

William Lee: First barrister of Chinese descent admitted to the New South Wales Bar

By Malcolm Oakes SC



William Lee in King Street, 1968. Photograph by David Mist. Collection: Powerhouse Museum, Sydney.

William Jangsing Lee was an Australian of Chinese descent who was admitted to the NSW Bar on 27 May 1938. He practised for 45 years¹, initially from old Chalfont Chambers at 142 Phillip St and later, after it opened in 1963, from the Thirteenth Floor of Selborne Chambers at 174 Phillip St. On his admission *The Sydney Morning Herald* recorded Lee as being 'the first Chinese to become a barrister in New South Wales'², a news item that was carried in at least ten other newspapers across the country at the time.

Lee was born in Sydney on 4 January 1912³ and died on 29 October 2010. He was the son of Philip Lee Chun (Lee being the family surname), who came to Australia in 1875⁴. In 1906 Lee Chun became a partner in the business *Kwong War Chong & Co* (founded in 1883 in Campbell Street) and around 1910 the business shifted to 84 Dixon St, by which time Lee Chun was the controlling partner. The business continued for over a century until 1987.⁵ The business does not lend itself to a single name description, although the type of business was common in the Chinese community and well understood by those who patronised it: it was organised around Chinese district of origin. At various times it offered travel ticketing services, moneylending services, money remittance services (it had branches in Hong Kong and Shekki, the county capital of Zhongshan), postal services (both poste restante and overseas courier delivery), immigration services (arranging Immigration Restriction Act paperwork), scribe services, interpretation services, market garden lease negotiation services, ossuaries services (bone repatriation), dormitory accommodation and

was also a deposit taker, general store and trading company (Williams: 1999). Lee Chun was not averse to resorting to the courts to pursue recalcitrant debtors, with one of his claims going to the High Court: *Shannon v Chun* (1912) 15 CLR 257, [1912] HCA 52⁶ where he was the successful respondent.

The family originated from the village of Chung Tou (涌頭)⁷ in Zhongshan county of Guangdong Province and were part of China's Pearl River delta community who constituted the bulk of the Chinese immigrants to NSW in the nineteenth century, initially attracted by the lure of the 'New Gold Mountain' as Australia was known. The family story is that Lee Chun landed at Cooktown in northern Queensland at the end of the Palmer River goldrush and made his way south to Sydney.⁸

Chinese movement back and forth to Australia in the nineteenth and early twentieth centuries came mainly from a relatively small number of districts on the Pearl River delta (Williams: 2002).⁹ Williams argues that in the period prior to World War II the central desire of this movement was to ensure the survival and prosperity of the family in the village context, and not to migrate, build up a Chinese diaspora or establish transnational families. Returning to the village was the main goal, and that is what most did, until security deteriorated in the early twentieth century and Hong Kong became the domicile of choice of those who could gain residency. One of the effects of this was that at the time of Federation there were only 10,222 Chinese in New South Wales out of a total population of 1.35 million.¹⁰

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Movement back and forth to Australia was initiated by the gold rushes and continued for almost a century until interrupted by the Japanese invasion of China in 1937, and the later occupation of Hong Kong (which was the embarkation port to Australia) in 1941. It was later permanently suppressed by the Communist government which came to power in late 1949.

In the late nineteenth and early twentieth centuries, Australian state and federal immigration restrictions prevented the bringing of wives from China to Australia except for merchant families. So the practice of returning to the home village for a wife (who remained there), and returning periodically to sire children, meant that the link to the home village remained strong, there was a need for money remittance services and there was a flourishing sea route between Australian ports and Hong Kong.

Lee Chun's wife was from China. William Lee was the seventh of eight siblings, all but the eldest of whom were born in Australia¹¹. This indicates a family of standing as Lee's mother was permitted Australian residency. An issue facing such families was the education of children, particularly in Chinese culture and writing. Where funds were available a solution was to send a male child to China for part of his education, often to church run schools in Hong Kong or Macao, thereafter returning him to Australia for business training.

