

Eversheds Contract Managers Professional Development Programme

1. Module Title – Contract Formation

Syllabus Overview:

This course examines the pitfalls and issues surrounding the formation of commercial contracts from a commercial as well as legal perspective.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand and explain the key principles of contract formation including offer, acceptance, consideration and intention to create legal relations
- comprehend the additional problems raised by delivery pre contract, agreements to agree and heads of terms
- analyse issues of incorporation of terms and battle of the forms and understand where these issues are likely to arise in practice

Professional Skills & Attitudes

A delegate should be able to:

- apply the principles of contract formation to their daily experience
- consider when and how to use documents such as heads of terms
- deal effectively with problems raised by the battle of the forms

Mode of Assessment

Multiple Choice Questions

2. Module Title – Contract Content (1)

Syllabus Overview:

This course provides an examination of some of the most common issues that arise in the review of commercial agreements and will focus on commercial and legal considerations.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the perspectives of both supplier and buyer in respect of price and payment, term and termination and endeavours clauses
- explain the rules relating to repudiatory breach of contract

- comprehend the issues raised by continuing contractual obligations

Professional Skills & Attitudes

A delegate should be able to:

- review and revise price and payment clauses
- ensure that term and termination clauses accurately reflect their client's expectations
- select the correct level of endeavours obligation to be used in their contracts

Mode of Assessment

Multiple Choice Questions

3. Module Title – Contract Content (2)

Syllabus Overview:

This course provides an examination of some of the most common issues that arise in the review of commercial agreements and will focus on commercial and legal considerations.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the key issues that arise in respect of warranties
- comprehend the ways in which an indemnity clause can be amended
- explain the key provisions of the Unfair Contract Terms Act 1977
- comprehend the distinction between direct and indirect losses

Professional Skills & Attitudes

A delegate should be able to:

- review and revise a warranty clause
- suggest an appropriate series of amendments to an indemnity clause
- apply the rules about exclusion and limitation clauses to a series of relevant examples

Mode of Assessment

Multiple Choice Questions

4. Module Title – Contract Content (3)

Syllabus Overview:

This course provides an examination of some of the most common issues that arise in the review of commercial agreements and will focus on commercial and legal considerations.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the principles used by the courts to resolve issues of contract interpretation
- explain the operation of implied terms and understand in what circumstances they may be applied by a court
- analyse issues concerning course of action and estoppel
- comprehend the rules on good faith
- outline the basic rules of the TUPE Regulations

Professional Skills & Attitudes

A delegate should be able to:

- apply the rules on course of action and estoppel to a series of practical scenarios
- decide when and how to insert good faith provisions into a contract

Mode of Assessment

Multiple Choice Questions

5. Module Title – Boilerplate Issues (1)

Syllabus Overview:

Boilerplate clauses may appear unglamorous when the heat is on to get the deal done, but your failure to include appropriate boilerplate clauses or amend standard clauses as appropriate can come back to haunt you, if the deal goes sour.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the different elements to be included in an entire agreement clause
- explain what should be included in a force majeure clause and what should not
- comprehend the usual amendments to be made to an assignment clause
- analyse the key concepts relating to sub-contracting
- understand how the courts will apply a severance clause in practice
- explain the key issues to be included in a notice clause

Professional Skills & Attitudes

A delegate should be able to:

- review clauses in respect of the issues mentioned above
- suggest appropriate amendments to such clauses

Mode of Assessment

Multiple Choice Questions

6. Module Title – Boilerplate Issues (2)

Syllabus Overview:

Boilerplate clauses may appear unglamorous when the heat is on to get the deal done, but your failure to include appropriate boilerplate clauses or amend standard clauses as appropriate can come back to haunt you, if the deal goes sour.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the principles that apply to liquidated damages clauses
- comprehend the scenarios in which a variation clause can be overridden by conduct
- explain the rules relating to execution clauses, e-signatures and dating of documents
- analyse different types of authority
- understand the limitations of waiver clauses
- explain the rules relating to jurisdiction and applicable law clauses

Professional Skills & Attitudes

A delegate should be able to:

- review clauses in respect of the issues mentioned above
- suggest appropriate amendments to such clauses

Mode of Assessment

Multiple Choice Questions

7. Module Title – Sale of Goods Act Issues

Syllabus Overview:

This course sets out an overview of the key issues arising from sale of goods contracts.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the operation of the implied terms of the Sale of Goods Act and the ability to exclude them from a business to business contract

- explain the different perspectives of supplier and buyer in respect of delivery and acceptance of goods
- comprehend the different perspectives of supplier and buyer in the context of risk and property and the content of a retention of title clause

Professional Skills & Attitudes

A delegate should be able to:

- review clauses in respect of the issues mentioned above
- suggest appropriate amendments to such clauses

Mode of Assessment

Multiple Choice Questions

8. Module Title – Unfair Contract Terms

Syllabus Overview:

This course sets out an overview of the key provisions of the Consumer Rights Act 2015 in respect of unfair terms in consumer contracts.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- explain the key provisions of the Consumer Rights Act 2015 in respect of this topic
- understand the correct interpretation of the test of ‘fairness’
- comprehend the amendments to the ‘fairness’ test introduced by the Consumer Rights Act 2015
- understand and apply the relevant guidance of the CMA

Professional Skills & Attitudes

A delegate should be able to:

- review a trader to consumer contract
- suggest appropriate amendments to such a contract to ensure compliance with the rules on unfair terms

Mode of Assessment

Multiple Choice Questions

9. Module Title – Data Protection in Commercial Contracts

Syllabus Overview:

This course examines how compliance with data protection laws impacts the formation and negotiation of commercial contracts.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the basic requirements for compliance with data protection law (in particular the GDPR)
- comprehend how the use of personal data in a contractual framework will impact the terms of that contract
- understand when certain obligations in respect of personal data use, will be required as part of the contractual framework

Professional Skills & Attitudes

A delegate should be able to:

- spot where data protection issues may be relevant
- consider when and how to use contracts to deal with these issues
- know when to seek legal advice in relation to data protection concerns

Mode of Assessment

Multiple Choice Questions

10. Module Title – Competition Law

Syllabus Overview:

This course provides an overview of competition law and examines the application of competition law to commercial arrangements.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand and explain the key principles of competition law
- identify contractual provisions which could give rise to competition concerns
- comprehend what type of information can and cannot be legally exchanged under competition law

Professional Skills & Attitudes

A delegate should be able to:

- apply the competition law principles to their daily experience
- understand what action to take if they become aware of a potential competition law infringement
- draft agreements in compliance with competition law
- identify strategic information

Mode of Assessment

Multiple Choice Questions

11. Module Title – Intellectual Property in Commercial Contracts

Syllabus Overview:

This course examines the pitfalls and clauses pertinent to intellectual property in commercial contracts from a commercial as well as legal perspective.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand and explain the key intellectual property rights most relevant in commercial contracts
- understand and be able to make suggestions regarding the drafting of a number of intellectual property specific clauses in a contract
- comprehend the additional problems raised by rights to use, assignments, warranties and indemnities and third party infringement of intellectual property
- analyse these issues from the perspective of both parties to a commercial agreement

Professional Skills & Attitudes

A delegate should be able to:

- apply intellectual property principles in contracts to their daily experience
- consider when to make particular amendments, for example to an assignment clause
- deal effectively with problems raised by these clauses and consider if it is commercially viable to agree to them

Mode of Assessment

Multiple Choice Questions

12. Module Title – International Commercial Contracts (1)

Syllabus Overview:

This course provides an overview of the relevant legislation relating to jurisdiction and applicable law clauses found in international commercial contracts

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- explain the rules relating to jurisdiction clauses as found in the Brussels Regulation (recast)
- understand the content of the Rome Convention and Rome I Regulation in respect of applicable law clauses
- summarise the key provisions of the Hague Convention

Professional Skills & Attitudes

A delegate should be able to:

- review and revise a jurisdiction clause
- review and revise an applicable law clause

Mode of Assessment

Multiple Choice Questions

13. Module Title – International Commercial Contracts (2)

Syllabus Overview:

This course provides an overview of the relevant legislation relating to sale of goods issues and exclusion and limitation clause found in international commercial contracts. It also summarises the operation of the Incoterms.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- explain the circumstances in which the Sale of Goods Act 1979 may apply to an international commercial contract
- understand the circumstances in which the Unfair Contract Terms Act 1977 does and does not apply to an international commercial contract
- comprehend the structure and content of the Incoterms

Professional Skills & Attitudes

A delegate should be able to:

- decide whether the Sale of Goods Act 1979 should apply
- consider the extent to which the Unfair Contract Terms Act 1977 will apply
- select and implement the correct section of the Incoterms

Mode of Assessment

Multiple Choice Questions

14. Module Title – Managing Disputes in Commercial Contracts

Syllabus Overview:

Once a contract has been concluded it doesn't always mean that performance has taken place in accordance with the terms agreed. This course will help to recognise whether a contract has been performed as agreed and in the event it has not, what remedies are available to manage any disputes around performance. This course also provides guidance on the practical steps that should be considered and what evidence is required to manage any potential dispute.

Learning Outcomes

Knowledge and Understanding

A delegate should be able to:

- understand the performance obligations in a contract
- appreciate the remedies available under the contract
- comprehend what evidence needs to be obtained to prove the breach
- understand the concept of privilege and how it applies in respect of a contract claims

Professional Skills & Attitudes

A delegate should be able to:

- explain whether a contract has been performed in accordance with the agreed terms
- identify what action should be taken in relation to a breach of contract claim
- explain the remedies available
- recognise privilege and the evidence that will be required in dealing with a dispute

Mode of Assessment

Multiple Choice Questions