

3rd Essentials of Commercial Contracts

Course Leader
Frank DeLuca,
Baker & McKenzie LLP



Richard Corley,
Blake, Cassels
& Graydon LLP



Sean
S. Caragata,
Cisco Systems



Hugh
F. Hamilton,
Fidelity National
Information
Services



Gary
D. Graham,
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Henderson LLP



Marlene J. Kane,
McMillan LLP



J. Fraser Mann,
Miller Thomson
LLP



Pierre Soulard,
Ogilvy Renault
LLP



Omar Wakil,
Torys LLP



Harry C.G.
Underwood,
McCarthy
Tetrault LLP



as well as:

Jill Fraser,
Aird & Berlis LLP

Martin J.
Herman,
Bombardier
Aerospace

Alan Gahtah,
Gahtan Law
Office

"This course helped me in understanding the key aspects to consider when preparing a commercial contract."

"This course gave me further insight into provincial/federal issues & thoughts on international arbitration & dispute resolution clause drafting."

"Extremely beneficial. A well rounded overview of contract law - the expertise & sharing of experiences is invaluable."

"This is a great 'refresher' course - would recommend."

**June
20 & 21, 2011,
Toronto**

Two-Day Event!

Workshop Included: Commercial contract dispute resolution

participating organizations

Aird & Berlis LLP
Baker & McKenzie LLP
Blake, Cassels & Graydon LLP
Bombardier Aerospace
Cisco Systems
Fidelity National Information Services
Gahtan Law Office
Gowling Lafleur Henderson LLP
McCarthy Tetrault LLP
McMillan LLP
Miller Thomson LLP
Ogilvy Renault LLP
Torys LLP

who should attend

Corporate Counsel, Contract Managers of Legal Services, Corporate/Commercial Lawyers, Paralegals, Contract Managers

course highlights

- Key issues with respect to the law of contract
- Key principles of good drafting technique
- Customizing agreements to reflect your objectives
- Troubleshooting during the contracting process
- Recent legislation impacting contract drafting
- Practical use and application of boilerplate clauses
- Key issues for pre-transaction and early stage agreements
- Best practices for crafting litigation-proof opinions
- Identifying, analyzing, responding to and controlling risk factors
- Dispute resolution clauses: deciding on a model

FACULTY

COURSE LEADER

FRANK DELUCA

Frank DeLuca is a partner in the **Baker & McKenzie** Corporate & Securities practice group in Toronto.

SEAN S. CARAGATA

Sean Caragata of **Cisco Systems** is a commercial and IT lawyer with broad general counsel background, having extensive experience negotiating complex commercial sales, service and licensing transactions.

J. FRASER MANN

J. Fraser Mann is a Partner with **Miller Thomson LLP**. He has more than 25 years of experience in technology and intellectual property law.

CO-LECTURERS

JILL FRASER

Jill Fraser is a partner with the **Aird & Berlis LLP** Financial Services Group. Her practice focuses on corporate and commercial lending transactions.

RICHARD CORLEY

Richard Corley's practice at **Blake, Cassels & Graydon LLP** is focused on the intersection of law & technology, focusing on the clean technology and IT industries.

MARTIN J. HERMAN

Martin J. Herman is Senior Legal Counsel, **Bombardier Aerospace – Commercial Aircraft**, where he provides legal support for the sale and financing of aircraft.

HUGH F. HAMILTON

Hugh Hamilton is Associate General Counsel with **Fidelity National Information Services**, leading the legal team providing in-house services to the International Division.

GARY D. GRAHAM

Gowlings' Hamilton founding partner, Gary Graham is a business law lawyer with over 25 years of business management experience.

MARLENE J. KANE

Marlene Kane is is National Director of Professional Development at **McMillan LLP** and a former commercial lawyer

PIERRE SOULARD

Pierre Soulard of **Ogilvy Renault LLP** practises securities and corporate law, with an emphasis on corporate finance, M&As, and general corporate matters.

OMAR WAKIL

Omar Wakil is a partner in **Torys** Competition and Antitrust Group and co-chair of the Foreign Investment Review Group.

HARRY C.G. UNDERWOOD

Harry Underwood, a partner in the **McCarthy Tetrault** Litigation Group in Toronto has gained experienced in arbitration proceedings in his 30 years of practice.

ALAN GAHTAN

Alan Gahtan, of **Gahtan Law Office**, is a recognized leading IT and outsourcing lawyer.

