

Ben Kremer
Barrister

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Curriculum Vitae

Admitted: 2002; Called to the Bar: 2006

Principal Areas of Practice

- Appellate
- Building and construction
- Commercial
- Competition and Consumer Law / Trade Practices
- Computers, science and technology
- Constitutional and Administrative law
- Equity
- Intellectual property
- International and domestic arbitration
- International law and conflict of laws
- Media and Telecommunications law

Notable and Selected Recent Matters

Building & Construction

- *J Hutchinson Pty Ltd v Glavcom Pty Ltd* [2016] NSWSC 126 (led by Christie SC) [fraud; voidability of adjudications; voidness of contractual provisions for non-compliance with sec 34]
- Acting for a State-owned corporation in relation to defective performance under a construction contract for construction of a pipeline (2013-2014; unled) [settled]
- Acted for a multinational corporation in relation to defective performance under a construction contract for construction of a road (2013; unled) [settled]
- Acted for an instrumentality of the State of New South Wales in relation to apprehended litigation under a major construction contract (2012; led by Christie SC)
- Acted for a multinational corporation in relation to defective performance by a sub-contractor for design of a sewage treatment plant (2012; led by Christie SC)
- Acted for a major contractor in relation to a significant dispute relating to a shopping centre [settled]
- *John Holland Pty Limited v Roads & Traffic Authority of New South Wales & Ors* (2007) 23 BCL 205; [2007] NSWCA 19 (led by Christie) [good faith and natural justice in adjudications]

Commercial Law

- Acting for former investors in failed tax-effective schemes (2013–; led by Newlinds SC)
- Advising startup company in respect of claim against funder (unled; 2015–)
- *Cody v Live Board Holdings Ltd* [2015] NSWSC 1790 (unled) [security for costs]
- Advised company in respect of corporate restructure and international expansion (unled; 2014)
- *Cody v Live Board Holdings Limited* [2014] NSWSC 78 (led by Newlinds SC) [validity of share issue in public company]
- *Onesteel Manufacturing Pty Ltd v BlueScope Steel (AIS) Pty Ltd* (2013) 85 NSWLR 1 (led by Dick SC) [sale of goods under iron ore supply contract]

- Acted for a company against its former officers for breach of fiduciary duty claims involving amounts in excess of \$25m (2013; led by F Gleeson SC and Newlinds SC) [settled]
- Acted for a major resources corporation in relation to a contractual claim for sale of goods in excess of \$90m (2012; led by J Gleeson SC and Bell SC) [settled]
- Advised resources company in respect of tenements (2012; led by Walker SC)

Competition and Consumer Law / Trade Practices

- Acted for Revlon Australia in relation to claims brought by Unilever Australia regarding consumer products and their chemical properties (led by Hall SC) [2014-2015; settled]
- *Australian Competition and Consumer Commission v Dateline Imports Pty Ltd* [2015] FCAFC 114 (led by Hutley SC)
- *Australian Competition and Consumer Commission v Dateline Imports Pty Ltd* [2014] FCA 791 (unled) [claims under sec 52 and 53 of the *Trade Practices Act* brought by the ACCC seeking pecuniary penalties regarding the advertising and chemical composition of a cosmetic product]
- *Application by APA GasNet Australia (Operations) Pty Ltd (No 2)* [2013] ACompT 8 (led by Moore SC)

Constitutional and Administrative Law

- *McCloy v The Honourable Megan Latham & Ors* [2015] NSWSC 1782 (led by Williams SC) [apprehended bias]
- *Qarase v Bainimarama* HBC 60 of 2007; HBC 398 of 2007 (led by Reynolds SC) [constitutional law; reserve powers and executive power; justiciability of dismissal of elected government and appointment of interim government]

Equity

- *Grimaldi v Chameleon Mining NL [No 2]* (2012) 200 FCR 296 (led by Hutley SC) [directors' duties at common law and under statute; Full Federal Court]
- *Friend v Brooker* (2009) 239 CLR 129 (led by Newlinds SC) [equitable contribution]

