

A TEN POINT MASTERCLASS – GET YOUR 10 CPD UNITS

10 Point Wills and Estates Online Masterclass

Wednesday 6 March 2024
Online

- Knowledge and Approval and Testamentary Capacity: Getting the Foundations Right
- Where There's a Will There's a Way: Informal Wills and Testamentary Intent
- Changing of the Guard: Precision Drafting in Trust Appointments
- Three Claims And A Court: The Intersect Between Constructive Trusts, Promissory Estoppel And Family Provision Claims
- Adding Up the Costs in Estate Litigation
- Negotiating and Drafting Terms of Settlement in Wills and Estate Matters

Earn 10 CPD units including the compulsory subjects – attend this one-day live online Masterclass and we'll supply 4 free on demand video webinars – 3 covering each of the compulsory subjects plus one other substantive law program to view at your leisure



Leaders in online CPD for Lawyers & Accountants

THE FACULTY:

Jennifer Maher, Director, Velocity Legal, Melbourne, Vic (Chair)
Caroline Sims, Partner, Teece Hodgson Ward Solicitors, Sydney, NSW
Hayley Mitchell, Partner, Cooper Grace Ward, Brisbane, Qld
Greg Russo, Principal, Greg Russo Law, Melbourne, Vic
Craig Birtles, Barrister, Wentworth Chambers, Sydney, NSW
Christian Teese, Special Counsel, Rigby Cooke Lawyers, Melbourne, Vic

9.00 – 9.10am

**Morning Theme: Creating the Succession Plan
Introduction and Welcome**

9.10 – 10.00am

Session 1: Knowledge and Approval and Testamentary Capacity: Getting the Foundations Right

In the realm of wills and probate, objections to the admission of a will often revolve around challenges to the testator's testamentary capacity or their failure to fully comprehend and approve the specific contents of the will. This session delves into the proactive measures succession lawyers can employ during the will-making process to minimize the likelihood of such disputes. Key topics covered include:

- The relationship between testamentary capacity and the testator's knowledge and approval - how these factors intertwine and influence each other
- Navigating the evidentiary burdens involved in testing testamentary capacity
- The assessment process to determine whether the will is the genuine product of a free and capable mind, considering the factors that influence this determination and how they can be evaluated
- Best practices for communicating with clients during capacity assessments, ensuring clarity, sensitivity, and compliance with ethical and professional obligations
- Critical factors to consider when determining whether to refer a client for further assessment of their capacity, and providing insights into the process of obtaining expert opinions
- Case update, including *Lim v Lim* [2023] NSWCA 84

10.00 – 10.10am

Questions and Discussion

10.10 – 11.00am

Session 2: Walking the Tightrope in Mutual Will Drafting

In theory, mutual wills provide blended families with some certainty following the death of the respective will-makers, but in practice drafting mutual wills requires considerable planning and drafting precision. This session provides a guide to practitioners on practicalities and challenges in drafting mutual wills, including:

- How to structure mutual wills and key clauses
- Building in restrictions or options for revocation and termination pre-death
- Clarifying assets and property the subject of the testamentary intentions
- Limitations and restrictions on the survivor's power and ability to dispose of, reduce or use the assets
- Techniques for factoring in circumstances including:
 - age differences of will-makers
 - nature of the family – step-children and/or biological children together
 - contributions of the parties before and during the marriage
 - length of the marriage
- ongoing needs and circumstances of the surviving spouse.

11.00 – 11.10am	Questions and Discussion
11.10 – 11.30am	Morning Break
11.30am – 12.20pm	<p>Session 3: Changing of the Guard: Precision Drafting in Trust Appointments</p> <p>In recent times the courts have been far more willing to critically assess and render invalid appointments made supposedly in accordance with the provisions of a trust deed. This usually has dire consequences for both officers and beneficiaries. This session will provide guidance on drafting effective appointment provisions in trusts, including:</p> <ul style="list-style-type: none"> • Appointing the appointor – defining role, responsibilities and powers • What happens if the appointer dies or becomes incapable of acting? Drafting for succession • Trustee selection and appointment processes • What should be in a deed of retirement and appointment of a new trustee? • Tips and traps in trust deed amendments and variations • The consequences of non-compliance with the trust deed • Recent cases and lessons from the courts.
12.20 – 12.30pm	Questions and Discussion
12.30 – 1.15pm	Lunch Break
1.15 – 1.20pm	Afternoon Theme: Attacking the Will Introduction and welcome
1.20pm – 2.10pm	<p>Session 4: Three Claims And A Court: The Intersect Between Constructive Trusts, Promissory Estoppel And Family Provision Claims</p> <p>The facts of contested estate matters often give rise to multiple, and overlapping, legal and equitable claims. There can be a tendency for claims to be bundled together and evidence led without specific reference to the legal or equitable claim to which it relates. Running cases along these lines is fraught with danger – not only for the success of the matter but for the solicitor who risks running a case without the requisite evidence to ground one or more of the claims. This session will explore:</p> <ul style="list-style-type: none"> • The intersection between equitable claims (including constructive trusts and promissory estoppel) and family provision claims • How the overlapping doctrines of constructive trust and family provision played out in the recent case of Clayton v Clayton [2023] NSWSC 399 and lessons to be learned from that decision • How promissory and other estoppel claims may operate within the facts of a family provision claim, including when promissory estoppel is run as a defence to a family provision claim • Tips for drafting your orders sought, structuring your arguments and leading evidence when running multiple claims
2.10 – 2.20pm	Questions and Discussion



