

William Ah Ket – His Cases and Career

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Introduction

Thank you very much, Pip. I'm grateful to you and the Law School for the invitation to present the Rare Book Lecture 2022. There are many other people and institutions that I'd like to thank, including Carole Hinchcliff, for helping me with my research into William Ah Ket and also for promoting William's legacy and story generally. It's a story that is well worth telling and I feel privileged to be able to participate in that story-telling.

My research into William Ah Ket commenced in October 2019. The Asian Australian Lawyers Association, through the efforts of two of its founding members – Reynah Tang and William Lye – invited me to attend the award ceremony for the William Ah Ket Scholarship at the High Court of Australia in Canberra. First awarded in 2017, the Scholarship is supported financially by the law firm Maddocks, where William did his articles of clerkship from 1900 to 1903. The Scholarship was established – and I quote – 'to encourage final year law students, law graduates and lawyers in the early stages of their career to contribute to the development and promotion of cultural diversity in the legal profession.' By chance, I happened to sit down next to one of the members of today's generation of Ah Kets and thus my journey of discovery began.

As the Dean mentioned, the Rare Book lecture series uses the Library collection as a starting point for more general discussion of a broad range of subjects. I initially thought that it would be a bit anomalous to use this series as a platform for talking about an historical figure, particularly when I would not be focusing specifically on any books, rare or otherwise. History, however, is accessed through documents, records and books and I have benefited enormously from having access to many rare books and documents that were either written by William or owned and used by him. There are also many books that make reference to William in one context or another. I'll return to some of these books and documents later in the lecture.

Outline

By way of outline, my lecture will cover four areas: I'll start with some biographical information about William; I'll then discuss William's education and training in the law; following that, I'll talk about William's career, including his colleagues at the bar and on the bench; and I'll conclude the substantive part of the lecture with a discussion of William's cases.

I have a number of slides as part of my 'show and tell', although in places it will be more 'show' than 'tell' in view of the time limitations.

William's biography

William was born in Wangaratta in 1876, the sixth child – and only son – of eight children born of Chinese parents. William's father, Mah Ket, was from the See Yup region in Guangdong Province in Southern China and had arrived in Australia in the mid-nineteenth century as a young man to work as a community leader among the Chinese workers on the gold fields in North-East Victoria. Less is known about his mother's origins and when she arrived in Australia. This slide shows William's memorial plaque in Wangaratta, the land that his father had farmed on a tributary of the Ovens River and the Wangaratta Primary School that William had attended as a child.

During his work as a community leader and interpreter, William's father, Mah Ket, assisted the members of the Chinese community with a broad range of issues and activities, including their interactions with the legal system, the law courts and the European community generally. As many of you would be aware, the interaction between the Chinese and the Europeans on the gold fields was often very fraught and occasionally erupted into violent clashes, such as the anti-Chinese race riot in 1857 that came to be known as the Buckland riot. 1857, of course, is a significant year in the history of Melbourne Law School as it was in that year that the University of Melbourne's founding Chancellor, Sir Redmond Barry, established Australia's first law course. And Sir Redmond Barry himself is significant in the history of Victoria for a number of reasons, including his role as the judge who sentenced Ned Kelly to death.

William is believed to have assisted his father in his work as a community leader and interpreter. One can therefore understand how his father is likely to have had aspirations for his son to become a lawyer and community leader. And in addition to William's achievements in the law, he certainly made a valuable contribution to the local community. He was active in Chinese community organisations and served as the Acting Consul-General for China in Melbourne for three years in the 1910s.

