

# CURRICULUM VITAE CRAIG LAMBERT

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| 2018 onward  | Member 6 <sup>th</sup> Floor Windeyer Chambers |
| 2015 to 2017 | 8 <sup>th</sup> Floor Windeyer Chambers        |
| 2007 to 2015 | Member Blackstone Chambers                     |

## Selection of Cases:

- *Nguyen v Sage Consultant Group Pty Ltd; Dang v Nguyen* [2021] NSWSC 753 - Acted for the successful first, second & third defendants - Land Law, Writs of Execution, Equitable & Caveatable Interests, Equitable Charges & Liens, Mere Equities: - Where the plaintiff claimed a constructive trust arose out of an oral agreement that the fourth defendant would hold title to and take out a mortgage over the property for plaintiff's benefit - Where plaintiff lodged a caveat against the property after the judgment creditors, the first, second & third defendants, had registered a writ for the levy of property against the title to the property and the Court found that the evidence did not justify a finding that the fourth defendant held the property on constructive trust for the plaintiff - Where plaintiff may be entitled to be subrogated to the registered mortgage in future but where that may not constitute a present proprietary right - Where the Court found that plaintiff's interest in the property if it existed is likely a "mere equity" - Where caveat lodged after registration of a writ for the levy of property against title to the property prevented the subsequent registration of a writ issued on a judgment obtained before lodgment of the caveat - Where the Court found that the judgment creditors were entitled to an injunction requiring plaintiff to withdraw the caveat and to not lodge another caveat interfering with judgement creditors' entitlement to register a new writ on the title to the property or the ability of the Sheriff to execute the writ - Whether lapsing notice issued by the Registrar-General on the application of judgment creditors pursuant to s 74I of the Real Property Act was improperly issued or invalid - Where plaintiff claimed lapsing notice was invalid because second writ had already been registered - Where plaintiff failed to establish this in fact - Where the Court found that lapsing notice was probably not improperly issued or invalid.
- **Appeal Occupational:** - *HSL Group Pty Ltd v Commissioner for Fair Trading, Department of Customer Service* [2021] NSWCATAP 112 Home Building Act 1989 (NSW) - Acting for the Commissioner of Fair Trading - improper conduct - disciplinary action - appellants failed to obtain insurance and made false or misleading applications - residential building work not carried out under a contract - appellants not fit and proper persons to hold an authority under the Act. Successfully defeated all 18 Grounds of Appeal.
- **Security for costs:** - *Rad Drill Services Pty Ltd v Warrego Energy EP469 Pty Ltd* [2021] NSWSC 214 (11 March 2021) – Acting for the Plaintiff - Relevant factors – Whether plaintiff cross-defendant to be treated as the real defendant – whether “oppression” a basis to resist security even if respondent fails to establish that an order for security will stultify the claim.
- **Appeal Building:** – *X-Build Construction Services Pty Ltd v O'Rourke* [2020] NSWCATAP 181 – Acting for the Applicant - constructive failure to exercise jurisdiction - absence of a necessary finding of fact – Appeal Panel in as good a position as the Tribunal to make that finding of fact – consequential variation of the Tribunal's orders.

- **Appeal Occupational:** - *Murabito v Commissioner for Fair Trading (No 2)* [2020] NSWCATAP 155 - Acting for the Commissioner of Fair Trading - real estate agent's licence – application for renewal – offences involving dishonesty – discretion to ignore offences – whether error of law in exercise of discretion – whether leave to appeal should be granted.
- **Summary Dismissal:** – *Murabito v Commissioner for Fair Trading* [2020] NSWCATAP 63 - Acting for the Commissioner of Fair Trading - failure to comply with directions – application to dismiss appeal proceedings for want of prosecution.
- **Contempt:** *In the matter of Jimmy's Recipe Pty Limited* [2020] NSWSC 93 Acting for the Third and Fourth Defendants – Contempt –whether criminal or civil – breach of undertakings- elements of civil contempt – elements of technical contempt – whether undertakings capable of compliance – whether acts of clients deliberate or willful – whether presence in court necessary at time of undertaking.
- **Administrative Law:** *Mr. Alexander Gambotto-Burke v Child Support Registrar & Ms. Antonella Gambotto-Burke* [2019] AATA - Acting for the Respondent Father - review of objection decision for change of assessment under the Child Support (Assessment) Act 1989 by Department of Human Services.
- **Criminal Fraud:** *NSW Fair Trading, Department of Finance, Services and Innovation v Edward Kang* [2019] – Acting for the Crown as Acting Crown Prosecutor - 6 x s 192E(1)(b) Crimes Act charges: The defendant by deception, namely inducing consumers to believe that a company would arrange a 457 Visa application knowing or being reckless to the fact that no such visa would eventuate, dishonestly caused a financial disadvantage.
- **Administrative Law:** *Saul v Department of Fair Trading* [2019] NSWCATAD 161 - Department issued a determination to take disciplinary action against the applicant under s 198 of the *Property Stock and Business Agents Act 2002* – Applicant sought review – Whether Applicant fit and proper person to hold a Licence under Act.
- **Appeals, Jurisdiction and Procedure:** *Gorczynski v W & FT Osmo Pty Limited* [2019] NSWCA 80 - Appeal from interlocutory decision of associate Judge - Effect of commencing appeal in Court of Appeal rather than in Common Law - Preliminary discovery denied application not confined to defined period and specific category of documents.
- **Appeals, Jurisdiction and Industrial Law:** *Liu v Stephen Grubits and Associates* [2019] FCAFC 24 and *Liu v Stephen Grubits and Associates (No2)* [2019] FCAFC 42 – Successfully defended the contention that there was no power for the Federal Circuit Court to award costs against a party in proceedings relating to a matter arising under the *Fair Work Act*.
- **Trust and Estates, Protected Persons:** *LP v P & Ors* [2018] NSWSC 1168 - Application by mother of protected person to have financial manager of the estate removed.
- **Employment:** *Liu v Stephen Grubits & Associates* [2018] FCCA 842 (No 2) - Industrial Law - whether costs available under the *Fair Work Act* where the applicant had acted unreasonably and was vexatious.
- **Immigration Fraud:** *Van Tuan Nguyen & 2 others v Sage Consultant Group Pty Ltd & 4 others* [2018] NSWSC 65 (6 February 2018) - 1<sup>st</sup> & 2<sup>nd</sup> Defendants posed as Registered Immigration Agents and Solicitors defrauding the Plaintiffs and obtaining financial benefit by deceit.

