



Graeme S Clarke QC

List A Barristers

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Areas of Practice

- Class Actions/Representative Proceedings
- Commercial Law
- Competition/Market Conduct
- Contract Disputes
- Corporations & Securities
- Equity & Trusts
- Insurance & Re-insurance
- Intellectual Property
- Trade Practices & Consumer Protection
- Banking & Finance
- Managed Investment Schemes
- Mortgages & Securities
- Administrative Law (Merits Review & Judicial Review)
- Landlord and Tenant

Educational Qualifications

- October 1983-August 1984 completed Bachelor of Civil Law, a postgraduate coursework degree, at Lincoln College, University of Oxford. Awarded upper second class honours.
- Associate to the Honourable Mr Justice King of the Supreme Court of Victoria April 1981-September 1983. King J was in charge of the Industrial Property List (Intellectual Property) during that period
- Studied LL.M by coursework and minor thesis at the University of Melbourne part-time 1980-1983. LL.M completed mid-1983.
- Admitted Barrister & Solicitor of the Supreme Court of Victoria, and of Federal Courts, on 1 April 1981.
- Articled clerk during 1980-1981 to Mr Shimeon Kotler of Clarke Richards & Co.
- Completed LL.B (Hons) Degree (H2B 9th in Class) at University of Melbourne 1979.
- Awarded Distinction for General Excellence (within top 50 students in Victoria).
- Completed HSC at Brighton Grammar School 1974. Dux of School for 1974.

Legal Experience

- Appointed Queen's Counsel for the State of Victoria 16 April 2014
- Appointed Senior Counsel for the State of Victoria 11 November 2003
- Signed roll of counsel on 22 November 1984 (No. 1924).
- Law reporter for the Commonwealth Law Reports 1994-2015
- Admitted to practice interstate – Tas, NSW, WA

Graeme S Clarke QC is a Commercial Law Silk, with a particular interest in Intellectual Property (Patents, Trade Marks, Designs, Copyright, Designs, Plant Breeders' Rights, Confidential Information, Misleading or Deceptive Conduct, Computers, Internet issues). Graeme has practised at the Victorian Bar for more than 30 years and as a Silk since 2003.

Cases in which he has appeared include the following:

- *IMCC Group (Australia) Pty Ltd v CB Cold Storage Pty Ltd*
[2017] VSCA 178 (Warren CJ; Ferguson & Kaye JJA) (Landlord and Tenant; Retail Leases; Commercial Leases)
- *Chowder Bay Pty Ltd v Paganin*
[2017] FCA 332 (Barker J; Misleading or Deceptive Conduct)
- *CB Cold Storage Pty Ltd v IMCC Group (Australia) Pty Ltd*
[2016] VCAT 1866 (Senior Member Walker); [2017] VSC 23 (Croft J; Landlord and Tenant; Retail Leases; Commercial Leases)
- *Bisognin v Hera Project Pty Ltd*
[2016] VSC 75 (Sloss J; Sale of Land; Contracts)
- *Timbercorp Finance Pty Ltd (In Liq) v FTM Nominees Pty Ltd*
[2015] VSC 498 (Judd J; Equity; Misleading or Deceptive Conduct; Practice and Procedure)
- *Verrochi v Direct Chemist Outlet Pty Ltd*
[2015] FCA 234 (Middleton J; Misleading or Deceptive Conduct; Trade Marks); (2015) 112 IPR 200; [2016] FCAFC 104 (Nicholas, Murphy and Beach JJ)
- *REA Group Ltd v Real Estate 1 Limited*
[2013] FCA 559; 102 IPR 1 (Bromberg J; Misleading or Deceptive Conduct; Trade Marks)
- *Sebastian v Strongwall International Ltd (Deregistered) (No 3)*
[2012] FCA 474 (McKerracher J; Practice and Procedure; Pleadings)
- *Hanna v Australian Securities and Investments Commission (No 2)*
[2011] FCA 1491; 286 ALR 706 (McKerracher J; Corporations)
- *Hanna v Australian Securities and Investments Commission*
[2011] FCA 1077 (McKerracher J; Practice & Procedure; Mediations)
- *Wong v Australian Community Pharmacy Authority*
[2011] FCA 959 (Siopis J; Administrative Law)
- *Nature's Blend Pty Ltd v Nestlé Australia Pty Ltd*
[2010] FCA 198; 86 IPR 1 (Sundberg J); [2010] FCAFC 117; 87 IPR 464 (Stone, Gordon & McKerracher JJ; Trade Marks)
- *Staley v Pivot Group Pty Ltd (No 6)*

