

THE HON. STEVEN RARES KC | ARBITRATOR AND MEDIATOR



BA (1975), LLB (1978) (University of Sydney)
Mediator, Harvard Law School (2022)
Adjunct Professor, School of Law, Faculty of Law, University of New South Wales (2024)
Judge of the Federal Court of Australia (2006-2023)
Judge of the Supreme Court of the Australian Capital Territory (2007-2023)
Judge of the Supreme Court of Norfolk Island (2018-2023)
Appointed Senior Counsel in 1993 and Queen's Counsel in 1994

Steven is a mediator, arbitrator and adjunct professor of law at the University of New South Wales. He has extensive experience in commercial, maritime, private and public international law issues.

In 2022, Steven qualified as a mediator at Harvard Law School. In 2023 he became a professional member of the Resolution Institute as well as a supporting member of the London Maritime Arbitrators Association (LMAA) and was made a titularly member of the Comité Maritime International.

He was appointed a judge of the Federal Court of Australia in February 2006 and served until November 2023. He was also a judge of the Supreme Courts of the Australian Capital Territory (from 2007) and Norfolk Island (from 2018). He heard numerous cases in all areas of those Courts' civil and criminal jurisdictions and delivered over 1,200 judgments at first instance and on appeal.

Prior to his appointment as a judge, Steven practised at the bar for 25 years, taking silk in 1993. His areas of practice at the bar included maritime, aviation, defamation, media, contempt, administrative, constitutional, trade practises, competition, consumer, planning professional negligence, employment and criminal law as well as appellate.

Steven was also a board member and later chair of Counsels Chambers Ltd (1996-2005) which provided accommodation, internet and other services to over 500 barristers. He was a member of the Council of the Bar Association of New South Wales for two years and a member of one of its professional conduct committees for many years. He was also a director of an ovarian cancer research charity until 2005.

PROFESSIONAL MEMBERSHIPS & EXPERIENCE

Fellow of the Australian Centre for International Commercial Arbitration (ACICA)

Member of the London Court of International Arbitration Asia Pacific Users' Council (LCIA)

Supporting member of the London Maritime Arbitrators Association (LMAA)

Member of the Panel Singapore Chamber of Maritime Arbitration (SCMA)

Titulary member of the Comité Maritime International (CMI)

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Member, International Working Group on Offshore Activities of CMI

Member of the Maritime Law Association of Australia and New Zealand

Presiding member, Admiralty Rules Committee under the *Admiralty Act 1988* (Cth) since 2011

Member and former president (2019-2021) of the Australasian Institute of Judicial Administration

Member and former president (2014-2016) of the Judicial Conference of Australia

Professional member, Resolution Institute

Non-practising member, New South Wales Bar Association

Fellow of the Australian Academy of Law

Member of the Intellectual Property Society of Australia and New Zealand

Appointed member of the Judicial Commission of New South Wales (2004-2005) under the *Judicial Officers Act 1986* (NSW)

JUDICIAL EXPERIENCE (2006-2023)

Steven was a judge of the Federal Court of Australia for nearly 18 years and sat in all areas of its general civil jurisdiction both at first instance and on appeal. He delivered over 1,200 judgments including in Admiralty and maritime (shipping), arbitration, insurance, commercial, cross-border and general insolvency, public international law, corporate, intellectual property (patents, trademarks and designs), administrative law, regulatory, native title, defamation and media law, professional negligence, and employment matters. He also heard criminal jury trials as a judge of the Supreme Courts of the Australian Capital Territory and Norfolk Island and sat in criminal appeals in the former. A list of some of his significant decisions is in **Annexure A**.

In 2012, he delivered the first judgment in the world that held Lehman Brothers liable for breaches of fiduciary duty and contract in causing its clients to invest in synthetic collateralised debt obligations and similar products: *Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)* [2012] FCA 1028; 301 ALR 1.

EXPERIENCE AS COUNSEL (1980-2005)

Steven had an extensive general practice at the bar both before and after taking silk in November 1993. He practised in all Australian jurisdictions at first instance and on appeal. His areas of practice included Admiralty and maritime, insurance, commercial, arbitration, insolvency, corporate, intellectual property, defamation and media law, professional negligence, administrative law, regulatory, family, professional conduct and aviation matters. A list of some significant cases in which he appeared as counsel is in **Annexure B**.

PUBLICATIONS AND SPEECHES

A list of publications and link to all speeches while a judge is in **Annexure C**.

