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5th Annual Contract Law Masterclass

Reducing risks
through enforceable
contracts

20-22 August 2008
Brisbane

Key benefits:

- Minimise your clients' exposure through **indemnities and exclusions**
- Master the technicalities of **liability apportionment**
- Gain the advantage when deciding on choice of **law and jurisdictions**
- Protect **IP rights** in contractual arrangements
- Discover the latest developments in **online contracts, alliance contracting** and much more

Plus don't miss the
practical workshops!

Speakers include:

Jeffrey Goldberger, Special Counsel,
Blake Dawson

Ted Williams, Group Counsel, Thiess Pty Ltd

Dr Adrian McCullagh, Information Security
Institute, Queensland University of Technology

Arch Fletcher, Partner, Clayton Utz

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Product of:

5th Annual Contract Law Masterclass

Reducing risk through enforceable contracts

Day one: Wednesday 20th August 2008

8:30 **Conference registration**

8:50 **Welcome and opening remarks from the Chair**
Ian Briggs, Partner, Minter Ellison co-Chairing with:
Stephen Pyman, Partner, Holding Redlich Lawyers

9:05 **Reflecting on current market dynamics and impacts on industry driven contracts**

Lawyers must ensure that contracts are attuned to changing economic conditions, market forces and business approaches. Demand for better outcomes has led to the development of new contracting methods and innovative approaches, and lawyers more than ever must be focussed on the means of achieving successful outcomes under a contract as opposed to merely matching rights and remedies. Attend this session and find out how economic and legal factors impact modern contracts, and how contracts are becoming as much a device for strengthening relationships as preserving rights.

Ted Williams, Group Counsel, Thiess Pty Limited

9:45 **Your vital case law update**

This two part session will cover a round up of important contract case law, with an opportunity for an open forum with delegate participation at the conclusion of the second session.

- Repudiatory conduct – *Sopov v Kane Constructions Pty Ltd* [2007] VSCA 257
- Exclusions for consequential loss - *Environmental Systems Pty Limited v Peerless Holdings Pty Ltd* [2008] VSCA 26
- Liquidated damages - *State of Tasmania v Leighton Contractors Pty Ltd* [2005] TASSC 133
- Tortious breach of duty - *Eden Construction Pty Ltd v New South Wales (No 2)* 9 May 2007 [2007] FCA 689
- Negotiating in good faith - *Jobern Pty Ltd v BreakFree Resorts (Victoria) Pty Limited* [2007] FCA 1066;
Laing O'Rourke (BMC) Pty Ltd v Transport Infrastructure Development Corp [2007] NSWSC 723
- Current issues

Jeffrey Goldberger, Special Counsel,
Blake Dawson

Includes morning tea break 10.30 - 11.00

11:30 **Minimising your clients' exposure through indemnities and exclusions**

- Examining courts' interpretation of indemnity and exclusion clauses
- Common law damages and indemnities
- Drafting an indemnity clause in relation to consequential loss
- Avoiding pitfalls and spotting weak points
- A review of recent cases including -
 - *Environmental Systems Pty Limited v Peerless Holdings Pty Ltd* [2008] VSCA 26
 - *BI (Contracting) Pty Limited v AW Baulderstone Holdings Pty Limited* [2007] NSWCA 173

Michael Rochester, General Counsel and Company Secretary, Sedgman Limited

12:15 **Mastering the technicalities of liability apportionment**

- Operation of the proportionate liability regime under the *Civil Liability Act* 2003 (Qld)
- Chapter 2 Part 2 - the scope for economic loss or damage to property arising from a breach of a duty of care and through misleading and deceptive conduct
- Breaches of contractual duty concurrent with tortious duty of care
- Exclusion of proportionate liability
- Considering joint and several liability and contribution
- Factors taken into account when apportioning liability
- Exclusion for fraud and intentional wrongdoing *Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd* [2007] FCA 1216
- *Atkins v Interprac Financial Planning Pty Ltd & Anor* [2007] VSC 445
- Contemplating the legitimacy of choice of law clauses
- Practical considerations – risk allocation in contracts and drafting alerts

David Rodighiero, Partner Construction & Engineering,
Carter Newell

1:00 **Networking lunch for speakers and delegates**

2:00 **Protecting your client's most important corporate asset - intellectual property**

- Differing species of intellectual property – the pros and cons of each
- Identifying IP rights – how do they develop during the life of a contract?
- The erroneous insistence on IP assignment in development contracts
- The IP indemnity clause - what is fair?
- Troubleshooting - when things go wrong how can Alternative Dispute Resolution (ADR) help?

