

A TEN POINT MASTERCLASS – GET YOUR 10 CPD UNITS

Drafting Effective Commercial Contracts: One Day 10 Point Masterclass

Wednesday 16 March 2022
Online

- Drafting Effective Memoranda of Understanding
- Promises, Promises: Drafting Watertight Warranties
- Contractual Risk Allocation Tools: Drafting Guarantees and Indemnities
- Joint Venture Agreements: Documenting the Key Essentials
- Drafting Restraint Clauses for Maximum Effect
- Drafting Effective Early Termination Clauses

Earn 10 CPD units including the compulsory subjects – attend this one-day live online Masterclass and we'll supply 4 free on demand video webinars – 3 covering each of the compulsory subjects plus one other substantive law program to view at your leisure



Leaders in Online CPD for Lawyers and Accountants

9.00 – 9.05am	Introduction and welcome
9.05 – 9.55am	<p>Session 1: The Start of a Beautiful Relationship: Drafting Effective Memoranda of Understanding</p> <p>The start of a commercial relationship often involves the creation of preliminary documents setting out the intentions of the parties and other matters of mutual interest. Often called MOU's, Letters of Intent or Heads of Agreement, the document has the flexibility to be what is needed at the time. In this session you will explore the drafting options for these types of documents and the importance of both document form and substance on the relationships created and the enforceability of the agreement:</p> <ul style="list-style-type: none"> • Recording preliminary negotiations and arrangements – what type of document is required, if any? • Benefits and disadvantages of having an MOU • Determining MOU purpose: <ul style="list-style-type: none"> ○ Framework for the future ○ Record of key terms ○ Record of commitment of future activity and/or formal contract • How much is too much – what should a pre-contractual agreement say? • Key terms for inclusion – exclusivity, confidentiality, next steps, respective responsibilities, IP creation, timeframe • Is the MOU to be binding in full or in part? The importance of clear drafting of intention • Providing disclaimers to minimise risk, such as non-reliance <p><i>Speaker: Lynda Reid, Partner, Mills Oakley, Sydney, NSW</i></p>
9.55 – 10.05am	Questions and Discussion
10.05 – 10.55am	<p>Session 2: Promises Promises: Drafting Watertight Warranties</p> <p>Warranties provide greater certainty for both vendor and purchaser in contracts for the provision of good, services or property. To achieve that certainty and meet the expectation of the parties, precision in drafting is essential. This session provides practitioners with a step-by-step guide to drafting watertight warranties and avoiding costly mistakes, including:</p> <ul style="list-style-type: none"> • Key features of a warranty • When is a warranty essential? • At what point does a warranty become effective and at what point does it end? • The relationship between disclosure and a warranty • Remedies for breach of a warranty • Drafting tips including: <ul style="list-style-type: none"> ○ Time-specific warranties ○ General limitations and exclusions ○ Liability limitations ○ Calculating loss and damage ○ Remedies • Consideration of relevant implied and statutory warranties and required compliance • Making sure your client understands the warranties – advice and review • Cases and examples <p><i>Speaker: Shah Rusiti, Partner, Teece Hodgson & Ward Solicitors, Sydney</i></p>
10.55 – 11.05am	Questions and Discussion
11.05 – 11.25am	Morning Break

<p>11.25am – 12.15pm</p>	<p>Session 3: Contractual Risk Allocation Tools: Drafting Guarantees and Indemnities</p> <p>Accepting liability, even of a limited nature, under a contract brings with it potentially onerous consequences and, as a result, precise and thorough drafting of such clauses is essential. This session provides a deep-dive into the drafting of guarantees and indemnities and associated guidance practitioners need to provide their clients, including:</p> <ul style="list-style-type: none"> • Guarantees and indemnities as risk allocation tools • The characteristics of a guarantee and appropriate circumstances to provide one • Essential features of a guarantee, including: <ul style="list-style-type: none"> ○ Default trigger and process ○ Guarantor’s obligations • Legal requirements for enforceable guarantees • Lessons from litigation • When to include an indemnity in a contract – assessing potential loss or damage and risk allocation • Key indemnity drafting considerations including: <ul style="list-style-type: none"> ○ Types of indemnities ○ Nature and extent of potential loss ○ Mitigation obligations ○ The availability of common law remedies ○ The impact of insurance • Negotiating indemnities and relationship management • Relevant cases and examples <p><i>Speaker: Mark Kenney, Partner, Carter Newell Lawyers, Brisbane</i></p>
<p>12.15 – 12.25pm</p>	<p>Questions and Discussion</p>
<p>12.25pm – 1.15pm</p>	<p>Lunch Break</p>
<p>1.15pm – 2.05pm</p>	<p>Session 4: Joint Venture Agreements: Documenting the Key Essentials</p> <p>The best intentions can go awry when parties to a joint venture have not documented their arrangements accurately or comprehensively. This session will provide a roadmap to key considerations in drafting joint venture agreements, including:</p> <ul style="list-style-type: none"> • Determining structure, form and content of arrangement • Documenting objectives and intentions • Relevant conditions precedent • Drafting tips and techniques for setting out: <ul style="list-style-type: none"> ○ Contributions ○ Equity and other benefits ○ Valuations and commercialisation ○ Confidentiality and disclosure ○ Roles, responsibilities and liabilities ○ Ownership of assets including intellectual property rights ○ Dispute resolution ○ Termination and exit strategies • Lessons from cases <p><i>Speaker: Gerry Cawson, Director, Kain Lawyers, Adelaide</i></p>
<p>2.05 – 2.15pm</p>	<p>Questions and Discussion</p>

