

# THE 13<sup>TH</sup> ANNUAL FAMILY LAW CONFERENCE

A two-day conference organised by Television Education Network Pty Ltd

Palazzo Versace, Main Beach, Gold Coast, Thursday 1 & Friday 2 August 2019

Carving up the asset pool in property settlement matters

Counting the cost of contributions

Adding back to the asset pool with add backs

The role of third parties in property matters

The problem of parental alienation

Drafting and enforcing child support agreements

Contravention cases – when parents don't comply

Online evidence in family law – what's in, what's out

Equity to the rescue – what orders are available?

Ex parte applications and injunctive relief to protect at risk property

Binding the financial agreement

When bankruptcy and family law collide

OPTIONAL HALF-DAY INTENSIVE:  
MULTI-DISCIPLINARY ISSUES FOR  
FAMILY LAWYERS | WEDNESDAY 31 JULY

FEEDBACK FROM LAST YEAR'S CONFERENCE:

"Great speakers, great conference, great venue, great networking opportunity. Keep this conference going."

"Very good topics on areas of practice that are quite complex and we need to know."

Value for money. Knowledgeable presenters whose reputation in the industry engenders confidence - well researched papers with relevance to everyday practice. So many good references to access."

"Excellent conference, great content and great speakers. Has increased my knowledge to a new level."



The professional development specialists

# DAY 1 – THURSDAY 1 AUGUST 2019

**CHAIR – DAY 1: The Honourable Judge Geoffrey Monahan, Federal Circuit Court of Australia, Sydney**

## MORNING THEME: PROPERTY MATTERS

**9.00 - 9.10am** Introduction and welcome

**9.10 – 9.55am**

### **Session 1: Carving up the Asset Pool in Property Settlement Matters**

An essential component of property division is identifying and valuing the asset pool. However, determining the size of the asset pool can be difficult, particularly where parties have interests in companies, family trusts and SMSFs. This session examines these difficult issues, including:

- Identifying the relevant ownership structure
- Navigating complex company and trust arrangements – can they be brought into the pool?
- What if the party does not have a legal interest or entitlement in a trust but still receives a financial advantage – can the trust be attacked?
- Identifying relevant interests in a business – either owned personally, or through any form of corporate entity, trust or partnership structure

*Speaker: Professor Patrick Parkinson, Dean of Law, TC Beirne School of Law, The University of Queensland, Brisbane*

**9.55 – 10.05am** Panel Comments and Questions

**10.05 – 10.50am**

### **Session 2: After it's all Over – Counting the Cost of Contributions in Property Matters**

The assessment of contributions remains a fraught area in family law, particularly when dealing with initial contributions, windfalls and post-separation contributions. This session assumes you know the basics and instead examines the more difficult aspects of assessing contributions, including:

- Relevance of timing of contribution:
  - Value of initial contribution
  - Are later contributions given more weight?
- What constitutes a post separation contribution and when do you have to disclose? Spotlight on:
  - Significant increases in income
  - Bonuses
  - Growth and development of assets
- Treatment of windfalls and inheritances
- Contributions and the role of comparable cases – lessons from Wallis & Manning
- Case law update, including Pandelis and Pandelis

*Speaker: Brett Hartley, Partner and Accredited Family Law Specialist, Hartley Healy, Brisbane*

**10.50 – 11.00am** Panel Comments and Questions

**11.00 – 11.25am** Networking Break and Morning Tea

**11.25am – 12.10pm**

### **Session 3: Adding Back to the Asset Pool with Add Backs**

Is it possible to add a sum of money back into an asset pool? While Stanford seemed to signal the death of add backs, the recent Full Court decision of Trevi & Trevi has breathed new life into the concept. This session brings you up to date on the current legal position, including:

- The impact of Stamford on add backs
- Can add backs be dealt with under section 75(2)?
- What is the status of legal fees paid out of the pool?
- Different categories of assets – are they treated differently?
- Case law update, including Trevi & Trevi

