**Case law examples – Dr Philip Bender**

**Administrative law (including customs) and constitutional law**

* *Maguire and Commissioner of Taxation* (ongoing in 2017, issues concerning the scope of the implied constitutional limitation on Commonwealth laws impinging on the States’ constitutional functions).
* *McCormack and ASIC* [2017] FCA 684 (successful appeal on unreasonableness and other grounds including the duty of decision makers to take submissions into account).
* *CPAC Residential Pty Ltd and ASIC* [2016] AATA 428 (various issues relating to the AAT’s jurisdiction to hear and determine a matter).
* *Tadcaster Sorrento Pty Ltd v Cmr of State Revenue* (2015, settled, Court of Appeal, appeal from[2015] VCAT 611 involving the role of legislative policy and purpose in defining the scope of an administrative discretion and errors of law in exercising the discretion based on relevant and irrelevant considerations).
* *Consiglio’s* case (2014, settled, Federal Court case on review of the exercise of an administrative discretion based on various administrative law grounds).
* *Eshuys’* case (2014, settled, Federal Court case on review of the exercise of an administrative discretion based on various administrative law grounds).
* *Bell v FCT* [2013] HCATrans 179 (acted as sole counsel in High Court on issue of what constitutes a “question of law” on appeal from an administrative tribunal).
* *Bell v FCT* [2013] FCAFC 32 (Full Federal Court, various issues relating to the application of principles of unreasonableness and relevant and irrelevant considerations in judicial review of administrative decisions).
* *VN Railway Pty Ltd & Ors v FCT* [2013] FCA 265 (Federal Court, scope of the rule in *Browne v Dunn* and its implications for procedural fairness in decisions of an administrative tribunal).
* *Watsford v FCT* [2013] FCA 1389 (irrationality in decisions of administrative tribunals and issue of what constitutes a question of law on appeal from a tribunal).
* *Australian Customs Service v Tzelepis* (Magistrates’ Court, customs matter).

**Bankruptcy and insolvency / family law**

* *Scott v McKenzie* (2017, settled, Federal Circuit Court, case dealing with the interaction of Family Law and bankruptcy).
* Advice to liquidator on priority claims in respect of insurance premium refunds (2016).
* *In the matter of George Alex (a bankrupt): Rambaldi and Yeo (joint trustees of Alex, a bankrupt) v Fieg and Ors* (2016, Federal Court, settled, acted for a trustee in bankruptcy in this matter involving a claim on a property).
* *EJ Cutting Pty Ltd (in liq) and Anor v Sandvik Australia Pty Ltd* (2016, settled, unfair preference claim).
* *Fode v Horne* [2015] FCCA 70 (judicial review of trustee in bankruptcy’s proof of debt decisions).
* *Di Coccio v Official Trustee in Bankruptcy* [2014] FCA 782(acted for Official Trustee in matter involving the question of whether property acquired using after-acquired income is property that vests in a trustee in bankruptcy).
* *Re Todisco* (a bankrupt) (Federal Circuit Court, settled – judicial review of trustee in bankruptcy’s decision).
* *DCT v National Skin Institute (Aust) Pty Ltd* [2012] FCAFC 2 (Full Federal Court – insolvency and statutory demand matter).
* Various appearances and advice on matters involving obtaining or defending bankruptcy orders, statutory demands (eg setting aside statutory demands), winding up companies (including setting aside winding up orders) and on “claw-back” of funds (eg preference claims) in bankruptcy/insolvency situations.

**Banking and finance**

* *House of Lords Property Pty Ltd v National Australia Bank Ltd* (2016, settled, banking dispute).
* *Alsafe Pre-Mix Concrete Pty Ltd v De Fazio* (2016, settled, enforcement of a charge).

**Building and property law**

* *Australasian Piling Company v Maxcon Constructions Pty Ltd* (2016, settled, acted in building and construction industry adjudication and subsequent judicial review appeal to the South Australian Supreme Court from the adjudicator’s decision).
* *Citipower Pty Ltd v Rypceen Pty Ltd* (2015, Supreme Court, settled, adverse possession claim).
* Several disputes involving caveats and mortgages/charges over real property and contracts for the purchase of real property.
* Several disputes involving claims of unconscionability, constructive trusts, and estoppel/part performance relating to real property (eg a settled Supreme Court dispute relating to the sale of a property by a trustee to an unincorporated gun club in unconscionable circumstances).

**Corporations law and financial services law**

* *Cheung and ASIC* (2016, unreported, acted in financial services banning matter).
* *Bolton and ASIC* [2015] AATA 977 (director banning case).
* *Jeffers and ASIC* [2015] AATA 537 (financial services banning case).
* *Howard v Commissioner of Taxation* (2014) 253 CLR 83 (High Court – the issues predominantly concerned the scope of fiduciary duties in commercial transactions and fiduciary duties of company directors).