Dr Adrian McCullagh, Adjunct Professor,
Telecommunications & Secure E-Business Law
Information Security Institute, Queensland University of Technology

Case law intensive forum

2:45	<p>Termination of construction contracts: legal and practical issues update focussing on the role of good faith in termination</p> <ul style="list-style-type: none"> • <i>Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited</i> [2007] HCA 61 • <i>Kellogg Brown & Root Pty Ltd v Australian Aerospace Ltd</i> [2007] VSC 200 • <i>Jobern Pty Ltd v BreakFree Resorts (Victoria) Pty Ltd (2008) Aust Contract R 90-269</i>; [2007] FCA 1066 • Review of the principles of termination at common law • Is there an implied duty of good faith when terminating a contract? • Does a duty of good faith apply to termination for convenience clauses? <p>Gregory Richards, Senior Associate, Minter Ellison</p>	<ul style="list-style-type: none"> - what are they - how do they work – judicial interpretations - why use them - ramifications and commercial considerations • Domestic and international jurisdictions – points of difference and preference affecting choices • <i>Fluor Australia Pty Ltd v ASC Engineering Pty Limited</i> [2007] VSC 262 • Investigating ADR clauses - what are they and how do they work? • Using arbitration clauses in <ul style="list-style-type: none"> - Domestic contracts – interstate trade and commerce issues - International contracts: Australia, China, United States – conventions and treaties <p>Michael Owens, Partner, Gadens Lawyers</p>
3:30	<p>Afternoon tea</p>	4:50
4:00	<p>Strategic choice of law, jurisdiction and alternative dispute resolution – current trends and future directions</p> <ul style="list-style-type: none"> • Examining law and jurisdiction clauses 	5:00
		<p>Closing remarks from the Chair</p> <p>Close of day one</p>

Day two: Thursday 21st August 2008

8:30	<p>Conference registration</p>	9:50
8:50	<p>Opening remarks from the Chair</p>	<p>Sliding doors – preserving and transferring rights by assignment, novation and subcontracting</p> <ul style="list-style-type: none"> • Distinguishing between legal and equitable assignment • Assessing regulatory provisions applicable to class of contract and compliance • Identifying which terms can be the subject of assignment and which cannot be assigned – preserving the obligations of original parties and exceptions to the rule • Observing the nemo dat rule • The rule against assignment of personal rights • <i>Parmalat Australia Ltd and Ors v Norco Co-operative Ltd</i> [2006] QCA 118 • Comparing assignment with novation – commercial advantages and disadvantages; consents and parties to each arrangement; consequences • Subcontracting: following the rights, obligations and liabilities under the head contract • Statutory requirements for subcontracts • Effects on financial, equitable and profit share arrangements • Stamp duty and GST implications • Australian case law since <i>Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd</i> [1994] 1 AC 85 <p>Andrew Crowe, Senior Counsel, Inns Quay Chambers</p>
9:00	<p>Complying with the <i>Property Agents & Motor Dealers Act 2000 (Qld) (PAMDA)</i></p> <ul style="list-style-type: none"> • Contracts regulated by PAMDA • The warning statement - contents, format, placement and use • Disclosure statements – contents and use • <i>Body Corporate and Community Management Act 1997 (BCCM)</i> • Adding clauses, conditions, annexures or attachments to pre-printed contracts or other documents • Who can provide advice about a contract, the document or any details that are filled in • A timeline for compliant procedures for the different categories of contracts • Terminating contracts governed by PAMDA • Penalties • Current law <p>Matthew Derrick, Partner, Deacons</p>	

