



The Commercial Law Association of Australia Ltd
ACN 001 290 115

Annual Report 2013

Building a bridge between commerce and law



The Commercial Law Association of Australia Ltd

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Farid Assaf (resign 28 November, 2013)

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Commercial Law Quarterly Editors

Professor Elisabeth Peden BA Hons, LLB Hons (Syd), PHD (Cantab) and Professor Gregory Tolhurst LLM (Syd)

Cover photo by Anthony Dreise.

Thank you to all those who have supported us throughout the year



Australian
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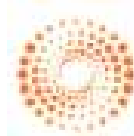
JOURNAL OF
**CONTRACT
LAW**



THE UNIVERSITY OF
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ALB
AUSTRALIAN LEGAL BUSINESS

RETIREINVEST
one life, make the most of it



THOMSON REUTERS

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Perry**



HERBERT
SMITH
FREEHILLS

**Slater &
Gordon**
Lawyers

President and Directors' Report

2013: YEAR IN REVIEW

This is my second year as President and I would like to thank all Directors for their support. It has been a most successful year for the CLA with record numbers attending our seminars and special events. Our list of seminars and presenters is too long to mention here. A comprehensive list of our activities and photos is featured in the following pages.

During 2013 Farid Assaf (1) resigned as Director. Farid joined the board in 2012. He chaired Justice Ashley Black's presentation on practice in the Corporations List in the Supreme Court of NSW for our June Judges Series. The CLA formally acknowledges the work that was undertaken by Farid Assaf as a Director.

Our 2013 CLA Mandatory CLE seminar for Practitioners, held in conjunction with the University of Notre Dame Australia proved very popular. Professor Gerard Ryan was once again the Chair with speakers including Associate Professor Sandra Lynch, Prasan Ulluwishewa and Robert Pelletier.

We were also delighted to be able to offer two special annual lunchtime seminars — Jeffrey Goldberger with his contract cases review in February and Russell Miller AM with his March update on Australian Consumer Law.

In March the CLA also held the inaugural Property and Planning Law Conference which was chaired by Justice Rachel Pepper (2) of the Land and Environment Court of NSW. The conference attracted interest from throughout NSW with many practitioners from regional centres also attending. Given the positive feedback we received we expect to make the Property and Planning Law Conference an annual event.

Professor John Carter provided our opening seminar for the new CLE year in May. The topic 'Construction of Commercial Contracts attracted widespread interest which was reflected in the large numbers of practitioners who attended.

In August our Navigating the Changing Privacy Landscape halfday seminar exceeded all expectations with over 40 attendees and our October Class Actions seminar, held in conjunction with Slater & Gordon, also attracted great interest and record numbers.

The success of this seminar was largely due to the work undertaken by members of the LRTF in developing the program and gaining eminent speakers such as Professor Rosalind Croucher (3), President of the Law Reform Commission and Professor Graham Greenleaf AM (4), Professor of Law & Information Systems at the University of NSW and Co-chair of AustLii.

The final event for 2013 was our Restitution, Equity & Statutory Liability Conference held in conjunction with the Australian National University (ANU). The conference featured prominent academics from the ANU and an impressive list of Judges and legal practitioners who all shared some links with the ANU. This is the first time we have joined forces with ANU in running a one-day conference and we were delighted by the results. We would especially like to thank Associate Professor Pauline Ridge (5) for her assistance in developing the program.

The Association once again was a Sponsor of the Sydney Postgraduate Law Conference 2013. The conference is one of Sydney Law School's major annual events, providing postgraduate students from across the region with the opportunity of presenting their research to academic staff from the University of Sydney Law School and other faculties within the University.

The success of the CLA is largely due to the support of many individuals from those who serve on the Board, committees and special interest groups to those who volunteer as guest speakers at seminars, contribute papers to the *Commercial Law Quarterly* or who support the Association by attending our seminars and events. If you are interested in participating in any of the CLA's activities please contact our CEO Max Wilson.



