

DAUID SIBTAIN

Barrister

LEVEL **22** CHAMBERS

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PROFESSIONAL EXPERIENCE

With over 20 years' experience at the Bar, Dauid maintains an expansive practice, with particular expertise in defamation, media, building and construction, commercial, and intellectual property matters. His considerable experience as a trial and appellate advocate before both judges and juries, has seen him appear in significant litigation in the High Court of Australia, New South Wales Court of Appeal and in other superior courts.

Dauid offers expert, to-the-point advice with sound judgment, and has appeared regularly for leading Australian media organisations and for international intellectual property rights holders.

Dauid frequently advises and appears for high profile clients, on instruction from both solicitors in private practice and directly from in-house corporate legal departments. His extensive experience as a barrister in leading chambers in Sydney, as a solicitor in international law firms and as a professional manager at Sony Music Publishing, provides Dauid with a solid foundation upon which to provide high quality representation that best serves the commercial and legal interests of his clients.

He is regularly engaged to appear in urgent applications. He has appeared, for applicants and respondents, in numerous urgent applications to restrain breaches of confidence, injurious falsehoods, breaches of restrictive covenants, infringements of copyright and trade mark infringements, and he regularly appears in urgent suppression and non-publication applications made in connection with criminal proceedings and coronial inquests.

PROFESSIONAL RECOGNITION

- World Trademark Review 2019 – Leading Trademark Professionals, Australia: The Bar
- Doyle's Guide 2018: Recommended Counsel, Leading Technology, Media & Telecommunications Barristers, NSW
- World Trademark Review 2018 – Leading Trademark Professionals, Australia: The Bar
- World Trademark Review 2017 – Leading Trademark Professionals, Australia: The Bar
- World Trademark Review 2016 – Leading Trademark Professionals, Australia: The Bar

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ADMISSIONS

- 1996 Admitted to the Bar of New South Wales
- 1989 Admitted as a Solicitor of the Supreme Court of New South Wales

PROFESSIONAL QUALIFICATIONS

- 1992 - 1996 Master of Laws (Media, Communications and Information Technology Law):
University of New South Wales
- 1984 - 1989 Bachelor of Laws: The University of Sydney
- 1984 - 1986 Bachelor of Arts: The University of Sydney

PRINCIPAL AREAS OF PRACTICE

Defamation

Media

Injurious Falsehood

Confidential Information

Dauid has appeared in the Supreme Court of New South Wales and in the Federal Court of Australia in many defamation trials (before judges sitting alone and jury trials), and in numerous injurious falsehood, confidential information and suppression order cases and applications. He has appeared in the High Court and in the New South Wales Court of Appeal in defamation appeals and applications, and in the New South Wales Court of Appeal in three of the leading cases on suppression orders. He has also appeared in suppression order applications in the District Court of New South Wales, Coroner's Court, Local Court of New South Wales and Commissions of Inquiry, and in defamation proceedings in the District Court of New South Wales and Australian Capital Territory Supreme Court. He regularly appears for the major media organisations in Australia, and has appeared for Channel 7, Channel 9, Channel 10, ABC, SBS, Nationwide News, Fairfax Media Publications, Macquarie University, the University of New South Wales, QBE, Emap Australia and Menulog.

Intellectual Property

Competition and Consumer Law

Trade Practices

Advertising

Entertainment

Dauid's experience in the Federal Court of Australia primarily concerns copyright, trade marks and trade practices cases and applications, including Copyright Tribunal proceedings and proceedings brought by the Australian Competition and Consumer Commission. He has appeared in the Full Court of the Federal Court in appeals involving competition and consumer law, and intellectual property. He has appeared for international and Australian intellectual property rights holders, and has appeared for large Australian corporations in proceedings arising out of the advertising activities of those corporations. He has advised

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and appeared for organisations including Virgin Enterprises, Sanitarium, the Commonwealth Bank, MBF (now, Bupa), NRMA, ABB, Hills Industries, Astra Pharmaceuticals, Reckitt and Coleman (now Reckitt Benckiser), Canon, the Australian Hotels Association, the Australian Writers' Guild and the Registrar of Trade Marks.

