

Adam Elliott Butt

Admissions

- Admitted as Australian Legal Practitioner: 2008
- Admitted as a Barrister in New South Wales: 2017
- Admitted as an Attorney in New York: 2017
- Australian National Mediation Accreditation: 2010

Academic

- Master of Laws (New York University) (2016)
- MPhil in International Relations and Politics (Cambridge University) (2015)
- Negotiation Program and Visiting Scholar (Harvard Law School) (2008)
- BComm/LLB (Hons), Dip Arts (Monash University) (2007)

Academic Prizes

- Highest Mark in Toxic Harms / Class Action litigation (2016) (New York University)
- Highest Mark in International Arbitration (2016) (New York University)
- Highest Mark in International Constitutional Law (2014-15) (Cambridge)
- Highest Mark in International Commercial Arbitration (2008) (Monash)
- Winner of the LIV Negotiation Competition - representing Allens Linklaters (2007)
- Monash Law School Prize for Conflict of Laws (2005) (Monash)
- Highest Mark in International Relations of the Middle East (2005) (Monash)
- Provost's Honors List, UCLA (2003) (on exchange)

Principle Areas of Practice

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| - Commercial | - Class action | - Administrative |
| - International arbitration | - Native title | - Mediation |
| - Cross-border litigation | - Human rights | |

Legal and Dispute Resolution Experience

- Barrister (8th Floor Wentworth Chambers) - 2017-21
- Mediation and ADR - 2010-14; 2017
 - o Commercial and community mediation; ADR lecturing and consulting
- Clayton Utz - Senior Associate - 2012-13
 - o International commercial arbitration and major projects litigation
 - o Tribunal Secretary over international arbitrations (SIAC, ICC, LCIA & UNCITRAL rules)
- Chalk & Fitzgerald - Senior Lawyer - 2010-12
 - o Native title, land claim and administrative
- Allens Linklaters - Lawyer - 2007-10
 - o Product liability, class actions, IP, trade practices, constitutional and corporate
- International Criminal Tribunal for the former Yugoslavia, United Nations, The Hague, The Netherlands - Chambers Division - Internship - 2005-06
 - o *Prosecutor v Slobodan Milošević*
 - o *Prosecutor v Ivica Marijačić and Markica Rebić*

Selected Cases

Litigation as Barrister

Public law

- *Registrar, Aboriginal Land Rights Act 1983 (NSW) v Mikael Smith* 2021/00111129 and *Troy Anderson* 2021/00111135 (NSW Civil and Administrative Tribunal) (with Kirk SC) – power to sanction for alleged misconduct under *Aboriginal Land Rights Act 1983 (NSW)*.
- *Joel Kaplan & Ors v State of Victoria & Ors* VID391/2021 (Federal Court of Australia) (unled) – claims under *Racial Discrimination Act 1975 (Cth)* / *Australian Human Rights Commission Act 1986 (Cth)* and negligence.
- *Gwenda Jarrett & Ors v Wagonga Local Aboriginal Land Council & Anor* NSD983/2020 (Full Court, Federal Court of Australia) (unled) – native title dispute in connection with Wagonga LALC's non-claimant application and the South Coast Peoples' 1.68 million ha claim.
- *South Coast People v Attorney General NSW* NSD1331/2017 (Federal Court of Australia) (unled) – representing Shoalhaven City Council in South Coast Peoples' native title claim.
- *Minister Administering the Crown Lands Act 1989 v NSWALC and Registrar, Aboriginal Land Rights Act 1983* 2017/00110874 (Land and Environment Court NSW) (with Emmett SC) – judicial review relating to provision in *Aboriginal Land Rights Act 1983 (NSW)*.
- *Griffith Local Aboriginal Land Council v Attorney General of NSW* NSD2005/2016 (Federal Court of Australia) (unled) – non-claimant application seeking native title determination.
- *Western Australia v KN & Ors* WAD 218/2017 (Federal Court of Australia) (with Lenehan SC) – future act regime of *Native Title Act 1993 (Cth)* and related mining issues.
- *Wagonga Local Aboriginal Land Council v Attorney General of NSW* NSD328/2017 (Federal Court of Australia) (unled) – non-claimant application for native title determination.
- *Roper and Anor* (Supreme Court of NT) (with Barker SC and Goodhand) – apprehended bias.
- *R v Fouani* (District Court of NSW) (with Watson) – causing grievous bodily harm with intent to murder and recruiting child to carry out criminal act.
- *Police v Steven Petrovski* (Local Court of NSW) (with Maghami) – assault occasioning actual bodily harm – destroy or damage property.
- *DEC v Stari Holdings* (Local Court of NSW) (with Higgins) – legislative crime.

