

INSURANCE GANGNAM STYLE (RELOADED)

Sir Ninian Stephen Insurance Law Masterclass

Parmelia Hilton Perth Hotel,
Mill Street, Perth 6000

Friday, 22 May 2015
8.30am for 9.00am.

Finishing at about 4.30pm
Greg Pynt (waca36@gmail.com)



Masterclass presented by the Universities of Western
Australia and Southampton (members of the
Worldwide Universities Network (WUN))

Supported by the University of Exeter and the
Australian Insurance Law Association

INSURANCE GANGNAM STYLE (RELOADED)

**Sir Ninian Stephen
Insurance Law Masterclass**

**Parmelia Hilton Perth Hotel,
Mill Street, Perth 6000**

Friday, 22 May 2015

PRESENTED BY

AILA



UNIVERSITY OF
Southampton

UNIVERSITY OF
EXETER

Parmelia Hilton Perth Hotel,
Mill Street, Perth 6000

Friday, 22 May 2015

8:30AM

Registration, coffee and tea

9:00AM

Opening address: The Hon. Justice Ken Martin

9:10AM

Construction of an insurance term and onus of proof

Chairperson: Stephen Davies SC, Francis Burt Chambers

1. Construing an insurance term: Mind the gap (between an insurer's expectations of what a policy means and a court's deliberations): Jenny Thornton (20 min)

2. Onus of proof in relation to a qualification to an insuring clause, a condition precedent, a condition subsequent and an exclusion.

The English position: Professor James Davey (25 min)

The Australian position: Samantha Traves (15 min)

CPD points – CA4: Substantive Law (Legal Knowledge) 1

10:15AM

Fraudulent devices; s 54 of the Insurance Contracts Act 1984 (Cth)

Chairperson: Justine Siavelis, Principal, Gilchrist Connell

3. Fraudulent devices: Professor James Davey (30 min)

4. Section 54: What is an 'act'? What is an 'omission'? What is the scope of s 54(5)(b)? Stefan Sudweeks (30 min)

CPD points – CA4: Substantive Law (Legal Knowledge) 1

11:20AM

Coffee and tea

11:35AM

Section 40(3) of the Insurance Contracts Act 1984 (Cth)

Chairperson: Toby Barrie, Partner, DLA Piper

5. What facts should an insured notify? Professor Rob Merkin QC (30 min)

6. Claiming the benefit of s 40(3) when a claim comes in. Fred Hawke (30 min)

CPD points – CA4: Substantive Law (Legal Knowledge) 1

12:40AM

Lunch

1:45PM

In what circumstances is an insurer bound by a judgment or settlement against its insured?

Chairperson: Her Honour Judge Felicity Davis

In the case of a:

- a) judgment on the merits;
- b) default judgment;
- c) settlement or judgment by consent.

7. The English position: Professor Rob Merkin QC (40 min)

8. The Australian position: Samantha Traves (20 min)

CPD points – CA4: Substantive Law (Legal Knowledge) 1

2:50PM

Supply and service contracts: Conflicts of interest for lawyers, indemnity clauses, scope of cover and Principals' extension

Chairperson: Stephen Williams, Partner, Kott Gunning

9. Conflicts of interest for an insurer's lawyer faced with a third party claim against the insured pursuant to a contractual indemnity. What to do? Fred Hawke (20 min)

10. Scope of cover: Is a liability insurer's obligation to indemnify its insured for its liability to an injured plaintiff limited to the extent of its insured's negligent contribution to the injury? Bettina Mangan (25 min)

11. Scope of a 'principals' extension to a liability policy: Chris Rimmer (15 min)

CPD points – CA3: Ethics/Professional Responsibility 1

4:00PM

Closing address

4:10PM

Drinks and nibbles

CONTINUING PROFESSIONAL DEVELOPMENT

Full attendance at this event entitles a WA legal practitioner to 5 CPD points:

Category CA3: Ethics/Professional Responsibility (1)

Category CA4: Substantive Law (4).

Please sign the attendance sheet for a CPD certificate.

This event may attract CPD points for legal practitioners from other parts of Australia. You may wish to check with your local Law Society about your CPD entitlement.

It may also attract CPD points for insurance industry representatives. Delegates should enquire from their local professional body about the availability of CPD points for the Masterclass.

