

Elle Nikou Madalin



Elle Nikou Madalin specialises in commercial and corporations law, including insolvency, financial services, and competition and consumer law.

QUALIFICATIONS

Master of Laws (First Class Honours) **P** +61 3 9225 8558
University of Melbourne
Bachelor of Laws
University of Melbourne
Bachelor of Arts
University of Melbourne
Member of the Chartered Institute of Arbitrators

CORRESPONDENCE

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CHAMBERS

Owen Dixon Chambers West
Level 23 Room 13
525 Lonsdale Street
Melbourne VIC 3000

COMMERCIAL LAW

Appellate | Banking & Finance | Bankruptcy | Class Actions | Commercial Arbitration | Competition |
Consumer Law | Contractual Disputes | Corporate Insolvency | Corporations & Securities | Equity & Trusts |
Private International Law | Real Property | Sports Law | Superannuation

EMPLOYMENT & INDUSTRIAL

Appellate | Confidential Information | Employment Contracts | Restraint of Trade

INTELLECTUAL PROPERTY

Confidential Information | Information Technology | Media & Entertainment | Privacy & Data Protection

TORT LAW

Appellate | Class Actions | Commissions & Inquiries | Common Law | Defamation | Major Torts |

Elle is easy to work with, timely and responsive, and is experienced in dealing with the particular concerns of her clients in high-profile and sensitive matters. She is sought after for her pragmatic, outcome-driven approach; strategic thinking; and emphasis on forming collaborative, long-term relationships in the teams in which she works.

Elle has advised and appeared in complex and large-scale litigation and arbitral proceedings for multi-national and domestic corporations; superannuation funds, major banks and financial services; family offices; insolvency practitioners and private individuals in a diverse range of industries.

In recent years, Elle has developed particular subject-matter expertise in cases involving software applications and platforms, blockchain, and other information technology; as well as the intersection between such technologies, commerce and financial services.

Other experience & expertise

Elle also has considerable expertise in sports and media law.

Elle is an arbitrator for the Court of Arbitration for Sport - the peak international body for dispute resolution in sports globally, seated in Lausanne, Switzerland.

Elle is also an arbitrator and Deputy Chair of Football Australia's National Dispute Resolution Chamber; an arbitrator for the AFLPA; an experienced independent investigator; a former Olympic selection panel chair; and has presided over dozens of ad hoc tribunals.

Liability limited by a scheme approved under Professional Standards legislation.

Recent Cases

GENERAL

ESSSuper v Iress Ltd & Anor (FCA): Breach of contract and misleading and deceptive conduct concerning the development of superannuation administration software, and the provision of outsourced superannuation and defined benefit scheme administration services (with S.J. Maiden KC).

Epic Games, Inc & Ors v Google LLC & Ors (FCA): Multiple proceedings heard together (including with related class actions, and related litigation against Apple) alleging anti-competitive conduct in respect of Google Play; mobile application developer seeking injunctive relief in respect of contracts, arrangements or understandings, misuse of market power, exclusive dealing and unconscionable conduct (leading A. Hanna in respect of confidentiality issues, and otherwise with C. Moore S.C., R. Yezerski S.C., C. Trahanas, P. Strickland and W. Liu).

Heartland Bank Ltd ats Internet Business Systems Australia Pty Ltd (VSC): Alleged breach of contract and misleading and deceptive conduct in development of bank lending software; trans-Tasman proceedings (unled on choice of law issues, and later with N.P. De Young KC).

Adam Cartwright Investments Pty Ltd v Hannah McTier Investments Pty Ltd (QSC): Existence of alleged partnership in relation to various pharmacy businesses (unled).

Bassi v Sikh Cultural Society of Victoria Inc (VSC): Claims against an incorporated association and its committee

members alleging breach of fiduciary duties and other matters (unled).

Mainland Property Holdings Pty Ltd (recs and mgrs apptd) & Ors v Naplend Pty Ltd & Ors (FCA): Allegations that default interest and loan management fees charged by lender constituted a penalty; allegations that receivers appointed by lender breached various statutory provisions in sales of real estate; director's competency to cause companies in receivership to issue proceedings where second set of receivers also appointed following collapse of Mayfair 101 group of companies (with S.J. Maiden KC).

Bianco & anor v Haast Pty Ltd & ors (pseudonyms) (FCA): Disclaimer of an unprofitable contract by trustees in bankruptcy (with S.J. Maiden KC).

Jess & Jess (No 7) [2023] FedCFamC1F 291: Application to summarily dismiss cross-claim brought by trustees in bankruptcy for want of jurisdiction and on other grounds (with H.G. Austin KC).

Re the Bankrupt Estate of Jones Snr (deceased) (a pseudonym) [2022] FCA 1470: Application to approve entry and implementation of a funding agreement by trustees in bankruptcy (with S.J. Maiden KC).