COURSE PROGRAM

DRAFTING EXCLUSION CLAUSES: IMPACT OF CURRENT CASE LAW

The recent Supreme Court's decision in *Tercon Contractors Ltd. v. British Columbia* marks an important development in the law of contract. This session will look at the drafting and enforceability of exclusion clauses in light of the Supreme Court ruling, providing drafting tips from a litigation perspective.

- Three stage test that considers whether a clause actually applies to the type of breach that is alleged, unconscionability and public policy
- Enforceability of exclusion clauses
- The doctrine of "fundamental breach"

LEGAL FRAMEWORK FOR DRAFTING COMMERCIAL AGREEMENTS

This session will examine the legal framework, including legislative and judicial developments, impacting the drafting of various types of commercial agreements.

- Overview of current legal framework for commercial agreements
- Recent and impending legislation impacting contract drafting
- Trends in regulations affecting commercial agreements
- Protecting your company from litigation and anticipate legal pitfalls

SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Business Law Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Business Law topics as delivered at our many recent Business Law conferences and courses.



COURSE PROGRAM

DRAFTING INTERNATIONAL COMMERCIAL AGREEMENTS

Drafting precise commercial agreements plays a vital role in achieving successful international business results. This session will deal with the practical drafting techniques necessary to successfully convert an international transaction or deal into a bulletproof written agreement.

- Pre-negotiation due diligence and preparations
- Principles of good drafting technique
- Key contract terms and provisions
- Key elements and clauses in international contracts

PRE-TRANSACTION AND EARLY STAGE AGREEMENTS

In order to be successful, there needs to be detailed attention paid to the processes before the actual deal is inked. This session will look at best practices in drafting pre-transaction and early stage agreements.

- Key considerations for pre-transaction and early stage agreements
- Pre-contract documents and enforceability
- How and when to use a letter of intent
- Binding vs. non binding pre-transaction agreements

DRAFTING NON-COMPETITION PROVISIONS

Great care must be taken when drafting non-competition clauses, as courts are very reluctant to enforce non-compete agreements that are unreasonable or otherwise not carefully drafted. This session will examine the factors that determine the enforceability of a non-competition clause.

- The legal context of non-competition agreements
- Key terms and conditions
- Determining "reasonableness" in drafting non-competition agreements

DRAFTING OPINIONS FOR COMMERCIAL TRANSACTIONS

Ongoing legislative developments, an increase in e-commerce and cross-border deals being entered into by businesses of all sizes and the increasing complexity of commercial agreements in general have heightened the need for the preparation of legal opinions in the commercial agreement drafting process.

- Best practices for crafting opinions
- Key considerations when drafting or requesting an opinion
- Drafting opinions for cross-border commercial agreements
- Drafting opinions for securities and financing transactions

DRAFTING & USE OF BOILERPLATE CLAUSES

This session will look at the most common type of boilerplate clauses and provide you with best practices for drafting effective clauses.

- Common boilerplate clauses
- Drafting boilerplate clauses
- Adapting standard wording that many business contracts use
- Drafting techniques to improve your protection

CASE STUDY: PRACTICAL CONSIDERATIONS IN COMMERCIAL CONTRACTS

Drafting and negotiating clear, effective and watertight commercial contracts requires that you be fully prepared for all potentialities that can arise during the process. This case study presentation will examine key pre-transaction issues.

- Setting the stage for ongoing relations between the parties
- Dealing with sale of goods and IP Licensing
- How to address legal and regulatory compliance issues
- Letters of intent and MOUs

RISK ALLOCATION IN COMMERCIAL AGREEMENTS

This session will examine the process of identifying, analyzing, responding to and controlling risks inherent in business negotiations, as well as how to avoid or mitigate them through proper negotiating and drafting practices.

- Assessing risks prior to entering contracts
- Risk identification process
- Understanding your client's risk tolerance
- Representations and warranties

STRATEGIES IN DRAFTING CONTRACTUAL PROVISIONS

This session will discuss the upfront considerations and practical drafting techniques that are necessary to successfully convert an idea or term sheet into a formal written agreement that will withstand the test of time.

- Drafting issues/objectives
- Papering the deal: how to translate the "deal" to paper
- Troubleshooting during the contracting process
- Tools for risk allocation and mitigation
- Customizing agreements to reflect your objectives

IT AGREEMENTS

The rapid evolution of IT, as well as the laws that apply to it, have made the IT contracting process ever more complex. This session will examine key considerations in IT licensing and service agreements.

