

Melanie Cairns

Professional Experience

Barrister (2008 to 2021)

Melanie is a leading senior junior in commercial law and equity at the NSW Bar, with expertise in contract, corporations law, equity & trusts, insurance, intellectual property, professional indemnity, misleading conduct law and real property.

In 2021, the Legal 500 ranked Melanie as a Leading Junior Counsel in commercial disputes in Australia, describing her as:

- *“a great communicator, a team player and very sharp”;*
- *“Melanie is hard-working, a critical thinker and great to work with”;* and
- *“notable for the breadth of her commercial and equity expertise”.*

Melanie appears in the NSW Supreme Court and Federal Court of Australia both unled and led, at first instance and on appeal.

She has acted for clients including AIG Insurance, AMP, ANZ, Aviagen, Baulderstone, Lendlease, NSW Departments of Health, Planning, Primary Industries and Transport, Perpetual, QBE, Sunsuper, Tenix Defence, Walker Corporation and Woolworths, as well as small to medium companies and individuals.

Clayton Utz (2000 to 2008)

Senior Associate and Lawyer, Litigation & Dispute Resolution.

Other Professional Roles

Melanie is a member of two NSW Bar Association committees: a Professional Conduct Committee and its Diversity & Equality Committee (as Chair of its Equitable Briefing Subcommittee).

She is also a founding member of Alinea Chambers, Sydney’s first commercial barrister chambers with 50% female members, and she is on the Board of those chambers.

Selected Recent Cases

The following 10 cases are only a sample of Melanie’s case-work to show the breadth of her commercial and advocacy experience, across four example areas. Therefore, if you are interested in a particular area, please request a case list in that area from her Clerk.

Real property

1. *Gazcorp Pty Limited v Woolworths Group Ltd* [2021] NSWSC 308 (Darke J, Real Property List) – Acted for Woolworths in a dispute on the proper construction of an agreement for lease, with allegations of variation by conduct, estoppel and frustration, and a cross-claim for misleading conduct, now on appeal. (Unled against Senior Counsel, instructed by Clayton Utz).
2. *Lendlease ats Peng & Li; Lendlease v CBRE, NSW Supreme Court Proceedings No. 2019/261524* (Real Property List) – Acted for Lendlease in a dispute over whether two contracts for sale of land were validly terminated, with alleged misleading conduct by Lendlease and also in issue was the proper construction of an indemnity

and other clauses in its agency agreement with CBRE. Settled shortly before final hearing. (Unled against Senior Counsel, instructed by Minters).

3. *Xu v Lindsay Bennelong Developments Pty Ltd & Ors* [2020] NSWSC 1692 (Ward CJ in Eq, Expedition List) – Acted for an individual in a complex dispute against two property developers. The first case to consider a developer’s discretion in off-the-plan contracts for sale, to change the Strata Plan description of the land being sold. Other issues included misleading conduct, availability of specific performance after completion, potential merger of rights on completion and, fraud as an exception to indefeasibility of title. (Unled against Senior Counsel, briefed by Dentons).

Contract

4. *PMWorks ats Management Services Australia* [2019] NSWCA 107 (Bathurst CJ, Gleeson JA and Sackville AJA) – Successful (3-0) on a full day appeal involving breach of contract, misrepresentation, unconscionability and estoppel. The Court of Appeal held that Melanie’s submissions accorded with its reasons: at [58]. This appeal ended 3½ years of litigation with a hearing below before McDougall J (Commercial List) on alleged breach of fiduciary duty, contract, misrepresentation, unconscionability and estoppel. (Unled against Senior Counsel, instructed by Resolve Litigation Lawyers).
5. *Aviagen Australia Pty Ltd v Bartter Enterprises Pty Ltd (of the Baiada group), Arbitration under UNCITRAL Rules* in 2021 before Dr Kevin Lindgren AM QC – Acted for Aviagen in a dispute over a high-value 20 year supply agreement involving issues of contractual construction, implied variation by conduct, implied terms of co-operation and good faith, and conventional estoppel. (Led by M Henry SC, instructed by Australian Business Lawyers).

Equity (agency, breach of fiduciary duty, estoppel, etc.)

6. *Dept of Primary Industries ats Gourmet Fare, NSW Supreme Court Proceedings No. 2020/155451* (Equity Division) – Acted for DPI in a dispute as to whether a ‘no agency’ term in a deed, stopped DPI from claiming that its contractor acted as its agent in collecting funds from the public. (Unled against Senior Counsel, instructed by HWL Ebsworths).
7. *Mayrin DM Pty Ltd v Deng & Ors* (2019) 19 BPR 39,841; [2019] NSWSC 1552 (Rein J, Duty List) - This case clarified whether a constructive trust be a caveatable interest. Melanie successfully argued that the difference between a remedial constructive trust (as a curial remedy yet to be ordered) and one that arises in equity (regardless of any court order) is determinative, where the latter forms a caveatable interest. (Unled, instructed by Aushine Lawyers).
8. *Priestley v Priestley* [2017] HCATrans 266 (special leave refused); [2017] NSWCA 155 – One of only a handful of Court of Appeal cases on proprietary estoppel since the High Court’s seminal decision in *Sidhu v Van Dyke* (2014) 251 CLR 505. It is also one of the rare cases in which the courts transferred property based on proprietary estoppel. (Led by T Alexis SC, instructed by Cole & Butler).

Corporations Law

9. *Re Ulan Stone Pty Ltd* [2020] NSWSC 937 (Black J, Corporations List) – My clients challenged the court’s jurisdiction to hear a director’s application (under s237 of

the Corporations Act) to bring s459G proceedings on behalf of the company. The director had no authority from the board to act for the company and the 21-day time limit for setting aside a statutory demand expired three months earlier. This is the first case to consider if unauthorised s 459G proceedings became void at 21 days if no s 237 order had been made. (Unled, instructed by Fazzini Lawyers).

10. *Elevate Brandpartners Pty Ltd v Hammond (No.1)* [2019] FCA 1103, *Hammond v Quayeyewear Pty Ltd* (2019) 141 ACSR 434 and *Elevate Brandpartners Pty Ltd v Hammond (No.4)* [2020] FCA 421 – Two related proceedings with numerous applications over 12-18 months. While the focus was on breach of director’s duties and a director’s right to access company records, this case was also the first to consider use of trade marked words on Instagram with prefixes “@” AND “#”. (Led by S Dawson SC, instructed by HWL Ebsworths).

The majority of the above 10 cases also involved misleading conduct claims.

Qualifications

University of New South Wales

2008	Master of Laws (Corporate & Commercial)
2000	Combined Bachelor of Arts/Laws

Select Lectures

2019	College of Law Masterclass lecture on Advocacy and Objections
2018	Continuing Legal Education (CLE) lecture on proportionate liability
2016	Clayton Utz CLE, Construction of commercial contracts since <i>Jireh</i>
2013	State Legal Conference, Post-contractual conduct in construing a contract
2013	UNSW Postgraduate Law litigation course on Legal Professional Privilege
2012	Newcastle Law Society, Insurance Law
2012	NSW Law Society, Young Lawyers, Evidence Lecture
2006	Course Lecturer, Postgraduate Intellectual Property Course at UNSW