Building and Construction

With considerable experience in building and construction, Dauid appears on behalf of clients in significant building cases and applications (including security of payment proceedings), at first instance and appellate levels. He also appears in Supreme Court references and in building and construction arbitrations. He has advised and appeared for international and Australian building companies, for developers, for bodies corporate and for specialist sub-contractors in major litigation, references and arbitrations. He has appeared for companies including Barclay Mowlem (now Laing O'Rourke), Multiplex Constructions, CSR, Downer EDI and Sekisui House.

Urgent applications

Dauid is regularly retained, on short notice, to appear in urgent and complex applications in a broad variety of areas of law, including appearing for high profile public figures and politicians.

Commercial

Constitutional Law

Equity

Employment Law

His commercial practice has seen him appear in a broad range of proceedings, including substantial commercial and contractual disputes. His commercial experience includes appearing in proceedings concerning guarantees, trusts, wills, employment disputes, insolvency, corporations law, and franchising. He has appeared in the High Court in several commercial cases and applications. He has appeared for companies including Channel 7, BP Australia and UGL.

PROFESSIONAL EXPERIENCE

- 2018 - present Barrister, Level 22 Chambers
- 2016 - 2018 Barrister, 4 St James Hall
- 2005 - 2016 Barrister, Nigel Bowen Chambers
- 1996 - 2005 Barrister, Blackstone Chambers
- 1994 - 1996 Senior Associate, Gadens Ridgeway (now Gadens)
- 1992 - 1993 Solicitor, Blake Dawson Waldron (now Ashurst)
- 1990 - 1992 Professional Manager, Sony Music Publishing
- 1989 - 1990 Solicitor, Blake Dawson Waldron (now Ashurst)

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SELECT CASES

Dauid has extensive advocacy (including appellate advocacy) experience appearing for clients in complex hearings and appeals in a wide variety of jurisdictions.

A detailed list of cases in which he has appeared in respect of each of his areas of practice is available upon request. Significant cases in which Dauid has appeared are as follows.

High Court of Australia Cases and Applications

- *John Fairfax Publications Pty Ltd & Anor v Gacic & Ors* [2012] HCATrans 168 (special leave application in defamation proceedings)
- *Bofinger v Kingsway Group Limited* 239 CLR 269; 83 ALJR 1210; 260 ALR 71; [2009] HCA 44 (a leading case concerning guarantor's right of subrogation)
- *Bofinger & Anor v Kingsway Group Limited formerly Willis & Bowring Mortgage Investments Limited & Ors* [2009] HCATrans 144 (special leave application in proceedings concerning subrogated rights of guarantors)
- *Channel Seven Sydney Pty Ltd v Mahommed* [2008] HCATrans 270 (special leave application in defamation proceedings)
- *John Fairfax Publications Pty Ltd v Gacic* 230 CLR 291; [1980] 2 NSWLR 380; 81 ALJR 1218; 235 ALR 402; [2007] HCA 28 (leading case on section 108(3) of the Supreme Court Act NSW and the power to enter a substituted verdict)
- *John Fairfax Publications Pty Ltd v Zunter* [2007] HCATrans 64 (special leave application in defamation proceedings)
- *John Fairfax Publications Pty Ltd & Anor v Gacic & Ors* [2006] HCATrans 676 (special leave application in defamation proceedings)
- *Ringrow Pty Ltd v BP Australia Pty Ltd; Ultimate Fuel Pty Limited v BP Australia Pty Ltd* 224 CLR 656; 80 ALJR 219; 222 ALR 306; [2005] HCA 71 (one of the leading cases on penalty clauses)
- *Ringrow Pty Ltd & Ors v BP Australia Pty Ltd* [2005] HCATrans 374 (special leave application in proceedings concerning penalty clauses)

New South Wales Court of Appeal Cases and Applications

- *Nationwide News Pty Ltd v Vass* [2018] NSWCA 259 (appeal in defamation proceedings)
- *Qiangdong Liu v Fairfax Media Publications Pty Ltd & Ors* [2018] NSWCCA 159 (application for leave to appeal from the refusal of a non-publication order)
- *Zoef v Nationwide News Pty Ltd* [2016] NSWCA 283 (appeal in defamation proceedings)