Lee's primary education was at Christ Church Primary School Railway Square, Sydney.^{12 13} At the age of 10 Lee was sent to Hong Kong for a classical Chinese education. Shortly after his arrival in 1923, Lee was taken by a first cousin to visit his father's village and home. He was carried in by palanquin with two bearers and escorted by a security guard of four armed with long-barrelled revolvers to protect against the risk of kidnapping. He visited the local school and was welcomed by a students' brass band as a tribute to his father's standing in the village.¹⁴ He subsequently visited the village again on a Ching Ming Festival day.¹⁵

Lee returned to Australia when he was 16. The *SMH* reported that he had almost lost his familiarity with English at that stage, although he spoke fluent Cantonese¹⁶. He would frequently observe that he arrived back in Sydney 'not qualified for anything in Australia'.¹⁷ On his return he entered the business in about 1929 but became anxious to get out. In about 1932, his father, then about 76, relocated to Hong Kong with all family members other than William and one of his older brothers



William Lee (third left) with his sister Lily (on his immediate left) and a group of Chinese children at the time of his departure for education in Hong Kong in 1923.
Photo: Courtesy Roland Lee.

Harry, who remained in the Australian business. Lee perceived the only way out was through further education and obtaining a professional qualification¹⁸ which had to be undertaken by night school. At his father's suggestion, he studied for a Diploma of Commerce at Sydney University, which did not require matriculation, then sat the matriculation examinations (which required passes in French and Latin for enrolment in the Law Faculty) and completed his Law degree, graduating in 1938. The journey from his return to Australia in around 1929 until completion of his law studies thus took some nine years. During part of that time he also worked in a bank.

As an interesting legal aside, the issue of the returning Australian born Chinese or Eurasian with lost or diminished English speaking and writing skills reached the High Court in *Potter v Minahan* (1908) 7 CLR 277, [1908] HCA 63. Minahan was born in Australia and was the child of a Caucasian mother and Chinese father. He left Australia aged five, returned aged 31 and successfully argued he was not an immigrant, not subject to the *Immigration Restriction Act 1901* and therefore not subject to the dictation test.¹⁹

In March 1941 Lee married Dorothy Wong in the Congregational Church in Pitt St. In 1999 Lee described this union as being to his 'utmost great fortune' and one of the greatest achievements of his life.²⁰ They initially resided in a flat on Ben Buckler, the rocky promontory at North Bondi, on the edge of the beach. In later life, Lee recalled the Japanese shelling of the Eastern Suburbs in June 1942²¹, (one of the shells fell in Bondi). There were two sons from the marriage, Roland (1951) and Lachlan (1954).

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One of Lee’s older brothers, Arthur, graduated with Honours in Latin from Sydney University, was called to the English Bar²², and became Professor of English at the University of Amoy²³ (now Xiamen University). Arthur’s example inspired Lee to study Law.

Lee went to the Sydney Bar in May 1938 after his admission. He faced a large number of challenges including that there was not a lot of work around for anyone, let alone for the first person of Chinese descent who had set up practice as a barrister in NSW. He had very little work at the start²⁴. From early 1940 until late 1945, during the Pacific War, he assisted the war effort as an interpreter and translator²⁵ at Victoria Barracks.²⁶

His practice improved with the formation of the Australian branch of the Chinese Seamen’s Union in 1942. Some 2,000 Chinese seamen became refugees as a result of the fall of Hong Kong and Singapore. Lee credits the Chinese Seamen’s Union as giving him his kick start at the bar. The connection spawned an immigration law practice, briefs in the Industrial Commission seeking equal pay for Chinese crew, defending Chinese seamen on criminal charges for desertion (instituted by shipping companies), defending Chinese who failed the dictation test (which resulted in a criminal charge and deportation) and later refugee deportation briefs. The criminal work was for virtually no money, and pro bono if the defendants had no money. But it got him on his feet. Chamber work included settling applications for exemption from the dictation test and settling applications for permanent residence.²⁷

As part of his immigration practice, Lee became involved in the fate of the ‘temporaries’: the name given to alien seamen and evacuees who were in Australia as a result of wartime conditions. Many found jobs, married and had children whilst in Australia. After the Pacific War the Chifley Government moved to deport aliens who had been allowed to stay during the war. There was broad opposition to this in the Chinese community, including from the Chinese Masonic Society, and Charles Ng Kin, a Deputy Grand Master, lodged his title deeds to a terrace of 22 houses in Annandale as security for the release of arrested Chinese ‘temporaries’ pending legal challenge.²⁸ In *O’Keefe v Calwell* (1949) 77 CLR 261, [1949] HCA 6, a case concerning a Dutch evacuee from the Celebes which tested such proposed deportations, the High Court held that an immigrant who had not taken the dictation test was not a prohibited immigrant. Refugees and evacuees had been allowed entry without taking the dictation test. The parliamentary response was the *War-time Refugees Removal Act 1949*.

