

# Dispute resolution

## Topic & description

Duration

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### Legal professional privilege: A practical approach

(60 mins)

Companies and their in-house lawyers frequently face the task of maintaining and protecting privilege. In recent years, the scope and applicability of privilege has come under increased scrutiny, culminating in a number of high-profile court challenges which have redefined the privilege landscape.

In this interactive session, focused on providing the 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 a number of 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 use of in-house counsel.

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### 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

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### Limitation and exclusion of liability

(60 mins)

Limitation of liability provisions in commercial contracts are often fiercely negotiated between contracting parties and over many years the courts have shaped the drafting of such clauses. We discuss some of the more typical exemption clauses, the common law and statutory rules that apply 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

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

(60 mins)

When negotiating a deal counterparties often exchange pre-contract statements and promises. Sometimes those statements and promises turn out to be wrong. Exaggerations, mistaken beliefs, misleading opinions as well as statements made recklessly might result in an aggrieved counterparty seeking redress.

In this session we explore the legal risks associated with precontract 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

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## Contract termination

(60 mins)

Can I terminate this contract? Is the other party entitled to terminate our contract? These questions commonly arise when a deal does not go to plan. Contract termination is a topic of practical importance and a potential minefield for the unwary. All businesses must ensure they remain on top of relevant legal issues and minimise risk wherever possible. Using case study examples, we explore strategies for terminating contracts, how to operate contractual provisions and the risks arising when you get 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

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## Claims arising from a corporate acquisition

(60 mins)

Disputes arising from private M&A transactions take up a surprising proportion 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 kinds of 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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## Directors' Duties and liabilities

(45 mins)

The Covid-19 pandemic has created uncertainty and distress for businesses across a broad range of sectors and markets.

Given this context, directors will be understandably concerned about their duties to their stakeholders and their own potential liabilities in continuing to trade. What key issues should the directors of a company be aware of and what are the potential personal liabilities for directors?

In this seminar we will discuss issues of key concern and identify practical steps that directors should take to protect their businesses.

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## Covid-19: key issues in contractual dispute resolution

(60 mins)

Covid-19 has impacted almost every area of our daily lives. In this seminar we look at some of the key contractual "flash points" that are likely to arise in the current climate. These include:

- Force Majeure
- Frustration
- Termination
- Material adverse change
- Economic duress
- The enforceability of "work arounds" agreed during conditions of crisis, with particular reference to the law on waiver, variation, estoppel and "no oral modification" clauses