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Appointments: Senior Counsel for New South Wales (2007)  
Bar Association Approved Arbitrator  
Fellow Australian Centre for International Commercial Arbitration  
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Supreme Court Panel of Mediators (1998)

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Professional Experience: Independent Counsel since 1991  
Associate Coudert Brothers International Attorneys 1990  
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## Approach

Strategy is the key ingredient in dispute resolution. Arbitral Tribunals, like Courts, only make decisions on what is put before them and based on the way it is put before them. The process is adversarial. The parties, with their expert representatives, control what is put forward and how. Strategy makes a difference.

Strategy requires a rapid assessment of the best the client can achieve and how best to achieve that outcome, with the least cost and delay. Cases are won and lost in the characterisation of the dispute. Clients are rarely impressed by “interesting questions of law”, which are risky and prone to change. Cases need to be conceived and shaped to make them fit as nearly as possible within favourable existing law, and most importantly, to make them intuitively attractive to an Arbitrator or Judge. A case which unfolds in a way that its central contentions appear inherently plausible and “right”, is a case most likely to succeed.

Dispute resolution is not a passive journey. It requires constant assessment of the current options and best choice to fit the strategy. How to use the pleadings to raise or avoid issues. How to confine or expand the scope of compellable documents, both the client’s and opponent’s. How to make and resist claims for documents. Which witnesses to put on affidavit, what to include and how to ensure that their evidence is put admissibly but in a way which limits, rather than expands, effective cross examination.

During a hearing there is no substitute for an encyclopaedic knowledge of the rules of evidence and procedure, which need to be drawn on in the split second available for effective objection. Although most Arbitrations are not bound by strict rules of evidence, the same issues arise for determination. Knowledge of those rules in different legal systems and the approach to them in different cultural settings, is critical to formulating objections and submissions in a way which is familiar and attractive to an Arbitrator.

Many Arbitrations permit oral testimony, when there is no substitute for an experienced and natural cross examiner. The right answer in cross examination can destroy the opponent’s case instantly. Minute changes in the question, the sequence of questions or the inflexion of voice, can produce different answers. It cannot be read from a script. The answers you want do not just fall out.

The Arbitral process involves hundreds of strategic decisions from before the start to the very last word. More than 25 years of running cases has taught me what they are and how to make them effectively. Knowledge, strategy and breadth of experience make the difference.

### Areas of Practice

- \* Arbitration
- \* Banking
- \* Commercial
- \* Competition
- \* Construction
- \* Contracts
- \* Corporations
- \* Equity and Trusts
- \* Financial Services
- \* Insurance
- \* Intellectual property
- \* Media
- \* Mortgages
- \* Partnership
- \* Professional negligence
- \* Real property
- \* Regulatory
- \* Technology
- \* Trade Practices

### My Cases

As confidentiality is a key feature of Arbitration, it is not possible to detail my experience in Arbitrations, beyond stating that it extends across different regions, Arbitral bodies, legal systems and industry sectors or subject matters. The following list of earlier public litigation in the Superior Courts of Australia, is some indication of experience.

#### *Selected Major Cases*

##### **2009 to 2012 Public Transport Ticketing Corporation v Integrated Transit Solutions**

in the NSW Supreme Court and NSW Court of Appeal. Acted as Defendant's counsel on the nine digit claim brought by NSW Government in relation to the failed public transport ticketing project known as T-card. The Defence raised the doctrines of prevention, acquiescence and affirmation as well as allegations of improper purpose and breach of an implied obligation of good faith. The Defendant successfully challenged the NSW Government's claims to public interest immunity, and in a landmark judgment relating to Crown Immunity in the context of commercial contracts, the Court of Appeal gave the Defendant access to the Cabinet Minutes relating to the decision to terminate the Contract. Thereafter the proceedings settled for a small sum ahead of a hearing set down for 20 weeks.

##### **2004 to 2009 Ingot Capital v Macquarie Bank**

in the NSW Supreme Court, Court of Appeal and High Court of Australia. Acted as Plaintiffs' counsel in proceedings against directors and officers as well as underwriters, actuaries, auditors and lawyers acting in relation to the Prospectus for the ill fated New Cap Reinsurance float. After a hearing lasting almost a year, the Plaintiffs were unsuccessful at first instance, but successfully appealed to the Court of Appeal and special leave to appeal to the High Court of Australia was refused.

**2001 to 2003 HIH Insurance Royal Commission.** Acted as counsel for State of New South Wales in this long running public inquiry into the causes of the failure of the HIH Insurance Group.

**1996 to 1999 British Telecom v State of NSW & Telstra** in the Federal Court and High Court of Australia. Acted for the NSW Government which was a co-respondent with Telstra to a suit by British Telecom for misleading and deceptive conduct and abuse of market power in relation to the failed NSW Government Private Telephone Network. The NSW Government Cross Claimed for breach of contract and loss of the promised savings and then mounted a successful challenge to British Telecom's claims of client legal privilege. An appeal on the privilege question was heard by the High Court pursuant to special leave but judgment was never delivered as a favourable settlement was secured while judgment was reserved.

**1996 to 1997 Estate Mortgage litigation** in the Victorian Supreme Court (including Full Court) and the NSW Supreme Court. Acted as counsel for the London insurers of the Trustee which was sued by investors in the failed Estate Mortgage Trusts for breach of trust. Insurers disclaimed liability for material non-disclosure and dishonesty by the Trustee. The Applicants also sued Directors and Officers, related companies and lawyers. The hearing ran for six months before a favourable multi-party settlement was secured.

**1992 to 1996 Allstate Life Insurance v ANZ** in the Federal Court and Full Federal Court (and related suits in the NSW Supreme Court). Acted as Applicants' counsel for a group of holders of subordinated debentures issued in the USA by the Linter Group. Some of the Applicants had subscribed for the debentures pursuant to a US Prospectus, while others had purchased the debentures and rights to litigate, for a fraction of a cent after the failure of the Linter Group. The Respondents were a group of Australian and international Bank lenders to the Linter Group, together with a major US law firm and a major Australian law firm, which acted for Linter Group in relation to the Prospectus. The Applicants sued for misleading and deceptive conduct, breaches of US securities law, fraud and intentional interference with contractual relations. Over 30 major interlocutory and appeal judgments were issued before the Defendants settled with an eight digit sum being paid to the Applicants.

## Selected Practice Areas

**Administrative law cases** in the NSW Court of Appeal: *Martin v Kelly*; in the NSW Supreme Court: *Buckley v ILGA*, *Remondis Australia v Local Court of New South Wales*, *DEF v Trappett*, *Pogson v Liberal Party of NSW*, *Hinton v Lane*, *Australian Injury Helpline v WorkCover Authority of NSW*, *Maronis Holdings v Nippon Credit Australia*; in the AAT: *Exeter v ASC*, *Arthur v CASA*, *Uzu Air v CASA*, *Hevi Lift v CASA*; and in the ADT: *AHJ v NSW Trustee & Guardian*, *Bhugon v WorkCover*, *McKellar v WorkCover*, *Taylor v WorkCover*, *Turbaro v WorkCover* and *Ward v WorkCover*.

**Appeals** as sole or lead counsel, in the Full Federal Court: *First Equilibrium v Bluestone Property* [2013] FCAFC 108, 95 ACSR 654, *Wenkart v Pantzer* [2013] FCAFC 81, 215 FCR 470, *Commissioner of Taxation v Guy* [1996] FCA 438, 67 FCR 68, and in the NSW Court of Appeal: *Wu v Ling* [2016] NSWCA 322, *Doueih v Construction Technologies Australia* [2016] NSWCA 105, 92 NSWLR 247, *State of New South Wales v Public Transport Ticketing Corporation* [2011] NSWCA 60 and (No3) [2011] NSWCA 200, *Tomanovic v Global Mortgage Equity Corporation* [2011] NSWCA 104, *Evans v Evans* [2011] NSWCA 92, *Crawley v Short* [2009] NSWCA 410, 76 ACSR 286, *Martin v Kelly* [2009] NSWCA 105, *Valstar v Silversmith* [2009] NSWCA 80, *Hamzee v Bradstreet* [2008] NSWCA 191, *Walton v Efato* [2008] NSWCA 86, *Tomko v Palasty (No 2)* [2007] NSWCA 369, *Drury v Stone* [2000] NSWCA 45, *Nowell v Palmer* (1993) 32 NSWLR 574.

