

## **I. RESUME OF LAINA CHAN<sup>1</sup>**

### **A. EDUCATION**

1. Harvard Business School:  
Certificate of Management Excellence, 2019;  
(completed programs in Negotiation, Strategy and Leadership).
2. ICC (Paris):  
International Commercial Arbitration;  
Advanced ICC Institute PIDA Training, 2013.
3. University of Sydney:  
BSc (Hons in Pure Mathematics), 1991;  
LLB (Hons), 1993;  
Sydney Law Review, 1992.
4. MLC Burwood:  
Dux, 1987.

### **B. ADMISSION**

5. Supreme Court of New South Wales, 1996.
6. High Court of Australia, 1996.
7. New South Wales Bar, 9 August 2004.
8. Victorian Bar, 2012.

### **C. EMPLOYMENT HISTORY**

9. NSW Court of Appeal:
  - a. Researcher to Clarke JA, Feb to Jun 1994 and Feb to Dec 1995;
  - b. Researcher to Kirby P, Jun 1994 to Feb 1995.
10. Phillip Fox Lawyers, 1996 to 1998.
11. Minter Ellison Lawyers, 1998 to 2003.
12. Herbert Geer Rundle, 2003.

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<sup>1</sup> Of [Melbourne TEC Chambers](#) since 2011, [Underground Works Chambers](#) since 2020 at the invitation of the Hon Peter Vickery QC and [2 Selborne Chambers](#) since 2019. Formerly of 3 Wentworth Chambers (2017 to 2019), 9 Wentworth Chambers (2006 to 2017) and Tenth Floor (2004 to 2005).

13. Tribal Warrior Association – an Indigenous Non for Profit Organisation, Executive Fundraiser, 2013 to 2014 (Casual volunteer):
  - a. Compiled and completed grant applications to local, state and federal governments;
  - b. Raised more than \$1.6 million.

#### **D. MENTEES**

14. New South Wales Bar Association Mentoring.
15. Asian Australian Lawyers Association, since 2015.
16. Society of Construction Law Australia, since 2015.
17. Women for Change, an initiative of the LBW Trust (2018-2019).

#### **E. ASSOCIATIONS**

18. Society of Construction Law:
  - a. Chair, since Aug 2020;
  - b. Company Secretary, Aug 2016 to Aug 2020.
19. Australian Construction Industry Forum:
  - a. Director, since Aug 2020.
20. International Committee, Australian Bar Association:
  - a. Member, since 2019.
21. Melbourne TEC Chambers:
  - a. Executive Member, since 2011.
22. Underground Works Chambers:
  - a. Associate Member, since 2020.
23. Australian Insurance Law Association.
24. Commercial Law Association:  
Victoria and New South Wales.

#### **F. CASES OF NOTE – judgments hyperlinked**

##### **1. PROFESSIONAL NEGLIGENCE**

- a. *Canon Finance Australia Limited v Reliance Medical Practice Pty Ltd & Ors* (No 7) [\[2020\] NSWSC 554](#)

- i. Successful defence of a finance broker.
- b. *Thiess v Parsons Brinckerhoff* [\[2016\] NSWSC 173](#)
  - i. Multi party dispute in connection with the collapse of the Lane Cove Tunnel during construction where David Williams SC and I acted for the geotechnical monitoring engineer.
  - ii. See article by Burman, Kotze and Chan referred to in paragraph 7 of Recent Publications of Note below.
- c. *Aquatec-Maxcon Pty Ltd v Barwon Region Water Authority (No 2)* [\[2006\] VSC 117](#)
  - i. An important case on proportionate liability in the context of multi-party dispute when I was unled and acted for the structural design engineer for a sewerage plant.
  - ii. Successful claim upon an indemnity contained in a Deed of Novation.
  - iii. While the client did not participate in [the appeal](#) in *MWH Australia Pty Ltd v Wynton Stone Australia Pty Ltd (in liq)* [\[2010\] VSCA 245](#); 31 VR 575 the construction of the scope of the release in the Deed of Novation that the Victorian Court of Appeal upheld was consistent with the submissions advanced by counsel at trial before Byrne J.
- d. *Brand v Monks* [\[2009\] NSWSC 1454](#)
  - i. Successful defence of a town planner who had reported her client's unlawful clearing of land to the relevant authorities.
- e. *Monaghan Surveyors Pty Ltd v Stratford Glen-Avon Pty Ltd* [\[2012\] NSWCA 94](#)
  - i. David Williams SC and I acted for a surveyor who had amended plans prepared for the creation of a new right of carriageway without notice to the dominant and servient tenements. At issue was the damages that flowed from this breach of duty of care.
  - ii. Important case on causation and damages.
- f. *Gregory Allan Laughton v Barry C Smith & Associates* (Unreported, District Court of New South Wales, E Olsson SC DCJ, 14 December 2011)
  - i. Successful defence of the mechanical engineer who had allegedly been negligent in the design of the mechanical services at the home

