



## 11th Annual Contract Law Masterclass VIC

Reinforcing contract performance and success  
18-19 October 2011, Stamford Plaza Melbourne

### Program highlights

- Be updated on recent case law developments
- Understand the impact of the Australian Consumer Law reforms on trading terms and conditions
- Successfully negotiate IT contracts and gain practical guidance on IP issues
- Acquire an in-house perspective on the best practice approach to negotiating agreements
- Be informed on how the *Personal Properties Security Act* affects business contracts
- Learn how to successfully manage public sector contracts and yield effective government procurement to your client

### Speakers

- Jeffrey Goldberger, Special Counsel, Blake Dawson
- Dr Elizabeth Lanyon, Director, Regulation and Policy, Consumer Affairs Victoria
- Julian Lincoln, Partner, Freehills
- Theo Kindynis, Partner, Minter Ellison
- Nick Tamburro, Director, Commercial Division, Department of Treasury and Finance
- Aneetha de Silva, Director, Government Services, Melbourne, Clayton Utz
- John Digby QC, Barrister, Owen Dixon Chambers West, President, Commercial Bar Association of Victoria

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# 11th Annual Contract Law Masterclass VIC

Reinforcing contract performance and success

Tuesday, 18 October 2011

8:30 Conference registration

8:50 Introduction from the Chair

**Dr Elizabeth Lanyon**, *Director, Regulation and Policy, Consumer Affairs Victoria*

## KEYNOTE ADDRESS

9:00 Recent case law and vital updates in contract law

- Surrounding circumstances in the construction and interpretation of contracts – *The Movie Network Channels Pty Ltd v Optus Vision Pty Ltd* [2010] NSWCA 111, *QBE Insurance Australia Ltd v Vasic* [2010] NSWCA 166
- Repudiation and termination of contracts – *Eminence Property Developments Ltd v Heaney* [2010] EWCA Civ 1168
- Promises to act in good faith and promises to negotiate in good faith – *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* [2010] NSWCA 268, *Strzelecki Holdings Pty Ltd v Cable Sands Pty Ltd* [2010] WASCA 222
- Novation – *Goodridge v Macquarie Bank Ltd* [2010] FCA 67, *Macquarie Bank Limited v Goodridge and Leveraged Equities Limited* [2011] FCAFC 3, *Habibsons Bank Ltd v Standard Chartered Bank (Hong Kong) Ltd* [2010] EWCA Civ 1335
- Performance securities – *Lucas Stuart Pty Ltd v Hemmes Hermitage Pty Ltd* [2010] NSWCA 283, *Kell & Rigby Holdings Pty Limited v Lindsay Bennelong Developments Pty Ltd* [2010] NSWSC 777
- Pre-contract statements and promissory estoppel – *Saleh v Romanous* [2010] NSWCA 274
- To deed or not to deed – *400 George Street (Qld) Pty Limited v BG International Limited* [2010] QCA 245

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

**1 CPD point**

10:00 The Australian Consumer Law reforms and its impact on trading terms and conditions

- Outlining unfair contract terms
- Changing standard form contracts to reflect the new regime
- Unequal bargaining power and unconscionable conduct provisions
- Misleading and deceptive conduct in contract negotiations
- Enforceability of “no reliance” clauses

**David Brewster**, *Partner, Allens Arthur Robinson*

**1 CPD point**

11:00 Morning tea

11:20 Pre-contractual representations and managing their risks

- The role of pre-contractual representations in contract interpretation and liability
- Managing the tender process to reduce exposure to misrepresentation claims: disclosure obligations; evaluation criteria; maintaining integrity and governance

**Julian Lincoln**, *Partner, Freehills*

**0.75 CPD point**

12:05 The *Personal Property Securities Act* and business contracts

- Background and objectives of the *Personal Property Securities Act 2009 (PPSA)* and what it covers in contracts
- New concepts and definitions regarding security interests
- Practical examples of how the *PPSA* will impact: retention of title clauses; joint venture agreements; consignment arrangements; equipment leases and bailments of goods
- Impact of the transitional provisions