William's family

I mentioned that William was the sixth of eight children. As the first and only son of a Chinese family, William's birth in 1876 must have generated much excitement. The historical records suggest that the life of his mother, Muriel, had been a difficult and tragic one as she knew very little, if any, English and had found it difficult to integrate into the broader society. In addition, she suffered from mental health issues and spent her final years in the Beechworth Asylum, where she died in 1896. Her husband, Mah Ket, died less than a week later. This must have been difficult for William, as he was only 20 years old when he lost both his parents. That said, William appears to have received much love and attention from his sisters, three of whom are depicted on this slide. The sisters were apparently very skilled in areas such as dressmaking and three of them established a tea house in Wangaratta. I'm privileged to have met descendants of three of

his sisters: Rose, Matilda and Ada – in addition to meeting William’s great granddaughter, Blossom Ah Ket.

William’s wife, Gertrude Bullock, was of Scottish background. The two of them courted for four years before her father finally relented and gave his permission for William to marry her. Gertrude and William had two sons and two daughters. The elder son – Stanley Ket – did law at Melbourne University but was tragically killed during the second world war. The younger son, who was also named William, studied medicine and became a doctor. The elder daughter, Melaan, married Len Williams and their son, John Williams, is the internationally renowned guitarist. William’s younger daughter, Toylan, spent many dedicated years of her life researching her father’s life. Work on publishing her biography of William Ah Ket is currently underway.

And by a curious quirk of fate, I discovered a connection between my wife, Angie, and the Ah Ket family. Angie’s grandfather, who was a general practitioner in Mansfield during the fifties and sixties, treated descendants of the Ah Ket family in North East Victoria, and Angie’s father, who was an Anglican minister and spent a few years in Tallangatta in country Victoria, conducted the marriage of one of the Ah Ket descendants!

William’s education and training in the law

Let me turn now to William’s education and training in the law. After some considerable time and effort, I think I have been able to work out the likely background to this. I say ‘likely’ as I am yet to complete my research into this area of William’s life and I would be very grateful for any guidance that others might be able to provide. My understanding is that William completed an Arts degree at Melbourne University from 1893 to 1897. In preparing for his legal career, William then had two possible options from which to choose. One was to pursue the Bachelor of Laws or LLB; the other option – which was cheaper and quicker – was to undertake the Articled Clerks Course. Admission to the Articled Clerks Course required applicants to complete *Jurisprudence* as a single subject and this is what William did in 1897. In other words, he chose the Articled Clerks Course over the more expensive – and time-consuming – Bachelor of Laws. Those who completed the Bachelor of Laws tended to be from affluent backgrounds. Although the Bachelor of Laws had a higher status than the Articled Clerks Course, many prominent barristers and judges at the time were educated through the Articled Clerks Course. I am indebted to John Waugh’s thesis for some of the details about this.

In 1898, William joined Maddock & Jamieson, as Maddocks was then known, and completed the Articled Clerks Course in 1899. He then undertook his articles of clerkship from 1900 to 1903 and was admitted to practice in May 1903. Curiously, and I would be very grateful for any guidance on this – in fact, I’d even throw in a free meal and bottle of wine – William won the Supreme

Court prize for articled clerks in 1902. I am curious about two things: why did he receive the prize in 1902, some three years after he completed the Articled Clerks Course. Was it because the prize was something that articled clerks could apply or compete for after they had finished the course, or was it based purely on their results from their course in the same way as the Supreme Court Prize has traditionally been awarded to the top graduates in the LLB degree (now the JD degree)? I am also curious about the fact that although William was awarded the Supreme Court prize for articled clerks in 1902, nobody appears to have been awarded the Supreme Court prize for the LLB in 1902. Was this because the LLB students and the articled clerks competed jointly for the prize?

To finish this part of William's story, following completion of his articles of clerkship, William decided to join the independent bar, read with McArthur and signed the roll in 1904.

Date of passing matriculation examination 1st term 1893

This is a page from the matriculation book at Melbourne University, indicating that William had passed the matriculation examination in 1893 and was therefore able to be admitted to the University to undertake an Arts degree. It is interesting to note William's grasp of languages; namely, Greek, Latin, English and French – on top of the Chinese language that he had spoken in the family and in which he had been educated in the Chinese classics by a private tutor engaged by his father. Indeed, as part of his advocacy in court, William was renowned for citing quotations from Shakespeare, Robby Burns and Gilbert & Sullivan.

