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Interactive  
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# Western Australia: 6th Annual Contract Law Masterclass

Applying contract law principles  
in a changing environment

5-6 February 2009  
Rydges Hotel  
Perth

## Don't miss this opportunity to:

- Examine the latest developments in courts' interpretations of exclusion, indemnity, liquidated damages and termination provisions
- Discover the most recent views on the application of the doctrine of good faith
- Learn from the experts on best practice contract drafting
- Keep up to date with emerging international contract law trends
- Consolidate your understanding of the impacts of impending policies on contract drafting

### Hear from experts including:

**Julian Courtney-Stubbs**, Partner, **Gilbert & Tobin Sydney**  
**Emeritus Professor Jim Davis**, ANU College of Law, Canberra  
**Graeme Dennis**, Partner, **Clayton Utz**  
**Kanaga Dharmananda**, Barrister, **Francis Burt Chambers**  
**Stephanie Faulkner**, Partner, **Jackson McDonald**  
**Jeffrey Goldberger**, Special Counsel, **Blake Dawson**  
**Matthew Howard**, Barrister, **Francis Burt Chambers**  
**Paul Reithmuller**, Partner, **Blake Dawson**  
**Ms Linda Richardson**, Special Counsel Commercial,  
**Australian Government Solicitor**  
**Dr Nicholas Seddon**, Special Counsel, **Blake Dawson**  
**Gordon Smith**, Special Counsel, **Allens Arthur Robinson**  
**Guest international speaker King & Wood, China**

Register today! Ph: 1800 772 772  
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# Western Australia: 6th Annual Contract Law Conference

## Applying contract law principles in a changing world

### Day One: Thursday 5 February 2009

8:30 **Conference registration**

8:45 **Opening remarks from the Chair**  
**Natasha Owen-Conway, Barrister,**  
**Sir Lawrence Jackson Chambers**

8:50 **Reducing liability by drafting exclusion, indemnity and liquidated damages provisions**

- Examining enforceable exclusion and limiting of liability for tort, equitable and statutory losses
- Preventing the use of unenforceable methods of prohibition and control of liabilities
- Ensuring indemnities for breach of contract are effective
- One year on – *Environmental Systems Pty Limited v Peerless Holdings Pty Ltd* [2008] VSCA 26 – categorising losses intended to be covered by provisions
- Comparing a breach of a duty of care with the failure to take reasonable care
- Analysing how proportionate liability schemes affect drafting considerations
- Securing your clients' position with effective liquidated damages provisions
- Preventing unenforceability of a liquidated damages provision
- *State of Tasmania v Leighton Contractors Pty Ltd* [2005] TASSC 133 – is there a special rule for government contracts?
- Drafting indemnities against liquidated damages

**Natalie Wigg, Senior Associate, Minter Ellison Lawyers**

9:50 **Minimising risk of breach of good faith in negotiating and performance**

- Applying common law good faith to contract negotiations
- Common law good faith in performance of contracts:
  - What does it mean?
  - How does it operate?
- When can good faith legitimately be used to prevent someone enforcing a contractual right?

**GiGi Visscher, Barrister, Francis Burt Chambers**

10:50 **Morning tea**

11:20 **Key developments in contract law**

- Breach and fundamental breach after *Koompahtoo Local Aboriginal Land Council v Sandpine Pty Ltd* [2007] HCA 61 and *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd* [2008] HCA 10
- Restitution and *Matthew Lumbers v W Cook Builders (in liquidation)* [2008] HCA 27
- Remoteness and contractual damages after *Transfield Shipping Inc v Mercator Shipping Inc* [2008] 3 WLR 345 (House of Lords)
- Managing the pitfalls of contract termination: *Chint Australasia Pty Ltd v Cosmoluce Pty Ltd* [2008] NSWSC 635
- Interpreting contractual indemnities in light of *Erect Safe Scaffolding (Australia) Pty Ltd v Sutton* [2008] NSWCA 114

