

DANIEL KROCHMALIK

Barrister

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PRINCIPAL AREAS OF PRACTICE

Commercial Law	Equity
Contracts	Insolvency and Bankruptcy
Corporations Law	Real Property
Employment / Restraint of Trade	Regulatory Investigations and Inquiries

Briefs accepted in all areas of law, with particular specialisation in corporations law and corporate insolvency

ADMISSIONS

Barrister, Supreme Court of New South Wales (<i>Con Varnavas Award</i> – 1st in NSW Bar Examinations, June 2013)	2013
Solicitor, Supreme Court of New South Wales and High Court of Australia	2008

SELECTED REPORTED CASES

Appellate (in order of most recent)

- *Roads and Maritime Services v Desane Properties Pty Limited* [2018] NSWCA 196 [challenge to compulsory acquisition] (led by R Merkel QC and D R Pritchard SC)
- *Chinatex (Australia) Pty Limited v Bindaree Beef Pty Limited* [2018] NSWCA 126 [contract law] (led by M L D Einfeld QC)
- *Thomson v New Galaxy Investments Pty Limited* [2017] HCATrans 265; [real property; caveats; successfully resisted special leave application] (led by M L D Einfeld QC)
- *Cherry v Steele-Park* (2017) 351 ALR 521; [2017] NSWCA 295 [contract law, guarantees] (unled)
- *New Galaxy Investments Pty Ltd v Thomson* (2017) 18 BPR 36811; [2017] NSWCA 153 [real property; caveats; successful appeal from an award of compensation under s 74P of the *Real Property Act 1900*]
- *New Galaxy Investments Pty Ltd v Thomson & Ors (No 2)* [2017] NSWCA 235 [costs] (led by M L D Einfeld QC)
- *James v Douglas* [2016] NSWCA 178 [trusts] (led by M A Ashurst SC)

- *Pavlovic v Universal Music Australia Pty Limited* (2015) 90 NSWLR 605; [2015] NSWCA 313 [formation of contract; solicitors' authority; successful appeal from a declaration that a binding agreement was reached] (led by R Merkel QC)
- *Pavlovic v Universal Music Australia Pty Limited (No 2)* [2016] NSWCA 31 [successfully obtained a forthwith costs order] (led by R Dubler SC)
- *Mushroom Composters Pty Limited v IS & DE Robertson Pty Limited* [2015] NSWCA 1; [contract] (led by B F Katekar)
- *Mushroom Composters Pty Limited v IS & DE Robertson Pty Limited (No 2)* [2015] NSWCA 68 [costs] (led by B F Katekar)
- *Kisimul Holdings Pty Limited v Clear Position Pty Limited* [2014] NSWCA 262 [successful appeal against the dismissal of an application to set aside a statutory demand] (led by C D Wood)
- *Kisimul Holdings Pty Limited v Clear Position Pty Limited (No 2)* (2014) 86 NSWLR 645; [2014] NSWCA 317 [successfully obtained a costs order against a party that filed a submitting appearance] (led by C D Wood)

First instance (in order of most recent)

- *Capital Securities XV Pty Limited v Calleja (No 2)* [2018] NSWSC 1498 [successful application for summary dismissal of a cross-claim (appeared for the Commonwealth Bank of Australia)] (unled)
- *In the matter of Precise Training Pty Limited* [2018] NSWSC 1383 [successful application for the dismissal of proceedings to set aside a statutory demand (appeared for the Chief Commissioner of State Revenue)] (unled)
- *Metal Storm litigation*, including:
 - *In the matter of Metal Storm Limited (in liquidation) (Receivers and Managers Appointed)* [2018] NSWSC 900 (led by A McGrath SC)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* [2016] NSWSC 306 (led by A McGrath SC)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* [2015] NSWSC 1699 (led by A McGrath SC)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* [2015] NSWSC 1698 (unled)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* [2014] NSWSC 1458 (led by C Scerri QC and H N G Austin)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* [2014] NSWSC 1170 (led by C Scerri QC and H N G Austin)
 - *In the matter of Metal Storm Limited (subject to Deed of Company Arrangement)* (2014) 100 ACSR 637; [2014] NSWSC 813 (led by C Scerri QC and H N G Austin)
- *In the matter of AMP Life Limited* [2018] NSWSC 855 [successful application to set aside a statutory demand (appeared for AMP)] (unled)
- *Desane Properties Pty Limited v State of New South Wales* [2018] NSWSC 553; [2018] NSWSC 738 [challenge to compulsory acquisition] (led by R Merkel QC and D R Pritchard SC)
- *De Lage Landen Pty Limited v HBO EMTB Holdings Pty Limited* [2018] NSWDC 116 [successful claim to enforce a guarantee] (unled)

