

# **JEREMY KIRK**

## **BARRISTER**

### **CURRICULUM VITAE**

#### **PRACTICE**

Main practice areas:

Administrative law  
Appellate  
Commercial and corporate law  
Constitutional law  
Environment and planning law  
Public and private international law  
Trade practices and competition law

In practice as a barrister since 2002.

Previously practised as a solicitor 1999-2001, including 8 months at the Shopfront Youth Legal Centre for homeless and disadvantaged young people.

#### **DEGREES**

Bachelor of Arts (ANU), majoring in political science and philosophy, 1989-1993.

Bachelor of Laws (Hons - 1st Class) (ANU), 1989-1993.

Bachelor of Civil Law (1st Class) (Oxford), October 1994 - July 1996.

Doctor of Philosophy (Oxford), supervised by Professor John Finnis and Sir Anthony Mason, October 1996 - January 1999, on topic: *"Implied Rights" in Constitutional Adjudication by the High Court of Australia since 1983.*

#### **AWARDS**

University Medal in Law, along with 14 other university prizes, at the ANU.

Rhodes Scholarship 1994-1997.

Vinerian Scholarship, 1996, for top student in the BCL (ie the law masters degree) at Oxford.

*Blashki & Sons Award* for topping NSW Bar exams, June 2001.

---

Eleven Wentworth Chambers  
180 Phillip Street  
Sydney NSW 2000  
kirk@wentworthchambers.com.au

ph 02 9223 9477  
fax 02 8028 6060  
DX 377 Sydney

Liability limited by a scheme approved under Professional Standards Legislation.

## LEGAL ARTICLES

- ‘The Entrenched Minimum Provision of Judicial Review’ (2004) 12 *Australian Journal of Administrative Law* 64.
- ‘Conflicts and Choice of Law in the Australian Constitutional Context’ (2003) 31 *Federal Law Review* 247.
- ‘Sports, Policy and Liability of Sporting Administrators’, co-written with Anton Trichardt, (2001) 75 *Australian Law Journal* 504.
- ‘Rights, Review and Reasons for Restraint’ (2001) 23 *Sydney Law Review* 19.
- ‘Constitutional Implications (II): Doctrines of Equality and Democracy’ (2001) 25 *Melbourne University Law Review* 24.
- ‘Constitutional Implications (I): Nature, Legitimacy, Classification, Examples’ (2000) 24 *Melbourne University Law Review* 645.
- ‘Administrative Justice and the Australian Constitution’, in Robin Creyke & John McMillan (eds), *Administrative Justice - The Core and the Fringe*, 2000, Australian Institute of Administrative Law, Canberra.
- ‘Constitutional Interpretation and a Theory of Evolutionary Originalism’ (1999) 27 *Federal Law Review* 323.
- ‘Constitutional Guarantees, Characterisation and the Concept of Proportionality’ (1997) 21 *Melbourne University Law Review* 1.
- ‘Still Standing: An Argument for Open Standing in Australia and England’, co-written with Elizabeth Fisher, (1997) 71 *Australian Law Journal* 370.
- ‘Constitutional Implications from Representative Democracy’ (1995) 23 *Federal Law Review* 37.

## HIGH COURT CASES

- Spencer v Commonwealth* (2010) pending – constitutional/environmental law
- Tabet v Gett* (2010) 265 ALR 227 – whether can recover for loss of chance in medical negligence
- Arnold v Minister Administering the Water Management Act 2000* (2010) 240 CLR 242 – constitutional and administrative law
- ICM Agriculture Pty Ltd v Commonwealth* (2009) 240 CLR 140 – constitutional and administrative law
- Pape v Commissioner of Taxation* (2009) 238 CLR 1 – constitutional law
- Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418 – constitutional law
- Telstra Corporation Ltd v Commonwealth* (2008) 234 CLR 210 – constitutional law re acquisition of property

*Farah Constructions Pty Ltd v Say-dee Pty Ltd* (2007) 230 CLR 89 – re equity and real property

