

Areas of Practice

- Commercial Arbitration: Domestic and International
- Mediation
- Professional Negligence
- Building, Construction and Engineering
- Expert Determination
- Expert Facilitation/Conclaves

Educational Qualifications

- Bachelor of Arts (Melbourne University) 1981
- Bachelor of Laws (Melbourne University) 1981
- Master of Laws (Melbourne University) 1987
- Doctor of Philosophy (Monash University) 2019

Chambers

- Chancery Chambers
Level 26, 200 Queen Street, Melbourne VIC 3000
T: +613 8600 1754 | F: +613 8600 1770 | M: +61 418 108 885
E: manly@chancery.com.au
W: www.chancery.com.au
- Melbourne TEC Chambers
www.mtecc.com.au

Legal Experience

- Articled to Frank Shelton, 1981 (Judge Shelton, County Court now retired) at Ellison Hewison & Whitehead (now Minter Ellison).
- Read at Victorian Bar with Peter Murdoch, 1983 (now Queen's Counsel).
- Admitted to practice as a Barrister in New South Wales (1986), Tasmania (1987), A.C.T. (1989), Queensland (1993), Northern Territory (1993), King's Inn Dublin (1993), South Australia (1994) and Western Australia (1996).
- On 27 November 2001 the Governor-in-Council of the State of Victoria appointed Mr Manly as Senior Counsel for the State of Victoria and in March 2014 he was appointed Queen's Counsel.
- Part-time lecturer RMIT Faculty of Architecture and Building (1982-84).
- Resident Tutor in Law, St Hilda's College, Melbourne University (1985).
- Non-resident Tutor in Law, St Hilda's College, Melbourne University (1986).
- Member Ethics Committee of The Victorian Bar September 2006 to December 2008.
- Member of Building Dispute Practitioners Society (1981)
- Member of Institute of Arbitrators and Mediators Australia ("IAMA") (now Resolution Institute) (1984)
- IAMA Grade 1 Arbitrator (2008)

- IAMA Practitioners Certificate in Mediation (2009)
- Nationally Accredited Mediation (2010)
- Associate member of The Chartered Institute of Arbitrators (2008)
- Deputy Chairman of the Construction Law Section of the Commercial Bar Association of the Victorian Bar (2000-2008)
- Member Dispute Resolution Board Australasia Inc (2014)
- Adjunct Professor with the Sir Zelman Cowan Centre, College of Law and Justice, Victoria University (2014): Commercial Arbitration: Law and Practice

Key Matters

- Conducted various lectures and seminars for IAMA and other institutions.
- Former Member County Court Building Cases List Users Committee and Supreme Court, TEC List, Users Committee.

Mr Manly specializes in construction litigation and in particular litigation regarding building and engineering projects.

Mr Manly has conducted various arbitrations and mediations by appointment of IAMA, Resolution Institute, ACICA, the Supreme Court, County Court and by the solicitors for the parties. Mr Manly has also acted as a Special Referee pursuant to Order 50 *Supreme Court Rules*, an Expert Determiner, and Facilitator of Expert Conclaves.

Seminar Papers

- Waiver and Estoppel (1990)
- Commercial Arbitration Act 1984: An overview (1992) (1994) (1995)
- Professional Liability Indemnity (1993)
- The Liability of Professionals in the Building Industry: or the Gutteridge Haskins and Davey Pty Ltd Saga (1993)
- What does a barrister expect from an expert report (1993)
- Receiving and controlling documents (1995)
- Challenging the Arbitrator (2001)
- Expert Witnesses (2002)
- Avoidance, Management and Resolution of Construction Disputes: Rules of Evidence and Conduct of a Trial (2002)
- Injunctions to restrain recourse to bank guarantees provided as security under construction contracts (2005)
- International Commercial Arbitration: Arbitrability of the Dispute (2006)
- Incorporation by reference (2007)
- County Court: Another Option (2008)
- Case note: *Habas Sinai Ve Tibbi Gazlar Isthisal Endustri As v Sometal S.A.L* (2010) EWHC 29 (Comm)
- The Civil Procedure Reforms Case Management, discovery and dispute resolution (2010)
- Liquidated damages and penalties (presented in Masters of Construction Law course, Melbourne University 2010, 2011, 2012, 2013, 2015, 2016, 2017, 2018)
- Penalties in Construction Law After *Andrews v ANZ* (presented 9 June 2014)
- Commercial Arbitration Practice and Procedure (presented in Graduate Diploma of Commercial Arbitration course, Victoria University 2013, 2014, 2015)