Intellectual Property; Computers, Science and Technology

- Acted for United States software corporation in relation to tortious and potentially unlawful accesses to its servers for the purposes of unfair competition (2014; unled) [settled]
- Acted for a multinational high frequency trading corporation in relation to breach of confidence and infringement of copyright in computer source code (2014; led by Hutley SC and Lancaster SC) [settled]
- Acted for a company against former senior employee in relation to breach of confidence and infringement of copyright in engineering drawings (2012; unled) [settled]
- *CA Inc v ISI Pty Ltd* (2012) 201 FCR 23 (led by Ireland QC) [breach of confidence and infringement of copyright claims in computer source code]

International and Domestic Arbitration

- Approved BarADR arbitrator with NSW Bar Association
- Acted for an Australian resources company against a Chinese corporation in an arbitration seated in Singapore involving Western Australian substantive law, including in relation to provisional measures (led by Hutley SC) [2013-2014; settled]
- Acted for an Australian power company against an international supplier (led by Rudge SC and Christie)

Restitution

- *Nu Line Construction Group Pty Ltd v Fowler* [2014] NSWCA 51 and *Nu Line Construction Group Pty Ltd v Fowler (No 2)* [2014] NSWCA 188 (led by Hale SC) [recovery of partial payments in anticipation of contract for sale of land]
- *Fitzsimons v TAB Limited* [2008] NSWSC 782 (led by Sheahan SC) [illegality; restitution; administrative law]
- *Lumbers & Anor v W Cook Builders Pty Ltd (In Liquidation)* (2008) 232 CLR 635 (led by Reynolds SC) [restitution and quantum meruit]

Private International Law

- *Beijing Joseph Investment Co. Ltd v Starr World Investment Ltd* [2014] NSWSC 1925 (led by Lancaster SC) [cross-vesting]

Previous Experience

2001-2006: Solicitor and Senior Associate, Freehills, Sydney.

- Commercial Litigation Section, 2001-2003 and 2004-2006
- Intellectual Property Section, 2003-2004

2000-2001: Associate to the Hon Justice Gummow AC, High Court of Australia, Sydney and Canberra.

Education

1997-2001: Doctorate of Philosophy in Law, Magdalen College, University of Oxford, thesis topic: "Illegal Transactions".

1995-1996: Bachelor of Laws degree with First Class Honours and the University Medal in Law, University of Sydney.

1991-1994: Bachelor of Science degree with First Class Honours and the University Medal in Organic Chemistry, University of Sydney.

Awarded prizes including the 1995 University of Sydney Convocation Medal for exceptional contribution to the University and academic excellence.

Winner, World 1996 Phillip C Jessup International Law Moot (Washington DC) with award for Best Oralist in the International Rounds; Winner, Australian national round 1996 Phillip C Jessup International Law Moot (Canberra).

Publications

"Lord Mansfield", *Historical Foundations of Australian Law*, vol 2, (Federation Press, 2013)

Book Review: "Restatement (Third) of Restitution and Unjust Enrichment" (2011) 35 *Melbourne University Law Review* 1197

"Open Source Software: What is it, and how does it work?" (2004) 55 *Computers & Law* 16

(with Rebecca Davies) "Pre-Trial Discovery: Order 15A of the Federal Court Rules" (2004) 24 *Australian Bar Review* 235.

(with Adam Liberman) "Australia-United States Free Trade Agreement: Time to Rethink the Law Regarding Exclusive Licences of Patents and Copyright?" (2004) 17 *IPLB* 28.

"Unjust Enrichment and Unconscientiousness: A Different View" (2003) 119 *Law Quarterly Review* 188.

"The Action for Money Had and Received" (2001) 17 *Journal of Contract Law* 93.

"Recovering Money Paid Under Void Contracts: 'Absence of Consideration' and Failure of Consideration (2001) 17 *Journal of Contract Law* 37.

"Copyright Protection of Computer Programs" [2000] 6 *European Intellectual Property Review* 292.

"Estoppel and Illegal Contracts" (1999) 26 *Journal of Malaysian and Comparative Law* 149.

"Copyright and Computer Programs: *Data Access v Powerflex* Before the High Court" (1997) 20 *Syd Law Rev* 296.

"An 'Unruly Horse' in a 'Shadowy World?': The Law of Illegality after *Nelson v Nelson*" (1997) 19 *Syd Law Rev* 240.

"27th International Chemistry Olympiad, Beijing 1995", *Chemistry in Australia* February 1996, p. 105.