

Asian Australian Lawyers Association

**William Ah Ket Scholarship Presentation
Great Hall, High Court of Australia, Canberra
9 October 2019, 5:30pm**

"William Ah Ket's contribution to diversity in the legal profession"

**The Hon Susan Kiefel AC
Chief Justice of Australia**

I am pleased to speak this evening and honoured to present the William Ah Ket Scholarship for 2019. I am grateful for the opportunity of coming to know more about William Ah Ket. He was, by all accounts, a man of considerable achievement with a strong sense of public duty.

He was born in 1876 in Wangaratta, Victoria to Chinese parents¹. His father was a storekeeper and tobacco farmer who had worked for some years on the goldfields after arriving in Australia in 1855². His father became "one of the most highly esteemed men in the Wangaratta district"³ and was an official interpreter for his countrymen⁴. The son followed in his father's footsteps. By his early teens he was already acting as a Chinese interpreter in court cases⁵. He was to have a much greater role in assisting Chinese people in the courts.

It was William Ah Ket's father's wish that Ah Ket should qualify for the law for that purpose⁶. William Ah Ket matriculated at the University of Melbourne and received a prize for his efforts in 1902⁷, although it is not clear whether it was the Supreme Court Prize⁸ or "the Supreme Court Judges' Prize for articulated clerks"⁹. Regardless of which it was, either award

was quite an achievement, particularly because of the barriers that faced someone of his background.

Mr Ah Ket was articled to Messrs Maddock & Jamieson, solicitors¹⁰. An article in a newspaper in 1902 shows that he represented his firm for the purpose of instructing a barrister in at least one criminal appeal that year¹¹. He was admitted to practice as a barrister and solicitor in the Supreme Court of Victoria in May 1903¹². He signed the roll of the Victorian Bar in June 1904¹³.

Mr Ah Ket may not have been the first barrister and solicitor of Chinese descent in Australia. It may have been Mr Ni Gan of Bendigo¹⁴. But Mr Ni Gan's star did not rise as did Mr Ah Ket's (who seems to have practised exclusively as a barrister¹⁵), and he was not to have the fine reputation that Mr Ah Ket came to have.

At the Bar, Mr Ah Ket read with Mr McArthur¹⁶, a future judge of the Supreme Court of Victoria¹⁷. His old firm of solicitors frequently instructed him from the time he took practice¹⁸. It is of interest though to note that on one occasion in 1915, in a County Court case, his old firm (by then Messrs Maddock, Jamieson & Lonie) instructed Mr Owen Dixon. Mr Ah Ket was instructed by another firm. Mr Ah Ket won¹⁹. Some years later, his old firm instructed Mr Ah Ket as junior to Mr Dixon KC²⁰. They continued to appear together in the Supreme Court of Victoria²¹ and in the High Court²². Mr Ah Ket appeared before Dixon when Dixon became an acting judge of the Supreme Court of Victoria in 1926²³.

Notable amongst Mr Ah Ket's achievements was the High Court case of *Ingham v Hie Lee*²⁴, in which he was led by McArthur KC. The case was heard by Chief Justice Griffith and Justice Barton.

Ingham v Hie Lee is a case of its times. The Victorian *Factories and Shops Act 1905* prohibited after-hours work in a factory or work-room, even if unpaid, where furniture was made or "where any Chinese person [was] ... at any time employed"²⁵. The Act expressly discriminated against Chinese persons. It even defined a "factory or work-room" as any place which employed at least "four ... persons other than a Chinese or ... one ... Chinese", among other things²⁶. Between 9 and 10 o'clock at night on 31 May 1912, a man was found ironing a shirt in a laundry in Carlton. He was Chinese²⁷. An information was heard at the Court of Petty Sessions charging the laundry owner (who was also Chinese) with an offence under the Act. The evidence showed that the man with the shirt worked as a fish-hawker, was a boarder at the premises, and was simply ironing his own shirt²⁸. According to one account, the shirt "was blue and he wore it to court"²⁹. The Carlton justices dismissed the information. The informant obtained an order to review the decision, but was unsuccessful at the Supreme Court³⁰. In his reasons, Chief Justice Madden observed that the Chinese had been singled out by the legislature, presumably believing them to be "either more inveterate in doing that which the law says they should not do, or more cunning in contriving to defeat those whose function it is to detect persons whom they suspect of evading the Statute"³¹.