**Jeffrey Goldberger, Special Counsel, Blake Dawson**

12:20 **Ensuring the commercial utility of your contracts through negotiating and implementing durable terms**

- Ensuring you understand your client's environments and desired outcomes
- Eliciting all the information you need – the client, its customer and the business

- Drafting the contract with enduring commercial relationships in mind – recognising the potential for changing conditions over the life of the contract
- Offering practical solutions for threats to the operation of the contract
- Ensuring valid formation and avoiding misrepresentation and mistake
- Advising your client prior to contract formation:
  - Admissibility of extrinsic evidence in contract cases
  - Conduct rendering a contract voidable
  - How equitable mistake can operate

**Mitch Artus, Partner, Downings Legal**

1:20 **Networking lunch for speakers and delegates**

2:20 **Avoiding Trade Practices Act 1974 encroachments on the enforcement of contracts**

- Understanding the relationship between contract law and provisions prohibiting:
  - Misleading and deceptive conduct - sections 52 and 53; and
  - Unconscionable conduct - s 51AA(1) s 51AB(1) and s 51AC
- Excluding liability under the *Trade Practices Act*:
  - Examining personal liability for breaches - *Houghton v Arms* [2006] HCA 59
  - The scope of permissible disclaimers, and drawing warranties and representations

• Drafting damages provisions with the *Trade Practices Act* in mind  
**Kanaga Dharmananda, Barrister, Francis Burt Chambers**

3:20 **Applying international law to contract drafting**

- Analysing whether exclusive or non-exclusive jurisdiction is appropriate
- Selecting choice of law – what is the scope of permissible election?
- Incorporating the application of the Free Trade Agreements
- Scrutinising the special relationship with New Zealand - the proposals of the Trans Tasman Working Group on Jurisdiction and Enforcement of Judgments
- Using anti-suit injunctions
- Preventing the enforcement of foreign judgments with the *Trade Practices Act*
- Enforcement of Australian judgments overseas and foreign judgments in Australia
- Enforcement of foreign arbitral awards in Australia and Australian arbitral awards overseas

**Emeritus Professor Jim Davis, ANU College of Law, Canberra**

4:20 **Afternoon tea**

4:50 **People's Republic of China - Contracting with confidence**

- Brief introduction to contract law in the PRC
- Major features of PRC contract law
- Examining the political context and its impact on contractual transactions
- Understanding the cultural issues which feature in PRC commerce
- Tips for doing business in China

**King & Wood, China and**

**Julian Courtney-Stubbs, Partner, Gilbert & Tobin Sydney**

5:50 **Closing remarks from the Chair**

6:00 **Close of Day One**



Hot Topic



Case Law Update



International Keynote

## Day Two: Friday 6 February 2009

8:30 Conference registration

8:50 **Opening remarks from the Chair**  
*Adam Handley, Partner, Corrs Chambers Westgarth*

9:00 **Five principles you need to know when terminating contracts**

- When is termination for convenience valid?
- Analysing the types of breaches – material, intermediate or innominate terms
- Advising your client on the consequences of termination and entitlement to damages
- What happens when you elect to accept termination – when does this become wrongful repudiation?
- Using good faith in termination action

*Matthew Howard, Barrister, Francis Burt Chambers*



10:00 **Discovering the best remedies for breach of contract**

- Steps of terminating a contractual relationship
- Utilising rescission
- Obtaining performance standards through the use of a court order
- Looking at the differences between interim and mareva injunctions
- Understanding the appropriate usage
- Minimising expense through resolving contractual breach disputes out of court
- Utilising restitution in order to restore and outline rights

*Katja Levy, Barrister, Francis Burt Chambers*

11:00 Morning tea

## Commercial contracts essentials

Select two sessions from these four for the topics which best complement your practice:

### Construction stream

11:30 **Preparing construction documentation with clarity and purpose**

**A**

- Introduction – risk allocation principles
- Examining the document suite governing the whole of project:
  - Effective use of standard form and bespoke contract documents
  - Identifying and managing the risk of inconsistency between project documents
- Focussing on key issues in project documentation:
  - Exclusions and limitations of liability
  - Warranties and indemnities
  - Liquidated damages
  - Variations
  - Extension of time
  - Termination
  - Dispute resolution

*Gordon Smith, Special Counsel, Allens Arthur Robinson*

12:30 **Ensuring efficient management of variations, delays and disruptions**

**B**

- Putting in place processes for managing Extension of Time claims
- Adjudications under the *Construction Contracts Act 2004*
- Working with parties through disruption claims
- Incorporating workable strategies for Owner or Contractor caused delays
- Navigating variation clauses
- Mitigating losses arising out of variation, delays and disruption
- Adjusting value of work through contract provisions

*Vincent Liu, Partner, Minter Ellison Lawyers*

1:30 Networking lunch for speakers and delegates

### Commercial stream

11:30 **Key contractual intellectual property issues**

**C**

- Understanding and applying the intellectual property fundamentals
- Understanding the impact of timing issues
- Identifying key areas of intellectual property contractual risk
- What cannot be excluded or limited?
- Disclaimers - when are they relevant and how effective are they?
- Contractual clauses to manage infringements:
  - By licensees
  - Of licensed products
  - By third parties
- Types of remedies provided for by the contract and how they can be used by both suppliers and customers as part of a risk management system

*Stephanie Faulkner, Partner, Jackson McDonald*

12:30 **Managing vendors through practical contracts**

**D**

- Structuring effective supply agreements
- Understanding the function and format of the Standing Offer and overarching Deed
- “Just put it on one page” - drafting Plain English terms and conditions
- Describing essential terms:
  - Price and price adjustments
  - Delivery
  - Specifications and quality
  - Title and Romalpa clauses
- Tips for avoiding inconsistencies in original versions and amendments to the contract

*Paul Reithmuller, Partner, Blake Dawson*



- 2:30 **Dissecting the impact of the Emissions Trading Scheme on contract provisions**
- Overview of the Emissions Trading Scheme
  - Which contract party will be liable for emission permit compliance?
  - Passing through emission costs
  - How do you deal with non-reviewable existing contracts?
  - Drafting and enforcing change of law provisions - will they work?
  - How do you price future carbon costs into contracts to be entered now?
- Graeme Dennis, Partner, Clayton Utz**

- 3:30 **Managing government contracts**  
*[stretch break/afternoon tea 4:15-4:45 pm]*
- Understanding the relevance of the government procurement guidelines
  - Negotiating with government entities – what aspects are negotiable?
    - Formulation of contract
    - Process and procedure implementation
    - Processes for amending or updating the contract
    - Communication process with contractor
    - Approval process
  - Managing and maintaining contractual and commercial relations
- Panellists:**  
**Dr Nicholas Seddon, Special Counsel, Blake Dawson**  
**Ms Linda Richardson, Special Counsel Commercial, Australian Government Solicitor**  
**Adam Handley, Partner, Corrs Chambers Westgarth**

- 5:30 **Closing remarks from the Chair**
- 5:45 **Close of Day Two**



### Upcoming events:

**Privacy Law Conference - NSW**  
1 December 2008, Amora Hotel Jamison, Sydney  
Preparing for the imminent reforms.

**Conveyancing & Property Law Toolkit**  
9 December 2008, Perth  
Session 4: Drafting effective property documents -  
Masterclass (1/2 day)

For more information please visit  
[www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd) or phone 1800 772 772

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*Here's what your colleagues had to say about previous LexisNexis Contracts Conferences*

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*“Fantastic two-day course representing good value for money.*