You will see the reference to Wangaratta and Wangaratta High School.

William was a renowned advocate and orator. Indeed, there is evidence to suggest that Sir Robert Menzies modelled his oratory skills after William. I will return to Menzies later.

4047 William Ah Ket Date of Matriculation 16 February 1897

The matriculation book at the University indicates that William had matriculated on 16 February 1897, I expect for the purposes of taking jurisprudence on a single subject basis.

University records

This is a photo of the University records, indicating that William had done *Jurisprudence* as a single subject and had subsequently undertaken the Articled Clerks Course in 1898 and 1899. The records note that William studied *Roman Law*, the *Law of Property*, the *Law of Obligations*, *International Law*, *Equity* and the *Law of Wrongs & the Law of Procedure*.

Supreme Court (Judges) Prize winners

The Honours board at the Law School lists those who had won the Supreme Court prize or, in

William's case, the Supreme Court Judges prize for articulated clerks. There are some names before and after William's entry that should be familiar to many of you, including John Latham who subsequently became the fifth Chief Justice of Australia, serving in that office from 1935 to 1952; John Clifford Valentine Behan, who was the second Warden of Trinity College, serving from 1918 until 1946; Wilbur Lincoln Ham who subsequently became a well-known King's Counsel and is said to have refused appointment to the Supreme Court in 1934; and, some years later, Robert Gordon Menzies, the 12th Prime Minister of Australia.

Presidents of the Law Students' Society

The Honours Board also lists the Presidents of the Law Students' Society. William became President in 1907, after his career at the bar had commenced, and joined a long line of prominent barristers and judges, including Henry Joseph, with whom William appeared in a couple of cases early on in his career; Charles Lowe, with whom William appeared in a case, and before whom William appeared after Lowe had been appointed to the bench of the Supreme Court of Victoria. I note that Lowe served as Chancellor of the University of Melbourne from 1941 to 1954. Finally, it is interesting to note that Francis Plumley Derham served as President in 1908. Derham was a solicitor and the uncle of Sir David Plumley Derham, who succeeded Sir George Paton, both as Professor of Jurisprudence in 1951, and as Vice-Chancellor of the University of Melbourne in 1968.

The Melbourne University Magazine

This extract from the inaugural issue of the Melbourne University Magazine in June 1907 notes the election of William as President, with Derham as Vice-President and a certain L.B. Cussen, later Sir Leo Cussen, as the Treasurer. Cussen subsequently became a Supreme Court judge and served as acting Chief Justice for a couple of years in the early thirties. Interestingly, he was also President of the Melbourne Cricket Club from the same year – namely, 1907 – until his death in 1933.

You may be wondering why I am doing so much name-dropping. Apart from highlighting other historical legal figures at the time, it paints a picture of the professional community of which William was a member and, controversially perhaps, the extent to which other members of that community had gone on to hold high office as compared with William. I will return to this theme later on.

The Melbourne University Magazine

As I was reading the inaugural issue of the magazine in 1907, I couldn't resist the temptation to share this amusing extract with you. Apart from the obvious gender imbalance, which was a reality in those times, it highlights the importance of sport and, in particular, the apparent divide

between those who played cricket and those who played football. Interestingly, although I can't relate directly to this myself, being neither a cricket player nor a football player, I can relate to the comment about members of different schools being accustomed to ignore one another's existence at the University.

Such was the society, or the milieu, in which William – who came from a family of seven sisters, I remind you – lived and built his career.

William's training

This slide contains a photo of William with his colleagues at Maddock & Jamieson and also a photo of William, which was taken upon his admission to the bar in 1904. I note that this is the photo that will soon be unveiled in the Peter O'Callaghan QC Gallery portrait collection in Owen Dixon Chambers.