**Commercial law, including competition and consumer law**

* As a sessional member of the VCAT, I have decided numerous contractual claims and claims under the Australian Consumer Law.
* Work in this area has involved drafting pleadings, affidavits, and other court documents and appearing in courts and tribunals and in mediations (see below for recent examples).
* *Khoee v Fletcher and Parker (Balwyn) Pty Ltd* (2017, settled, dispute involving misleading and deceptive conduct).
* *SJM Group Pty Ltd v Lantrak Pty Ltd and Anor* (2016, issues involving breach of contract, application of the *Wrongs Act* and the Australian Consumer Law).
* *Xu v Singh* (2016, settled, shareholder oppression action).
* Confidential commercial fraud case (briefed by VGSO - involved analysis of 100 folders of evidence and provision of advice about possible causes of action and evidentiary issues).
* *Stenholm Holdings Pty Ltd v Heylbut* (2015, settled during hearing, Supreme Court appeal from VCAT relating to contractual issues and issues of restitution)

**Common law**

* On WorkSafe Victoria’s list of preferred counsel for common law matters.
* *Canny v Fisher McCrae (a firm)* (2017, settled, professional negligence claim).
* *Millington v Waste Wise Environmental Pty Ltd* [2015] VSC 167 (acted for Insurance Australia Group in this negligence test case involving important damages principles including loss mitigation, the once and for all rule and the compensatory principle)
* *Lyons v Lay* (2015, professional negligence claim)
* Various other negligence matters, predominantly involving an element of professional negligence (eg accountants, lawyers etc)

**Occupational health and safety**

* *Victorian Workcover Authority v City Circle Pty Ltd* (upcoming 5 day trial in December 2017 to prosecute on various criminal breaches).
* *Victorian Workcover Authority v Celsius Fire Services Pty Ltd* (ongoing prosecution with a 3 week committal to be heard in April 2018).
* *Victorian Workcover Authority v CFA, Fire Services Commissioner and MFB* (2015, complex and long running matter over 8 months involving the Hazelwood mine fire and multiple alleged breaches of various provisions of Part 3 of the *Occupational Health and Safety Act 2004* which did not ultimately result in charges being laid).
* *Baiada Poultry Pty Ltd v Victorian Workcover Authority* (unreported, 2015, Court of Appeal leave application involving issues relating to maintaining an adequate system of work in a chicken processing plant).
* *Lofts Quarries Pty Ltd v Worksafe Victoria* (2015, settled, judicial review of a Worksafe Victoria decision regarding a quarrying company and its transport contractors in respect of s 21 of the *Occupational Health and Safety Act 2004*).
* Various advices to employers in respect of Workcover premium/payroll tax matters, including classifications.
* Previously acted in the Duty Barristers pro-bono scheme in the Magistrates’ Court assisting with criminal pleas.

**Superannuation**

* *Hart v Commissioner of Taxation* (ongoing in 2017, disqualification for breaches of superannuation legislation).
* *Alamiste Superannuation Fund v Cmr of Taxation* (2015, Federal Court, settled, superannuation dispute).
* *VN Railway Pty Ltd & Ors v FCT* [2013] FCA 265 (Federal Court, superannuation, penalties and procedural fairness and Full Federal Court case which was withdrawn prior to hearing).
* Assisting law firms with drafting their superannuation trust deeds and with amendments to those deeds in light of 2016 and 2017 reforms.

**Trusts and deceased estates**

* *Dance & Ors v Ian Dance Nominees Pty Ltd & Ors* (2016, Supreme Court, settled dispute to restrain a trustee from exercising their discretion to distribute benefits).
* *Barnett v Barnett* (2014, County Court, settled dispute to remove a trustee of a family trust).
* *Frick Foundation v Attorney-General* (Supreme Court, unreported, amendment of a deed of a charitable trust).
* *Smith v Fingal Glen Pty Ltd atf Comfort Resort Echuca Moama Trust* (2013, County Court, dispute between a unit holder and the trustee of a trust).
* Providing advice on trust deed interpretation and assisting law firms with drafting issues with discretionary trust deeds and unit trust deeds.

**Taxation**

* *Deputy Commissioner of Taxation v Hosseini* (ongoing, Supreme Court).
* *Watsford v FCT* [2013] FCA 1389 (Federal Court – issue of contractual interpretation of an options agreement); [2012] AATA 331 (original AAT decision).
* *International All Sports v FCT* [2011] FCA 824 (Federal Court – GST matter); (No 2) [2011] FCA 1027 (Federal Court – costs dispute).
* *Heaney v Commissioner of Taxation* [2013] AATA 331 (non-commercial loss rules).
* *Hadrian Fraval Nominees Pty Ltd v Commissioner of Taxation* [2013] AATA 127 (research and development concession).
* *Confidential and Commissioner of Taxation* [2012] AATA 178 (trusts and superannuation case).
* *Bell and Commissioner of Taxation* [2012] AATA 45 (small business CGT concessions).
* *Armirthalingam and Commissioner of Taxation* [2012] AATA 449 (income tax case).
* *Knox and Commissioner of Taxation* [2011] AATA 906 (partnership and interest deductibility case).
* *Confidential and Commissioner of Taxation* [2011] AATA 682 (personal services income case).
* *A & C Sliwa and Commissioner of Taxation* [2011] AATA 390 (GST property development and income tax case).