2.15pm – 3.05pm	<p>Session 5: A Shot Across the Bow: Drafting Restraint Clauses for Maximum Effect</p> <p>Restraints on the employment of key personnel following departure is a common feature of many employment or sale of business contracts. However, the courts have increasingly limited the scope and reach of these clauses. This session will explore the current legal position on restraint clauses and provide a guide to effective drafting, including:</p> <ul style="list-style-type: none"> • Why have a restraint clause? When will a restraint clause be an essential contract term? • What personnel are restraint clauses appropriate for? • Typical limits in restraint clauses, from geographical to work activities • Strategies for drafting restraint clauses – purpose, validity and effect • Are cascading provisions effective? • When will a restraint clause be considered to have gone too far? Validity and public policy issues • Examples of restraint clauses and lessons from the courts including <i>AECI Australia Pty Ltd v Convey</i> [2020] QSC 207 • What does a reasonable restraint look like? A drafting guide and examples • Other options for restraining personnel following termination – are they more effective or more likely to succeed? <p><i>Speaker: Jennifer Wyborn, Partner, Clayton Utz, Canberra</i></p>
3.05 – 3.15pm	Questions and Discussion
1.15 – 3.35pm	Afternoon Break
3.35 – 4.25pm	<p>Session 6: Tears Before Bedtime: Drafting Effective Early Termination Clauses</p> <p>All contracts come to an end eventually, often by completion but also by early termination. This session will explore options for drafting effective early termination clauses in contracts, including:</p> <ul style="list-style-type: none"> • In what circumstances should an early termination clause be used in a contract? • Considering alternatives to early termination to keep the contract on foot, such as ADR • Anticipating the circumstances and consequences of early termination on: <ul style="list-style-type: none"> ○ The parties ○ Stakeholders ○ Third parties • Termination for convenience – notice periods and other consequences • Termination with cause – what will allow a party to terminate? • Is rectification possible? • Factoring in common law termination • Case examples for assisting drafting <p><i>Speaker: Dr Allison Stanfield, Solicitor Director, Lantern Legal, Sydney</i></p>
4.25 – 4.35pm	Questions and Discussion
4.35pm	Masterclass Close

In addition, all delegates will receive the following on demand video webinars.

These webinars are being recorded in early 2022 and will be provided online by mid February 2022 for you to view at your leisure by 31.3.22 to make up the 10 CPD units.

<p>Substantive law - 1 unit</p>	<p>Sale of Business Agreements: Documenting the Essentials</p> <p>There are a myriad of considerations to be taken into account when preparing a sale of business agreement for your client. Although much will depend on the industry and the nature of the business, there are a number of key issues common to all business sales that every practitioner needs to understand and manage. This session provides a guide to drafting business sale documents and their key terms, including:</p> <ul style="list-style-type: none"> • Structuring the deal: an overview of sale of business, sale of assets or sale of shares agreements • Legislation governing small business sale contracts • The preliminaries: using non-disclosure agreements and letters of intent in the negotiation and pre-sale phase • Documenting payment terms • Asset identification and transfer requirements, including intellectual property • Identification of third party licences, leases, permits and approvals required: landlord, mortgagee/security holder, government • Risk management: drafting warranties, indemnities, limitation of liability and restraint of trade clauses to minimise your client's obligations • Identification and treatment of warranties and liabilities – the use of disclosure letters • Employee liabilities and transfers arrangements • What happens if the purchaser defaults? Effective management of claims and disputes
<p>Professional Skills – 1 unit</p>	<p>Zooming Into the Digital Age: A Guide for Lawyers</p> <p>The pandemic has seen a massive cultural shift in the way we practice law. Like it or loathe it, the digital age is well and truly upon us. This session looks at practical ways to improve your online presence and the digital skills you need to master, including:</p> <ul style="list-style-type: none"> • Technology preparation – don't be caught short • Presentation skills to maximise your online presence • Key tips and traps when conducting internal and external meetings online • Preparing for a virtual hearing – the key essentials and protocols • Handling privacy, confidentiality, interpreters, inter-party communications • Maintaining visibility and relationships with clients and colleagues in a virtual setting



