

Perry Herzfeld

Professional details

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

Contact details

	SYDNEY	MELBOURNE
Chambers:	Eleven Wentworth Chambers Level 11, 174–180 Phillip Street SYDNEY NSW 2000	Ninian Stephen Chambers Level 38, 140 William Street MELBOURNE VIC 3000
Tel:	02 8231 5057	03 9225 8689
Email:	pherzfeld@elevenwentworth.com	pherzfeld@vicbar.com.au
Fax:	02 9232 7626	03 9225 7728
Clerk:	Andrew Laughlin 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

Books

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

“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

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

Selected cases

Unled

Appeals

ASP15 v The Commonwealth [2016] FCAFC 145 — 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*

QBE Insurance (Australia) Ltd v Miller [2013] NSWCA 442; (2013) 67 MVR 322 — administrative law, motor accidents, unled for the Attorney-General for New South Wales as *amicus curiae*

Collection Point Pty Ltd v Commissioner of Taxation [2013] FCAFC 67; (2013) 212 FCR 184; 95 ATR 334 — freedom of information, statutory interpretation, unled for the appellant

First instance

Caird Seven Pty Ltd v Attia [2016] NSWSC 1088 — contract, specific performance, 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)

Helen M Sedman & Associates Pty Ltd v Morgan Stanley Wealth Management Australia Pty Ltd [2013] VSC 549 — cross-vesting, *forum non conveniens*, exclusive jurisdiction clause, unled for the defendant

Kostka v The Ukrainian Council of NSW Inc [2013] NSWSC 222 — charitable trusts, unled for the ninth defendant (the Attorney-General for New South Wales)

Subramaniam v Mental Health Review Tribunal [2012] NSWSC 918; (2012) 83 NSWLR 171; 268 FLR 243 — constitutional law, inconsistency of federal and state laws, statutory interpretation, unled for the second defendant (the South Western Sydney Local Health District) and the Attorney-General for New South Wales (intervening)

Collection Point Pty Ltd v Commissioner of Taxation [2012] FCA 720; (2012) 129 ALD 263; 89 ATR 322 — freedom of information, statutory interpretation, unled for the applicant

CCPI Holdings Pty Ltd v Hose [2011] VSC 34 — corporations, compulsory acquisition of shares, unled for the applicant

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High Court

Attwells v Jackson Lalic Lawyers Pty Ltd [2016] HCA 16; (2016) 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) 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 Congo [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

Director of Public Prosecutions (Cth) v JM [2013] HCA 30; (2013) 250 CLR 135; 87 ALJR 836; 298 ALR 615; 94 ACSR 1; 228 A Crim R 570 — constitutional law, judicial power, criminal procedure, case stated, with Stephen McLeish SC for the Attorney-General for Victoria (intervening)

Betfair Pty Ltd v Racing New South Wales [2012] HCA 12; (2012) 249 CLR 217; 86 ALJR 418; 286 ALR 221; *Sportsbet Pty Ltd v New South Wales* [2012] HCA 13; (2012) 249 CLR 298; 86 ALJR 446; 286 ALR 404 — constitutional law, freedom of interstate trade, with Stephen McLeish SC and Stephen Donaghue for the Attorney-General for Victoria (intervening)

Hogan v Hinch [2011] HCA 4; (2011) 243 CLR 506; 85 ALJR 398; 275 ALR 408 — constitutional law, *Kable* principle, implied freedom of political communication, with Gavin Silbert SC and Brett Sonnet for the informant

Plaintiff M61/2010E v The Commonwealth; Plaintiff M69 of 2010 v The Commonwealth [2010] HCA 41; (2010) 243 CLR 319; 85 ALJR 133; 272 ALR 14; 123 ALD 244 — constitutional law, validity of personal non-compellable power, administrative law, migration, with Stephen McLeish SC and Lisa De Ferrari for Plaintiff M69 of 2010

Dickson v The Queen [2010] HCA 30; (2010) 241 CLR 491; 84 ALJR 635; 270 ALR 1; 205 A Crim R 94 — constitutional law, inconsistency of federal and state laws, with Tom Danos for the appellant

Intermediate appellate

Board of Studies, Teaching and Educational Standards v Vandenbergkamp [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 Donner EDI Works Pty Ltd [2015] VSCA 287; (2015) 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

The Commonwealth v Vero Insurance Ltd [2013] FCAFC 152; (2013) 306 ALR 182; 18 ANZ Ins Cas ¶62-003 — insurance and reinsurance, interpretation, limitation of actions, with Geoffrey McArthur SC for the respondent

ML v Australian Securities and Investments Commission [2013] NSWCA 109; 300 ALR 764; 94 ACSR 23; 276 FLR 14 — corporations, stay of disciplinary proceedings, federal jurisdiction, with Neil Williams SC for the first respondent

Primary Health Care Ltd v Giakalis [2013] VSCA 75; (2013) 38 VR 165; 63 MVR 218 — transport accidents, workers' compensation, statutory interpretation, case stated, with Philip Solomon SC for the defendant