*NSW v Commonwealth – Work Choices Case* (2006) 229 CLR 1 – constitutional law

*McKinnon v Secretary, Department of the Treasury* (2006) 228 CLR 423 – re FOI Act

*Sweedman v Transport Accident Commission* (2006) 226 CLR 362 – constitutional law and conflicts of law

*Harriton v Stephens*; (2006) 226 CLR 52 and *Waller v James* (2006) 226 CLR 136 – tort action re “wrongful life” claims

*Mobil Oil Australia Pty Ltd v Trendlen Pty Ltd* (2006) 229 ALR 51, see also (2006) 229 CLR 386, re representative proceedings, abuse of process, champerty

*Combet v Commonwealth* (2005) 224 CLR 494 – statutory construction, constitutional law

*APLA Ltd v Legal Services Commissioner of NSW* (2005) 224 CLR 322 – statutory construction and constitutional issues

*Toll (FGCT) Pty Ltd v Alphapharm & Ors* (2004) 219 CLR 165 – contract law

*Re Woolley; Ex parte Applicants M276/2003* (2004) 79 ALJR 43 – constitutional issues

*Behrooz v Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* (2004) 219 CLR 486 – statutory construction and constitutional issues

*Al-Kateb v Godwin* (2004) 219 CLR 562 and *Minister for Immigration, Multicultural and Indigenous Affairs v Al Khafaji* (2004) 219 CLR 664 – statutory construction and constitutional issues

*NEAT Pty Ltd v AWB Ltd* (2003) 216 CLR 277 – administrative law

*British American Tobacco Australia Ltd v Western Australia* (2003) 217 CLR 30 – constitutional and jurisdictional issues

#### **EXAMPLES OF CASES WHERE LED OTHER COUNSEL AND/OR OPPOSED SENIOR COUNSEL**

*Getup Ltd v Electoral Commissioner* [2010] FCA 869 – obtaining orders upholding validity of electronic enrolment to vote

*KF v Royal Alexandra Hospital for Children aka Children's Hospital Westmead* [2010] NSWSC 891 – obtaining first court order in NSW requiring a plaintiff to undergo genetic testing

*Gwandalan Summerland Point Action Group Inc v Minister for Planning* (2009) 168 LGERA 269 (the Catherine Hill Bay case) – establishing a bias claim against Minister for Planning re large Part 3A concept plan approval

*Betfair Pty Ltd v Racing NSW* [2010] FCA 603 –re constitutional validity of race fields scheme

*Racing NSW v Betfair Pty Ltd* [2009] FCAFC 119, re discovery principles in context of constitutional litigation

*John Holland v CFMEU* (2009) 178 FCR 461 – constitutional law and statutory construction

*Orleans Investments Pty Ltd v Mindshare Communications Ltd* (2009) 254 ALR 81 (NSW Court of Appeal) – re alleged judicial bias, contract and remedy issues

*Carbotech v Yates & SES*, 2008 – confidential information/abuse of directors' duties; (settled after 4 weeks of hearing)

*SZGME v Minister for Immigration* (2008) 168 FCR 487 (Full Federal Court), immigration law and statutory construction

*Darkinjung Pty Ltd v Darkinjung Local Aboriginal Land Council* [2006] NSWSC 1008 – administrative law, charities and trust issues (13 day case re validity of \$25m funds transfers)

*Travel Compensation Fund v Blair* [2003] NSWSC 720 – re constitutional validity of aspects travel compensation fund scheme

*Sportodds Systems Pty Ltd v State of NSW* (2003) 201 ALR 706 per Gyles J, on appeal (where led) at (2003) 133 FCR 63 – constitutional issues re gambling and Rugby World Cup

#### **EXAMPLES OF OTHER LEADING CASES**

##### ***In the Federal Court of Australia:***

*Evans v State of New South Wales* (2008) 168 FCR 576 (Full Court), re validity of World Youth Day laws