Commercial and Civil

- *ADG United Pty Ltd v EG Enterprises Pty Ltd* NSD1200/2020 (Federal Court of Australia) (with Stitt QC) – breaches of Shareholders' Agreement; oppression; tort of interference.
- *Indigoriver Pty Ltd v Glomesh International Pty Ltd* 2020/00111421 (District Court of NSW) (unled) – breaches of investor's loan agreement.
- *Tuscan Capital Partners Pty Ltd v Trading Australia Pty Ltd* NSD1294/2019 (Federal Court of Australia) (unled) – review of liquidator's decision to admit proof of debt.
- *Dominic Galati and Anor v Robert Deans and Ors* 2016/00360462 (Supreme Court of NSW) (with Marshall SC) – contract, breach of trust, estoppel, \$3bn project dispute.
- *Breach reporting (s 912D of the Corporations Act)* 2019 (with Game SC and Huxley) – advising major bank and subsidiaries in relation to breach reporting under s 912D of the Corporations Act.
- *Neil James Anderson v Deputy Commission of Taxation* NSD 1076/2017 (Federal Court of Australia) (unled) – bankruptcy.
- *Faralga Pty Ltd v Eco Sense Environmental Pty Ltd* 2016/00309098 (District Court of NSW) (unled) – mercantile law, contract, bailment, agency.
- *Fu Tian Fortune Pty Ltd Park Cho Pty Ltd* 2017/00140558 (Supreme Court of NSW) (with McGrath SC) – sale of property – misleading and deceptive conduct.
- *BA Fisher Building Pty Ltd v Gentle and Gentle* 2017/0011372 (Local Court of NSW) (unled) – contract, quantum meruit and estoppel.
- *Cheryl Digby v Karen McMenemy* 2015/271618 (Supreme Court of NSW) (with Maghami) – equity – family provision.
- *Saravinovski v Saravinovska* (NSW Court of Appeal) (with Rose and Pritchard SC) – *Property (Relationships) Act 1984 (NSW)*.
- *Gambino v Twin Properties Pty Ltd and Feitelson* (Supreme Court of NSW) (with McGrath SC) – property dispute.
- *Darmidjian v Nominal Defendant* (District Court of NSW) (with Nolan) – tort.
- *Higgins v Higgins* (Supreme Court of NSW) (with McGrath SC) – property dispute.

- *Cahill v Western NSW Local Health District* (District Court of NSW) (with Mahony) – tort – nervous shock.
- *Chen v Liu* (Supreme Court of NSW) – alleged breaches of fiduciary duty, forum non conveniens.
- *Lambourne and Pollett v Baker and Ors* 2016/00344608 (Supreme Court of NSW) – director and fiduciary duties, misleading and deceptive conduct and estoppel.

International and Domestic Arbitration

- Tribunal Secretary and legal assistant on international arbitrations including:
 - o SIAC arbitration concerning disputes arising out of a shareholders' agreement between Asian entities. Amount in dispute: USD\$54 million.
 - o ICC arbitration concerning breach of warranty issues and tort of deceit in the context of sale of business. Case involves entities from Asia, North America, the UK and Europe. Retail sector. Amount in dispute: GBP£1.4 billion.
 - o ICSID arbitration involving Eastern European State and UK investor concerning allegations of breach of fair and equitable treatment standard and denial of justice arising under BIT and Energy Charter Treaty.
 - o ICC arbitration involving disputes between Asian corporations arising out of game licensing agreements. Amount in dispute: USD\$200 million.
 - o SIAC arbitration concerning a claim for damages for breach of contract between entities from Asia and Europe. Resources sector (oil and gas). Amount in dispute: c. USD\$100 million.
 - o Ad hoc international arbitration under UNCITRAL rules arising out of shareholders' agreement disputes between joint venturers from the UK, The Netherlands and Singapore.
 - o ICC arbitration concerning disputes between entities from the Middle East arising out of contracts for engineering, procurement, construction and commissioning in relation to an oil field project. Amount in dispute: USD\$219 million.
 - o ICC arbitration involving disputes arising out of distributorship agreements involving Asian corporations. Building materials sector. Focus: breach of contract, tort, statute of limitations. Amount in dispute: USD\$47 million.
 - o PCA arbitration conducted under the UNCITRAL rules involving disputes between UK investor and an Asian state arising under a BIT. Television Broadcasting sector. Focus: fair and equitable treatment / denial of justice.
 - o Ad hoc international arbitration under Swedish Arbitration Act 1999 involving two European companies focused on natural gas export / pipelines. Focus: price revision disputes under natural gas long-term sales agreements. Amount in dispute: US\$1.85 billion.
 - o SIAC arbitration concerning shareholder agreement disputes between Asian entities. Computer manufacturing industry. Focus: arbitrability of liquidation-related disputes; enforceability of shareholder agreement. Amount in dispute: US\$82 million.
 - o LCIA arbitration involving a dispute arising out of the financing of a joint venture involving corporations from North America and the Caribbean. Resources sector (oil/gas). Amount in dispute: US\$227 million.
 - o Two related SIAC arbitrations concerning a failed investment by Mauritian and Indian corporations involving Indian nationals. Film production industry. Focus: misrepresentation and breaches of warranty. Amount in dispute: US\$63 million.
 - o SIAC arbitration (ICC Rules) concerning an investment dispute between a Japanese company and a South Asian public authority in relation to an engineering, procurement and construction contract. Amount in dispute: US\$108 million.
 - o ICC arbitration involving foreign-owned and state-owned Indian corporations in a dispute over a telecommunications agreement. Amount in dispute: US\$1 billion
- Solicitor on construction and joint venture litigation/arbitration matters including:
 - o Disputes relating to the construction and operation of certain electricity transmission infrastructure which interconnects the transmission systems of two Australian States.
 - o Disputes arising out of a joint venture between an Australian university and state entities in relation to the construction of a major research centre.
 - o Disputes concerning owner's liability in relation to the collapse of a major river system.