The informant appealed to the High Court. The appeal was dismissed with costs³². Chief Justice Griffith said that in determining the question of construction of the Act, that which avoids injustice is to be preferred. The meaning for which the appellant contended would mean that "work" would include "a carpenter mending the leg of his saw bench, or a laundryman mending the leg of his ironing table, or brushing his own coat, or polishing his own boots, or [even] mending his own clothes". Work, he concluded, must be read to mean "work at factory work"³³. It has been commented that

“[t]he decision marked a turning-point and the dozens of prosecutions each year of Chinese [persons] in the laundry trade came to an end”³⁴.

Between 1905 and 1928, Mr Ah Ket appeared before the High Court on at least 12 occasions³⁵. The cases included *Potter v Minahan*³⁶, which remains relevant today. He appeared as junior to Mr Duffy KC, whom I would assume to be Frank Gavan Duffy, who later become a Justice and Chief Justice of the High Court³⁷. The respondent, for whom they acted, was born in Victoria. His father was Chinese and he was given his mother's surname. His father took him to China when he was about 5 years old, where he lived for many years. On his return to Australia he was treated as an immigrant and failed to pass the notorious dictation test, which required him to write in English a passage of not less than 50 words, read out to him by a Customs officer³⁸.

The Police Magistrate sitting as a Court of Petty Sessions found that he was not a prohibited immigrant under the *Immigration Restriction Acts 1901-1905* (Cth)³⁹. The High Court agreed. The passage from Justice O'Connor's judgment is still cited today⁴⁰. It is to the effect that “[i]t is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness”⁴¹.

In later reflections on his life, newspapers reported that Mr Ah Ket “had achieved considerable success at the Bar, chiefly in civil [matters]”⁴², and was regarded as something of an authority in insolvency law⁴³. He was renowned for his skill at cross-examination⁴⁴. He also appears to have been very advanced in his thinking for that time. He believed in the settlement of legal disputes by means other than litigation, including by arbitration. He “exploited his talents as a conciliator even more than as a fighter, and a large

proportion of the cases he handled were settled out of court"⁴⁵. He "was credited with more settlements than any other member of the Victorian Bar"⁴⁶.

Mr Ah Ket remained deeply connected with, and was an advocate for, the Chinese community. He was involved in the formation of "a committee to agitate against the *Immigration Restriction Act 1901* and the unreasonable conditions [it] imposed, such as the infamous dictation test"⁴⁷. He "was a member of the Chinese Empire Reform Association of 1904 and of the Anti-Opium League of Victoria, organizations which supported modernization and social reform among Chinese at home and abroad. He was a delegate to the first interstate Chinese convention held at Melbourne in 1905 [and] ... co-founder and president of the Sino-Australian Association, which [is considered to be] ... the first Australian-Chinese Club. ... He was acting consul-general for China in 1913-14 and in 1917"⁴⁸.

In 1933, Mr Ah Ket delivered the second George Ernest Morrison Lecture in Canberra⁴⁹—having co-founded that annual memorial event⁵⁰. He spoke of the nature of the differences between the culture of the East and that of the West. "Western thought," he said, "taken as a whole, is not altogether what it should be, because thought, as a means to an end, is employed where it should not be. In short, it is too material". He went on: "Neither is the Eastern way of thinking completely satisfactory, as it knows only symbolical expressions of fact, which prevents it from mastering the details of the outer world, which is a necessary, proper and legitimate scope of thought". "[B]ut", he said "both ways are organically connected and inter-related"⁵¹. These are the insights of a philosopher.

Mr Ah Ket is said to have had "a deep knowledge of the classics and modern languages"⁵². He has been described as "one of the most popular

barristers in Victoria"⁵³. In a book written about the history of the Victorian Bar, he appears with the Bar cricket team⁵⁴. He was said to have been "a keen, if not successful punter"⁵⁵.

