



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 Robison*
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**

Claim CPD/MCLE points with all LexisNexis Professional Development events

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

Priority registration form 11th Annual Contract Law Masterclass VIC

4 easy ways
to register

Online: www.lexisnexis.com.au/pd
Phone: 1800 772 772
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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: _____

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** to send conference confirmation

B

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- 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
- The Law of Ecommerce
- Australian Intellectual Property Law Bulletin

For more information on these products call 1800 772 772

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1. 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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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	1	\$900 + GST = \$990	\$990
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Advance price (register and pay before 12 August 2011)

Please Select	Options	Qty	Price	Subtotal
<input type="checkbox"/>	Two day conference		\$1800 + GST = \$1980	
<input type="checkbox"/>	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
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<input type="checkbox"/>	One day conference*		\$1050 + GST = \$1155	

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<input type="checkbox"/>	One day conference*		\$1150 + GST = \$1265	

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Please Select	Options	Qty	Price	Subtotal
<input type="checkbox"/>	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

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