Litigation (as solicitor)

- Sydney trade practices dispute in NSW Civil and Administrative Tribunal concerning contract and tortious damages and breaches of Sale of Goods Act.
 - o Settled proceeding against Zagame Automotive (Audi dealership).
- NSW Land and Environment Court Aboriginal land claims including:
 - o *Deerubbin LALC v Minister Administering the Crown Lands Act* [2012] NSWLEC 68 (successfully obtained 355ha of land in western Sydney).
 - o *Awabakal LALC v Minister Administering the Crown Lands Act* (first successful land claim over a former police station).
 - o *NSWALC v Minister Administering the Crown Lands Act* (obtained land in Bermagui).
 - o *NSWALC v Minister Administering the Crown Lands Act* (obtained land on which 'Skippy the Bush Kangaroo' was filmed).
- Successful native title claims in Federal Court and Supreme Court (WA) including:
 - o Proceedings concerning Woodside's proposed Browse LNG precinct at James Price Point, WA. Issues: validity of compulsory acquisitions, disputes over future act regime of Native Title Act and Indigenous Land Use Agreements, fiduciary duties, and heritage disputes.
- Supreme Court (VIC) litigation proceedings and mediations concerning alleged contract breaches and misleading and deceptive conduct in relation to IT outsourcing agreement and tender process.
 - o E.g. various stages including merits hearing in *Ipex ITG Pty Ltd v Melbourne Water Corporation*.
- Supreme and County Court (VIC) product liability matters involving tobacco and pharmaceutical industries and class action litigation in relation to same.
 - o E.g. first tobacco jury trial outside of the USA (*David Clemens (aka Lindsey) v Philip Morris Ltd*, County Court of Victoria, 21 May 2007; [2008] VSCA 48) and solicitor involvement in other trials and proceedings.
- Solicitor on general commercial issues, IP matters, constitutional and pro bono.
 - o E.g. landmark High Court constitutional and human rights case of *Roach v Electoral Commissioner* [2007] HCA 43.

Mediation and ADR

- Mediating numerous commercial disputes involving partnership disagreements between high net worth individuals, tenancy, unit trust agreement, IP and franchising. Amounts in dispute have ranged from thousands to millions of dollars.
- Mediating community disputes concerning victim offender mediations (adult), youth justice victim offender mediations, community justice and family law.
- ADR lecturing/consulting at UNSW, Monash, Vienna University, NYU and other entities.

Appointments/Presentations/Other

- Finalist, Australian Lawyers Weekly Barrister of the Year awards (2021).
- Member of Oxford and Cambridge Club (2016-21).
- Guest presenter at New South Wales Barristers' Bar Course, "A Guide to Conclave and Concurrent Expert Evidence: Playing in the Hot Tub" (2021). Also presented at Legalwise Seminar on Advanced Evidence and Advocacy Masterclass (2021).
- Guest presenter at Legalwise 10th Annual Contract Law Conference: Minimising Risks & Disputes, "Duty to Negotiate in Good Faith: Contract and Beyond" (2021).
- Finalist, Australian Lawyers Weekly Barrister of the Year awards (2020).
- Guest presenter at New South Wales Barristers' Bar Course, "Principled Negotiation" (2018).
- Judge at Vis International Commercial Arbitration Moot, Hong Kong (2018).
- Guest speaker at Court of Judge Robert E Jones, Courtroom 10A, Mark O. Hatfield Federal Courthouse, Portland, Oregon, "Concurrent Expert Evidence in the United States – Is There a Role for Hot Tubbing?" (2017)
- Mediator Panel, Federal Court of Australia's List of Native Title Mediators (2017-18; 2010-11).
- Guest speaker at Australian National Mediation Conference November 2016, Gold Coast Australia – "Negotiating Arab-Israeli Peace: an interest-based perspective."
- Australia's Representative to Asia-Pacific Forum for International Arbitration (2012-15).
- Guest presenter on concurrent expert evidence model at NYU Law School, 'How to Try a Jury