2.20pm – 3.10pm	Session 5: Adding Up the Costs in Estate Litigation Courts have a discretion when ordering costs, and it is a misconception that the estate will always pay the costs of litigation. This session will look at the changing nature of cost allocation and orders in estate litigation, including: <ul style="list-style-type: none">• Do costs always follow the event?• What are the cost rules in estate litigation and how far can judges deviate from the rules?• Issues in costs allocation including:<ul style="list-style-type: none">○ The cause of the litigation○ Investigations as a result of capacity or drafting○ Family provision claims• The proportionality principle: <i>Oslen v Oslen</i> [2019] NSWSC; <i>Harris v Harris</i> [2018] NSWCA 334• Cost consequences for executors behaving badly• Advising clients on the prospects of success and cost implications for bad or unfollowed advice• When will a court impose personal cost orders against practitioners?• Recent cases including: <i>The estate of Milan Zlatevski</i>; <i>Geroska v Zlatevski (No 2)</i> [2020] NSWSC 388; <i>Re Veca</i> [2015] VSC74; <i>In the Estate of Amuso (No 2)</i> [2021] SASC 61; <i>Re Howden</i>; <i>Howden v Rackshaw</i> [2020] VSC 315; <i>Trinder v Ciniglio</i> [2020] QSC 176
3.10 – 3.20pm	Questions and Discussion
3.20 – 3.40pm	Afternoon Break
3.40 – 4.30pm	Session 6: Negotiating and Drafting Terms of Settlement in Wills and Estate Matters Negotiating and settling wills and estate disputes require refined skills. This session looks at what these are, with practical advice on implementation. It includes: <ul style="list-style-type: none">• Understanding the timing of negotiations and its practical effects• Process and procedure in disclosing financials• Determining the property pool• Having some bargaining power whilst maintaining ethics and fairness• Knowing when to reach the settlement middle ground• Construction of terms of settlement - what to put in and what to leave out• How to ensure terms of settlement are binding• Case study - a settlement agreement checklist
4.30 – 4.40pm	Questions and Discussion
4.40pm	Masterclass Close



In addition, all delegates will receive 4 on-demand video webinars.

These webinars will be provided online by end February 2024 for you to view at your leisure by 31.3.24 to make up the 10 CPD units.

<p>Substantive law – 1 unit</p>	<p>Discretionary No More? The Future of Discretionary Family Trusts Post-Owie</p> <p>The recent decision of <i>Owie</i> has thrown the future of discretionary family trusts into doubt by challenging the idea that trustees of discretionary family trusts have absolute discretion to distribute income for the benefit of one or more of the beneficiaries of the trust in preference to others. Lawyers must now grapple with the potential ramifications of this decision and what it means for their clients. To help understand these issues and their potential ramifications in more depth, this session will examine:</p> <ul style="list-style-type: none"> • What does ‘real and genuine consideration’ mean when trustees are exercising their discretion? How far does this extend? • The facts in <i>Owie</i>, what led to the decision and its outcome • What does <i>Owie</i> mean for the future of discretionary family trusts in Australia • When will the court remove a trustee? • Best practice tips in relation to what advice should be provided to clients following this decision when acting for both trustees and beneficiaries • What steps should lawyers be advising their clients to now take to evidence the rationale behind trust distributions in the event of a future challenge <p>Speaker: <i>Jeremy Smith, Barrister, Melbourne</i></p>
<p>Professional Skills – 1 unit</p>	<p>Estate Administration Litigation: Sharpening Your Skillset When the Gloves Come Off</p> <p>While few succession lawyers want their matters to end up in court, it is unavoidable that certain matters will eventually result in litigation. This practical session delves into the potential issues that may emerge in succession law litigation and offers insights on how lawyers can effectively equip themselves with the necessary skill set to navigate such situations. Topic areas covered include:</p> <ul style="list-style-type: none"> • Probate caveats and the impact of the recent decision of <i>Re Estate Capelin, deceased</i> [2022] NSWSC 238 on their use in contested matters • The ins and outs of <i>ex parte</i> applications: <ul style="list-style-type: none"> ○ when are they appropriate? ○ how to present your case in accordance with current best practice standards ○ who to notify of the outcome (and when) • Notices and applications to bar claims: <ul style="list-style-type: none"> ○ when they ought to be considered ○ practical and strategic considerations if served with one • The duty of legal representatives in succession law litigation, as discussed in <i>Limberger v Limberger</i> [2021] NSWSC 474) <p>Speaker: <i>Carolyn Sparke KC, Barrister, Melbourne, Vic</i></p>



