

GREENS LIST

BARRISTERS



SIMON PITT

BARRISTER - VICTORIAN BAR

BAR ROLL: 2003 | ADMITTED: 2002

CONTACT INFORMATION

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SOCIAL NETWORK



PROFILE

BACKGROUND

Simon came to the Bar from Herbert Geer Lawyers in 2003. He has since built a general commercial trial-based practice. Simon regularly appears (alone and as junior counsel) for clients in all Victorian courts, appellate courts and tribunals in his stated practice areas. Simon has also appeared in several interstate jurisdictions and the High Court of Australia.

Simon also accepts briefs to advise in all his stated practice areas. He is particularly interested in matters involving the Corporations Act, equity, trusts and Wills & Estates.

Simon has developed a keen interest in lecturing and teaching. He regularly presents papers in his stated practice areas both to established CPD providers; and law firms' internal CPD programs. He has lectured Contract Law at RMIT Business School.

Simon was an Honorary Secretary of the Victorian Bar Council for three years from 2007 - 2009. He was a member of the Victorian Bar Council in 2010. Simon was a member of the New Barristers' Committee for 7 years including its chairman for 2 years. Simon formed the Victorian Bar Student Engagement Committee in 2010 which is dedicated to increasing the awareness of secondary and tertiary students of the Bar as a career path following the study of law. He was chairman of that committee from 2010 to 2015.

SAMPLE OF CASES

Carter v Caason Investments Pty Ltd & Ors [2016] VSCA 236. Simon successfully defended an appeal against a decision by Justice Elliott in the Supreme Court granting Simon's clients non-party costs orders against a director and shareholder of a litigation funder.

Re Gardiner [2016] VSC 541. In this case, Simon acted for a substantial estate and successfully defended an application by intermeddlers to the estate on the basis that they lacked standing to seek to revoke a grant of probate.

YZW Pty Ltd v Sushi Sushi Franchising Pty Ltd & Anor [2016] VSC 538. Simon acted for a nationwide franchisor in an interesting application involving questions of waiver of privilege under the *Evidence Act 2008* (Vic). The case considered questions arising out of s131(2) of that Act for the first time in Victoria.

1165 Stud Road v Power & Ors (No 2) [2015] VSC 735: Simon successfully defended a non-party costs application which was brought against a firm of solicitors. This case involved claims being made against Simon's client under the *Civil Procedure Act*, the *Supreme Court Act*, the *Supreme Court (General Civil Procedure) Rules* and *Flower & Hart* principles.

Bakers Investment Group (Australia) Pty Ltd v Caason Investments Pty Ltd (No 3) [2015] VSC 644: Simon successfully applied for a non-party costs order against a litigation funder and related parties.

Semmler v Todd [2015] VSC 657: Simon successfully defended a testator's family maintenance claim brought by a person who was not related to the deceased but was in a relationship with the deceased.

Jarrold v Registrar of Titles & Anor [2015] VSCA 45: Interesting decision by the Court of Appeal remitting the matter back to trial before a different judge.

Simon recently gave expert evidence on Victorian wills and estates law at the Philippine Consulate in Canberra, as part of a multi-jurisdictional dispute over the deceased estate of professional gambler Alan Woods worth almost \$1 billion. Simon was instructed by Baker & McKenzie.

Mercier Rouse Street v Burness & Ors [2015] VSCA 8: Simon acted for successful respondents in the Court of Appeal in a matter involving questions of sale of land, contracts and the imposition of trusts over assets of a company in liquidation.

Bakers Investment Group Australia v Caason Investments Pty Ltd [2014] VSC 598: Recent win in the Supreme Court in a trial involving questions of contract, equity and consumer law.

Baxter v Baxter [2014] VSC 377: Simon acted for the plaintiff in this matter who successfully applied for further provision out of the estate of his deceased father, pursuant to Part IV of the *Administration and Probate Act*.

Levy v Watt & Anor [2014] VSCA 60: Fascinating matter in the Court of Appeal involving a stolen painting and the *Limitation of Actions Act 1958*.

Glezer v Deals.com.au & Ors [2014] VSC 202: Simon successfully defended an appeal from a decision of an Associate Judge of the Supreme Court, who granted Simon's client pre-action discovery.

Bakers Investment Group v Caason Investments [2014] VSC 154: Successful application in the Supreme Court for a company seeking security for costs.

IMO Zinc Port Melbourne Pty Ltd [2013] VSC 599: Simon acted on behalf of a mortgagee seeking declaratory relief and consequential orders in respect of a deed of charge. Simon successfully defended allegations that certain properties covered by the deed of charge were subject to various trusts.

Smoel v Morris [2013] VSC 594: This was an interesting case involving a binding death benefit nomination under a self-managed superannuation fund which raised issues of a trustee's right of indemnity to claim costs out of a trust fund.

Harpur v Levy & Ors [2013] VSCA 209: Successful matter in the Court of Appeal dealing with discretionary trusts / beneficiaries, equitable principles of contribution and recoupment, deceased estates and more.

Jarrold v Isajul & Ors [2013] VSC 461. Successful matter in the Supreme Court where Simon defended a claim by his client's ex-wife who had alleged the forgery of a signature on a power of attorney in order to sell a jointly owned property.

Fast & Ors v Rockman & Ors [2013] VSC 18. Simon successfully applied on behalf of Mrs Rockman to have scandalous and offensive words omitted from the copy of her late husband's will which was admitted to Probate.

