

Performance Interpretation  
Enforceable  
**Competition** PERFORMANCE  
UNFAIR CONTRACTS Offshoring  
**Law Challenge Valid** PPSA  
Proportionate Breach **Repudiation** NEGOTIATIONS  
LIABILITY Unconscionable Behaviour

# Contract Law MASTERCLASS

TERMINATION Exclusion Drafting INDEMNITY  
**Negotiations** Common Law OFFSHORING  
Consumer Law **Obligation**  
**Litigation** PPSA **Managing Risk**  
DRAFTING UNFAIR CONTRACTS LIABILITY

This legal masterclass satisfies MCLE Rule 57 in the areas of ethics and professional responsibility, practice management, business and professional skills.

**8:30am** Registration opens

**8:45am** **Opening remarks from the Chair**

The changing landscape of contract law: Current trends and rulings from the High Court

**9:00am**



**James Morvell**  
Special Counsel  
Hall & Wilcox  
Lawyers

**Pre-contract negotiation skills: Getting the best outcome for your client**

- Discover how to prepare strategically for every contract negotiation
- Understand how to negotiate the resolution of obstacles to contract formation
- Learn how negotiations prior to contract formation play a role in interpreting clauses in a contract
- Impact of pre-contractual negotiations in the context of M&A transactions (including the intersect with consumer protection laws)
- What front-end negotiators can learn from litigators when drafting term sheets and contracts
- Recent case law including:
  - > *Factory 5 Pty Ltd (In Liq) v State of Victoria (No 2)* [2012] FCAFC 150
  - > *Geemaz Management Pty Ltd v Geelong Motors Pty Ltd* [2013] VSC 571
  - > The recently settled matter involving Asahi and Pacific Equity Partners and Unitas Capital

**9:45am**



**Gregg McConnell**  
Special Counsel  
Lander & Rogers

**Drafting enforceable contracts: How to draft simpler and smarter provisions**

- Effective drafting - simple, clear and plain English
- Contractual structure
- Contractual certainty and completeness
- Drafting enforceable heads of agreement and other preliminary agreements
- Drafting effective liquidated damages clauses
- Drafting enforceable post-termination restraints
- Preparing online agreements
- Incorporating important boilerplate provisions

**10:30am**

**Networking break**

**11:00am**



**Matthew Lees**  
Partner  
Arnold Bloch Leibler

**Effectively managing contract interpretation disputes**

- New developments involving surrounding circumstances
- Understanding whether or not you need ambiguity in a contract before you can consider evidence to support interpretation of a clause
- Identifying and defining the existence of an ambiguity
- *Codelfa Construction Pty Ltd v State Rail Authority of NSW*
- *Electricity Generation Corporation v Woodside Energy*

- Recent case law examples
- Strategies to manage contract interpretation disputes

**11:45am**



**Rebecca Bedford**  
Partner  
Minter Ellison  
Lawyers

**Breach, repudiation, enforceability of rights and obligations on termination**

- How to exercise a right to terminate a contract validity
- Detailed analysis on the current position concerning implied terms
- The permissible scope and enforcement of post-termination restraints
- The extent to which damages must be ascertained before commencing proceedings

**12:30pm**

**Lunch reception**

**1:15pm**



**Deanna Constable**  
Partner  
Lander & Rogers

**BRIEFING: When clients use contracts without legal advice: How to move forward**

Offshoring of legal contract drafting and the increasing use of online service providers to draft contracts provide clients with a false confidence in dealing with another party and put themselves at risk. While these contracts are easily accessible and affordable, the failure to use a lawyer in drafting or negotiating contracts can be extremely damaging to a client's business holdings. This 30-minute briefing will focus on how lawyers can combat poorly drafted contracts by others and move forward to protect a client's interests.

**1:45pm**



**Richard Morrison**  
Partner  
Sparke Helmore

**Indemnity, exclusion and consequential loss clauses: What you need to know**

- Drafting clear, succinct and enforceable indemnity and limitation of liability clauses
- Recent case law on how indemnity clauses have been interpreted
- Strategies on negotiating indemnities
- Reviewing wording of indemnities and warranties
- Restraint of trade clauses
- How to avoid unnecessary indemnities in contracts
- Navigating the lack of standardisation and the shifting approach to indemnities and loss
- Clarifying the uncertainty around liquidated damages clauses

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- and exclusion of consequential loss clauses
- The interplay of the proportionate liability provisions of the Civil Liability Act with indemnity clauses
- The relationship between indemnity clauses and negligence

2:30pm



**Jim Doyle**  
Director  
Doyles Construction  
Lawyers

### Performance and termination: Analysis on when to challenge

Most contracts come to a natural end as a result of the parties performing their respective obligations. However, to terminate a contract, there must be a breach of an essential term, a sufficiently serious breach of a nonessential term or a repudiation of the contract by the other party. This session will highlight:

- How and when you can terminate a contract that has no termination provisions
- Contractual termination rights and termination for convenience clauses
- The implied duty of good faith in termination for convenience
- Economic duress, renegotiation and repudiation in context of termination
- Guidance on when and how a principal can terminate a contract and the restrictions involved
- What is the duty of good faith in the performance of a contractual obligation likely to mean in practice?
- Drafting enforceable contracts in respect of termination rights and compensation for breach of contract or early termination (exclusions, indemnities and penalties)
- Case studies and advice on handling disputes involving terminated contracts
- *ANZ v Paciocco*: When does a fee secure performance of a primary obligation and when is it a fee for further service or accommodation?
- Compare terminating under contract with terminating under common law since *Koompahtoo*

3:15pm

Networking break

3:30pm



**Bill Papastergiadis**  
Managing Partner  
Moray & Agnew  
Lawyers

### Managing risks and liability through indemnities

This session will examine how to manage liability clauses, including:

- A clearer understanding of the liability of a guarantor for the debts of a third party in circumstances where the third party can avoid liability by reliance on statute
- The interplay of the proportionate liability provisions of the Civil Liability Act with indemnity clauses
- How to draft an effective indemnity clause that does not jeopardise a client's insurance coverage
- Limited liability and consequential loss clauses
- Proportionate liability application and indemnities
- Assigning liabilities for environmental issues

4:15pm



**David Krelttszheim**  
Special Counsel  
Clayton Utz

### UPDATE: PPSA and contract law intersection: Avoiding pitfalls

The Personal Property Securities Act (PPSA) changed the way security interests are dealt with across Australia by establishing a single national law, governing most security interests in personal property. The legislation has led to the creation of a single online Personal Properties Securities Register (PPSR), in most types of holders of a security interests in personal property must register to ensure they have a priority claim to that property. Legal title is no longer enough, as this legislation overturns fundamental personal property law concepts.

This session examines steps needed to be taken to protect your clients' interests including:

- Retention of title arrangements
- PPS Leases
- Take-out rights under a contract
- Consequences of failing to register
- Enforcing security interests
- Applying proceeds following enforcement
- *Case Law: White v Spiers Earthworks Pty Limited*
- Arcabi Pty Ltd

This session will refer briefly to the outcome of the statutory review of the PPSA completed in January 2015.

5:00pm

Masterclass concludes

This legal masterclass satisfies MCLE Rule 57 in the areas of ethics and professional responsibility, practice management, business and professional skills.

**BOOK YOUR TEAM  
PASS AND SAVE!**

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price of 3 and save \$1295*