**PROFESSOR
JAMES DAVEY,
PROFESSOR OF
INSURANCE &
COMMERCIAL LAW,
UNIVERSITY OF
SOUTHAMPTON**

James is Professor of Insurance and Commercial Law in the School of Law at the University of Southampton and co-director of the Insurance Law Research Group.

James has been researching insurance contract law and regulation since his first appointment to an academic post in 1994. His research focuses on the policy justifications for the development of insurance contract law in England & Wales, in light of approaches taken elsewhere across the globe. He has also undertaken empirical work, utilising an original approach to measuring the incidence of murder within family units for life insurance monies, in order to falsify a common claim that such murders are rare. His research is published in leading law journals, including the Cambridge Law Journal.

James is editor of the Marine Insurance section of the Lloyd's Commercial and Maritime Law Yearbook. His work is cited in leading monographs, including Malcolm Clarke The Law of Insurance Contracts and by policymakers in the United Kingdom. Over the last five years, he has contributed to discussions on the drafting of the Insurance Contract Act 2015.

In addition to his work on substantive UK insurance law, he has written on the role of the Financial Ombudsman Service in the UK as a means of consumer redress, and on the role of the European Union institutions as a source of equality/anti-discrimination law for insurance markets. His current research focuses on the use of experimental economics on the design of financial services regulation in the UK and US.

**FRED HAWKE,
PARTNER,
CLAYTON UTZ**

Fred Hawke is a partner in Clayton Utz, based in Melbourne. Fred has extensive legal and practical experience in insurance law, claims management and insurance company operations.

Before joining Clayton Utz, Fred was directly employed in the insurance industry for more than 20 years and was responsible for negotiating and settling insurance and reinsurance disputes involving some of Australia's largest liability losses.

Since joining Clayton Utz, Fred has practised extensively in the field of insurance and reinsurance law, with special emphasis on regulatory and compliance issues, captive insurer arrangements, Bankers Bonds, crime and financial liability insurances, facultative and treaty reinsurance and retrocession arrangements. He has acted for policyholders in major claim disputes involving ISR (Fire & Perils), Marine (Hull, Cargo and Charterers' Liability), Public and Products Liability policies. Trade credit and insolvency and political risk insurance are also areas in which he has had considerable experience, both in the insurance industry and in legal practice.

He is a well-recognised and prolific writer and presenter on insurance law and insurance industry related legal matters and occasional lecturer in the Graduate Studies Program at Melbourne University.

**BETTINA MANGAN,
BARRISTER, FRANCIS
BURT CHAMBERS, PERTH**

Bettina joined the Independent Bar on 1 September 2009. Prior to September 2009, Bettina was on a number of insurer's legal panels. In the course of her practice she gained extensive experience advising on policy liability issues and negotiating and litigating claims ranging from the minor and straightforward to large and complex.

Since joining the Bar, Bettina has continued her practice in insurance law, covering advice on general insurance and contractual indemnity law, claims management, negotiating settlement of claims and litigation. Bettina has advocacy experience in various and diverse jurisdictions. Bettina is a nationally accredited mediator.

**PROFESSOR
ROB MERKIN
QC, LLOYD'S
PROFESSOR
OF COMMERCIAL
LAW, UNIVERSITY
OF EXETER**

Rob is Professor of Commercial Law, University of Exeter, Honorary Professor, University of Auckland and Special Counsel to DLA Piper.

Rob is widely published in the areas of insurance, reinsurance and arbitration, for example, the fourth edition of Sutton's Law of Insurance (2014). Rob's works have been cited in over 150 judgments in a number of jurisdictions. Rob speaks regularly at AILA events, and in 2009 he was the Geoff Masel Memorial lecturer.

In 2010 he was awarded the AILA Insurance prize. Rob is past President of the British Insurance Law Association, Vice-President of the International Association of Insurance Law (AIDA), a consultant to the English and Scottish Law Commissions and editor of the BILA Journal. In December 2014 he was Expert Adviser to the House of Lords Special Public Bills Committee on the Insurance Bill 2014. In January 2015, Rob was appointed an Honorary Queens Counsel in England and Wales for his major contribution to the law of England & Wales outside practice in the courts.

