

A ONE-DAY ONLINE MASTERCLASS DELIVERED OVER 2 HALF DAYS

# When the Gloves Come Off in Estate Disputes

Part 1: Thursday 10 September 2020 [1.30 to 5pm]

Part 2: Thursday 17 September 2020<sup>21</sup> [1.30 to 5pm]

- Weighing Up the Evidence in Capacity Challenges
- The Age of Entitlement: Eligibility for Family Provision Claims
- Equitable Remedies and Estate Litigation
- Obtaining Judicial Advice in Wills and Estate Matters
- Will Caveats: Proceed with Caution
- Drafting Settlement Deeds following Estate Litigation



Leaders in Online CPD for Lawyers and Accountants

## Thursday 10 September 2020

### Part 1: Challenges to the Estate

1.30 to 1.40pm	<b>Introduction and welcome</b> <b>CHAIR: Bryan Mitchell, Principal, Mitchells Solicitors, Brisbane</b>
1.40 to 2.30pm	<b>Session 1: Weighing Up the Evidence in Capacity Challenges</b>  A challenge to testamentary capacity often places the professionalism of the drafting practitioner in the spotlight, and can be reputationally damaging. This session discusses how the weight of evidence is changing from medical expertise to more general lay observations, and what practitioners can do to protect themselves from challenges, including: <ul style="list-style-type: none"><li>• Key elements of testamentary capacity reconsidered: <i>Mikhail v Hana</i> [2019] NSWCA 97</li><li>• How far does a lawyer need to go to investigate capacity? <i>Ryan v Dalton; Estate of Ryan</i> [2017] NSWSC 1007</li><li>• The shifting weight towards solicitors' evidence including not just files notes but practice and procedure: Case studies of <i>Drivas v Jakopovic</i> [2019] NSWCA 218; <i>The Estate of Blanche Minnie Condon</i> [2020] NSWSC 19; <i>Croft v Sanders</i> [2019] NSWCA 303; <i>In the matter of the Will and Estate of Joyce Helen Greer deceased</i> [2019] VSC 592</li><li>• Improving disclosure in capacity cases: <i>Re Estates Brooker-Pain and Soulos</i> [2019] NSWSC 671</li><li>• Professional guidelines and precautionary measures for assessing and proving capacity</li></ul> <b>Speaker: Christian Teese, Special Counsel, Rigby Cooke Lawyers, Melbourne</b>
2.30 to 2.40pm	<b>Questions and Discussion</b>
2.40 to 2.50pm	<b>Short break</b>



2.50 to 3.40pm	<p><b>Session 2: The Age of Entitlement: Eligibility for Family Provision Claims</b></p> <p>Not everyone who feels hard done by in relation to the distribution of the estate is able to make a claim for a slice of the pie. This session looks at eligibility for making a claim against an estate, and what evidence is required to satisfy the court, including:</p> <ul style="list-style-type: none"><li>• Who can bring a claim? Do the Australian jurisdictions differ on eligibility?</li><li>• Partners, children, grandchildren and others - analysing the categories of eligible claimants</li><li>• How important are fairness and moral duty? <i>Vigolo v Bostin</i> [2005] HCA 11; <i>Firth v Reeves</i> [2019] VSC 357</li><li>• Evidence of relationships - what do the courts need to see? <i>Re Gunn; Thomas v Gunn</i> [2019] VSC 772; <i>Estate of the late Shirley Joan Violet Gardner; Bernengo v Leaney</i> [2019] NSWSC 1324</li><li>• How is "need" proven? Looking at need, dependency and other factors: <i>Dannawi v Dannaway</i> [2019] NSWSC 1287; <i>Veniou v Equity Trustees Limited</i> [2018] VSC 832; <i>Firth v Reeves</i> [2019] VSC 357</li><li>• Costs considerations: shifting the burden, proportionality and sounding a warning: <i>Wengdal v Rawnsley</i> [2019] NSWSC 926; <i>Oslon v Oslon</i> [2019] NSWSC 217; <i>Harris v Harris</i> [2018] NSWCA 334</li></ul> <p><b>Speaker: Craig Birtles, Barrister, Wentworth Chambers, Sydney</b></p>
3.40 to 3.50-pm	<b>Questions and Discussion</b>
3.50 to 4.00pm	<b>Short break</b>
4.00 to 4.50pm	<p><b>Session 3: Equitable Remedies and Estate Litigation</b></p> <p>Equitable remedies in estate litigation may often be a more appropriate claim or be pleaded in conjunction with other claims as alternate relief. This session considers when these remedies may be relevant, what remedies are available, when they should be claimed and covers:</p> <ul style="list-style-type: none"><li>• Equitable remedies and elements<ul style="list-style-type: none"><li>○ Secret trusts and semi secret trusts</li><li>○ Promissory estoppel and detriment in reliance on the promise</li></ul></li><li>• Equitable estoppel – when is it appropriate to plead?</li><li>• Constructive trusts and resulting trusts</li><li>• Equitable severance – when will equity recognise equitable severance of jointly held property?</li><li>• Recent cases</li></ul> <p><b>Speaker: Monica Ross-Maranik, Consulting Principal, Keypoint Law, Sydney</b></p>
4.50 to 5.00pm	<b>Questions and Discussion</b>
5.00pm	<b>Part 1 Close</b>



