



## Contracts 2012 – NSW

Legislative updates, case studies and practical know-how

15 & 16 February 2012, Conference

14 February 2012, Pre-conference workshop

The Grace Hotel Sydney

### Program highlights

- Termination, damages and restitution – a case law update
- Australian Consumer Law – one year on
- Limitations of liability
- Introduction of WHS legislation and its effect on contract management
- Practical tips in contract management
- Personal Property Securities Law February 2012 commencement
- Carbon tax provisions in contracts

### Claim your CPD/MCLE points

Professional Skills

Practice Management and Business Skills

### Speakers

- **The Honourable Sir Laurence Street AC KCMG QC**, former Chief Justice, NSW Supreme Court
- **Jeffrey Goldberger**, Special Counsel, **Blake Dawson**
- **Justice Michael Walton**, Vice President, NSW Industrial Relations Commission
- **Peter Armitage**, Partner, **Blake Dawson**
- **Kate Eastoe**, Group Corporate Counsel Asia Pacific, **George Weston Foods Limited**
- **Glenda Stubbs**, Corporate Lawyer, **Kellogg (Aust) Pty Ltd**
- **Georgina Foster**, Partner, **Baker & Mackenzie**
- **Cormack Dunn**, Senior Associate, **Freehills**
- **David East**, Partner, **DLA Piper**
- **Annette Golden**, Head of Legal & Compliance-Asia, **Tibra Capital**

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9 December 2011

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# Contracts 2012 – NSW

## Legislative updates, case studies and practical know-how

Wednesday, 15 February 2012

8:30 Registration

9:00 Introduction from the Chair

**The Honourable Sir Laurence Street AC KCMG QC**

9:15 Termination, Damages and Restitution – a case law update

### 1. Termination

- Termination at common law; *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* [2007] 233 CLR 115
- Preconditions for termination; *The Craftsmen Restoration & Renovations Pty Ltd v Boland* [2011] NSWCA 147; *Almond Investors Limited v Qualitree Nursery Pty Ltd* [2011] NSWCA 198; *Cooper and Kinsella* [2011] NSWCA 45
- Terminating contracts of indefinite duration; *Jireh International Pty Ltd v Western Exports Services Inc.* [2011] NSWCA 137
- Termination for convenience; *Kellogg Brown & Root v Australian Aerospace Ltd* [2007] VCS 200

### 2. Damages

- Causation; *Bullabidgee Pty Ltd v McCleary* [2011] NSWCA259
- Remoteness; *Transfield Shipping Inc v Mercator Shipping Inc. The Achilles* [2008] 4 All ER 159; *Sylva Shipping Co Limited v Progress Bulk Carriers Limited* [2010] EWHC 542 (Comm)
- Date for assessment; *McCrohon v Harith* [2010] NSWCA 67

### 3. The restitutionary remedy

- Scope of the remedy; *Lumbers v W Cook Builders Pty Ltd (in Liq.)* [2008] 232 CLR 632; *Henderson's Automotive Technologies Pty Ltd (in Liquidation) v Flaton Management Pty Ltd* [2011] VSCA 167
- Failure of consideration; *Haxton v Equuscorp Pty Ltd* [2010] VSCA 1; *Peisley v Maddrell Management Pty Limited* [2010] NSWSC 1477
- Mistake of fact or law; *David Securities v Commonwealth Bank of Australia* [1992] 175 CLR 353

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

■ 1.25 CPD/MCLE points

10:30 Morning tea

## DISCUSSION PANEL

10:45 **Personal Property Securities Act: Implications and outworkings for contract professionals**

This discussion will look at the implications and outworkings of the *Personal Property Securities Act* for contract professionals.

Drawing on the expertise of a Partner, In-house Counsel and a Barrister we will look at the possible impacts of the *PPSA* from all sides. Front end, back end and everything in between. With the delay of the *PPSA* implementation to February 2012 this essential discussion could not have come at a better time.

**David East, Partner, DLA Piper**

**Annette Golden, Head of Legal & Compliance-Asia, Tibra Capital**

**Chloe Burnett, Barrister, Wentworth Chambers**

■ 1.5 CPD/MCLE points in Practice Management and Business Skills

12:15 Networking lunch for speakers and delegates

1:15 Carbon tax provisions in contracts

- Liability under the carbon pricing mechanism
- Mechanisms for allocating liability
- Case studies of carbon pass through
- Carbon pass through clauses - what to look out for

**Vishal Ahuja, Partner, Mallesons Stephen Jaques**

■ 0.75 CPD/MCLE points

2:00 The importance of understanding proportionate liability when allocating contractual risk

