

## CONTRACT LAW & RISK MANAGEMENT FOR IP PROFESSIONALS

[Times are approximate. Please expect that the duration of breaks may be shortened throughout]

<b>DAY 1:</b>		
<b>9.00</b>	<b>An agreement to agree is not an agreement</b>	Sometimes we may want to defer negotiating an issue because we recognise that the best time to properly negotiate it is a later time when the parties are better informed. Can you do this and still have a binding agreement? Recognising and avoiding an agreement to agree. Proper mechanisms to defer the negotiation and still have a binding agreement. Case studies drawn from university transactions.
	<b>Is an option to negotiate a license or a right of first refusal to negotiate a license legally valid?</b>	Options to negotiate a license and rights of first refusal to negotiate a license are commonly employed provisions in a material transfer agreement, a research agreement, and a collaboration agreement. Are these legally binding? What legal liabilities or exposures arise? Case studies drawn from university transactions.
	<b>Do you have a duty of disclosure to the other party?</b>	You know something that the other party does not know which may affect its attitude or decision making in a negotiation. Do you have to disclose it? Even if it is contrary to your own interests? Are there consequences if you don't? Case studies drawn from university transactions
	<b>Binding and Non-Binding Term Sheets</b>	A Term Sheet is not normally intended to be legally binding. What if the other party wants it to be? Implications of it being binding. Making sure that you're not bound earlier than you want to be. Case studies drawn from university transactions.
<b>11.00</b>	<b>Morning Tea</b>	
<b>11.30</b>	<b>How to form a legal binding contract</b>	Legal requirements to validly form a contract. Offer, Acceptance, Consideration, etc How contracts can be valid even if no money is paid or even promised under the contract. Difference between Deeds and Agreements. Are deeds necessary? Case studies drawn from university transactions.
	<b>Avoiding a proposal being legally binding</b>	A Proposal is not usually thought of as being something that could become binding. It's only the first step after all. But it can be. Implications. Avoiding a proposal becoming binding. Case studies drawn from university transactions.
	<b>Oral Contracts: Avoiding Unintended side oral agreements</b>	Usually you don't intend to be bound until the contract is signed. But along the way to getting there, you might have agreed to something orally, and you are bound by it. Recognising and avoiding unintended side oral agreements. Case studies drawn from university transactions.
<b>1.00</b>	<b>Lunch</b>	
<b>2.00</b>	<b>Authority to enter into a contract &amp; Delegation</b>	Do academic staff have authority to sign a contract? Do academic staff have the ability to contractually bind a university? Delegation. Agency. Acting outside authority - potential liabilities of delegates and agents. Case studies drawn from university transactions.
	<b>Execution of a contract including electronic signing</b>	How contracts can be binding even if they are not signed. Examples in a university context. The mechanics of contract formation. How universities sign contracts. How companies sign contracts. How Government signs contracts. How CRCs enter into contracts. Is a witness necessary? Electronically signing contracts. Case studies drawn from university transactions.
	<b>Contract Terms, including implied terms</b>	What are express terms. What are implied terms. In what circumstances can terms be implied. Rules for the implication of terms. Incorporation by reference. Terms conferring benefits on third parties. Case studies drawn from university transactions.
<b>3.30</b>	<b>Afternoon Tea</b>	
<b>4.00</b>	<b>Certainty and Precision in what you agree</b>	The outcome of a negotiation – what is agreed – needs to be precise. The lack of precision means that the parties are not bound. How to recognise when you have achieved the necessary level of precision, and when you have fallen short. Case studies drawn from university transactions.

4.20	<b>Certainty in Research Agreement Schedules</b>	Drafting Research Agreement Schedules to achieve certainty: Sch 1 Research Program; Sch 2, Research Funds, Sch 3 Milestones.
5.00	<b>Close</b>	

<b>DAY 2:</b>		
9.00	<b>Misrepresentation, and statutory extensions to misrepresentation</b>	You don't have to intend to misrepresent or mislead. How misrepresentations can arise, even unintentionally. Consequences of misrepresentation. How to manage and reduce the risk of misrepresentation. Case studies. In the Australian edition of this workshop, misleading and deceptive conduct under Australian Consumer law and how these Australian Consumer Law provisions apply to university contracts. Implications. Case studies drawn from university transactions. In the Singaporean edition of this workshop, the Singapore Misrepresentation Act. Strategies to Minimise the Risk of misrepresentation.
10.30	<b>Morning Tea</b>	
11.00	<b>What non-lawyers need to know about negotiating risk allocation: releases, indemnities, and limitations on liability</b>	Risk allocation refers to where risk will lie in an agreement. Research agreements, collaboration agreements and license agreements considered. Risk can be allocated differently in relation to different issues in an agreement. How risk is customarily allocated in research and license agreements. How releases, indemnities and limitations of liability implement the risk allocation that is negotiated. Case studies drawn from university transactions.
12.30	<b>Lunch</b>	
1.30	<b>Sub-contracting, assignment, novation</b>	Differences between each. Different legal effect of each. When to use one instead of another. Consent to sub-contracting and assignment. Meaning of consent not to be unreasonably withheld. Case studies drawn from university transactions.
	<b>Governing Law</b>	Choice of governing law. International treaties and bilateral agreements dealing with recognition of judgements in other countries and enforcement. Implications of agreeing to governing law being a country other than your own country. Taking away the controversy and making the resolution of governing law more straightforward.
	<b>Alternative Dispute Resolution</b>	Alternatives to litigation. Dispute notification and mandatory cooling off. Negotiation of disputes. Assistance to resolve including mediation and expert determination. Arbitration, advantages and disadvantages.
	<b>Termination, Damages, Injunction</b>	How and when to terminate an agreement. Usual termination models. The consequences of breach. All about damages. All about Injunctions.
3.00	<b>Afternoon Tea</b>	
3.30	<b>Boilerplate clauses and what they mean</b>	What do these boilerplate clauses mean: Joint & Several; No variations unless in writing; Force Majeure; Waiver; Whole Agreement; No Representations, Severance. What do they mean? Are they important?
	<b>Legal terminology and what they mean</b>	"Good faith" "Acting reasonably" "Best endeavors" "Material" etc. These are terms often used. What do they legally mean? Are they meaningless? The implications of employing them? Case studies.
5.00	<b>Close</b>	