

# **CURRICULUM VITAE**

## **DECLAN HYDE**

*September 2016*

### **General**

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Full Name: Declan Fellowes Hyde  
Qualifications: BA LLB (Monash University)  
Admitted to the Legal Profession: 3 April 1986  
Signed Victorian Bar Roll: 25 May 1989  
Other admissions to practice: N.S.W. W.A. High Court  
Chambers: Chancery Chambers, Level 25, 200 Queen Street, Melbourne, Vic. 3000  
Tel: (03) 8600-1718 (Chambers direct)  
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### **Areas of Practice**

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- Banking & Finance
- Bankruptcy & Corporate Insolvency & Reconstruction
- Commercial Law
- Consumer Law
- Contract
- Corporations & Securities
- Equity & Trusts
- Insurance
- Mortgages & Securities
- Partnerships
- Professional Negligence
- Property Law

### **Educational Qualifications**

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B.A. LL.B (Monash University) Admitted to double degree in 1978. Completed studies in faculties of Arts and Economics & Politics (B.A. 1983) and Faculty of Law (LL.B. 1985). Period obtaining degrees included extended deferred study and part-time study periods whilst working in industry (mining and security).

### **Experience in legal profession**

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Articles of Clerkship and solicitor at Ellison Hewison & Whitehead (now Minter Ellison) February 1985 - June 1986 (commercial and civil law). Solicitor at Freehill Hollingdale and Page (now Herbert Smith Freehills) July 1986 – end 1987 (commercial and civil law). Solicitor Australian Legal Group (Parker & Parker) in Perth (now Allens Linklaters) end 1987 to end 1988 (commercial and civil law and resources).

Joined Victorian Bar in March 1989. Signed Bar Roll May 1989.

Extensive experience as Counsel. Practice is predominantly in commercial, corporations & property law in Supreme and Federal Court jurisdictions, first instance and appellate, both advisory and advocacy. (See selected cases below). Work is also undertaken in intermediate court (County Court) and administrative tribunal (Commonwealth and State) jurisdictions.

Extensive experience in all forms of alternate dispute resolution, particularly both Court ordered and voluntary mediation together with formal arbitration.

### **Associations and appointments**

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Victorian Bar

Commercial Bar Association

Law Institute of Victoria

Undergraduate and post-graduate Mentor - Melbourne & Monash University Law Schools

Victorian Bar Council sub-committee member (2014)

Director and List Committee Member, List A Barristers Pty Ltd (6 years)

### **Other matters – commercial & property**

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Proprietary company directorships and management (exceed 25 years); investor & private portfolio manager from 1987 (ASX equities and real property); partner in private international tourism business (Japan-Australia) from 1994; experience in property leasing and development.

### **Recent representative cases re areas of practice**

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#### **Commercial Law:**

*The Really Good Company Pty Ltd v MAE Pacific Pty Ltd* [2016] VSC 517 - Supreme Court proceeding – Trusts – interpretation of unit trust deed – statutory misleading & deceptive conduct – joint venture & fiduciary duties - statute of limitations – account stated - remedies

*Ambridge Investments Pty Ltd v Tresscox Lawyers & Michael Leon Sifris* [2016] – Advocate's immunity from suit – procedure - separate trial of question under Rule 47.04

*Rujan Properties Pty Ltd v GEG Direct Securities Pty Ltd* [2016] - Supreme Court proceeding – ex parte injunction – mortgages and securities – default – power of sale – balance of convenience

*T & M Davis Pty Ltd v Melbourne Room Service and Catering Pty Ltd* [2016] – County Court proceeding – sale of business - misrepresentation - s.52(3) of *Estate Agents Act* 1980 (Vic.) – liability of vendor's business broker and/or accountant- fraud - remedies

*Dayi Sun v Utokyo Pty Ltd & Anor* [2016] – [CI-15-05333] - County Court proceeding – sale of business – misleading and deceptive conduct – operation of s.52(3) *Estate Agents Act* 1980 (Vic.) – penalties – relief against forfeiture

*Regent Rentals Pty Ltd (In Liquidation): Suzanna Varvatselis v Regent Rentals Pty Ltd (In Liquidation)* [2015] - Supreme Court proceeding – insolvency – winding up orders – statutory demands – service of process - proof of debts – powers & duties of liquidator – provision of statement of affairs – directors' obligations to assist liquidator – proof of solvency

*Re S.C.S Investments: Woodhouse v Watt* [2015] - Supreme Court proceeding – shareholder oppression action – exclusion of shareholder – operation of ss.232 & 233 *Corporations Act* – trusts – redistribution - taxation - ATO Private Rulings - liability for capital gains tax

*In the Matter of ACN 056 444 627 Pty Ltd (in Liq) and Stirling Lindley Horne and Ors (Liquidators) and Yellow Express Taxi Trucks Pty Ltd* [2015] - Supreme Court proceeding – unfair preference dispute – existence of running account defence – section 588FA(3) *Corporations Act*