**Theo Kindynis**, *Partner, Minter Ellison*

**0.75 CPD point**

12:50 Networking lunch for speakers and delegates

1:50 Successfully negotiating the following key clauses in IT contracts

- Payment
- IP rights ownership & licensing
- Warranties
- Indemnity & liability
- Service levels
- Termination

**Kent Davey**, *Principal, Russell Kennedy*

**0.75 CPD point**

2:35 An in-house perspective: best practice approach to negotiating agreements

- Understanding the nature of each contract and the business requirements to meet stakeholder expectations
- Creating appropriate strategies together with the business to cover both commercial and legal risk in the contract
- The negotiating table: Who should attend and what is their role; when one should walk away from a negotiation
- Have internal counsel made external counsel redundant when it comes to drafting and negotiating contracts?

**Elise Margow**, *Head of Legal, Liberty Financial*

**0.75 CPD point**

3:20 Afternoon tea

3:40 Good faith: practical applications in contract law

- Does an implied term of good faith exist in Australian law?
- The meaning of good faith
- Good faith in the negotiation phase; good faith in the performance and enforcement of contracts

**Gregg McConnell**, *Senior Associate, Middletons*

**0.75 CPD point**

4:25 Risk allocation in construction and projects: theory and application

- Principles of ideal risk allocation in construction and projects contracts
- Risk allocation during negotiations – when is the best time to agree
- Effective risk transfer and the use of standard form contracts
- Application of ideal risk allocation principles to common areas of dispute in construction and projects contracts

**David Ulbrick**, *Senior Associate, Corrs Chambers Westgarth*

**1 CPD point**

5:25 Close of day one

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# 18-19 October 2011, Stamford Plaza Melbourne

## Wednesday, 19 October 2011

- 8:30 Registration
- 8:50 Introduction from the Chair  
**John Walter, Partner, Corrs Chambers Westgarth**
- 9:00 Mitigating clients' liability through the drafting of indemnities, exclusions and liquidated damages provisions
- Enforceable exclusion clauses and their limitations
  - Preventing unenforceable methods of prohibition and control of liabilities
  - Ensuring effective indemnities for breach of contract
  - Drafting an indemnity clause in relation to consequential loss
  - Analysing how proportionate liability schemes affect drafting considerations re exclusion clauses
  - Securing your client's position with effective liquidated damages provisions
- George Golvan QC, Barrister, Owen Dixon Chambers West**  
**1 CPD point**
- 10:00 Key principles of effective contract management: a case study of managing public sector contracts
- Contract management – a commercial view; different approaches to contract management
  - Contrasting contract management of PPPs with supply contracts
  - Understanding potential risk areas of the contract
  - What is "effective relationship management"
- Nick Tamburro, Director, Commercial Division, Department of Treasury and Finance**  
**0.75 CPD point**
- 10:45 Morning tea
- 11:05 Actioning effective contract administration: implementing enforceable requirements for contractor performance
- Contractual close out issues: setting up projects for success
  - Negotiating payment schedules and liquidated damages contingent on performance
  - Transparency in the discussion of potential issues including risk, safety and tortious breach of duty
  - Practical dispute resolution techniques: DRB panels, expert determinations
  - Grasping the scope of protection covered by contemporary agreements
- James Morgan-Payler, Partner, Norton Rose**  
**0.75 CPD point**
- 11:50 Practical guidance on intellectual property issues in commercial contracts
- Common IP issues in contracts; main types of clauses for IP in contracts
  - Drafting disclaimers and licences – key issues
  - Options for IP ownership in contracts
  - IP risk allocation including warranties and indemnities
  - Managing infringements – preferred contractual approaches
- Gordon Hughes, Partner, Blake Dawson**  
**Duncan Longstaff, Lawyer, Blake Dawson**  
**0.75 CPD point**