<p>Ethics - 1 unit</p>	<p>Meeting Ethical Standards in Written Communication</p> <p>This session examines ethics obligations for practitioners in written communication. Whether by letter, email or other medium they each present ethical risk. This session looks at the main issues to remain compliant, including:</p> <ul style="list-style-type: none"> • Solicitor conduct rules and ethical communication • Civility professionalism and courtesy in written communication • Duty to establish client's case factually • Writing clearly and concisely - when lack of clarity represents an ethics risk • Letters of advice - the ethical parameters • Communicating to third parties • Inappropriate language and phraseology in written communication • When communication breaches can amount to professional misconduct • Case study - examples of do's and don'ts in written communication
<p>Practice Management & Business Skills - 1 unit</p>	<p>Incorporating Mindfulness into Legal Practice</p> <p>Practitioners may have razor-sharp insights into client needs, but may not always be the best at recognising their own personal needs. This practical session examines how lawyers can stay focussed and boost performance, by prioritising their own mental health and wellbeing through mindfulness. It includes:</p> <ul style="list-style-type: none"> • Stress and pressures in legal practice - navigating the realities of being a lawyer • Understanding what mindfulness is and how it can assist professionals in practice • Mindfulness in the workday - some practical strategies for incorporating it into practice • Using mindfulness to aid decision making, difficult negotiations, or urgent client needs • Mindfulness and return to work anxiety post COVID-19 • The role of mindfulness in overcoming digital distractions



GENERAL INFORMATION

Masterclass Registration Fee

The registration fee includes attendance at the live online masterclass and 4 recorded webinars.

Masterclass Papers

Access to the papers and PowerPoints will be available online to all delegates in the lead-up to the masterclass (as they become available). The materials will be available in .pdf format for easy download to your local computer or portable device. Free WIFI is available in the masterclass room.

CPD – Lawyers

10 CPD units – 6 substantive law units from attending the Masterclass PLUS we will provide you with 4 free on demand video webinars – 3 covering each of the compulsory subjects (Ethics, Practice Management & Business Skills and Professional Skills) plus one other substantive law program - for you to view at your leisure prior to 31 March 2022. The recorded webinars will be made available for viewing by mid February 2022.

CPD Certificate

All delegates will receive a CPD certificate confirming registration and the CPD units applicable



Conference Terms & Conditions

1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - b. "you" means the person who has registered to attend or the person or persons who attend(s) the conference (if different from the person registered)
 - c. "Plan" means the COVID-Safe Plan for the conference described below.
 - d. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - e. "live conference" means a conference other than a recorded conference.
 - f. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - g. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - h. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

COVID Safe Plan – face to face conferences

What happens if you are diagnosed with COVID-19 or you are otherwise unwell

5. If the conference is held face to face, TEN will conduct the conference in accordance with a COVID Safe Plan. You agree to comply with that Plan at the conference. If you fail to comply with the Plan, you agree to leave the conference immediately at the request of a TEN staff member or venue staff member. If you leave under these circumstances, you will not be entitled to a refund of any part of the registration fee. TEN will not be responsible for any travel or accommodation costs or fees incurred by you in relation to the conference or as a result of you leaving the conference early.
6. The COVID safe plan will prevent your attendance at a face to face conference if you are diagnosed with COVID-19 prior to or during the conference and the infection has not been cleared by two negative PCR tests, if you have a fever (ie raised temperature) at the time of registration or if you have a respiratory illness (including a cold or cough) at the start of or during the conference. In these circumstances:
 - a. You will be entitled to attend the live online version of the conference and/or recorded online version if that is offered; or
 - b. If not, you will be entitled to a full refund of the registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.



7. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
8. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
9. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Copyright

10. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
11. You are entitled to use those materials for private study and research only.
12. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
13. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

14. TEN reserves the right to cancel a conference for any reason.
15. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

16. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

17. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.



Registration Form

REGISTRATION IS SIMPLE: complete the form below and fax or post your registration to us or register online.
Television Education Network Pty Ltd (ABN 19 052 319 365)
Mail: GPO Box 61, Melbourne, Victoria 3001 Phone (03) 8601 7700
Enquiries: Contact our Event Co-Ordinator, Hayley Williams-Cameron (hayley@tved.net.au) [direct: (03) 8601 7730]
Register online: www.tved.net.au – go to Masterclasses

Please register me for Drafting Effective Commercial Contracts: One Day 10 Point Masterclass Online to be held online on Wednesday 16 March 2022. [code: SXCMAR22]

Delegates will receive 4 free on demand video webinars - 3 covering each of the CPD compulsory subjects + 1 additional substantive law unit to view at your leisure. Delegates will earn their 10 CPD units for the CPD year ending 31.3.22.

- Early Bird Registration – for registrations paid on or before 28 February 2022 - \$990 (\$900 + \$90 GST)
- Full Price Registration – \$1100 (\$1000 + \$100 GST)

Can't Attend – Purchase the Masterclass Papers

The papers from this masterclass will be available in electronic form only approximately 1 week after the masterclass has been held. You can pre-order the papers now online via our website at www.tved.net.au [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) [Code: PSXCMAR22].

NAME & ADDRESS DETAILS

Mr/Mrs/Miss/Ms (circle appropriate) Name:.....

Position in Company/Firm:.....

Company/Firm:.....

Postal Address:

..... State..... Postcode:.....

Telephone: {.....} Mobile: {.....}.....

Email:

PAYMENT DETAILS (Note: This form will be a Tax Invoice for GST when you make payment)

I enclose a cheque for \$..... payable to: Television Education Network Pty Ltd or
Please debit my: Amex Mastercard Visa

Expiry Date/.....

Name on Card: _____ Signature: _____