- Case Intelligently' (2015).
- Member of International Bar Association's Mediation Committee (2013-15) / Organiser of IBA VIAC International Mediation and Negotiation Moot (2013-15).
- National Director of LEADR Association of Dispute Resolvers (Resolution Institute) (2011-13).
- Guest lecturer on mediation at University of Vienna, 'International Commercial Mediation' (2013-14).
- Guest lecturer on negotiation at NYU Law School, 'ICC Paris Mediation Competition' (2013).
- Member of ICC Young Arbitrators Forum, Young ICCA, ICCA, ACICA, IBA and MAA (2012-18).
- Forum Sentencing Facilitator and Youth Justice Convenor, NSW Government (2010-14).
- Principal organiser of international arbitration event at Clayton Utz regarding the Jerusalem Arbitration Center, an ICC Palestine and ICC Israel joint venture (2013). See: <http://www.resolution.institute/news/jerusalem-arbitration-centre>.
- Judge at Vis International Commercial Arbitration Moot: Hong Kong (2012); Vienna (2013).
- Keynote speaker at UNSW's Model UN Society Diplomacy Conference – "how to be an effective Negotiator" (2013).
- Representative of Moot Alumni Association at 45th UNCITRAL Session, New York (2012).
- Harvard Law School Mediation Course (2011).
- Speech at LEADR's international conference - '*kon gres 2011* – "Duty to negotiate in good faith: principles and applications," Sep 2011. Also presented at AIDC, Nov 2011.
- Judge at the Australian Law Students' Association Sir Laurence Street Negotiation Championship Grand Final (2011).
- Mediator Panel, Arts Law Centre of Australia; Mediation assistance, Courtyard Legal (2010-11).
- Practitioner Member of LEADR; Member of Australian Mediation Association (2010-12).
- Judge in UNSW Law School Negotiation Competition (2010).
- Completion of national mediation accreditation process, Bond University, Gold Coast (2009-10).
- Judge in Melbourne and Monash Negotiation Competitions (Finals and Semi-Finals) (2007-9).

Publications

- Butt, A & Stowe, H, "Playing in the Hot Tub - a Guide to Concurrent Expert Evidence in New South Wales", Bar News: The Journal of the NSW Bar Association, Spring, 2018, pp 44-55, at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/NSWBarAssocNews/2018/66.html>.
- Butt, A.E, "Concurrent Expert Evidence in U.S. Toxic Harms Cases and Civil Cases More Generally: Is There a Proper Role For "Hot Tubbing"?", 40 Houston J. Int'l L. 1 (2017).
- Butt, A.E, "Concurrent Expert Evidence in the United States – Is there a role for 'Hot Tubbing'?", Jury Matters, Official Newsletter for the Civil Jury Project at NYU School of Law, Sep 2017, at p 6, <https://civiljuryproject.law.nyu.edu/concurrent-expert-evidence-in-the-united-states-is-there-a-role-for-hot-tubbing/>.
- Butt, A, "Structuring discretion in sentencing: mandatory sentencing, guideline judgments and standard non-parole periods", Bar News: The Journal of the NSW Bar Association, Summer, 2014, at http://www.nswbar.asn.au/docs/webdocs/BN_032014_18_25.pdf.
- Butt, A, Chalk & Fitzgerald, "Submission to Attorney General: clarifying good faith requirements under the future act regime of the *Native Title Act 1993*," 2011.
- O'Donahoo, P & Butt, A, "Leo Cussen Institute Seminar Paper - Legal Professional Privilege Update for In-House Counsel: Practical Tips for Maintaining LPP," 2008.
- O'Donahoo, P, Butt, A, & Stone S. "Review of Victoria's Civil Justice System - Parts 1 & 2," September-October 2007, at <http://www.aar.com.au/pubs/ldr/index.htm> (articles re-published in *Civil Procedure News New South Wales*).
- Clark, K, Norton, M & Butt, A, "*Jane Doe v ABC*: a new privacy action?" June 2007, at <http://www.aar.com.au/pubs/priv/index.htm>.