To Build a Firm – The Maddocks Story

This extract from the book about Maddocks, written by Helen Penrose, notes William's early involvement in the fight against discriminatory legislation. This legislation included the Victorian *Shops and Factories Act* of 1896, which provided that all furniture made by the Chinese had to be stamped accordingly. A Royal Commission in 1902 recommended that the Act be amended to require all 'Asiatics' in the furniture industry to be licensed and to limit the number of licensed factories. The amending bill was passed in the Legislative Assembly but did not make it through the Legislative Council, which blocked it on the basis that it was against 'British fair play'. More about this, and William's role in the fight against discriminatory legislation, later on.

The auspicious '88'

I'm indebted to Julian McMahon AC SC of Gorman Chambers, for pointing out that William's roll number at the Victorian Bar was 88, which is an extremely auspicious number from a Chinese cultural perspective. Both Julian and I thought that this was probably too remarkable to be a coincidence and I set out to work out how this might have come about. Although it is somewhat speculative, I worked out that there were three barristers who signed the roll over three successive weekdays in 1904: Walter St George Sproule, who signed the roll on Friday 17 June; William Ah Ket who signed the roll the following Monday 20 June; and George H Walker, who signed the roll on Tuesday 21 June. Given that the other dates were separated by weeks or months, I think it is likely that there had been some coordination between the three barristers to enable William to obtain the number 88.

William's colleagues – the legal profession 1904 – 1935

Let me turn now to William's career, starting with his colleagues at the bar. I have done a pretty

extensive analysis of the reported cases in which William appeared and have listed a selection of barristers with whom and opposite whom William appeared. The first list on this slide contains the names of barristers who subsequently became judges. As you will see, it reads like a veritable Honours board of famous judges from Victoria, including judges of the Supreme Court of Victoria and the High Court of Australia. Sir Arthur Dean is the former judge of the Supreme Court of Victoria who wrote a history of the bar in 1968 – more from Dean later on.

I have also listed three barristers who did not become judges but who are nonetheless significant. The first is Sir William Harrison Moore, who subsequently became a professor of law and the third Dean of Law at Melbourne University. The chair that was named after him is currently held by Professor Hilary Charlesworth. William was one of three alumni who proposed the toast to Harrison Moore at a Law Student Society dinner in his honour in 1929. The others were Owen Dixon, who subsequently became Chief Justice of the High Court, and Kenneth Bailey, who subsequently became the first Australia-born dean of the law school.

I mention J.A. Arthur as he was the first cousin of the grandfather of John Arthur, who is a current member of the Victoria Bar and a member of the national executive committee of the Asian Australian Lawyers Association. I also mention Edward Ellis as Joan Rosanove QC, who was the first woman to become a barrister in Victoria, read with Ellis and knew William. I will return to Joan Rosanove towards the end of my lecture.

Sports and the law

Sport figured prominently in William's life, as was – and still is – the case with many other members of the profession and the judiciary. This photo, from the Supreme Court of Victoria Library, features William as scorekeeper for the Supreme Court Cricket Match circa 1904.

William's cases – *Potter v Minahan*

Let me turn now to William's cases. I'd like to discuss three cases. The first two of which were selected to represent William's involvement in what might be described today as public interest cases. The third case was selected for its entertainment value and also to illustrate how William was depicted in the press.

The first case, the High Court case of *Potter v Minahan* is still cited as good law. It involved a man called Minahan, who was born of a Chinese father and a European mother in 1876, which was coincidentally the same year in which William was born. Minahan resided in Victoria until the age of 5, when he moved to China and lived with his father in his father's village until his father's death twenty years later in 1896. Minahan subsequently returned to Victoria in 1907, but failed the notorious dictation test and was charged by a customs officer with being a prohibited immigrant. According to the law report, '[e]vidence was given by the customs officer