- *In the matter of Bantex Pty Limited (subject to deed of company arrangement)* [2018] NSWSC 531 [successful application under s 450E(2) of the *Corporations Act 2001*] (unled)
- *In the matter of SFL/PILTECH (EA) Pty Limited* [2018] NSWSC 637 [successful application for the winding up of a company opposed by administrators (appeared for Boral)] (unled)
- *Grace Fashion Pty Limited (In Liquidation) v Miss Cherry Fashion Pty Limited* [2017] FCA 662 [unfair preference claim; successful application for default judgment] (unled)
- *In the matter of MROC Car Wholesalers Pty Limited* [2017] NSWSC 738; [2017] NSWSC 287 [successful application to set aside appointment of administrators; interlocutory injunction] (unled)
- *In the matter of Australian Company Number 074 962 628 Pty Limited (in liq)* [2017] NSWSC 370 [liquidator's remuneration] (unled)
- *In the matter of Tanamerah Estates Pty Limited* [2016] NSWSC 1644 [winding up] (unled)
- *In the matter of Hunter Valley Foods Pty Limited* [2016] NSWSC 1903 [successful application for summary dismissal of an unfair preference claim] (unled)
- *BCI Finances Pty Limited (in liq) v Binetter (No 4)* (2016) 348 ALR 227 [2016] FCA 1351 [successfully resisted liquidators' claim for compensation of tens of millions of dollars against a director] (led by S Golledge)
- *In the matter of Arrow Law Pty Limited* [2016] NSWSC 748 [successful application to wind up a company] (unled)
- *In the matter of Therma Truck Pty Limited* [2016] NSWSC 266 [application for appointment of a provisional liquidator] (unled)
- *Perception Investire Pty Limited v Bassal Holdings Pty Limited* [2015] NSWSC 1954 [real property; options] (led by D R Pritchard SC)
- *Thomson v Golden Destiny Investments Pty Limited (No 3)* [2016] NSWSC 78 [successfully resisted a claim for compensation under s 74P of the *Real Property Act 1900*; causation] (led by M L D Einfeld QC)
- *Thomson v Golden Destiny Investments Pty Limited* [2015] NSWSC 1176; *Thomson v Golden Destiny Investments Pty Limited (No 2)* [2015] NSWSC 1929 [real property; caveats; funds held in court; trusts; priority] (led by M L D Einfeld QC)
- *Re Mansfield; In the matter of GSP Group Pty Limited (Administrators Appointed)* [2015] FCA 409 [successful application for extension of convening period for second meeting of creditors] (unled)
- *Prentice in his capacity as the trustee of the bankrupt estate of Marjoribanks v Pitt* [2015] NSWSC 262 [bankruptcy; equity] (unled)
- *Tripod Funds Management Pty Limited v Shao* [2014] NSWSC 1722 [successful application for dismissal of proceedings] (unled)

Other

- Appeared for liquidators and examinees in various examinations under Part 5.9 of the *Corporations Act 2001*
- Appeared for examinees in various examinations under s 19 of the *Australian Securities and Investments Commission Act 2001*

PROFESSIONAL EXPERIENCE PRIOR TO BAR

Solicitor, Herbert Smith Freehills (previously Freehills)

2008–2013

- Commercial litigation and dispute resolution
- Specialised in contractual, property, corporations and equity disputes, regulatory investigations and enforcement proceedings, and white collar prosecutions
- Selected matters include:
 - *CTI Joint Venture Company Pty Limited v CRI Chatswood Pty Limited (in liq) (Receivers & Managers Appointed) & Ors (No 3)* [2012] NSWLEC 6
 - successfully acted for the Commonwealth Bank of Australia in complex proceedings concerning an integrated shopping centre and residential development
 - *Australian Incentive Plan Pty Limited v Attorney-General for Victoria* (2012) 44 VR 661; [2012] VSCA 236; [2012] VSCA 251 and *Australian Incentive Plan Pty Limited v Babcock & Brown International Pty Limited* (2010) 81 ATR 290; [2010] VSC 564
 - acted for a trustee in an application to vary the terms of a trust deed and terminate the trust and in appeal proceedings on nomination of appropriate beneficiaries
 - *Rosenberg v ASIC* [2010] AATA 654
 - successfully acted for a prominent stockbroker to set aside a decision by ASIC to ban the applicant from providing financial services
 - *XQZT v ASIC* [2009] AATA 669; *ASIC v AAT* (2009) 181 FCR 130
 - successful application in the Administrative Appeals Tribunal and, on appeal, in the Full Federal Court for suppression orders and a stay of an ASIC banning order
 - *Crawley v Short* (2009) 262 ALR 654; (2009) 76 ACSR 286; [2009] NSWCA 410
 - successful cross-appeal in the NSW Court of Appeal concerning the appropriate remedy for breach of fiduciary duties / oppression and methodology for valuation of minority shareholding

Shopfront Youth Legal Centre (secondment)

2011–2012

- Pro bono legal service for homeless and disadvantaged clients
- Specialised in criminal law and victims' compensation
- Represented clients as advocate in contested trials, pleas in mitigation, bail applications and appeals with daily appearances in Courts including the NSW Supreme Court, District Court and Local Court

Faculty of Law, University of New South Wales (part-time)

2009

- Lecturer, Public Law

ACADEMIC QUALIFICATIONS & AWARDS

University of New South Wales

Bachelor of Law (Hons. equiv) (2006); ranked 3rd out of 247

Bachelor of Arts (2004)

Awards

- Con Varnavas Award (2013); *Awarded for the highest aggregate score in the NSW Bar Examinations*
- Finalist (“Round of 32”) (2006); Vis International Commercial Arbitration Moot, Vienna
- Sydney Morning Herald Prize (2004); *Awarded for the best overall performance in all the courses contributing to the completion of a major in Politics and International Relations*
- Politics and International Relations Prize (2004); *Awarded for the best overall performance in Upper Level courses in Politics and International Relations*

OTHER INTERESTS

- Bridge
- Squash
- American Politics
- NSW Jewish Board of Deputies and NSW Society of Jewish Jurists & Lawyers