



Albert Monichino QC

List A Barristers

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Areas of Practice

- Alternative Dispute Resolution / Mediation
- Banking and Finance
- Building and Construction
- Commercial Law
- Corporations and Securities
- Intellectual Property
- International Commercial Arbitration
- Professional Negligence
- Trade Practices

Educational Qualifications

- B.Ec, LLB(Hons) (Mon), LLM (Cambridge), Grad Dip Intell Prop Law
- **Monash University, Australia**
1978 – 1982
Bachelor of Economics (major in Accounting)
Bachelor of Laws (with Honours)
- **University of Cambridge, England**
1985 – 1986
Master of Law (specialising in International and Commercial Law)
- **University of Melbourne, Australia**
1995 – 1996
Graduate Diploma in Intellectual Property Law

Other Qualifications

- Appointed Senior Counsel in 2010.
- Chartered Arbitrator.
- Registered as a Foreign Lawyer with the Singapore International Commercial Court.
- Immediate Past President of the Chartered Institute of Arbitrators Australian Branch ('**CIArb**'): 2014 - 2017.
- Fellow of the Australian Centre for International Commercial Arbitration ('**ACICA**') and CIArb.
- Member of Executive Committee and Former Vice President (for over 10 years) of the Commercial Bar Association of the Victorian Bar ('**COMMBAR**') and currently Co-Chair of its Arbitration and ADR Section.

Selected Matters

- Acting for a claimant in an ICSID arbitration in a dispute, resolved by expert determination, with its litigation funder who sought to terminate the funding agreement on the grounds of non-disclosure or material adverse change in circumstances.

- Acting for parties in a claim against the Legal Practitioners Fidelity Fund in respect of alleged fraudulent dealing by a solicitor with \$4 million of trust monies: *De Simone v Legal Services Board* [2017] VSC 471
- Acting as a sole arbitrator in an arbitration seated in Sydney, according to UNCITRAL Arbitration Rules, governed by NSW law, in respect of a foreign mining dispute between non-Australian parties: 2016 - 2017
- Acting for an award debtor on an application for stay of execution of a foreign award made in Singapore: *IFF Co-op Ltd v. Gutnick* [2015] VSC 770
- Acting as counsel in an international arbitration seated in Hong Kong, according to HKIAC Rules, governed by Victorian law, in respect of a share sale dispute: 2015-2016
- Acting as sole arbitrator in an ICC arbitration seated in Singapore, governed by New York law, in respect of a share sale dispute – 2015 and continuing
- Acting as presiding arbitrator in an arbitration seated in Malaysia, according to KLRCA Rules, governed by Malaysian law, in respect of a construction dispute – 2015.
- Application for review of an adjudicator's determination on the grounds of breach of natural justice - *RE: Hall Contracting Pty Ltd v Macmahon Contractors Pty Ltd & Anor* [2014] NTSC 20
- Acting for a local council who owned a former municipal landfill in recovering remediation and other costs from a neighbouring council following migration of landfill gas from the landfill into a neighboring residential estate – *Wheelahan v City of Casey & Ors* [2013] VSC 316
- Acting for a company in respect of which minority shareholder had obtained leave to bring a statutory derivative action, which had largely failed. The company sought costs orders against the minority shareholders – *Links Golf Tasmania Pty Ltd v Sattler (No 2)* [2012] FCA 1271
- Acting for an individual (and related company) against a public listed company in complex litigation alleging, inter alia, an implied consultancy agreement with a success fee – *PGA Group Pty Ltd v Idameneo (No. 789) Ltd* [2011] VSC 382
- Acting for a special unitholder of a registered managed investment scheme in a dispute involving the nature of the redemption rights of the special unitholders when the scheme was illiquid - *AvSuper Pty Ltd v CMIL* [2010] NSWSC 1499
- Acting for shareholders and unit holders in a deadlocked group of companies and trusts – *Vigliaroni & Ors v CPS Investment Holdings Pty Ltd & Ors* [2009] VSC 428
- Obtaining leave to bring a statutory derivative action on behalf of a company against a director and related companies – *Vigliaroni v Concrete Precast Systems Pty Ltd & Anor* [2009] VSC 253; also [2009] VSC 254
- Acting for an investor seeking damages against a financial planner who recommended investments in Westpoint-related securities - *Atkins v Interprac Financial Planning Pty Ltd* [2007] VSC 445
- Acting for an engineering company in a contractual dispute involving questions of the proper construction of commercial contracts and conventional estoppel – *PAN Orient Shipping Services Pty Ltd v Basell Australia Pty Ltd* [2007] VSC 215
- Acting for a borrower seeking to set aside several loan agreements on the grounds that they infringed the equitable doctrine of penalties – *Yarra Capital Group Pty Ltd v Goldberg* [2006] VSCA 109
- Acting for Fluor Australia, Engineers, in arbitration proceedings brought by Anaconda Pty Ltd in respect of the alleged negligent design and construction of a mineral processing plant in Western Australia. The arbitration was conducted between 2001 and 2004 before a panel of internationally renowned arbitrators
- Acting for an employer whose business was wrongfully diverted by an employee – *Capital Investments Corporation v Classic Trading Pty Ltd* [2001] FCA 1385
- Acting for Arthur Andersen in the *Metropolitan Ambulance Royal Commission* Acting for a company and its directors in defamation proceedings – *FEO v Pioneer Concrete (Vic) Pty Ltd* [1999] VSCA 180

