

Continuing legal education presentation topics

About the presenter:

Justin Graham is a barrister at the Victorian Bar and a member of List A Barristers. He was called to the Bar in 2003 and he practises in all areas of commercial and corporate law. Justin appears in all courts in Victoria at trial and appellate levels, and he regularly presents at the Bar Readers' Course and other legal education events conducted by the Victorian Bar.

Before coming to the Bar, Justin practised in commercial litigation, first as a solicitor with Mallesons Stephen Jaques (now King & Wood Mallesons) in Melbourne (1997-2000) where Justin also undertook his articles, and then in London with Linklaters (2000-2003) where he was appointed senior associate.

Topic A: The proper approach to the construction of commercial contracts, as revisited by the High Court in recent cases

Synopsis: Interpreting what a contract means is a mainstay of commercial legal practice. It is necessary to have a clear understanding of the relevant principles in mind whenever drafting contracts for clients, advising clients as to their rights and liabilities under contracts, or litigating and resolving their contractual disputes.

This presentation will examine the proper approach to the task of construing a contract, as revisited in a number of recent decisions of the High Court. It will address the principles to be applied, the sources of information to which regard may be had, and some areas of continuing debate at intermediate appellate court level in Australia. The differences between the processes of construction of contracts, implication of terms, and rectification of contracts will also be considered.

Suitable for: All commercial and litigation practitioners.

Topic B: Pleading basics

Synopsis: This presentation will address some fundamental requirements for a proper pleading and will suggest an effective approach for formulating and drafting a pleaded claim or defence. It will include consideration and discussion of a brief factual scenario, as a working example of the suggested approach.

Suitable for: All litigation practitioners.

Topic C: The Civil Procedure Act 2010 (Vic): refresher and recent developments

Synopsis: This presentation will consider the operation of the *Civil Procedure Act 2010*, some years having now passed since its much-heralded commencement. It will give an overview of the Act and will look at recent jurisprudence from the Supreme Court of Victoria (including the Court of Appeal) to identify some developing areas, in particular as to: how the Act informs and affects the exercise of certain discretionary powers of the Court; the summary judgment test; what is expected of practitioners and litigants in the conduct of disputes before the courts; and the circumstances in which adverse costs orders or other orders may be made against those who do not comply with their obligations under the Act.

Suitable for: All litigation practitioners.

Topic D: What to do when you are instructing

Synopsis: This presentation will provide guidance for solicitors in instructing Counsel in litigious matters. It will provide some tips for successful and efficient briefing by solicitors, and it will identify some pitfalls to avoid. The legal and ethical duties of instructing solicitors will also be considered, including as they relate to what an instructing solicitor does during a hearing or trial, and communications by solicitors with the Court and other parties.

Suitable for: Junior litigation practitioners, or commercial practitioners who instruct Counsel infrequently.

Topic E: Proofing and preparing witnesses

Synopsis: This presentation will provide guidance to solicitors as to how to deal with their client's witnesses, both in obtaining instructions (or a "proof" of evidence) and in preparing for the witnesses to give evidence at trial. It will consider the duties and professional conduct rules which apply to legal practitioners in dealing with witnesses, and it will suggest techniques for dealing effectively with witnesses. The presentation will include consideration and discussion of short scenarios which illustrate some problems commonly encountered by practitioners in dealing with their client's witnesses.

Suitable for: All litigation practitioners.