- [2010] WASC 228 (Kenneth Martin J; Easements)
- *Manderson M&F Consulting (A Firm) v Incitec Pivot Ltd*
 - [2010] VSC 63 (Croft J; Confidential Information)
- *Adnurat Pty Ltd v ITW Construction Systems Australia Pty Ltd*
 - [2009] FCA 499 (Sundberg J; Patents)
- *Jenton Overseas Investment Pte Ltd v Townsing*
 - (2008) 21 VR 241 (Whelan J; Companies, Foreign Judgments)
- *Chiropedic Bedding Pty Ltd v Radburg*
 - (2008) 79 IPR 1 (French, Rares and Besanko JJ; Designs)
- *Re James Michael Keogh*
 - [2008] ATMO 69 (Trade Marks; Succession)
- *Men's Gallery Pty Ltd v Platinum 253 Pty Ltd*
 - (2008) 78 IPR 71 (Trade Marks)
- *Memcor Australia Pty Ltd v Zenon Technology*
 - [2008] APO 8 (Patents)
- *Brother Industries Ltd v Dynamic Supplies Pty Ltd*
 - (2007) 163 FCR 530 (Tamberlin J; Trademarks); *Brother Industries Ltd Dynamic Supplies Pty Ltd* [2007] FCA 1694 (Tamberlin J; Injunctions); *Brother Industries Ltd v Dynamic Supplies Pty Ltd* [2008] FCA 126 (Tamberlin J; Costs)
- *Zenon Environmental Inc v Memcor Australia Pty Ltd*
 - [2006] APO 36 (Patents)
- *Intellectual Property Pty Ltd v Mygroups Pty Ltd*
 - [2006] FCA 15 (Goldberg J; Colour trademarks)
- *Novartis AG v Bayer Health Care AG*
 - APO (unreported 29 July 2006; Patents)
- *Protiviti Inc v Probiti Pty Ltd*
 - [2005] FCA 1114 (Heerey J; Trade Marks)
- *Osgaig Pty Ltd v Ajisen (Melbourne) Pty Ltd*
 - (2004) 213 ALR 153 (Weinberg J; Passing Off)
- *Novartis AG v FH Faulding & Co Ltd*
 - [2004] FCAFC 254 (Heerey, Emmett & Allsop JJ; Patents)
- *Muscat v Best Direction Pty Ltd*
 - (2004) 61 IPR 1 (Sundberg J; Copyright)
- *Elliot v Australian Prudential Regulation Authority*
 - [2004] FCA 586 (Gray J; Administrative Law; Superannuation)
- *W & M Klein Pty Ltd v Art Plastics Pty Ltd*
 - (2003) 60 IPR 253 (Finn J; Patents)
- *Philmac Pty Ltd v Registrar of Trade Marks (No. 2)*
 - (2003) AIPC 91-876 (Mansfield J; Trade Marks)
- *Philmac Pty Ltd v Registrar of Trade Marks*
 - (2002) 56 IPR 452 (Mansfield J; Colour Trade Marks)
- *Abrasives & Related Suppliers Pty Ltd v Rotheram*

