



## DANIEL AGHION KC

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### SUMMARY

Daniel Aghion KC 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.

### SPECIALIST INDUSTRY EXPERIENCE

#### **Property development**

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.

#### **Contamination and clean-up**

Daniel led a team of five barristers in the *Alphington Developments v Amcor* trial, concerning significant asbestos contamination at the former APM factory complex in Alphington, Melbourne. He also appeared (led by Jeremy Gobbo QC) in the large and complex *Premier v Spotless* litigation, defending a town planner from a claim concerning contamination from a former dry-cleaning facility in inner Melbourne.

#### **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.

#### **Insurance and re-insurance**

Daniel has acted for Australian publicly 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.



## QUALIFICATIONS

**BA; LLB – Monash University**

**LLM – University of Melbourne**

**Member of the Victorian Bar since 1997**

**Appointed as Senior Counsel in 2021 and King's Counsel in 2022**

**Admitted to practice in NSW**

**Member of the Tasmanian Bar**

**Nationally accredited mediator since 2008**

## PROFESSIONAL EXPERIENCE

Daniel is an experienced trial and appellate advocate. He appears in cases involving complex questions of fact and law.

Examples include:

### **Property**

*Chatham v Coral Park Pre-Training & Breaking Pty Ltd* (2020) 66 VR 171 - appearance at trial for the vendor of a racehorse breeding and training facility, to defend a claim for rescission by the purchaser under the *Sale of Land Act 1962* (Vic).

*The Edge Development Group Pty Ltd v Jack Road Investments Pty Ltd* [2019] VSCA 91, [2018] VSC 326 - appearance at trial and on appeal for the purchaser under an agreement to sell commercial land 'subject to contract'.

*Ten Boundary Street South Melbourne Pty Ltd v Ivanhoe Project Pty Ltd* [2016] VSC 755 - appearance at hearing on construction of best endeavours clause in contract of sale.

*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* (Vic).

*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.



## **Environmental law and planning**

*Alphington Developments Pty Ltd v Amcor Limited (2021)* - acting for the developer of the former APM factory complex in Alphington, Melbourne. The developer claimed the cost of cleaning up significant asbestos contamination. Daniel led a team of five barristers. Judgment is reserved.

*Northcote Devco Pty Ltd v Darebin CC [2022] VCAT 515* - acting for a local council, to defend a planning application to redevelop Northcote Plaza shopping centre as a mixed-use development comprising a supermarket, retail floorspace, office floorspace and 605 apartments, in two separate buildings, with heights of between one and 18 storeys, above three levels of basement car parking.

*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 by dry-cleaning fluids.

## **Professional negligence**

*Sonic Clinical Services Pty Ltd & anor v LDB Accountants and Advisors (a firm) & ors* - defence of lawyers who acted for vendors in sale of medical group.

*Bodycorp Repairers Pty Ltd (Vic) Pty Ltd & anor v Murdaca & ors [2018] VSCA 174* - successful defence of solicitor accused of conspiracy by unlawful means to give and procure false evidence. Witness immunity considered.

*Owners Corporation v Barouche [2017] VSC 143* - appearance at appeal. Successful defence of solicitor on the ground that the claim was beyond the scope of the solicitor's duty of care.

Advising 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 (No 8) [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 [2014] VSCA 40; [2014] VSCA 38* – appearance at trial and on appeal, to defend lawyers from an allegation that rare racing Porsches were stolen from premises controlled by a mortgagee in possession for whom the lawyers 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**

*Keo Waleta Property Pty Ltd v 1693 Malvern Road Pty Ltd* [2019] VSC 239 - appearance at trial concerning construction of joint venture agreement.

*Pomeroy Pacific Pty Ltd v Melstone Wellington Pty Ltd & anor* [2017] VCC 1699 - appearance at trial concerning construction of agreement for project management services.

*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. Contractual indemnity claimed 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) 13 ASTLR 156 – 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.



## **Defamation**

*The School for Excellence Pty Ltd v Trendy Rhino Pty Ltd* [2018] VSC 514 - appearance at injunction, to restrain further publication of ongoing defamatory material in a large Facebook group.

## **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**

*Ezra Abrahams Pty Ltd v Milburn* [2017] VSCA 355 - appeal from trial judge's refusal to reopen plaintiff's case after defendant's no-case submission.

*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

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

*Proving the Money Trail: the importance of causation in lost opportunity claims* (2019) 151 Precedent 4

*When is a promise not a promise? Leases, collateral contracts and estoppel: A discussion of Crown Melbourne Limited v Cosmopolitan Hotel (Vic)* (2016) 260 CLR 1 June 2018

*Avoiding Ethical Problems* March 2018

*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* (2014) 121 Precedent 6



*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?* (2007) 82 Precedent 40

*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* 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* 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

*Best Lawyers* lists Daniel as a leading Australian lawyer in the areas of alternate dispute resolution, construction/infrastructure law, professional malpractice litigation and real property law. In 2018, he was named "Lawyer of the Year" for professional malpractice litigation in Melbourne. Daniel has been listed in this publication since 2017.

*The Legal 500* ranks Daniel as a leading silk in Australia in the area of commercial disputes. Daniel has been listed in this publication since 2023.

As a junior barrister, *Chambers and Partners* listed 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*". Daniel was listed in this publication from 2012 to 2018.



# YOUNG'S LIST

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 senior law.