By all accounts, Mr Ah Ket was a remarkable man. Despite his high profile and achievements, it would seem that others were advanced while he was not⁵⁶. He was neither appointed Silk nor a judge. Sir Robert Menzies wrote that he and Mr Ah Ket "were great friends". He said that "William Ah Ket did not ever sit on the Bench, though he would have been a very competent judge. ... He was a sound lawyer and a good advocate". He added, "A certain prejudice among clients against having a Chinese barrister to an extent limited his practice, though instructing solicitors thought very well of him"⁵⁷.

Despite, or perhaps because of, having himself been discriminated against, Mr Ah Ket devoted his life to fighting against unfair discrimination⁵⁸. He advocated and promoted "peaceful coexistence"⁵⁹. His answer 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. It is fitting and proper that this scholarship is named for him.

¹ See, eg, Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> ; *Age* (Melbourne, Victoria), 7 August 1936 at 8.

² Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16; Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> .

³ *Age* (Melbourne, Victoria), 7 August 1936 at 8. See also, eg, Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> .

⁴ Toylan Ah Ket, "William Ah Ket—Building Bridges between Occident and Orient in Australia, 1900-1936" (Chinese Studies Association of Australia, Macquarie University, July 1995)

at 3. See further, eg, *Mount Alexander Mail* (Victoria), 12 January 1889 at 2; *Mercury* (Hobart, Tasmania), 14 January 1889 at 3.

⁵ See, eg, *Leader* (Melbourne, Victoria), 29 November 1902 at 36; *Herald* (Melbourne, Victoria), 6 August 1936 at 3; *Recorder* (Port Pirie, South Australia), 7 August 1936 at 1; *Australian Worker* (Sydney, New South Wales), 19 August 1936 at 14; Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16.

⁶ See, eg, *Sunday Times* (Sydney, New South Wales), 23 November 1902 at 7; *Leader* (Melbourne, Victoria), 29 November 1902 at 36.

⁷ See, eg, *Leader* (Melbourne, Victoria), 29 November 1902 at 36; *Sun* (Sydney, New South Wales), 6 August 1936 at 26; *Evening News* (Rockhampton, Queensland), 12 August 1936 at 7.

⁸ University of Melbourne, "MLS Honour Board", under "Supreme Court Prize recipients" accessed at <<https://law.unimelb.edu.au/alumni/alumni-profiles-and-accomplishments/honour-board>>.

⁹ Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16. See also, eg, *Recorder* (Port Pirie, South Australia), 7 August 1936 at 1; Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>.

¹⁰ See, eg, *Leader* (Melbourne, Victoria), 29 November 1902 at 36; Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>.

¹¹ *Ballarat Star* (Victoria), 30 August 1902 at 4.

¹² See, eg, *Age* (Melbourne, Victoria), 14 April 1903 at 7; Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>; Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16.

¹³ See, eg, Lack, "Ah Ket, William (1876–1936)" in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>>; Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16.

¹⁴ See, eg, *Age* (Melbourne, Victoria), 18 October 1895 at 3; *Barrier Miner* (Broken Hill, New South Wales), 30 November 1895 at 3; *Bendigo Advertiser* (Victoria), 15 September 1896 at 4; *Bendigo Advertiser* (Victoria), 27 October 1896 at 2; *Bendigo Advertiser* (Victoria), 5 January 1898 at 1; *The Bulletin* (Sydney, New South Wales, Vol 25, Issue 1264), 5 May 1904 at 15.

¹⁵ See, eg, Victorian Bar, "Diversity & Inclusion" Brochure at 2 accessed at <<https://www.vicbar.com.au/sites/default/files/17624%20VicBar%20-%20Diversity%20%26%20Inclusion%20Brochure%20Web.pdf>>.

¹⁶ See, eg, *Herald* (Melbourne, Victoria), 6 August 1936 at 3; Dowling, "William Ah Ket, 1876 – 1936" (1984) (Winter) *Victorian Bar News* 16 at 16.

¹⁷ Supreme Court of Victoria, "Past Judges and Associate Judges" accessed at <<https://www.supremecourt.vic.gov.au/about-the-court/our-judiciary/past-judges-and-associate-judges>>.

¹⁸ See, eg, *Age* (Melbourne, Victoria), 23 June 1904 at 8; *Herald* (Melbourne, Victoria), 22 August 1904 at 2; *Age* (Melbourne, Victoria), 18 November 1904 at 4; *Argus* (Melbourne, Victoria), 21 August 1906 at 4; *Ballarat Star* (Victoria), 27 July 1907 at 12; *Herald* (Melbourne, Victoria), 15 August 1907 at 6.

