

# Perry Herzfeld

## Professional details

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<b>Admitted to practice:</b>	26 April 2006
<b>Signed Bar Roll:</b>	19 November 2009
<b>Qualifications:</b>	BSc LLB (Hons) (Melb) LLM (Melb)
<b>Previous legal positions:</b>	Associate to the Honourable Justice Susan Crennan AC, High Court of Australia (2008–2009)  Allens Arthur Robinson, Articled Clerk (2005–2006), Lawyer (2006–2008)  Reporter for the <i>Commonwealth Law Reports</i> (2010–2016)

## Contact details

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	<b>SYDNEY</b>	<b>MELBOURNE</b>
<b>Chambers:</b>	Eleven Wentworth Chambers Level 11, 174–180 Phillip Street SYDNEY NSW 2000	Ninian Stephen Chambers Level 38, 140 William Street MELBOURNE VIC 3000
<b>Tel:</b>	02 8231 5057	03 9225 8689
<b>Email:</b>	pherzfeld@elevenwentworth.com	pherzfeld@vicbar.com.au
<b>Fax:</b>	02 9232 7626	03 9225 7728
<b>Clerk:</b>	Zach Rymer Eleven Wentworth Chambers Level 11, 174–180 Phillip Street SYDNEY NSW 2000 02 9232 7609	John Dever (List D) Owen Dixon Chambers 205 William Street MELBOURNE VIC 3000 03 9225 7999

## Publications

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### Books

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*Statutory Interpretation Principles* (2014, Thomson Reuters) (with Thomas Prince)

*Interpretation and Use of Legal Sources* (2013, Thomson Reuters) (with Thomas Prince and Stephen Tully)

### Articles

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“Video Link Evidence and Foreign Government Consent: *Joyce v Sunland Waterfront (BVI) Ltd* [2011] FCAFC 95; (2011) 195 FCR 213” [Summer 2011–2012] *NSW Bar News* 29

“Lost Policy? Insurer Bears the Onus” [September 2011] *Law Institute Journal* 32

“Limitation of Actions and Price-Fixing Cartels” (2010) 84 *Australian Law Journal* 254

“Still a Troublesome Area: Legislative and Common Law Restrictions on Indemnity and Insurance Arrangements Effected by Companies on Behalf of Officers and Employees” (2009) 27 *Company and Securities Law Journal* 267

“Prudent Anticipation? The Arbitration of Public Company Shareholder Disputes” (2008) 24 *Arbitration International* 297

“Corporations, Defamation and General Damages: Back to First Principles” (2005) 10 *Media & Arts Law Review* 135

“Constitutional Limitations on State Choice of Law Statutes” (2005) 16 *Public Law Review* 188

## Education

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**Post-graduate:** LLM (Melb)

**Graduate:** BSc LLB (Hons) (Melb)

Placed second on the Final Law Honours List (Spero Wilson Memorial Scholarship)

Harrison Moore Exhibition for Advanced Constitutional Law (placed first in subject)

Full Faculty Scholarship from the Faculty of Law

- Debating:** World Debating Championships (2003) — Runner-up; Fourth ranked speaker  
AustralAsian Debating Championships (2002) — Winner; Eighth ranked speaker
- Mooting:** Governor General’s Moot (2003, 2004) — Winner; Best Counsel  
Melbourne University Senior Mooting Competition (2003) — Winner

## Recent cases

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### Unled

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### Appeals

*Morgan v District Court of New South Wales* [2017] NSWCA 105; (2017) 319 FLR 463; 345 ALR 621 — administrative law, judicial review, criminal law, review of District Court on appeal from Local Court, unled for the second respondent (State of New South Wales)

*Minister for Immigration and Border Protection v SZVFW* [2017] FCAFC 33; (2017) 248 FCR 1 — administrative law, migration, unled for the appellant