Transport Accident Commission v Cuthbertson [2013] VSCA 29 — transport accidents, with Ross Gillies QC for the appellant

Victoria v Sportsbet Pty Ltd [2012] FCAFC 143; (2012) 207 FCR 8; 294 ALR 113 — constitutional law, freedom of interstate trade, with Stephen McLeish SC and Stephen Donaghue for the appellant

Pantazis v The Queen [2012] VSCA 160; (2012) 38 VR 446; 268 FLR 121; 217 A Crim R 31 — constitutional law, inconsistency of federal and state laws, with Stephen McLeish SC for the Attorney-General for Victoria (intervening)

Bezgin v Phi [2012] VSCA 161; (2012) 61 MVR 342 — transport accidents, serious injury application, with Philip Solomon SC for the respondents

John Holland Group Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2011] VSCA 396; (2011) 34 VR 635; 255 FLR 122; 214 IR 343 — contract, constitutional law, acquisition of property, with Michael Wyles SC for the appellant

First instance

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

Obeid v Ipp [2016] NSWSC 1376 — 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, 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 Wuyong 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

470 St Kilda Road Pty Ltd v Robinson [2013] FCA 1420; (2013) 308 ALR 411; 18 ANZ Ins Cas ¶62-008 — insurance, interpretation, with Neil Young QC for the cross-respondent (Chubb Insurance Co of Australia Ltd)

Birla Nifty Pty Ltd v International Mining Industry Underwriters Ltd [2013] WASC 386; (2013) 18 ANZ Ins Cas ¶61-993 — insurance, interpretation, estoppel, with Geoffrey McArthur SC for the defendant

Groves v Groves [2013] QSC 277 — guarantee, married woman's equity, undue influence, unconscionable conduct, with Jeremy Kirk SC and Edward Goodwin for the second and fourth defendants (Citigroup Global Markets Australia Pty Ltd and Citibank NA)

Cromwell Property Securities Ltd v Financial Ombudsman Service Ltd [2013] VSC 333 — contract, administrative law, external dispute resolution scheme, with David Batt SC for the plaintiff/applicant

Seven Network (Operations) Ltd v Brown [2013] NSWSC 372 — contract, restraint of trade, entertainment, with Alan Sullivan QC for the plaintiff

ML v Australian Securities and Investments Commission [2013] NSWSC 283; (2013) 93 ACSR 332; 276 FLR 1; *Levi v Australian Securities and Investments Commission (No 2)* [2013] NSWSC 932; (2013) 277 FLR 461 — corporations, stay of disciplinary proceedings, federal jurisdiction, costs, suppression orders, with Neil Williams SC for the first defendant

Smith v Gould [2012] VSC 461 — division of property of *de facto* partners, with Simon Wilson QC for the defendant

Myer Stores Ltd v State Fire Commission [2012] TASSC 54 — statutory immunity from suit, statutory interpretation, with Neil Young QC and Peter Tree SC for the plaintiffs

Sportsbet Pty Ltd v Harness Racing Victoria (No 6) [2012] FCA 896; (2012) 206 FCR 50; 293 ALR 658 — constitutional law, freedom of interstate trade, with Stephen McLeish SC, Peter Hanks QC and Stephen Donaghue for the second respondent (the State of Victoria)

The Commonwealth v Vero Insurance Ltd [2012] FCA 826; (2012) 291 ALR 563; 17 ANZ Ins Cas ¶61-944 — insurance and reinsurance, interpretation, limitation of actions, with Geoffrey McArthur SC for the respondent

Shepparton Projects Pty Ltd v Cave Investments Pty Ltd (No 2) [2011] VSC 384 — loan, interest, costs, with Peter Tree SC for the first defendant

Sportsbet Pty Ltd v Victoria [2011] FCA 961; (2011) 282 ALR 423 — constitutional law, freedom of interstate trade, with Stephen McLeish SC and Stephen Donaghue for the first and second respondents (the State of Victoria and the Victorian Commission for Gambling Regulation)

Saeco International Group (Australia) Pty Ltd v Ubertini [2011] VSC 360 — detainee, breach of confidence, costs, with Philip Solomon SC for the plaintiff

Cocoon Holdings Pty Ltd v K2M3 LLC [2011] VSC 355 — anti-suit injunction, default judgment, with Philip Solomon SC for the plaintiff

Koutroulis v Transport Accident Commission [2011] VSC 159; (2011) 58 MVR 48 — transport accidents, with Philip Solomon SC for the respondent

Qantas Airways Ltd v Portelli [2011] VSC 162 — legal professional privilege, statutory abrogation, with Sue McNicol for the appellant

Sportsbet Pty Ltd v Harness Racing Victoria (No 4) [2011] FCA 196 — public interest immunity, parliamentary privilege, with Stephen McLeish SC for the second respondent (the State of Victoria)

Reynolds v Tasmanian Heritage Council [2011] TASSC 6; 246 FLR 454; 277 ALR 394 — administrative law, racial discrimination, with Peter Tree SC for the applicants