

Liabilities, Damages & Other Contentious Issues

in International Commercial Agreements

19-20 September 2019 • 5-6 March 2020 London



Reduce your exposure to risk and liability in your contracts in two essential days

By the end of the programme you will:

- **Be aware** of all the areas of risk so you can effectively identify and manage your exposure
- **Recognise** where a breach of contract may occur so that where necessary and within reason liability can be excused
- **Limit** the maximum aggregate damages to control your overall cost exposure
- **Impose** effective and useful time limits to control the length of your exposure to certain risks
- **Understand** what should be included to fall under a *force majeure* clause to ensure they are used favourably within your contracts
- **Get to grips** with the types of damages that can be imposed to mitigate against the cost
- **Discuss** the potential impact of Brexit
- **Be aware** of the new Supreme Court rule, and subsequent decisions, on liquidated and ascertained damages and penalties – *Cavendish v Makdessi* and how it affects you

'Great speaker and good content. A very informative and productive two days. Highly recommended!'

Inga Regenass, Ipsen Pharma SAS

'Engaging and entertaining. Very effective at presenting.'

Elaine McDonnell, Bühler UK Ltd

'Engaging and interactive course, helps you answer what interpretation a party may have and need for clear drafting when closing a deal.'

Anna Fitzmaurice, Legal Adviser, Eusa Pharma Inc

'Lively and well-structured presentations, well-thought-out course with explanatory examples and case law, capacity of the speaker to adjust course to attendees.'

Ludovic Dendane, Head of Legal Department, Transgene

FEATURING: Practical workshops examining how clauses are interpreted differently in various jurisdictions

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Why should you attend this programme?

Now is not the time for weaknesses in your commercial contracts when risk and liability have to be kept to a minimum. During the negotiation of international commercial agreements, the exact exposure in relation to damages is often not properly identified, anticipated or understood and, frequently, the parties are:

- **Unaware** of the true nature of the law of damages in the chosen governing law of the contract
- **Unaware** of the fundamental differences of approach in the common law and civil law systems
- **Unaware** that their attempts at limiting or excluding their liability may be ineffective

This specialist two-day programme has been specifically developed to focus exclusively on this subject. It offers a diverse and detailed understanding of the law of damages under English law with comparisons to civil law jurisdictions. Presented by an international specialist in the field, the seminar will enable participants to effectively draft and negotiate contracts with knowledge and confidence.

Who should attend this programme?

- Lawyers working in business, government and private practice
- All those working in a legal context but not necessarily having law as their underlying professional qualification, including contract managers, commercial managers and directors

What are the objectives of the programme?

As a result of attending you will be able to:

- **Identify** the potential risks presented by international commercial agreements
- **Understand** what is recoverable and why
- **Be able** to effectively address the exclusions and limitations of liability
- **Familiarise** yourself with the remedies available, and the most advantageous situation and context in which to tactically apply them
- **Master** the impact of time limits, *force majeure* and the burden of proof
- **Grasp** the quantum of damages under common and civil law

Comparative workshop sessions

Throughout the programme comparisons will be made to common law vs civil law. Additionally the programme has two interactive workshop sessions led by our internationally qualified facilitator where, using a case study as a basis, specific clauses will be examined through their different interpretations in varied jurisdictions.

'Great course, great speaker. I am better equipped to negotiate international contracts and understand the other parties' minds.'

Agnès Audoin, IPSEN Pharma

'The course was well presented, informative and relevant for anyone drafting and negotiating international contracts.'

Sebastian Gruson, Boehringer-Ingelheim RCV GmbH & Co KG

'A very well-structured course with an excellent and experienced lawyer as a speaker. Ideal for in-house counsel as a refresher but also a good opportunity for networking with other legal counsel from different industries.'

Sunia Ali, ROSEN Swiss AG

Expert trainer



Arun Singh (Prof) OBE, FRSA is an international lawyer and consultant to an international law firm. He was formerly a partner and head of commercial law at KPMG Legal and partner at Masons (now Pinsent Masons).

