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expert legal assistance for  
commercial litigation  
matters

## Qualities to look for in a commercial litigation lawyer

American websites talk about lawyers “crushing” their opponents in court and “destroying” their opponent’s story. The only thing an Australian lawyer “destroys”, at least according to Google, is evidence.

What does it really take to prevail in court and how do you know that your lawyer has what it takes to win a commercial victory for you or your clients?

### **The nature of commercial litigation and the knowledge, skills and attributes required**

If you believe the TV and movies you would think that the key skills to succeeding in Court involved the ability to spin stories, gesture wildly and scream loudly. The reality is different. Oral presentation skills are important in Court but in commercial disputes there are many skills and characteristics which are equal or more important. Experience is paramount. Experience tells a lawyer when a situation requires an urgent application to Court in a short, sharp, violent burst of activity like a commando raid, and when a matter will become a long, expensive, drawn out sloggy match or war of attrition such as WWI. When time is short, for example, when a large sum of money has been fraudulently removed, experience tells a lawyer how to get in front of a judge in a few hours or less to obtain relief such as a freezing order or other injunction to prevent you suffering loss.

Project management skills are required in large, complex commercial litigation. The right team of senior and junior solicitors, law clerks, senior and junior barristers, witnesses both expert and lay, valuers, translators, various consultants and others have to be assembled and coordinated. The right lawyer will know who to involve and when to involve them to achieve the desired outcome. There’s no commercial sense in engaging the best QC (senior barrister), junior barrister and solicitor

available for your Local Court trial over a \$10,000 debt when a legal team of that magnitude will cost you around \$20,000 per day in court.

The right lawyer to take your matter to trial has the knowledge to identify causes of action, both legal and equitable and to give you comprehensive advice, including time limitation issues. They can also discuss with you likely defences that the defendants will raise and indicate your chances of success. They will give you a realistic estimate of costs, because they have done it many times before.

There are many procedural requirements in commercial litigation. Your cause may suffer considerably if your lawyer doesn’t comply with the rules of court, doesn’t know how or why to “qualify” expert witnesses, doesn’t know how to appear in online Court, prepare for a first directions hearing, prepare a Court book, trial bundle, or exhibit list, cannot draft affidavits or submissions and the list goes on.

A lawyer involved in a commercial trial, particularly when there is a multi-week trial, needs to dedicate themselves to that trial. Nothing else comes first. Not holidays and not social life. A commercial trial can be very time intensive both in terms of the trial preparation and while it is running. Everything else must be set aside and considered secondary.

A lawyer heading to trial must be detailed and thorough and the plan must be comprehensive. Once the trial has started it is not the time to discover that the pleadings are deficient, mistakes have been made, something has been forgotten, preparations were insufficient or that witnesses are uncontactable at short notice and so forth.



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### **What kind of lawyer do I need for this work?**

A lawyer heading for trial must cope well under stress. They must thrive in high pressure situations. They must allocate time appropriately. They must have stamina and energy because the long hours associated with preparing for and running commercial trials are very draining. They must not be weak or sickly as during a trial there is little latitude for anything but 100% effort.

That is why commercial trials aren't for every lawyer. And if your lawyer is afraid of trials, disorganised, uncertain or is failing to respond, then simply put, you need a lawyer who is not.

### **Indicia that you need a new lawyer:**

1. Your commercial dispute matter drags on and on but no progress is made (unless you are a defendant)
2. You aren't given real advice and your lawyer is ambiguous when you seek answers
3. Your lawyer isn't organised and misses court deadlines for no reason
4. Your lawyer pushes you into mediation or settlement and won't consider fighting your case in court without giving you a reasoned and satisfactory explanation as to why settlement is better than trial or allowing you to make the final decision
5. Your lawyer is evasive or you can never get in touch with them
6. Your lawyer is too busy



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