

# TIMOTHY SMARTT

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## Professional Experience

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2019 – 2021	<b>Solicitor (Commercial Litigation), Corrs Chambers Westgarth</b>
2019, 2020	<b>Casual Lecturer (Criminal Law), University of Sydney</b>
2018 – 2019	<b>Associate to the NSW Attorney General</b>
2017	<b>Tipstaff to the Hon Justice Brereton AM RFD</b>
2016 – 2017	<b>Paralegal, Clayton Utz</b>
2013	<b>Transfer Pricing Intern, PricewaterhouseCoopers</b>

## Education

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2014 – 2016	<b>Juris Doctor, University of Sydney</b> <ul style="list-style-type: none"><li>• John George Dalley Prize No. 1B (2016)</li><li>• Dean's List for Excellence in Academic Performance (2016)</li><li>• Governor-General's Prize (2016)</li><li>• Winner, Sydney Law School Contracts Moot (2014)</li><li>• Winner, Sydney Law School Witness Examination (2014)</li><li>• Winning Team, national Shine Lawyer Torts Moot (2014)</li><li>• Wigram Allen Scholarship for Juris Doctor Award (2014)</li></ul>
2010 – 2013	<b>Bachelor of Arts (Economics and Plan II Honours) and Bachelor of Science (Psychology), University of Texas at Austin</b> <ul style="list-style-type: none"><li>• Highest Honours (2013)</li><li>• Departmental Honours in Psychology (2013)</li><li>• Distinguished College Scholar (2013)</li><li>• Stephen Michael Sanders Scholarship (2012)</li><li>• Unrestricted Endowed Presidential Scholarship (2012)</li><li>• Dean's List (2010-2013)</li><li>• University Honours (2010-2013)</li></ul>

## Publications

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2022	Timothy Smartt, Sanaz Talaifar and Samuel D Gosling, 'Dostoevsky's conjecture: Evaluating personality impressions based on laughter' (Forthcoming), <i>Journal of Nonverbal Behavior</i> (Special Issue of the Science of Laughter).
2018	'Book Review: Leading Cases in Contract Law' (2018) 92(7) <i>Australian Law Journal</i> 563
2018	'The Doctrine of Extended Joint Criminal Enterprise: A "Wrong Turn" in Australian Common Law' (2018) 41(3) <i>Melbourne University Law Review</i> 1324
2017 – present	Thomson Reuters, <i>Robson's Annotated Corporations Legislation</i> (co-author of commentary on various parts of the <i>Corporations Act</i> )

## Selected matters

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### Led

#### High Court

- *Garlett v Western Australia* [2022] HCA 30 – constitutional challenge to the High Risk Serious Offenders Act 2020 (WA) (for the amicus curiae, led by G McIntyre SC and S Hartford Davis)
- *HarperCollins Publishers Australia Pty Ltd & Anor v Gill & Ors* [2023] HCATrans 14 – application for special leave arising from claim of defamation over imputations of fraud and medical malpractice in the administration of deep sleep therapy (for the respondent, led by S Chrysanthou SC and B Dean)

#### Full Federal Court

- *Hanson v Burston* [2023] FCAFC 124 – appeal from a decision rejecting Senator Hanson’s defence of justification to a defamation claim by a former senator alleging imputations of assaulting a staffer in the Great Hall of Parliament without provocation and sexually abusing staff (for the appellant, led by S Chrysanthou SC)

#### NSW Court of Appeal

- *Whittington v Newman* (NSWCA, ongoing) – application for leave to appeal raising novel issues in the interpretation of serious harm and concerns notice provisions of the *Defamation Act 2005* (NSW) (led by S Chrysanthou SC)

#### Federal Court

- *Faruqi v Hanson* (FCA, ongoing) – claim of racial vilification by Senator Faruqi against Senator Hanson; constitutional challenge to ss 18C and 18D of the *Racial Discrimination Act 1975* (Cth) based on infringement of the implied freedom of political communication (for the respondent, led by B Walker SC and S Chrysanthou SC)
- *Rabul Goyal & Jennifer Anne Nettleton in their capacities as joint and several (special purpose) liquidators of ACN 154 520 199 Pty Ltd (in liq) and Anor v Phillip George Cochineas & Ors* (FCA, ongoing) – claim of breach of directors’ duties for alleged involvement of the company in a GST scrap gold scheme (for the plaintiffs, led by C Withers SC and S Hartford Davis)
- *Al Muderis v Nine Network Australia Pty Ltd & Ors* (FCA, ongoing) – claim of defamation arising from allegations of gross medical malpractice as an osseointegration surgeon in *The Sydney Morning Herald*, *The Age* and *60 Minutes* (for the applicant, led by S Chrysanthou and N Olson)
- *Edwards v Nine Network Australia Pty Ltd* (FCA, ongoing) – claim of defamation over *A Current Affair* program that allegedly carried imputation of theft of a celebrity dog (for the applicant, led by S Chrysanthou SC and N Olson)
- *Russell v Australian Broadcasting Corporation (No 3)* [2023] FCA 1223 – claim of defamation by a former soldier arising from reports of murder of a prisoner of war during the War in Afghanistan; first use of the public interest defence under s 29A of the *Defamation Act 2005* (NSW) (for the applicant, led by S Chrysanthou SC and N Olson). Also:
  - *Russell v Australian Broadcasting Corporation* [2023] FCA 38 – separate determination of imputations of involvement in or reasonable suspicion of war crimes

