

Justin Pen

Solicitor 2017

Barrister 2022

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Justin specialises in all areas of labour law, including employment, anti-discrimination, and work health and safety law. He also regularly accepts briefs in commercial law and public law matters.

He is regularly briefed to act unled in proceedings before the Federal Court of Australia, Federal Circuit Court and Family Court of Australia, and the Fair Work Commission in his principal areas of practice.

Before coming to the bar, Justin was a Senior Associate with Harmers Workplace Lawyers and a Solicitor with the Marrickville Legal Centre. He also previously served as Tipstaff to the Hon. Justice Robertson Wright in His Honour's then role as President of the New South Wales Civil and Administrative Tribunal.

His work has been published in, among other places, the Alternative Law Journal, a quarterly peer-reviewed legal affairs journal; Workplace Review, Thomson Reuters' industrial relations journal; and Bar News, the journal of the New South Wales Bar Association. He also maintains Recent Cases in Labour Law, a monthly case-note bulletin of decisions of interest, and presents to law firms and community legal centres on topics of interest.



Justin brings to each matter a strong knowledge of case law, robust strategic issue identification and problem-solving skills, and an attentive demeanour. He takes a collaborative and egalitarian approach to litigation and encourages input from all members of a legal team.

Copies of his presentation slides and published articles are generally available on request.

QUALIFICATIONS

2022	Called to the Bar
2017	Admitted to practice
2016	Bachelor of Laws, University of Sydney
2014	Bachelor of Arts, University of Sydney

LABOUR LAW

Ord Minnett v Theodorou [2025] FCA 721 - appeal from the Federal Circuit and Family Court of Australia (Division 2) regarding the application of the Banking, Finance and Insurance Award 2010 to a private client adviser employed by a wealth management firm (led by J Darams SC, instructed by Lander & Rogers).

Wright v Younes (Federal Court of Australia, 6 December 2024) - interlocutory application by a motel employee for freezing orders to prevent their former employer from diminishing the value of their assets in proceedings alleging wage underpayments in breach of the Miscellaneous Award 2020 and Fair Work Act 2009 (Cth) (led by C Parkin, instructed by Legal Aid NSW).

SafeWork NSW v J. F Building Consultants Pty Ltd (Local Court of New South Wales, 29 October 2024) - criminal prosecution and sentencing of building company for breaches of cl 225(3) and 225(5) of the Work Health and Safety Regulation 2017 (unled, instructed by SafeWork NSW).

Monash IVF Pty Ltd v Mooring (New South Wales Supreme Court, 29 July 2024) - interlocutory application by fertility services and treatments provider to enforce a restraint of trade to prevent a consultant obstetrician from working with a competing medical services provider (led by D Mahendra, instructed by Gadens) - also, *Monash IVF Pty Ltd v Mooring* [2024] NSWSC 1651 (costs).

Numerous unled appearances in interlocutory hearings in the Fair Work Commission and Federal Circuit and Family Court of Australia (Division 2), including: **Christine Williams v Veris Australia Pty Ltd [2024] FWC 2913** (instructed by Gadens); **Morshed v Barrenjoey Services Pty Limited [2023] FedCFamC2G 318** (instructed by WorkLawyers); **Hans Stenly v The Hour Glass (Australia) Pty Ltd [2022] FWC 2674** (instructed by Tahota Law Firm).

COMMERCIAL LAW

Shapkin v The University of Sydney [2024] NSWSC 1091 - appeal from the New South Wales Civil and Administrative Tribunal regarding the application of the Residential Tenancies Act 2010 (NSW) to student accommodation (led by B Tronson, instructed by Bartier Perry) - also, *Shapkin v The University of Sydney* [2023] NSWCATAP 2 (decision below); *Shapkin v The University of Sydney* [2025] NSWCA 100 (leave to appeal).

JKM Window Door Facade Strata Professionals Pty Ltd v Probuild Project Management Pty Ltd (Local Court of New South Wales, 9 October 2023) - application by contractor for summary judgment; whether email was a "payment schedule" under section 14 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (unled, instructed by MistryFallahi).

