



The Eighth Annual Melbourne Family Law Conference

Big Money, Big Problems? The Family Court and the Top End of Town
All's Fair in Love and War, except when it comes to Binding Financial Agreements
Counting the Cost of Family Violence on Property Settlements
The impact of Relationship Status on Judicial Decision Making
The Long and Winding Road: Child Relocation and Travel
Access and Overnight Stays in Parenting Arrangements: Reforms in the Spotlight
Have Costs become the Weapon of Choice for the Courts?
Super-Size Me: Superannuation Splitting and Family Law
Factoring in Tax in Family Law Property Settlements

Pro Fess ion Al skills: Appointing & Challenging the Experts in Family Law Asset Valuations

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eThICs: Negotiations and Determining When to Settle: Walking the Ethical Tightrope

A Two-day Conference
Thursday 9 & Friday 10 March 2023

Crown Melbourne

Feedback from last year's conference:

- “Lots of relevant and interesting talks, and very nice to be able to network with people face to face!”
- “Great relevant topics for the seminar sessions, beautiful venue & food. Really helpful staff.”
- “Run professionally. Speakers high calibre and content always interesting and mostly very relevant.”



Leaders in online CPD for Lawyers & Accountants

Day 1 - Thursday 9 March 2023

Chair Day 1: The Hon. Nahum Mushin AM, Melbourne, Vic

Morning Theme: Property and Financial Matters

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Big Money, Big Problems? The Family Court and the Top End of Town

Rising property values, globalisation of commerce, dual family income, inheritance and investment growth have seen the wealth of Australians rise considerably over the last few decades, and none more so than those at the top of the tree. This session will explore how the family courts are viewing property adjustment in very wealthy family separations, including:

- What does “just and equitable” mean in the context of wealthy families?
- Is there a presumption of equality of contribution as a starting point in property adjustments in high wealth cases?
- Court treatment of special contributions in high wealth cases
- How far and to what extent should the court examine family wealth behind the parties?
- Are family trusts doing their job in protecting assets?
- Recent cases including Balken & Vyner [2020] FamCA 955; Rigby & Kingston (No 4) [2021] Fam Ca 501

Speaker: John Spender, Principal, Accredited Family Law Specialist, Kennedy Partners, Melbourne, Vic

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: All's Fair in Love and War, except when it comes to Binding Financial Agreements

Fairness is an essential principle in family law, and yet when it comes to determining the validity of a binding financial agreement it seems the principle can be missing in action without implication. This session will explore the current thinking on fairness in binding financial agreements and whether the courts are finding alternatives to strike down “bad bargains”, including:

- What does “unfairness” mean in the context of binding financial agreements?
- Section 90G and the omission of a “fairness” requirement
- What is the difference between an unfair arrangement and unconscionable behaviour? *Thorne v Kennedy* [2017] HCA 49; *Saintclair & Saintclair* [2015] FamCAFC 245; *Gongsun & Paling* [2020] FamCAFC 244
- Failure to disclose as grounds for setting aside an agreement – will the new disclosure rules have a positive impact? Is failure to disclose a form of unfairness?
- Are the courts moving to a test of unfairness under a different name?

Speaker: Wendy Kayler-Thomson, Partner, Accredited Family Law Specialist, Forte Family Lawyers, Melbourne, Vic

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

11.25am - 12.10pm

Session 3: Counting the Cost of Family Violence on Property Settlements

The impact of family violence has been increasingly recognised by the courts in property settlement matters. This session examines the financial consequences of family violence, including:

- What circumstances are necessary to raise the Kennon argument?
- Can the Kennon argument apply to post-separation violence and conduct?
- What evidence is required to rely on the argument?
- The rise and recognition of emotional abuse and coercive control
- How the assessment on contributions is calculated: *Jabour & Jabour* [2019] FamCAFC 78; *Benson & Drury* [2020] FamCAFC 21; *Koch & Kest* [2021] FamCA 408

Speaker: Adam Cooper, Principal, Cooper Family Law, Brisbane, Qld

12.10 - 12.20pm Panel Comments and Questions

Day 1 - Thursday 9 March 2023

12.20 - 1.05pm

Session 4: Same Same But Different? The impact of Relationship Status on Judicial Decision Making

Under the Family Law Act, de facto couples and married couples have virtually the same rights when it comes to the application of laws governing property and parental arrangements. However, do the cases tell a different tale? This session will examine trends in decision-making through a number of cases and provide guidance for case preparation with your client's specific circumstances in mind, including:

- The law is clear but is it reflected in the practical reality of the cases?
- How is the financially weaker party in a shorter de facto relationship or marriage treated?
- How are the courts viewing property adjustments in same sex relationships particularly when there are no children involved? How does this contrast with decisions involving heterosexual relationships?
- Is there a conservative/traditional bias in the courts towards married and/or heterosexual couples?
- Some tips for when you are advising clients who do not fall within the conservative/traditional dynamic

Speaker: Justine Woods, Partner, Accredited Family Law Specialist, Cooper Grace Ward Lawyers, Brisbane, Qld

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

Afternoon Theme: Challenges in Parenting Matters

2.15 - 3.00pm

Session 5: Access and Overnight Stays in Parenting Arrangements: Reforms Under the Spotlight

Parental relationships are largely forged while children are young, but when families break down, age can often be used as a weapon in limiting access. With this dilemma in mind and changing societal attitudes, the courts are rethinking parenting arrangements for young children. This session will examine the developments in this area, with a focus on the proposed changes considered under the draft Family Law Amendment Bill 2023, including:

- Spotlight on the draft Family Law Amendment Bill 2023:
 - How will the proposed changes impact the way the court determines care arrangements?
 - How will the reforms change the way separated parents share decision-making about their children?
 - What will "best interests of the child" mean?
- The benefits and problems in overnight parenting arrangements – what does the research show?
- Is age the key or are there other considerations at play?
- How do the courts look at this issue – case examples discussed
- How do the courts view a child's desires when it comes to access?
- How often should access arrangements be reviewed?

Speaker: Evelyn Young, Partner, Accredited Family Law Specialist, Mitchell Family Law, Melbourne, Vic

3.00 - 3.10pm Panel Comments and Questions

3.10 – 3:30pm Networking Break and Afternoon Tea

Day 1 - Thursday 9 March 2023

3.30 - 4.15pm

Session 6: The Long and Winding Road: Child Relocation and Travel

Both domestic and international relocations give rise to some specific issues. Emotions can run hot, and there can often be no middle ground. This session will examine some of these dilemmas and lessons from recent cases, including:

- Consent and relocation revisited: Commissioner of Police for State Central Authority of South Australia & Garnett [2021] FamCA 86
- What should be covered in relocation agreements and relocation orders?
- Can covid risks be used as a reason for preventing travel or relocation? Kingsley & Secretary, Department of Communities and Justice (No 2) [2021] Fam CA 308; Denham & Newsham [2021]FamCAFC 141
- Is air travel an unacceptable risk? Kardos & Harmon [2020] FamCA 328; Banham & Banham [2020] FCCA 1201
- How will vaccination of children (or failures to agree to vaccinate) impact travel between parents in overseas relocations?

Speaker: Jacob Clancy, Senior Associate, Clancy & Triado, Melbourne, Vic

4.15 - 4.25pm Panel Comments and Questions

Day 2 - Friday 10 March 2023

**Chair Day 2: Gerry Holmes,
Barrister, Victorian Bar,
Melbourne**

**Morning Theme: Litigation and Carving Up
the Citadel**

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

**Session 7: Have Costs become the Weapon of Choice
for the Courts?**

In rolling out the new rules, the government and the courts have made it very clear that costs in family law matters are a significant issue which will be closely monitored and have consequences for practitioners. This session will examine why costs have become a central issue in family law and what the rule changes mean for practitioners, including:

- The compliance cost of new rules and process on practice
- Cost notices, disclosure and the focus on fair and reasonable costs – what does it mean?
- How will courts use their power to manage costs?
- The impact of costs crackdowns on practitioners – personal cost orders, indemnity costs and other consequences
- Recent cases and examples

Speaker: Lino Marchetti, Barrister & Nationally Accredited Mediator, Owen Dixon Chambers East, Melbourne, Vic

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

**Session 8: Super-Size Me: Superannuation Splitting and
Family Law**

Often one of the biggest assets in the property pool, superannuation has become an essential component in property settlements. This session will examine some of the increasingly complex issues in consideration and splitting of superannuation between the parties, including:

- Accessing superannuation details – recent reforms
- Practical and financial consequences of splitting super – is there a better way?
- Strategies for dealing with corporate trustees and large super fund administrators
- Checking the fund rules – what to look for
- Joining the trustee to family court proceedings
- Managing super splitting involving multiple member funds
- Specific issues concerning SMSFs, defined benefit schemes, military pensions and other less common situations
- Recent cases