Proportionate liability legislation has significant potential to interfere with the express allocations of risk between contracting parties. In one New South Wales decision, *Reinhold v New South Wales Lotteries Corp (No 2)* [2008] NSWSC 187, the Court refused to enforce a contractual indemnity relying solely on provisions of the proportionate liability regime in the *Civil Liability Act 2002 (NSW)*. The decision in *Reinhold* highlights why it is important for contracting parties to understand proportionate liability when allocating contractual risks. The session will outline:

- Proportionate liability and your contracting strategy
- The ways in which proportionate liability interferes with contractual indemnities
- Whether it is possible to contract out of proportionate liability legislation and if so, how this can be done
- Whether proportionate liability applies to arbitrations
- Overview of the proposed new model provisions regarding the harmonisation of proportionate liability legislation

**Peter Voss, Partner, Blake Dawson**

■ 0.75 CPD/MCLE points

2:45 Afternoon tea

3:00 Terminations

- How, when and why to pull the plug
- Negotiating the termination
- Considerations of any guarantees or payouts

**Joe Catanzariti, Partner, Clayton Utz**

■ 0.75 CPD/MCLE points in Professional Skills

3:45 Practical tips in contract management

- Reading and owning the document from day one
- Referring to the contract and communicating to your business managers during the course of a project
- Negotiation strategies that will save you time and money in the long run

**Glenda Stubbs, Corporate Lawyer, Kellogg (Aust) Pty Ltd**

■ 0.75 CPD/MCLE points in Professional Skills

4:30 Close of day one

## Who should attend?

### Legal Professionals:

- Solicitors from Law Firms
- In-house Counsel

### Non-legal Professionals:

- Contract Managers and Administrators
- Commercial and Business Development Managers
- Project and Procurement Managers

Claim CPD/MCLE points with all LexisNexis Professional Development events



## February 14, 15 & 16 – The Grace Hotel Sydney

### Thursday, 16 February 2012

8:30 Registration

9:00 Introduction from the Chair

9:15 Australian Consumer Law – one year on

- Early thoughts on navigating the consumer guarantees maze
- Coming to grips with mandatory reporting
- Which items on the remedies menu have appealed to the ACCC

**Peter Armitage**, *Partner*, **Blake Dawson**

■ 0.75 CPD/MCLE points

10:00 Effects of the new Australian Consumer Law on the standard exclusion of liability clauses

- To what extent can ACL liability be excluded?
- Impact of the unfair contract terms provisions
- Consumer guarantees and exclusion clauses
- Drafting ACL-compliant exclusion clauses

**Georgina Foster**, *Partner*, **Baker & McKenzie**

■ 0.75 CPD/MCLE points

10:45 Morning tea

#### DISCUSSION PANEL

11:00 Introduction of WHS legislation and its effect on contract management

**Kate Eastoe**, *Group Corporate Counsel Asia Pacific*,  
**George Weston Foods Limited**  
**Justice Michael Walton**, *Vice President*, **NSW Industrial Relations Commission**  
**Cormack Dunn**, *Senior Associate*, **Freehills**

■ 1.5 CPD/MCLE points in Practice Management and Business Skills

12:30 Networking lunch for speakers and delegates

1:30 Intellectual property in commercial contracts

- Managing ownership and use rights with new IP
- How to clearly licence IP and define royalties
- Drafting sensible IP warranties
- Transacting and protecting know how

**Scott Bouvier**, *Partner*, **Mallesons Stephen Jaques**

■ 0.75 CPD/MCLE points

2:15 Consequential loss

- Fair and reasonable consequentials
- When is an indemnity due and owing
- Recent cases

**Warren Davis**, *Senior Associate*, **Gadens**

■ 0.75 CPD/MCLE points

3:00 Afternoon tea

3:15 Limitations of liability

- Drafting effective exclusion clauses
- What you can and can't contract out of...personal injury... death?
- Recent cases and trends

**Anne Petterd**, *Special Counsel*, **Baker & McKenzie**

■ 0.75 CPD/MCLE points

4:00 Franchising agreements

- Incorporating the franchising code of conduct into the contract
- Responsibilities of the franchisee and franchisor
- Examples of compliance and non-compliance

**Heath Adams**, *Director Lawyer*, **Franchise Legal**

■ 0.75 CPD/MCLE points

4:45 Closing comments from the Chair

5:00 Close of conference

### Pre-Conference Workshops: 14 February 2012

#### WORKSHOP A

9:00-12:00 Franchising agreements

This workshop will delve deeply into the minutiae of franchising agreements and elucidate some of the basic pitfalls and essentials in this complex practice area.

Our presenter Fiona Wallwork is an acknowledged expert in this field and is on hand to impart her understanding of this all-important topic.

- Incorporating the franchising code of conduct into the contract
- Responsibilities of the franchisee and franchisor
- Examples of compliance and non-compliance

**Fiona Wallwork**, *Partner*, **Norton Rose**

■ 3 CPD/MCLE points

#### WORKSHOP B

1:00-4:00 Limitations of liability

This workshop will further enhance your understanding of the limitations of liability with the full attention from our expert presenter.