of the plaintiff.

- g. *Hourani v Siemens* [\[2012\] NSWDC 203](#)
  - i. Successful defence of an insurer's subcontractor in respect of personal injury when the plaintiff slipped on a wet floor.
  - ii. The allegation that there had been inadequate assessment and delayed repair of insured premises by insurer's sub-contractors was refuted.
- h. *Dymocks Book Arcade Pty Ltd v Capral Ltd* [\[2013\] NSWSC 514](#)
  - i. The case was constrained by the length of time between the alleged negligence and the proceedings.
  - ii. The insured architect had destroyed his records and was unable to corroborate his defence.

## 2. FIXED COSTS, INDEMNITY COSTS AND COSTS ORDERS AGAINST THIRD PARTIES

- a. *Brand v Monks* [\[2010\] NSWSC 313](#) (indemnity costs against 3<sup>rd</sup> party Director)
- b. *Bateman Long and Maloney Pty Ltd v Long Beach Land Co Pty Ltd* [\[2011\] NSWSC 1495](#) (third party costs order)
- c. *Gupta v Fordham Laboratories Pty Ltd (No 2)* [\[2018\] NSWSC 694](#) (fixed cost orders)
- d. *Canon Finance Australia Limited v Reliance Medical Practice Pty Ltd & Ors (No 8)* [\[2020\] NSWSC 1898](#) (indemnity costs orders)

## 3. GUARANTEES

- a. *Coates Hire Operations Pty Ltd v Rivercorp Pty Ltd & John Philip Brosnan & Stephen McCann; Stephen McCann v Rivercorp Pty Ltd & John Philip Brosnan & Anthony Jerard Rowe* (Unreported, District Court of New South Wales, O'Toole DCJ, 18 April 2012)
  - i. Successful defence of a claim under a guarantee.
- b. *Zanrush Pty Limited v Donovan Sendall* (Unreported, Local Court of New South Wales, Magistrate Bradd, 20 December 2011)
- c. *Filmlock Pty Ltd v Nissi Investments Pty Ltd (No 2)* [\[2013\] NSWSC 959](#)

- i. Successful claim against guarantors pursuant to a deed of guarantee and indemnity when purchasers failed to complete a contract for sale.

#### 4. INDEMNITIES AND LEAPFROG ORDERS

- a. *Aquatec-Maxcon Pty Ltd v Barwon Region Water Authority (No 9)* [\[2007\] VSC 531](#)
  - i. Successful application for a leapfrog order such that obviated the need for my client to satisfy the judgment in favour of the cross-claimant prior to claiming upon the indemnity that it was a beneficiary of.

#### 5. REAL ESTATE AND CONVEYANCING

- a. *West v Goyal* [\[2021\] NSWSC 526](#)
  - i. Helped in the creation of **new law** when the Court accepted my submissions on the construction of s 182G of the *Retirement Villages Act 1999* (NSW).
  - ii. It was the **first time** that s 182G had received judicial consideration.
  - iii. It is now the law that all residents and former occupants, beneficiaries of unregistered statutory charges, rank in priority ahead of registered and unregistered mortgagees.
- b. *Ng v Filmlock Pty Ltd* [\[2014\] NSWCA 389](#); 88 NSWLR 146
  - i. Termination of a contract for sale and the appropriate measure of loss where there is no available market for the sale of land.
- c. *Filmlock Pty Ltd v Nissi Investments Pty Ltd (No 2)* [\[2013\] NSWSC 959](#)
  - i. Alleged defects in title arising from rights of carriageway and restrictions on use created after contract.
  - ii. Purchaser was held to be obliged to complete the contract for sale.
- d. *Monzer Tabbouch v Scott Devlin* [\[2008\] NSWSC 600](#)
  - i. Significant case establishing that 14 days constitutes a reasonable time for a notice to complete.
- e. *Gupta v Fordham Laboratories Pty Ltd* [\[2018\] NSWSC 551](#)
  - i. A case in respect of agreements to lease, the entitlement to specific performance and when a party may have abandoned their agreement to lease.