- [2003] FCA 838 (Heerey J; Copyright)
- *Brivis Australia Pty Ltd v Seeley International Pty Ltd*
[2002] FCA 843 (O'Loughlin J; Patents); [2003] FCAFC 130 (Wilcox, Sackville and Selway JJ)
 - *Expectation Pty Ltd v Pinnacle Vrb Ltd*
[2001] WASC 144 (Murray J; Companies, Contract) [2002] WASCA 160 (Steytler, Miller and Hasluck JJ); [2004] WASCA 261 (Steytler, McKechnie, Jenkins JJ).
 - *Malibu Boats West Inc v Catanese*
(2000) 51 IPR 134 (Finkelstein J; Trade Marks)
 - *Hugo Boss AG v World One Co Ltd*
(2000) ATMO 88 (Trade Marks)
 - *connect.com.au Pty Ltd v GoConnect Australia Pty Ltd*
(2000) 50 IPR 535 (Emmett J; Internet, Trade Practices, Trade Marks)
 - *Minecom Australia Pty Ltd v Mine Radio Systems Inc*
[1999] TASSC 116 (Slicer J; Companies)
 - *Balfour Wauchope Pty Ltd v Great Southern Pie Co Pty Ltd*
[1999] FCA 1028 (Finn J; Trade Practices, Trade Marks)
 - *Environmental & Resource Technology Holdings Pty Ltd v Debco Pty Ltd*
(1999) APO 31 (Patents)
 - *Eli Lilly & Co v Novo Nordisk A/S*
(1999) APO 45 (Patents)
 - *Caterpillar Inc v John Deere Ltd*
(1999) 48 IPR 1 (Carr, Sundberg, Kenny JJ; Patents)
 - *Agius v Sage*
[1999] VSC 100 (Byrne J; Sale of Land)
 - *Compagnie Industrielle de Precontrainte et d'Equipment des Constructions SA v First Melbourne Securities Pty Ltd*
(1999) 44 IPR 512 (Merkel J; Copyright)
 - *Pacific Dunlop Ltd v Swinbank*
[1998] VSC 154 (Mandie J; Insurance)
 - *Macquarie Bank Ltd v Sixty-Fourth Throne Pty Ltd*
[1998] 3 VR 133 (Winneke P, Tadgell JA and Ashley AJA; Banking, Real Property)
 - *Coca-Cola Co v All-Fect Distributors Ltd*
(1998) 43 IPR 47 (Merkel J; Trade Marks)
 - *Hutt v Enig Pty Ltd*
(1998) 41 IPR 559 (Goldberg J; Patents)
 - *Commissioner for Corporate Affairs v X&Y*
[1987] VR 460 (Murphy, McGarvie and Marks JJ; Companies)
 - *Admar Computers Pty Ltd v Ezy Systems Pty Ltd*
(1997) 38 IPR 659 (Goldberg J; Computers, Copyright)

- *Dart Industries Inc v David Bryar & Associates Pty Ltd*
(1997) 38 IPR 389 (Goldberg J; Confidential Information, Copyright)
- *Tip Top Ice Cream Co Ltd v Peters Foods Australia Ltd*
[1996] ATMO 4 (Trade Marks)
- *AB Hassle v Pharmacia (Australia) Pty Ltd*
(1995) 33 IPR 63 (Ashley J; Patents)
- *Toyota Motor Corporation Australia Ltd v Ken Morgan Motors Pty Ltd*
[1994] 2 VR 106 (Brooking, Tadgell and J D Phillips JJ; Contracts)
- *Melbourne v Terry Fluid Controls Pty Ltd*
(1993) 26 IPR 292 (Jenkinson J; Patents); (1994) 28 IPR 302 (Northrop, Gummow, Olney JJ)
- *Remy Martin Amerique Inc v Carlton Wines & Spirits (Aust) Pty Ltd*
(unreported, O'Loughlin J; Federal Court of Australia 19 February 1992; Passing Off)
- *Dart Industries Inc v Grace Bros Pty Ltd*
(1990) 18 IPR 87 (Marks J; Patents)
- *The Paul Dainty Corporation Pty Ltd v The National Tennis Centre Trust*
(1990) 22 FCR 495 (Woodward, Northrop, Sheppard JJ; Trade Practices, Exclusive Dealing)
- *Acushnet Co v Spalding Aust Pty Ltd*
(1989) 17 IPR 136 (Northrop J; Patents)
- *Miki Shoko Co Ltd v Merv Brown Pty Ltd*
(1987) 9 IPR 321 (Northrop J; Trade Practices, Trade Marks); (1988) ATPR 40 858 (Sweeney, Lockhart, Spender JJ)

Articles / Papers, Available by Download from Website entry

- Proportionate Liability in Commercial Cases: Principles & Practice (June 2017)
- Misleading or Deceptive Conduct Cases in the Supreme Court of Victoria (2015) 89 ALJ 397
- Misleading or Deceptive Conduct – Western Australian Developments (October 2014)
- Misleading or Deceptive Conduct Cases – Remedies (October 2014)
- Damages for Patent, Design and Trade Mark Infringement (June 2011)
- *After Gallo Winery v Lion Nathan: Does a parallel importer of trade-marked goods infringe the mark?* (November 2010; Published April 2011, Australian Law Journal) (2011) 85 ALJ 234
- *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* [2009] HCA 8: Contract breakers beware! (March 2009)
- Confidential Information and trade secrets: When is a trade secret in the public domain? (September 2008; Published April 2009, Australian Law Journal) (2009) 83 ALJ 242
- Interlocutory Injunctions in Intellectual Property Cases, Principles and Practice (March 2007; Published 2007, Intellectual Property Forum)