- Arbitration and the Enforcement of International Awards (presented 3 June 2015)
- Enforcing and Setting Aside Arbitral Awards in Australia: A Domestic and International Perspective (presented 12 August 2015)
- The Penalty Doctrine in Australia and England: A Changing Landscape (presented 6 July 2016 and 8 November 2016)
- Construction Litigation (presented 16 September 2016)
- Construction of Contracts and Other Mercantile Documents (presented 10 February 2017)
- Conclaves: Tips and Tricks (presented 1 May 2019)
- Pleading Restitution for Unjust Enrichment Claims (presented 18 August 2020)

Published Papers

- The use of Scott Schedules in technology, engineering and construction litigation (2011) *Building and Construction Law Journal* 151 (see <http://ssm.com/abstract=2456493>)
- The benefits of clauses that liquidate, stipulate, pre-estimate or agree damages (2012) *Building and Construction Law Journal* 246 (see <http://ssm.com/abstract=2456495>)
- The penalty doctrine: *Andrews v Australia and New Zealand Banking Group Ltd* (2012) 7(2) *Construction Law International* 35
- Liquidated damages and the doctrine of penalties: Rethinking the war on *terrorem* (jointly with Matthew Bell) (2012) 29(4) *International Construction Law Review* 386
- Substance over form: Australia's highest Court reconsiders the penalty doctrine (2013) 8 (4) *Construction Law International* 19
- The use of formulae to calculate liquidated damages and stipulated damages (2013) 29 (2) *Building and Construction Law Journal* 127 (see <http://ssm.com/abstract=2456078>)
- Breach no longer necessary : The High Court's reconsideration of the penalty doctrine (2013) 41 *Australian Business Law Review* 314 (see <http://ssm.com/abstract=2456496>)
- The Conventional Penalties Act 1962 (South Africa): Comparative Observations with Recent Developments in the Common Law (2017) 34 (2) *International Construction Law Review* 155

LLM Thesis (1987)

"The admissibility of survey opinion evidence as an exception to the hearsay rule".

Supervisor: Mr Julian Phillips (Melbourne University)

Examiners: Mark Weinberg and Suzanne McNichol

Postgraduate Research at Monash University

I completed a Doctor of Philosophy degree by research and thesis at Monash University in 2019. The topic is:

"Liquidated Damages and Penalties - A Comparison of the Common Law and Certain International Approaches."

Supervisors: Dr Normann Witzleb, Dr Sirko Harder, Dr Rebecca Giblin, Dr Gabrielle Golding, and Professor Mark Davison (Monash University)

Date submitted: 20 February 2019

Examiners: Professor Bruno Zeller (University of Western Australia) and Professor Philip Evans (The University of Notre Dame, Australia)

Result: 6 May 2019

Reported Cases

- *Tekmat Pty Ltd v Dosto Pty Ltd* (1990) 102 FLR 240
- *Leighton Contractors Pty Ltd v Kilpatrick Green Pty Ltd* (1992) 2 VR 505
- *Con Kallergis Pty Ltd (trading as Sunlighting Australia) v Calshonie Pty Ltd (formerly CW Norris Pty Ltd)* (1998) 14 BCL 201 (Victoria Court of Appeal)
- *Fletcher Construction Australia Ltd v Lines Macfarlane and Marshall Pty Ltd (No 2)* (2002-3) 6 VR 1
- *Aquatec Maxcon Pty Ltd v Minson Nacap Pty Ltd* (2004) 8 VR 16
- *Barwon Region Water Authority v Aquatec Maxcon Pty Ltd* (2007-8) 17 VR 480
- *Lysaght Building Solutions Pty Ltd (trading as Highline Commercial Construction) v Blanalko Pty Ltd* (2013-14) 42 VR 27