## 6. COMMERCIAL DISPUTES INVOLVING POORLY DOCUMENTED AGREEMENTS

- a. *Yakiti Pty Ltd v MacDonald* [\[2019\] NSWSC 1772](#)
- i. A difficult case in which the plaintiff was a secured creditor of the defendant and the parties had an acrimonious relationship. The key defence of the defendant was that the loan had effectively been repaid by reason of certain actions of the plaintiff.
  - ii. The attempt to apply the equitable principles of double satisfaction to the facts of the case was unsuccessful at first instance. The difficulty in the case arose from the fact that the defendant alleged that the parties had entered into a joint venture agreement which was unfortunately not properly documented.
  - iii. The judgment went on appeal and counsel declined to act on the appeal. The appellant was successful on liability in the appeal.

### ***Multiple related interlocutory proceedings***

- iv. *Yakiti Pty Ltd v MacDonald (No. 2)* [2018] NSWSC 1970
  - v. *Yakiti Pty Ltd v MacDonald* [2018] NSWSC 1505
  - vi. *MacDonald v Yakiti Pty Ltd* [2018] NSWCA 108
  - vii. *Yakiti Pty Ltd v MacDonald* [2018] NSWSC 1392
- b. *Fields Group Pty Ltd v Wilson Security Pty Ltd* [\[2019\] NSWCA 286](#)
- i. A case which involved an alleged agreement between an indigenous security company and the defendant.
  - ii. The difficulty arose because the alleged agreement upon which the plaintiff relied was not properly documented even though it formed the basis of and was referred to in a government tender for security work.
  - iii. The appellant/plaintiff was adamant that a concluded agreement had been formed. Neither the Court of Appeal or the Trial Judge agreed.

- c. *Fields Group Pty Ltd v Wilson Security Pty Ltd* [\[2019\] NSWSC 475](#)

## 7. ARBITRATION

- a. *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 2)* [\[2012\] FCA 276](#)
- b. *Tensioned Concrete Pty Ltd v Munich Re* [\[2020\] WASC 431](#)

- i. On the interplay between *Insurance Contracts Act 1984* (Cth), the *Commercial Arbitration Act 2012* (WA) and the inherent jurisdiction of the Court to control its own proceedings.
- ii. Tensioned Concrete had sought declarations from various insurers that it was an insured under 2 policies of insurance. There were tandem arbitral proceedings on foot, albeit that the insurers were not named parties, in which these issues would be ventilated.
- iii. Key issue was whether the principles in *Akai Pty Ltd v People's Insurance Co Ltd* (1996) 188 CLR 418 applied to preclude the Court from staying the proceedings pending the determination of the arbitration in circumstances where the *Insurance Contracts Act 1984* (Cth) required indemnity issues to be determined by a court.
- iv. Appeal was resolved via negotiated outcome. However, *Epic Games, Inc v Apple Inc* [2021] FCAFC 122 is consistent with the propositions that counsel put forward in the case. Further, it was also conceded by counsel for both parties during argument (which counsel listened to in full) that if the court had been dealing with an arbitration agreement that contravened the *Insurance Contracts Act 1984* then it would be void and could not be the foundation of a stay of court proceedings.
- v. BenchTV has invited me to film a video on the arbitration issues that arose in this case.