*ASP15 v The Commonwealth* [2016] FCAFC 145; (2016) 248 FCR 372; 155 ALD 41 — administrative law, constitutional law, migration, unled for the respondents

*Attia v Caird Seven Pty Ltd* [2016] NSWCA 271 — contract, specific performance, unled for the respondent

*Waterhouse v Independent Commission Against Corruption (No 2)* [2016] NSWCA 133 — administrative law, judicial review, bias, Independent Commission Against Corruption, unled for the respondents

*SZVCP v Minister for Immigration and Border Protection* [2016] FCAFC 24; (2016) 238 FCR 15 — administrative law, migration, unled for the first respondent

*Yasmin v Attorney-General (Cth)* [2015] FCAFC 145; (2015) 236 FCR 169; 330 ALR 570 — administrative law, prerogative of mercy, unled for the appellant

*Inghams Enterprises Pty Ltd v Sok* [2014] NSWCA 217; (2014) 87 NSWLR 198 — administrative law, workers’ compensation, unled for the WorkCover Authority of New South Wales as *amicus curiae*

## First instance

*DLF16 v Minister for Immigration and Border Protection* [2017] FCA 1072 — administrative law, judicial review, migration, unled for the respondent

*Sharkey v Minister administering the Water Management Act 2000* [2017] NSWLEC 47 — statutory interpretation, unled for the respondent

*ARJ17 v Minister for Immigration and Border Protection* [2017] FCA 263 — administrative law, judicial review, jurisdiction, migration, unled for the respondent

*LFDB v SM (No 3)* [2017] FCA 80 — private international law, registration of foreign judgments, *Trans-Tasman Proceedings Act 2010* (Cth), unled for the applicants

*Dean v Antunes* [2016] NSWSC 1845 — trusts, leave to amend, unled for the defendant

*Caird Seven Pty Ltd v Attia* [2016] NSWSC 1088; *(No 2)* [2016] NSWSC 1217; *(No 3)* [2016] NSWSC 1452; (2016) 92 NSWLR 457; *(No 4)* [2016] NSWSC 1750— contract, specific performance, enforcement of orders, receivers, unled for the plaintiff

*Hunter v Minister for Corrections* [2015] NSWSC 1930 — administrative law, validity of regulations, corrective services, unled for the defendant

*Monteiro v State of New South Wales (No 2)* [2015] NSWSC 1901 — administrative law, judicial review, corrective services, unled for the third defendant (Commissioner of Corrective Services)

*Obeid v Independent Commission Against Corruption* [2015] NSWSC 1891 — administrative law, judicial review, Independent Commission Against Corruption, unled for the third defendant (David Ipp QC)

*Mandie v Memart Nominees Pty Ltd* [2015] VSC 446; *Mandie v Memart Nominees Pty Ltd (No 2)* [2015] VSC 622 — trusts, exclusion of beneficiaries, leave to amend, costs, unled for the defendant

*LFDB v SM* [2015] FCA 725; (2015) 239 FCR 262 — private international law, registration of foreign judgments, *Trans-Tasman Proceedings Act 2010* (Cth), unled for the applicants

*McKane v Commissioner of Corrective Services* [2015] NSWSC 737 — administrative law, judicial review, corrective services, unled for the defendants

*O'Hara v Independent Liquor & Gaming Authority* [2014] NSWSC 880 — administrative law, judicial review, bias, unled for the second defendant (the Attorney-General for New South Wales)

*Hall v Hillview Ltd t/as Outrigger Reef Fiji Resort* [2014] NSWSC 377 — private international law, *forum non conveniens*, unled for the defendant

*Application of Uncle's Joint Pty Ltd* [2014] NSWSC 321; (2014) 12 ASTLR 487 — trusts, judicial advice, unled for the plaintiffs

*A (by his tutor Brett Collins) v Mental Health Review Tribunal (No 4)* [2014] NSWSC 31 — administrative law, judicial review, mental health, unled for the second respondent (Justice Health & Forensic Mental Health Network)

