



Building a bridge
between
commerce and law

The Commercial
Law Association
of Australia Ltd

ACN 001 290 115

Annual Report
2011

The Commercial Law Association of Australia Ltd

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Commercial Law Quarterly Editors

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

Professor Gregory Tolhurst LLM (Syd)

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



President and Directors' Report

2011 YEAR IN REVIEW

Our list of seminars and presenters is too long to mention here. A list of our activities plus photos are featured in the following pages. Other events of the year included:

■ During 2011 Kalinda Cobby and David O'Bryen resigned as Directors. Kalinda had joined the board in February 2005 and had served as Vice President and chaired the New Graduates and Mentoring Program committee. Under Kalinda's leadership the CLA successfully launched the mentoring program and implemented a number of activities promoting the benefits of the CLA to young lawyers. David O'Bryen had been the CLA's longest serving Director having joined the Board in March 1989. David's role as Treasurer was instrumental in ensuring that the CLA prospered over the past years. The CLA formally acknowledges the excellent work that was undertaken by both Directors.



■ 2011 was significant in that it was the first time that the CLA has been involved in the organisation of an overseas conference (pictured above and on page 7). The *Journal of Contract Law* Conference — Commercial Contract Law: International Perspectives — was held at the Shangri-La Tanjung Aru Resort & Spa in Sabah, Malaysia. The conference attracted 80 participants from Malaysia, Singapore, Borneo and Australia. The CLA worked closely with the Sabah Law Association in organising the event. Sponsors included Freehills, SEDIA (Sabah Economic Development and Investment Authority) and LexisNexis. Professor John Carter was instrumental in initiating discussions which ultimately lead to the event's success.

■ In March the CLA held its Mandatory CLE halfday seminar for practitioners. The idea was to provide a alternative to many of the standard seminars available. Professor Gerard Ryan, Dean of the Sydney Law School, Univeristy of Notre Dame Australia was the Chair with speakers including Associate Professor Sandra Lynch, Director Centre for Faith Ethics and Society, University of Notre Dame Australia; Angela Pearsall, Partner, Blake Dawson; and Jasmine Malki, Graduate Development Manager, Blake Dawson.

■ Two seminars were held on PPS which attracted great interest. Our March 'PPS: Coming Ready or Not' seminar was followed in August by another seminar focusing on practical implementation issues.

■ 'Force Majeure' with Professor Woody Hunter, Professor John Carter and Professor Donald Robertson, held in conjunction with the *Journal of Contract Law*, was held in July in Sydney and was so popular that we organised a similar event in Brisbane in September.

■ The mentoring program continued to be a popular member service under the stewardship of Sandra Di Bella, our Mentoring and Graduates Program Co-ordinator.

■ The Association once again sponsored the Post Graduate Students Conference held at the Law Faculty of Sydney University on Thursday, 28 October. This event encourages scholarship and networking for PhD students engaged in research within our universities. The conference was well attended with over 80 delegates representing universities from all the eastern states.

■ The Legislative Review Task Force was active with Chair Norman Donato implementing a range of activities. We had a number of new members join in the activities of the Task Force during the year.

■ 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, act as mentors, 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 small increase in surplus funds compared to 2010. Our surplus for 2011 was \$25,973 (2010: \$24,206). Our improved financial position for both 2010 and 2011 is largely the result of an increase in seminar income and strong cost controls. To view the audited financial reports for 2011 visit the CLA members' section.

2011 Seminar Program

Recent cases: trademark law — Optical 88 Ltd v Optical 88 Pty Ltd; Telstra Corp v Phone Directories Company

11/2/2011

Carmen Champion



Current insolvency issues: deconstructing and reconstructing

18/2/2011

Scott Hedge, Michael Joseph, Paul Burges, Peter Sheppard



Key contract cases: the year in review

25/2/2011

Jeffrey Goldberger



PPS. Coming — ready or not

18/3/2011

Paul Rogerson, Andrew Boxall, James O'Donovan, Patrick Lowden

Australian consumer law — a new beginning

18/3/2011

Russell Miller AM



Mistake in contract and restitution

21/3/2011

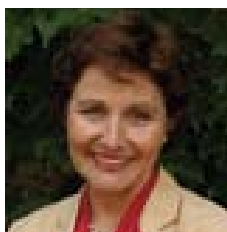
Professor John Carter



Developments in the common law of employment

25/3/2011

Justice Stephen Rothman



The complete Rule 42 requirements

30/3/2011

Professor Gerard Ryan, Associate Professor Sandra Lynch, Jasmine Malki, Angela Pearsall

Commercial Contract Law — International Perspectives

The *Journal of Contract Law* conference in association with the Sabah Law Association and the CLA

Shangri-Law Tanjung Aru Resort & Spa, Sabah, Malaysia. 10-11/6/2011

Justice Tan Sri Datuk Seri Panglima Richard Malanjum, Justice Andrew Phang, Professor John Carter, Professor Woody Hunter, Professor Michael Furmston, Dato' RR Sethu, Dr David Fung

Proudly supported by LexisNexis Butterworths, Freehills, Ross Parsons Centre



Frustration and force majeure

7/7/2011

Professor Woody Hunter, Donald Robertson, Professor John Carter

Presented in association with the *Journal of Contract Law* and the Ross Parsons Centre



