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Summary

Daniel Aghion has a broad civil and commercial litigation practice, including advice and appearances in matters concerning property, commercial and contract law, equity, trade practices, insurance and professional negligence, construction and torts.

Daniel is a recognised expert on the difficult question of proportionate liability, having appeared in some of the leading cases in this area.

He also holds a Master of Laws from the University of Melbourne, specialising in commercial equity and trade practices, negligence, insurance, construction, evidence and procedure.

Specialist industry experience

Property development

Over nearly 20 years of practice, Daniel has advised and acted for many entities within the property development industry including landowners, large privately held developers, local councils, financiers, commercial builders and professional consultants. He has represented parties on both greenfield and large scale infill developments. Daniel appeared (led by Jeremy Gobbo QC) in the large and complex *Premier v Spotless* litigation, representing a town planner, where a \$25million claim was brought by a property developer arising from contamination of a former dry cleaning facility in inner Melbourne. Daniel is familiar with the *Building Act*, *Building Code of Australia*, *Environment Protection Act*, *Planning and Environment Act*, *Property Law Act* and *Sale of Land Act* (Vic).

Pharmacy

Daniel has for many years advised and acted for the Victorian Pharmacy Authority on regulatory issues concerning the pharmacy profession. As a result, he has been involved in many of the significant issues of the last decade, including corporatisation of pharmacy services and government procurement of health services. Daniel is familiar with the *Pharmacy Regulation Act*, *Victorian Pharmacy Authority Guidelines* and *Drugs Poisons and Controlled Substances Act* (Vic).



Insurance and re-insurance

Daniel has acted for Australian publically listed life and general insurers, authorised foreign insurers, reinsurers, title insurers, statutory insurance corporations and indemnity funds, and Lloyds market syndicates. He is a current member of the Australian Insurance Law Association. Daniel is familiar with the *Insurance Act, Life Insurance Act and Insurance Contracts Act (C'th)*.

Qualifications

BA; LLB – Monash University

LLM – University of Melbourne

Member of the Victorian Bar since 1997

Admitted to practice in NSW

Member of the Queensland and Tasmanian Bars

Nationally accredited mediator

Professional experience

Daniel is an experienced trial and appellate advocate. He appears in the Federal Court and the Supreme Courts of Victoria, Queensland and Tasmania, in cases involving complex questions of fact and law. As a 'senior junior' barrister he usually appears unled or with a junior, and opposed to silk.

Examples include:

Property

Seacrest Pty Ltd v Banyule City Council (2015) – acting for a local council in a complex dispute involving claims of carriageway rights across a Council car park for vehicle access to an adjacent shopping centre. Settled at mediation.

Bellarine Lakes Pty Ltd v Butteriss (2015) – acting for the developer of an aged care facility, involving claims of entrance and egress rights onto the developer's land from an adjoining farm. Settled at mediation.

Landmark Property Enterprise Pty Ltd v Monash Property Developments Pty Ltd [2015] VSC 266 – trial involving a failed purchase of a large commercial development site. The case established new law on terms contracts, and the ability of purchasers to avoid such contracts.

Price v Aquasure Pty Ltd (2013) – acting for a group of farmers claiming compensation for flooding said to be caused by infrastructure works associated with Victoria's desalination plant. Settled at mediation.

Savers Inc v Herosy Nominees Pty Ltd [2011] VCAT 1160 – appearance at trial for the landlords of a department store, where the tenant claimed a repairing remedy under the *Retail Leases Act 2003*.

Premier Building and Consulting Group Pty Ltd v Spotless Ltd (2007) 64 ACSR 114 – appearance for a town planner at trial, in a long-running and highly complex dispute involving substantial contamination of land.



Aussie Invest Corp Pty Ltd v Pulcesia Pty Ltd (2005) 13 VR 168 – appearance at trial for the vendor of commercial property. The case considered how late a conveyancing solicitor needed to keep their office open to give the purchaser an opportunity to tender.