## Led

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### High Court

*Re Canavan* [2017] HCA 45; (2017) 91 ALJR 1209 — constitutional law, parliamentary disqualification, with Stephen Donaghue QC, Mark Costello and Julia Watson, for the Attorney-General of the Commonwealth (intervening)

*Brown v Tasmania* [2017] HCA 43; (2017) 91 ALJR 1089 — constitutional law, implied freedom of political communication, with Stephen Donaghue QC and Julia Watson, for the Attorney-General of the Commonwealth (intervening)

*Plaintiff S195/2016 v Minister for Immigration and Border Protection* [2017] HCA 31; (2017) 91 ALJR 857; 346 ALR 181 — constitutional law, migration, with Stephen Donaghue QC, Geoffrey Kennett SC and Anna Mitchelmore for the first and second defendants

*Plaintiff M96A/2016 v The Commonwealth* [2017] HCA 16; (2017) 91 ALJR 579; 343 ALR 362; 155 ALD 224 — constitutional law, migration, with Stephen Donaghue QC for the defendants

*Attwells v Jackson Lalic Lawyers Pty Ltd* [2016] HCA 16; (2016) 259 CLR 1; 90 ALJR 572; 331 ALR 1 — advocates' immunity, with Andrew Bell SC for the respondent

*Plaintiff M68-2015 v Minister for Immigration and Border Protection* [2016] HCA 1; (2016) 257 CLR 42; 90 ALJR 297; 327 ALR 369 — constitutional law, executive power, migration, with Justin Gleeson SC, Geoffrey Kennett SC and Anna Mitchelmore for the first and second defendants

*Queensland v Congoo* [2015] HCA 17; (2015) 256 CLR 239; 89 ALJR 538; 320 ALR 1; 147 ALD 1 — native title, extinguishment, with Sturt Glacken QC for the first respondents

*Plaintiff S297/2013 v Minister for Immigration and Border Protection* [2015] HCA 3; (2015) 255 CLR 231; 89 ALJR 292; 316 ALR 161; 143 ALD 553 — administrative law, migration, with Stephen Donaghue QC for the defendants

*CPCF v Minister for Immigration and Border Protection* [2015] HCA 1; (2015) 255 CLR 514; 89 ALJR 207; 316 ALR 1; 143 ALD 443 — administrative law, constitutional law, executive power, migration, with Justin Gleeson SC, Stephen Donaghue QC and Chris Horan for the defendants

*Tajjour v New South Wales; Hawthorne v New South Wales; Forster v New South Wales* [2014] HCA 35; (2014) 254 CLR 508; 88 ALJR 860; 313 ALR 221; 241 A Crim R 381 — constitutional law, implied freedom of political communication, with Stephen McLeish SC for the Attorney-General for Victoria (intervening)

*Plaintiff S4/2014 v Minister for Immigration and Border Protection* [2014] HCA 34; (2014) 253 CLR 219; 88 ALJR 847; 312 ALR 537 — administrative law, migration, with Stephen Donaghue QC for the defendants

*Plaintiff S297/2013 v Minister for Immigration and Border Protection* [2014] HCA 24; (2014) 255 CLR 179; 88 ALJR 722; 309 ALR 209; *Plaintiff M150 of 2013 v Minister for Immigration and Border Protection* [2014] HCA 25; (2014) 255 CLR 199; 88 ALJR 735; 309 ALR 225 — administrative law, migration, with Stephen Donaghue QC for the defendants

### **Intermediate appellate**

*Re Kelvin* [2017] FamCAFC 258 — family law, constitutional law, case stated, transgender children, with Kate Richardson SC for the Attorney-General of the Commonwealth (intervening)

*Kaldas v Barbour* [2017] NSWCA 275 — administrative law, constitutional law, privative clauses, with Jeremy Kirk SC and Celia Winnett for the first and second defendants