*Speaker: Malcolm Gittoes-Caesar, Principal and Accredited Family Law Specialist, Coleman Greig Lawyers, NSW*

**12.10 – 12.20pm** Panel Comments and Questions

**12.20 – 1.05pm**

### **Session 4: When Three's a Crowd: The Role of Third Parties in Property Matters**

While a property matter typically involves two warring former spouses, there has been a steady increase in the number of third party applications in the Family Court. This session examines the rights and responsibilities of third parties joined to a proceeding, and how a family lawyer should best navigate the process when acting for a third party. It covers:

- Who can be a third party?
  - Family members or business associates with an interest in property subject to the proceedings
  - Trustees or appointors of a family trust
  - Directors and shareholders of a family company Trustee of super fund
  - Trustee in bankruptcy
- Parent loans versus gifts
- Why should a third party be joined to the proceeding?
- Third party disclosure obligations
- When can orders be made against the third party?
- What remedies are available?
- On what grounds can a third party resist orders being made affecting them?
- Strategies and procedural issues to consider when advising a third party:
  - Requesting particulars from the parties
  - Understanding the relevant grounds and remedies
  - What evidence is required to support your client's position?
  - Payment of valuation and expert costs
  - The role of bifurcation applications

*Speaker: Jacob Clancy, Lawyer, Clancy & Triado, Melbourne*

**1.05 – 1.15pm** Panel Comments and Questions

**1.15 – 2.15pm** Luncheon

# DAY 1 – THURSDAY 1 AUGUST 2019

## AFTERNOON THEME: PARENTING MATTERS

**2.15 – 3.00pm**

### **Session 5: The Problem of Parental Alienation**

It's not unusual in marriage or relationship breakdowns for an acrimonious dispute to arise between the respective couple. However, what happens when one party turns the children against the other party? This session covers:

- What is being said and how do you prove it? How parental alienation arises
- What are the implications for the parent being accused?
- Through the child's eyes – understanding the impact of parental alienation
- How the Courts might rule on parental alienation
- Practical strategies when advising clients

*Speaker: Minal Vohra SC, Barrister, Victorian Bar, Melbourne*

**3.00 – 3.10pm** Panel Comments and Questions

**3.10 – 3.55pm**

### **Session 6: Drafting and Enforcing Child Support Agreements**

Parties are increasingly choosing to enter into child support agreements to allow more flexibility and control in how their child's expenses will be met between them. However, getting the right child support agreement in place while navigating the procedural challenges can be difficult, particularly in light of recent reforms. This session sets out:

- Choosing the right type of child support agreement
- What to include in the agreement – a practical guide
- Estimating income and expenses for child support agreement purposes
- Understanding the new reforms - when is a Child Support Agreement cancelled or suspended?
- What constitutes a substantial change?
- When is an eligible carer no longer eligible?
- What are the implications of the reforms on each of the parents?
- Apportioning during the suspension period

*Speaker: Brett Walker-Roberts, Director, Child Support Policy Advice Team, Child Support Program Branch, Department of Human Services, Adelaide*

**3.55 – 4.05pm** Panel Comments and Questions

**4.05 – 4.25pm** Networking Break and Afternoon Tea

**4.25 – 5.10pm**

### **Session 7: Contravention Cases: When Parents Don't Comply**

Recent high-profile examples have shone a spotlight on the challenges that arise when one parent fails to return a child in contravention of parenting orders. This session examines the myriad of evidentiary and procedural requirements involved in contravention proceedings. It covers:

- What does the Court consider to be a "reasonable excuse" in contravention cases?
- When is it time to act and alert the authorities?
- What is the procedure involved for legal representatives?
- What do you tell your client?
- When does "running late" cross over the criminal jurisdiction?
- What should be in the application and supporting application?
- Cost orders and penalties

*Speaker: Suzanne Christie SC, Barrister, Culwulla Chambers, Sydney*

**5.10 – 5.20pm** Panel Comments and Questions

# DAY 2 – FRIDAY 2 AUGUST 2019

**CHAIR – DAY 2: The Honourable  
Michelle May AM QC**

**MORNING THEME: COURT ROOM  
PROCEDURES IN FAMILY LAW**

**9.00 – 9.45am**

## **Session 8: Online Evidence in Family Law – What's In, What's Out**

In our increasingly digital age, it comes as no surprise that parties in both parenting and property matters are seeking to rely on online evidence. However, when is online evidence admissible, and most importantly, how do you formulate submissions to the Court that it is? This session considers evidence on websites, social media, and the cloud that your client argues is critical to their case.