*Good practical and legal perspectives given.*

*Excellent speakers!”*

Carolyn Gibbons, Legal Counsel, Vline Passenger Pty Ltd

*“Refreshingly informative.”*

Craig Williams, Project Services Manager, Lycopodium Engineering Pty Ltd

*“Excellent conference, relevant content, well presented and organised”*

Karen Alexander, Director, Legal and Commercial, Department of Infrastructure

### Who Should Attend?

- Partners
- Solicitors
- Barristers
- Associates
- Senior Associates
- In-house Counsel / General Counsel / Legal Counsel
- Government Lawyers
- Litigators
- Dispute Resolution Specialists
- Contract Managers and Officers
- Procurement Managers
- Purchasing Managers and Buyers
- Commercial and Business Development Managers
- Supply Chain and Logistics Managers
- Project Managers and Officers
- Alliance Managers
- Construction and Engineering Managers

### TEAM DISCOUNTS\*

Register a team of 2 for Western Australia: 6th Annual Contract Law Masterclass at the same time, from the same organisation and receive a free pass for the 3rd delegate.

\* Early Bird, team discounts and any other discount cannot be taken concurrently

# Priority registration form

## WA: 6th Annual Contract Law Masterclass

**4 easy ways  
to register**

**Phone:** 1800 772 772  
**Fax:** (02) 9422 2338  
**Online:** www.lexisnexis.com.au/pd  
**Mail:** Conference Co-ordinator, LexisNexis  
 Locked Bag 2222, Chatswood Delivery Centre,  
 Chatswood NSW 2067  
 or: DX 29590 Chatswood

Please complete sections A, B, C, D, E

Conference code: PD0309 ABN: 70 001 002 357

**A** Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Postal address: \_\_\_\_\_

\_\_\_\_\_

Suburb Postcode State

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

### Delegate 2 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

### Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

**3rd Delegate FREE!**

\*\* to send conference confirmation

**B** Please tick as many practice areas you work in which apply:

<input type="checkbox"/> Banking and Finance	<input type="checkbox"/> Family Law
<input type="checkbox"/> Commercial Litigation and ADR	<input type="checkbox"/> Insolvency & Restructuring
<input type="checkbox"/> Corporate and Commercial Law	<input type="checkbox"/> Insurance and Risk
<input type="checkbox"/> Criminal Law	<input type="checkbox"/> Property
<input type="checkbox"/> Energy and Resources	<input type="checkbox"/> Wills and Estates
<input type="checkbox"/> Environment and Planning	<input type="checkbox"/> Workplace Relations, Employment and Safety
	<input type="checkbox"/> Other: _____

This will help us keep you informed about topics relevant to your business needs.

**C** **Event Pricing** (please tick your selection)

<b>Early Bird Special* (register and pay before 19 December 2008)</b>	
<input type="checkbox"/> Two day conference only	\$1950.00 + GST = \$2145.00
<input type="checkbox"/> One day conference only#	\$1050.00 + GST = \$1155.00
<b>Standard Pricing* (register and pay after 19 December 2008)</b>	
<input type="checkbox"/> Two day conference only	\$2050.00 + GST = \$2255.00
<input type="checkbox"/> One day conference only#	\$1150.00 + GST = \$1265.00

# I would like to attend:  Day One  Day Two

Stream sessions (Choose two only):

Session A  Session B  Session C  Session D

**D** **CONFERENCE RESOURCES**

I am unable to attend but would like to purchase a set of conference papers for Western Australia: 6th Annual Contract Law Masterclass  
 \$360.00 + GST = \$396.00

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Register a team of 2 for Western Australia: 6th Annual Contract Law Masterclass at the same time, from the same organisation and receive a free pass for the 3rd delegate.

\* Early Bird, team discounts and any other discount cannot be taken concurrently

**E** **Payment details** Payment is due upon registration

Enclosed is my cheque for: \$ \_\_\_\_\_ made payable to LexisNexis

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Name of approving manager: \_\_\_\_\_

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#### CANCELLATION

Your registration will be confirmed in writing when full payment is received. We will refund your registration in full less a \$165 administration fee if notification is received in writing by 8 January 2009. If we receive written notification between 9 January 2009 and 22 January 2009 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 22 January 2009. You may nominate a replacement, however no refund will be issued.

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