administering the dictation test that he had told the defendant he was going to read out to him a passage of not less than fifty words in English, and that he required him to write them out in English; that he said—“Here is paper and pencil for that purpose. If you write them you will be allowed to land, and if you fail to write them you will not be allowed to land. I will read the passage slowly, and if you say you can write it, I will read it out slowly again.” He then read a passage, and asked the defendant if he could write it, and [the] defendant, through an interpreter, said he could not.’ The question that fell to be determined was whether the Act was intended to apply to Australian-born subjects, who would normally enjoy a right of entry. The question was decided in favour of Minahan and on the basis that the Act was not intended to apply to Australian-born subjects, who were British subjects by virtue of being born within a British dominion such as Australia. As Duffy KC and Ah Ket argued, it is improbable that the Legislature would take away this right except by express words or necessary implication. Their argument was accepted by the High Court.

The Chinese and the Factories Acts

The second case arose in the context of the restrictions on Chinese workers under the *Factories and Shops Act* of 1905. As I mentioned before, following its enactment in 1896, the Act provided that all furniture made by the Chinese had to be stamped accordingly. William had railed against this discriminatory legislation in a paper that he wrote in 1906.

William’s cases: *Ingham v Hie Lee*

At issue in this case, *Ingham v Hie Lee*, was the interpretation of s 42 of the Act, which prohibited persons at Chinese factories from working on any day during certain prohibited hours. In this case, the owner of a Chinese laundry had been charged with an offence for permitting a lodger to iron a shirt during the prohibited hours. To cut a long story short, Ah Ket in the Supreme Court of Victoria and subsequently McArthur and Ah Ket in the High Court of Australia successfully argued that the lodger had in fact been ironing his own shirt and that this was not an offence under the Act as it did not constitute work that was ordinarily done in the factory within the terms of the legislation.

William’s cases – Failed Him

The third case involved a fine that was imposed on an individual for making available a fruit machine (also known as a slot machine) in the Stock Exchange Club in breach of the relevant gambling legislation. The question that fell to be determined by Judge Foster in the Court of General Sessions was whether the fruit machine was a game of skill or a game of chance, the latter being prohibited under the legislation. William had led evidence from consulting engineers to the effect that the fruit machine was a game of skill and that, after practice, it was possible to win every time. To demonstrate this, William arranged for a fruit machine to be brought into the

court and told the judge that he would produce a cherry. After dropping his token into the machine, William managed deftly to manipulate the machine so that it produced a cherry. As the report in *The Sun* noted, and I quote, 'Judge Foster was interested. He asked Mr Ah Ket to repeat his skills, but the machine failed him. Judge Foster accordingly decided that the machine was a game of chance.'

The headline is also amusing. Long Tack Sam was a famous Chinese-born American magician of the time who, amongst other things, had been a member of Houdini's Magicians Club. As the headline read, 'Failed Him – Ah Ket no Long Tack Sam'.

The cartoon of Ah Ket has the caption 'Mr W Ket, on a leisure job, what price 'Arithmetic'? This no doubt reflects comments made by the judge, who is reported to have said that the "Odds Against Winning were 1000 to 10." The cartoon was drawn by Sam Wells, a prominent newspaper cartoonist of the day.

It is interesting to reflect on the way in which court proceedings were reported on and depicted in the press during William's times. The press appears to have performed a more educative role than today in terms of reporting on how the legal system worked, including its protagonists such as barristers and solicitors. Today, the focus appears to be limited to reporting on the facts of the cases, particularly facts that are controversial or salacious in nature.

'A great settler of cases'

As time is running out, what I'd like to do now is invite you to read what various people have said about William Ah Ket. In particular, William was famous for being a great settler of cases, as noted in the extract from Dean's book and also in comments by Sir John Minogue in 1984.