CHRIS RIMMER,
PARTNER, JARMAN
MCKENNA

Chris completed his law degree at The University of Western Australia in 1994 and was admitted as a barrister and solicitor of the Supreme Court of Western Australia in 1996 and admitted to the High Court of Australia in 2001. Chris commenced employment as an articled clerk with Jackson McDonald in 1995 and was admitted to the partnership of that firm in 2002. Chris was a founding partner of Jarman McKenna when the firm commenced in July 2003.

Chris has practised in insurance law, providing advice to insurers and appearing as Counsel in the District and Supreme Courts and Court of Appeal, for in excess of 15 years. His areas of practice include public liability, professional indemnity, workers' compensation and motor vehicle claims.

STEFAN SUDWEEKS,
PARTNER, JACKSON
MCDONALD, PERTH

Stefan has been a commercial litigator for 20 years, the last eight of which include specialising in Professional Risks, D&O, Errors and Omissions, and Property Insurance issues. He is recognised internationally as a "Leading Individual" by Chambers Asia Pacific in this field.

Stefan acts for a wide range of professions including barristers, solicitors, members of the finance industry, engineers, estate agents, surveyors, valuers and accountants. He has also been involved in a number of subrogated property recovery claims. Stefan also acts for a number of Australian insurance companies as well as for various Lloyd's of London Syndicates.

Stefan presents seminars on insurance and related issues and publishes papers on legal developments. He has held positions on Industry based groups such as AILA and the committee advising the Solicitor General on harmonising legislation on proportionate liability.

JENNY THORNTON,
PARTNER, CLYDE & CO,
PERTH

Jenny advises insurers in a range of professional indemnity actions including in respect of engineers, architects, investment managers, financial planners, auditors, accountants, solicitors and medical practitioners.

Jenny also advises on directors and officers' insurance claims and, on insurers' instructions, defends directors/officers involved in commercial litigation and quasi-judicial inquiries. She has represented directors in actions alleging breaches of OH&S legislation and allegations of wrongful dismissal, misleading and deceptive conduct, and insider trading.

Jenny advises on industrial special risks, contractors all risks and contract works policies. She also drafts and negotiates clauses in project contracts which reflect appropriate insurance arrangements. She handles coverage, defence and subrogated recovery matters, and has extensive experience managing complex, large and high-profile commercial litigation in the Supreme, Federal and High courts. She also represents parties in arbitration proceedings.

SAMANTHA TRAVES,
VISITING FELLOW
AT THE FACULTY OF
LAW, QUEENSLAND
UNIVERSITY OF
TECHNOLOGY AND
CONSULTANT AT BARRY.
NILSSON., BRISBANE

Samantha has held the position of Senior Lecturer and Visiting Fellow at the Faculty of Law, Queensland University of Technology where she was Head of undergraduate and postgraduate insurance law and Head of commercial law while also lecturing in corporate law. She is an admitted Solicitor of the Supreme Court of Queensland and in 2007 was appointed Consultant to Barry.Nilsson. Lawyers.

Samantha is the author of the Lexis Nexis publication, Commercial Law, a popular reference book for practitioners and a prescribed text in Law Faculties throughout Australia. Samantha also co-authored a Law Book Co text, Due Diligence and has published widely in the area of insurance law. Samantha assisted in the drafting of insurance contracts legislation for Papua New Guinea, has been guest speaker at national and State insurance law conferences and is a past recipient of the Australian Insurance Law Association (AILA) Insurance Law Prize and an Australian and New Zealand Institute of Insurance and Finance (ANZIIF) award in recognition of her contribution to excellence in the provision of education. She is a member of the committee of the National Insurance Lawyers Group of the Law Council of Australia and serves on the Scientific Council of the Association International de Droit des Assurances (AIDA).

DISTRIBUTION OF PAPERS

Papers and presentations will be provided to delegates on a USB memory stick on the day of the event.

CHANGES

All chairpersons and speakers are confirmed as at 6 March 2015. The presenters of the Masterclass reserve the right to change chairpersons or speakers due to unforeseen circumstances.

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An insurance masterclass

Friday, 22 May 2015

NAME	AILA MEMBER \$220 INCL GST	NON-AILA MEMBER \$290 INCL GST	FULL TIME STUDENT \$70 INCL GST
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DETAILS

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CANCELLATION

AILA will refund the registration fee if cancellation is notified to AILA on or before 30 April 2015. Replacement person/s may attend in a registered delegate's place.