PPSA: practical perspectives for practitioners

26/8/2011

Associate Professor Lee Aitken, Oliver Shtein, Daniel Tirado, Professor Sheelagh McCracken



Frustration & force majeure

Brisbane. 26/9/2011

Kate Cahill, Professor Michael Furmston, Donald Robertson, Professor John Carter

How not to misinterpret a contract

17/10/2011

Professor John Carter



Navigating the Australian Consumer Law

28/10/2011

Justice Steven Rares, Peter Kell, Kon Stellios, Jeffrey Goldberger, Sarah Moritz, Jackie Mortensen



Obligations of good faith in the performance of commercial agreements

28/10/2011

Robert Angyal SC



Seen at the seminars



JCL conference, Sabah, Malaysia



Our thanks to the Sabah Law Association, SEDIA, Freehills, LexisNexis and the staff of the Shangri-La Tanjung Aru Resort & Spa.

Board of Directors as at December 31, 2011



Stephen Lamy BA, LLM, FCLA

Stephen became President of the CLA in February, 2006. He 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 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.



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.



Anthony J Dreise Dip Law, FCLA

Tony is a consultant lawyer in private practice specialising in financial markets regulation and the financial services legislation. 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/Kaplan (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, F ICAA, FCLA

Stephen is a Chartered Accountant and a fellow of the Financial Services Institute of Australia (Finsia). He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, 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.



Norman Donato BEc, LLB, LLM, FCLA

Norman recently joined Bartier Perry as Executive Lawyers. Before that he was a partner at Makinson & d'Apice Lawyers. He has practised since his admission in 1987 and 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 has presented many papers on corporate finance, ecommerce, IT and IP issues at various industry conferences. Norman was the national practice leader for the Ecommerce and Intellectual Property group of a national law firm. He has specialist knowledge of corporate finance and advisory, retailing, and communications and media industries. 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.



Richard Porter FCA, FCPA, ACIS, AAIM, FCLA

Richard is a Corporate Recovery and Litigation Partner in the Chartered Accountancy firm of Moore Stephens. He is a Fellow of the Institute of Chartered Accountants in Australia (FCA), Associate of the Chartered Institute of Secretaries and Administrators (ACIS), Fellow of the Australian Society of Accountants (FCPA) and Associate of the Australian Institute of Management. Richard is also a registered official liquidator, tax agent and real estate agent. Richard's main professional areas of interest are corporate recovery and litigation. He was appointed as a Director of the CLA in 2003 and is currently serving on the Publications Committee.



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)

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

Jim Biady is an experienced commercial lawyer who has practiced for over 25 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 as well as commercial leasing. He focuses on understanding each client's business and finding appropriate commercial solutions. Jim is a Business Law Specialist accredited by the Law Society of New South Wales.



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

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. Cristean is currently Senior Legal Counsel with Perpetual.

Standing Committees as at December 31, 2011

EDUCATION COMMITTEE

Stephen Lamy FCLA, Chair
Max Wilson FCLA

Maintaining a reputation for providing good value lunchtime, halfday and one-day conferences on a diverse range of commercial law topics has been one of the guiding principles of our seminar program. Stephen Lamy as President has taken a strong interest in the development of this year's program which delivered a comprehensive program of seminars meeting the continuing education needs of members.

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon 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 2011 we established a Facebook site and a discussion group for members on LinkedIn.

PUBLICATIONS COMMITTEE

Rick Porter 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 25 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 Elisabeth Peden, Faculty of Law, University of Sydney, 173-175 Philip Street Sydney NSW 2000 or DX 983 Sydney.

NEW GRADUATES PROGRAM

Sandra Di Bella, Co-ordinator
Max Wilson FCLA

Mentoring program was launched in June 2007 and is targeted at young lawyers who desire a mentoring experience outside their firm/practice area. The CLA's mentoring program has been specifically designed not to compete with any members' existing program. The Association through its broad range of members provides young lawyers a range of mentoring experiences. The program has been deliberately kept small with the pairing limited to 10 mentors and 10 mentees each year. In this way the Association is able to provide the one on one support and coaching that ensures mentees and mentors get the most out of the relationship. Sandra Di Bella joined the program as Co-ordinator in 2010 and successfully matches mentors with mentorees.



Legislative Review Task Force as at December 31, 2011

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

Members

A-Professor Dr Karl Ajami MCLA, Director, Undergraduate Law Program & LLM International Law (Dispute Settlement), Kazakhstan Institute of Management

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

Michael Bell FCLA, Procurement Manager, Sinclair Knight Merz, Western Australia

Dr Hung Chu FCLA, Director, Lonergan Edwards and Associates

Brian Gillard FCLA, Director, Gillard Consulting Lawyers

Roger Hamilton SC FCLA, Barrister-at-Law, Wentworth Selborne Chambers

Jason Harris MCLA, Senior Lecturer, Law Faculty, UTS

Bill Henty FCLA, Solicitor, W J Henty & Co

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

Bruce McBain FCLA, CEO, Corporate Superannuation Association

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

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

Rashda Rana FCLA, General Counsel, Bovis Lend Lease

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

Allen CM Wong FCLA, Vice Chairman, Hong Kong Food Science and Technology Association

Greg Wrobel MCLA, Partner, Holding Redlich

Simon Ansell, Gillard Consulting Lawyers