty Ltd v Griggs [\[2012\] NSWSC 659](#)

(with Jeremy Kirk SC) (injunctive relief, post-employment restraints)

Graphite Energy Pty Ltd v Lloyd Energy Systems Pty Ltd, NSW Supreme Court, No. 2013/371285

(with Miles Condon SC) (breach of contract)

Park and Choi v Chong, NSW Supreme Court, No. 2015/89879

(with Matthew Darke SC) (injunctive relief, accounting of company activities)

Wilmar Sugar Australia Ltd v Queensland Sugar Ltd (2016) 335 ALR 72; [\[2016\] FCA 20](#)

(with Jeremy Giles SC) (oppression)

Mackay Sugar Limited v Wilmar Sugar Australia Limited [\[2016\] FCA 789](#)

(with Jeremy Giles SC) (application to restrain a company meeting)

Mackay Sugar Ltd v Wilmar Sugar Australia Ltd (No 2) [\[2016\] FCA 1179](#)

(with Jeremy Giles SC) (oppression)

Ethan Group Pty Ltd v MG Logistics Pty Ltd, NSW Supreme Court, No. 2017/32536

(with Jeremy Giles SC) (breach of contract)

Salama v Galic, NSW District Court, No. 2012/281514

(with Duncan Miller SC) (recovery of barristers' fees, professional negligence)

In the matter of Payless Shoes Pty Ltd (subject to Deed of Company Arrangement), Federal Court of Australia, NSD 2269/2017

(unled) (public examinations of company auditors)

Dunn Group Australia Pty Ltd v Rachwal, Federal Court of Australia, NSD 1097/2015

(unled) (breach of contract, misleading conduct, fraud, breach of directors' duties)

Sophia McGinn v Peter Clisdell Pty Ltd, NSW Supreme Court, No. 2017/331810

(unled) (default judgment application)

SM Project Development Pty Ltd (in liq) v Hua, NSW Supreme Court, No. 2015/300318

(unled) (unreasonable director-related transactions, directors' duties)

Secure Logic Pty Ltd v Noble [\[2016\] NSWSC 1525](#)

(unled) (application for appointment of an expert)

Makeek Fahd Islamic School Ltd v Australian Federation of Islamic Councils Inc, NSW Supreme Court, No. 2016/280690
(unled) (breach of directors' duties, applications for discovery)

King v The University of Notre Dame, NSW Supreme Court, No. 2016/85995
(unled) (*Contracts Review Act*, enforcement of settlement deed)

Zalami v Salm, NSW Supreme Court, No. 2014/140802
(unled) (insolvent trading)

Zerofootprint Software Inc. v A2green Pty Ltd [\[2013\] NSWSC 1865](#)
(unled) (breach of contract, breach of directors duties, separate question)

In the Matter of Trainer Connections Pty Ltd [\[2012\] NSWSC 1204](#)
(unled) (application to set aside a statutory demand)

Defamation and Media

Chittick v Pitney [\[2014\] NSWSC 1557](#)
(unled) (objections to form and capacity)

Equity and Trusts

Wright v Stevens [\[2018\] NSWSC 548](#)
(with Paul Blackburn-Hart SC) (trustee's obligation to provide documents and accounts; charitable trusts)

Application by Stevens [\[2016\] NSWSC 1523](#)
(with Paul Blackburn-Hart SC) (judicial advice regarding trustee's defence of proceeding)

Estate of Palmisano, NSW Supreme Court, No. 2013/179073
(with Paul Blackburn-Hart SC) (trusts, family provision claim)

Estate of Chow, NSW Supreme Court, No. 2013/171883
(with Paul Blackburn-Hart SC) (trusts and executor's duties)

Strata Plan No 22724 v Strata Plan No 30403 [\[2012\] NSWSC 1192](#)
(with Mark McCulloch SC) (proprietary estoppel)

Tanlane Pty Ltd v Moorebank Recyclers Pty Ltd, NSW Supreme Court, No. 2016/198977
(with Tim Robertson SC) (easements)

Jarosz v State of NSW, NSW Supreme Court, No. 2017/163763
(unled) (strike out application)

Aldred v Aldred, NSW Supreme Court, No. 2015/377317
(unled) (application for preliminary discovery, breach of executors' duties)

Lea v D.N.L Pty Ltd, NSW Supreme Court, No. 2015/353354
(unled) (injunctive relief, breach of trust)

Intellectual property

Sigma Pharmaceuticals (Australia) Pty Ltd v Wyeth; Alphapharm Pty Ltd v Wyeth; Generic Health Pty Ltd v Wyeth,
Federal Court of Australia, VID 195/2009, NSD596/2009, NSD1124/2009
(with Tony Bannon SC, Stephen Lloyd SC, Christian Dimitriadis SC, Julian Cooke, and Stephen Free)
(claims for compensation pursuant to undertakings as to damages given in patent litigation)

Commonwealth of Australia v Sanofi, Federal Court of Australia [\[2017\] FCA 382](#), [\[2017\] FCA 711](#)
(with John Sheahan QC, Scott Nixon SC, and James Hutton) (third party claim for compensation pursuant to undertakings as to damages given in patent litigation)