- Various models for licensing software
- Overlap between licenses and service agreements
- Pricing and payment terms
- Service level metrics and remedies for non-compliance

DRAFTING RIGHTS, OBLIGATIONS, EXCLUSION AND LIMITATION CLAUSES

With the high degree of risk present in today's business environment, well-drafted commercial contracts should contain effective rights, obligations, exclusion and limitation clauses, which seek to clarify each party's role in the business relationship. This session will examine rights, obligation, exclusion and limitation clauses, and their interpretation and enforceability.

- Key rights and obligations contained in most commercial contracts
- Review of current practice on limitation of liability and liability exclusion clauses
- Warranty disclaimers and warranty remedy approaches
- Risk mitigation approaches and applicability

WORKSHOP

COMMERCIAL CONTRACT DISPUTE RESOLUTION

This workshop will explore the prominent issues faced in resolving disputes in business contracts and will provide practical strategies for avoiding and winning such disputes.

- Drafting dispute resolution clauses: deciding on a model
- Determining what warranties and indemnities are needed
- Resolving business disputes through litigation or alternatives
- The workings of the doctrine of frustration

MULTIMEDIA PRESENTATION

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

Practical Drafting Techniques for Contracts and Agreements

C. Ian Kyer,
Fasken Martineau DuMoulin LLP

Confidentiality Agreements and Letters of Intent

D. George Kelly,
Borden Ladner Gervais LLP

Pre-Transaction & Early Stage Agreements

George Kelly,
Borden Ladner Gervais LLP

Drafting Exclusion Clauses

Glen B. Scott Q.C.,
Brownlee LLP

The Structure And Format Of Commercial Contracts: Strategies In Drafting Contractual Provisions

Laura M. Safran Q.C.,
Davis LLP

IP License Agreements

Martin P.J. Kratz,
Bennett Jones LLP

Electronic Contracts

Martin P.J. Kratz,
Bennett Jones LLP

Drafting Contracts and Agreements

Karen G. Corraini,
Xenon Pharmaceuticals Inc.

Drafting & Use of Boilerplate Clauses

Michael Styczen,
Stikeman Elliott LLP

Securities Agreements

Jonathan S. Drance,
Stikeman Elliott LLP

Drafting Non-Competition Provisions in Commercial Contracts

Scott D. Whitby,
MacPherson Leslie & Tyerman LLP

Drafting Rights, Obligations, Exclusion & Limitation Clauses

Stephen D. Burns & Sebastien A. Gittens,
Bennett Jones LLP

Impact of Treaties and Conventions on Business Agreements: Avoiding Pitfalls

Lawrence L. Herman,
Cassels Brock & Blackwell LLP

Developing Strategic Contracting

Fred Lawlor,
Fairmont Raffles Hotels International

Negotiating & Structuring International Joint Ventures & Strategic Alliances Agreements

Mark A. Trachuk,
Osler, Hoskin & Harcourt LLP

Service Level Agreements

Scott Kitching,
Ceridian Canada Ltd.

Negotiating Loan, Credit & Other Financing Agreements

Jon J. Holmstrom,
Fasken Martineau DuMoulin LLP

Drafting Opinions for Commercial Contracts

Christopher M. Wolfenberg,
MacLeod Dixon LLP

Unlocking the Mysteries of the 'Standard Clause'

Colleen Spring Zimmerman,
Borden Ladner Gervais LLP

International Commercial Agreements

Bryan C. Haynes,
Bennett Jones LLP

International and Cross-Border Agreements

Sterling G. Koch,
TransAlta Corporation

Representations & Warranties in Intellectual Property Licensing Agreements

Peter S. Newell,
Ogilvy Renault

Dealing With Change and Allocating Risk in Commercial Agreements

Matthew Peters,
McCarthy Tetrault LLP

Commercial Contract Dispute Resolution

Stuart Svonkin,
Torys LLP

Customs and Trade Remedy Impact on Commercial Transaction

Darrel H. Pearson,
Gottlieb & Pearson

Registration: To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

Location: Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

Conditions: Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

Time: This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

Cancellation: Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to June 7, 2011. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

Discounts: Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to June 13, 2011

Phone: 1-800-363-0722

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TO REGISTER FOR ESSENTIALS OF COMMERCIAL CONTRACTS

Name _____
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Approving Manager Title _____
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Please bill my credit card: AMEX VISA Mastercard
_____ Expiration date: ____ / ____
Signature : _____
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REGISTRATION COSTS

NUMBER OF PARTICIPANTS:
COURSE: \$1975
COURSE + PROCEEDINGS CD-ROM:
\$1975 + \$175 = \$2150
PROCEEDINGS CD-ROM: \$599
NOTE: Please add 13% HST to all prices.
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