- **Practice and Procedure:** *Gorczynski v W & FT Osmo Pty Limited* [2018] NSWSC 1107 - Acting for the Fifth Respondent - Application for preliminary discovery- whether plaintiff has confined orders sought for disclosure, discovery and production to a defined time period - whether plaintiff has defined the specific category of documents required - respondents not required to provide preliminary discovery.
- **Indictable Offences:** *R –v– Liam Cooley* H60475420 [2017] – Acting Crown Prosecutor Seq. 1: Aggravated Break and Enter & commit serious indictable offence (in company) – s.112(2) Crimes Act 1900, Seq. 2: Be carried in conveyance taken w/o consent of owner - T2 – s.154A(1)(b) Crimes Act 1900, Seq. 3: Larceny – s.117 Crimes Act 1900 Seq. 4: Possess prohibited drug – s.10(1) Drug Misuse and Trafficking Act 1985.
- **Employment and Fraud:** *The Entourage Group Pty Ltd v Amilo Abouna & Rania Ishak trading as Smart Way Consulting* [2016] NSWDC 14827 - Fraud established against employee and by contractor wife.
- **Urgent Relief:** *The Entourage Group Pty Ltd v Amilo Abouna & Rania Ishak trading as Smart Way Consulting* [2016] NSWSC 226197 (24 June 2016) - Freezing order obtained against fraudsters.
- **Building:** *Yong v Antworks Pty Ltd* [2016] NSWCATAP 14 (18 January 2016) - Successful appeal on interpretation of Home Building Act.
- **Employment:** *Cole v Quest Software Pty Ltd* [2015] FCCA 1314 (27 May 2015) - Breach of employment contract and unconscionable conduct.
- **Negligence and Personal Injury:** *Jack Layard by his Tutor v Leisure Learning Pty Ltd* [2012] NSWDC 70218 – Duty of importer/distributor of a flying fox, Injury to child, future economic loss (Settled 2014 NFP).
- **Appeal:** *Tjong & Anor -v- Tjong* [2012] NSWCA 201 (28 February 2012) - Junior - Credibility of appellant.
- **Urgent Relief:** *Cascio v Western Suburbs Soccer, Sports and Community Club Limited t/as Canada Bay Club* [2012] NSWSC 796 - Interim and final relief obtained preventing expulsion of a member.
- **Vexatious Litigants:** *Viavattene v Morton* [2011] NSWSC 1173 - security for costs and guillotine order obtained against vexatious self-represented litigant.
- **Employment and Fraud:** *H. Polesy & Co Pty Limited -v- Peter Wayne Cherry* [2011] NSWSC 1334 (14 March 2011) - Fraud in employment - breach of fiduciary duty - restraint of confidential information.
- **Trusts and Fraud:** *Tjong & Anor -v- Tjong* [2010] NSW 578 (4 June 2010) - Junior - fraudulently established family trust - removed trustee and executor - reclaimed monies improperly procured from the family trust - defendant found to have fabricated evidence.

- 2005 - 2007:** Browns Lawyers.
- Position:** Solicitor
- Experience:** • Assisting the principal in matters in all state jurisdictions but largely in the Local Court, Federal Magistrate's Court and Family Courts.
- 1990 - 2005:** AQCS Consulting.
- Position:** Special Counsel
- Experience:** • Drafting employment contracts, confidentiality agreements, intellectual property agreements, independent contractor agreements, service and works agreements, and sales and purchasing agreements and developing, documenting and registering Australian Workplace Agreements and developing Compliance Programs and conducting Compliance Audits against Part V of the then Trade Practices Act.

### **Community/Professional Appointments**

- Current: • Approved NSW Bar Association ADR Arbitrator
- Current: • Appointed to the Crown Prosecutor Panels of the NSW Office of Director of Public Prosecutions and the Office of the Commonwealth Director of Public Prosecutions and Department of Fair Trading
- Current • Appointed to the Criminal and Mental Health Advocacy Panels of Legal Aid NSW
- Current • Duty Barrister NSW Bar Association Pro Bono Legal Aid Program
- Current • Appointed to the Industrial, Employment, Health & Safety Committee of the NSW Bar Association

### **Relevant Qualifications**

- 2004 • Bachelor of Laws (Honours: 1st Class) - Macquarie
- 1993 • Bachelor of Business (Majors: Accounting and Economics) – UTS

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| <b>Practice Areas</b> | Building and Construction    | Commercial Leases and Property  |
|                       | Contract and Trade Practices | Employment and Fraud            |
|                       | Equity, Trusts and Estates   | Administrative and Occupational |