

# Make your lawyer love you

9 tips for client engagement  
to surprise and delight your adviser

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# 1 Have a contract

- in writing (email is fine)
- *“the record is reality”*
- “parol evidence rule”
- poor business practices reflect badly on business people
- the easy way:  
standard terms, incorporation by reference

## 2 Control when you're engaged

- law assumes a “magic moment” of acceptance and contract formation
- reality is rarely like that, but try to get close
- provider can *define* how the client may accept  
eg, “*by continuing to instruct us ...*”
- easy to do business with  
but able to prove client chose to do so

# 3 Think about entities & signatures

- signatures: useful but not essential\*
  - larger engagements
  - if significant up-front costs
  - any concern about client's integrity
- be aware of:
  - entities involved (check ASIC)
  - how individuals & companies sign contracts

# 4 IP in your contract

- people are funny about IP
- contract should address IP
- think about *existing* and *new* IP (& *3rd party* IP)  
(what's delivered may be a mix of those)
- preserve (ie, don't assign) existing libs, ideas, templates, frameworks, 3rd party IP
- assign? licence?  
licence can be limited to particular subject area

# 5 Rules for transferring IP

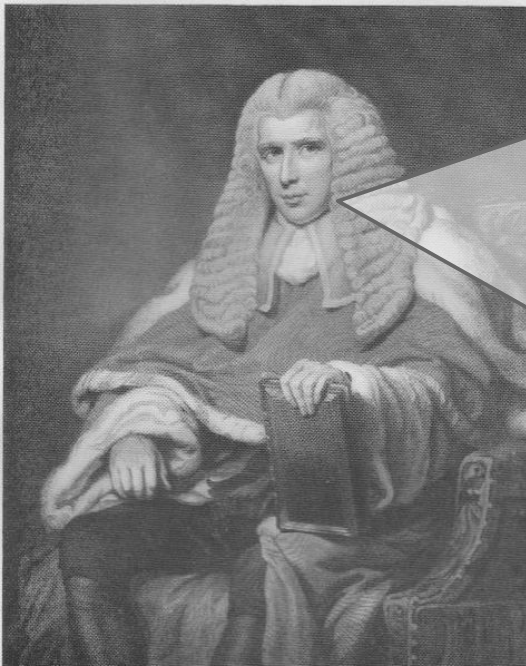
- **Copyright:** in writing and signed by assignor
- **Patent:** in writing and signed by assignor and assignee
- **Trade Mark:** no document formalities, but must update TM register
- **Confidential Information:** not really property

# 6 IP & payment contingencies

- contract can say:  
IP not assigned/licensed  
until full payment made
- effects:  
subtle incentive on client to pay  
realistic & 'automatic' remedy on non-payment

# 7 Liability in your contract

## *Hadley v Baxendale*



Baron Sir Edward Hall  
“full-stops are for losers”  
Alderson

... where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, ie, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it ...

- Bottom line:
  - *can* be liable for indirect loss
  - contract should address this
  - exclude indirect loss  
limit / cap other liability
  - limit remedies for warranty breaches
  - deal with implied warranties ...



# 8 Liability & implied warranties

- certain warranties automatically implied
  - due care & skill
  - materials reasonably fit for purpose
  - (if purpose or result made known:  
reasonably fit for purpose /  
might reasonably expect to achieve result)
- cannot exclude
- can limit liability to re-supply / cost of re-supply

# 9 Don't forget the small print

- some 'boilerplate' terms are important

Sumerian contract  
Selling of a field and a house  
Shuruppak (modern Al-Qādisiyyah, Iraq)  
c.2600 BC



**Thank you.**



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