*Qantas Airways Ltd v Gama* (2008) 167 FCR 537 (Full Court), discrimination law (unled)

*Telstra Corporation Limited v ACCC (No 2)* (2007) 240 ALR 135, and *(No.3)* [2007] FCA 1905 – competition law

*Boston Commercial Services Pty Ltd v GE Capital Finance Australasia Pty Ltd* (2006) 236 ALR 720 – on s.31A of the Federal Court Act and assignments (unled)

*L v Human Rights and Equal Opportunity Commission* (2006) 233 ALR 432 (Full Federal Court) – determination of an applicant's capacity to conduct proceedings (unled)

##### ***In the NSW Court of Appeal:***

*Stewart v Ronalds & NSW* (2009) 259 ALR 86 – administrative, constitutional and tort law re sacking of a State Minister

*Administrative Decisions Tribunal Appeal Panel v Director-General, Dept of Commerce* [2008] NSWCA 140 – re FOI Act (unled)

*Kew v Robinson*, application for leave to appeal refused, 21 April 2008 – for respondent, re criminal procedure (unled)

*Markisic v Commonwealth & United States*, application for leave to appeal refused, 6 July 2007 – for United States (unled)

*Police Integrity Commission v Shaw* (2006) 66 NSWLR 446 – re jurisdiction of Police Integrity Commission to investigate conduct of former judge

*Cross v Barnes Towing* (2005) 65 NSWLR 331 – constitutional law, statutory construction

***In the NSW Supreme Court:***

*Chahoud v Koleda* (2008) 72 NSWLR 740 – medical negligence/conflicts matter (unled)

*Johnston v McGrath* (2008) 67 ACSR 169 – corporations and trade practices law – permanent stay granted (unled)

*HIH Insurance Ltd (in liq) v Adler* [2007] NSWSC 633 – appearing for HIH on strike-out motion re claim from nine defendants for purchase price of FAI; upheld in the Court of Appeal.

I advised and appeared for HIH generally in its claims relating to the takeover of FAI.

*Johnston v McGrath* (2006) 195 FLR 101 – for liquidators of HIH, re proving in liquidation and priority of creditors

*R v Khazaal* (2006) 167 A Crim R 565, and related [2006] NSWSC 1061 – re attempt to exclude legal practitioners from appearing in a terrorist trial

*Oil Drilling & Exploration (Borneo) Pty Ltd v Nerdlihc Co Inc* [2005] NSWSC 298 – commercial law; obtained judgment for plaintiff of \$15.7 million (unled)

*Save Our Suburbs (SOS) NSW Inc v Electoral Commissioner* (2002) 55 NSWLR 642 - administrative law re non-registration of a political party (unled)

***In the NSW Land and Environment Court:***

*Gray v Minister for Planning* (2006) 152 LGERA 258 – re downstream greenhouse gas emissions in context of proposed Anvill Hill coal mine

*Tugun Cobaki Alliance Inc v Minister for Planning* [2006] NSWLEC 396 – first challenge to a Ministerial approval under Part 3A of the EP&A Act

*City of Sydney Council v Royal Botanic Gardens and Domain Trust* [2004] NSWLEC 285 – re cutting down of trees in the Domain

***In the NSW Industrial Relations Commission:***

*Hardeman v Children's Medical Research Institute* [2007] NSWIRComm 189 (Full Bench) – constitutional law

***In the Victorian Court of Appeal:***

*Transport Accident Commission v Sweedman* (2004) 10 VR 31 – statutory construction, constitutional and conflicts of law issues re car accident involving interstate drivers

***In the Administrative Appeals Tribunal:***

*International Fund for Animal Welfare v Minister for Environment and Heritage* [2005] AATA 1210 and [2006] AATA 94, re importation of elephants to Taronga Park and Melbourne Zoos (acting for the zoos)

***In other Tribunals:***

Appeared for Raytheon Australia Pty Ltd in applications for exemption from compliance with anti-discrimination laws in tribunals in Queensland, South Australia, Western Australia and the ACT.