

John Marshall SC

Senior Counsel since 2002.

Extensive trial and appellate experience. Has appeared and advised in cases involving all areas of general commercial law including revenue, insolvency (tax related), banking and insurance and in common law appeals. Has also regularly advised and appeared for the State of New South Wales and the Chief Commissioner of State Revenue (NSW).

Long trials: For Samsung in the *Samsung v Apple* litigation (2013-2014); for the Chief Commissioner of State Revenue (NSW) in relation to the recovery of land rich duty on the sale of Sydney airport (2010-2012); in various aspects of the Pan Pharmaceuticals litigation (2009-2010 and again 2013); for the NRL in the *C7 case* (2005-2006), described by the trial judge (Sackville J) as “mega” litigation; and as junior counsel for the NRL in the *Souths* litigation (2000-2001); for the Commonwealth Bank in the *Occidental Life Insurance* case in the Supreme Court of Victoria (1991-1992) and in relation to its numerous foreign currency loan cases (1988-1992) - including the David Securities litigation from trial through Full Court to the High Court: *David Securities Pty Limited v Commonwealth Bank of Australia* [1990] FCA 148; 23 FCR 1; *David Securities Pty Limited v Commonwealth Bank of Australia* [1992] HCA 48; 175 CLR 353.

Common law appeals: *Temora Shire Council v Stein* [2004] NSWCA 236 (council no breach of duty); *Evans Shire Council v Richardson* [2005] NSWCA 416 (council no duty); *State of NSW v Klein* [2006] NSWCA 295 (no duty of care owed by police); *The Nominal Defendant v Swift*; *Wollondilly Shire Council v Swift* [2007] NSWCA 56 (council no breach of duty); *State of NSW v Tyszyk* [2008] NSWCA 107 (no duty of care owed by police); *Nguyen v Cosmopolitan Homes* [2008] NSWCA 246 (CLA & no breach); *State of NSW v Tomlinson* (wrongful arrest; tender by the plaintiff of police witness statements in the case of the plaintiff – argued September 2017); *Robinson v State of NSW* (LEPRA s 99 fixed for 28 June 2018).

Revenue: Regularly retained by the Chief Commissioner of State Revenue (NSW) to advise and appear: for the Chief Commissioner in relation to the recovery of land rich duty on the sale of Sydney airport (2010-2012) and in other matters (*CCSR v Hayson Group of Companies* [2006] NSWCA 233; *L and T (Sales) Pty Ltd v CCSR* [2007] NSWSC 1061; *CCM Holdings Trust Pty Ltd v CCSR* [2013] NSWSC 1072; *Tay v CCSR* [2017] NSWSC 338). For the taxpayer in the GST case *KAP Motors Pty Ltd v Commissioner of Taxation* [2008] FCA 159. Has appeared in revenue cases involving substantial amounts of revenue. Regularly advises in relation to issues prior to litigation. Has negotiated resolution of several revenue matters which resulted in payments of many millions of dollars of revenue without litigation.

Insolvency and commercial trials: Regularly appears at trial level in relation to insolvency and liquidator recovery matters and also general commercial trials. Most recently appeared for liquidators who recovered substantial amounts as damages for income tax liabilities incurred by the companies in liquidation as a result of breach of fiduciary duty by the former directors: *BCI Finances Pty Limited (in liq) v Binetter (No 4)* [2016] FCA 1351; *BCI Finances Pty Limited (in liq) v Binetter (No 5)* [2017] FCA 1523.

Banking: *Duke Finance Ltd (In Liq) v Commonwealth Bank of Australia* (1990) 22 NSWLR 236; *Mehta v Commonwealth Bank of Australia* (CA) (1991) 23 NSWLR 84; *Dwyer v Commonwealth Bank of Australia* [No 2] [1995] NSWCA 137; *State Bank of NSW v Swiss Bank* (1995) 39 NSWLR 350 (CA) (restitution); *Westpac Banking Corporation v Vamoti Pty Ltd* [1996] NSWCA 557; *Dovade Pty Ltd v Westpac Banking Group* [1999] NSWCA 113; *State of New South Wales v Commonwealth Bank of Australia* [2001] NSWSC 1067 (Constitutional issue affecting rights claimed by the Crown); *Illawong Village Pty Ltd v State Bank of NSW Limited* [2005] NSWCA 382; *Rose v Sakkara Properties Pty Limited* [2009] FCA 304.