Levy v Watt & Anor [2012] VSC 539 (with D.A. Klempfner). Simon acted in a case involving extinguishment of legal title to a valuable painting by Rupert Bunny under s.6 of the *Limitation of Actions Act* 1958. The case involved the fraud exception under s.27 of that Act.

Alabakis v Alabakis & Anor [2012] VSC 437 (with Kate McMillan SC, as Her Honour then was). Simon acted for the daughter of the deceased in a

successful claim under Part IV of the *Administration and Probate Act 1958*. The case involved alleged disentitling conduct and a family farm.

Pridham v Archer [2012] NSWSC 752. Successful application on behalf of defendant in proceedings involving an alleged fake Brett Whiteley painting titled "Blue Lavender Bay".

McCann v Ward & Burgess [2012] VSC 63 (with Kate McMillan SC, as Her Honour then was). Acted for the executors and trustees of a \$14m estate, defending a claim brought by the deceased's stepdaughter under Part IV of the *Administration and Probate Act 1958*.

Harpur v Levy & Ors [2011] VSC 653 (with D.A. Klempfner). Successfully defended proceedings by a trustee plaintiff for equitable relief (recoupment) against the executors of a deceased estate. The proceeding involved questions of equity, trusts, foreign law, expert evidence and sections 76 and 79 of the *Evidence Act 2008*.

Environinvest Ltd (in liq) v Pescott & Ors; Environinvest Ltd (in liq) v Blackburne Pty Ltd (in liq) & Ors [2011] VSC 325 (with F.G.A. Beaumont QC). Successful application to strike out large parts of a liquidator's statement of claim. Part of an ongoing matter involving directors' duties under the *Corporations Act 2001* arising out of the liquidation of a series of managed investment schemes within Environinvest Ltd (in liq).

Story v Semmens & Anor [2011] VSC 305. Summary judgment application brought pursuant to Part 4.4 of the *Civil Procedure Act 2010* in a proceeding brought under Part IV of the *Administration and Probate Act*.

Port of Portland Pty Ltd v State of Victoria (2010) 242 CLR 348 (with J.D. Merralls QC). Successful appeal to the full court of the High Court (7:0) in proceedings involving the enforceability of a government contract. The proceedings involved questions of constitutional law, contract law and land tax.

Port of Portland v State of Victoria (2009) 27 VR 366 (with M.R. Pearce SC).
Appeal from decision of Mandie J at first instance ([2007] VSC 488) on
questions of constitutional law, contract law, valuation of land and land tax.

Ansett v Moss & Ors [2007] VSCA 161 (with Kate McMillan SC as Her Honour
then was). Successful appeal to the Court of Appeal seeking an extension of
time within which to bring proceedings pursuant to Part IV of the
Administration and Probate Act. Successfully established error on the part of
the trial judge and had the proceeding remitted to Trial Division.

Simon also conducts trials in the County Court of Victoria in his stated practice
areas.

PAPERS

Simon has recently written and presented papers on the following:

Civil Procedure in 2014 - a practical look at how Courts have applied the
Civil Procedure Act 2010 and how this affects practitioners.

Succession Laws (2014) - Simon delivered a paper on the current law and
proposed changes recommended by the Victorian Law Reform Commission on
Succession Laws (Family Provision).

Beneficiaries' Rights Under Trusts - in this paper, Simon covers some of
the remedies and avenues available to beneficiaries under trusts when dealing
with recalcitrant, cagey or inept trustees. Delivered to the LIV Accredited
Commercial Litigation Specialists.

Clear Legal Drafting in Contract Law - this paper was delivered to Leo
Cussen and stresses the importance of clear legal drafting in Contract Law; and
the consequences of using unclear language.

Boardroom Bona Fides - a look at duties of executive and non-executive
directors following *Centro* (presented to Legalwise seminar series, DLA Piper
lawyers, Piper Alderman lawyers, Mills Oakley Lawyers, Wisewould Mahony

Lawyers and the LIV Business Law Study Group).

Client Interviews - principles and practice (presented to Mills Oakley Lawyers and Wisewould Mahony Lawyers).

AON v ANU - 6 months on (presented to Leo Cussen Seminars).

Keeping things moving in litigation: a practical look at making interlocutory applications in the Supreme and County Courts (presented to the Law Institute of Victoria).

Categories of claimants under Part IV of the *Administration and Probate Act* 1958 (presented to CPDS seminars).

Proportionate Liability and Contractual Allocation of Risk (presented to Lexis Nexis Contract Law Masterclass and Piper Alderman Lawyers).

The conduct of Commercial Litigation - a close look at certain aspects of running a commercial litigation file from taking instructions to taking judgment (presented to Legalwise Seminars).

Analysing the Impact of Proportionate Liability on the Conduct of Commercial Litigation (presented to Legalwise seminars)

Proceeds of crime and confiscation of assets (presented with Kate McMillan SC (as Her Honour then was) and Anna Duran to Ken Collins' Wills and Probate Conference)

Preventing that which is feared: Quia Timet injunctions and related interlocutory relief (presented to Legal Wise seminars)

Approaches to granting a stay of execution - a cross jurisdictional look at obtaining stays of execution of judgment (presented to Legal Wise seminars)

Seeking leave to appeal from VCAT and the Supreme Court (with Mark Dreyfus QC, as he then was)(presented to the Victorian Bar's CPD Program)

To get in touch with Simon Pitt | or for more information please
contact the

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