



TWO HALF-DAY MASTERCLASSES

DRAFTING COMMERCIAL CONTRACTS WITH PRECISION

Morning: Drafting Commercial Contracts

Afternoon: Termination & Enforcement Issues in Commercial Contracts

Organised by Television Education Network Pty Ltd

Rydges World Square, Sydney | Tuesday 29 October 2019

BOOKABLE
SEPARATELY OR
ATTEND THE
FULL DAY



**Television
Education
Network**

The professional development specialists

Morning Masterclass: Drafting Commercial Contracts

**CHAIR: Robert Schneider, Consultant,
HWL Ebsworth Lawyers, Sydney**

9.00 - 9.10am

Introduction and welcome

9.10 - 10.00am

Session 1: The Role of Indemnities, Guarantees and Warranties in Commercial Contracts

What is the difference between a liability and an indemnity? Do you need to include a warranty in every contract? This session provides a refresher of drafting indemnities, guarantees and warranties. Topics covered include:

- Indemnities - when are they used, types of indemnities, principles of construction and enforcement issues
- Warranties - when are they used, principles of construction and enforcement
- Difference between warranties and indemnities
- Guarantees - categories and how are they construed?
- Recent case law update

Speaker: Shah Rusiti, Partner, Teece Hodgson & Ward, Sydney

10.00 - 10.10am Panel Comments and Questions

10.10 - 11.00am

Session 2: Drafting Effective Exclusion Clauses in Commercial Agreements

Courts are reluctant to interpret exclusion clauses broadly, preferring to interpret narrowly where possible. Drafting wide exclusions must be carefully done and avoid ambiguity. This session looks at the key issues, including:

- Understanding the law applying to exclusion clauses
- Understanding what is being excluded – gauging the scope of exclusion
- How much liability can you limit?
- How much liability can you pass on to another party?
- Rules of interpretation – drafting to address the rules
- Damages and exclusion clauses
- Exclusion of liability versus limitation of liability
- Case study – possible approach to preparation of an exclusion clause

Speaker: James d'Apice, Senior Associate, Makinson d'Apice Lawyers, Sydney

11.00 - 11.10am Panel Comments and Questions

11.10 - 11.30am Networking Break and Morning Tea

11.30am - 12.20pm

Session 3: Dodging the Traps of Unfair Contract Terms in Small Business Contracts

Under the unfair contract regime, any term found to be an unfair will be void and unenforceable. This session examines those terms likely to be considered unfair and explores the key drafting strategies you can use to avoid them. It covers:

- What is a 'small business' and 'standard form contract' under the laws?
- What is an unfair contract term? Understanding the key issues that make the term 'unfair'
- The impact of unilateral provisions in the contract, including the right to vary terms
- Checking existing contracts for enforceability
- Case report - Australian Competition and Consumer Commission v JJ Richards & Sons Pty Ltd [2017] FCA 1224; Australian Competition and Consumer Commission v Servcorp Limited [2018] FCA 1044

Speaker: Elizabeth Richmond, Special Counsel, Clayton Utz, Sydney

12.20 - 12.30pm Panel Comments and Questions

12.30 - 1.30pm Luncheon

Afternoon Masterclass: Termination and Enforcement Issues in Commercial Contracts

CHAIR: Robert Schneider, Consultant, HWL Ebsworth Lawyers, Sydney

1.30 - 2.20pm

Session 4: Interpreting Commercial Contracts - When the Parties Fail to See Eye to Eye

Parties typically don't worry about how a contract will be interpreted - until the parties no longer see eye to eye. Understanding how the courts will interpret your client's contract is key, especially when things go wrong. This session will cover the following:

- The guiding principles of contractual interpretation and rules of construction
- How will the courts find the objective intention of the parties
- How is ambiguity addressed when it arises?
- Contextual facts and the consideration of extrinsic evidence
- When can the court change the words in a contract?

