

The Commercial Law Association of Australia Ltd
ACN 001 290 115

Annual Report 2018

Building a bridge between commerce and law



The Commercial Law Association of Australia Ltd

www.cla.org.au

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Board of Directors as at 31 December, 2018

Norman Donato, President	Edmund Finnane
James Biady, Vice-President	Sally Moten
Stephen Lamy, Treasurer	Sarah Hill
Stephen McMahon	Professor Gerard Ryan

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Commercial Law Quarterly Editors

Dr Gregory Tolhurst LLM (Syd)

Professor Elisabeth Peden BA Hons, LLB Hons (Syd), PHD (Cantab)

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



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President and Directors' Report

2018: YEAR IN REVIEW

As another year comes to an end it is my pleasure to present this report on the activities of the Commercial Law Association to its members on behalf of the Directors.

We have several new faces on the board. I welcome Sally Moten from Lander & Rogers, Sarah Hill from 4 Selborne Chambers and Professor Gerard Ryan from the University of Notre Dame Australia. I wish to thank all of them for their contributions, as my other fellow board members that volunteer their time to the CLA.

Seminars and events

2018 proved to be a strong year for our seminars. Sixteen events were held comprising a mixture of half-day and lunchtime seminars, master classes, a workshop, a forum and a one-day conference. The most for three years.

I take this opportunity to particularly thank all our guest speakers. Amongst the highlights this year were:

- Russell Miller AM's update on Australian Competition and Consumer Law;
- The PPSA: Beyond the Basics master class;
- Christopher Hodgekiss SC's Misuse of Market Power master class;
- The June Judges series with the Hon Justices Ashley Black, Nigel Rein and Steven Rares;
- Mandatory CLE seminar in late March, once again our speakers were from the Sydney Law School of the University of Notre Dame Australia;
- The Managing Workplace Relations half-day seminar;
- Dr John Eldridge from the University of Sydney — who presented a lunchtime seminar on 'Surrounding circumstances in contractual interpretation'; and
- A free Commercial Law Forum on cyber security gained much attention from our members.

Jeffrey Goldberger's annual **Contracts Master Class**, chaired by the Hon Justice Fabian Gleeson, attracted another large and appreciative audience. One of the attendees summed up the general audience feedback by saying 'One of the most valuable seminars I have attended. The content was excellent. The paper was sensational.'

Emeritus Professor John Carter's '**Carter on Mondays**' seminars (we were very glad to have three of them this year) were once again among our most popular events. Again, a typical attendee response stated, 'I always gain much insight from Professor Carter's encyclopaedic knowledge of contract law'. We were also honoured to join the celebrations surrounding the launch of the second edition of *Carter's Breach of Contract* (LexisNexis Butterworths) during November.

With the encouragement and help of Associate Justice Verity McWilliam (a former board member of the CLA), we held a sold-out seminar workshop in the ACT on '**Practice and procedure in the ACT Supreme Court**'. Running long-distance seminar is never easy and we'd like to thank the staff of the Supreme Court who made everything run very smoothly for us.

Finally, our pinnacle event of the year was the **30th Anniversary Journal of Contract Law Conference**. We are always very proud to be a part of these conferences. Our distinguished speakers' presentations provoked a great deal of discussion among the audience. The conference was enjoyed by all who attended and by those who attended the dinner afterwards.

Commercial Law Quarterly

Our new look, entirely online version of *CLQ* was launched in early 2018. My special thanks to Elizabeth Wilson who has done an excellent creative new design with images from Australia's coastline on the cover and carried the design through to our website. Environmentally friendly and easier to store and reference, members have widely welcomed the change as well as the change in design.

Appointment of Life Members

Once again, this year we took the opportunity to recognise the valuable contribution of some of our members over the years by awarding Life Memberships to Stephen Lamy, Jennifer Wily and Stephen McMahon (pictured, left to right), all long-serving members of the board.



Major sponsor

Spicers Retreats, again very generously, offered a two-day escape as a membership prize. Congratulations to James Mack from Level 22 Chambers for winning a stay at Spicers Potts Point in our June membership draw.