- When is online material considered evidence in parenting matters?
- The rule against hearsay and other rules of evidence in respect of online material
- If online material is admitted, what weight will the court give it?
- The role of social media in parenting cases
- What should you be telling your clients regarding social media usage?
- Do lawyers have an obligation to conduct online searches for relevant evidence?
- When is online evidence considered evidence in property matters?
- How do you submit website material and other online evidence to the Court – examining procedural requirements
- The cloud unpacked: a practical look at where your evidence may be stored, how it is provided to the court and its relevance to property matters

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

**9.45 – 9.55am** Panel Comments and Questions

**9.55 – 10.40am**

## **Session 9: Equity to the Rescue – What Orders are Available to Family Law Practitioners?**

Following a relationship breakdown, equitable remedies can be an important tool for relief, as highlighted by the High Court in *Thorne v Kennedy*. This session sets out a practical guide as to what equitable orders the Court can provide your client, how you apply, and how to best maximise the benefits to your client. It covers:

- Pleadings and preliminary challenges involving equitable remedies
- Equitable claims and remedies relevant to family law:
  - Resulting and constructive trusts
  - Breaches of fiduciary duty and confidence
  - Equitable estoppel and unjust enrichment
  - Unconscionable conduct
- Reasons why equitable relief may be refused
- Recent case update involving equitable remedies

*Speaker: Lee Formica, Partner, Lander & Rogers, Melbourne*

**10.40 – 10.50am** Panel Comments and Questions

**10.50 – 11.10am** Networking Break and Morning Tea

**11.10 - 11.55am**

## **Session 10: Ex Parte Applications and Injunctive Relief - Practical Precautions to Protect At Risk Property**

Protecting at risk matrimonial property often requires quick thinking and careful planning. Family lawyers need to be strategic in utilising the range of legal protections available for at risk property in a property dispute. This session explores the options, including:

- Caveat over land – parameters in family law disputes
- Injunctions to protect property – when can they be used?
- Property protection on an interim basis
- When will the Court exercise its discretion?
- Third party orders to prevent the disposal of assets
- Mareva Orders – how do they work and when are they required?

*Speaker: Jeff Marhinin, Partner and Accredited Family Law Specialist, Barkus Doolan Family Lawyers, Sydney*

**11.55 am – 12.05pm** Panel Comments and Questions

**12.05 – 1.05pm** Lunch

# DAY 2 – FRIDAY 2 AUGUST 2019

## AFTERNOON THEME: PROTECTING CLIENT WEALTH

**1.05 – 1.50pm**

### **Session 11: Binding the Financial Agreement**

In a post *Thorne v Kennedy* landscape, clients may be wondering whether a financial agreement can be truly binding. While a completely watertight financial agreement may be a pipe dream, there are things you can do to increase their effectiveness. This session examines the Court's current approach with financial agreements and how you can draft a financial agreement that sticks. It covers:

- How to get it over the line - drafting strategies to prepare a common sense, financial agreement to protect and deliver certainty for your client
- What goes in and what stays out? The important question of disclosure, and when
- Defending a financial agreement:
  - What weapons are available when the threat of attack is pending?
- How have the lower courts applied the High Court's reasoning in *Thorne v Kennedy*?
- Lessons from recent cases, including *Jess & Garvey [2018] FAMCAFC 44*

*Speaker: Phillip Sorensen, Barrister, Queensland Bar, Brisbane*

**1.50 – 2.00pm** Panel Comments and Questions

**2.00 – 2.45pm**

### **Session 12: When Bankruptcy and Family Law Collide**

When relationship breakdown coincides with bankruptcy, a messy situation becomes a whole lot more complicated. This session examines how family law proceedings are impacted by bankruptcy of a party, including:

- Bankrupt's standing in family law proceedings
- Clawback powers – how this impacts family court proceedings
- Dealing with unsecured debts
- How are interests of a trustee in bankruptcy relevant to section 79 of the Family Law Act?
- Creditors versus non-bankrupt spouse
- Rights of creditors versus trustees in bankruptcy to set aside financial agreements
- Rights of trustees in bankruptcy under section 75(2)(ha) of the Family Law Act
- Cost issues and bankruptcy in family law proceedings
- Case law update

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

**2.45 – 2.55pm** Panel Comments and Questions

**2.55pm** Conference Close

# THE SEVENTH ANNUAL FAMILY LAW INTENSIVE

Multi-disciplinary Issues for Family Lawyers  
Palazzo Versace, Gold Coast – Wednesday 31 July 2019

**2.00 - 2.10pm**

Introduction and welcome

**2.10 – 3.00pm**

## ***Topic 1: Tax Imperatives for Family Lawyers***

A recent High Court case has found that a tax debt of one spouse can be shifted to another during a divorce property settlement. This significant decision, along with the recent Full Federal Court decision of *Ellison v Sandini Pty Ltd* is a timely reminder for family lawyers of the need to consider tax in property settlements. This session unpacks these important decisions and provides a tax law perspective on preparing settlement orders. It covers:

- Treatment of tax debts following *Commissioner of Taxation v Tomaras*
- When should the more financial spouse consider discharging the tax debt by other means?
- Considering CGT implications and rollover relief in family law property settlements
- Lessons from *Ellison v Sandini*.
- The use of the 'and/or nominee' clauses in property consent orders
- Circumstances where you do not want the CGT rollover to apply
- Transfers of assets and payments from private companies – application of Division 7A
- Who bears top-up tax liability?
- How can family lawyers mitigate the risks of future tax liabilities?

*Speaker: Patrick Ellwood, Director, Clover Law, Queensland*

**3.00 – 3.10pm** Panel Comments and Questions

**3.10 – 4.00pm**

## ***Topic 2: Estate Planning for Family Lawyers: Meeting at the Crossroads***

Family law practitioners are not just a litigator and dispute resolution specialist. They also need to help manage risks to prevent family law headaches in the future. This session examines the intersect between estate planning and family law and how to best manage future risks, including:

- Understanding how a client owns assets and how they will be treated:
  - Assets in discretionary trusts
  - Super funds
  - Jointly owned property
  - Assets in personal name subject to loans
- Identifying and balancing the needs of competing beneficiaries
- Choice of executors
- The role of powers of attorney
- Use of testamentary trusts in estate planning – what does a family lawyer need to know?
- Relevance of financial agreements in family provision claims
- Lessons from recent cases
- Case study: Estate planning for blended families

*Speaker: Nathan Yii, Director, Nathan Yii Lawyers – Structuring & Estate Planning Law, Melbourne*

**4.00 – 4.10pm** Panel Comments and Questions

**4.10 – 4.30pm** Networking Break and Afternoon Tea

# THE SEVENTH ANNUAL FAMILY LAW INTENSIVE

Multi-disciplinary Issues for Family Lawyers  
Palazzo Versace, Gold Coast – Wednesday 31 July 2019

**4.30 – 5.20pm**

***Topic 3: NOCLAR Obligations Unpacked for Family Lawyers***

It's not uncommon for property matters to involve forensic accountants. However, a new game changer has hit the accounting and auditing sectors which may have significant ramifications for clients. "Non-compliance with laws and regulations", or NOCLAR, has changed the non-compliance playing field and most importantly the principles of confidentiality when reporting. This session examines what you need to know before involving forensic accountants in your property settlement matters, including:

- NOCLAR unpacked – overview of key requirements
- What do the new rules mean for family lawyers, and how it could affect your practice
- Expert evidence and NOCLAR in property matters
- Are you breaching your client confidentiality?
- Understanding the implications for your client and the other party
- Case study: You found a skeleton in the closet – now what?