Corporations: *North Sydney Brick and Tile Co v Darvall* (1989) 17 NSWLR 327; *Chahwan v Euphoric Pty Ltd trading as Clay & Michel* [2008] NSWCA 52; *Sheahan v Londish* [2010] NSWCA 270; *Campbell Street Theatre Pty Ltd (receiver and manager appointed) (in liquidation) v Commercial Mortgage Trade Pty Ltd* [2012] NSWSC 669; *ASIC v Managed Investments Limited No.4* [2013] QSC 15.

Insurance: *Manufacturers Mutual Insurance Ltd v Motor Accidents Authority of NSW* (1991) 7 ANZ Ins Cas 61-090 (CA); *East End Real Estate Pty Limited v C E Heath Casualty & General Insurance Ltd* (1993) 7 ANZ IC 61-151; *Newcastle City Council v GIO General Ltd* [1997] HCA 53; 191 CLR 85; *National Vulcan Engineering Insurance Group Ltd v Pentax Pty Limited* [2004] NSWCA 218; *Stephen Forgacs v Lumley General Insurance Limited* [2007] NSWSC 1506; *Tzaidas v Child* [2009] NSWSC 465 (CA s 601AG); *Thiess Pty Ltd v Zurich Specialties London Ltd* [2009] NSWCA 47; *AAI Limited ats Cash Converters Personal Finance Pty Ltd* NSD 96/2015; For the buyer's warranty insurers in the *Asahi litigation* in the Federal Court in Victoria (2014); *Mobis Parts Australia Pty Ltd v XL Insurance Co SE (No 9)* [2017] NSWSC 1762. Advised reinsurers in relation to the Kennecott mine wall collapse of April 2014. Routinely advise on PI, property, D&O and BI insurance claims.

Commercial appeals: *Travel Compensation Fund v Tambree* [2005] HCA 69; 224 CLR 627 (causation); *Rahme v Commonwealth Bank of Australia* [1991] NSWCA 230; *Ratcliffe v Oceanic Life Ltd* [1998] NSWCA 180; *Scott v McMahon* [2004] NSWCA 327; *Meteyard v Love* [2005] NSWCA 444; 65 NSWLR 36 (privilege in insurance context); *Challenger Group Holdings Ltd v Concept Equity Pty Ltd* [2009] NSWCA 190 (contract); *Crossman v Sheahan* [2016] NSWCA 200.

Sport: Founding and continuing Chair of the FFA Disciplinary & Ethics Committee. From 1998-2013 appeared in most of the rugby league related cases for the NRL (including the *Souths* case, *Seven Network Limited v News Limited* [2007] FCA 1062; *Bulldogs Rugby League Club Ltd & NRL v Sonny-Bill Williams* [2008] NSWSC 822) and almost every significant anti-doping case most recently *Anti-Doping Rule Violation Panel v XZTT* [2013] FCAFC 95.

Other: *Ryan v Great Lakes Council & Ors* [1997] FCA 970 (class action - dismissal of claim against defendant client); *Hi-Fert Pty Ltd v United Shipping Adriatic Inc* [1998] FCA 1622; 89 FCR 166 (anti-arbitration injunction); *Tyndall Superannuation Limited v Commercial Nominees of Australia Limited* [2001] NSWSC 162 (superannuation); *Gray v Cash Converters International Limited* 2015 (class action for the plaintiff); *Sheahan v Thompson (No 2)* [2015] NSWSC 871 (recovery of funds paid in breach of trust – *Barnes v Addy* first limb); *Desane v State of NSW* (argued Feb-March 2018).