*National Australia Bank v Pillay* [2014] - Supreme Court proceeding - application of *National Consumer Credit Protection Act 2009* (Cth) and *Australian Securities and Investments Commission Act 2001* (Cth.) - unconscionable conduct and/or misleading and deceptive conduct

*United Lift Services Pty Ltd & Ors v John Hermus & Ors* [2012-2013] - Supreme Court proceeding - director's duties - oppression of minority shareholders – ss.232 & 233 *Corporations Act*

*Polyxeni Kambouris v. Theo Tahmazis & Ors* [2013] - Supreme Court proceeding - director's duties - fiduciary duties – joint ventures - debt

*Dometic Pty Ltd & Anor v Olaf Wolfgang Bach & Ors* [2011] VSC 651 - Supreme Court proceeding - employment contracts – directors' fiduciary and statutory duties - unfair dismissal – fraud - theft

*Re Alpha Technologies Corporation Ltd (in Liquidation)* [2011] - Liquidator's powers in winding up / Supreme Court procedure - 468A(3) *Corporations Act 2001* (Cth)

*David Sharbutt v Supatech Holdings Pty Ltd & Anor* (2009) FCA 612 - Federal Court proceeding - international letters of credit - summary judgment / contract / trusts / Trade Practices / fiduciary duties

### **Property Law:**

*Dale Patricia Shumack v Jiri Anthony Kousal* [2016] - County Court proceeding – trespass to land – consequential damage to land - adverse possession – evidence - application of *Surveying Act 2004* (Vic.)

*Vassiliadis v WAG Developments Pty Ltd & Melbourne (SR) Toorak Pty Ltd* [2016] VCC 795 - County Court proceeding – Sale of Land – Special Conditions – carrying out repairs in proper & workmanlike manner - repudiation & rescission – forfeiture of deposit - relief against forfeiture

*Varvatselis v Zamcar Pty Ltd* [2016] - County Court proceeding – agreement for sale of land – evidence – constructive trusts – damages – caveats and removal of caveats

*Re Gloria Tocigl: Central Victorian Investments Limited & Ors* [2015] - Supreme Court proceedings (2) and Federal Circuit Court proceeding - indefeasibility of title - trusts - equitable interests in land - mortgages – default – caveats – appointment of receiver – bankruptcy – stay of proceedings

*Re Knox v Katholios and Lime Sublime Pty Ltd and Eagle v Katholios and Lime Sublime Pty Ltd* [2014] - Supreme Court proceedings (2) - Easement dispute – strata apartment development – reinstatement of unlawful works - damages

*Pajouhesh v Borden & Ors* [2014] - VCAT proceeding - Owners Corporation (Strata Title) dispute – powers and duties of Owners Corporation committee Royal Domain Towers

*Re Whittaker v Surplus Properties Pty Ltd & Ors* [2012-2015] - County Court proceeding - sale of land - mistake - indefeasibility - negligence - agency - estoppel – equity - relief for unconscionable conduct

*20 Young Road Pty Ltd v Mircea Cica* [2013] - County Court proceeding – sale of land – vacant possession – default – specific performance – damages

*Noan Pty Ltd v 19<sup>th</sup> Hole Centre Pty Ltd & Ors* [2012] - Supreme Court proceeding – existence and use of easement to shopping centre – designation of roads - estoppel

*Balanced Securities Ltd v Bianco & Ors* (2010) 27 VR 599 - Supreme Court proceeding - mortgage securities - Torrens title - indefeasibility and statutory exceptions - leases

*Re Panache Global Holdings & Ors* [2010] VSC 137 - Supreme Court proceeding - seizure of personal property - security interests - injunctive relief.

*Mantec Thoroughbreds Pty Ltd v Batur & Anor* (2009) 25 VR 507 - Supreme Court proceeding - validity and scope of easement – maintenance and improvement of easements – easements of necessity - damages - remedies

*Break Fast Investments Pty Ltd v PCH Melbourne Pty Ltd* (2007) 20 VR 311 - Supreme Court proceeding (Court of Appeal) - airspace trespass – commercial building cladding encroaching into airspace – planning restrictions – heritage land and buildings - injunctions - *Shelfer* discretion - equity

**Other:**

*Costa Tsavalias v Moonee Valley Hospitality Pty Ltd & Ors* [2014] - County Court proceeding – insurance – liability of hotelier – serious assault – insurer’s obligation to indemnify – liability of Lloyds of London

*Cameron v Smeg Australia Pty Ltd* [2014] - Fair Work Commission proceeding - Employment Law – unfair dismissal and compensation - general protections application under Part 3-1 of the *Fair Work Act* (Cth.)

*Break Fast Investments Pty Ltd & Anor v Gravity Ventures Pty Ltd & Ors* [2013] - Supreme Court proceeding - variation of NSW Freezing Order / procedural discretion (2013)

*Taco Bill Mexican Restaurants (Australia) Pty Ltd v. Westmex Investments Pty Ltd & Anor* [2013] - Supreme Court proceeding - franchising - injunctive relief