



Wilberforce

# COMMERCIAL LITIGATION CONFERENCE 2018: From contract to court

Wednesday 18 April 2018 | The Grange St. Paul's Hotel, London | 3.5 CPD | £120 +VAT | 12.30pm

The Wilberforce Annual Commercial Litigation Conference returns with a number of topical talks and workshops. This year, the particular focus is to look at what lessons can be learnt from recently decided cases when it comes to drafting contractual provisions in a number of different commercial

areas. The aim is to put various commercial cases under the spotlight, examine familiar problems, look at how the courts have interpreted certain clauses in the past and suggest drafting solutions. We hope this conference will appeal to litigators and non-litigators alike.

## Timetable

12.30pm Registration and lunch

1.15pm **Welcome from the Chairman** – Nikki Singla QC

1.30pm **Notice provisions nailed: How to avoid the pitfalls associated with the requirement for notice when making a claim under a contractual warranty or indemnity**

Joanna Smith QC

- Continuity in construction: *Wood v Capita Insurance Services Ltd* [2017] UKSC 24
- Notice provisions: the dangers for claimants
- The contra proferentem rule: Does it apply?
- Practical tips for draftsmen and for litigators

1.50pm **JVs & QPs: Death by litigation or a different approach?**

Lawrence Cohen QC

- Quasi-partnerships and a typical squeeze out
- The purpose of powers/obligations – performance and damages remedies
- The Supreme Court in *Eclairs v Glengary*
- Litigation and alternatives – Living arbitration

2.10pm **Entire agreement clauses, misrepresentation and estoppel**

Elizabeth Houghton

- Do entire agreement clauses work?
- What is the impact of such a clause on misrepresentation, mistake and estoppel claims
- Can an entire agreement clause exclude implied terms?
- Tips for drafting and enforcing entire agreement clauses

2.30pm Workshops 1, 2 or 3 (Please select one)

### W1 Termination: A poisoned chalice?

Alan Gourgey QC, Julian Greenhill QC, Anna Littler

- Termination for event of default – the potential pitfalls
- Relevance of motive in the exercise of contractual rights
- When the right to damages may be lost.
- The relief from forfeiture card in commercial contracts – when to play it.

### W2 Good faith in contracts

Lexa Hilliard QC, Tiffany Scott QC, Zoë Barton

- What does “good faith” mean?
- What is the effect of an express good faith clause in a contract?
- When will an obligation of good faith be implied into a contract?
- Is there a duty to negotiate in good faith?

### W3

#### Say it isn't so: informal variation of written contracts, verbal agreements and collateral contracts

Marcia Shekerdemian QC, Jonathan Hilliard QC, Bobby Friedman

- Excluding oral contractual variations – *Rock v MWB*
- When collateral contracts arise
- Variations by conduct
- The role of estoppel and waiver

3.30pm BREAK

4.00pm **You can but try: Endeavours clauses in commercial contracts**

Emer Murphy

- Best, all reasonable and reasonable endeavours: recent guidance
- Judging the endeavours: how to determine what is reasonable
- Limits on endeavours clauses: agreements to agree

4.20pm **The '5 minute pitch'**

Chaired by Ian Croxford QC.

Terence Mowschenson QC, Jonathan Davey QC, Jonathan Hilliard QC and Max Mallin QC will each pick a case from the last 100 years and attempt to persuade you that it is the most important case decided in the commercial litigation sphere. They will have 5 minutes each. Who is the most effective? You, the audience, will decide.

4.50pm **Guest Speaker: Daniel Susskind**

The future of the legal profession: How to adapt to advancing technology

- Two futures for the legal profession (both based on technology)
- Artificial intelligence
- The different ways to produce and share expertise
- What this means for lawyers

5.25pm **Closing** – Nikki Singla QC

5.30pm Drinks reception