Speaker: Brenda Tronson, Barrister, Level 22 Chambers, Sydney

2.20 - 2.30pm Panel Comments and Questions

2.30 - 3.20pm

Session 5: When The Music Stops: Drafting and Relying Upon Effective Termination Clauses

When a contract is breached, the non-defaulting party has a range of options available, including terminating the contract. However, the termination process can be fraught with litigation risk. It can ultimately hinge upon the reliance of a well-drafted termination clause. This session examines how to prepare effective termination clauses in your commercial agreements, as well as how to effectively exercise termination rights. It covers:

- Drafting effective termination clauses
- Circumstances of termination
- Termination versus rescission, issues that may influence
- Restrictions on termination and rescission
- Reducing risk in terminating a contract including limiting litigation risk
- Avoiding mistakes in exercising termination rights

Speaker: to be advised

3.20 - 3.30pm Panel Comments and Questions

3.30 - 3.50pm Networking Break and Afternoon Tea

3.50 - 4.40pm

Session 6: Drafting Watertight Settlement Agreements

While a settlement agreement may be seen as just another contract, it comes with unique drafting quirks and challenges. This practical session explores a range of key issues relating to drafting settlement agreements, including:

- Offers of settlement & Calderbank letters
- Agreements versus deeds
- Structuring the settlement - key issues to take into consideration:
 - Indemnities and releases
 - Which terms of the agreement are essential and need to be part of a binding settlement agreement?
- Extent of a solicitor's authority to contract - lessons from *Feldman v GNM Australia*
- Are you bound before you know it?
- Role of implied terms in settlement agreements
- Thinking about the tax traps - when to seek additional tax advice before signing on the dotted line
- GST implications of settlement agreements
- Case studies
- Checklist for settlement agreements

Speaker: to be advised

4.40 - 4.50pm Panel Comments and Questions

4.40 - 4.50pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance, online access to the conference papers and refreshment breaks and lunch. These masterclasses can be booked as 2 separate half day conferences or you can attend for the whole day.

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

Either half-day masterclass - 3 CPD units (substantive law)

One-day Masterclass – 6 CPD units (substantive law)

The Masterclass Venue

Rydges World Square

389 Pitt Street, Sydney

Web: <https://www.rydges.com/accommodation/sydney-nsw/world-square-sydney-cbd/>

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 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 conference 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.

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REGISTRATION FORM – TAX INVOICE*

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)

GPO Box 61, Melbourne, Victoria 3001

Fax (03) 9670 0588 Phone (03) 9670 2055 Enquiries Jenna Pickrell

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for **Drafting Commercial Contracts: Half Day Masterclass** to be held in Sydney on Tuesday 29 October 2019 [confcode: SXCOCT19M]

Early Bird Registration – for registrations made on or before 27 September 2019 - **\$495** (\$450 + \$45 GST)

Full Price Registration – **\$605** (\$550 + \$55 GST)

Please register me for **Termination & Enforcement Issues in Commercial Contracts: Half Day Masterclass** to be held in Sydney on Tuesday 29 October 2019 [confcode: SXCOCT19A]

Early Bird Registration – for registrations made on or before 27 September 2019 - **\$495** (\$450 + \$45 GST)

Full Price Registration – **\$605** (\$550 + \$55 GST)

Please register me for **Drafting Commercial Contracts with Precision: One Day Masterclass** [both the morning and afternoon sessions with lunch included] to be held in Sydney on Tuesday 29 October 2019 [confcode: SXCOCT19]

Early Bird Registration – for registrations made on or before 27 September 2019 - **\$880** (\$800 + \$80 GST)

Full Price Registration – **\$1100** (\$1000 + \$100 GST)

The papers from this conference 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. The papers are **\$165** (\$150 + \$18 GST) (Code: PSXCOCT19).

Multiple registration discount? If you would like to send more than one person from your company to this masterclass, please ask Jenna about the discounts available for multiple registrations: The more you send, the greater the discount. jenna@tved.net.au or phone (03) 8601 7729.

Fill out personal details on next page ...

REGISTRATION FORM – TAX INVOICE*

Personal Details

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