

ONLINE MASTERCLASS

The Elder Law Online Masterclass

Friday 31 May 2024

- Deciphering capacity – toolkit for supporting & advising older clients
- Detecting and addressing undue influence and coercion
- Options for dealing with rogue attorneys
- The new Aged Care Act 2024 – what lawyers need to know
- Family living arrangements – building a solid legal foundation
- Later in life relationships and the estate plan



Morning Theme: Capacity and Elder Abuse

9.00 – 9.10am	Introduction and welcome Morning Chair: James Dimond, Practice Leader, Moores, Melbourne, Vic
9.10 – 10.00am	Session 1: Deciphering Capacity: The Toolkit for Supporting and Advising Older Clients In an era where the ageing population is growing, the importance of ensuring a client's testamentary capacity becomes increasingly paramount. By delving into the latest research, legal precedents, and practical considerations, this session provides a roadmap for succession lawyers to ethically and effectively navigate the challenges associated with determining capacity when advising ageing clients. Key issues covered include: <ul style="list-style-type: none">• Defining testamentary capacity and key lessons from major cases of significance• Collaboration between lawyers and medical professionals and understanding cognitive and medical assessments• Practical considerations for lawyers to navigate:<ul style="list-style-type: none">○ Establishing a comprehensive client intake process○ Strategies for communicating with older clients○ Reasonable adjustments required to support clients to give meaningful instructions, understand rights and options, and participate in legal processes relating to them○ Monitoring changes in client capacity over time• Lessons learnt and best practices from key cases Speaker: Ines Kallweit, Principal, KHQ Lawyers, Melbourne, Vic
10.00 – 10.10am	Questions and Discussion



10.10 – 11.00am

Session 2: Detecting and Addressing Undue Influence and Coercion: Protecting the Elderly

It used to be said that cases disputing wills on the basis of alleged undue influence and coercion were few and far between. However, in recent years the number of cases involving allegations that the deceased was unduly influenced or coerced by someone when it came to the making or variation of their will has risen, particularly amongst older Australians. This session examines how practitioners can effectively safeguard the integrity of the succession planning process and the key lessons to be learnt from recent case law. It covers:

- Deciphering undue influence and coercion amongst the elderly: understanding its legal parameters and warning signs
- Actual vs. presumed undue influence
- Proving the unseen: evidentiary considerations in establishing undue influence
- Practitioner responsibilities where they suspect duress and undue influence
- Standing and the burden of proof in allegations of undue influence
- Remedies for loss arising from duress and undue influence
- Lessons from recent cases

Speaker: Tanya Chapman, Solicitor, Baker Love Lawyers, Newcastle, NSW

11.00 – 11.10am

Questions and Discussion

11.10 – 11.30am

Morning Break



11.30am –
12.20pm

Session 3: Attorneys Gone Bad: Options for Dealing with Rogue Attorneys

According to the ALRC, financial abuse is the most common form of elder abuse, commonly facilitated through misuse of a power of attorney. But what options are available for when an attorney has gone rogue? This session explores:

- Examples of how POAs have and continue to be misused, how the misuse was uncovered and the role lawyers played in either facilitating, uncovering or responding to misuse
- The legal and practical options available when it is suspected that an attorney has gone rogue, including the powers and limitations of going to an administrative tribunal versus remedies available in the Supreme Court and the pros and cons of each
- The practicalities of gathering evidence of wrong doing
- Steps to replace the attorney
- Tips for communicating and dealing with the wrong doer and other relevant persons

Speaker: Asheetha Jelliffe, Partner, Bridges Lawyers, Sydney, NSW

12.20 – 12.30pm

Questions and Discussion

12.30 – 1.15pm

Lunch Break



Afternoon Theme: Living Arrangements

1.15 – 1.20pm	Introduction and welcome Afternoon Chair: Jennifer Maher, Director, Velocity Legal, Melbourne, Vic
1.20pm – 2.10pm	Session 4: The New Aged Care Act 2024 – What Lawyers Need to Know Over the past few years, there has been much activity surrounding the development of the new Aged Care Act. The new Act, anticipated to commence in July 2024, will replace the Aged Care Act 1997 and other existing legislation, heralding the dawn of a new era for regulating the aged care sector. To help practitioners understand the new Act and the potential issues which may affect elder law clients in the new system, this session examines: <ul style="list-style-type: none">• A high-level overview of the main changes introduced by the new Act;• Key areas which are likely to cause issue for elderly clients and their lawyers• How will the new Act impact older persons heading into aged care, as well as existing residents in aged care facilities Speaker: Rodney Lewis AM, Senior Solicitor, Elderlaw Legal Services, Sydney, NSW
2.10 – 2.20pm	Questions and Discussion



