

THIRTEEN WENTWORTH SELBORNE

BENJAMIN KASEP



CALLED TO THE BAR	2004
QUALIFICATIONS	B Intl St; LLB (Hons I) <i>UWS</i>
ADMITTED TO PRACTICE	Supreme Court of New South Wales High Court of Australia

PRACTICE AREAS

Taxation Law
Commercial Law/Equity
Conflict of Laws
Arbitrations & Mediations
Trusts
Property Law
Administrative Law
Family Law
Trade Practices & Competition
Constitutional Law

PRACTICE PROFILE

Ben has a broad practice encompassing both public and private law.

His experience includes appearances in foreign jurisdictions, and providing advice to international clients on matters relating to conflict of laws. Ben has also regularly appeared in tax matters including many leading cases concerning the interpretation of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('the GST Act').

Ben is a member of the floor's international practice group maintained in association with London chambers, 1 Gray's Inn Square.

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NOTABLE APPEARANCES

Taxation Law

- *AP Group Ltd v Commissioner of Taxation* [2013] FCAFC 105; 214 FCR 301; 2013 ATC ¶20-417—Whether automotive industry “incentive payments” consideration for supplies under the GST Act (led by Michael Wigney SC);
- *Yacoub v Commissioner of Taxation* [2012] FCA 678; 292 ALR 128; 83 ATR 722; 2012 ATC ¶20-328—Property development – Whether applicants partners in a partnership or participants in a “non-entity joint venture” under the GST Act;
- *ECC South Bank Pty Ltd v Commissioner of Taxation* [2012] FCA 795; 205 FCR 505; 87 ATR 902; [2012] Q ConvR ¶54-780; 2012 ATC ¶20-336—Whether student accommodation a supply of “commercial residential premises” under s 40-35(1) of the GST Act (led by Jane Needham SC);
- *Travelx Ltd v Commissioner of Taxation* [2010] HCA 33; 241 CLR 510; 270 ALR; 84 ALJR 683; 76 ATR 329; 2010 ATC ¶20-214—Foreign currency exchange – Whether a supply of money is a “supply made in relation to rights” under s 38-190 of the GST Act (led by Stephen Gageler SC, Solicitor-General of the Commonwealth of Australia);
- *KAP Motors Pty Ltd v Commissioner of Taxation* [2008] FCA 159; 168 FCR 319; 246 ALR 395; 69 ATR 927; 2008 ATC ¶20-007—Entitlement to refund of over-paid GST – Whether over-paid GST held on constructive trust (led by Stephen Gageler SC);

Constitutional Law/Administrative Law

- *Commissioner of Taxation v Pham* [2013] FCA 579; 60 AAR 264; 134 ALD 534—Non-publication order – Judicial review – Whether AAT fell into jurisdictional error by failing to take into account relevant considerations – Whether findings unsupported by evidence (led by Michael Wigney SC);
- *R v LK; R v RK* [2010] HCA 17; 241 CLR 177; 266 ALR 399; 84 ALJR 395; 202 A Crim R 522—Conspiracy – Crown appeal against directed acquittal – Trial by jury and s 80 of the *Constitution* – Whether Crown appeal infringes the inviolability of a jury’s verdict of acquittal (led by T E F Hughes AO QC);
- *Fleming v Talagi*, High Court of Niue, Action No. CV1 of 2010—Dismissal of Financial Secretary – Whether Premier of Niue committed misfeasance in public office – Whether damages available for breaches of the *Constitution of Niue* (led by Dr Gerard McCoy SBS QC SC of the Hong Kong Bar);

- *Qarase v Bainimarama* [2008] FJHC 241—Executive powers – Dismissal of Prime Minister of Fiji – Whether military coup d'état grounds for invoking doctrine of necessity (led by Dr Gerard McCoy SBS QC SC of the Hong Kong Bar);

Commercial Law

- *Thomson Aviation Pty Ltd v Dufresne* [2011] NSWSC 864—Cross-claim brought against British Columbia company alleging breach of contract – Whether Supreme Court of New South Wales a “clearly inappropriate forum” for the determination of the cross-claim – Determining the “proper law” of the contract;
- *Smythe v Thomas* [2007] NSWSC 844; 71 NSWLR 537; (2008) Aust Contract R ¶90-271—Whether ‘eBay auction’ gives rise to an enforceable contract – Whether specific performance available;
- *Davis v Westpac Life Insurance Services* [2007] NSWCA 175; 226 FLR 285; (2008) 15 ANZ Ins Cas ¶90-132—Avoidance under the *Insurance Contracts Act 1984* (Cth) (led by John Graves SC);
- *Medfin Australia Pty Ltd v Rafter* [2007] NSWDC 72; 4 DCLR (NSW) 272—Hire purchase agreement – Contractual penalties;
- *Buchanan v Crown & Gleeson Business Finance Pty Ltd* [2006] NSWSC 1465; 13 BPR 24,513; (2007) NSW ConvR ¶56-173—Caveats – Balance of convenience;
- *Young v Lalic* [2006] NSWSC 18; 197 FLR 27—Resulting and constructive trusts – Equitable estoppel – Tracing – Jurisdiction of the Supreme Court under the *Family Law Act 1975* (Cth).

PAPERS

Stripping the Corporate Veil in Tax Matters (Australian Taxation Office ‘Entity Structures’ Technical Conference, 31 May 2013);

Calderbank Offers (College of Law, 25 March 2008);

A Comment on Professor John Petrila: ‘The US Supreme Court and the New Federalism: Revolution of Passing Fancy’ (New South Wales Chapter of the Australian Association of Constitutional Law, 14 April 2005).

ASSOCIATIONS

International Institute of Space Law

Australian Association of Constitutional Law

Selden Society