



Angus Stewart SC

NEW/CHAMBERS

BCL (first class), University of Oxford, 1994
LLB (*cum laude*, class medal), University of Natal, 1992
BA (English and Economics majors), University of Natal, 1988

Telephone +61 2 9151 2079
Clerk's telephone +61 2 9151 2080
Fax +61 2 9233 1850
Email stewart@newchambers.com.au

Admitted to the legal profession 2011 (NSW), 1996 (South Africa)
Admitted as a barrister 2011 (NSW), 2016 (VIC)
Appointment as Senior Counsel 2014 (NSW), 2006 (South Africa)
Entitled to practise in All Australian jurisdictions (Commonwealth, State and Territory)
All South African Courts and Tribunals.

Principal areas of practice

Appellate	Commercial
Shipping and Transport	Arbitration
International Trade	Commissions and inquiries
Private International Law	Constitutional and administrative
Insurance	Sport.

Previous professional experience

- Barrister, Sydney Bar, 2011 - present
 - Acting judge, KwaZulu-Natal High Court, Nov-Dec 2009
 - Advocate (Senior Counsel), Durban Bar, 2006-2010
 - Advocate (junior), Durban Bar, 1996-2006
 - Attorney, Durban, 1996.
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Awards or professional recognition

Fellow of the Chartered Institute of Arbitrators (FCIArb)
Fellow of the Australian Centre for International Commercial Arbitration (FACICA)
Panel member of the arbitration panels of the Australian Maritime and Transport Arbitration Commission (AMTAC), the Singapore Chamber of Maritime Arbitration (SCMA) and the Maritime Law Association of Australia and New Zealand (MLAANZ).
Recognised as:

- 'Lawyer of the Year', Transportation Law, Sydney (Best Lawyers, 2019)
- 'Preeminent' Senior Counsel, Transport Barrister (Doyles Guide, 2018)
- 'Band 1' shipping silk (Chambers and Partners Asia-Pacific Guide, 2019)

Professional memberships

Maritime Law Association of Australia and New Zealand
Australian Association of Constitutional Law
Australian Insurance Law Association
Sydney Marine Discussion Group
Professional Conduct Committee #4, NSW Bar Association
Federal Court of Australia Admiralty Users Group
Maritime Law Association of South Africa
Australian Lawyers for Human Rights.

Additional information

Counsel Assisting the Royal Commission into Institutional Responses to Child Sexual Abuse in several of its case studies.

Appointed in 2016 by the President of the Australian Human Rights Commission to conduct an inquiry into complaints of violations of human rights and of unlawful discrimination by the Commission.

Mr Stewart has accepted appointments as arbitrator in Australia, Hong Kong and South Africa, and appeared as counsel in many international arbitrations in those jurisdictions. He has also appeared before the Court of Arbitration for Sport (CAS).

Publications

- 'Cross-border insolvency law in Australia and shipping insolvencies: unique challenges or issues of wider significance?' with Karen Petch (2018) 18 *Insolvency Law Bulletin* 214
- 'Recognition of foreign proceedings under the UNCITRAL Model Law: recent developments in Australia' with Karen Petch, *INSOL International*, August 2018 Issue No.8
- 'The Owner's Vulnerability to the Liabilities of the Demise Charterer' (2015) 29 *Australian & New Zealand Maritime Law Journal* 85
- 'Characteristics of the Admiralty Action in rem: The Alina II' in (2011) 25 *Australian & New Zealand Maritime Law Journal* 237
- 'The characteristics of the state as employer: implications for labour law' [1995] 16 ILJ 15, cited in *Transnet Ltd and Others v Chirwa* 2007 (2) SA 198 (SCA) per Cameron JA at paras [54] and [56]
- 'Some problems in the law of contract and the Constitution' in *Constitutional Democracy in South Africa 1994-2004*, edited by Max du Plessis and Stephen Pete (LexisNexis Butterworths, 2004)
- 'Focus on: the judiciary' in *Focus*, issue 45, 1st quarter 2007 (The Helen Suzman Foundation)
- 'Admiralty Law' in *Annual Survey of South African Law 2007* (Juta & Co, 2009)
- 'An opinion carries a high price' in *Higher Learning* March 2009
- Occasional book reviews and comments, including: (1995) 11 SAJHR 645 and (2007) 124 SALJ 896.