Professional negligence

Advising the Legal Services Board in respect of a multi-million dollar fraud committed by a solicitor against several of the solicitor's former clients, and recovery rights against a statutory indemnity fund (2016).

Hudspeth v Scholastic Cleaning and Consultancy Services Pty Ltd [2014] VSC 567, [2014] VSCA 78 – appearance at trial and on appeal, to defend junior counsel in an 'own motion' judicial enquiry under the *Civil Procedure Act 2010*. This was the first judicial enquiry conducted under the Act.

Rolfe v Investec Bank (Australia) Ltd; Investec Bank (Australia) Ltd v Gadens Lawyers [2014] VSCA 40; [2014] VSCA 38 – appearance at trial and on appeal, to defend Gadens Lawyers from an allegation that rare racing Porsches were stolen from premises controlled by a mortgagee in possession for whom Gadens had acted. The case is the leading Australian authority on bailment of concealed goods.

Mills v Fordham Business Advisors Pty Ltd [2012] VCC 1716 – appearance at trial for a client of an accounting firm, regarding advice given as to the effect of the Small Business Concession.

Hay v Victorian Securities Corporation Limited (2010) 29 VR 503 – appearance at trial and on appeal, in a claim by a lender against a valuer alleging negligent valuation.

Moorabool Shire Council & anor v Taitapanui & ors (2009) 14 VR 55 – appearance at trial, on appeal to the Supreme Court (Trial Division), in the Court of Appeal, and in the High Court (special leave refused) for a builder's warranty insurer. The case established that building surveyors who issue building permits for dwellings are liable in negligence to subsequent owners of those dwellings.

Proportionate liability

Adams v Clark Homes Pty Ltd [2015] VCAT 1658 – the first case to decide the question of joinder of a concurrent wrongdoer after expiry of a limitation period.

St George Bank Limited v Quinerts Pty Ltd (2009) 25 VR 666 – appearance at trial and on appeal, in the first case to decide the scope of concurrent wrongdoing under proportionate liability legislation.

Contract

Birdanco Nominees Pty Ltd v Money (2012) 36 VR 341 – appearance at trial and on appeal, to defend an employee accused of breaching a restraint of trade clause in his contract of employment with an accounting firm.

M3 Property (Vic) Pty Ltd v Whitehorse Towers Pty Ltd [2012] VSC 109 – appearance in the Supreme Court of Victoria, on an appeal from VCAT, in a claim by a real estate agent to be paid its commission on sale of a large development property.

Capital Securities (Aust) Pty Ltd v Perpetual Trustees Vic Ltd [2009] VSCA 259 appearance at trial and on appeal, in a claim by a lender against a mortgage broker. Daniel acted for Perpetual Trustees, who claimed contractual indemnification for losses suffered due to fraud



committed by the lender's employee.

Bi Rite Electrical Pty Ltd v Choice Electrical Pty Ltd [2009] QSC 303 – appearance in the Supreme Court of Queensland, in proceeding concerning a dispute between licensee and licensor involving Australia-wide retailer of electrical appliances.

Tort

Younis v Varveri (2014) – appearance at trial for a landlord, in a claim by a plaintiff who fell through a skylight on the premises and suffered serious injuries. Settled at trial.

Corporations

Entwisle v Minken Pty Ltd (2013) 97 ACSR 361 – application to wind-up a group of property development companies, including application by a non-member.

Partnerships and joint ventures

Re Line Accord Pty Ltd [2016] VSC 203; *Entwisle & ors v Minken Pty Ltd & ors* [2015] VSC 561 – dispute amongst joint venturers involving a group of property development companies.

Restitution

Southage Pty Ltd v Vescovi (2015) 321 ALR 383 – trial and appeal involving a restitutionary claim where both plaintiff and defendant were victims of a mortgage fraud.

Trusts

Mustica Holdings Pty Ltd v Lotus Almonds Pty Ltd [2015] VSC 531 – application to replace the trustee of a unit trust.

Benson v Doloraine Pty Ltd [2015] TASSC 41 – defence of application in the Supreme Court of Tasmania to replace the trustees of two discretionary trusts.