<p>Ethics – 1 unit</p>	<p>Ethical Considerations in Client Representation: Knowing When to Proceed and When to Refrain</p> <p>In succession law matters it can be common to take instructions from a couple and provide advice to ensure their testamentary wishes align. As time passes, people and circumstances change, family dynamics evolve, and relationships can break down. Such events can create challenges and lawyers who fail to stop to consider the ramifications of changed circumstances run the risk of falling foul of legal, professional and ethical obligations. This session will examine:</p> <ul style="list-style-type: none"> • An overview of the ethical duties and obligations surrounding when lawyers can (and when they should not) act and the continuing obligations towards client following termination of client relationship • Case examples to workshop through different scenarios which can create ethical conundrums, including acting for a former client or person connected with a former matter • Ethical rules surrounding duties owed to former clients, including confidentiality • Practical guidance about navigating the process when weighing up ethical considerations and how to create safeguards to prevent inadvertent breach of obligations <p>Speaker: Michele Davis, Consulting Principal, Keypoint Law, Brisbane</p>
<p>Practice Management & Business Skills – 1 unit</p>	<p>Strengthening Your Defences Against Scams, Phishing and Cyber Security Attacks</p> <p>Around 300,000 cyber-crimes are committed in Australia every year. Many of these incidents arise not from hacking but from the behaviour of people who fall prey to scams, phishing and other social engineering methods. As the recent headlines have shown us, lawyers are no exception. This session assists succession lawyers keep on top of their cyber-security risk by examining:</p> <ul style="list-style-type: none"> • The different methods currently employed for scams; • Spotlight on the particular cyber security vulnerabilities experienced by succession lawyers • Tips for how to identify scams and fraudulent communications • Suggestions for systems, policies and steps lawyers can take to minimise their risk • Potential consequences that can arise following a breach and what practitioners should do if they suspect a breach <p>Speaker: Jason Symons, Partner, Mills Oakley, Sydney, NSW</p>



GENERAL INFORMATION

Masterclass Registration Fee

The registration fee includes attendance at the live online masterclass and 4 recorded webinars.

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). The materials will be available in .pdf format for easy download.

CPD – Lawyers

10 CPD units – 6 substantive law units for attending the Masterclass **PLUS** we will provide you with **4 free** on demand video webinars – 3 covering each of the compulsory subjects (Ethics, Practice Management & Business Skills and Professional Skills) plus one other substantive law program - for you to view at your leisure prior to 31 March 2024. The recorded webinars will be made available for viewing by end February 2024.

Please check your CPD rules to ensure that you are able to claim 4 CPD units from viewing recorded webinars. Most states have allowance for claiming CPD for viewing recorded webinars. **[WA practitioners – you cannot claim our recorded webinars as we are unable to verify that you have viewed them].**

CPD
Certificate

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



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 - 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).
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 - 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
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General – all conferences

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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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8. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
9. You are entitled to use those materials for private study and research only.
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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.



Registration Form

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Mail: GPO Box 61, Melbourne, Victoria 3001 **Phone** (03) 8601 7700
Enquiries: Contact our Event Co-Ordinator, Jason Hooker (jason@tved.net.au) [direct: (03) 8601 7719]
Register online: www.tved.net.au – go to Masterclasses

Please register me for the **10 Point Wills and Estates Online Masterclass** to be held online on Wednesday 6 March 2024. [code: SXWMAR24]

Delegates will receive **4 free on demand video webinars** - 3 covering each of the CPD compulsory subjects + 1 additional substantive law unit to view at your leisure. Delegates will earn their 10 CPD units for the CPD year ending 31.3.24.

- Early Bird Registration** – for registrations paid on or before **20 December 2023** - **\$990** (\$900 + \$90 GST)
- Full Price Registration** – **\$1100** (\$1000 + \$100 GST)

NAME & ADDRESS DETAILS

Mr/Mrs/Miss/Ms (circle appropriate) Name:

Position in Company/Firm:

Company/Firm:

Postal Address:

..... State..... Postcode:

Telephone: (.....)..... Mobile: (.....)

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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: _____