Chen v Blockchain Global Limited & anor (VSC): Cryptocurrency and cryptocurrency exchange platforms; breach of contract; misleading and deceptive conduct (with S.R. Horgan KC).

Abel & Ors v Blockchain Global Limited & ors (VSC): Collapse of cryptocurrency exchange and claims for allegedly misappropriated funds (with S.R. Horgan KC).

Expert determination on construction of commercial lease, acting for the State of Victoria (with S.D. Hay KC).

AXF Group Pty Ltd (in liq) & anor v AXF Holdings Pty Ltd, Richard Gu & ors (VSC): Indemnification of insolvent former trustee; liabilities exceeding \$200M; multiple applications and proceedings (with S.D. Hay KC).

Jess & Jess [2021] FedCFamC1F 24: Acting for trustees in bankruptcy; statutory restriction on publication of court proceedings where trustees sought to initiate separate proceeding for approval of complex litigation funding (with S.J. Maiden KC).

Michos Family Super Company Pty Ltd & anor v LSA Partners Pty Ltd (VSC): Financial and investment advice; alleged professional negligence and breach of contract; concurrent wrongdoers (unled).

Russel & ors v Macquarie Bank Ltd (FCA): Appeal on relevance of confidential documents to construction of employment contracts (unled).

Director of Consumer Affairs Victoria v Belle Gibson (FCA): Public examination; pecuniary penalties imposed following unconscionable conduct under s 21 of the Australian Consumer Law (Vic); forensic examination of bank accounts, cryptocurrency holdings, and futures and options trading (unled).

Burrows & anor v Lightspeed Finance Pty Ltd & anor (VSC): Alleged breaches of tripartite collateral contract and fiduciary duty by mortgage broker; alleged contraventions of *Australian Securities and Investments Act 2001* (Cth) (with A.T. Strahan KC).

Sox Holdings Pty Ltd & ors v Spiral Developments Pty Ltd (VSCA): Appeal on proper construction of suite of agreements and alleged termination in bad faith (with A.T. Strahan KC).

Gouvas v Amanatidis & Ors (VSC): Claims against individual and corporate defendants for breaches of partnership agreement, fiduciary duties and trust arising out of alleged joint venture (with R. Heath KC).

Fortune Holding Developments Pty Ltd & ors v V Properties (VIC) Pty Ltd & ors (VSC): Shareholder's derivative action; alleged breach of director and fiduciary duties and breach of partnership agreement (with M. Goldblatt).

DEFAMATION & REPUTATIONAL HARM

Google LLC & anor ats Clifftop at Hepburn Pty Ltd (FCA): Representing Google in successfully resisting an application for preliminary discovery to identify various users of its reviewing platform (unled).

Rayner v Seven Network (Operations) Ltd & anor (FCA): Defamation; television publication; US-based plaintiff with professional and personal reputation in Australia (with G.L. Schoff KC).

Lennon v Herald & Weekly Times Pty Limited & ors (VSC): Defamation; online publications; hyperlinked material (with D.P. Gilbertson KC).

Wellington v Metcalf (VSC): Defamation; multiple social media publications in the course of a political campaign (with D.P. Gilbertson KC).

Duffy & anor v Marr & anor (VSC): Defamation; injurious falsehood; misleading and deceptive conduct (with M. Goldblatt).

Hardie v Herald & Weekly Times Ltd & Rule [2016] VSCA 103: Defamation; online and print publications; appeal and cross-appeal (with S.K. Wilson KC).

Hardie v Herald & Weekly Times Ltd & Rule [2015] VSC 364: Defamation; online and print publications (with S.K. Wilson KC).

Advising a well-known Victorian institution in respect of public statements during the course of scandal and intense media scrutiny (unled).

SPORTS

Michael Zerafa & Ors ats Labruna (VSC): Correct construction, breach and repudiation of managerial agreement (with B.M. Ihle KC).

Football Federation Australia v Atkinson & ors: Disciplinary investigation and proceedings following Australian team international sex scandal (unled).

Racing Victoria Ltd v Darren Weir (RAD Board): Charges pursuant to the Rules of Racing (with P. Wheelahan).

Danny Nikolic v Racing Victoria Ltd (VCAT): Review of jockey licence application; acting for key witness (with P. Wheelahan).

Advice concerning judicial review of decisions made in the administration of Australia's National Anti-Doping Scheme.

Numerous doping and selection proceedings, and general arbitral proceedings concerning employment contracts, salary disputes and other matters.

Conduct of multiple independent investigations concerning allegations of historical and recent sexual assault, sexual harassment, bullying, discrimination, team selection and other matters.

Memberships

Chartered Institute of Arbitrators (CIArb)

Australian Restructuring, Insolvency and Turnaround Association (ARITA)

Australian and New Zealand Sports Law Association (ANZSLA)

Former Assistant Honorary Secretary, Victorian Bar

Former member of the Executive, Commercial Bar Association (CommBar)