- 10:40 **Morning tea**
- 11:10 **Implementing viable contracts under *Building and Construction Industry Payments Act 2004 (BCIPA)***
- Does the BCIPA govern your contract – contemplating the scope of written and oral, building and construction work, supply of related goods and services?
 - Negotiations and pre-contract exchanges – how and to what extent can these bind the parties
 - What parties are bound by the BCIPA
 - Understanding the interpretation of “progress claim” under the BCIPA
 - Variation claims: delay claims and prolongation claims
 - Consequential losses arising from disruption to work
 - Building and Other Legislation Amendment Act 2008. Review of *Altys Multi-Services Pty Ltd v. Grandview Modular Building Systems P/L* [2008] QSC 26
 - Can any rights and obligations under the BCIPA and related legislation be minimised by the bars, payment preconditions or limiting the discretion of the Superintendent?
 - Recent case studies, including
 - *Intero Hospitality Projects P/L v. Empire Interior (Australia) P/L & Anor* [2008] QCA 83
 - *Bucklands Convalescent Hospital v Taylor Projects Group* [2007] NSWSC 1514
 - *Hervey Bay (JV) Pty Ltd v Civil Mining and Construction Pty Ltd & Ors* [2008] QSC 58
- Allison Radcliffe, Senior Associate, Holding Redlich Lawyers**
- 12:00 **Aligning the management, IT and the practitioner perspectives in online contracts**
- Scrutinising formation of electronic contracts
 - Why your web designer needs to work closely with your lawyer – lessons from recent cases
 - Maximising your ability to enforce an electronic contract – electronic document management and evidence laws
 - Security and privacy issues - proposals to introduce data breach notification laws
 - UNICTRAL Convention on the Use of Electronic Communications in International Contracts
- Karl Scott, Partner, Gadens Lawyers**
- 12:50 **Networking lunch for speakers and delegates**
- 1:50 **Getting the best out of alliance contracting for your client**
- Identifying the alliance contract process
 - Understanding the *raison d’être*
 - Overviews of the legal and commercial fundamentals
 - Examining other important features of the alliance contract relationship
 - Positive teaming with the finance provider
 - Governing an alliance
 - A comparative examination of alliances in context of the alternatives
 - Vital implications for legal advisors
- Arch Fletcher, Partner, Clayton Utz**
- 2:40 **Reducing the impact of risk exposure during project life cycle**
- Risk allocation during negotiations - when is the best time to agree?
 - Due diligence – impact on risk allocation and effective risk transfer
 - Minimising the risk of contractual disputes arising
 - Developing a feasible communications plan
 - Damage control -
 - Recognising the status of a struggling project
 - Identifying appropriate stakeholders for communications, involvement, planning and implementation
 - Assessment and planning for recovery of project
 - Limitations of liability
 - Risk management frameworks for goods procurement
- Joanna Jenkins, Partner, Blake Dawson**
- 3:30 **Afternoon tea**
- 4:00 **Running an effective procurement process**
- Understanding the procurement process
 - Being aware of tender terminology
 - The process contract
 - Implied terms and acting in good faith
 - Managing legal risks
 - The procurement framework
 - Preparing the RFP
 - Documentation supporting the tender process
 - Maintaining flexibility
 - Engaging with suppliers
 - Reviewing responses
 - Contract finalisation
- Kirsten Bowe, Senior Associate, Mallesons Stephen Jaques**
- 5:00 **Closing remarks from the Chair**
- 5:10 **Close of conference**

Day three workshops: Friday 22nd August 2008

8:30 Workshop registration

9:00am - 12:30pm

Workshop A

Driving successful procurement for your organisation

In seeking a foolproof way to systemise the tender process managers are in danger of doubling up on issues unnecessarily as well as permitting loopholes to creep into what may otherwise appear to be a coherent system.

This workshop takes delegates step-by-step through a tender management process that will give them greater confidence in ensuring their projects are not getting lost in the system.

Key learnings from this workshop include:

- Understanding the procurement process
- Effectively evaluating tenders
- Multi-attribute decision analysis
- The process contract
- Implied terms and acting in good faith
- Avoiding the pitfalls of tendering
- Disclosure
- Developing compliance procedures
- The procurement framework
- Documentation supporting the tender process
- Contract finalisation
- Freedom of information – what can a tenderer access?
- Complaints and whistleblowers

By the end of the workshop, monitoring tender compliance and progress will be simplified and delegates will be apprised of how to incorporate a compliant tender process and evaluation method into their workplace.