Academic/Publications

Albert has lectured and/or tutored in the CIArb Diploma Course in International Commercial Arbitration since its inception in 2006. He was the Co-Course Director of the 2015 and 2016 Diploma Courses, held in Sydney and Singapore respectively.

He has published and presented widely in the areas of commercial law, arbitration and ADR, including:

- “Privilege disputes in international arbitration” (December 2016) *The ACICA Review*
- “International Arbitration in Australia: 2015/2016 Year in Review” (November 2016) *Australasian Dispute Resolution Journal* (co-authored with Alex Fawke)
- “Arbitration Downunder – Two Steps Forward, One Step Back” (August 2016) *Australian Construction Law Newsletter*
- “Termination for Convenience: Good faith and other possible restrictions” (April 2016) 31 *Building and Construction Law Journal (BCL)* 68
- “The future of International Arbitration in Australia” (2015) 5(1) *Victoria University Law and Justice Journal* 1
- “Plummeting market prices: Frustration, force majeure, or hardship? (2015) *AMPLA Yearbook*
- “International arbitration in Australia: 2014/2015 in review” (2015) *Australasian Dispute Resolution Journal* 192
- “Costs in statutory derivative actions: the lingering ghost of Wallersteiner” (January 2015) *Companies and Securities Law Journal*
- “Adjudicators: beware of natural justice”, (September 2014) *Australian Construction Law Bulletin*
- “Recent developments in expert evidence in Victoria”, (March 2014) *Journal of Civil Litigation and Practice*
- “Enforcement of Foreign Arbitral Awards, Issue Estoppel and Comity: Developments in Australia”, (January 2014) *Asian Dispute Review* (co-authored with Alex Fawke)
- “International arbitration: sheep, wolves and vegetarianism – a view from Down Under”, (2013) *Construction Law International*
- “Australia and the Backlash against Investment Arbitration” (2013) 19 *The ADR Reporter* 28 (co-authored with Alex Fawke)
- “International Arbitration in Australia: The need to centralise judicial power” (2012) 86 *Australian Law Journal* 118
- “The Adequacy of Arbitral Reasons: an Australian Perspective” *Asian Dispute Review* (October 2010), pp 118 – 122
- “Arbitration Reform in Australia: Striving for International Best Practice”, (2010) 29(1) *The Arbitrator & Mediator* 29
- “Reform of the Australian Domestic Arbitration Acts – It’s Time” (2009) 28(1) *The Arbitrator & Mediator* 83
- “Stop clock hearing procedures in arbitration”, *Asian Dispute Review* (July 2009), pp 76 - 81
- “Mediation: An Honesty-free Zone?” *Australian ADR Reporter* (December 2007).

Arbitration Qualifications

Albert is a member of the ACICA, SIAC, KCAB, KLRCA, SZAC, the NZDRC Arbitration Panels and the HKIAC List of Arbitrators.

Albert has acted as arbitrator in wide-ranging commercial disputes, including in relation to:

- partnership, joint venture and company disputes;
- construction, engineering and infrastructure disputes
- contractual disputes;
- international sales disputes;
- financial and investment disputes; and
- intellectual property disputes.

He has acted as counsel in numerous arbitrations, including in the *Fluor v Anaconda* arbitration, 2001 – 2004, involving claims exceeding A\$1 billion.