This legislation led to a highlight in Lee’s immigration practice, being led by Barwick KC in the High Court in *Koon Wing Lau*



William Lee at his admission in 1938. Photo: *The Sydney Morning Herald* / Fairfax Photos.

v Calwell (1949) 80 CLR 534, [1949] HCA 65 which involved challenges to the constitutional validity of the deportation of Chinese refugees under the *War-time Refugees Removal Act 1949* and the *Immigration Act 1949*. It was Lee’s idea to bring in Barwick KC, who was just establishing himself as a constitutional lawyer.²⁹ £40,000 was raised in the community to fund this case³⁰, over \$2 million in today’s money.³¹ Although the case was unsuccessful, time was on the side of the litigants, as the People’s Republic of China was proclaimed on 1 October 1949, the case was heard shortly thereafter in October 1949, and reserved judgment was handed down on 21 December 1949. On 19 December 1949 the Menzies Government came to office and decided not to deport Chinese seamen back to mainland China.

Another highlight was *Chu Shao Hung v The Queen* (1953) 87 CLR 575, [1953] HCA 33 in which Lee was led by Badham QC, and which established that upon conviction for an Immigration Act offence, the Court could release a person on a good behaviour bond and was not limited to a custodial sentence. Lee viewed this case as indicating that immigration offences were not necessarily criminal in nature, that detention by imprisonment was unfair and unreasonable and that the case probably resulted in the establishment of detention centres rather than the gaoling of illegal immigrants in Australia.³²

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Lee's practice evolved into a general practice of the times primarily in Petty Sessions and the District Court, including tenancy law³³ and immigration, with appearances in the Supreme Court in matrimonial causes and in bankruptcy, and occasional appearances in the High Court. He was well liked and regarded by his floor colleagues, always made himself available to colleagues under the bar 'open door' tradition, and occasionally took floor colleagues to meals in Chinatown, giving them their first lessons in the use of chopsticks.³⁴

Outside of the law, Lee was interested in reading and writing poetry in Chinese, was an MC of choice at Chinese weddings as he was bilingual and a good speaker, held committee positions on a number of Chinese social and community organisations³⁵ and enjoyed football (round ball) and mineral fossicking which he sometimes used to do with a friend and colleague from Law School days, 'Mac' Russell. Lee liked to go and physically look at the mineral prospects held by mining companies.³⁶ Lee was an active investor concurrently with his legal practice, taking a great interest in gold mining companies in particular, having some investment successes whilst others proved no better than speculative. He was a director and at times chairman of some non-listed companies, an engineering works in Unanderra, toolmakers in Surry Hills, Charters Towers Mines (which went on to list as Charters Towers Gold and is now Citigold Corporation Ltd) and Mt Coora Mining Ltd.³⁷ He also was a facilitator with various syndicates of Chinese people investing in land at Hoxton Park, Greenacre, Terrigal and Wamberal. In the years immediately preceding his retirement, Lee complained of his deteriorating eyesight, became less active in court work and spent more time on his investments.³⁸

He assisted many Chinese immigrants through to the 1990s.³⁹

The picture that emerges of Lee is one of determination and courage, a man who was prepared to take considered risks, realising that some may not be successful. Colleagues recall him as being a very gentlemanly figure⁴⁰ who always exhibited grace.

