

# Education and training

## General Course Syllabus

- A. Preliminary introductory audio-tape (no accompanying session):
1. The nature of conflict and the different approaches to conflict management.
  2. The nature of conflict and differing styles of management.
  3. Negotiation.
  4. Litigation and adjudication.
  5. Formal arbitration and powers of the arbitrator.
  6. Mediation and limited powers of the mediator.
  7. Conciliation and limited powers of the conciliator.
  8. Expert Determination and powers that may be accorded to the Determiner.
1. The Commercial Arbitration Act ('the Act').
  2. The Law of Contract [Part 1].
  3. The Law of Contract [Part 2].
  4. The Law of Torts.
  5. Evidence.
  6. The Expert Witness.
  7. Laying the ground for arbitration and ADR.
  8. Opening processes for formal arbitration; agreeing to the process, preliminaries and the Preliminary Conference[s].
  9. Pre-hearing processes for formal arbitration hearings.
  10. Formal arbitration hearings – proceedings.
  11. Mediation and other ADR processes.
  12. Consummating formal arbitration hearings [Part 1].
  13. Consummating formal arbitration hearings [Part 2].

A **weekend workshop** will follow session 12 and will constitute 25% of the assessment. The workshop will be conducted by a panel, including academics and practitioners, covering –

1. Mock Preliminary Conference.
2. Mock element of an arbitration.
3. Discussion of sample award (issued in advance).

**Assignment** – During the course, an assignment (2500-3500 words) relating to selected topics, will be set and marked by practitioners. This will constitute 40% of the total assessment. Course presenters will set and mark two topics for the assignment.

An **examination (duration two hours)** will be held within three weeks after the conclusion of the course and will constitute 35% of the total assessment. Course presenters will set and mark two questions for the examination.

### **Advanced Course Syllabus**

1. Advanced issues under The Commercial Arbitration Act and allied legislation.
2. Advanced Contract Law.
3. Waiver and estoppel.
4. The Trade Practices Act and allied legislation.
5. Advanced Law of Evidence.
6. Powers of the Courts.
7. Arbitrability and Jurisdiction – the scope of the clause/agreement/order under which the arbitrator or mediator is empowered to work.
8. Conduct of the Preliminary Conference.
9. Pleadings and particulars and the available alternatives.
10. Pre-hearing proceedings following the Preliminary Conference.
11. Section 27 Conferences.
12. Conduct of the Hearing – assuming a formal arbitration.
13. Awards.

**Advanced workshop** will be conducted over two days and will constitute 25% of the assessment. The workshop will be conducted by a panel, including academics and practitioners, covering –

1. Mock Preliminary Conference, Mock S27 Conference and Mock Mediation.
2. Award Writing.

**Assignment** – During the course, an assignment (4000-5000 words) including award writing relating to selected topics, will be set and marked by practitioners. This will constitute 40% of the total assessment. A number of topics for the assignment will be proposed allowing students to choose their assignment topic.

An **examination (duration three hours)** will be held within three weeks after the conclusion of the course and will constitute 35% of the total assessment. Course presenters will set and mark two questions for the examination.

**Each session** will include a discussion on problems to be addressed in the assignment and exam.

### **Suggested reading**

- The Commercial Arbitration Acts, together with any relevant legislation or rules, in your State or Territory.
- Institute Practice Notes.
- Selective papers from Institute courses.
- *the arbitrator* journal.
- Sharkey, J.J.A. & Darter, J.B. *Building and Construction Contracts in Australia*, The Law Book Company Ltd, Chapter 14.
- Darter, J.B. & Sharkey, J.J.A. *Commercial Arbitration*, The Law Book Company Ltd.
- Fitch, R. *Commercial Arbitration in the Australian Construction Industry*, The Federation Press.
- Mustill & Boyd. 1989, *Commercial Arbitration*, second edition, Butterworths.
- Watson, A. & Victoria, M. 1982, *Russell on Arbitration*, 20th edition, The Law Book Company Ltd.
- Jacobs, M. *Commercial Arbitration Law & Practice*, The Law Book Company Ltd.
- Cheshire & Fifoot. *Law of Contract*, 6th Aust edition, Butterworths.
- Fleming. *The Law of Torts*, 8th edition, The Law Book Company Ltd.