Tracey Moore, Special Counsel, McCullough Robertson

1:00pm Workshop B registration

1:30pm - 5.00pm

Workshop B

Drafting essential clauses – indemnities, exclusions and liquidated damages provisions

This workshop offers both in-house and private practice lawyers as well as commercial and contract managers up to the minute and comprehensive advice on latest techniques and practice in the drafting of these classes of contractual clauses.

Plain English drafting techniques are a skill set that requires updating as often as new legal developments occur. While some lawyers unwittingly allow their techniques to go rusty, others lack exposure to changes in the law that require a new approach to drafting.

Key learnings from this workshop include:

- Understanding the mechanics of these clauses
- Working with your client to elicit all relevant information and providing useful advice
- Drafting commercially acceptable and legally effective indemnity, exclusion and liquidated damages clauses

In this workshop contract drafting skills will receive a complete overhaul. Delegates will leave with fresh information and well-honed skills – more confident in their drafting ability and armed with the knowledge of exactly how to achieve accurate and effective contractual clauses.

Jay Leary, Partner, Freehills

12:30-1:30pm
Networking lunch
for delegates
attending both
workshops

Future events:

4th Annual Wills, Estate Planning & Agreement Management Conference

16 - 17 July

2nd Annual Industrial Relations Conference

29 - 30 July

Legal EA & PA Conference

20 - 21 August

Estate Planning Tool Kit

22 October & 12 November

Visit www.lexisnexis.com.au/pd for brochures



Priority registration form

5th Annual

Contract Law Masterclass

**4 easy ways
to register**

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

Please complete sections A, B, C, D

Conference code: PD9008 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

3rd Delegate FREE!

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

- Banking & finance
- Commercial litigation & ADR
- Corporate and commercial law
- Criminal law
- Energy and resources
- Environment and planning
- Family law
- Insolvency & restructuring
- Insurance and risk
- Property
- Wills & estates
- Workplace relations, employment & safety
- Other: _____

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

CONFERENCE RESOURCES

- I am unable to attend but would like to purchase a set of conference papers for the 5th Annual Contract Law Masterclass \$300.00 + GST = \$330.00

TEAM DISCOUNTS*

- Register a team of 2 for the 5th 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

C Event Pricing (please tick your selection)

Early Bird Special* (register & pay before 9 July 2008)

<input type="checkbox"/> Two day masterclass + 2 workshops	\$2090.91 + GST = \$2300.00
<input type="checkbox"/> Two day masterclass + 1 workshop#	\$1850.00 + GST = \$2035.00
<input type="checkbox"/> Two day masterclass only	\$1600.00 + GST = \$1760.00
<input type="checkbox"/> One day masterclass# + 2 workshops	\$1400.00 + GST = \$1540.00
<input type="checkbox"/> One day masterclass# + 1 workshop#	\$1200.00 + GST = \$1320.00
<input type="checkbox"/> One day masterclass only#	\$850.00 + GST = \$935.00

Standard Price (register & pay after 9 July 2008)

<input type="checkbox"/> Two day masterclass + 2 workshops	\$2300.00 + GST = \$2530.00
<input type="checkbox"/> Two day masterclass + 1 workshop#	\$2050.00 + GST = \$2255.00
<input type="checkbox"/> Two day masterclass only	\$1800.00 + GST = \$1980.00
<input type="checkbox"/> One day masterclass# + 2 workshops	\$1575.00 + GST = \$1732.50
<input type="checkbox"/> One day masterclass# + 1 workshop#	\$1350.00 + GST = \$1485.00
<input type="checkbox"/> One day masterclass only#	\$950.00 + GST = \$1045.00
<input type="checkbox"/> Both workshops	\$863.64 + GST = \$950.00
<input type="checkbox"/> Workshop only#	\$500.00 + GST = \$550.00

I would like to attend Day1 Day 2 Workshop A Workshop B

D Payment details Payment is due upon registration

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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 23 July 2008. If we receive written notification between 24 July 2008 and 6 August 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 6 August 2008. You may nominate a replacement, however no refund will be issued.

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