¹⁹ *Age* (Melbourne, Victoria), 18 May 1915 at 14.

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- ²⁰ See, eg, *Argus* (Melbourne, Victoria), 28 March 1922 at 8; *Herald* (Melbourne, Victoria), 28 March 1922 at 3; *Herald* (Melbourne, Victoria), 30 March 1922 at 3; *Argus* (Melbourne, Victoria), 1 April 1922 at 25.
- ²¹ See, eg, *Re Leonard Heat Electric Co Ltd; Ex parte Barnes* [1923] VLR 659.
- ²² See, eg, *Mulcahy v Hoyne* (1925) 36 CLR 41.
- ²³ See, eg, *Haywood v Roadknight* [1927] VLR 512.
- ²⁴ (1912) 15 CLR 267.
- ²⁵ *Factories and Shops Act 1905* (Vic), s 42(1).
- ²⁶ *Factories and Shops Act 1905* (Vic), s 5.
- ²⁷ *Ingham v Hie Lee* [1912] VLR 329 at 329.
- ²⁸ *Ingham v Hie Lee* [1912] VLR 329 at 329-330.
- ²⁹ Challinger, *Historic Court Houses of Victoria* (2001) at 54.
- ³⁰ *Ingham v Hie Lee* [1912] VLR 329 at 329-330.
- ³¹ *Ingham v Hie Lee* [1912] VLR 329 at 330-331.
- ³² *Ingham v Hie Lee* (1912) 15 CLR 267 at 274.
- ³³ *Ingham v Hie Lee* (1912) 15 CLR 267 at 270.
- ³⁴ Challinger, *Historic Court Houses of Victoria* (2001) at 54.
- ³⁵ *Ah Yick v Lehmert* (1905) 2 CLR 593; *Brown v Lizars* (1905) 2 CLR 837; *Bishop v Chung Brothers* (1907) 4 CLR 1262; *Bayne v Baillieu* (1907) 5 CLR 64; *Bayne v Blake* (1908) 5 CLR 497; *David v Malouf* (1908) 5 CLR 749; *Potter v Minahan* (1908) 7 CLR 277; *Commonwealth v Progress Advertising & Press Agency Company Pty Ltd* (1910) 10 CLR 457; *Ingham v Hie Lee* (1912) 15 CLR 267; *Kemp v Barber* (1918) 25 CLR 229; *Mulcahy v Hoyne* (1925) 36 CLR 41; *Major v Bretherton* (1928) 41 CLR 62.
- ³⁶ (1908) 7 CLR 277.
- ³⁷ High Court of Australia, “Sir Frank Gavan Duffy PC KCMG KC” accessed at <<http://www.hcourt.gov.au/justices/former-justices/former-chief-justices/sir-frank-gavan-duffy-pc-kcmg-kc>>.
- ³⁸ *Potter v Minahan* (1908) 7 CLR 277 at 278-279.
- ³⁹ *Potter v Minahan* (1908) 7 CLR 277 at 278-279.
- ⁴⁰ See, eg, *Federal Commissioner of Taxation v Tomaras* (2018) 93 ALJR 118 at 137 [101] (Edelman J); *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569 at 581 [11] (French CJ, Kiefel and Bell JJ).
- ⁴¹ *Porter v Minahan* (1908) 7 CLR 277 at 304 (O’Connor J), citing *United States v Fisher*, 6 US (2 Cranch) 358 at 390 (1805). See also Maxwell, *On the Interpretation of Statutes* (4th ed, 1905) at 122.
- ⁴² *Sun* (Sydney, New South Wales), 6 August 1936 at 26. See also, eg, *Herald* (Melbourne, Victoria), 6 August 1936 at 3.
- ⁴³ See, eg, *Herald* (Melbourne, Victoria), 6 August 1936 at 3.