FINANCE. The CLA achieved a significant surplus of funds in 2013 — \$57,595. To view the audited financial reports for 2013 visit the CLA members' section.

2013 Seminar Program

**CARTER ON
MONDAYS**



Construction of Commercial Contracts

11 February, 2013 in Brisbane

Professor John Carter

with guests Kate Cahill, Margaret Mertens, Ian Reed

Proudly supported by Herbert Smith Freehills



Key contract cases: 2012 in review

22 February, 2013

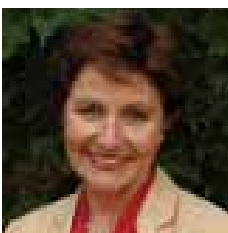
Jeffrey Goldberger



Inaugural Property and Planning Law Conference

1 March, 2013

Justice Rachel Pepper, Craig Leggat SC, Scott Nash, John Atkin, Fenja Berglund, Alan Hyan OAM,
Dr John Keogh, Janet McKelvey, Peter Rigg, Dr Ian Ellis-Jones



Mandatory CLE seminar

15 March, 2013

Professor Gerard Ryan, Associate Professor Sandra Lynch,
Prasan Ulluwishewa, Robert Pelletier. Proudly supported
by the University of Notre Dame



Piercing the corporate veil: recent developments in the light of classic cases

15 March, 2013

Associate Professor Lee Aitken



Social media: legal developments and challenges

22 March, 2013

John Garnsey QC, Elizabeth Blackford, Donna Short, James Mattson, Therese Catanzariti



Australian Consumer Law update

22 March, 2013

Russell Miller AM

CARTER ON MONDAYS



Construction of Commercial Contracts

20 May, 2013

Professor John Carter

with guests Peter Paradise, Greg Hing, David Templeman

Proudly supported by Herbert Smith Freehills



Attitude of the ACCC to cartels

31 May, 2013

Christopher Hodgekiss SC

JUNE JUDGES SERIES



Practice in the Corporations List in the Supreme Court of NSW

7 June, 2013

Justice Ashley Black



Practice in the Corporations List in the Federal Court

14 June, 2013

Justice Peter Jacobson



The new regime of practice in the Equity division

21 June, 2013

Justice Patricia Bergin



Navigating the changing privacy landscape: key legal and business issues

30 August, 2013

Professor Rosalind Croucher, Professor Graham Greenleaf AM, Este Darin-Cooper, Norman Donato

CARTER ON MONDAYS



The pitfalls of contracts of guarantee

14 October, 2013

Professor John Carter



Class actions

18 October, 2013

Ray Finkelstein QC, Michael Lee SC, Moira Saville, Odette McDonald, Frank C Torchio, Ben Phi



Resitution, Equity & Statutory Liability

8 November, 2013

Professor Stephen Bottomley, Associate Professor Pauline Ridge, Daren Armstrong, Bob Alexander, Sean King, Russell Miller AM, James Hutton, Justice Robert Beech-Jones, Justice James Stevenson, Professor Peta Spender

Held in conjunction with the Australian National University

'We aim to provide a quality seminar program that covers a diversity of topics and at a level that appeals to our member base.' Cristean Yazbeck, President

Seen at the seminars





Board of Directors as at December 31, 2013



Cristean Yazbeck BComm (Hons), LLB (Hons) (Syd), GradDipLegPrac, MCLA

Cristean Yazbeck joined the Board in 2011. Cristean is a senior lawyer specialising in taxation, superannuation, financial services and commercial law. He was admitted to practice in 2006. Cristean's legal career has seen him work for a Big 4 accounting firm (Ernst & Young), in-house legal (CBA, Perpetual), and private legal practice (HWL Ebsworth). Cristean has written on tax and superannuation-related issues. In addition to the Commercial Law Association, Cristean is closely involved with a number of financial services associations, including ASFA and the Financial Services Council. Cristean is also a Justice of the Peace, having been appointed to the role in 2002. He is the Principal and Head of Financial Services at Rockwell Olivier.



