



Daniel Metcalfe

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Year of Call: 2008

“Very responsive and well prepared. Excellent in court, reads judges well.” **Legal 500 2021**

“Navigates complex issues with sensitivity and professionalism.” **Legal 500 2020**

Daniel has a broad commercial and chancery practice and undertakes a wide range of advisory, drafting and advocacy work. He appears regularly in the High Court for trials, applications, appeals and case management hearings. Daniel is very experienced in a number of commercial and chancery areas including contract and tort litigation, intellectual property, consumer law, construction, insurance, insolvency, bankruptcy, professional negligence, property and land disputes, commercial leases, and procedural and jurisdictional issues.

Daniel is attuned to the specific needs of his clients and represents clients from all backgrounds. He understands the array of motivations driving litigation, advises in a client appropriate manner and is particularly keen for clients to recognise the commerciality of their decisions. Daniel is known for his extensive and meticulous preparation for court hearings, so as to put his clients' cases at their highest. In court, Daniel robustly and fearlessly represents his clients' interests.

Daniel has been involved in a number of high profile and reported cases, including the following:

Ahmad v Wood [2018] EWHC 996 (QB) – Negligence claim against a solicitor in respect of conduct in divorce proceedings. Interim application concerning abuse of process (in the context of earlier factual findings) and loss of chance.

Media Agency Group Ltd v Space Media Agency Ltd [2018] EWHC 1434 (QB) – Trial involving claim for misuse of trade secrets and passing off.

Clark v Meerson [2018] EWHC 142 (Ch) – Claim by liquidator against directors in respect of payments from company funds. Issue as regards the interpretation and effect of an earlier settlement agreement.

Ningbo Jiangdong Jiemao Import & Export Co Ltd v Universal Garments International Ltd [2017] 11 WLUK 660 – Claim for registration and enforcement of a foreign judgment. Defendant failed in a summary judgment application.

Watt v Dignan [2017] EWCA Civ 1390 – Claim involving easements for parking and use of toilet facilities. In the Court of Appeal, whether the benefit of the easement had been lost by estoppel.

Akhtar v Bhopal Productions (UK) Ltd [2015] EWHC 154 (IPEC) – Instructed by the Institute of Contemporary Arts to defend a claim brought in respect of the public viewing of a film alleged to infringe copyright.

Rossetti Marketing Ltd v Diamond Sofa Co Ltd [2011] EWHC 2482 (QB) – Case involving a commercial agency agreement, which was allegedly breached by reference to the agent's conduct in representing more than one principal without fully informed consent.

EXPERTISE

Banking, Finance and Insolvency

Daniel represents banks, credit institutions, businesses and consumers in the fields of banking and finance. In relation to consumer credit, Daniel regularly advises as to the enforceability of loan agreements and hire purchase agreements (particularly regarding vehicles and plant and machinery) and as to performance of obligations thereunder. He is well acquainted with the technical aspects of consumer credit and his drafting and advocacy capitalise on such expertise.

Daniel is often instructed to deal with banking matters involving the enforceability of loans and mortgages and breaches by banks in relation to their duties towards customers. He deals with cases involving lenders subject to the provisions of the Financial Services and Markets Act 2000 and the Mortgage Code of Business (MCOB) and undertakes work in respect of misselling and misrepresentation (including fraud) in relation to financial products. Daniel is also able to assist with complaints to the Financial Ombudsman Service.

Daniel has recently been involved in a number of claims involving unfair relationships under sections 140A to 140D of the Consumer Credit Act 1974. He also frequently advises in relation to guarantees and other securities, including legal charges, debentures and bills of exchange.

Much of Daniel's practice involves representation in relation to both corporate and personal insolvency. His main practice in that area concerns applications within insolvency proceedings usually in respect of pre-insolvency conduct. He has experience in corporate insolvency applications under sections 212 (delinquent directors), 213 (fraudulent trading), 214 (wrongful trading), 238 (transactions at an undervalue) and 239 (preferences) of the Insolvency Act 1986. He has experience in personal insolvency applications under sections 339 (transactions at an undervalue) and 340 (preferences) of the Insolvency Act 1986.

Company and Commercial

Much of Daniel's practice centres on contractual disputes, including in relation to sale and carriage of goods, supply of services, construction, insurance (particularly non-disclosure and misrepresentation issues) and agency (including commercial agents). Daniel is regularly instructed on tort actions, including professional negligence, fraudulent/negligent/innocent misrepresentation, deceit/fraud and contractual interference. He attends hearings of applications for interim remedies including interim injunctions, orders for delivery up, interim payments and security for costs. He is recognised for his expertise and breadth of knowledge in commercial law, such that he is able to identify nuanced legal points that can often achieve favourable results.

Daniel has a strong intellectual property practice and is regularly instructed on complex matters involving copyright, trademarks, design rights (both registered and unregistered) and passing off. He has experience encompassing computer software, manufacturing designs and company names and logos. He represents clients with intellectual property rights and also those alleged to be infringing such rights. He understands the demands of clients in intellectual property cases and is able to advise as to the appropriate remedies, whilst recognising the broad scope of possible outcomes within settlement negotiations.

Daniel assists clients in relation to company law issues. He has provided representation in respect a number of shareholder disputes and provides advice as to whether to pursue a derivative action or an unfair prejudice petition. Daniel is well acquainted with the statutory and fiduciary duties of directors and the scope for breach and acts for companies and directors in relation to such disputes. Daniel has experience of non-contentious drafting in the field of company law including in respect of shareholder agreements concerning a company's constitution, share and asset sales, debentures, charges and resolutions of the members and directors. Daniel's familiarity with the provisions of the Companies Act 2006 enables him to provide advice on compliance in order for companies to avoid disputes.

Daniel is also instructed in relation to partnerships (including limited liability partnerships) and provides representation to individual partners, partnerships as entities and third parties dealing with partnerships. He regularly advises in respect of disputes between partners and dissolution of partnerships.

Property and Private Client

Daniel is instructed in relation to commercial landlord and tenant disputes, including dilapidations, disrepair, arrears of rent, breach of terms, forfeiture and lease renewals. He also provides representation in respect of long leases, including in relation to service charge disputes, the right to manage and general interpretation of leases and covenants. Daniel's broad property practice also extends to boundary disputes, adverse possession, easements and nuisance.

Daniel has experience of the law of trusts concerning various types of property (real and personal) and he has acted for clients whose trust property has been misappropriated or misapplied by trustees. He accepts instructions in relation to the Trustee Acts 1925 and 2000 and the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA). Daniel is well equipped to deal with other areas of equity, including estoppel (particularly proprietary estoppel) and unjust enrichment, together with the various equitable remedies, such as tracing and restitution.

Daniel is frequently required to provide advice to construction companies, builders, customers, suppliers, architects and project managers concerning construction disputes. He is well acquainted with the JCT standard terms and conditions, but also finds himself dealing with basic written contracts or even oral contracts in relation to construction cases. In all cases Daniel is able to apply his broad

knowledge of contract law to his client's advantage. He often attends the Technology and Construction Court.

ADR and Mediation

Daniel accepts instructions to attend all types of alternative dispute resolution. He has extensive experience of mediations, many of which have been successful. Daniel is apt at handling his client's expectations, whilst also articulating his client's position in response to issues raised by the mediator.