Speaker: Jacky Campbell, Partner, Accredited Family Law Specialist, Forte Family Lawyers, Melbourne, Vic

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

11.15 - 12.00pm

**Session 9: Factoring in Tax in Family Law Property
Settlements**

Property settlements can often come with potential tax consequences. This session examines the thorny tax issues that can arise, including:

- Disposal of assets and CGT issues
- Tax issues involving the family home
- Unrealised and hidden tax liabilities you need to consider
- Spotlight on deemed dividends and Division 7A issues
- Spotting tax irregularities and other tax skeletons in the accounts
- Case studies

Speaker: Briana Kotzapavidis, Partner, Hargreaves Family Lawyers, Melbourne, Vic

12.00am - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

Day 2 - Friday 10 March 2023

Afternoon Theme: 3 CPD Compulsory Topics

1.10 - 2.00pm

Session 10: Professional skills

Appointing and Challenging the Experts in Family Law Asset Valuations

The volatile economic conditions coupled with ongoing trading performance uncertainty has increased reliance on business valuations in family law property proceedings. While expert valuers are often engaged, what happens where one party disagrees with the valuation? This session examines the process with a critical eye and provides strategies for review, including:

- Professional and ethical requirements and the appointment of an expert
- The single expert valuation process and rules unpacked
- Shadow and adversarial experts – is there a difference in the roles?
- How to effectively ask questions of the valuer
- What are the hurdles in getting another expert appointed?
- What are the typical problems with / errors found in valuation reports?
- When should different scenarios and updates be prepared?

Speaker: Suzanne Delbridge, Director, Delbridge Forensic Accounting, Newcastle, NSW

2.00 - 2.10pm Panel Comments and Questions

2.10 - 3.00pm

Session 11: Practice management & business skills

Handling Volatile Clients in Family Law

In an area of law that is already heightened with emotion, family lawyers can often be faced with difficult clients: they may be excessively needy, overly aggressive, or a combination of both. This session provides best practice strategies in managing difficult clients, including:

- The written agreement on client practitioner interaction
- Maintaining a professional relationship with the client
- Some red flags to watch – recognizing the manipulative, needy client
- Managing toxic or aggressive behaviour
- Key management strategies:
 - Managing communication and response expectations
 - Explain difference between urgent and non-urgent
 - Setting a precedent to reinforce boundaries
 - Being selective on clients
- Managing client expectation where client exhibits excessive list of wants
- Knowing when to 'pull the plug' on the client

Speaker: Paul Fildes, Principal, Accredited Family Law Specialist, Taussig Cherrie Fildes Lawyers, Melbourne, Vic

3.00 – 3.10pm Panel Comments and Questions

3.10 – 3.30pm Networking Break and Afternoon Tea

3.30 – 4.20pm

Session 12: Ethics

Negotiations and Determining When to Settle: Walking the Ethical Tightrope

All may be fair in love and war, but when do negotiation tactics cross the line into an ethical breach? This session looks at the ethical dimensions of negotiations and entering into settlements in family law matters. It includes:

- Understanding the ethics of adversarial practice and their impact on settlement
- Ethical guidelines for entering settlement negotiations
- Should we view settlement negotiations as a game? - the ethics consequences
- Some ethics issues in settlement negotiations:
 - Fraudulent deception
 - When silence is a problem
 - Use of false material
 - Obligation of disclosure
- Ethics issues in the settlement of complex litigation
- Is there an ethics issue in refusing to settle?

Speaker: Barry Berger, Director, Accredited Family Law Specialist, Dignity.EDR, Melbourne, Vic

4.20 - 4.30pm Panel Comments and Questions

4.30pm Conference Close

GENERAL INFORMATION

Conference registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers (except WA): 10 CPD units for attending the conference including the 3 compulsory CPD units.

WA Lawyers: 6 CPD points (there are 3 CPD compulsory unit sessions + 9 substantive law sessions – take your pick).

WA practitioners can claim 6 CPD points for attending the conference (being the maximum allowable per event).

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference venue

Crown Melbourne

8 Whiteman Street, Southbank

Travelling to the Conference venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

Terms & Conditions

1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

general – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

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5. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
6. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
7. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

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9. You are entitled to use those materials for private study and research only.
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Conference cancellation by Ten – all conferences

12. TEN reserves the right to cancel a conference for any reason.
13. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

14. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

governing law – all conferences

15. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

