

A ONE-DAY ONLINE MASTERCLASS

When the Gloves Come Off in Commercial Disputes

Thursday 29 April 2021
Online

- Drafting Effective Early Termination Clauses
- Safeguarding Against Insolvency in Commercial Relationships
- The Unfair Contract Regime: Unpacking the New Landscape
- Counting the Costs of Damages for Breach of Commercial Agreements
- Drafting a Defence in Commercial Litigation: Strategy and Procedure
- Alternative Dispute Resolution: Maximising the Impact



The professional development specialists

Morning Theme: Drafting Commercial Contracts with the End in Mind

9.00 – 9.05am	<p>Introduction and welcome Chair: <i>Stephanie Lambert, Partner, DLA Piper, Sydney</i></p>
9.05 – 9.55am	<p>Session 1: 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>
9.55 – 10.05am	Questions and Discussion
10.05 – 10.55am	<p>Session 2: Safeguarding Against Insolvency in Commercial Relationships</p> <p>Business relationships are always fraught with risk, and now even more so during times of economic downturn. What protections are available to a supplier of goods or services against the risk of insolvency by a contracting party? This session will examine supply chain risks and how practitioners can assist their clients to minimise their risks of exposure to a contractor's insolvency and voidable preference claims, including:</p> <ul style="list-style-type: none">• Doing the financial due diligence on contracting partners• What needs to be in your company's procurement policies and procedures?• Tender conditions and standard form contracts reviews• Monitoring ongoing financial health of contracting parties – what red flags should you be looking for?• What safeguards can be put into the contract? A discussion of:<ul style="list-style-type: none">○ Default and termination rights○ Step in rights○ Sub-contractors and supply chain monitoring and risk management• Benefits of being a secured creditor – PPSA, retention of title and other options <p><i>Speaker: Nahum Ayliffe, Special Counsel, Russell Kennedy Lawyers, Melbourne</i></p>
10.55 – 11.05am	Questions and Discussion

11.05 – 11.25am	Break
11.25am-12.15pm	<p>Session 3: The Unfair Contract Regime: Unpacking the New Landscape</p> <p>The unfair contracts regime is set for a significant shakeup, with further protections to be provided to small businesses entering into standard form contracts. With strong civil penalties on the horizon, it has never been more important for commercial lawyers and their clients to be across the new landscape. This session covers:</p> <ul style="list-style-type: none">• Unfair contract term regulation and small business - impact on standard form contracts• What is a 'small business'?• Understanding what is an unfair term – the key issues that make it 'unfair'• Navigating the proposed amendments• The impact of a finding that a term is unfair – enforceability and rights• Reviewing standard form contracts to ensure compliance• The impact on unilateral rights in a contract• Where to now for business:<ul style="list-style-type: none">○ Use of standard form contracts including automatic renewal clauses○ Avoiding unenforceable terms○ Risk management checklist when entering new contracts• Case update <p><i>Speaker. Adrian Kuti, Partner, Clayton Utz, Sydney</i></p>
12.15 – 12.25pm	Questions and Discussion
12.25 – 1.10pm	Lunch break



Afternoon Theme: Managing Commercial Disputes

1.10 – 1.15 pm	<p>Introduction and welcome Chair: <i>Mike Fitzpatrick, Solicitor & Notary Public, Clarendene, Sydney</i></p>
1.15 – 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: Caroline Hutchinson, Principal, Coleman Greig Lawyers, Sydney</p>
2.05 - 2.15pm	Questions and Discussion
2.15 – 3.05pm	<p>Session 5: Drafting a Defence in Commercial Litigation: Strategy and Procedure</p> <p>There is a mistaken belief amongst some practitioners that drafting a defence is a simple process. However, practitioners overlook the defence at their peril. A well-drafted defence has the client’s outcome in mind and a clear understanding of the facts and elements required to prove your client’s position. This session looks at how to draft effective defences, including:</p> <ul style="list-style-type: none">• Acting for defendants – understanding the practitioner’s obligation• Understanding the defence content – procedural and ethical obligations• Responding to the allegations• When you should make:<ul style="list-style-type: none">○ Admissions○ Denials○ Non-admissions• When you don’t know should you say that?• Asking for more particulars and seeking documents referred to in claim• Pleading failure to mitigate• Pleading your actions were caused by a third party• Practical evidentiary considerations• Ensuring you have made out a valid defence <p>Speaker: Steven Brown, Chairman, Etienne Lawyers, Sydney</p>
3.05 – 3.15pm	Questions and Discussion
3.15 – 3.35pm	Break

3.35 – 4.25pm

Session 6: Alternative Dispute Resolution: Maximising the Impact

Use of ADR has become almost mainstream now in managing commercial disputes. However, understanding the strategies that go with it may not be so well understood. This session focuses on these strategies and how they are applied, including:

- Starting with the end result in mind – working out what ADR is best for you
- Incorporating an ADR clause in your commercial agreement
- Main ADR categories and when they should be used – benefits and advantages
- Preparing for the ADR – strategy and procedure
- Fairness and natural justice in ADRs
- Using more interventionist mediators – is this a new approach to ADR?

Speaker: Daniel Allman, Senior Associate, Norton Rose Fulbright, Sydney

4.25 – 4.35pm

Questions and Discussion

4.35pm

Conference Close



GENERAL INFORMATION

Masterclass Registration Fee

The registration fee includes online attendance at the masterclass and online access to the conference materials and recordings of all of the sessions following the event.

This masterclass can be booked as 2 separate half day sessions or you can attend for the whole day.

CPD – Lawyers

One day masterclass: 6 units (substantive law)

Either half day masterclass: 3 units (substantive law)

CPD Certificate

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

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the masterclass for a 85% refund. Substitute delegates accepted at any time.

Masterclass Terms

Program subject to change without notice. The information and views presented in the masterclass are not necessarily those of TEN and participants rely on these at their own risk. TEN is not responsible for any **financial or other losses incurred by delegates or for injury or damage to persons or property**. TEN's maximum liability for masterclass cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the masterclass as a result of strikes, natural disasters, and other Acts of God.



Registration 1 of 2

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 Fax (03) 9670 0588 Phone (03) 8601 7730 [direct line]

Enquiries: Contact our Event Coordinator, Hayley Williams-Cameron (hayley@tved.net.au)

Register online: www.tved.net.au – go to Masterclasses

Please register me for When the Gloves Come Off in Commercial Disputes – one-day online Masterclass to be held on Thursday 29 April 2021 [conf code: SXCAPR21]

- Early Bird Registration – for registrations paid on or before Friday 9 April 2021 - \$880 (\$800 + \$80 GST)
 - Full Price Registration – \$990 (\$900 + \$90 GST)
-

Please register me for the morning masterclass – Drafting Commercial Contracts with the End in Mind to be held on the morning of Thursday 29 April 2021 [conf code: SXCAPR21M]

- Early Bird Registration – for registrations paid on or before Friday 9 April 2021 - \$440(\$400 + \$40 GST)
 - Full Price Registration – \$495 (\$450 + \$45 GST)
-

Please register me for the afternoon masterclass – Managing Commercial Disputes to be held on the afternoon of Thursday 29 April 2021 [conf code: SXCAPR21A]

- Early Bird Registration – for registrations paid on or before Friday 9 April 2021 - \$440(\$400 + \$40 GST)
 - Full Price Registration – \$495 (\$450 + \$45 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: PSXCAPR21).



Registration 2 of 2

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:

