

A TEN POINT MASTERCLASS – GET YOUR 10 CPD UNITS

Drafting Effective Commercial Contracts: a one-day Masterclass

Wednesday 19 February 2020
Radisson Hotel & Suites, Sydney

- Drafting Effective Memoranda of Understanding
- Drafting Shareholder Agreements for the Long Haul
- Drafting Sale of Business Contracts – The More Challenging Clauses
- Drafting Warranties, Indemnities and Limitation of Liability Clauses in Supply Agreements
- The Unfair Contract Regime: Don't Get Caught Out
- Formation of Electronic Contracts: Binding the Parties in an Online World
- Offers of Settlement and Settlement Agreements

Earn 10 CPD units including the compulsory subjects – attend this one-day Masterclass and we'll supply 3 free recorded video webinars covering each of the compulsory subjects to view at your leisure



The professional development specialists

Morning Theme: Documenting the Essentials in Business Relationships

9.00 – 9.10am	Introduction and welcome Chair: Carolyn Chudleigh, Partner, HFW Australia, Sydney
9.10 – 10.00am	Session 1: The Start of a Beautiful Relationship: Drafting Effective Memoranda of Understanding <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>Speaker: Stephanie Lambert, Partner, HFW Australia, Sydney</p>
10.00 – 10.10am	Questions and Discussion
10.10 – 11.00am	Session 2: Drafting Shareholder Agreements for the Long Haul <p>Shareholders agreements are drafted at the start of a new relationship, when hopes are high and everyone is on their best behaviour. But what happens when things go wrong or the parties want to end the relationship? You need to look realistically at the arrangement and draft not just for business as usual, but also for when things don't go to plan. This session provides a checklist of matters that need to be considered in drafting a robust and workable shareholders' agreement, including:</p> <ul style="list-style-type: none">• Knowing what the parties are trying to achieve – their goals and aspirations• Optimum ownership structure and corporations law requirements• Shareholder activity outside the new venture – are any limitations or restraints required?• Loans and contributions of capital – managing the contribution, the obligations, repayments, returns and exit by the lender• Managing benefits to shareholders including contracts with the company• Director appointments and voting rights• Meeting requirements and decision-making processes: strategies for balancing good governance with operational flexibility• Effective dispute resolution mechanisms and exit strategies <p>Speaker: Paul McDonald, Barrister, Wentworth Chambers, Sydney</p>
11.00 – 11.10am	Questions and Discussion

11.10 – 11.25am	Networking Break and Morning Tea
11.25am-12.15pm	Session 3: Drafting Sale of Business Contracts – The More Challenging Clauses <p>Getting a sale of business contract right is an essential practitioner skill. It is important both parties know exactly what they are getting on signing. This session looks at drafting essentials for complex clauses, including:</p> <ul style="list-style-type: none">• Obtaining the right information as a drafting aid• Exactly what are you selling – sale of business or the asset structure?• Disclosure and confidentiality obligations – the what, who and where• Payment arrangements – method and timing• Earn outs and deferred payment arrangements• Structuring warranties and indemnities – reflecting the due diligence process• Intellectual property clauses that work• Adjustment clauses – interest and price changes• The non-compete restraint – the question of reasonableness• Case study – Examining the restraint and an example of bespoke drafting <p><i>Speaker: John Nash, Executive Lawyer, Henry William Lawyers, Sydney</i></p>
12.15 – 12.25pm	Questions and Discussion
12.25 – 1.15pm	Session 4: Getting the Balance Right: Drafting Warranties, Indemnities and Limitation of Liability Clauses in Supply Agreements <p>One of the key contractual issues in the provision of the goods and services is the importance of supply in accordance with the terms of the contract. While most suppliers start out with the best intentions, failure to meet obligations can result in serious consequences. This session looks at three contractual mechanisms for risk minimisation and how to draft them for best effect, including:</p> <ul style="list-style-type: none">• What warranties do you need to put into a contract?• Statutory warranties and consumer law• Drafting different types of warranties eg representations of fact, performance standards• Limiting the consequences for breach of warranty – liquidated damages and other remedies• What is an indemnity and why does your client need one in the contract? How will it affect common law and statutory rights?• Tips for drafting indemnities – assessing risks, quantifying potential losses, framing the nature and extent of the indemnity and limiting factors• Using financial caps, time limits for claims and other strategies to minimise or limit liability• Excluding liability – how far can you go? Drafting with the consumer and common law in mind• Recent cases <p><i>Speaker: Nicholas Simpson, Barrister, 13th Floor St James Hall, Sydney</i></p>
1.15 – 1.25pm	Questions and Discussion
1.25 – 2.10pm	Luncheon

Afternoon Theme: Commercial Contracts Nuts & Bolts

2.10 – 3.00pm

Session 5: The Unfair Contract Regime: Don't Get Caught Out

The unfair contracts regime has been in place long enough for us to reflect on how the reforms have affected SMEs and the key lessons we should note from recent cases. This session examines the terms likely to be considered unfair and explores the key drafting strategies you can use to avoid them. It covers:

- 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'
- 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:
 - Use of standard form contracts including automatic renewal clauses
 - Avoiding unenforceable terms
 - Risk management checklist when entering new contracts
- Case update

Speaker: Adrian Kuti, Special Counsel, Clayton Utz, Sydney

3.00 – 3.10pm

Questions and Discussion

3.10 – 4.00pm

Session 6: Formation of Electronic Contracts: Binding the Parties in an Online World

Contracts formed online have a number of challenges for the contracting parties and for practitioners in advising clients. Tips for avoiding the traps of online contracts are provided in this session:

- Contracts 101 – online changes nothing in law but everything in fact!
- www.invitation.to.treat?
- How to ensure contracts online are binding
- What is a signature? Are eSignatures binding?
- The relevance of the Electronic Transactions Act 2000
- Choice of law in e-contracts with offshore suppliers
- How does the Vienna Convention apply?
- Dealing with defective goods and contract disasters
- Application of Australian Consumer law to overseas suppliers, small businesses and farmers
- Electronic evidence and record retention
- Resolving E contract disputes – where, when and how?

Speaker: Philip Argy, Consulting Principal, Keypoint Law, Sydney

4.00 – 4.10pm

Questions and Discussion



4.10 – 4.25pm	Networking Break and Afternoon Tea
4.25 – 5.15pm	Session 7: Offers of Settlement and Settlement Agreements: The Drafting Essentials Toolbox Drafting settlement offers and agreements require consideration of individual circumstances of each matter. Getting it right is essential to ensure the client obtains for cost benefits of settlement and the practitioner avoids potential negligence claims. This session includes: <ul style="list-style-type: none">• Offers of settlement:<ul style="list-style-type: none">○ The principles of <i>Calderbank v Calderbank</i>○ The Uniform Civil Procedure Rules impact on drafting offers to settle○ Drafting to show a genuine offer○ Offers to settle or offer to compromise – drafting and content comparisons○ Cost consequences – can drafting improve a cost outcome?○ Case study – Example of an offer to settle• Settlement agreements:<ul style="list-style-type: none">○ Ensuring the parties have reached a binding agreement○ Transferring binding terms of settlement into the agreement○ Drafting to indicate intention to be bound○ Drafting to demonstrate complete agreement○ Confidentiality clauses - demonstrating completeness in agreement Speaker: Stephen Klotz, Partner, Hall & Wilcox, Sydney
5.15 – 5.25pm	Questions and Discussion
5.25pm	Conference Close

In addition to attending the masterclass we will provide you with 3 free recorded webinars covering each of the CPD compulsory programs. These webinars will be recorded on 11 February 2020 and the link for viewing will be sent to you no later than 25 February 2020. You then need to view the programs by 31 March 2020.

The 3 Compulsory Programs:

1. *Ethics*: Ethics in Communication – Giving Undertakings and Keeping Promises
2. *Professional Skills*: Drafting and Relying Upon Effective Termination Clauses
3. *Practice Management & Business Skills*: Creating a Strategy for Practice Development – Build It and They Will Come



GENERAL INFORMATION

Masterclass Registration Fee

The registration fee includes attendance at the masterclass, online access to the conference papers and refreshment breaks and lunch.

Masterclass Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the masterclass (as the papers become available), during the masterclass and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the masterclass TEN will supply printed copies of the PowerPoint presentations used at the masterclass.

CPD - Lawyers

10 CPD units – 7 substantive law units from attending the Masterclass **PLUS** we will provide you with **3 free** recorded video webinars covering each of the compulsory subjects (Ethics, Practice Management & Business Skills and Professional Skills) for you to view at your leisure prior to 31 March 2020. The recorded webinars will be available within 3 days after the masterclass has been held.

WA Lawyers note: you may only claim 9 CPD points under the LPBWA rules – being the maximum of 6 CPD points you can claim for attending a single event + the 3 CPD compulsory points for viewing the compulsory subject recorded webinars.

CPD Certificate

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

The Masterclass Venue

Radisson Hotel & Suites

72 Liverpool Street, Sydney

Web: <https://www.radisson.com/sydney-hotel-ns-2000/ausydney>

Masterclass Dress

Smart casual attire is suitable. *(note: the temperature in the conference room varies depending on where you are sitting. Light attire is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)*

Cancellation Policy

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

If a registration was purchased as part of a group discount the cancellation of that registration may affect the the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group.

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 such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.



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 **Fax** (03) 9670 0588 **Phone** (03) 9670 2055

Enquiries: Contact our Event Manager, Jenna Pickrell [jenna@tved.net.au]

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

Please register me for **Drafting Effective Commercial Contracts: One-day 10 Point Masterclass** to be held on Wednesday 19 February 2020. Registration includes attendance at the masterclass plus 3 free one-hour recorded webinars covering each of the CPD compulsory subjects to view at your leisure. Delegates will earn their 10 CPD units for the CPD year ending 31.3.20. [conf code: SXCFEB20]

Early Bird Registration – for registrations paid on or before Friday 17 January 2020 - \$880 (\$800 + \$80 GST)

Full Price Registration – \$990 (\$900 + \$90 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: PSXCFEB20].

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: _____