Recent papers or presentations

- "Concurrent expert evidence" – Maritime Law Association of South Africa annual conference, August 2018, Franschoek
- "Is a slot charterer a charterer?" – Maritime Law Association of Australia and New Zealand annual conference, October 2018
- "Conflicts of interest in international arbitration", CIArb / Federal Court of Australia national seminar, 2018
- "The *Sam Hawk* – the Australian flirtation with foreign maritime liens" – International Congress of Maritime Arbitrators, Copenhagen, August 2017
- 'The "Sam Hawk": is the orthodoxy re-established?' presented to AMTAC seminar as part of Sydney Arbitration Week, November 2016.
- "Examination in chief" to the Bar Practice Course, NSW, twice yearly September 2016 – September 2018.
- '*The Ship "Sam Hawk": outlier, or the new orthodoxy on foreign maritime liens?*' presented to AMTAC seminar as part of Sydney Arbitration Week, November 2015.
- "Shipping and Insolvency", Federal Court of Australia Admiralty Seminar, April 2015
- "Liabilities of the Demise Charterer", International Congress of Maritime Arbitrators XIX (ICMA), Hong Kong, May 2015
- "The role of the maritime barrister", Hong Kong Maritime Law Association, April 2015
- "Ethical issues in admiralty proceedings" to the MLAANZ annual conference in Queenstown, New Zealand, September 2014
- "*CMA CGM SA v Ship 'Chou Shan'* [2014] FCAFC 90" to the MLAANZ (NSW Branch) Year in Review seminar, August 2014
- "Application procedure" to the Bar Practice Course, NSW, May 2014
- "Associated ship arrest in South Africa" to the MLAANZ annual conference in Sydney, 2013

Selected cases

In Australia:

Shipping, maritime and admiralty

- *Korea Shipping Corporation v Lord Energy SA* [2018] FCAFC 201, appeal from *Lord Energy SA v The Ship "MV Dangjin"* [2018] FCA 1717
- *Mount Isa Mines Ltd v The Ship "Thor Commander"* [2018] FCA 1326
- *Zetta Jet Pte Ltd v The Ship "Dragon Pearl" (No 2)* [2018] FCAFC 132, appeal from *Zetta Jet Pte Ltd v The Ship "Dragon Pearl"* [2018] FCA 981
- *Zetta Jet v The Ship "Dragon Pearl"* [2018] FCAFC 99, appeal from *Zetta Jet Pte. Ltd v The Ship* [2018] FCA 878
- *OneSteel Manufacturing Pty Ltd v Comptroller-General of Customs* [2017] FCA 828 and *OneSteel Manufacturing Pty Ltd v Comptroller-General of Customs (No 2)* [2017] FCA 959
- *Virtu Fast Ferries Ltd v The Ship "Cape Leveque"* [2015] FCAFC 58; 232 FCR 22; 321 ALR 471; [2015] 2 Lloyd's Rep 222
Virtu Fast Ferries Ltd v The Ship "Cape Leveque" [2015] FCA 324; 232 FCR 9; 325 ALR 706
(Admiralty – arrest of surrogate ship – general maritime claim by purchaser of vessel alleged to be defective against shipbuilder under s 4(3)(n) of *Admiralty Act 1988* (Cth) – whether purchaser could arrest nearly completed vessel in shipyard of shipbuilder – whether s 19(a) satisfied – surrogate vessel under construction not a "ship" for purposes of s 19(a) – ship on delivery not owned by "relevant person".)
- *Programmed Total Marine Services Pty Ltd v Ships "Hako Endeavour", "Hako Excel" and "Hako Esteem"* [2014] FCAFC 134; 315 ALR 66; and (No 2) [2014] FCAFC 169
(Appeal from [2013] FCA 1261; Admiralty: writs and pleadings against demise chartered vessel; crewing contract; contractual construction; restitution)
- *Ships "Hako Endeavour", "Hako Excel", "Hako Esteem" and "Hako Fortress" v Programmed Total Marine Services Pty Ltd* [2013] FCAFC 21; (2013) 211 FCR 369; (2013) 296 ALR 265
(Appeal from [2012] FCA 805; (2012) 293 ALR 139; (2012) 855 LMLN 3: Admiralty; Dispute as to the validity of the arrest of four tugs based on the bareboat charterer's liability; maritime lien for seaman's wages and subrogation; termination of bareboat charterparty and the need or otherwise for repossession.)
- *Navios International Inc v The Ship HUANG SHAN HAI* [2011] FCA 895; (2011) 194 FCR 468
(Admiralty: Dispute as to the sufficiency of and requirements for bail for the release of a ship from arrest.)

