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David Birch



David has a BA and LLB from the University of Sydney, including being awarded a University Medal in Philosophy. He also has an LLM from the University of Cambridge and was awarded the Chancellor's Medal for English Law. David was awarded the Christopher Gee QC Memorial Prize for Advocacy and Evidence for the May 2016 Bar Practice Course.

David principally practises in commercial and public law. David has appeared led in the High Court, and has appeared led and unled in various federal and New South Wales courts and tribunals.

David is a contributor to Robson's Annotated Corporations Law.

Prior to coming to the Bar, David practised as a solicitor in the Commercial Litigation group at Clayton Utz for 4 years and was the tipstaff for Justice J C Campbell in the NSW Court of Appeal.

David has also been a casual tutor at the University of Sydney in public law, constitutional law and equity.

Contact details:

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Admission to the Bar:

2016 (New South Wales)
Christopher Gee QC Memorial Prize for Evidence and Advocacy

Principal areas of practice:

David accepts briefs in all areas, including:

- Commercial
- Administrative & public law
- Constitutional law
- Equity
- Corporations
- Banking
- Insolvency / administration
- Competition
- Insurance

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- Trade practices
- Real property

Qualifications:

LLM (Class I) (Cantab)

Chancellor's Medal in English Law
Justice Peter Hely Scholarship (USyd)
Henry Arthur Holland Studentship in Law; Lizette Bentwich Prize; Senior Scholarship (Trinity College)

BA (Hons I) / LLB (Hons I) (USyd)

University medal (philosophy)
Prizes including Nancy Gordon Smith Memorial Prize; John Geddes Prize for Equity; Aaron Levine Prize for Proficiency in Criminal Law; E.D. Roper Memorial Prize No 2 for Equity and Corporate Law.

Selected appearances as counsel

HCA

Thorne v Kennedy [2017] HCA 49

Grounds for setting aside financial agreement under *Family Law Act* on basis of unconscionability, undue influence or duress; led by R Lethbridge SC and G Eldershaw

NSWCA

Racing NSW v Lewin [2018] NSWCA 93

Validity of Racing Appeals Tribunal Regulation 2015; led by J Gleeson SC

Hunter's Hill Council v Minister for Local Government [2017] NSWCA 188

Judicial review of proposal for amalgamation of local government areas; led by N Hutley SC, J Hutton and T O'Brien

AMP Life Ltd v AMP Capital Funds Management Ltd [2016] NSWCA 176; 115 ACSR 421; 312 FLR 391

Construction of s 253E *Corporations Act*; led by A Leopold SC and E Holmes

NSWSC

Gupta v Fordham Laboratories Pty Ltd [2018] NSWSC 551

Specific performance of an equitable lease arising following exercise of an option; led by P McEwen SC

Lewin v Racing NSW [2018] NSWSC 269

Validity of Racing Appeals Tribunal Regulation 2015; led by P Braham SC

Sharma v Segal [2017] NSWSC 867

Contractual construction; led by S Lawrance

Healthcare Australia Pty Ltd v Randstad Pty Limited [2016] NSWSC 1407

Restraint clause in contract for sale of business; led by E Holmes

Re AMP Capital Funds Management Limited (in its capacity as responsible entity of the AMP Capital China Growth Fund) [2016] NSWSC 986; 116 ACSR 198; 310 FLR 382

Construction of s 253E *Corporations Act*; led by A Leopold SC

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FCA

BrisConnections Finance Pty Limited (Receivers and Managers Appointed) v Arup Pty Limited [2017] FCA 1268; [2017] FCA 590

Claim by the receivers and managers of BrisConnections Finance Pty Ltd against Arup alleging misleading and deceptive conduct in relation to traffic forecasts (settled during trial in 2017; interlocutory decisions include admissibility of jointly authored expert report and implied waiver of legal professional privilege); led by G Rich SC and J Arnott

Hardy v Reckitt Benckiser (Australia) Pty Limited (No 2) [2017] FCA 785; [2017] FCA 341

Class action alleging misleading and deceptive conduct in relation to Nurofen advertising (interlocutory decisions include class closure applications); led by N Hutley SC and S Lawrance

WDR Delaware Corporation v Hydrox Holdings Pty Ltd; In the Matter of Hydrox Holdings Pty Ltd [2016] FCA 1164

Claim in relation to the joint venture agreement for the Masters business (arbitration; Federal Court proceedings for stay pursuant to arbitration clause); led by N Hutley SC and S Lawrance

NSWLEC

Woollahra Council v Minister for Local Government [2016] NSWLEC 86; 218 LGERA 65; *Hunter's Hill Council v Minister for Local Government* [2016] NSWLEC 124

Judicial review of proposal for amalgamation of local government areas; led by N Hutley SC, J Hutton and T O'Brien

NCAT

Park v Transport for NSW [2018] NSWCATAD 82

Administrative review - unled

DFD v New South Wales Education Standards Authority [2018] NSWCATAD 48

Administrative review - unled

Professional background:

Solicitor, Clayton Utz (2012 –2016)

Commercial litigation, working on matters including *Novartis Pharmaceuticals Australia Pty Ltd v Bayer Australia Limited* [2013] FCA 929, [2013] FCA 1201, [2013] FCA 1323; *HRX Pty Ltd v Scott* [2013] NSWSC 451. Secondments to Commonwealth Bank of Australia and Cochlear Ltd.

Tipstaff to Justice J C Campbell (2011)

New South Wales Court of Appeal

Tutor, University of Sydney (2011-2016)

Public law, constitutional law and equity

Publications:

UK Supreme Court Yearbook, Managing Editor

D Birch, "Validity of Asymmetric Jurisdiction Agreements in England, Australia and New Zealand" (2016) 5 *Journal of Civil Litigation and Practice* 96

D Birch & A Zheng, "Private Law" [2015] *UK Supreme Court Yearbook* 332

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D Birch & A Zheng, "Private Law" [2014] *UK Supreme Court Annual Review* 283

D Birch & A Zheng, "Cutting the Gordian Knot or entangling it further?" (2012) 86 *Australian Law Journal* 748

D Birch, "The Cleaver principle: Re-uniting mutual wills and secret trusts" (2011) 5 *Journal of Equity* 288

D Birch, "The slippery nature of a constitutional guarantee: acquisition of water rights in *ICM Agriculture v Commonwealth*" (2011) 13 *Constitutional Law and Policy* 58

D Birch, "Tabet v Gett: The High Court's own lost chance of a better outcome" (2011) 19 *Tort Law Review* 76

D Birch, "The Justifiability of Criminal Responsibility for Negligent Conduct" (2010) *Pandora's Box* 48 – 1st place in 2010 Australian Legal Philosophy Students' Association National Essay Competition