

ALEC LEOPOLD SC

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Alec has had a commercial litigation practice at the Bar for over a quarter of a century, with nearly 15 years as a silk. He practises predominantly in the following areas:

- General commercial litigation, including contract, equity, insurance, estoppel and misleading conduct;
- Banking and financial services litigation, which has involved work for large banks and financial institutions;
- Litigation concerning the *Corporations Act* and the *ASIC Act*, including corporate insolvency;
- Appellate work;
- Issues involving proof of fraud and fabrication;
- Professional negligence;
- Class actions.

Qualifications/Admissions

- LLB (Hons) (ANU)
- Admitted in NSW and other States of Australia; and in New Zealand

Background

- Appointed Senior Counsel - October 2007
- Admitted to the NSW Bar - January 1996
- Commercial Litigation solicitor at Allens 1983-1995 (Partner 1988-1995)
- Associate to Sir Anthony Mason (High Court) 1981-1983

Selection of cases

Corporate law; corporate (inc cross-border) insolvency; managed investment schemes:

- *Kelly v Loo (Re Halifax Investment Services Pty Ltd (In Liq))* (argued successfully for, and appeared in, the first ever joint sitting of judges of the Federal Court of Australia and an overseas court (the High Court of NZ); and subsequently successfully argued for, and appeared in, the first ever joint sitting of an Australian appellate court (the Full Federal Court) with an overseas appellate court (the NZ Court of Appeal) (large range of issues arising from cross-border insolvency of operators of internet trading platforms in Australia and NZ, inc significant issues concerning tracing of mixed funds in equity) – numerous hearings, but see esp: [\[2021\] FCAFC 186](#); [\[2021\] NZCA 561](#); [\[2021\] FCA 531](#); [\[2021\] NZHC 1113](#); [\[2019\] FCA 1341](#); [Venning J 12.12.19](#)
- *Chung-Yi Pty Ltd v Chih-Yang Chang (No 2)* [\[2018\] NSWSC 1112](#) (breach of duties of director / oppression / just and equitable winding up / rights issues)
- *Hislop v Paltar Petroleum Ltd (No 3)* [\[2017\] FCA 1253](#) (s 237 *Corporations Act* application / equitable fraud)
- *Shub v Mon Purse Pty Ltd* [\[2017\] NSWSC 1187](#) (validity of appointment of directors)
- *Re Ten Network Holdings Ltd* [\[2017\] FCA 1144](#) (various issues re administration of Ten Network Holdings Ltd)
- *AMP Life Ltd v AMP Capital Funds Management Ltd* [\[2016\] NSWCA 176](#) (voting rights of RE of managed investment scheme / scope of s 253E *Corporations Act*)
- *HP Mercantile Pty Ltd v Hartnett* [\[2015\] NSWSC 1475](#); [\[2016\] NSWCA 342](#) (construction of provisions of prospectuses for horticultural schemes)
- *OzEcom (In Liq) v Hudson Investment Group Ltd* [\[2007\] NSWSC 719](#); [\[2007\] NSWSC 1441](#) (issues re underwriting agreement for capital raising / recall of reasons for judgment)
- *Re Daisytek Australia Pty Ltd* (2003) 46 ACSR 424; [\[2003\] FCA 768](#) (issues re extension of time for registration of charge)

General commercial/equity/contract/misleading conduct/estoppel and the like:

- *Khattar v Hills Shoppingtown Pty Ltd* [\[2022\] NSWSC 363](#) (repudiation of contract)
- *Wyzenbeek v Australasian Marine Imports Pty Ltd (in liq)* [\[2019\] FCAFC 167](#) (special leave refused by HCA - [HCATrans 54](#)) (very important decision on causation of loss in misleading conduct cases)
- *Neal v Murnain* [\[2017\] NSWSC 1039](#) (application of rules of political party)
- *Owners Strata Plan 74602 v Eastmark Holdings Pty Ltd* [\[2015\] NSWSC 1981](#) (wide range of issues re disputes within strata scheme)
- *HP Mercantile Pty Limited v Hartnett* [\[2015\] NSWSC 1475](#); [\[2016\] NSWCA 342](#) (construction of contract containing multiple inconsistencies)
- *Perpetual Trustee Co Ltd v Ishak* [\[2012\] NSWSC 697](#) (wide range of issues re misleading conduct)
- *Overlook Management BV v Foxtel Management Pty Ltd* [\[2002\] NSWSC 17](#) (contractual good faith / misleading conduct / unconscionable conduct)
- Several cases involving sale of business, or share sale, agreements

- Various articles including *Estoppel: A Practical Appraisal of Recent Developments* (1991) 7 Aust Bar Rev 47

Acting for large banking and financial services entities:

- *Commonwealth Bank of Australia v Rafidi and Brick & Block Company Pty Limited (In Liq)* (judgment for the Bank on claim against it for \$183 million following withdrawal of that claim after 13 days of cross-examination)
- *International Skin Care Suppliers Pty Ltd v Commonwealth Bank of Australia* [\[2013\] NSWSC 1768](#) (misleading or deceptive conduct case dismissed on the basis of rejection of the evidence of the key witnesses)
- *Tonto Home Loans Australia Pty Ltd v Tavares* [\[2011\] NSWCA 389](#) (unconscionable conduct)

Fraud; mortgage forgery:

- Defending numerous claims in which fabricated or fraudulent claims have been exposed (and on more than one occasion withdrawn following cross-examination)
- *Rheem Australia Pty Ltd v McInnes* [\[2020\] NSWSC 1313](#) (substantial issues re tracing of mixed funds in equity)
- *Super Vision Ltd v AC Holdings Co Pty Ltd* [\[2020\] NSWCA 319](#) (transfers in fraud of creditors – s 37A of *Conveyancing Act*) (special leave to appeal to HCA refused)
- *Despot v Registrar-General of NSW* [\[2014\] NSWSC 1002](#); [\[2016\] NSWCA 5](#) (specific performance / res judicata / cause of action estoppel)
- *Van den Heuvel v Perpetual Trustees Victoria Ltd* [\[2010\] NSWCA 171](#) (consequences of mortgage fraud)

Class actions:

- *BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall* [\[2019\] HCA 45](#) (successfully arguing for invalidity of common fund orders) (numerous other significant procedural arguments in that case in FCA)
- *Wigmans v AMP Ltd (No 3)* [\[2019\] NSWSC 603](#) (first “beauty parade” case)
- *Petersen Superannuation Fund Pty Ltd v Bank of Queensland Ltd* [\[2017\] FCA 699](#) (investors in financial product)
- *Clasul Pty Ltd v Commonwealth of Australia* [\[2014\] FCA 1133](#) (equine influenza)
- *O’Sullivan v Challenger Managed Investments Ltd* [\[2007\] NSWSC 383](#) (investors investing in property trust through prospectus)
- *Petrusevski v Bulldogs Rugby League Club Ltd* [\[2003\] FCA 61](#) (the Canterbury-Bankstown Bulldogs salary cap breach class action)
- *Hunter Valley Community Investments Pty Ltd v Bell* [\[2001\] FCA 201](#) (alleged misleading conduct in investment scheme)
- *King v GIO Australia Holdings Ltd* [\[2001\] FCA 308](#) (alleged misleading conduct re prospectus)

Issue estoppel, res judicata, abuse of process, contempt and the like:

- *Re. Group Pty Ltd v Kazal (No 4)* [\[2017\] FCA 1084](#)
- *Despot v Registrar-General of NSW* [\[2016\] NSWCA 5](#)
- *Bracks v Smyth-Kirk* (2009) 263 ALR 522; [\[2009\] NSWSC 401](#)
- *Haines v ABC* (1995) 43 NSWLR 404; [\[1995\] NSWSC 136](#)

Insurance law:

- *Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd* [\[2015\] NSWCA 314](#)
- *Solarus Projects Pty Ltd (Receivers and Managers Appointed) (In Liq) v AAI Ltd (trading as Vero Insurance) (No. 8)* [\[2015\] NSWSC 412](#)
- *Poole v Chubb Insurance Company of Australia Ltd* [\[2014\] NSWSC 1832](#)

Valuation - a range of cases involving issues concerning land valuation (inc negligent valuation; and inc extensive experience in cross-examination of valuers):

- *LM Investment Management Pty Ltd (In Liq) v EY (aka Ernst & Young)* (current)
- *Super Vision Ltd v AC Holdings Co Pty Ltd* [\[2020\] NSWCA 319](#)
- *Wyzenbeek v Australasian Marine Imports Pty Ltd (in liq)* [\[2019\] FCAFC 167](#)
- *Bank of Western Australia v Licata* [\[2012\] NSWSC 78](#)

Professional liability including auditor's negligence:

- *LM Investment Management Pty Ltd (In Liq)* [\[2019\] QSC 246](#) (current)
- *Fuji Xerox audit negligence litigation in both Australia and NZ* (current)
- *Compliance plan audit negligence litigation*
- *Perpetual Trustee Co Ltd v Ishak* [\[2012\] NSWSC 697](#)

Preliminary discovery:

- *Hatfield v TCN Channel Nine Pty Ltd* [2010] 77 NSWLR 506; [\[2010\] NSWCA 69](#)

Partnership:

- *Seiwa Australia Pty Ltd v Beard* (2009) 75 NSWLR 74; [\[2009\] NSWCA 240](#)

Statutory construction:

- *BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall* [\[2019\] HCA 45](#)
- *AMP Life Ltd v AMP Capital Funds Management Ltd* [\[2016\] NSWCA 176](#)
- *Rural Funds Management Pty Ltd v Minister Adminstrating the Water Management Act 2000* [\[2016\] NSWLEC 19](#)