

A TEN POINT MASTERCLASS – GET YOUR 10 CPD UNITS

The Lifecycle of Commercial Relationships: One Day 10 Point Masterclass

Wednesday 22nd February 2023
Online

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 & Accountants

Morning Theme: Drafting to Manage Risk in Contractual Documents

9.00 – 9.05am	Introduction and welcome Morning Chair: David Townsend, Barrister, Wentworth Chambers, Sydney, NSW
9.05 – 9.55am	Session 1: Be Careful What You Wish For: A Guide for Drafting Pre-Contractual Documents They might be called MOUs, letters of intent or heads of agreement, but it's the intention and content that matter when drafting preliminary documents rather than the title. This session will provide a comprehensive guide to drafting documents intended to form the basis of a further agreement, including: <ul style="list-style-type: none">• Assessing and defining purpose and intention - why it matters• How comprehensive should the document be? Is a non-disclosure agreement a viable alternative?• Considerations for establishing and recording:<ul style="list-style-type: none">○ a framework for ongoing negotiations○ key terms○ commitments and obligations○ fundamental arrangements• When will an MOU be binding? Cases and examples for appropriate language and content• Factoring financial consequences into the timetable• Should the arrangement be made "subject to contract"?• Strategies for drafting for flexibility and options going forward• Drafting appropriate termination and dispute resolution processes Speaker: Benjamin Zipser, Barrister, 5th Floor Selborne Chambers, Sydney, NSW
9.55 – 10.05am	Questions and Discussion



10.05 – 10.55am

Session 2: Contractual Risk Allocation Tools: Drafting Guarantees and Indemnities

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:

- Guarantees and indemnities as risk allocation tools
- The characteristics of a guarantee and appropriate circumstances to provide one
- Essential features of a guarantee, including:
 - 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:
 - 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

Speaker: Mark Kenney, Partner, Carter Newell Lawyers, Brisbane, Qld

10.55 – 11.05am

Questions and Discussion

11.05 – 11.25am

Morning Break



11.25am –
12.15pm

Session 3: Warranties: A Contract Safety Net in Commercial Agreements

A warranty provides a degree of certainty to the contracting party to whom it is made, but the way in which it is drafted will have considerable bearing on the outcome of its breach. This session will provide practitioners with a deep dive into why precise drafting of warranties is essential and how to avoid costly drafting mistakes, including:

- Is there a difference between a warranty and a representation? Can a warranty ever be a representation?
- Warranties as a risk allocation tool
- When is a warranty required? Examples for various sale agreements discussed
- The time-based nature of a warranty – at what point is it effective?
- What are the consequences of a breach of warranty?
- What does a warranty need to contain?
- Drafting for consequences for breach of warranty:
 - limiting or excluding damages
 - direct and consequential loss issues
- Implied and statutory warranties
- Examples of warranties and case studies

Speaker: Lynda Reid, Partner, Mills Oakley, Sydney, NSW

12.15 – 12.25pm

Questions and Discussion

12.25 – 1.10pm

Lunch Break



Afternoon Theme: Commercial Relationships and the End of the Line

1.10 – 1.15pm	<p>Introduction and welcome Afternoon Chair: Alicia Hill, Principal, MST Lawyers, Melbourne, Vic</p>
1.10pm – 2.05pm	<p>Session 4: Counting the Costs of Damages for Breach of Commercial Agreements</p> <p>Breach of commercial agreements present many potential economic claims against the defaulting part. This session focuses on what is and is not claimable, including recent case law developments. It contains:</p> <ul style="list-style-type: none"> • Revisiting Hadley v Baxendale – what refinements have taken place? • Claims for termination of services • Recovery for loss of bargain and profits • What expenses can be recovered for reliance on the contract? • Containing damages for pure economic loss • Claiming damages for ‘loss of a chance’: is this possible? • Duty to mitigate loss in commercial contract breach • Case update <p>Speaker: Brenda Tronson, Barrister, Level 22 Chambers, Sydney, NSW</p>
2.05 – 2.15pm	<p>Questions and Discussion</p>
2.15pm – 3.05pm	<p>Session 5: 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>Speaker: Dr Allison Stanfield, Solicitor Director, Lantern Legal, Sydney, NSW</p>
3.05 – 3.15pm	<p>Questions and Discussion</p>
3.15 – 3.35pm	<p>Afternoon Break</p>

3.35 – 4.25pm

Session 6: All Over Red Rover? Drafting Watertight Settlements and Releases

The hopes and dreams of many litigants fall in a heap with settlements at the court door. Often agreed in haste, practitioners on all sides need to ensure cooler heads prevail when it comes to drafting appropriate settlement documents. This session provides a step-by-step guide to the content and form of settlement agreements, including:

- Agreement or deed?
- Drafting for multiple parties
- Why recital details matter
- Key operative terms considered and explained
- Crafting the scope of the release and the consequences of getting it wrong
- Detailing consideration, payment and similar arrangements
- Incorporating financial and tax implications and expenses
- Choosing relevant boilerplate clauses
- Who is authorised to execute the agreement?