Jenny Wily LLB (Hons) BCL (Hons), FCLA

Jenny practises on her own account at Wily Legal and Consulting Pty Limited, having formerly been a Partner with Deacons for a number of years. In her current practice, Jenny provides legal and consulting services primarily in the areas of funds management, AFS licensing, compliance and corporate structuring and governance. In addition to being a Director of the Commercial Law Association, Jenny is also on the board of a number of public companies that provide financial services.



Stephen Lamy BA, LLM, FCLA

Stephen was admitted as solicitor in NSW in 1974 and England and Wales 1979. He had a variety of private practice positions involving commercial and revenue work before moving in-house in 1990. Stephen's corporate career has included roles with AMP and St George Bank and from 2002 with CBA. He has had more than 20 years in funds management with emphasis on superannuation. Stephen has a strong interest in legal education and developments in areas outside of his specialisation. Stephen joined the CLA's board of directors in August 2002. He became President of the CLA in 2006 and served in this capacity for five years.



Norman Donato BEc, LLB, LLM, FCLA

Norman is an executive lawyer at Bartier Perry. He has practised since his admission in 1987 in corporate finance and corporate commercial law. His qualifications include Bachelor degrees in Law and Economics, as well as a Master of Laws. Norman has extensive corporate and finance experience obtained from advising national and international clients including government bodies, major banks, public companies, SMEs and entrepreneurs. He is associated with a number of industry bodies. Norman is the Chair of the Legislative Review Task Force and was appointed to the board in May 2008.



Anthony J Dreise Dip Law, FCLA

Tony is a consultant lawyer in private practice with wide experience in government and corporate regulation. He was admitted to practice in 1977. For many years he was General Counsel of the Sydney Futures Exchange (now part of ASX). Prior to joining the futures exchange, Tony held senior legal positions with the NSW Corporate Affairs Commission (now ASIC). He was a long time task force member for Finsia Education (previously the Securities Institute of Australia) in its financial markets courses and has lectured on financial market and regulatory topics. He is a former Chairman of the Legislative Review Task Force of the CLA and is a longstanding member of the CLA.



Stephen McMahon BComm, FCA, F Fin, FCLA

Stephen is a Chartered Accountant and a fellow of the Financial Services Institute of Australia (Finsia) and the Institute of Chartered Accountants Australia (ICAA). He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, business valuations and due diligence along with investigating and solving complex financial and business issues which require the application of a combination of accounting and detective skills. Stephen's interests are in the Commercial Law and Finance sectors. He was appointed as a Director to the CLA in 1998 and currently serves as the Membership and Marketing Chairman.



Jane Ann Gray BA (Hons), LLB (Hons), LLM (Harvard), FCLA

Jane Ann is Special Counsel within the Corporate Advisory, M & A and Equity Capital Markets group at Clifford Chance. She was admitted as a solicitor in NSW in 1979. She practised for 20 years as a corporate and commercial partner, and joined Clifford Chance through its merger with Chang Pistilli & Simmons in 2011. Jane Ann's principal areas of practice are mergers and acquisitions including under Chapter 6 of the Corporations Act; business structuring and restructuring including schemes of arrangement; capital raisings; corporate regulation including for listed entities; and the legal aspects of the tax consolidations regime, in particular, tax sharing and funding arrangements.



Edmund Finnane BA and LLB (ANU), LLM (Corporate & Commercial Law) (UNSW), FCLA

Edmund Finnane has practised as a barrister in NSW since 1997. He has a wide ranging practice in commercial law and equity. Edmund is particularly interested in corporate insolvency, mortgage law, equity and contract law. He is a director of the CLA and is also the Deputy Chairman of that Association's Legislative Review Task Force. Edmund has delivered seminars to members of the legal profession on areas including commercial damages, equity, insolvency law and de facto relationships law. He is co-author of two books: *Equity Practice and Precedents* (Finnane, Newton and Wood, Thomson Lawbook Co, Sydney, 2008) and *Pleading Precedents* (Azize, El Khoury and Finnane [6th Ed], Thomson Reuters, Sydney, 2009). He is the author of the annotations in the Thomson Reuters annual and online publication, *Corporations Legislation with Annotations*.