- *Russell v Australian Broadcasting Corporation (No 2)* [2023] FCA 808 – application by the respondent to vacate order requiring it to disclose name of a source
- *Burston v Hanson* [2022] FCA 1235– claim of defamation by a former senator against Senator Hanson alleging imputations of sexual abuse, mistreatment of staff and assaulting another staff without provocation (for the respondent, led by S Chrysanthou SC)
- *Barlow & Ors v Tyndall Capital Pty Ltd* (FCA, settled) – application seeking specific performance of an information-rights agreement and documents pursuant to s 247A of the *Corporations Act 2001* (Cth) (for the plaintiffs, led by S Hartford Davis)
- *Gill v Harper Collins Publishers Australia Pty Ltd* (FCA, settled) – claim of defamation over imputations of fraud and medical malpractice in the administration of deep sleep therapy (for the applicant, led by S Chrysanthou SC and B Dean)

### Supreme Court

- *Promina Design & Construction Pty Ltd v The Owners Strata Plan No. 97449* (NSWSC, ongoing) - appeal from a decision of the Appeal Panel of NCAT concerning the construction of s 48K of the *Home Building Act 1989* (NSW) (for the plaintiff, led by S Lawrance SC)
- *Kosciolek v Commissioner of Police & Anor* (NSWSC, ongoing) – second test case challenge to penalty notices issued in NSW for COVID-19 related offences (for the plaintiffs, led by K Richardson SC)
- *Pure Metals Pty Ltd v Hawsons Iron Ltd & Anor* (NSWSC, ongoing) – claim arising from alleged misappropriation of shares by a stockbroker (for the plaintiff, led by C Withers SC and S Hartford Davis)
- *Beame; Els v Commissioner of Police & Anor* [2023] NSWSC 347– test case challenge to penalty notices issued in NSW for COVID-19 related offences (for the plaintiffs, led by K Richardson SC)
- *Employers Mutual Ltd v Heise* [2022] NSWSC 465 – appeal from private prosecution under the *Workplace Injury Management and Workers Compensation Act 1998* (for the plaintiff, led by N Chen SC)
- *Employers Mutual Ltd v Heise (No 2)* [2022] NSWSC 663 – application for costs in criminal proceedings (for the plaintiff, led by N Chen SC)
- *Anjoul v Woodhams & Ors* (NSWSC, settled) – claim for the return of deposit under a contract for the sale of land (for the plaintiff, led by S Lawrance SC)
- *Coombes v State of New South Wales* (NSWSC, settled) – claim of intentional torts allegedly committed by police against a criminal defence lawyer (for the defendant, led by D Hume)
- *Gumbleton v Unity (NSW) Pty Ltd & Ors* (NSWSC, settled) – claim of negligence arising out of an electrical accident (for the first defendant, led by D Lloyd SC)
- *Campbell v Murray Irrigation Ltd; Murray Irrigation Ltd v Campbell* (NSWSC, settled) – application for judicial advice and application by beneficiary for trust documents (for the beneficiary, led by D Sulan SC)

### Local Court

- *Heise v Employers Mutual Ltd* (NSWLC, determined) – private prosecution under the *Workplace Injury Management and Workers Compensation Act 1998* (for the defendant, led by N Chen SC)

## Unled

### NSW Court of Appeal

- *Woolf v Brandt* (NSWCA, ongoing) – application for leave to appeal from a decision that the applicant was abusing the process of the District Court by maintaining defamation proceedings for the predominant purpose of harassing the respondent (for the respondent)

### Full Federal Court

- *Veale v Coleman* (FCAFC, ongoing) – appeal from decision to set aside bankruptcy notice based on non-compliance with reg 12 of the *Bankruptcy Regulations 2021* (Cth) (for the respondent)

### Federal Court

- *Ashby Mining Ltd v AU Gold & Ors* (FCA, ongoing) – claims of misleading or deceptive conduct arising out of statements made during the applicant’s capital raising (for the first to fourth respondents)
- *Coleman v Veale* [2023] FCA 1023 – application to set aside a bankruptcy notice based on breach of exchange rate conversion requirements (for the applicant)
- *Coleman v Gannaway* [2023] FCA 224 – application to set aside a bankruptcy notice based on breach of exchange rate conversion requirements (for the applicant)
- *Evans v Commonwealth Bank of Australia* (FCA, settled) – claims against the respondent bank arising out of fraudulent use of the applicant’s account (for the applicant)
- *In the matter of Defugo Group Australia Pty Ltd* (FCA, settled) – application for winding up and application to stay winding up based on breach of exclusive jurisdiction clause (for the respondent)
- *Walsh v TAL Life Limited* (FCA, settled) – appeal on a question of law from a decision of the Australian Financial Complaints Authority (for the respondent)

