



## Michael Swanson

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### Solicitor 2014

### Barrister 2018

## Background

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Michael accepts briefs in all areas from solicitors and in-house counsel. He has a strong background in working directly with corporate legal teams to deal with the difficult issues that arise for businesses during disputes. Michael focuses on developing commercial and ethical outcomes that align with his client's interests and public image.

He has appeared both led and unled in the Supreme Court of New South Wales and the Federal Court of Australia.

Before being called to the Bar, Michael was a solicitor at Kemp Strang in the Dispute Resolution & Insolvency practice group. He practiced across all areas of the group including in proceedings for major banking corporations, small business disputes, insolvency proceedings and tax disputes.

Michael was formerly the associate to the Chief Justice of the supreme Court of South Australia and a lecturer/tutor at Flinders University.

## Focus Areas + Select Cases

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### Commercial & Equity

*Tritton Resources Pty Ltd v Ever Rock Navigation S.A.* [2019] FCA 276 (led by Edward Cox SC) - This case determined whether the Plaintiffs as consecutive owners of a bill of lading were entitled to bring a claim against the owner of a ship on which their goods were carried and subsequently damaged.

*Daglish & Ors v Quigley* (led by Rod Weaver) - Appeared at trial for the Plaintiffs in the Supreme Court of New South Wales concerning a contractual claim for outstanding loans amounts. The matter was settled on a commercial basis during trial.

*Lithgow State Mine Railway Ltd v City of Greater Lithgow Mining Museum Inc* [2019] NSWSC 1131 (led by Terrence Lynch SC) – dispute arising out of the sale of land and the assertion of proprietary estoppel by a third party. Application by third party seeking joinder to proceedings in the Real Property list seeking specific performance of a contract.

*Verwood Suites Pty Ltd & Anor v O'Reilly & Ors* – District Court of New South Wales (led by Edward Cox SC) – Contractual claim relating to the delivery of defective goods. The matter settled on a commercial basis during trial.

*The Owners Re: Strata Plan No. 80751 v AV Jennings (Cammeray)* [2018] NSWSC 1080 (unled) - Appeared resisting a notice of motion for the court to grant leave for the Plaintiff to rely on expert evidence a month before final hearing.

*Australian Maritime Safety Authority v The YM Eternity as surrogate ship* – Federal Court of Australia (led by Edward Cox SC) – Dispute relating to the recovery of fees pursuant to the Protection of the Sea (Civil Liability) Act 1981.

*MTD bht NSW Trustee & Guardian v JJD* – Supreme Court of New South Wales (unled) – dispute concerning the distribution of assets from the estate of a person under a financial management order pursuant to the Guardianship Act 1987 (NSW)

## **Class Actions**

*Brewster v BMW Australia Ltd* [2019] NSWSC 35 (led by John Sheahan QC and Elisa Holmes) - This case determined whether the NSW Supreme Court had the power to make a Common Fund Order and, whether a Common Fund Order was contrary to the Ch 111 or s 51 (xxxi) of the Australian Constitution. This matter was heard as part of a joint sitting of the NSWCA and the FCAFC in *Westpac Banking Corporation v Lenthall* [2019] FCAFC 34.

## **Constitutional Law**

*Brewster v BMW Australia Ltd* [2019] NSWSC 35 (led by John Sheahan QC and Elisa Holmes) - This case determined whether the NSW Supreme Court had the power to make a Common Fund Order and, whether a Common Fund Order was contrary to the Ch 111 or s 51 (xxxi) of the Australian Constitution. This matter was heard as part of a joint sitting of the NSWCA and the FCAFC in *Westpac Banking Corporation v Lenthall* [2019] FCAFC 34.

*Australian Maritime Safety Authority v The YM Eternity as surrogate ship* – Federal Court of Australia (led by Edward Cox SC) – Dispute relating to the recovery of fees pursuant to the Protection of the Sea (Civil Liability) Act 1981, raising issues of legislative capabilities of the commonwealth parliament.

## **Insolvency & Bankruptcy**

*Edward Lee v Gang Il An* (unreported, Supreme Court of New South Wales, corporations division) (unled) – Setting aside of a statutory demand pursuant to s 459G in circumstances where the time to comply was misstated due to the amendments to the *Corporations Act 2001* (Cth) arising out of the COVID pandemic and costs relating to the application.

Michael regularly appears in insolvency and bankruptcy lists in the Federal Court of Australia, Federal Circuit Court of Australia, and New South Wales Supreme Court. He has represented parties both seeking and opposing winding-up and bankruptcy orders. In most circumstances a commercial resolution has been reached.

*In the matter of Australia Solution Centre Pty Ltd* (unreported, Federal Court of Australia) (unled) – determination of costs on an application for the setting aside of a statutory demand.

CPD Presentation with Mr Stephen Ipp – Trust Issues for Insolvency Lawyers: Amerind and Beyond – CLE presentation dealing with the practical outcomes from Amerind and how solicitors and barristers should approach the distribution of trust assets in insolvency. Available at: <https://www.youtube.com/watch?v=ivetVCg9Eek> and <https://www.greenway.com.au/develop/cpd-library>

## **Appellate Law**

*BMW Australia Ltd v Brewster* [2019] HCATrans 94 - Special Leave application (led by John Sheahan QC, with Elisa Holmes and Rachel Manstead) – preparation and drafting of response to the special leave application from the NSWCA appeal judgment in *Brewster v BMW Australia Ltd* [2019] NSWSC.

*DDG17 v Minister for Home Affairs & Anor* [2020] HCATrans 82 (led by Edward Cox SC) – special leave application referred by the NSW Bar Association Legal Assistance Referral Scheme. Special leave sought to review the application of the duty of the Immigration Assessment Authority to consider and undertake to exercise statutory powers as applicable to Part 7AA (Fast Track) determinations.

## **Employment Law**

*Mei Chan v Advanced Health Invest Pty Ltd T/A Mastery Dental Clinic* [2019] FWC 7824 – Unfair dismissal of an employee in a dental clinic. Determination of whether the Respondent was a small business within the meaning of the Fair Work Act.

*Barber-Fleming, Jonathan v Billi Australia Pty Ltd T/A Billi* [2020] FWA 6029 (unled) – Claim of unfair dismissal of an employee.

## **Sports Law**

Michael regularly appears in the NEAFL tribunal representing players and clubs.