*Speaker: Joseph Box, Partner - Financial Advisory, National Head of Forensic Consulting, Grant Thornton, Brisbane*

**5.20 – 5.30pm** Panel Comments and Questions

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

## Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

## CPD Units/Points

### CONFERENCE:

**Lawyers (except WA):** 7 CPD units (substantive law)

**WA Lawyers:** 6 CPD points (substantive law)

### INTENSIVE:

**All Lawyers:** 2.5 CPD units (substantive law)

## The Conference Venue

**Palazzo Versace Gold Coast**, Sea World Drive, Main Beach

The Palazzo Versace is located in Main Beach in the heart of the Gold Coast, Queensland.

## Conference Delegate Rate at Palazzo Versace

Television Education Network has negotiated a special conference delegate rate with Palazzo Versace:

**Superior Room (for single or twin share)** ( this room rate includes a buffet breakfast for 1 person) **\$309 (GST inc)**

This rate is strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with Palazzo Versace.**

**Hotel Reservations:** Phone: 1800 098 000 (toll free) Phone: (07) 5509 8000 Fax: (07) 5509 8074

Email: [reservations@palazzoversace.com.au](mailto:reservations@palazzoversace.com.au) [www.palazzoversace.com.au](http://www.palazzoversace.com.au)

## Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

The Gold Coast is easily accessed via Coolangatta Airport - 20 kms away and Brisbane Airport is an easy 1 hour drive. There are also rail and coach services from Brisbane into the Gold Coast.

## Conference Dress

Smart casual attire is suitable. (note: the temperature in the conference room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)

## Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.



# REGISTRATION FORM – TAX INVOICE\*

Registration is simple; complete the form below and fax or post your registration to us or register online.

Television Education Network Pty Ltd, (ABN 19 052 319 365)

GPO Box 61, Melbourne, Victoria 3001

Fax (03) 9670 0588 Phone (03) 9670 2055 Enquiries Jenna Pickrell

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **13th Annual Family Law Conference** – a 2-day conference to be held at the Gold Coast on **Thursday 1 & Friday 2 August 2019** [conf code: GFLAUG19]

- Discount Registration** – for registrations **made on or before 12 July 2019** – **\$1980** (\$1800 + \$180 GST)
- Full Price Registration** – **\$2145** (\$1950 + \$195 GST)
- Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a 10% discount off the full registration fee – **\$1930.50** (\$1755 + \$175.50 GST)

The papers from this conference will be available in electronic form only approximately 2 weeks after the conference has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au). The papers are **\$198** (\$180 + \$18 GST) [Code: PGFLAUG19]

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Please register me for the **7th Annual Family Law Intensive** – an optional half-day intensive to be held on the **Gold Coast on Wednesday 31 July 2019** [conf code: GFIAUG19].

- Discount Registration** – for registrations **made on or before 12 July 2019** – **\$550** (\$500 + \$50 GST)
- Full Price Registration** – **\$660** (\$600 + \$60 GST)
- Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a 10% discount off the full registration fee – **\$594** (\$540 + \$54 GST)

The papers from this conference will be available in electronic form only approximately 2 weeks after the conference has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au). The papers are **\$110** (\$100 + \$10 GST) [Code: PGFIAUG19]

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Please register me for the **13th Annual Family Law Conference and pre-conference Intensive** [conf code: GFXAUG19].

- Discount Registration** – for registrations **made on or before 12 July 2019** – **\$2530** (\$2300 + \$230 GST)
- Full Price Registration** – **\$2805** (\$2550 + \$255 GST)
- Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a 10% discount off the full registration fee – **\$2524.50** (\$2295 + \$229.50 GST)

# REGISTRATION FORM – TAX INVOICE\*

## Personal Details

Mr/Mrs/Miss/Ms First Name .....

Middle Init.....Last Name .....

Preferred Name for nametag *(if different from above)* .....

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## Payment

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