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ANNEXURE A – SIGNIFICANT CASES AS A JUDGE

Apotex Pty Ltd v Les Laboratoires Servier (No 4) [2015] FCA 104; 111 IPR 160 (whether patentee entitled to amend to disclose best method known to it)

Apotex Pty Ltd v Les Laboratoires Servier [2013] FCA 1426 (patents; validity; infringement; whether best method known to patentee disclosed in specification)

Australian and International Pilots Association v Qantas Airways Ltd [2014] FCA 32; 240 IPR 342 (employment; implication of term)

CV Sheepvaartonderneming Ankergracht v Stemcor (A/sia) Pty Ltd [2007] FCAFC 77; 160 FCR 342 (seaworthiness; carrier's obligation to exercise due diligence; Art 3(2) of *Hague Visby Rules*)

Dampskibsselskabet Norden A/S v Gladstone Civil Pty Ltd [2013] FCAFC 107; 216 FCR 469 (arbitration clauses; charterparties)

eBay International AG v Creative Festival Entertainment Pty Ltd (ACN 098 183 281) [2006] FCA 1768; 170 FCR 468 (electronic contracts ; formation)

Herron v HarperCollins Publishers Australia Pty Ltd [2022] FCAFC 68; 292 FCR 336 (defamation, whether imputations conveyed; justification; qualified privilege)

Hur v Samsun Logix Corp [2015] FCA 1154; 238 FCR 482 (cross-border insolvency; stay, maritime lien for seafarer's wages)

Idameneo (No 789) Ltd v Symbion Pharmacy Services Pty Ltd [2011] FCAFC 164; 94 IPR 442 (trademarks; infringement; licence)

Mount Isa Mines Ltd v The Ship "Thor Commander" [2018] FCA 1326; 236 FCR 181; [2019] 1 Lloyd's Rep 167 (carriage of goods by sea; whether bill of lading or charterparty; salvage)

Official Trustee in Bankruptcy v Kent [2023] FCA 1211 (insolvency; meaning of 'property')

Poralu Marine Australia Pty Ltd v MV Dijkgracht [2023] FCAFC 147 (formation of contract; carriage of goods by sea; whether bill of lading or charterparty; arbitration)

PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission [2011] FCAFC 51; 192 FCR 393 (public international law; foreign state immunity; whether corporation separate entity)

Sagacious Legal Pty Ltd v Westfarmers General Insurance Ltd (No 4) [2010] FCA 482; 268 ALR 108 (insurance; duty of disclosure; misrepresentation)

Ship "Sam Hawk" v Reiter Petroleum Inc [2016] FCAFC 26; 246 FCR 337 (maritime liens)

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Ships “Hako Endeavour,” “Hako Excel,” “Hako Esteem” and “Hako Fortress” v Programmed Total Maritime Services Pty Ltd [2013] FCAFC 21; 211 FCR 369 (demise charterparties; maritime lien for seafarer’s and master’s wages)

Strong Wise Ltd v Esso Australia Resources Pty Ltd [2010] FCA 240; 185 FCR 149 (*Convention on Limitation of Liability for Maritime Claims 1976* – limitation – whether one or more distinct occasions)

The Polo/Lauren Company L.P. v Ziliani Holdings Pty Ltd [2008] FCA 49; 75 IPR 143 (copyright; infringement, designs)

V’landys v Australian Broadcasting Corporation [2023] FCAFC 80 (defamation; capacity of matter complained of to convey imputations)

Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia [2017] FCA 803; 365 ALR 624 (native title; estoppel)

Watson v Commissioner of Patents [2019] FCA 1015; 373 ALR 716 (patents; whether invention a manner of manufacture within meaning of *Statute of Monopolies 1623* (UK))

Wingecarribee Shire Council v Lehmann Brothers Australia Ltd (in liq) [2012] FCA 1028; 301 ALR 1 (misrepresentation in sale of synthetic collateralised debt obligations)

ANNEXURE B – SIGNIFICANT CASES AS COUNSEL

Australian Securities Commission v Ampolex Ltd (1995) 38 NSWLR 504 (companies; regulatory; confidentiality undertaking)

Emery Air Freight Corp v Merck Sharpe & Dohme (Aust) Pty Ltd [1999] NSWCA 415; 47 NSWLR 696 (international carriage of goods by air; *Warsaw Convention*; private international law)

Halloran v Minister Administering National Parks and Wildlife Act 1974 [2006] HCA 3; 229 CLR 545 (company law; bills of exchange; commercial transactions and assignments; property law; trusts)

Mann v O’Neill [1997] HCA 28; 191 CLR 204 (defamation; absolute and qualified privilege)

McConnell v The Queen (1985) 2 NSWLR 269 (criminal law; *Magna Carta* c. 29; human rights)

Port Kembla Coal Terminal Ltd v Braverus Maritime Inc (the Fortius) [2004] FCA 1211; 140 FCR 445; *Braverus Maritime Inc v Port Kembla Coal Terminal Ltd* [2005] FCAFC 256; 148 FCR 68 (alision; compulsory pilotage)

Re Wakim; Ex parte McNally [1999] HCA 27; 198 CLR 511 (constitutional law; judicial power)

Tanning Research Laboratories Inc v O’Brien [1990] HCA 8; 169 CLR 332 (international arbitration; insolvency; private international law)

The Sentry Corporation v Peat Marwick Mitchell & Co (a firm) [1990] FCA 404; 24 FCR 463 (anti-suit injunctions; private international law)

Westpac Banking Corp v The Ship “Stone Gemini” [1999] FCA 434; 110 FCR 47; [1999] 2 Llody’s Rep 255 (letters of credit; bills of lading; letters of indemnity; conversion)

ANNEXURE C – SPEECHES AND PUBLICATIONS

The blurring of lines between shipping contracts | Journal of International Maritime Law, (2023) JIML 291

A collection of his speeches while a judge is accessible using this link:

<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/speeches-former-judges/justice-rares>