**Banker and Customer litigation** many cases as bank's counsel (Westpac, State Bank, ANZ, NAB, CBA) and as customer's counsel.

**Bankruptcy/insolvency cases** including, in the Full Federal Court: *First Equilibrium v Bluestone Property*, *Wenkart v Pantzer*; in the NSW Court of Appeal: *Tomko v Palasty (No2)*, *Wenkart v Pitman*; in the Federal Court: *Bluestone Property v First Equilibrium*, *Wenkart v Abignano*; and in the NSW Supreme Court: *Nudd v The Official Trustee in Bankruptcy*.

**Building and Construction Industry Security of Payment Act cases** in the NSW Supreme Court including *Over Fifty Mutual Friendly Society v Smithies*, *Siemens v Tolco* and *Lucchitti v Tolco*.

**Class actions** including *Helix (ICI) Chemical litigation* in Federal Court of Australia.

**Competition (Trade Practices Act, restraint of trade and infrastructure access) cases**

including: The Hospitality Group v Australian Rugby Union in the Federal Court, the Full Federal Court and special leave refused in the High Court; in the NSW Supreme Court: Ozer v Antrose, McHugh Holdings v Newtown Colonial Hotel, Donaldson Coal v Pacific National, Wambo Coal v Pacific National; and in the Independent Pricing and Regulatory Tribunal (NSW): Pacific National v Rail Infrastructure Corporation.

**Construction litigation** including Hughes Brothers v Trustees of Roman Catholic Church in the NSW Supreme Court and Court of Appeal, as well as numerous Arbitrations.

**Consumer and misleading conduct cases** including, in the Federal Court: Australian Water Holdings v Dack, KGL Health v Mechtler, Yum Restaurants Australia v The Acorn Group, McMullin v ICI Australia Operations, Soul Pattinson Telecommunications v Nortel; and in the NSW Supreme Court: Westpac v Billgate, NRMA v Morgan, Metcash Trading v Hourigan's IGA, Smack-on-time v Chubb Security and Pacific National v Goninan.

**Corporations Act cases** including, in the NSW Court of Appeal: Tomanovic v Global Mortgage Equities, Crawley v Short, Palasty v Tomko; in Federal Court: ASIC v Macro Realty Developments, Raffellini v Raffellini, Vatera v Meribal Interiors, ASIC v Corporate Inspirations, Sumitomo Mitsui Banking Corp v Sumitomo Mitsui Financial Group, Australand Properties v Oceania Property Corp, ASC v Bank Leumi Le-Israel, Talbot v NRMA; and in the NSW Supreme Court: Scottish & Colonial v Australian Power & Gas, Parkview Constructions v Tayeh, Carbotech v Yates, Khoury v JCS Technologies, Tyndall v AGP, Yates v Whitlam, Westpac v ITS Taxation Services, MGM Bailey Australia v Austin Enterprises, Re Leisure Developments (Qld), Hudson Investments v Australian Hardboards, Project Construction & Development v Ellison, Carter v Telepacific, Cole v Segenhoe, R v Corner and Cleary v Australian Co-operative Foods; and numerous ASIC banning order cases before a Delegate and the AAT.

**Equity/Commercial cases** including, in the NSW Court of Appeal: Wu v Ling, Doueihy v Construction Technologies Australia, Evans v Evans, Valstar v Silversmith, Drury v Stone; and in the NSW Supreme Court: Imaging Partners Online v Imaging Independently, Evans v Evans, Vitkek v Estate Homes, Sheahan v Slattery, AJG Capital v AJG Properties, AUSDOC Information Management v Central Document Storage, Nikolic v Nikolic, Consolidated Credit Network v Sonenco Apartments, Australian Medical Imaging v Marconi Medical Systems, Compuware v Chubb, Sydney Super Dome v Consolidated Press, Ishac v David Securities, Pavan v Ratnam, National Mutual Trustees v Permanent Trustee and Policylink v Watson.

