

# Daniel Farinha

Admitted to practice: 2018

Called to the bar: 2020

Eleven Wentworth, 180 Phillip St, Sydney NSW 2000

## Education

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*University of Sydney* 2011–2016

### **Bachelor of Laws (First Class Honours and University Medal)**

University of Sydney Outstanding Achievement Scholarship  
(2011–2016)

Ian Joye Prize in Law (2016)

Nancy Gordon Smith Prize for Honours at Graduation (2016)

RG Henderson Memorial Prize (NSW Bar Association) (2016)

John George Dalley Prize No 1A for Final Year Exams (2016)

George and Matilda Harris Scholarship No I for Second Year (2015)

LexisNexis Book Prize No 4 for Most Proficient in Combined Law IV (2015)

Minter Ellison Prize for Most Distinguished Student Commencing Combined Law IV  
(2014)

LexisNexis Book Prize No 2 for Most Proficient in Combined Law II (2012)

Herbert Smith Freehills and EM Mitchell Prizes for Contracts (2012)

Aaron Levine Prize for Criminal Law (2012)

*University of Sydney* 2011–2014

### **Bachelor of Economics (First Class Honours and University Medal)**

Dean's List of Excellence in Academic Performance (2011–2013)

Randolph G Rouse Prize for Best Performance in 4th Year Honours (2014)

Geoffrey Dale Prize for Third Year in the Faculty of Economics and Business (2013)

## Professional Experience

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*High Court of Australia* 2019–2020

### **Associate/Senior Associate to the Honourable Justice Nettle AC**

*New South Wales Court of Appeal* 2017–2018

### **Tipstaff/Associate to the Honourable Justice Meagher**

*Supreme Court of New South Wales* 2017

### **Equity Division Researcher**

*Sydney Law School* 2013–2017  
**Research Assistant in Contracts, Torts and Energy Law**

*Kay & Hughes* 2013–2016  
**Paralegal**

*Linklaters LLP* 2014  
**Australian Clerk**

### **Legal Publications**

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“Misfeasance by Directors: Past, Present and Future” in John Eldridge, Michael Douglas and Claudia Carr (eds), *Economic Torts and Economic Wrongs* (2021) (with Justice Geoffrey Nettle AC)

“Fraud and Formality: Relief in Equity from Acts of Parliament” (2018) 12 *Journal of Equity* 297

“Book Review: *Equitable Compensation and Disgorgement of Profit*” (2017) 91 *Australian Law Journal* 931

“Causation and Fiduciary Misconduct in Hong Kong and Beyond” (2017) 44 *Australian Bar Review* 221

“Damages for Breach of Contract: *Clark v Macourt*” (2014) 28 *Commercial Law Quarterly* 47

### **Selected Cases**

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#### *High Court of Australia*

*Namoa v The Queen* (2021) 95 ALJR 396; 388 ALR 531; [2021] HCA 13: statutory interpretation and criminal law — appeal on whether spouses may commit “conspiracy” within s 11.5 of the *Criminal Code* (Cth) (appearing for the appellant led by G O’L Reynolds SC and R W Haddrick)

*DRJ v Commissioner of Victims Rights* [2021] HCASL 53: statutory interpretation and private international law — application for special leave on whether an “act of violence” within the *Victims Rights and Support Act 2013* (NSW) must occur in New South Wales (acting for the applicants led by K Eastman SC and D Hume)

*Ogawa v Attorney-General (Cth)* [2021] HCATrans 97: constitutional and administrative law — application for special leave on whether the executive power to recommend and grant a pardon is amenable to judicial review (appearing for the applicant led by J K Kirk SC and D Hume)

### *Full Court of the Federal Court of Australia*

*Australian Rail, Tram and Bus Industry Union v Busways Northern Beaches Pty Ltd* (NSD172/2021) (judgment reserved): industrial law — application for judicial review on whether conversion of government activities into a business constitutes establishing a “*genuine new enterprise*” within s 172 of the *Fair Work Act 2009* (Cth) (appearing for the applicant led by W L Friend QC)

*Carnival PLC v Karpik* (NSD1033/2021) (judgment reserved): contract, consumer and private international law — appeal on whether an exclusive jurisdiction clause and class action waiver were incorporated into contracts of carriage of North American passengers in the *Ruby Princess* class action and whether the waiver is enforceable under Australian law and the general maritime law of the United States (appearing for the respondents led by I Pike SC and R J May)

### *New South Wales Court of Appeal*

*Rinehart v Rinehart* [2021] NSWCA 228: civil procedure and arbitrations — application for leave to appeal against a stay of proceedings pending the determination of issues raised in arbitrations (appearing for a respondent led by P Brereton SC and T E O’Brien)

*Bowers v Judicial Commission of NSW (No 1)* [2021] NSWCA 323; *Bowers v Judicial Commission of NSW (No 2)* [2021] NSWCA 324: administrative law and civil procedure — application for leave to appeal against the summary dismissal of judicial review proceedings arising out of complaints against judicial officers (appearing for the respondent unled)

*Rinehart v Rinehart* [2021] NSWCA 233 (judgment on appeal reserved): property and trust law — application for leave to appeal, and then appeal, against the stay of an order for production of documents by a former trustee (appearing for a respondent led by C N Bova SC and T E O’Brien)

### *Federal Court of Australia*

*Royal Caribbean Cruises Ltd v Reed* (NSD1359/2020) (proceedings discontinued by applicant): contract and private international law — application for an anti-suit injunction against proceedings in the United States District Court in Florida by victims of the Whakaari (White Island) volcano eruption (appearing for the respondents led by T E O’Brien)

