

GREGORY KEITH BURTON SC, FCI Arb, FRI, TEP

Senior counsel; commercial arbitrator, referee, mediator, expert determiner, early neutral evaluator (accredited/listed with various statutory, Court and private panels); part-time Senior Member NCAT; author.

BCL (Oxon), BA (Hons), LLB (Hons) (Syd); Senior Counsel (SC) from September 2004; barrister (NSW, Qld, High Ct, Fed Cts, Ireland); barrister and solicitor (Vic, ACT, WA, NT); reciprocal recognition all Australian jurisdictions; Dip Intl Arbn (CI Arb) Sept 2012, Fellowship CI Arb December 2012.

Senior Counsel since September 2004; part-time Senior Member NCAT Appeal Panel and Consumer and Commercial Division from March 2017; barrister in private practice since 1989; solicitor (corporate and finance), Freehills (now Herbert Smith Freehills) (1980-83); Associate to Hon Justice Sir William Deane AC, KBE, QC, High Court (1984-85); senior adviser to federal shadow Attorney-General John Spender QC MP (1986); lecturer in law, Australian National University (1987-88).

Practice areas (trial and appellate): ongoing opinion and litigation work in commercial/equity, corporate, finance, securities, insolvency, insurance, property (real, personal, IP, IT), trusts, consumer and competition, torts/negligence and professional liability, succession/family provision, associations and charities, public law, ADR.

Selected appearances as counsel (some reported) and appointment as referee:

Re Fearndale Holdings PL (admin apptd) (r&m apptd) [2019] NSWSC 1810, 1885 (my referee's report in complex securities proceedings, including contested hearing on matters of credit during reference, adopted by Black J)

Re Cisera FT [2016] NSWCA 319, [2017] NSWSC 960 and [2018] NSWCA 286 (re-consideration of section 81 *Trustee Act 1925 (NSW)* as interpreted in *Re Dion Investments PL* (2014) 87 NSWLR 753, [2014] NSWCA 367 and *Stein v Sybmore Holdings* [2006] NSWSC 1004

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District (formerly South West Area Health Service) [2016] NSWSC 1587 (our trial submissions largely upheld on appeal allowed from primary decision [2020] NSWCA 274); from [2008] NSWSC 738, [2009] NSWSC 629, [2010] NSWSC 1139, [2010] NSWCA 268, [2010] NSWCA 348, [2011] NSWCA 171: trespass, co-venture, good faith, many areas of commercial, finance, equity and property law, loss of opportunity, valuation.

Re S, an incapacitated young person [2017] NSWSC 859: protective jurisdiction with change of existing trust.

Complex oppression, trust and valuation proceedings settled shortly before long hearing 2018/19.

Complex disclaimer and related insolvency issues proceedings settled during preparation for long hearing 2020/21.

Current joint venture, fiduciary, oppression and valuation proceedings in preparation.

Advice on trust, charitable, administrative law, abuse and discipline matters as retained counsel for Presbyterian Church.

Selected decisions in NCAT:

Bondarek v NSW Land and Housing Corp [2018] NSWCATAP 299 (lead writer)

Capcelea v Owners SP48887 [2019] NSWCATCD 27

Owners SP 58068 v/ats Cooper [2019] NSWCATCD 62 and costs (unrep, 31.i.20 SC 19/18982, SC 19/27422), my primary decision upheld by NSWCA [2020] NSWCA 250, (2020) 103 NSWLR 160

Benjamin v Geneville Constructions PL [2021] NSWCATAP 138 (lead writer)

Palm Lake Resort PL v King and Metcalfe [2021] NSWCATAP 195 and 355 (lead writer)

Owners SP 36613 v/ats Doherty [2021] NSWCATAP 285 (lead writer)

Bajimaya and Paudel v Reward Homes PL [2021] NSWCATAP 297 (lead writer)

ADR qualifications and experience:

Reference in *Fearndale* mentioned above.

A number of auDA domain name determinations as single member and chair of 3-member panel decisions.

A number of private commercial arbitrations in commercial/securities, finance and IT. I have chaired and advised dispute panels for large private and educational organisations.

Mediated hundreds of hours in above commercial practice areas and also retail tenancy, farm debt, employment, personal injury and public law.

Numerous court-appointed District Court arbitrations while those lists were active, both commercial and Philadelphia.

LEADR and IAMA (now Resolution Institute (RI)) mediation and arbitration qualifications and IAMA grading 1993/94, NMAS mediation accreditation from inception; RI Advanced Mediator Panel; ADC panels; listed with Supreme Court, District Court, NSW Bar Association; appointed farm debt mediator.

Other experience:

Procurator (retained general counsel) Presbyterian Church of Australia (in NSW from 2002 and federally from 2004, WA from 2005, Queensland from 2006).

Several years as lead director (voluntary - during practice) of 5 Wentworth Chambers during substantial re-organisation, recruitment, expansion; currently a director of 5 Wentworth Chambers and most senior counsel in chambers

Former member NSW Bar Association professional conduct committee and *Bar News* committee; current member Bar ADR committee.

Founding and current editor, Journal of Banking and Finance Law and Practice from 1990.

Co-editor, Weaver and Craigie's The Law Relating to Banker and Customer in Australia (primary responsibility for re-issue of work in 2003).

Title editor and contributor, *Finance, Banking and Securities* in The Laws of Australia.

Former Banking and Finance editor of Australasian Dispute Resolution Service.

Personal property contributor, Australian Legal Dictionary.

Editor, Directions in Finance Law (Butterworths, 1990).

Author:

"Negotiability: Set-Offs and Counter-Claims", in Burton (ed), Directions in Finance Law (1990)

Australian Financial Transactions Law (Butterworths, 1991)

"Trusts", in Australian Commentary on Halsbury's Laws of England (1992)

"Bills of exchange and other negotiable instruments", in Halsbury's Laws of Australia (1992 and subsequent updates and reissues)

"Set-off", in The Laws of Australia (1993 and subsequent updates) and The Principles of Equity (1996 and 2nd ed 2002)

"Arbitration in Australia", in Comparative Law Yearbook of International Business 1994 (Kluwer/CILS, Vienna).

Articles, notes and seminar presentations on aspects of banking, finance, equity, property, corporate securities, commercial and corporate law, ADR, public law and private international law.

Director, Australian Elizabethan Theatre Trust (from 1994); member various research and charitable institutes; interests (as time permits) in world affairs and the arts, reading, writing, sport (rugby referee approx 15 years), languages, travel.

Education: Lindfield Public, Artarmon Opportunity Classes, scholarship to Trinity Grammar (dux of each year and various prizes), scholarships and prizes (including Geddes Prize and Roper Prize in Equity and Commercial Law) in law, English, history and government, University Medal in History, University of Sydney, Editorial Committee, Sydney Law Review, 1978-1979, Oxford University postgraduate bursary and Keble College awards.

Member: New South Wales Bar Association; Banking and Financial Services Law Association; Commercial Law Association (Fellow); Australian Institute of Administrative Law; Chartered Institute of Arbitrators (Fellow); Society of Trust and Estate Practitioners (STEP).