*Minister for Immigration and Border Protection v ARJ17* [2017] FCAFC 125; (2017) 250 FCR 31; 347 ALR 477 — administrative law, statutory interpretation, with Geoffrey Kennett SC for the appellant

*Mandie v Memart Nominees Pty Ltd* [2017] VSCA 177 — trusts, exclusion of beneficiaries, bias, with Alan Archibald QC for the respondent

*People for the Plains Incorporated v Santos NSW (Eastern) Pty Ltd* [2017] NSWCA 46; (2017) 220 LGERA 181 — administrative law, judicial review, environment and planning, mining, with Richard Lancaster SC for the third respondent (Secretary, NSW Department of Industry)

*Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic* [2017] NSWCA 28 — charitable trusts, with Sturt Glacken QC for the first and second respondents

*Minister for Indigenous Affairs v MJD Foundation Ltd* [2017] FCAFC 37; (2017) 250 FCR 31 — administrative law, statutory interpretation, with Geoffrey Kennett SC for the appellant

*Board of Studies, Teaching and Educational Standards v Vandenvoorenkamp* [2016] NSWCA 268 — constitutional law, inconsistency of federal and state laws, administrative law, judicial review, education, with Noel Hutley SC for the appellant

*Jones v Treasury Wine Estates Ltd* [2016] FCAFC 59; (2016) 241 FCR 111 — private international law, anti-suit injunction, overseas depositions, with Andrew Bell SC for the respondent

*Chubb Insurance Company of Australia Ltd v Robinson* [2016] FCAFC 17; (2016) 239 FCR 300; 19 ANZ Ins Cas ¶62-096 — insurance, interpretation, with Neil Young QC for the appellant

*Mandie v Memart Nominees Pty Ltd* [2016] VSCA 4 — trusts, exclusion of beneficiaries, leave to amend, with Alan Archibald QC for the respondent

*Independent Commission Against Corruption v Kinghorn* [2015] NSWCA 342; (2015) 90 NSWLR 682 — reopening final orders, with Geoffrey Watson SC for the applicant

*Director of Public Prosecutions v Downer EDI Works Pty Ltd* [2015] VSCA 287; (2015) 47 VR 688; 254 IR 447 — criminal law, case stated, occupational health and safety, implied repeal, with Stephen Donaghue QC for the Director of Public Prosecutions

*Birla Nifty Pty Ltd v International Mining Industry Underwriters Ltd* [2014] WASCA 180; (2014) 47 WAR 522; 18 ANZ Ins Cas ¶62-041 — insurance, interpretation, estoppel, with Geoffrey McArthur QC for the respondent

*Murphy v Victoria* [2014] VSCA 236; (2014) 45 VR 119; 313 ALR 546; 289 FLR 337 — misleading or deceptive conduct, injunctions, separate questions, with Mark Moshinsky QC and Kathleen Foley for the first respondent

*Cromwell Property Securities Ltd v Financial Ombudsman Service Ltd* [2014] VSCA 179; (2014) 313 ALR 469; 288 FLR 374 — contract, administrative law, external dispute resolution scheme, with David Batt QC for the appellant

*Mandie v Memart Nominees Pty Ltd* [2014] VSCA 181 — trusts, beneficiaries' entitlement to information, with Ian Hardingham QC for the respondent

*Financial Services Council Ltd v Industry Super Australia Pty Ltd* [2014] FCAFC 92; (2014) 222 FCR 455 — administrative law, statutory interpretation, superannuation, with Jeremy Kirk SC for the applicant

*Smith v Gould* [2014] VSCA 138 — division of property of *de facto* partners, with Simon Wilson QC for the respondent

*Prince v Malouf* [2014] NSWCA 12; (2014) Aust Torts Reports ¶82-157 — defamation, qualified privilege, with Terry Tobin QC for the appellant

### **First instance**

*CrownBet Pty Ltd v New South Wales* [2017] NSWSC 1470 — equity, declarations, gambling, with Bret Walker SC for the plaintiff

