

Dispute resolution

Topic & description

Duration

Legal professional privilege: A practical approach

(60 mins)

Businesses and their in-house lawyers frequently face the task of maintaining and protecting privilege. In recent years, the scope and applicability of privilege has been addressed in a number of judgments which have redefined the privilege landscape.

Course outline

In this interactive session, with lots of opportunity to discuss and ask questions, we cover how to handle real world privilege issues in a pragmatic way. Using a series of case studies, we discuss typical scenarios where legal privilege issues arise in practice, including in internal investigations, discussions of sensitive matters at Board level and litigation considerations.

We also discuss how to avoid common pitfalls, such as creating and sending documents when you shouldn't, how to share documents with third parties while maintaining privilege and the most effective use of in-house lawyers.

Misrepresentation: the truth, the half-truth and anything but the truth

(60-90 mins)

When negotiating a deal, the parties commonly make pre- contract statements. Sometimes those statements turn out to be wrong. Exaggerations, mistaken beliefs, misleading opinions as well as statements made recklessly might result in an aggrieved party seeking redress. In this session we explore the legal risks associated with pre-contract statements, the types of claims that can be made when things go wrong and the different remedies available in each type of claim. We start with an explanation of the legal principles, followed by an interactive case study to provide practical advice on how to handle misrepresentation issues and generate plenty of discussion.

Course outline

- ▶ The causes of action
- ▶ Remedies, including damages and rescission
- ▶ The effectiveness of risk management clauses (entire agreement, non-reliance and limitation of liability)
- ▶ Group interaction with case study example
- ▶ Practical risk management tips

Boilerplate clauses

(60 mins)

Boilerplate clauses are often overlooked in commercial transactions. Sometimes they are not negotiated at all. But when things go wrong, boilerplate clauses are often central to the dispute and their interpretation can be crucial when determining rights. We review the case law, provide practical tips on how to interpret key boilerplate clauses and consider how to avoid common pitfalls that can arise.

Course outline

- ▶ Penalty clauses
- ▶ Reasonable and best endeavours clauses
- ▶ Entire agreement clauses
- ▶ The effectiveness of "no oral modification" clauses

Limitation and exclusion of liability

(60 mins)

Limitation of liability provisions in commercial contracts are often fiercely negotiated and over many years judicial decisions have shaped the drafting of such clauses. We discuss some of the more typical exemption clauses, the relevant common law and statutory rules and whether you can exclude liability for misrepresentation.

Course outline

- ▶ Typical exemption clauses
- ▶ Incorporation
- ▶ Construction
- ▶ Common law limitations
- ▶ Unfair Contract Terms Act 1977
- ▶ Excluding liability for misrepresentation

Contract termination

(60 mins)

Can I terminate this contract? Is the other party entitled to terminate the contract? These questions commonly arise when the commercial relationship doesn't live up to expectations. Contract termination is a topic of practical importance and a potential minefield for the unwary. All businesses should seek to minimise risk wherever possible. Using case study examples, we explore strategies for terminating contracts, how to operate contractual provisions and the potential consequences of getting it wrong. Our session will provide a practical summary, focusing on best practice.

Course outline

- ▶ A review of standard contractual rights to terminate (and how to operate provisions)
- ▶ How to determine whether a breach is material or repudiatory
- ▶ Remediable breaches
- ▶ Terminating open-ended contracts
- ▶ Terminating in the absence of a contractual entitlement to do so

Claims arising from a corporate acquisition

(60 mins)

Disputes arising from M&A transactions take up a surprising amount of the courts' time, with claims from breach of warranty, indemnity and price adjustment issues, to those involving tax covenants, misrepresentation, fraud and other matters. In this session, we explore some of the most common claims that can arise when an acquisition does not go to plan and some practical risk management strategies for buyers and sellers.

Course outline

- ▶ Warranty and indemnity claims
 - ▶ Misrepresentation claims
 - ▶ Shareholder claims
 - ▶ Claims against directors
 - ▶ Uncovering commercial fraud
 - ▶ Tax covenants
 - ▶ Price adjustment
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Navigating a High Court claim – immediate steps for success

(60-90 mins)

In this interactive, scenario-based session we look at the immediate actions a business needs to take if it is served with a claim issued in the High Court and steps to be taken to ensure compliance with its obligations as a party to litigation and set the company up to successfully respond to the claim.

Course outline

- ▶ Assessment of urgency – steps to be taken in the first 48 hours
- ▶ Analysis of the claimant and the claim
- ▶ Adequacy of service
- ▶ What if the defendant party is incorrect?
- ▶ Risk of default judgment and obtaining extensions of time to respond
- ▶ Document preservation instructions
- ▶ Managing privilege
- ▶ Interim steps: tactics and timing

Dealing with a counterparty facing insolvency

(60 mins)

The COVID pandemic had a significant effect on corporate insolvencies. Since then, long-lasting difficult economic conditions have caused corporate insolvencies to increase and remain high. In this session we will run through a scenario, assessing the position of the business if one of its key counterparties is facing insolvency. We will consider where the business stands immediately before and after the counterparty becomes insolvent, and will look at the options the business has to protect its position to its best advantage and reduce risk at each stage. We focus on practical tips and strategy, drawing on our experience in this area.

Course outline

- ▶ Recovery strategies where a counterparty cannot pay
- ▶ Effects of administration and liquidation – what happens to your debt/property?
- ▶ The insolvency practitioner
- ▶ What happens to litigation? Can you start a new claim? Can you continue a claim?
- ▶ When are directors accountable?
- ▶ How can you protect yourself in contracts against risk of insolvency?