Financial update

The CLA ended the year with a small deficit of \$9,933 due to editorial costs for past years being invoiced during 2018. Except for this abnormal expense, the CLA would have again made a small profit this year, demonstrating once again the appeal of seminars to attendees. To view the audited reports for this year, please visit our website. A comprehensive list of our activities and photos of events throughout the year are featured in the following pages.

I look forward to seeing you at future events. I take this opportunity to thank my fellow Board members, and our executive team for their valuable contributions during the year.

Norman Donato, President

2018 Seminar Program

**MASTER
CLASS**



Contract law in the cases: 2017 in review

23 February, 2018

Jeffrey Goldberger

**MASTER
CLASS**



PPSA: beyond the basics

9 March, 2018

Bruce Whittaker, Professor Sheelagh McCracken, Helena Busljeta, Nicholas Mirzai

**CARTER ON
MONDAYS**



What is wrong with illegality?

12 March, 2018

Emeritus Professor John Carter

**LUNCHTIME
SEMINAR**



A new era for Competition and Consumer Law

16 March, 2018

Russell Miller AM

HALFDAY SEMINAR



Mandatory CLE seminar

23 March 2018

Professor Gerard Ryan, Professor Michael Quinlan, Professor Iain Benson,

Adjunct Associate Professor Catherine Osborne, Murali Sagi

Proudly supported by the University of Notre Dame Australia

**CARTER ON
MONDAYS**



The renegotiation of contracts and contract doctrine

7 May, 2018

Emeritus Professor John Carter

**THE
JUNE JUDGES
SERIES**



Recent developments in corporate law

8 June, 2018
The Hon Justice Ashley Black



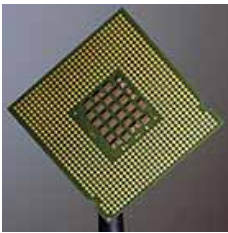
Close encounters of the unconscionable kind:

IP Star Australia v APS Satellite
15 June, 2018
The Hon Justice Nigel Rein



Commercial issues: private international law

22 June, 2018
The Hon Justice Steven Rares



30TH ANNIVERSARY JOURNAL OF CONTRACT LAW CONFERENCE

How will contract law meet the challenges of the 21st century?

27 July, 2018
The Hon Justice Gleeson, Associate Professor Goh Yihan, Assistant Professor Eliza Mik, Dr Simon Blount, Professor Elisabeth Peden, Professor Howard Hunter, Dr Greg Tolhurst, Associate Professor Katy Barnett, Dr Wayne Courtney, Emeritus Professor John Carter, The Hon Justice Julie Ward

HALFDAY SEMINAR



Managing workplace relations: what you need to know

17 August, 2018
Ingmar Taylor SC, Jane Seymour (not pictured), Tony Woods (not pictured), Sally Moten, Anne-Marie Allgrove, Bryony Binns, Kellie Edwards, Amber Sharp

**LUNCHTIME
MASTER CLASS**



Misuse of market power

17 August, 2018

Christopher Hodgekiss SC, Dr Katharine Kemp (Chair)

**COMMERCIAL
LAW FORUM**



**How to protect yourself from evolving risks
and cyber crime**

29 August, 2018

Nick Klein, Katherine Sainty

**LUNCHTIME
SEMINAR**



**'Surrounding circumstances' in contractual
interpretation. Where are we now?**

14 September, 2018

Dr John Eldridge, Hon Reginald Barrett (Chair)

**WORKSHOP
SEMINAR**



Practice and procedure in the ACT Supreme Court

8 November, 2018

Associate Justice Verity McWilliam

**CARTER ON
MONDAYS**



**Reliance on an unknown ground to justify termination of
contract. What is the current position?**

19 November, 2018

Emeritus Professor John Carter

Seen at the seminars





Current Board of Directors



Norman Donato BEc, LLB, LLM, FCLA

Norman is a partner 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 was appointed to the board in 2008 and is currently the President of the CLA.



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

Jim Biady is an experienced commercial lawyer who commenced practice in 1983. 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. Jim was appointed to the board in 2011 and is currently the Vice-President of the Commercial Law Association.