*CFMEU v Director of the Fair Work Building Industry Inspectorate* [2017] FCA 1166 — industrial law, with Michael Wheelahan QC and Matthew Follett for the respondent

*BB Australia Pty Ltd v Danset Pty Ltd* [2017] NSWSC 1307 — contract, inducing breach of contract, trusts, with Kelly Rees SC for the plaintiff



*Blairgowrie Trading Ltd v Allco Finance Group Ltd (Receivers & Managers Appointed) (In Liq) (No 3)* [2017] FCA 330; (2017) 343 ALR 476; 118 ACSR 614 — class actions, settlement approval, with Jeremy Kirk SC for the third respondent (KPMG)

*Linfox Australia Pty Ltd v Transport Accident Commission* [2016] VSC 592; (2016) 78 MVR 177 — transport accidents, personal property, statutory construction, with Michael Wheelahan QC for the defendant

*Obeid v Ipp* [2016] NSWSC 1376; (2016) 338 ALR 234 — tort, misfeasance in public office, administrative law, judicial review, Independent Commission Against Corruption, with Bret Walker SC and Stephen Free for the first defendant.

*People for the Plains Incorporated v Santos NSW* [2016] NSWLEC 93 — administrative law, judicial review, environment and planning, mining, with Richard Lancaster SC for the third respondent (Secretary, NSW Department of Industry)

*Mandie v Memart Nominees Pty Ltd (No 3)* [2016] VSC 267 — trusts, exclusion of beneficiaries, bias, with Alan Archibald QC for the defendant

*Carillion Construction Ltd v AIG Australia Ltd* [2016] NSWSC 495; (2016) 19 ANZ Ins Cas ¶62-115 — insurance, deed of release, limitation of actions, with Geoff McArthur QC for the defendant

*Bishop Irinej Dobrijevic v Free Serbian Orthodox Church, Diocese for Australia & New Zealand Property Trust (No 2)* [2015] NSWSC 1976 — charitable trusts, with Sturt Glacken QC for the plaintiffs

*Blairgowrie Trading Ltd v Allco Finance Group Ltd (Receivers & Managers Appointed) (In Liq)* [2015] FCA 811; (2015) 325 ALR 539; 108 ACSR 1 — class actions, common fund application, with Jeremy Kirk SC for the third respondent (KPMG)

*Stock v NM Superannuation Pty Ltd* [2015] FCA 612 — superannuation, with Ian Hardingham QC for the applicant

*Metgasco Limited v Minister for Resources and Energy* [2015] NSWSC 453 — administrative law, judicial review, mining, with Jeremy Kirk SC for the defendants

*Re Mandie; Mandie v Danos* [2015] VSC 55 — family provision, costs, with Jeremy Ruskin QC for the defendant

*Darkinjung Local Aboriginal Land Council v Wjyong Coal Pty Ltd (No 2)* [2014] NSWLEC 71; (2014) 202 LGERA 223 — administrative law, statutory interpretation, Aboriginal land rights, with Jeremy Kirk SC for the applicant

*Mandie v Memart Nominees Pty Ltd* [2014] VSC 290; (2014) 42 VR 325 — trusts, beneficiaries' entitlement to information, with Ian Hardingham QC for the defendant

*Ubertini v Saeco International Group SpA (No 4)* [2014] VSC 47; (2014) 98 ACSR 138 — corporations, oppression, with Philip Solomon SC for the first defendant

*Video Ezy International Pty Ltd v Sedema Pty Ltd* [2014] NSWSC 143 — franchise contract, with Philip Durack SC for the plaintiffs

*Gondarra v Minister for Families, Housing, Community Services and Indigenous Affairs* [2014] FCA 25; (2014) 220 FCR 202; 311 ALR 41; 141 ALD 106 — administrative law, Aboriginal land rights, with Stephen Lloyd SC for the first respondent