Sir Robert Menzies

This quote from Robert Menzies highlights the friendship that existed between both of them – Menzies had also practised at the bar from Selborne Chambers, where William had maintained chambers until the early thirties when he moved to Equity Chambers, subsequently known as Gorman Chambers. The quote is revealing for a number of reasons; first, Menzies believed that William would have been a very competent judge; secondly, his keen sense of fun was concealed behind an almost immovable mask; thirdly, there was a certain prejudice among clients against having a Chinese barrister, which limited William's practice 'to an extent'. This begs the question as to the extent to which prejudice and discrimination may have limited William's career more generally.

The fight against discrimination

William clearly lived in a period of prejudice and racial discrimination. However, it appears that

William rose above this and dedicated much of his life to building bridges between the East and the West. In the biography of Joan Rosanove QC, Isabel Carter recounts the time when William said to Joan: 'You and I have both chosen the wrong profession, Joan. We will never satisfy our ambitions. Neither of us will ever be made a judge, you because you are a woman. I because I am Chinese. We should have done Medicine.'

The William Ah Ket Scholarship

As noted by Chief Justice Kiefel at the award ceremony for the 2019 William Ah Ket Scholarship, '[h]is answers to the difficulties he faced appears to have been to succeed in what he did; to be a real part of the legal profession; to help others and to act at all times righteously, with courage and with kindness.'

I think this comment is apt in capturing William's philosophy of life.

Equity Chambers

In 1931, William took up chambers in the new Equity Chambers in the Equity Trustees Company Building, following Pat Gorman and a number of other barristers from Selborne Chambers. By another curious quirk of fate, Julian McMahon occupied the room previously occupied by William, which was the room on the right on the third floor overlooking Bourke Street, before Gorman Chambers moved to its current location in Lonsdale Street. The photo next to this is of William in his robes. Julian and I think that this was taken in the Supreme Court library, rather than in his room at Selborne Chambers as I had previously assumed.

It is fitting that the Supreme Court Library will soon open an exhibition of William Ah Ket, and Joanne Boyd will speak about this in a few moments.

William's law reports

William's old nominate law reports are now in the care of Chief Justice Allsop of the Federal Court of Australia. I am indebted to the former chief justice, The Hon Michael Black, for sharing with me the story of how he came into possession of the reports and arranged to have them rebound. The reports bear William's stamp, the stamp of Elias Godfrey Coppel, a silk and acting justice of the Supreme Court of Victoria who acquired the reports after William's death and whose son, Charles Coppel, is the renowned scholar of Indonesian history and politics, who is himself a law graduate of Melbourne Law School and practised as a barrister for five years before embarking on his academic career. Finally, the reports bear the signature of Michael Black.

Taylor on Evidence

This is a photo of a two-volume set of Taylor on Evidence, which William had in his collection and

which has recently been restored by Sharyn Prentice, the partner of William's late grandson, Paul Ket. These two volumes are significant as they passed through the hands of, and bear the stamps of, The Hon Benjamin Dunn, a judge of the Supreme Court of Victoria between 1968 and 1977 and also The Hon Peter Gray, a former judge of the Federal Court of Australia. I am grateful to Peter for sharing the story of how he gifted the two volumes to William's younger daughter, Toylaan, when she was undertaking research for the biography of her father.

1933 GE Morrison Lecture

Together with William Liu, William Ah Het founded the GE Morrison Lecture series, named after the famous Australian journalist and Sinologist, George Ernest Morrison, or 'Morrison of Peking'. The lecture series continues to this day at ANU. In 1933, William delivered the second G.E. Morrison Lecture, in which he reflected on the similarities between Western culture and Chinese culture, particularly as embodied in the philosophy of Confucius. The lecture was reported in the press, which picked up William's comment that '[i]f Confucius lived today, he would probably have been fascinated by the bagpipes.' This is likely to be a reference on William's part to the Scottish background of his wife, Gertrude.

I thought it would be nice to close my lecture this evening with William's own words: 'Having carefully improved himself, a man may bend his mind to improving others and by the force of example as well as precept help to make the world a better and happier place.'

Thank you. I'd now like to invite Joanne Boyd to say a few words about the forthcoming exhibition in the Supreme Court Library.