International trade

- *Toll Holdings Ltd v Stewart* [2016] FCA 256

(*Sale of Goods Act 1923* (NSW): stoppage *in transitu* – whether Dick Smith Electronics Pty Ltd (in Administration) (Receivers & Managers appointed) had the right of possession of goods shipped from China in the face of a stoppage *in transitu* notice to the carrier from the vendors; whether consignor or carrier can replace straight bills of lading with to order bills after goods shipped on board)

- *British Marine PLC v Wollongong Coal Limited* [\[2015\] FCA 403](#)

(International trade – contract of affreightment between plaintiff and third party to ship coking coal from Australia to India – where plaintiff alleges first defendant liable for cost of freight under a contract of affreightment – where second defendant purported to proffer, on behalf of the first defendant, a letter of guarantee by the first defendant for amounts owing – whether letter of guarantee was an offer capable of acceptance which would create contractual obligations – whether second defendant had actual or apparent authority to bind the first defendant – whether plaintiff relied on letter of guarantee to discharge cargo – whether first or second defendant engaged in misleading and deceptive conduct)

- *ALYK (HK) Ltd v Caprock Commodities Trading Pty Ltd and China Construction Bank* [\[2012\] NSWSC 1558](#)

(International trade: Opposition to an injunction sought to prevent payment under a standby letter of credit pending resolution of the underlying dispute.)

Private international law

- *Board of Directors of Rizzo-Bottiglieri-De Carlini Armatori SpA v Rizzo-Bottiglieri-De Carlini Armatori SpA* [\[2018\] FCA 153](#)

- *Alari (Trustee), in the matter of Rizzo-Bottiglieri-de Carlini Armatori SpA (Trustees in Bankruptcy appointed) v Rizzo-Bottiglieri-de Carlini Armatori SpA (No 2)* [\[2018\] FCA 1067](#)

- *Atlasnavios Navegacao, LDA v The Ship "Xin Tai Hai"* [\[2012\] FCA 715](#); (2012) 291 ALR 795 and (No. 2) [\[2012\] FCA 1497](#); (2012) 215 FCR 265, (2012) 301 ALR 357

(Private international law, shipping: Application for an anti-suit injunction in relation to proceedings in China, and opposition to an application for the stay of local proceedings on *forum non conveniens*, or clearly inappropriate forum, grounds.)

- *Board of Directors of Rizzo-Bottiglieri-De Carlini Armatori SpA as Debtor-in-Possession Of Rizzo-Bottiglieri-De Carlini Armatori SpA v Rizzo-Bottiglieri-De Carlini Armatori SpA* [\[2013\] FCA 157](#)

(Cross Border Insolvency – recognition of an Italian concordato preventive proceeding as foreign main proceedings under the *UNCITRAL Model Law on Cross-Border Insolvency* which is Schedule 1 to the *Cross-Border Insolvency Act 2008* (Cth))

Insurance

- *Marshall v QBE Insurance (Australia) Limited* [\[2013\] NSWSC 1935](#)

(Appeal from the Local Court; liability of a non-party, being in this case a director of the litigating company, for legal costs of the litigation)

- *Galea v Stromer* [\[2013\] NSWSC 1720](#)

(Application to strike out pleading of apportionment in a construction dispute)

- *Melrose Cranes & Rigging Pty Ltd v Manitowoc Crane Group Australia Pty Ltd* [\[2012\] NSWSC 904](#) and (No. 2) [\[2012\] NSWSC 1048](#)

(Insurance, evidence: Insurer claimed litigation privilege over the reports of the investigators of the loss.)

Constitutional, administrative and regulatory

- *CPJ17 v Minister for Immigration and Border Protection* [\[2018\] FCA 1242](#)

- *The Queen v Christian (No 3)* [\[2018\] NFSC 5](#)

- *ARJ17 v Minister for Immigration and Border Protection* (2018) 257 FCR 1

- *CSL Australia Pty Limited v Minister for Infrastructure and Transport* [\[2014\] FCAFC 10](#); (2014) 221 FCR 165; (2014) 141 ALD 1; (2014) 311 ALR 547

(Administrative law and statutory interpretation: judicial review of the decisions to issue temporary licences under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth))

- *Director of Public Prosecutions (NSW) v Priestly* [\[2014\] NSWCA 25](#); (2014) 201 LGERA 1