- 12:35 Networking lunch for speakers and delegates
- 1:35 Yielding successful government procurement to your client
- Selecting the optimal procurement model – common procurement models; risk allocation principles; payment mechanisms
  - Effective tendering – tender documentation; the process contract, implied terms and good faith obligations; US Free Trade Agreement (implications for government procurement); evaluating the tender
  - Contract finalisation – negotiation strategies; documenting the deal
  - Freedom of information – what can a tenderer access
- Aneetha de Silva, Director, Government Services, Melbourne, Clayton Utz**  
**0.75 CPD point**
- 2:20 Ensuring project success: identifying and managing ongoing project risks and embracing the technicalities of risk allocation
- Identifying and managing practical project risks
  - Dealing with risks relating to conduct arising outside of the contract
  - The technicalities of drafting for desired risk allocation of key risks: critical processes; termination options; dispute resolution (including the impact of proportionate liability); security for performance; security of payment provisions
- St John Frawley, Partner, Herbert Geer**  
**1 CPD point**
- 3:20 Afternoon tea
- 3:40 Best remedies for breach of contract
- Steps and methods for terminating a contractual relationship
  - Utilising rescission
  - Obtaining performance standards through the use of a court order
  - Analysing the differences between interim and mareva injunctions
  - Utilising restitution in order to restore and outline rights
- Iain Jones SC, Barrister, Owen Dixon Chambers West**  
**0.75 CPD point**
- 4:25 Strategic choice of law, jurisdiction and alternative dispute resolution (ADR) – current trends and future directions
- Examining law and jurisdiction clauses
  - Domestic and international jurisdictions – comparisons and preference affecting choices
  - Investigating ADR clauses
  - Usage of arbitration clauses in: domestic contracts – interstate trade and commercial issues; international contracts
- John Digby QC, Barrister, Owen Dixon Chambers West, President, Commercial Bar Association of Victoria**  
**1 CPD point**
- 5:25 Close of conference

To register now visit: [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd) or ph: 1800 772 772 or fax: 02 9422 2338

# Priority registration form 11th Annual Contract Law Masterclass VIC

## 4 easy ways to register

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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: PD6111 ABN: 70 001 002 357

A

### Delegate 1 details

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\*\*): \_\_\_\_\_

\*\* to send conference confirmation

B

### PLEASE SEND ME MORE INFORMATION ON:

- ☐ Carter's Guide to Australian Contract Law – 2nd edition book  
☐ Australian Journal of Corporate Law  
☐ Journal of Contract Law  
☐ Building Contracts Australia  
☐ Australian Construction Law Bulletin  
☐ Internet Law Bulletin  
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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:

- One calendar month or more prior to the first day of event: LexisNexis will refund your registration fee less \$165.00 administration cost.
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- 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	1	\$900 + GST = \$990	\$990
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#### Advance price (register and pay before 12 August 2011)

Please Select	Options	Qty	Price	Subtotal
	Two day conference		\$1800 + GST = \$1980	
	One day conference*		\$ 900 + GST = \$990	

#### Early bird price (register and pay after 12 August 2011 and before 16 September 2011)

Please Select	Options	Qty	Price	Subtotal
	Two day conference		\$1950 + GST = \$2145	
	One day conference*		\$1050 + GST = \$1155	

#### Standard price (register and pay after 16 September 2011)

Please Select	Options	Qty	Price	Subtotal
	Two day conference		\$2050 + GST = \$2255	
	One day conference*		\$1150 + GST = \$1265	

#### Conference Resources (I am unable to attend but please send me conference papers)

Please Select	Options	Qty	Price	Subtotal
	11th Annual Contract Law Masterclass VIC		\$360 + GST = \$396	

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

TOTAL

### \*I plan to attend:

☐ Day one or ☐ Day two

D

### Payment details

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

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