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- *Shift2Neutral Pty Ltd v Fairfax Media Publications Pty Ltd* [2015] NSWCA 274 (appeal in defamation proceedings)
- *Gacic v John Fairfax Publications Pty Ltd* 89 NSWLR 538; [2015] NSWCA 99 (appeal in defamation proceedings)
- *Hyndes v Nationwide News Pty Ltd; Nationwide News Pty Ltd v Hyndes* [2012] NSWCA 349 (appeal in defamation proceedings)
- *Fairfax Digital Australia & New Zealand Pty Ltd v District Court of New South Wales* [2012] NSWCA 172; 83 NSWLR 52; 263 FCR 211 (leading case - appeal in application for take-down order)
- *Gacic v John Fairfax Publications Pty Ltd* [2011] NSWCA 362 (appeal in defamation proceedings)
- *Channel Seven Sydney Pty Ltd v Senator Concetta Fierravanti-Wells* [2011] NSWCA 246 (appeal in defamation proceedings)
- *Downer EDI Works Pty Ltd v Parsons Brinckerhoff Australia Pty Ltd* 80 NSWLR 202; [2011] NSWCA 78 (appeal in building case concerning security of payment legislation)
- *William Wayne Moss v Luke McIlveen* [2011] NSWCA 77 (leave application in contract proceeding)
- *Miller v Nationwide News Pty Limited* [2008] NSWCA 261 (leave application in contract proceeding)
- *Miller v Nationwide News Pty Limited* [2008] NSWCA 222 (leave application on contract proceeding)
- *Bofinger v Kingsway Group Ltd* [2008] NSWCA 41 (leave application in case concerning guarantor's right of subrogation)
- *Bofinger & Anor v Kingsway Group Pty Ltd & Ors* 73 NSWLR 437; 3 BFRA 253; [2008] NSWCA 332 (appeal in case concerning guarantor's right of subrogation)
- *Bruce Allan Burrell v Regina* [2008] NSWCCA 276 (appeal in application for suppression order)
- *Preston v Harbour Pacific Underwriting Management Pty Limited* [2008] NSWCA 216 (appeal in case concerning fresh or further evidence)
- *John Fairfax Publications Pty Ltd v Hitchcock* 70 NSWLR 484; [2007] NSWCA 364 (appeal in defamation proceedings concerning the availability of defences)
- *Gross v Weston & Anor* 69 NSWLR 279; [2007] NSWCA 1 (appeal in defamation proceedings concerning particulars of a reply)
- *Application by John Fairfax Publications Pty Ltd re MSK, MAK, MMK and MRK* [2006] NSWCCA 386 (appeal in application for suppression order)
- *John Fairfax Publication Pty Limited v MSK MMK MRK MAK & Regina* [2006] NSWCCA 356 (appeal in application for suppression order)

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- *Bitannia Pty Ltd & Anor v Parkline Constructions Pty Ltd (No.2)* [2006] NSWCA 255 (appeal in building case involving conflict between Federal and State legislation)
- *Bitannia Pty Ltd & Anor v Parkline Constructions Pty Ltd* 67 NSWLR 9; [2006] NSWCA 238 (appeal in building case involving conflict between Federal and State legislation)
- *John Fairfax Publications Pty Ltd v Zunter* [2006] NSWCA 227 (appeal in defamation proceedings)
- *Nationwide News Pty Ltd v Sleeman* [2005] NSWCA 349 (appeal in defamation proceedings)
- *John Fairfax Publications Pty Ltd & 2 Ors v Ryde Local Court & 3 Ors* 62 NSWLR 512; 220 ALR 248; 152 A Crim R 527; [2005] NSWCA 101 (appeal in application for suppression order and access to court documents)
- *John Fairfax Publications Pty Ltd & Anor v District Court of NSW & Ors* 61 NSWLR 344; 148 A Crim R 522; 50 ACSR 380; [2004] NSWCA 324 (appeal in application for suppression order)
- *SG v DPP* [2003] NSWCA 128 (appeal in application for suppression order)
- *Sue Whelan Architects v Gilmour* [2001] NSWCA 152 (appeal in negligent survey case)

Recent Federal Court cases and applications

- *Albarran (Liquidator) v Rankin, in the matter of Hartford Investments Pty Ltd (in liq)* [2018] FCA 2111 (application for suppressing order on grounds of derivative privilege)
- *Roberts-Smith v Fairfax Media Publications Pty Ltd* [2018] FCA 1943 (application for a suppression order)
- *Rush v Nationwide News* [2018] FCA 1851 (application for a suppression order)
- *Rush v Nationwide News* [2018] FCA 357 (application for a suppression order)
- *Inspire by Sophie Guidolin Pty Ltd v Finch Entertainment Pty Ltd* [2017] FCA 1618 (trade mark injunction)