

# Tristan Cleary

Solicitor 2005

Barrister 2015

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Tristan practices primarily in general commercial. Insolvency, taxation/revenue, insolvency, and general equity matters.

He has appeared unled in all jurisdictions in NSW, as well as in several jurisdictions in QLD and Victoria.

He is equally comfortable being led, and has worked productively with numerous silks. He has also assumed the role of leader, appearing with a junior barrister.

Tristan is particularly focused on obtaining the best possible result for his clients by the most sensible and efficient means possible, leading to judicial officers noting his practical and pragmatic approach to litigation. He is particularly adept at obtaining positive results for his clients in alternative dispute resolution processes.

From 2006 – 2013 Tristan was employed in the in-house litigation team at the Australian Taxation Office, where he was rapidly promoted,

spending the final years of his time engaged as Principal Litigator. In this role Tristan handled complex taxation and insolvency matters on behalf of the Commissioner of Taxation, and led a team of litigators. He frequently conducted training and external seminars as a representative of the Commissioner.

From 2013 to 2015, Tristan was engaged as Special Counsel for Cleary's Commercial Lawyers, handling its litigation matters. These matters consisted of general commercial and some Family Law matters.

Tristan commenced at the bar in September 2015 and has developed a thriving practice in general commercial, taxation, revenue, insolvency, building and construction and general equity matters. Tristan has appeared for statutory authorities including the Commissioner of Taxation, Official Trustee in Bankruptcy, and the Fair Work Ombudsman, although the majority of his clients are private rather than public clients.

## Qualifications

Bachelor of Law, Macquarie University, 2005

Bachelor of Business Administration, Macquarie University, 2005

## Specialisations

- Commercial
- Bankruptcy & Corporate Insolvency
- Corporations
- Equity
- Taxation & Revenue
- Trade Practices & Competition
- Trusts & Superannuation

## Selected Case

***Newstart 225 Pty Limited v Condon [2024] NSWSC 788*** Successfully opposed an appeal from the Local Court on the question of the personal liability of a voluntary administrator for make good costs and other damages during the period of administration.

***Bentancur v Mammoliti [2024] NSWDC 201*** Successfully enforced a commercial contract focusing on mitigation and implied terms.

***CLGC Pty Ltd v Zhang (No 2) [2024] NSWSC 610*** Successful application to have solicitor respondent held in criminal contempt, resist application to set aside judgment based on questions of Chinese law.

***In the matter of Antpet Pty Ltd (in liq) [2024] NSWSC 155*** Application for receiver's remuneration and future conduct of receivership.

***Li v Chief Commissioner of State Revenue [2023] NSWCATAD 330*** Unsuccessful land tax review application.

***Zioukin v Lang [2023] NSWCA 42*** Successful opposition of application for leave to appeal from judgment of Supreme Court.

***Bao v Li [2022] NSWSC 1335*** Unsuccessfully opposed application for declarations of various trusts over land. Appealed in ***Li v Tao [2023] NSWCA 310*** (Led by C Wood SC) where we were successful on questions of law in dispute but unsuccessful due to matters of credit.

***In the matter of L&B Seafood Pty Ltd [2022] NSWSC 100*** - (Leading A Wilson) Successful application for a winding up order on just and equitable grounds in a deadlocked company.

***TDWF and Commissioner of Taxation [2022] AATA 2549*** Successfully opposed an application by the Commissioner of Taxation for delayed disclosure orders

***In the matter of Priority Matters Pty Ltd [2022] NSWSC 3*** Unsuccessful application to set aside a \$4.9m statutory demand on the basis that the amount demanded, being an estimate of taxation liabilities made, had been revoked. Unsuccessfully appealed in ***Priority Matters Pty Ltd v Deputy Commissioner of Taxation [2022] NSWCA 208***

## Selected Case

**Lee v Parker (No 2) [2022] FCA 582** – (led by C Wood SC) Successfully opposed an application for security for costs.

**CLGC Pty Limited v Zhang [2021] NSWSC 946** – (led by C Webster SC) Successful claim for damages against a former solicitor, including for breaches of fiduciary duties. Judgment obtained for a sum in excess of \$15m.

**Hassan El-Jamal [2021] NSWSC 114** Judicial advice relating to an application for sale by a trustee.

**Fisk v Gold [2021] NSWSC 1465** Contempt application before Ward CJ in Eq- Successfully obtained an order for costs payable on an indemnity basis, forthwith.

**Lee v Parker [2020] FCA 1453** Successful application for reinstatement of two companies and appointment of a new liquidator, over opposition of former liquidator.

**Lee v Deputy Commissioner of Taxation; Silverbrook v Deputy Commissioner of Taxation [2020] NSWCA 95** (led by D McGovern SC) Unsuccessful appeal on question of law relating to the recovery of estimates made by the Deputy Commissioner of Taxation. Special leave was later refused (in which I was led by Giles SC).

## Other Assorted Cases

Numerous other decisions, such as a \$2.2m judgment on behalf of the DCT in the Federal Court (DCT v Hawach), and successfully capping receivers fees in the Supreme Court, and dissolving a partnership (Shanmugathaas & Anor v Paramanirupan), as well as countless matters resolved without a final hearing, including numerous insolvent trading, unfair preference and uncommercial transaction cases, numerous building and construction disputes, and numerous matters for and against the ATO and Revenue NSW.

## Interests

Tristan enjoys travelling to new destinations overseas whenever the opportunity arises and has visited around 40 countries.

Tristan is an avid skier having spent several northern hemisphere winters working as a ski instructor at Whistler Blackcomb, Canada, and otherwise visiting ski destinations all around the world. He is also a keen scuba diver, with a highlights being a diving trip to Sipadan, off the coast of Borneo, and diving with thresher sharks in Malapascua, Philippines.

Tristan also plays basketball and tennis socially and competitively.

Tristan closely follows McLaren in Formula 1, and the Manly-Warringah Sea Eagles in the NRL.