## Thursday 17 September 2020

### Part 2: Strategy & Procedure in Estate Litigation

1.30 to 1.40pm	<b>Introduction and welcome</b> <b>CHAIR: Maree van der Kwast, Director, Dwyer Durack Lawyers, Perth</b>
1.40 to 2.30pm	<b>Session 4: Obtaining Judicial Advice in Wills and Estate Matters</b>  When things turn ugly, a prudent executor or trustee should consider whether to seek judicial advice to reduce the risk of claims against them. The session looks at the issues in obtaining judicial advice in wills and estate matters and how it can be used as a risk management tool, including: <ul style="list-style-type: none"><li>• When do you know it is time to seek judicial advice?<ul style="list-style-type: none"><li>○ Commencement of legal proceedings</li><li>○ Interpretation of will or trust deed</li><li>○ Varying powers</li><li>○ Course of action which may create disputation in beneficiaries</li></ul></li><li>• Legislative basis for judicial advice applications</li><li>• What are the essential elements of judicial advice applications?</li><li>• The statement of facts in judicial advice applications</li><li>• Judicial advice and the right of indemnity</li><li>• Nature and effect of judicial advice – the judicial advice direction</li><li>• When will judicial advice be refused?</li><li>• What happens if judicial advice is not obtained?</li><li>• Costs issues in obtaining judicial advice</li></ul> <i>Speaker: Steven Hughes, Barrister, Garfield Barwick Chambers, Sydney</i>
2.30 to 2.40pm	<b>Questions and Discussion</b>
2.40 to 2.50pm	<b>Short break</b>



2.50 to 3.40pm	<p><b>Session 5: Will Caveats: Proceed with Caution</b></p> <p>Probate caveats are a useful tool to prevent the grant of probate. However, filing a caveat should not be done lightly and could result in significant costs if filed in the wrong circumstances or without proper grounds. This session will provide a guide to the lodging of a caveat and what practitioners need to be aware of, including:</p> <ul style="list-style-type: none"><li>• When should a caveat be lodged? Distinguishing types of challenges against the will</li><li>• Who has standing to lodge a caveat?</li><li>• What are sufficient grounds for lodging?</li><li>• How long does a caveat remain in force?</li><li>• What happens after a caveat is lodged?</li><li>• Cost risks of the caveator</li><li>• Practice notes from the courts</li><li>• Case studies and drafting tips</li></ul> <p><b>Speaker: Ursula Stanisich, Barrister, Melbourne</b></p>
3.40 to 3.50pm	<b>Questions and Discussion</b>
3.50 to 4.00pm	<b>Short break</b>
4.00 to 4.50pm	<p><b>Session 6: Being on the Front Foot: Drafting Settlement Deeds following Estate Litigation</b></p> <p>Deals done at the courtroom door or following mediation are a common ending to protracted disputes. The preparation of a settlement deed or checklist in advance means you can take control of the negotiations with your own document, ensuring a quick resolution with all the bases covered. This session will set out the key elements of settlement arrangements in the estate litigation context, including:</p> <ul style="list-style-type: none"><li>• Accurate naming and details of parties and any relevant third parties</li><li>• Framing recitals and non-admission of liability</li><li>• Defining the dispute – what is the deed settling?</li><li>• Describing relevant property and other assets to be paid, transferred or provided and the responsibility for associated taxes or duties</li><li>• Next steps – both interim and long term</li><li>• Relevant warranties and indemnities</li><li>• Releasing the parties and any third parties</li><li>• Liability for legal costs</li><li>• Confidentiality and non-disparagement obligations</li><li>• Obtaining independent legal advice</li></ul> <p><b>Speaker: Asheetha Jelliffe, Partner, Bridges Lawyers, Sydney</b></p>
4.50 to 5.00pm	<b>Questions and Discussion</b>
5.00pm	<b>Part 2 Close</b>