Benson v Benson (2015) – proceeding in the Federal Court, Hobart Registry. The case involved an inter-generational family dispute over Australia's largest organic farming group. The proceeding settled at trial.

Administrative law

Burgess v Director of Housing [2014] VSC 648 – injunction and trial, to restrain the Department of Housing from evicting a tenant due to a failure to accord procedural fairness. Daniel appeared pro bono.

Daniel has for many years advised the Victorian Pharmacy Authority (previously the Pharmacy Board of Victoria) on various complex questions of administrative law and interpretation of their governing legislation.

Civil procedure

Wilson v Mitchell [2014] VSC 332 - appearance for Bruce Wilson, ex-partner of the former prime-minister Julia Gillard, to claim legal professional privilege over Mr Wilson's legal file held with the law firm Slater & Gordon. Daniel appeared pro bono.



Lee v Omni Leisure Operations Pty Ltd [2008] VSC 272 – appearance for the owner of the Dream World theme park, to defend the plaintiff’s claim for an extension of time under the *Personal Injuries Proceeding Act 2002* (Qld) to commence a personal injuries proceeding.

Spotless Group Ltd v Premier Building and Consulting Pty Ltd (2006) 16 VR 1 – appeal concerning waiver of privilege over legal advice given to third party financiers of the plaintiff’s litigation.

Papers and presentations

Risk Management for Lawyers March 2016

Ethics in Practice for Commercial Lawyers Law Society of Tasmania - Hobart, March 2016 with Dan Coombes

Succession Planning from a Legal Perspective: what is it and why is it important? Society of Trust and Estate Practitioners, October 2015 with Robert Boadle

Ethics: the conflict rules Law Society of Tasmania - Launceston, July 2015

Understanding Damages: quantification issues and consequential loss Hobart, November 2014

Ethics and Professional Responsibility: professional conduct and the Civil Procedure Act March 2014

Proportionate Liability: an update, Precedent Issue 121, March/April 2014

Where Did I Go Wrong? Professional negligence and property transactions Southern Solicitors Group, February 2014

Contract Law in Practice September 2012

Introduction to Pleadings September 2011

Civil Procedure Reform May 2011 with Michael Heaton QC

Navigating Proportionate Liability March 2009

Assessing Pecuniary Damages for Breach of Contract March 2008

Proportionate Liability: who bears the burden? Precedent Issue 82, September/October 2007

Proportionate Liability: a leap into the dark August 2007

Proportionate Liability: a comparative analysis of Victorian and Commonwealth legislation August 2007

Burning the Midnight Oil: how late must a conveyancing lawyer’s office remain open? Law Institute Journal, December 2006

Proportionate liability: your questions answered March 2006

Good Conduct Guide: Professional Standards for Victorian Barristers Joint Editor, 2006

Proportionate Liability: an analysis of the Victorian and Commonwealth legislative schemes Commercial Bar Association, August 2005 with Graeme Uren QC



Insurance and Construction Law: recent developments in Victoria September 2005

Proportionate Liability under the Wrongs Act 1958: one year on March 2005

Identifying and Quantifying Heads of Damage for Breach of Contract March 2005

Injunctions and Interlocutory Orders: professional and ethical responsibilities for legal practitioners
Victorian Bar, November 2004

The Remedial Constructive Trust: an exercise in discretion? September 2003

Liability of Public Authorities for Highways, Roads and Paths May 2003

Negligent Infliction of Psychiatric Injury November 2002

Awards and professional recognition

Chambers and Partners ranks Daniel as one of Australia's leading junior barristers. He was most recently described in that publication as "*fantastic: devises strategy effortlessly, very smooth on his feet and an excellent cross-examiner*".

Best Lawyers lists Daniel as a leading Australian lawyer in the areas of professional malpractice litigation and real property law.

In 2014, Daniel received the Ron Merkel QC award from the Victorian Bar for his pro bono advice and advocacy in respect of homelessness and elder law.

Daniel has written and presented nationally on various topics including legal ethics, proportionate liability, contract damages and civil procedure.