### Supreme Court

- *Re PSR Refining Services Pty Ltd* [2023] NSWSC 243 – application to set aside statutory demand based on application of foreign law (for the respondent)
- *Newman v Whittington* [2022] NSWSC 249 – application to strike-out defamation pleadings based on newly enacted element of serious harm to reputation in defamation claims (for the defendant)
- *Newman v Whittington* [2022] NSWSC 1725 – application to file an amended statement of claim alleging serious harm to reputation (for the defendant)
- *Employers Mutual Ltd v Heise (No 3)* [2022] NSWSC 1364 – application for gross sum costs order in criminal proceedings (for the plaintiff)
- *Newman v Whittington* [2022] NSWSC 160 – privilege objections in response to notice to produce (for the defendant)
- *In the matter of DC Partners (Nominees) Pty Ltd* (NSWSC, determined) – application to set aside statutory demand (for the respondent)

## District Court

- *Emde v State of New South Wales* (NSWDC, ongoing) – claim against police for allegedly conducting an unlawful arrest of a person alleged to have committed breaches of an AVO (for the defendant)
- *SC v DC* (NSWDC, ongoing) – claim by sex worker for breach of contract, fraud and battery arising out of allegations of a fraudulent promise to pay for services (for the plaintiff)
- *Matantia Developments Pty Ltd v Ronnie Zeait* (NSWDC, ongoing) – claim for trespass on the case arising out of alleged unlawful dumping of toxic waste on land (for the plaintiff)
- *Woolf v Brandt (No 4)* [2023] NSWDC 460 – application for extension in time under s 56A of the *Limitation Act 1969* (NSW) to recommence defamation proceedings that were previously dismissed (for the defendant)
- *Woolf v Brandt (No 2)* [2023] NSWDC 184 – application for summary dismissal of defamation proceedings as an abuse of process intended to harass the defendant (for the defendant)
- *Woolf v Brandt* [2022] NSWDC 623 – application for summary dismissal of defamation proceedings based on defective concerns notice and statement of claim (for the defendant)
- *Randell v McLachlain* [2022] NSWDC 506 – application for summary dismissal of defamation proceedings based on defective concerns notice and statement of claim (for the defendant)
- *Reliance Leasing Pty Ltd v Smith* [2022] NSWDC 505 – application for leave to file cross-claim (for the plaintiff)
- *Reliance Leasing Pty Ltd v Smith (No. 2)* [2022] NSWDC 535 – application for costs of motion to file cross-claim (for the plaintiff)
- *Newport v Li & Anor (No 2)* [2022] NSWDC 132 – application for indemnity costs (for the first defendant)
- *O'Shanassy v Turland* [2021] NSWDC 642 – application to set aside a subpoena in defamation proceedings (for a subpoenaed party)
- *Toyota Material Handling Australia Pty Ltd v Devinsbire Investments Pty Ltd & Anor* (NSWDC, determined) – claim for breach of contract, conversion and detinue for failure to return a forklift (for the plaintiff)
- *Big Scrub Food Science and Technology Pty Ltd v Defugo Group Australia Pty Ltd* (NSWDC, settled) – claim for payment of consulting services (for the defendant)

## Federal Circuit and Family Court of Australia

- *Maaaz v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FedCFamC2G 92 – application for judicial review of migration decision (for the applicant, pro bono)
- *Samartis v Marsdens Law Group* [2021] FCCA 1630 – application to set aside bankruptcy notice and claim of estoppel (for the applicant, pro bono)

## Local Court

- *Bilansky v Nadile* (NSWLC, ongoing) – claim by roofing contractor for breach of contract (for the plaintiff)

- *Davidson White Accountants Pty Ltd v White* (NSWLC, determined) – claim for recovery of unauthorised expenses against former employee (for the plaintiff)
- *Transocean Administration Services Pty Ltd v Marshall* (NSWLC, determined) – claim for recovery of money advanced pursuant to a loan (for the plaintiff)
- *Sanchez v Vargas* (NSWLC, determined) – claim in debt and defence under s 7 of the *Contracts Review Act 1980* (NSW) between former romantic partners (for the plaintiff)
- *Xin Yan v Little Infinity Pty Ltd* (NSWLC, determined) – claim for repayment of loan allegedly used to finance the operation of a bubble tea store (for the plaintiff)

#### NCAT

- *Promina Design & Construction Pty Ltd v The Owners Strata Plan No. 97449* [2023] NSWCATAP 122 – appeal concerning the construction of s 48K of the *Home Building Act 1989* (NSW) (for the appellant)
- *Promina Design & Construction Pty Ltd v The Owners Strata Plan No. 97449* [2023] NSWCATAP 122 – application for stay of order transferring proceedings to the District Court (for the appellant)
- *Peng v Chief Commissioner of State Revenue* [2022] NSWCATAP 378 – appeal from review of decision of Chief Commissioner to require repayment of First Home Owner Grant (for the respondent)
- *Peng v Chief Commissioner of State Revenue* [2022] NSWCATAD 212 – review of decision of Chief Commissioner to require repayment of First Home Owner Grant (for the respondent)
- *Rigby v Wilson and Bishop* (NCAT, determined) – consumer claim for defective construction (for the applicant)