(Statutory interpretation: challenge to the prohibition on 'staying overnight' in Martin Place by Occupy Sydney protestors)

- *CSL Australia Pty Ltd v Minister for Infrastructure and Transport and Rio Tinto Shipping Pty Ltd (No. 1)* [\[2012\] FCA 1110](#); (No. 2) [\[2012\] FCA 1181](#); (No. 3) [\[2012\] FCA 1261](#) and (No. 4) [\[2012\] FCA 1306](#)

(Shipping, administrative law: Opposition to an injunction sought pending judicial review of the Minister's decision to issue a temporary licence for the coastal carriage of cargo under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth), and opposition to the judicial review of that decision. An appeal to the Full Court is pending.)

- *Patsalis v State of New South Wales* [\[2012\] NSWCA 307](#); (2012) 81 NSWLR 742; (2012) 266 FLR 207

(Constitutional law, human rights: Appeal against an order denying a prisoner leave under s 4 of the *Felons (Civil Proceedings) Act 1981* (NSW) to bring judicial review proceedings against the State of NSW, and a challenge to the applicability of the leave requirement to such proceedings)

- *Birdon Pty Ltd v Houben Marine Pty Ltd* [\[2011\] FCAFC 126](#); (2011) 197 FCR 25; (2011) 283 ALR 39

(Constitutional law, admiralty: Opposition to a challenge to the applicability of the *Building and Construction Industry Security of Payment Act 1999* (NSW) to a charterparty dispute otherwise within federal admiralty jurisdiction.)

- *Haskins v The Commonwealth* [\[2011\] HCA 28](#); 244 CLR 22; 85 ALJR 836; 279 ALR 434

(Constitutional law: Challenge to the constitutional validity of a statutory provision deeming as valid convictions and sentences by the Australian Military Court which had previously been declared to be invalid.)

Aboriginal Land Rights

- *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council* [2016] NSWCA 253
New South Wales Aboriginal Land Council v The Minister Administering the Crown Lands Act (Moira Park Road No 1 and Moira Park Road No 2 claims) [2015] NSWLEC 179
(*Aboriginal Land Rights Act 1983* (NSW): were the claimed lands in Morisset precluded from being claimed on the basis that the Minister had in relation to an earlier claim decided that they were required for residential development or because their requirement for residential development was a requirements for an “essential public purpose”.)
- *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act* [2015] NSWCA 349 (special leave to appeal to the HCA granted at [2016] HCATrans 144 and appeal dismissed at [2016] HCA 50.)
New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (Berrima) [2014] NSWLEC 188
(*Aboriginal Land Rights Act 1983* (NSW): whether historic Berrima Correctional Centre buildings and gardens lawfully occupied at the date of claim when use as gaol had ceased.)
- *NSW Aboriginal Land Council v Minister Administering the Crown Lands Act (Boggabri Common)* [2014] NSWLEC 58; (2014) 202 LGERA 273
(Claim by the Aboriginal Land Council under s 36 of the *Aboriginal Land Rights Act 1983* (NSW) to the parcels of land known as the Boggabri Common; lawful use and occupation; *Commons Management Act 1989* (NSW) and Regulations)
- *NSW Aboriginal Land Council v Minister Administering the Crown Lands Act (Newcastle Post Office)* [2014] NSWLEC 72; (2014) 204 LGERA 1
(Claim by the Aboriginal Land Council under s 36 of the *Aboriginal Land Rights Act 1983* (NSW) to the building that formerly housed the Newcastle Post Office; essential public purpose; lawfully used or occupied)
- *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (Camberwell)* [2012] NSWLEC 174; (2012) 190 LGERA 171
(Appeal by the Land Council against the Minister's rejection of a land claim under the *Aboriginal Land Rights Act 1983* (NSW).)

Professions/discipline

- *Roulstone v New South Wales Bar Association* [2015] NSWSC 1749 and No. 2 [2015] NSWSC 1869
(Professions and trades: appeal by barrister under s 108 of *Legal Profession Act 2004* (NSW) against Bar Council's deemed refusal of a practising certificate – whether fit and proper person – whether the barrister failed to discharge his duty of candour during the application process)
- *Roulstone v New South Wales Bar Association* [2015] NSWSC 5
(Professions and trades: barrister seeking practicing certificate pending final decision on whether he is a fit and proper person to hold a practicing certificate under the *Legal Profession Act 2004* (NSW))