## 8. EMPLOYMENT – NOTICE PERIODS

- a. *Adventure World Travel Pty Ltd v Newsom* [\[2014\] NSWCA 174](#); 86 NSWLR 515 (*affirming the decision of Gibson DCJ on 27 Sept 2013*)

## 9. ADVICE WORK

- a. For various Insurers in respect of Insurance coverage for all Financial Lines Policies including CAR Policies, Management Liability Policies, Product Liability Policies, Professional Indemnity Policies.
- b. For purchasers and vendors in connection with their rights under the contracts for sale.

## 10. NEGOTIATED OUTCOMES

- a. Strategic preparation of multiple cases in connection with:
  - i. retail and other commercial leases and contracts for sale;
  - ii. professional indemnity claims for architects, certifiers, real estate agents and other professionals;

- iii. restraint of trade in contracts for employment of real estate agents;
- iv. commercial disputes involving Macquarie University and their tenants;

for hearing prior to them being resolved at mediations or informal settlement conferences on favourable terms.



## G. RECENT PUBLICATIONS OF NOTE

1. **JW Carter and L Chan, Contract and the Australian Consumer Law, Federation Press (March 2019)**
  - a. A text that explores the extent to which the ACL has modified the law of contract. The effects of the provisions in respect of misleading or deceptive conduct, unconscionable conduct, exclusion clauses, unfair contract terms and consumer guarantees are explored.
  - b. **Prescribed text** for the Contracts and Torts law course at the University of Sydney.
2. **L Chan and JW Carter, Mann v Paterson Constructions Pty Ltd – New Law for Quantum Meruit Claims in Building Contracts, (2020) 36 BCL 1**
  - a. **Prescribed reading** for the Remedies in Contract course for the University of Melbourne, Master of Construction Law Program.
3. **Chan, Two vexed issues in arbitration — The joinder of third parties and the arbitrability of indemnity issues — (2021) 31 ILJ 85**
  - a. This article explores the issues that arose during the Tensioned Concrete litigation (see Section **Error! Reference source not found.** paragraph **Error! Reference source not found.** above).
  - b. Fred Hawke (Clayton Utz), the peer reviewer for the article found the article stimulating and invited me to prepare a follow up article on the incorporation of terms (including for example an arbitration agreement) into policies of insurance.
4. **Chan, Raising Consumer Confidence in Residential Apartment Buildings – The New South Wales Pillar 1 Reforms (2021) 37 BCL 1 (upcoming publication)**
  - a. This article examines the NSW Regulatory Reforms enacted to raise consumer confidence in residential apartment buildings. It touches upon the extended duty of care for pure economic loss, its retrospective nature and the impact of the long stop for building actions in s 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW).
  - b. The article is the culmination of almost 2 years of work on the regulatory reforms which started with the preparation of submissions on behalf of the Society of Construction Law on the exposure drafts, presentations at educational seminars on the legislation to the Australasian Professional Indemnity Group, the Society of Construction Law, the New South Wales Bar Association (with the Hon Robert McDougall QC as co-presenter) and the Resolution Institute.
  - c. The commentary of the Hon Robert McDougall QC on this paper will be published in the same issue as part B to the article. Both papers (which highlight some omissions in the legislation) have been provided to and reviewed by the Office of the NSW Building Commissioner.

5. **Contributing author to Bailey, Construction Law in Australia, Thomson Reuters, 4th edition, 2018 – chapters on Professional Liability and Insuring Risk in Construction Projects**
  - a. **Prescribed text** for the University of Melbourne, Master of Construction Law Program.
  
6. **Chan, Insuring Risk in Construction Projects, (2018) 34 BCL 378**
  - a. An expanded and academic version of the chapter in Bailey's Construction Law in Australia setting out key insurance issues in construction projects.
  
7. **Burman, Kotze and Chan, Lane Cove Tunnel Collapse and Sinkhole a Forensic Review (in 3 parts) - Part 1, the collapse; Part 2, post failure investigations and Part 3, the legal aftermath, (2018) 53(4) Australian Geomechanics 21, 35 and 51 respectively**
  - a. An unexpectedly controversial paper in the geotechnical community which posits that the cause of the collapse of the Lane Cove Tunnel arose from construction defects at odds with the findings of McDougall J in the Supreme Court Proceedings.
  - b. **Hundreds of copies** of this paper have been supplied to the geotechnical community at their request.
  
