

NZ | LAWYER | **Contract Law**
masterclass 2019

7 March • Hilton Auckland



nzlawyermagazine.co.nz/contract-law-masterclass

Presented by

**KEY
MEDIA**

8:45am

Introductory remarks from chairperson

9:00am

International contract law update

This session will discuss the intersection between New Zealand contract law with laws from other jurisdictions, as we become increasingly trade focused.

- GDPR and its flow on effect for NZ multi-nationals
- Case law trends in Australian and UK courts

9:30am

Enforceability of verbal contracts – lessons from the UK

Two recent cases in the UK provide guidance on the legal standing of non-oral modification clauses in written agreements in New Zealand.

- When can a written agreement with a non-oral modification (NOM) clause be varied verbally?
- Implications of *Blue v Ashley [2017]* and *Rock Advertising v MWB Business Exchange Centres* for New Zealand contracts
- Dealing with allegations of oral variations or oral collateral contracts
- How to draft an enforceable no oral modification (NOM) clause

Speakers:

Tal Williams

Partner

Holman Webb Lawyers

10:15am

Enforceability of click-wrap and browse wrap agreements

Online contract have become the norm, forcing the courts to re-consider the application of age-old principles of contract law. How are the courts treating online contracts?

- The risk of clickwrap, sign-in wrap and browsewrap agreements
- Meeting the expectations of customers and regulators
- Implications of the Uber case (*Meyer v Kalanick & Uber Technologies*) for New Zealand
- What counts as reasonably conspicuous notice of terms and conditions?
- Lessons from Australian case: *Surfstone Pty Ltd v Morgan Consulting Engineers Pty Ltd [2016]*
- How to ensure that you're bringing incorporated terms to the contracting party's attention
- What does the future hold for online contracts?

11:00am

Morning refreshments and networking break

11:30am

PANEL: Risks and opportunities of blockchain and smart contracts

Blockchain is still a work in progress from a legal and operational perspective. This thought-provoking panel will discuss the enforceability and risks of smart contracts.

- Know your customer checks and blockchain: complying with anti-money laundering and counter terrorism financing (AML/CTF) laws
- What are the risks of blockchain repeating and compounding errors or fraud?
- Does blockchain have mechanisms to detect infiltrators?
- How powerful is private key cryptography as an ownership tool?
- How easy is it to detect and modify errors in blockchain?
- Problems with legal enforceability with a "permissionless" distributed ledger
- Dispute resolution mechanisms relating to distributed ledger technology

Speaker:

Chris Linton

Consultant

Duncan Cotterill

Jeremy Muir

Partner

MinterEllisonRuddWatts

Michael Taylor

Senior Associate

Russell McVeagh

12:30pm

Contract interpretation by the courts – what evidence will be considered?

What material relating to contractual terms and meaning can be admitted as evidence to help courts to interpret contracts?

- Parol and oral evidence of the parties' negotiations
- Post-contractual dealings or other evidence relating to the parties' subjective interpretation
- Lessons from the courts – trends in admission of evidence

Speaker:
Chris Browne
Partner
Wilson Harle

1:00pm

Networking lunch

2:00pm

High Court guidance on the penalty doctrine – the Honey Bees case

The recent Honey Bees case provides clarity on the way that penalties are being interpreted by the New Zealand courts.

- Overview of Honey Bees Preschool Limited v 127 Hobson Street Limited
- How are the New Zealand courts deciding whether a clause is really a penalty?
- How does the court determine the bargaining power of the parties?
- Lessons for the drafting of enforceable clauses: deterrence versus punishment
- Comparing the likely loss and the stipulated sum of damages clause
- What constitutes a legitimate interest which a payment obligation on breach is seeking to protect?
- What does a proportionate sum look like?

Speakers:
Nick Gillies
Partner
Hesketh Henry

2:45pm

Warranties, indemnities and insurance contracts

This session will discuss the interplay between warranties, indemnities, insurance and limitations of liability, along with commentary on the future of insurance contracts.

- Effective contractual devices to minimise or avoid liability
- The legal difference between an indemnity and a guarantee
- Timeline and future of the insurance contract law review in New Zealand
- Third party access to liability insurance moneys under the Law Reform Act 1936
- Allocating post completion risks between the seller and the buyer
- How does warranty insurance impact the negotiation of warranties?
- Warranties for the purpose of contractual provisions or disciplinary provisions
- Caw law overview– how enforceable are broad indemnity clauses?

3:45pm

Afternoon refreshments & networking break

4:00pm

Successful contract negotiation strategies

This practical workshop will help you to hone your negotiation skills so that you can adapt your negotiation style and strategies to your circumstances.

- Selecting the negotiation style that suits the context and commercial circumstances
- Taking control of the timing and pace of a contractual negotiation
- Agreeing settlement parameters and walk-away positions
- Managing difficult clients with unrealistic expectations

Speaker:
Kiri Tahana
Partner
Kahui Legal

5:15pm

Conference concludes

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masterclass

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