Arun has advised on disputes and collaborations in a wide range of jurisdictions including Europe, countries in West and East Africa, India, Bangladesh, China, Hong Kong, Saudi Arabia, UAE, Qatar, Pakistan, Libya, Jordan, Syria, the US, Caribbean, Russia, Israel, Lebanon, Egypt, Thailand and Singapore. Arun is cited and ranked in the Chambers Guide to the world's leading lawyers. He concentrates on international investment, joint ventures, licensing of technology, research and development, M&A, energy, outsourcing and corporate governance in developed and emerging markets; he also handles international legal risk management matters. Arun advises a range of international organisations and is a visiting professor in International Business, Leadership and Negotiations at Salford University Business School, senior associate at Oxford University's Institute of Legal Practice and teaches international leadership and negotiations at the University of Cambridge. He has facilitated programmes in Europe, Asia, the Middle East and the US.

He is a recognised corporate educator and a non-executive director of two international investment companies – one of which is listed on the London Stock Exchange, chairing the Audit Committee and Investment Committee. He was appointed an OBE by HM the Queen in January 1999 for services to international trade, investment and intercultural management. Arun is an editor and contributor to a number of publications including *Business and Contract Law* (Thorogood) and *How to Lead Smart People – Leadership for Professionals* (Profile Books), a facilitator for company programmes and an experienced speaker at international corporate conferences.

Dates and venue

19-20 September 2019
5-6 March 2020

The Rembrandt Hotel
11 Thurlow Place
London
SW7 2RS
Tel: +44 (0)20 7589 8100
Web: www.sarova-rembrandthotel.com



The Rembrandt Hotel is opposite London's Victoria and Albert Museum (V&A) and within a ten-minute walk of the Natural History Museum, Science Museum, Hyde Park, Harrods and the Royal Albert Hall. The location is superb – surrounded by restaurants, bars, shops and cultural attractions. The venue's beautifully modernised Edwardian rooms were originally apartments for Harrods. You can stroll to South Kensington underground station in five minutes. From here, District, Circle and Piccadilly Tube lines take you straight to the City of London, Heathrow Airport and mainline train stations including Paddington and Victoria.

Accommodation

We have arranged a preferential rate for accommodation at this venue. To take advantage of this, please contact reservations_rembrandt@sarova.com and quote **FALCON**. There are limited rooms available at this rate so please book early.

For alternative accommodation solutions, please visit our website: falconbury.co.uk/accommodation

Timetable

Day 1: Registration: 0900-0930. Start: 0930. Close of day: 1700.

Day 2: Start: 0900. Course finish: 1630. There will be two 15-minute refreshment breaks and one hour for lunch scheduled each day.

The programme

Day one

Introduction

- Key differences in civil and common law
- Identifying potential legal risks
- Fundamental distinctions
- Emerging trends
- Drafting approaches
- Introduction to comparative exercises

Pre-contract agreements – background and drafting

- NDAs, MoUs, Letters of Intent
- Pre-contractual liability
- Good faith
- Confidentiality agreements – binding?
- Templates of pre-contract documents
- Redrafting template documents

Warranties, representations, guarantees and indemnities

- Differences
- Which to use and when
- Remedies for breach
- Relationship with entire agreement
- Indemnities – examples
- The court approach and *contra proferentem*
- Types of guarantees – performance and on demand

Exclusions, limitations and maximum liability

- Liability for personal injury or death
- Liability for late delivery, performance or similar
- How to limit the maximum aggregate damages
- Fundamental breach vs breach of fundamental obligation
- Specific examples of limitation of liability clauses from different jurisdictions

Force majeure, frustration and economic hardship

- The concepts of *force majeure* and economic hardship
- Doctrine of frustration
- Changing circumstances and unforeseen events
- Hardship clauses
- Defining the events
- Typical claims
- The termination period
- Re-execution/renegotiating
- The legal effect