Other

- *Mizuho Bank Ltd v Ackroyd* [2016] NSWSC 1148
(Corporations: construction of s 440J(1) of the *Corporations Act 2001* (Cth) and whether it has the effect of staying proceedings against a guarantor if the proceedings were commenced before the debtor company entered administration)

In the South African Constitutional Court:

- *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* [2010] ZACC 11; 2010 (6) SA 182 (CC)
(Constitutional law, local government, planning: challenge to the constitutionality of national legislation giving provinces land use management powers in conflict with local government planning powers.)
- *Richter v Minister of Home Affairs and others* [2009] ZACC 3; 2009 (3) SA 615 (CC)
(Constitutional law, elections: challenge to the constitutionality of a statutory provision excluding South Africans located overseas from voting in elections.)
- *MEC for Education, KZN, and others v Pillay* [2007] ZACC 21; 2008 (1) SA 474 (CC)
(Constitutional law, education, human rights: opposition to a challenge relying on the rights to equality, culture and religion to a high school policy not allowing facial jewellery – the ‘nose stud case’.)
- *Zondi v MEC for Local Government and Traditional Affairs, KZN, and Others* [2004] ZACC 19; 2005 (3) SA 589 (CC)
(Constitutional law, property rights, access to court: challenge to the constitutional validity of legislation allowing for the impounding and sale of cattle.)
- *J and Another v Director General of the Department of Home Affairs and Others* [2003] ZACC 3; 2003 (5) SA 621 (CC)
(Constitutional law, equality: challenge to the constitutional validity of legislation giving rights of recognition as parents to opposite-sex partners using assisted reproductive technology but not same- sex partners.)

In the South African Supreme Court of Appeal:

- *Harmony Gold Mining Company Ltd v Regional Director: Free State Department of Water Affairs (971/12)* [2013] ZASCA 206; 2014 (3) SA 149 (SCA)
(Administrative law: challenge to a directive under the National Water Act 36 of 1998 which required the appellant to continue to fund the pumping of acid water drainage from gold mines which it no longer owned or operated)
- *BBS Empangeni CC v Phoenix Industrial Park (Pty) Ltd* [2012] ZASCA 33
(Real property, prescription/limitation of actions.)

- *Democratic Alliance v eThekweni Municipality* [\[2011\] ZASCA 21](#); 2012 (2) SA 151 (SCA)
(Constitutional law, administrative law, local government law: opposition to a challenge to the City of Durban's new street names adopted to better reflect South African diversity – the 'street renaming case'.)
- *MV Alina II (No. 2): Transnet Ltd v Owner of the mv Alina II* [\[2011\] ZASCA 129](#); 2011 (6) SA 206 (SCA)
(Shipping, admiralty: challenge to an order for the attachment of a ship, dealing with the nature of the admiralty action *in rem*.)
- *Curators Ad Litem to Certain Beneficiaries of Emma Smith Educational Fund v University of KwaZulu-Natal* [\[2010\] ZASCA 136](#); 2010 (6) SA 518 (SCA)
(Constitutional law, trusts: opposition to a challenge to the amendment of a trust deed to remove racial exclusivity.)
- *mv 'Iran Dastghayb': Islamic Republic of Iran Shipping Lines v Terra-Marine SA* [\[2010\] ZASCA 118](#); 2010 (6) SA 493 (SCA)
(Admiralty: opposition to stay of local proceedings in favour of London arbitration, associated ship.)
- *mv 'Cape Courage': Bulk Ship Union SA v Qannas Shipping Ltd and another* [\[2009\] ZASCA 74](#); 2010 (1) SA 53 (SCA)
(Admiralty, shipping: challenge to the arrest of a ship as security for foreign proceedings dealing with when a claim under a purchase and sale MOA 'arises'.)
- *mv 'Olympic Countess': Fortis Bank (Nederland) v Orient Denizcilik* [\[2007\] ZASCA 115](#); 2008 (1) SA 376 (SCA)
(Admiralty, shipping: for the mortgagee bank challenging the ranking of claims against a fund.)
- *Impala Platinum Ltd v Koninklijke Luchtvaart Maatschappij NV and Another* [\[2006\] ZASCA 69](#); 2008 (6) SA 606 (SCA)
(Aviation, carriage by air: title to sue under the Warsaw Convention.)
- *Dlamini and Another v Joosten and Another* [\[2005\] ZASCA 138](#); 2006 (3) SA 342 (SCA)
(Land rights: establishing burial rights on farm land.)