James Biady BEc, LLB, Accredited Specialist Business Law, FCLA

Jim Biady is an experienced commercial lawyer who has practiced for over 30 years. He advises clients in a number of specialty areas including structuring of entities, employment law, commercial litigation, dispute resolution, sale & purchases of businesses, sale & purchases of property, wills and estates, as well as commercial leasing. He focuses on understanding each client's business and finding appropriate effective commercial solutions. Jim is a Business Law Specialist accredited by the Law Society of New South Wales.

Standing Committees as at December 31, 2013

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon FCLA
Jim Biady FCLA
Max Wilson FCLA

An important element of the Association's image is to ensure that marketing assists in attracting Legal practitioners and those involved in commerce to our Association's activities. By promoting our seminar programs and other programs we aim to encourage people to join the Association. Listening to our members and reacting to their needs is also very important in maintaining membership. During 2013 our discussion group on LinkedIn grew to over 600 members. This year we launched a successful membership campaign with Bannisters in Mollymook. New and renewing members were offered a prize of a two-night mid-week stay at Bannisters along with a \$200 voucher to Rick Stein's at Bannisters restaurant.

PUBLICATIONS COMMITTEE

Tony Dreise FCLA, Chair
Professor Elisabeth Peden
Professor Gregory Tolhurst
Max Wilson FCLA

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 27 years and is a highly respected reference material for those involved with the practice of law. All manuscripts submitted to the *Quarterly* are refereed prior to acceptance for publication. The journal contains articles and news about commercial law issues from around Australia and overseas. One of the main objectives of the Commercial Law Association is to make business people aware of the constant changes to the law and make law-makers aware of the constantly changing business environment. Through the publication of the *Commercial Law Quarterly*, the Association aims to:

- encourage members of the commercial and corporate community and the legal profession to examine and consider jointly commercial law usages and practices;
- disseminate information on concerning new legislation proposed or enacted by the Parliaments of Australia or overseas relating to commercial or corporate law usages and practices.

The Editors welcome the submission of notes to cases and issues of law reform and longer articles. Submissions should be sent to Professor Gregory Tolhurst, Faculty of Law F10, Eastern Avenue, University of Sydney, NSW 2006 or DX 983 Sydney.



Legislative Review Task Force as at December 31, 2013

The three key roles of the LRTF are to

- Review, and make submissions to appropriate bodies, on legislation and legislative proposals and legal issues of interest to the commercial and legal community.
- Encourage an interest in legal and legislative issues of a commercial nature.
- Promote the practical and principled application of the law in the commercial sphere.

Chair

Norman Donato FCLA, Executive Lawyer, Bartier Perry

Deputy Chair

Edmund Finnane FCLA, Barrister-at-Law, Wentworth Selborne Chambers

Secretary

Andrew Macpherson MCLA, Macpherson Greenleaf Lawyers

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Gavin Bartier FCLA, Acting Director, Legislation, Legislation and Policy Branch, Department of Lands NSW

Brian Gillard FCLA, Director, Gillard Consulting Lawyers

Dr John Keogh FCLA, Barrister-at-Law, Culwulla Chambers

Nicholas Newton FCLA, Barrister-at-Law, 13 Wentworth Selborne Chambers

Stephen Phillips MCLA, General Manager, Customers and Commercial Development, Company Secretary, Hunter Water Corporation

Alison Silink MCLA, Barrister and Lecturer, Communications Law Centre, UTS

Simon Ansell MCLA, Gillard Consulting Lawyers

Linda De Rosa, Lawyer