### GENERAL INFORMATION

#### Masterclass Registration Fee

The registration fee includes online attendance at the masterclass and online access to the conference papers. This one-day masterclass will be delivered in 2 parts over 2 half days. The 2 half days can be booked separately.

#### Masterclass Papers

Access to the masterclass materials (papers and Powerpoints) will be available online to all delegates in the lead-up to the masterclass (as the materials become available), during the masterclass and for 30 days after the masterclass. The materials will be available in .pdf format for easy download to your local computer or portable device.

#### Masterclass Recorded Sessions

In addition to attending the live online event, all delegates will automatically receive recordings of each of the sessions delivered after the event has been held.

#### CPD – Lawyers

One day masterclass: 6 CPD units/points

Either half day masterclass: 3 CPD units/points

This is a national masterclass and is suitable for succession lawyers throughout Australia.

#### CPD Certificate

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

#### Online Delivery

The masterclass will be delivered online. Delegates will receive a link to login and attend this online event.

This online masterclass will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

#### Cancellation Policy

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

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group.

#### Terms

Program subject to change without notice. The information and views presented in the masterclass 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 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 masterclass as a result of strikes, public health emergencies, natural disasters, and other Acts of God.



## Registration 1 of 2

**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)

**Mail:** GPO Box 61, Melbourne, Victoria 3001   **Fax** (03) 9670 0588   **Phone** (03) 8601 7700

**Enquiries:** contact our Event Coordinator, Hayley Williams-Cameron ([hayley@tved.net.au](mailto:hayley@tved.net.au)) [direct phone: (03) 8601 7730]

Register online: [www.tved.net.au](http://www.tved.net.au) – go to Masterclasses

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Please register me for **When the Gloves Come Off in Estate Disputes: One Day Online Masterclass delivered in 2 Parts** to be held on **Thursday 10 & Thursday 17 September 2020** [conf code: SXSSEP20]

**Early Bird Registration** – for registrations paid on or before 31 August 2020 - **\$715** (\$650 + \$65 GST)

**Full Price Registration** – **\$825** (\$750 + \$75 GST)

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Please register me for the **Part 1 – Challenges to the Estate** to be held on Thursday 10 September 2020. [conf code: SXSSEP201]

**Early Bird Registration** – for registrations paid on or before 31 August 2020 - **\$495** (\$450 + \$45 GST)

**Full Price Registration** – **\$550** (\$500 + \$50 GST)

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Please register me for the **Part 2 – Strategy & Procedure in Estate Litigation** to be held on Thursday 17 September 2020. [conf code: SXSSEP202]

**Early Bird Registration** – for registrations paid on or before 31 August 2020 - **\$495** (\$450 + \$45 GST)

**Full Price Registration** – **\$550** (\$500 + \$50 GST)

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### Can't Attend – Purchase the Masterclass Papers

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](http://www.tved.net.au) [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) [Code: PSXSSEP20].

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## Registration 2 of 2

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### NAME & ADDRESS DETAILS

Mr/Mrs/Miss/Ms (circle appropriate) Name: .....  
Position in Company/Firm: .....  
Company/Firm: .....  
Postal Address: .....  
..... State..... Postcode:.....  
Telephone: [.....]..... Mobile: [.....].....  
Email: .....

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### PAYMENT DETAILS (Note: This form will be a Tax Invoice for GST when you make payment)

I enclose a cheque for \$..... payable to: **Television Education Network Pty Ltd** or

Please debit my:  **Amex**     **Mastercard**     **Visa**

Expiry Date ...../.....

Name on Card: \_\_\_\_\_ Signature: \_\_\_\_\_

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