*Karpik v Carnival plc (The Ruby Princess) (Stay Application)* [2021] FCA 1082: contract, consumer and private international law and class actions — application for a stay of claims by overseas members of the *Ruby Princess* class action based on an exclusive jurisdiction clause and class action waiver (appearing for the representative applicant led by I Pike SC and R J May)

*Mulley v Hayes* [2021] FCA 1111: federal jurisdiction and tort law — separate question on whether the jurisdiction of the Federal Court had been properly invoked by

proceedings based on messages sent over social media (appearing as court-appointed pro bono counsel for the applicant unled for the hearing)

*Australian Aged Dental Care Pty Ltd v Australian Dental Association (New South Wales Branch) Ltd* [2021] FCA 1514: civil procedure — application for a stay of proceedings alleging misleading or deceptive conduct pending the determination of criminal proceedings (appearing for the respondent led by P Herzfeld SC)

*Hastie Group Limited (In liq) v Multiplex Constructions Pty Ltd* (VID1277/2017) (proceedings on foot): insolvency and construction law — proceedings by companies in liquidation based on receivables claimed under subcontracts and calls on bank guarantees (appearing for the Lendlease respondents led by C N Bova SC and A Carr)

*Mladenovic v Commonwealth Superannuation Corporation* (QUD92/2020) (proceedings on foot): trust and superannuation law — proceedings seeking damages for alleged breaches of covenants under the *Superannuation Industry (Supervision) Act 1993* (Cth) (appearing for the respondent led by R Schulte)

#### *Supreme Court of New South Wales*

*Techfront Australia Pty Ltd v MKTG Australia Pty Ltd* (No 2020/283291) (proceedings settled): contract and corporations law — proceedings to enjoin termination of a services agreement including on the basis that the termination clause was unenforceable under s 451E of the *Corporations Act 2001* (Cth) (appearing for the plaintiff led by C N Bova SC)

*Application of Rinehart: 2020/142504 (No 2)* [2021] NSWSC 364: trust law and civil procedure — application to set aside a decision to vary an undertaking given as a condition of appointment as trustee (appearing for an applicant led by C N Bova SC and T E O'Brien)

*John Campbell Nominees Pty Ltd ACN 646 545 262* [2021] NSWSC 233: trust law — application for judicial advice on defending proceedings and filing a cross-claim (appearing for the plaintiff led by J Burnett)

*Perry (ATF the Banksia Free Church Trust) v Attorney-General (NSW)* (No 2020/66272) (orders made): trust and charity law — application for a *cy-près* scheme over assets of an extinct church (appearing for the defendant unled)

*Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025: insolvency, consumer and tort law — proceedings against officers of the Arrium group arising out of drawdowns and rollovers under facility agreements (appearing for the respondent CFO led by M R Pesman SC, E A J Hyde and A E Munro)

*James Bowers v Judicial Commission of New South Wales* [2021] NSWSC 1570: administrative law — proceedings for judicial review based on a duty of procedural fairness to a complainant (appearing for the defendant unled)

*Mulberry Capital Management Pty Ltd v Shen* (No 2019/216782) (orders made): civil procedure — application to set aside a subpoena in Corporations List proceedings (appearing for the applicant unled)

*Lima Orthopaedics Australia Pty Ltd v Proactive Ortho Pty Ltd* [2021] NSWSC 1014: civil procedure — application by plaintiff/cross-defendant seeking security for costs in Commercial List proceedings (appearing for the applicant unled in the application and led by A E Munro in the proceedings, since settled)

*Sydney Seaplanes Pty Ltd v Airag Aviation Services Pty Ltd* (No 2020/230682) (proceeding settled): tort and consumer law — proceedings for economic loss arising out of a seaplane crash (acting for the plaintiff led by I Pike SC and A E Munro)

*In the matter of Flight Centre Technology Pty Ltd ACN 010 297 766* (No 214288/2021) (proceedings on foot): corporations law — application to be relieved under s 1322 of the *Corporations Act 2001* (Cth) for the purposes of relief from reporting obligations (appearing for the plaintiffs led by S Mirzabegian SC)

*Sher v Chargrill Charlies Holdings Pty Ltd* (No 2021/190045); *Sher v Sher* (No 2021/270274); *MC Sher Pty Ltd v RW Sher Pty Ltd* (No 2021/320819) (proceedings on foot): corporations and contract law and equity — proceedings arising out of a restructure of the “*Chargrill Charlie’s*” business (appearing for various defendants led by J Williams SC)

*Lendlease Corporation Limited v Acciona Infrastructure Asia Pacific Pty Ltd* (No 2021/219818) (proceedings on foot): contract law — proceedings arising out of the sale of the Lendlease Engineering business (appearing for the plaintiff led by J Williams SC and T E O’Brien)

#### *Supreme Court of Victoria*

*Bogan v Estate of Smedley* (No S-ECI 2020/3281) (proceedings on foot): corporations law and class actions — proceedings against officers of the Arrium group for non-impairment of assets (appearing for various defendants led by M Pesman SC and T Spencer Bruce)

#### *District Court of New South Wales*

*Toal v Swyftx Pty Ltd* (unreported, District Court of New South Wales, 24 September 2021): private international law and civil procedure — application to stay proceedings concerning cryptocurrency account based on an exclusive jurisdiction clause (appearing for the defendants led by T E O’Brien)

*Vadde v Sri Reyansh Pty Ltd* (unreported, District Court of New South Wales, 4 March 2022): contract law — proceedings alleging breach of an oral contract to terminate an agreement concerning franchise stores (appearing for the defendant unled at trial)

#### *Tribunals*

Perth Casino Royal Commission: appearing for the former Executive Chairman of Crown (with L Pham)