**Evidence Act (client legal privilege) cases** including, in the High Court: Goldberg v Ng, BT (Australia) v NSW; in the NSW Supreme Court : Garratt's v Thangathura, Carbotech v Yates, Westpac v ITS Taxation Services and Watson v McLernon.

**Evidence Act (public interest immunity) cases** including, in the NSW Court of Appeal: State of New South Wales v Public Transport Ticketing Corporation, Goldberg v Ng; and in the NSW Supreme Court: Marsden v Amalgamated Television.

**Franchisor / Franchisee litigation and related ACCC litigation**, for the Chubb Security Group, Yum Restaurants (KFC, Pizza Hut etc), Wendy's and Arnold's Ribs and Pizza.

**Hotel Licensing** including Martin v Reserve Hotels (NSW Supreme Court and Court of Appeal), Buckley v ILGA, Hinton v Lane and McHugh v Newtown Colonial Hotel (NSW Supreme Court).

**Income tax cases** including, in the High Court: CT v Rowe, CT v McNeil; in the Full Federal Court: CT v Guy, Howell v CT, CT v Rowe, Thai v DCT; in the Federal Court: W Wehbe v CT, Newcastle Club v CT, CC(NSW) v CT, Warner Music Australia v CT, Thai v DCT; and in the AAT: Piggott v CT, Howell v CT and NT94/123-128 v CT.

**Insurance contracts cases** including Tower Australia v Farkas (NSW Court of Appeal) and the Estate Mortgage Litigation.

**Intellectual property cases** including Trade Marks: Hayes v John S Hayes & Associates, Gardenia Overseas v The Garden Company, Johnson & Johnson v Dermatech; Copyright: Health Communications Network v Pro Medicus, Universal Studios v Minotaur, Daimer Sports v Aware Industries, Aristocrat Technologies Australia v Impact Gaming; and Patent: Encore v Plastec, as well as numerous Trade Mark oppositions.

**Inquiries** including two ICAC Public Inquiries into Corruption in Workplace Accreditation and numerous appearances for executives and politicians at private hearings before the Commissioner or a Delegate.

**Media and communications law cases** including in the NSW Supreme Court: R v John Laws (Criminal Jury Trial), Darby v Oxford University Press and Hall v Hannaford (Defamation).

**Professional negligence cases** including, in the NSW Court of Appeal: Walton v Efato, Hamze v Bradstreet; and in the NSW Supreme Court: Cahill v Ferrier, Molnar v Stacks.

**Real property cases** including, in the NSW Supreme Court: Young v Hawatt, Mitchell v Boutagy, Vitek v Estate Homes, Szozda v NSW Trustee & Guardian, Pinlas v Bankstown Airport, Helicopters v Bankstown Airport and Bankstown Airport v Airking.

**Regulatory compliance and investigations** (including insider trading, whistle blower and banning order cases) for numerous public companies and for senior executives being investigated. Large scale health and safety penalty cases such as in the NSW Supreme Court: Remondis Australia v Local Court of New South Wales.

**Schemes of Arrangement** including Dairy Farmers and NSW Grains Board (NSW Supreme Court); Metlife and Vatera v Merribal (Federal Court).

**Succession and Powers of Attorney cases** including, in the Court of Appeal: Nowell v Palmer; and in the NSW Supreme Court: Szozda v Szozda, Parker v Higgins, Palmer v Nowell and Scott MacRae Investments v Baylily.

**Technology cases** including, in the Federal Court: BT Australia v State of NSW; and in the NSW Supreme Court: Compuware v Chubb and Public Transport Ticketing Corporation v Intergrated Transit Solutions.

**Trade Practices (price fixing) cases** including, in the Full Federal Court: ACCC v FFE Building Services; in the Federal Court (NSW): ACCC v FFE Building Services; in the Federal Court (Qld): ACCC v Tyco Australia; and in the Federal Court (SA): ACCC v FFE Building Services.