COMPARATIVE WORKSHOP SESSION: PART 1

Practical workshop where, using a case study as a basis, clauses will be examined that are interpreted differently in different jurisdictions, including:

- *Force majeure*
- Exclusion clauses
- Approaches to interpretation

Day two

Direct, indirect damages and consequential loss

- Types of damages
- Damages for breach of contract
- Back-to-back contracts
- Physical damages
- Costs and expenses
- Waste
- Loss of profit
- Consequential losses and expenses
- Loss of opportunity, expectation and amenity
- Examples of clauses from common and civil law

Q & A INTERACTIVE SESSION

Identifying types of damages

Liquidated damages and penalties defined – comparative analysis

- Recoverability of liquidated damages and penalties
- Rules of interpretation and evidence requirement
- Types of contract to which the rules do or do not apply
- Types of clause to which the rules do or do not apply
- Templates with comparative clauses
- New Supreme Court rule on liquidated and ascertained damages and penalties – *Cavendish v Makdessi*

Choice of law, jurisdiction and arbitration Part 1 – choice of law and jurisdiction

- Legal basis
- Applicable law in the absence of choice
- Limits of choice of law
- Natural place of jurisdiction
- Choice of forum clauses
- Limits of choice of forum clauses
- Brussels and Rome Regulations – post Brexit
- Direct applicability and the chosen law rule

Choice of law, jurisdiction and arbitration Part 2 – arbitration and dispute resolution

- Choice of arbitration, drafting of an arbitration clause, avoiding pathological clauses
- Alternative dispute resolution – conciliation, mediation and ADR
- Enforcement: The New York Convention and beyond

COMPARATIVE WORKSHOP SESSION: PART 2

A practical workshop where, using a case study as a basis, clauses will be examined that are interpreted differently in different jurisdictions, including:

- Limitation of liability
- Liquidated damages and penalties
- Drafting techniques



All practising lawyers are required to have enough suitable CPD hours for their area of law



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Book before 6 August 2019
and SAVE £200/€280!

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To book online go to: falconbury.co.uk/15

Dates and venue

19-20 September 2019 Ref: 10363

5-6 March 2020 Ref: 10656

The Rembrandt Hotel
11 Thurloe Place
London
SW7 2RS
Tel: +44 (0)20 7589 8100
Web: www.sarova-rembrandthotel.com

Accommodation

We have arranged a preferential rate for accommodation at this venue. To take advantage of this, please contact reservations_rembbrandt@sarova.com and quote **FALCON**. There are limited rooms available at this rate so please book early.

For alternative accommodation solutions, please visit our website: falconbury.co.uk/accommodation



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Fees and payment

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£1299.00 + VAT = £1558.80 • €1819.00 + VAT = €2182.80

Book AFTER 6 August 2019

Multiple booking discount for 2nd or subsequent delegates – 15%

£1104.15 + VAT = £1324.98 • €1546.15 + VAT = €1855.38

Payment options

1. Invoice which can be paid by bank transfer or credit/debit card.
2. Online through our secure website when registering.



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Coming to Falconbury for your in-house training provides an all-inclusive service which gives you access to a wide variety of content, learning platforms and delivery mechanisms as well as your own personal training adviser who will work with you from the initial enquiry through to feedback and follow-up after the programme.

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To get a FREE consultation and to find out how we can work with you, please call **Aleksandra Beer**, our in-house training expert, on **+44 (0)20 7729 6677** or email inhouse@falconbury.co.uk

A little bit of 'Small Print'

FEE

The fee includes all meals and refreshments for the duration of the course and a complete set of course materials. If you have any particular requirements, please advise customer services when booking.

PLEASE NOTE

Falconbury Ltd reserve the right to change the content and timing of the programme, the speakers, the date and venue due to reasons beyond their control. In the unlikely event that the course is cancelled, Falconbury will refund the registration fee and disclaim any further liability.

The rest of the 'Small Print', the event cancellation policy and the terms and conditions are on our website, please visit falconbury.co.uk/content/terms-and-conditions



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