Parkview Constructions Pty Ltd v Futuroscop Enterprises Pty Ltd [2023] NSWSC 178 - claim by a builder for damages and specific performance under a design and construct contract and cross-claim by principal for defective building work and failure to achieve practical completion (led by I G Roberts SC and H Pintos-Lopez, instructed by William Roberts Lawyers).

***Catholic Healthcare Limited v SafeWork NSW* [2025] NSWIRComm 1046** – external review of an inspector’s decision to issue an improvement notice to a residential aged care facility provider requiring the implementation of fit testing of respiratory masks (unled, instructed by SafeWork NSW).

CD 2024/00139002: *Bondi Junction Inquest* – appearing for SafeWork NSW in the coronial inquest into the Westfield Bondi Junction mass casualty event on 13 April 2024 (unled, instructed by SafeWork NSW).

***Shapkin v The University of Sydney* [2024] NSWCA 156** – application for leave to appeal decision by primary judge to decline to conduct, and thus stay, judicial review proceedings commenced concurrently with statutory appeal proceedings (led by A Rao, instructed by Bartier Perry) – also, *Shapkin v The University of Sydney* [2023] NSWSC 1534 (decision below).

***FKT v Children’s Guardian* [2023] NSWCATAD 22** – external review of Children’s Guardian decision to refuse a working with children’s check to a person who had been found not guilty of various criminal offences (unled, instructed by the Crown Solicitor’s Office).

***AZ v Sydney Local Health District* [2022] NSWSC 878** – application by parents of a child in the *parens patriae* jurisdiction of the Supreme Court of New South Wales to restrain a local health district from discharging their child from a hospital (led by B Tronson, instructed by McGirr & Associates).

ARTICLES/ CASE NOTES

Kevin Tang and Justin Pen, 'An Interview With Keith Mason and Larissa Reid' (2024 Winter) *Bar News: Journal of the NSW Bar Association* 30.

Justin Pen and Emily Aitken, 'Vox ex machina: recent cases in audio-visual link law' (2024 Autumn) *Bar News: Journal of the NSW Bar Association* 58.

Brenda Tronson and Justin Pen, 'Preparing expert evidence: "Render unto the expert the things that are the expert's"' (5 August 2022) *Law Society Journal* (online).

Justin Pen, '(I Can't Get No) Jurisdiction' (2022 Winter) *Bar News: Journal of the NSW Bar Association* 14.

Justin Pen, 'Employees vs Independent Contractors' (2022 Autumn) *Bar News: Journal of the NSW Bar Association* 26.

BOOK REVIEWS

Justin Pen, 'The Iliad by Homer: translated by Emily Wilson' (2024 Winter) *Bar News: Journal of the NSW Bar Association* 100.

Justin Pen, 'The Odyssey by Homer: translated by Emily Wilson' (2024 Autumn) *Bar News: Journal of the NSW Bar Association* 106.

Justin Pen, 'Common Law, Equity and Statute: A complex entangled system' by Mark Leeming (2023) 48(4) *Alternative Law Journal* 305-306

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PRESENTATIONS

"Strategies for Underpayment Recovery" to the Union Lawyers & Industrial Officers Conference 2025 (March 2025).

"Brrrrr It's Cold In Here - Freezing Orders and Employment Law" to the NSW Working Women's Centre (February 2025).

"The Right to Disconnect" to the Piddington Society (March 2024).

"Deeds of Release: Doing Them and Undoing Them" to Legal Aid NSW (March 2024), Herbert Smith Freehills (May 2023), and Community Legal Centres NSW's Employment and Discrimination Network (February 2023).

"Industrial manslaughter and recklessness offences" - Greenway Chambers CPD (February 2024) (with Colin Magee).

"Unreasonable additional working hours - claims under the *Fair Work Act 2009* (Cth)" to the New South Wales Young Lawyers' Workplace and Safety Law sub-committee (October 2022), Harmers Workplace Lawyers (October 2022), and Herbert Smith Freehills (October 2022).