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- ⁴⁴ See, eg, *Age* (Melbourne, Victoria), 7 August 1936 at 8; *Recorder* (Port Pirie, South Australia), 7 August 1936 at 1; *Chronicle* (Adelaide, South Australia), 13 August 1936 at 15; Derkley, “William Ah Ket Legacy Recognised” (2018) 92(3) *Law Institute Journal* 83 at 84.
- ⁴⁵ *Recorder* (Port Pirie, South Australia), 7 August 1936 at 1. See further, eg, Derkley, “William Ah Ket Legacy Recognised” (2018) 92(3) *Law Institute Journal* 83 at 84; Dowling, “William Ah Ket, 1876 – 1936” (1984) (Winter) *Victorian Bar News* 16 at 17; Dean, *A Multitude of Counsellors: A History of the Bar of Victoria* (1968) at 234.
- ⁴⁶ *Herald* (Melbourne, Victoria), 6 August 1936 at 3. See further, eg, *Herald* (Melbourne, Victoria), 7 August 1936 at 6; Lack, “Ah Ket, William (1876–1936)” in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> .
- ⁴⁷ Asian Australian Lawyers Association, “The William Ah Ket Scholarship 2019” accessed at <<http://www.aala.org.au/page-18108>> . See also Lack, “Ah Ket, William (1876–1936)” in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> .
- ⁴⁸ Lack, “Ah Ket, William (1876–1936)” in *Australian Dictionary of Biography*, vol 7 (1979) accessed at <<http://adb.anu.edu.au/biography/ah-ket-william-4979>> . See also *Government Gazette of the State of New South Wales* (Sydney, Issue No 116), 23 July 1913 at 4499; *Commonwealth of Australia Gazette* (National, Issue No 57), 16 August 1913 at 1892; *Government Gazette of the State of New South Wales* (Sydney, Issue No 171), 28 September 1917 at 5355.
- ⁴⁹ Ah Ket, “Eastern Thought, with More Particular Reference to Confucius” (Australian Institute of Anatomy, Canberra, 3 May 1933) accessed at <<https://openresearch-repository.anu.edu.au/bitstream/1885/145813/2/Morrison%20Oration%2002.pdf>> .
- ⁵⁰ Toylan Ah Ket, “William Ah Ket—Building Bridges between Occident and Orient in Australia, 1900-1936” (Chinese Studies Association of Australia, Macquarie University, July 1995) at 1.
- ⁵¹ Ah Ket, “Eastern Thought, with More Particular Reference to Confucius” (Australian Institute of Anatomy, Canberra, 3 May 1933) at 22 accessed at <<https://openresearch-repository.anu.edu.au/bitstream/1885/145813/2/Morrison%20Oration%2002.pdf>> .
- ⁵² *Western Star and Roma Advertiser* (Toowoomba, Queensland), 15 August 1936 at 4. See also, eg, *Age* (Melbourne, Victoria), 7 August 1936 at 8; *Chronicle* (Adelaide, South Australia), 13 August 1936 at 15.
- ⁵³ *Herald* (Melbourne, Victoria), 6 August 1936 at 3. See also, eg, *Age* (Melbourne, Victoria), 7 August 1936 at 8; *Western Star and Roma Advertiser* (Toowoomba, Queensland), 15 August 1936 at 4; *Herald* (Melbourne, Victoria), 1 March 1937 at 26.
- ⁵⁴ Dean, *A Multitude of Counsellors: A History of the Bar of Victoria* (1968) at 80 (opposite, top photograph). See also Dowling, “William Ah Ket, 1876 – 1936” (1984) (Winter) *Victorian Bar News* 16 at 17.
- ⁵⁵ Dean, *A Multitude of Counsellors: A History of the Bar of Victoria* (1968) at 234.
- ⁵⁶ See Derkley, “William Ah Ket Legacy Recognised” (2018) 92(3) *Law Institute Journal* 83 at 83, 84.
- ⁵⁷ Menzies, *The Measure of the Years* (1970) at 249.
- ⁵⁸ See generally Monument Australia, “William Ah Ket” accessed at <<http://monumentaaustralia.org.au/themes/people/humanitarian/display/33882-william-ah-ket>> ; *Public Place Names (Denman Prospect) Determination 2015 (No 1)*, 17 April 2015 at 2 (Dorte Ekelund, Delegate of the Minister).

⁵⁹ Toylaan Ah Ket, "William Ah Ket—Building Bridges between Occident and Orient in Australia, 1900-1936" (Chinese Studies Association of Australia, Macquarie University, July 1995) at 9.