Speaker: Graydon Dowd, Partner, Hall & Wilcox, Melbourne, Vic

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 will be provided online by end February 2023 for you to view at your leisure by 31.3.23 to make up the 10 CPD units.

<p>Substantive law – 1 unit</p>	<p>Unconscionability and Commercial Agreements</p> <p>Recent case law has broadened the scope of statutory unconscionable conduct. This session looks at the main issues, including:</p> <ul style="list-style-type: none"> • Understanding unconscionability and when it applies • Broadening the scope of statutory unconscionability – case law update • Relationship of special disadvantage or vulnerability not required • Why being misleading may be enough to create liability • Implications for business and what is necessary to remain compliant • Case report – ACCC v Quantum Housing Group P/L [2021] FCAFC 40
<p>Professional Skills – 1 unit</p>	<p>Drafting to Avoid Unfair Contract Terms</p> <p>The unfair contract term provisions under the Australian Consumer Law raise significant issues for all businesses that utilise 'standard form contracts'. Forthcoming changes to the laws will significantly increase the risk associated with these laws, as it will soon be illegal to include 'unfair terms' in such contracts, exposing businesses to the risk of significant financial penalties.</p> <p>This session will provide a summary of the new laws, and discuss how careful drafting can effectively manage the associated risks. Issues to be covered include:</p> <ul style="list-style-type: none"> • Undertaking an effective 'unfair term' review • Documenting 'reasonable basis' for potentially unfair terms • Understanding the ACCC's views as to what is 'unfair' • Effective negotiation strategies to avoid the application of UCT laws • Understanding when an onerous clause can still be 'fair' • Techniques for drafting enforceable, once-sided clauses • Use of mutuality and interpretation clauses to mitigate risk



<p>Ethics – 1 unit</p>	<p>Disciplinary and Professional Complaints: Walking the Ethical Tightrope</p> <p>Despite the best of intentions, no lawyer is immune from a complaint or disciplinary action. A poorly handled complaint can have a potentially devastating impact on your reputation and your ability to practice. This practical session examines how lawyers can avoid, manage and respond to complaints, including:</p> <ul style="list-style-type: none"> • Complaint receiving bodies – who are they? What is the process? • Responding to the initial complaint – the right way and wrong way when dealing with the regulator • Best practice to resolve matters efficiently • Disciplinary proceedings – case examples and approaches to take • Disclosure obligations, including offences and show cause events
<p>Practice Management & Business Skills – 1 unit</p>	<p>Getting Noticed - Marketing Techniques for Lawyers</p> <p>New clients and files don't just magically happen. While we all wish we were natural-born rainmakers, the reality is it takes a combination of hard work, clever marketing and the development of effective networks. This session covers:</p> <ul style="list-style-type: none"> • Gaining clarity on the type of practice you have – the key to marketing success • The importance of marketing that is measurable and tracking the results • Business development starts with low hanging fruit - your existing clients • Developing referral sources – active marketing for referrals • Developing your connections to entities with potential clients – getting out there • Devising a social media marketing strategy • Incorporating marketing in your business plan • Case study – your firm's online presence: infrastructure and content



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.

CPD – Lawyers

10 CPD units – 6 substantive law units for 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 2023. The recorded webinars will be made available for viewing by end February 2023.

Please check your CPD rules to ensure that you are able to claim 4 CPD units from viewing recorded webinars. Most states have allowance for claiming CPD for viewing recorded webinars. [WA practitioners – you cannot claim our recorded webinars as we are unable to verify that you have viewed them].

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 trading as TEN The Education Network
 - 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. "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).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - g. "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.
5. 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.
6. 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.
7. 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

8. 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.
9. You are entitled to use those materials for private study and research only.
10. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
11. You are entitled to watch a conference for private study and research only.



Conference cancellation by TEN – all conferences

12. TEN reserves the right to cancel a conference for any reason.
13. 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

14. 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

15. 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* trading as **TEN The Education Network** (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 **The Lifecycle of Commercial Relationships: One Day 10 Point Masterclass Online** to be held online on Wednesday 22nd February 2023. [code: SXCFEB23]

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 31.3.23.

- Early Bird Registration** – for registrations paid on or before **3 February 2023** - **\$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: PSXCFEB23).

NAME & ADDRESS DETAILS

Mr/Mrs/Miss/Ms (circle appropriate) Name:
Position in Company/Firm:
Company/Firm:
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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: _____