Stephen Lamy BA, LLM, FCLA

Stephen has been a solicitor for 40 years. 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 to 2016 with CBA. He has had more than 25 years in funds management with an emphasis on superannuation. Stephen contracts to financial services providers. 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. He currently serves as Treasurer.



Stephen McMahon BComm, FCA, F Fin, FCLA

Stephen is a Forensic Accountant and a fellow of the Financial Services Institute of Australia (Finsia) and the Institute of Chartered Accountants Australia and New Zealand. 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, has served many years as the Membership and Marketing Chairman and was awarded Life Membership in 2018.



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 has delivered seminars to members of the legal profession on areas including commercial damages, equity, insolvency law and de facto relationships law. Edmund is co-author of two books: *Equity Practice and Precedents* (2nd Edition) (Finnane, Newton and Wood, Thomson Reuters, Sydney, 2019), (as well as the first edition of that book published in 2008) and *Pleading Precedents* (Azize, El Khoury and Finnane [6th Ed], Thomson Reuters, Sydney, 2009). Since 2009 he has been author of the annotations in the Thomson Reuters annual and online publication, *Corporations Legislation with Annotations*. In 2018, Edmund was appointed as general editor of the *Company and Securities Law Journal* (Thomson Reuters).



Sally Moten LLB (Hons) (USyd), BCom (USyd)

Sally Moten was admitted as a Solicitor in NSW in 2005. She has a Bachelor of Laws (First Class Hons), and Bachelor of Commerce, both from the University of Sydney. Sally specialises in all aspects of employment and safety law and has spent several years working in large commercial laws firms, Blake Dawson (now Ashurst) and Henry Davis York (merged with Norton Rose Fulbright). She also spent time working in-house at a large NSW Government Agency. Sally joined Landers and Rogers Lawyers in November 2017 as Special Counsel. Sally provides advice on matters ranging from performance management and disciplinary matters to defending unfair dismissal and discrimination claims, managing industrial disputes, advising on restructuring of organisations, defending WHS prosecutions and providing WHS advice on compliance and safety legislation. Sally joined the CLA's Board of Directors in 2016.



Sarah Hills BA/LLB (Hons) (USyd)

Sarah Hill has practised as a barrister in NSW since 2004. She holds a BA/LLB (Hons) from the University of Sydney. She has a broad ranging equity and commercial practice covering such areas of the law as contracts, corporate law, insolvency, equity, property, trusts and wills and estates. Sarah has given presentations in many of these areas at industry conferences and to various legal bodies. She was admitted to the Supreme Court of NSW, the Federal Court of Australia and the High Court of Australia in 2003. Sarah was appointed to the Board of Directors of the CLA in 2018 and is currently serving as the chair of the Publications Committee.



Professor Gerard Ryan BEc (Hons) (USyd), LLB (Hons) (USyd), GradDipLP (UTS), LLM (Hons) (USyd), GCUT (UNDA)

Gerard is a Professor of Law at the University of Notre Dame Australia (UNDA). He graduated from the University of Sydney with First Class Honours in Economics and Law. His Masters of Law included an Honours thesis in competition law. Gerard was admitted as a solicitor in 1991. He was a partner in a large city commercial law firm, specialising in commercial work in the energy sector (including electricity derivative transactions, large energy infrastructure projects and regulatory advice). From 2008 to 2012 he was Dean of the School of Law, Sydney at UNDA. His main areas of teaching are contracts, commercial practice, commercial drafting, ethics, corporations law and property. He has supervised research students in contracts, competition law and other areas. Gerard and his UNDA colleagues have conducted the CLA's annual CPD presentation on ethics, practice management and professional skills since March 2011. He joined the CLA Board of Directors in 2018.

Standing Committees as at December 31, 2018

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon

Jim Biady

Max Wilson

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.

PUBLICATIONS COMMITTEE

Sarah Hill

Professor Elisabeth Peden

Dr Gregory Tolhurst

Max Wilson

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 30 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.

All copies of the *Commercial Law Quarterly* from 1986 to the present day are available online. There is also a number of copies of *The Bulletin* (CLQ's predecessor) in the library, but we are still seeking some issues. The library is available on our website.

The Editors welcome the submission of notes to cases and issues of law reform and longer articles.