Tim Somerville brings a wealth of experience and know-how to this perennial topic.

- Drafting effective exclusion clauses
- What you can and can't contract out of...personal injury... death?
- Recent cases and trends

**Tim Somerville**, *Principal*, **Somerville Legal**

■ 3 CPD/MCLE points

# Priority registration form

# 5 easy ways to register

## Contracts 2012 – NSW

February 14, 15 & 16  
The Grace Hotel Sydney  
77 York Street  
Sydney NSW 2000

Online: [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)  
Email: [registration@lexisnexis.com.au](mailto:registration@lexisnexis.com.au)  
Phone: 1800 772 772  
Fax: (02) 9422 2338

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

## TAX INVOICE

Conference code: PD0212

ABN: 70 001 002 357

### A Delegate 1 details

#### Delegate 1 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name  
Organisation: \_\_\_\_\_  
Address: \_\_\_\_\_  
Position: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email (required\*\*): \_\_\_\_\_

#### Delegate 2 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name  
Organisation: \_\_\_\_\_  
Address: \_\_\_\_\_  
Position: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email (required\*\*): \_\_\_\_\_

#### Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name  
Organisation: \_\_\_\_\_  
Address: \_\_\_\_\_  
Position: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email (required\*\*): \_\_\_\_\_

\*\* to send conference confirmation

## Future Events

- Wills & Estates, 16 February 2012
- Legal Intensive – NSW, 15 March 2012
- Commercial Litigation 2012 - NSW, 7 March 2012
- Employment Law for HR Practitioners, 10 May 2012

### B Earn CPD/MCLE points:

Lawyers can earn up to 17 CPD/MCLE points.

Where did you hear about this event? \_\_\_\_\_

☐ Please add me to the LexisNexis Monthly Professional Development email list.



#### PROGRAM CHANGES

Details regarding this conference were confirmed and correct at the time of printing. LexisNexis reserves the right to cancel or amend the conference details at any time if required.

#### CANCELLATION

Your registration will be confirmed in writing when full payment has been received. LexisNexis' cancellation policy applies as follows. If cancellation is notified in writing:

1. One calendar month or more prior to the first day of event: LexisNexis will refund your registration fee less \$165.00 administration cost.
2. Between one calendar month plus one day and 14 days prior to the first day of event: LexisNexis will refund 50% of the fee paid by you and provide you with a copy of event papers.
3. 13 days or less prior to the first day of the event: LexisNexis will not refund any part of your fee. However, you may nominate a replacement delegate to attend in your place.

### C Event pricing (please tick your selection)

#### GROUP BOOKING

Register 3 or more people from the same organisation at the same time and book at the advanced price per person.

#### EXAMPLE

<input checked="" type="checkbox"/>	One day conference	7	\$ 900 + GST = \$ 990	\$990
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#### Advanced price (register and pay before 9 December 2011)

Please Select	Options	Qty	Price	Subtotal
	Two day conference + both workshops		\$2550 + GST = \$2805	
	Two day conference + one workshop *		\$2150 + GST = \$2365	
	Two day conference only*		\$1800 + GST = \$1980	
	One day conference + both workshops		\$1700 + GST = \$1870	
	One day conference + one workshop *		\$1300 + GST = \$1430	
	One day conference only*		\$ 900 + GST = \$ 990	

#### Standard price (register and pay after 9 December 2011)

Please Select	Options	Qty	Price	Subtotal
	Two day conference + both workshops		\$2850 + GST = \$3135	
	Two day conference + one workshop *		\$2450 + GST = \$2695	
	Two day conference only*		\$2050 + GST = \$2255	
	One day conference + both workshops		\$1950 + GST = \$2145	
	One day conference + one workshop *		\$1550 + GST = \$1705	
	One day conference only*		\$1150 + GST = \$1265	
	Both workshops only		\$ 850 + GST = \$ 935	
	One workshop only*		\$ 450 + GST = \$ 495	



#### Conference Resources

☐ I am unable to attend but please send me the **Contracts 2012 – NSW** conference papers

Qty	Price	Subtotal
	\$360 + GST = \$396	

# Advanced price, team discounts and any other discount cannot be taken concurrently.

TOTAL

\* I would like to attend:

- ☐ Day one 15 November 2012 ☐ Workshop A  
☐ Day two 16 November 2012 ☐ Workshop B

### D Payment details

Payment is due upon registration. This document will be a Tax Invoice/Receipt for GST upon completion of payment.

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

☐ Pay by credit card: Please charge \$ \_\_\_\_\_ to

☐ Mastercard ☐ Visa ☐ American Express

Card number: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Expiry: \_\_\_\_/\_\_\_\_

Name of cardholder: \_\_\_\_\_

Signature of cardholder: \_\_\_\_\_

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