He had a great memory, and retained a clear mind until his death at 98.⁴¹

Endnotes

1. <http://www.lawalmanacs.info/>; Lee letter to Michael Williams 3 June 1999.
2. *The Sydney Morning Herald* Saturday 28 May 1938.
3. NSW Certificate of Entry in the Register of Births kept at the Registrar-General's Office, Sydney, No of Application 1912/935.
4. Handwritten Notes of Norman Lee (brother of William Lee) held by Norman Lee's daughter, Deborah Lee.
5. Williams, Michael (1999) *Chinese Settlement in NSW: a Thematic History. Report for the NSW Heritage Office of NSW*. <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/chinesehistory.pdf>
6. 'Chun' was Lee Chun's Chinese personal name, 'Lee' being the family name and 'Philip' being adopted as a Western Christian name in an adult baptism on 23 June 1896; Baptismal Register of St Thomas Church of England

- Narrandera, Charles Sturt University Regional Archives RW1025/LV/316.
- To avoid surnaming confusion William Lee changed his name by registered instrument to rearrange the order of his names from William Lee Jang Sing to William Jangsing Lee, such that his personal names preceded his family name: Instrument Publishing Change of Name dated 29 April 1938 recorded No 2026 in the Office of the Registrar General on 6 May 1938.
- Other spellings are Chongtong and Tsung Tau.
- Roland Lee (son of William Lee) email to the author 2 July 2014.
- Williams, Michael (2002) *Destination Qiaoxiang: Pearl River Delta Villages & Pacific Ports 1849-1949*. Doctoral thesis submitted to the University of Hong Kong. <http://hub.hku.hk/handle/10722/31596>
- <http://www.abs.gov.au/ausstats/abs@.nsf/featurearticlesbytitle/4A6A63F3D85F7770CA2569DE00200137?OpenDocument>
- The eldest was born in the family village; see Handwritten Notes of Norman Lee (brother of William Lee) held by Norman Lee's daughter, Deborah Lee.
- This school was a co-educational school and an adjunct to Christ Church St Laurence, Railway Square, Sydney. It ceased operation as a primary school in 1923.
- Lee letter to Michael Williams 3 June 1999.
- Lee letter to Michael Williams 5 June 1999.
- The Chinese Ching Ming Festival, is also known as Tomb Sweeping Day. It falls on a particular day in the Chinese lunar calendar which matches the 15th day after the northern Spring Equinox (Autumn Equinox in the southern hemisphere).
- The Sydney Morning Herald* Saturday 28 May 1938.
- Eulogy for William Lee delivered by his son, Roland Lee, at Lee's funeral 5 November 2010.
- Lee interview with Michael Williams May 2004.
- The *Immigration Act 1901* required an immigrant to pass a dictation test. Upon failure the immigrant was deemed to be a prohibited immigrant, and upon being found guilty liable to six months' imprisonment (or deportation).
- Lee letter to Michael Williams 7 June 1999.
- Eulogy for William Lee delivered by his son, Roland Lee, at Lee's funeral 5 November 2010.
- Lee interview with Michael Williams May 2004.
- Needham, J, *Science and Civilisation in China*, Vol 5 by Huang, H T (Cambridge, Cambridge University Press, 2000) 1.
- Lee interview with Michael Williams May 2004.
- Commonwealth of Australia, Department of Army (Civil Employment), Certificate of Service of W J Lee dated 28 September 1945 held by Roland Lee.
- Roland Lee email to the author 2 July 2014.
- Lee letter to Michael Williams 5 June 1999.
- Lee letter to Michael Williams 5 June 1999.
- Lee interview with Michael Williams May 2004.
- Lee interview with Michael Williams May 2004.
- Reserve Bank Pre-Decimal Inflation Calculator <http://www.rba.gov.au/calculator/annualPreDecimal.html>.
- Lee letter to Michael Williams 5 June 1999.
- Interview of the author with John McLaughlin on 7 July 2014. McLaughlin was a floor colleague from 1964-1984 and later master and associate justice of the Supreme Court.
- Interview of the author with John McLaughlin on 7 July 2014.
- He was president of the Australian-Chinese Association in 1949-1950 and 1950-51 (see photograph at <http://chia.chinesemuseum.com.au/objects/D003881.htm>) and on the committee that oversaw the erection of the Pavilion in the Chinese section of the Rookwood Necropolis.
- Interview of the author with Nigel Russell, son of 'Mac' Russell, 16 July 2014.
- Roland Lee email to the author 2 July 2014.
- Interview of the author with John McLaughlin on 7 July 2014.
- Roland Lee email to the author 2 July 2014.
- Hon John Bryson QC email to the author 19 June 2014. Interview of the author with John McLaughlin on 7 July 2014.
- Roland Lee email to the author 20 June 2014.