8. **Chan, The enforceability of extended contractual warranties - can the hurdle of applicable limitation periods be overcome? (2016) 32(3) BCL 1**
  - a. A work **referenced widely** by construction lawyers. Researched and prepared at the invitation of and the guidance of Professor J W Carter.
  - b. The article looks at the enforceability of extended warranties for works that are now included in bespoke contracts for infrastructure projects. These clauses may run afoul of applicable limitation periods. For example, sections 14 and 16 of the *Limitation Act 1969* (NSW) prescribe limitation periods of, respectively, six years for actions in tort and for breach of contract, and 12 years for actions founded on a deed. Section 109ZK of the *Environmental Planning and Assessment Act 1979* (NSW) precludes bringing a building action beyond 10 years after the issue of a final occupation certificate. This article explores how the US, UK and Australia have grappled with this issue and considers whether it is possible to contract out of limitation periods to ensure the enforceability of extended contractual warranties.
  - c. The judgment of *Price v Spoor* [2021] HCA 20 which says that the public policy behind the *Limitation of Action 1974* (Qld) does not preclude parties from contracting out of limitation periods is consistent with the propositions put forward in the article.
  
9. **Chan, International Disputes, the Execution of Foreign Arbitral Awards in the Asia Pacific and Two Case Studies (2015) 28 NYILR 1**

the Asia Pacific Region prepared at the invitation of the editor of the New York International Law Review.

10. **Chan, International disputes and the execution of foreign arbitral awards in the Asia Pacific (2014) Vol 9 issue 1 CLInt 33**
11. **Chan, A Penumbral Duty of care – is a principled approach possible? (2013) 21 TLJ 106**
  - a. This article explores the evolution and development of the law in relation to the penumbral duty of care of solicitors and notes the increased willingness of the New South Wales Court of Appeal in recent times to find the existence of a penumbral duty of care in certain circumstances. I note the lack of a cohesive jurisprudential basis for the finding of the existence of such a duty and suggest that the salient features test expounded in *Caltex Refineries (Qld) Pty Ltd v Stavara* (2009) 75 NSWLR 649 propounded by Allsop P might provide such a basis.
12. **Chan, When Conveyances go Wrong — Vendor breaches Laina Chan (2011) 20 APLJ 33**
  - a. An unencumbered title is the main concern of any purchaser in any real estate transaction. Prior to 1986, the common law only required a vendor to reveal latent defects in title. Defects in quality fell squarely within the rule of caveat emptor. However since 1986, the vendor disclosure obligations pursuant to s 52A of the *Conveyancing Act 1919* (NSW) has significantly diluted the rule of caveat emptor.
  - b. This article explores the disclosure obligations of a vendor pursuant to a contract for sale and the consequences of non-compliance.
  - c. This appears to be the **only peer reviewed published article** on these issues and has become a widely referenced work by solicitors and other counsel.
13. **Chan, When Conveyances go Wrong – Unwanted Caveats and Fraud (July 2009) Australian Property Investor Magazine 50**
14. **Chan, The successful delivery of Infrastructure Projects – a management rather than a legal issue, Brooking Prize winner and published by the Society of Construction Law and (2020) 195 Australian Construction Law Newsletter 33**
15. **Chan, A triumph for residents of retirement villages, (2021) LSJ 80**
  - a. Article explaining the significance of *Goyal v West* [2021] NSWSC 526
16. **Contributor to the Australian Insurance Law Bulletin:**
  - a. Case note on *Globe Church Inc v Allianz Australia Insurance Ltd* (2019) 34(10) ILB 125.
  - b. Case note on *Delta Pty Ltd v Mechanical and Construction Insurance Pty Ltd* (2019) 37(10) ILB 111.

- c. The Opal Tower is a product — the purpose of product liability policies Icon Co (NSW) v Liberty Mutual Insurance (2020) 36(7) ILB 110.
- d. Class actions and multiple plaintiffs — how many claims do they constitute Bank of Queensland Ltd v AIG Australia Ltd (2019) 35(5) ILB 55.
- e. Question — double insurance claim within the Federal Court jurisdiction? Epsilon v Liberty (2019) 35(4) ILB 38.

**17. Reporter for the Building and Construction Law Journal**