2.20pm – 3.10pm

Session 5: Family Living Arrangements: Building a Solid Legal Foundation

Owning your own home has long been considered the Australian dream. Another quintessential Australian concept is the good old granny flat. While many families consider a granny flat on their adult children's property to be a mutually beneficial arrangement that provides not only financial security to the younger generation but also practical assistance to the ageing parents, issues arise when circumstances of the family inevitably change, for example, when the aged parent needs to go into high-care or the adult children divorce. To avoid issues arising at that time, it is imperative that granny flat arrangements are structured properly from the get-go. This session focuses on the legal issues which can arise in family living arrangements and examines:

- The need to identify and protect the rights of the elderly client, and what steps can be taken to protect against elder abuse
- Tips for reducing the risk of disputes or litigation arising in the future including terms/conditions to consider
- How to reality testing proposed arrangements with your client
- The intersection and impact of arrangements on other financial arrangements, including granny flat exemptions, and Centrelink deeming provisions
- Tips for developing a long term plan to transition to an arrangement
- Examples of what can happen to both the elderly client and their estate when the living-with-family arrangement is not properly structured

Speaker: Richard McCullagh, Legal Practitioner, Educator and Author, Gosford, NSW

3.10 – 3.20pm

Questions and Discussion

3.20 – 3.40pm

Afternoon Break



3.40 – 4.30pm

Session 6: ‘Til Aged Care Do We Part: Later In Life Relationships And The Estate Plan

Relationships in later life can bring unexpected joy to those involved but can also result in additional complications when the circumstances involve respective children, disparate financial circumstances and/or health and age gap issues. This session examines the challenges practitioners face in advising these couples on succession planning, including:

- Characteristics of late in life relationships and when does a “legal” relationship arise?
- Can a de facto relationship exist when the two parties live separately?
- Does a de facto relationship end if one party goes into care?
- Are Binding Financial Agreements a viable option for succession planning?
- Will keeping assets completely separate minimise risk in the event of a relationship breakdown?
- Will drafting issues including:
 - Ongoing living arrangements for the surviving spouse
 - Aged care funding considerations for the surviving spouse
 - Managing potential claims by disgruntled children

Speakers: Justine Taylor, Principal, Uther Webster & Evans, Sydney, NSW; Daniel Bennett, Director, Uther Webster & Evans, Sydney, NSW

4.30 – 4.40pm

Questions and Discussion

4.40pm

Masterclass Close



GENERAL INFORMATION

Masterclass Registration Fee

The registration fee includes attendance at the live online masterclass.

Masterclass Papers

Access to the papers and PowerPoints will be available online to all delegates in the lead-up to the masterclass (as they become available).

CPD – Lawyers

6 CPD units/points – substantive law units

CPD
Certificate

All delegates will receive a CPD certificate confirming registration and the CPD units applicable



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Enquiries: Hayley Williams-Cameron - email hayley@tved.net.au or phone (03) 8601 7730.
Register online: www.tved.net.au – go to Masterclasses

Please register me for **The Elder Law Online Masterclass** to be held online on Friday 31 May 2024. [code: SXEMAY24]

Early Bird Registration – for registrations paid on or before **19 April 2024** - **\$990** (\$900 + \$90 GST)

Discount Registration – for registrations paid on or before **10 May 2024** - **\$1100** (\$1000 + \$100 GST)

Full Price Registration – **\$1210** (\$1100 + \$110 GST)

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The papers from this masterclass will be available in electronic form only approximately 1 week after the masterclass has been held. You can pre-order the papers now online via our website at www.tved.net.au [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) (Code: E/PSXEMAY24).

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