

A TEN POINT MASTERCLASS – GET YOUR 10 CPD UNITS

Wills and Estates: One Day 10 Point Masterclass

Wednesday 22nd March 2023
Online

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

9.00 – 9.05am	Introduction and Welcome Morning Chair: Dr John de Groot, Special Counsel, De Groot's Wills & Estate Lawyers, Brisbane, Qld
9.05 – 9.55am	Session 1: What, When and How: Knowledge and Approval in Estate Litigation The case of Lewis v Lewis highlighted the challenges of overturning the presumption of knowledge and approval, even where capacity may not be an issue. This session will examine the important lessons from this case for succession lawyers, including: <ul style="list-style-type: none">• Why testamentary capacity is only part of the equation• Key elements of knowledge and approval• Rebutting the presumption – what evidence is required?• Consequences of failure to prove knowledge and approval, including will invalidity and severance• Is it enough that the will-maker has read the will?• Court assessment of knowledge and approval in the event of:<ul style="list-style-type: none">○ Mental acuity and comprehension issues○ Suspicious circumstances○ Unsophisticated will-makers○ Complex financial circumstances and arrangements• How can advisers best ensure that knowledge and approval by their client is satisfied?• Tips for client management, record keeping and will drafting• A discussion of recent cases Speaker: Angela Cornford-Scott, Director, Cornford-Scott Lawyers, Brisbane, QLD
9.55 – 10.05am	Questions and Discussion



10.05 – 10.55am

Session 2: Be Careful What You Wish for: Statements of Wishes in the Firing Line

A letter or memorandum of wishes accompanying a will or inter vivos family trust can be a helpful tool for an executor or trustee, but also have the potential to cause discontent and lead to challenges. This session provides a tool kit for practitioners in drafting letters/memorandums of wishes and a guide to avoiding the problems that can accompany these personal letters, including:

- When should a will - maker complete a statement of wishes regarding his/her will or inter vivos family trust? Advantages and disadvantages discussed
- Timelines for creation and review of a statement of wishes
- What matters should be included and in what detail?
- What matters should not be included?
- Drafting tips and traps including using statements to explain exclusions and intentions in gifting
- What form should the statement take? Does it need to be signed or sworn?
- Are statements of wishes confidential and who can they be disclosed to?
- To what extent are statements bindings on the executor and how should they be treated?
- Does a statement of wishes form part of probate?
- Key lessons from cases

Speaker: Paul Evans, Partner, Makinson d'Apice Lawyers, Sydney

10.55 – 11.05am

Questions and Discussion

11.05 – 11.25am

Morning Break



11.25am –
12.15pm

Session 3: Double Trouble? The Perils and Pitfalls of Mutual Wills

The benefits of mutual wills can be significant, but in practice mutual wills have their problems and limitations in terms of drafting, enforcement and family impact. This session will examine those issues and provide guidance to practitioners in how to navigate and minimise the risks, including:

- In what circumstances should mutual wills be considered?
- A deep dive into the advantages and disadvantages
- How binding are mutual wills?
- Can one party change or revoke their mutual will without the consent of the other party?
- Who can bring an enforcement action against the will-maker and at what stage?
- What are the consequences of a surviving party dealing or reducing the assets referred to in a mutual will?
- Alternative options for protecting assets and ensuring disposal intentions are met
- Can a mutual will defeat a family provision claim? *Stanford v Stanford* [2021] NSWSC 1469
- Do practitioners have a conflict of interest in drafting mutual wills for both parties?
- Drafting tips for mutual will provisions
- Recent cases, including *Forster v Forster* [2022] QSC 30

Speaker: Justine Taylor, Principal Director, Uther Webster & Evans, Sydney, NSW

12.15 – 12.25pm

Questions and Discussion

12.25 – 1.10pm

Lunch Break



1.10 – 1.15pm	Introduction and Welcome Afternoon Chair: Indran Sinnadurai, Special Counsel, Makinson d'Apice Lawyers, Sydney, NSW
1.15 – 2.05pm	Session 4: In for a Penny, In for a Pound: Family Provision Claims and Non - Biological Children The concept of a family has greatly changed over the last few generations and, further complicated by assisted reproduction technology, the issue of who is a child has become far more complex. This session will examine the availability of potential claims against an estate by a person who is not a child of the deceased in a traditional sense, including: <ul style="list-style-type: none">• The basis of inheritance rights of children and their development to current family provision legislation• Relevant State legislation and jurisdictional requirements• Who is a child or family member for family provision claims?• An analysis of the rights of foster, adopted and step - children and grandchildren• Is there any difference where the step - child is within a de facto relationship?• What are the rights of a child to make a claim from the estate of his or her egg/sperm donor parent?• What factors will the court consider in determining a family provision claim in a blended family situation?• Proactive steps and drafting tips for will - makers in blended or unusual family situations• Are family agreements an option?• Cases including Estate of Wright [2016] NSWSC 1779; Scott - Mackenzie v Bail [2017] VSCA 108; Lowe v Lowe (No 2) [2015] NSWSC 16; Haertsch v Whiteway [2020] NSWSC 133; Re Williams; Smith v Thwaites [2017] VSC 365; Masson v Parsons [2019] HCA 21 Speaker: John Armfield, Barrister and Mediator, Wentworth Chambers, Sydney, NSW
2.05 – 2.15pm	Questions and Discussion



2.15pm – 3.05pm

Session 5: Testamentary Trusts: Holding Trustees to Account in Discretionary Decision-Making

Being a trustee of a testamentary trust brings with it great responsibility and sometimes onerous obligations. While in most cases the duties are carried out in accordance with the law and testamentary powers, the courts have also had to deal with decision-making that goes beyond the powers and even into the realm of bad faith. This session will explore the duties of trustees and examine cases where the courts have had to intervene to remedy the situation, including:

- Trustee discretionary powers and overriding duties
- What must a trustee consider in exercising their discretion?
- Does a trustee have to give a reason for their decision?
- When can a discretionary decision be challenged and by whom?
- What will the courts look at and what remedy can they order?
- Drafting tips for discretionary powers in trust deeds
- Key steps for trustees when exercising their discretion
- Is there a good argument for not including discretionary decision-making in a trust deed?
- Recent cases including: *Cardaci v Filippo Primo Cardaci* as executor of the estate of Marco Antonio Cardaci [2021] WASC 331; *Baba v Sheehan* [2021] NSWCA 58; *Re Owies Family Trust* [2020] VSC 716; *Mandie v Memart Nominees Pty Ltd* [2020] VSCA 281; *Marsella v Wareham (No 2)* [2019] VSC 65

Speaker: Hayley Mitchell, Partner, Cooper Grace Ward Lawyers, Brisbane, Qld

3.05 – 3.15pm

Questions and Discussion

3.15 – 3.35pm

Afternoon Break



3.35 – 4.25pm

Session 6: Disapproval and Removal: Showing Executors the Door

Courts are more willing to deal with executor bad behaviour than they have been in the past, but it's no easy feat and can impose a heavy toll on family relationships and the management of the estate. This session will explore the options and processes involved in executor removal, including:

- Why executor appointment needs to be carefully considered upfront
- The risks of appointing family members and other interested parties
- Role and responsibilities of executors and where it can all go wrong
- What constitutes unacceptable behaviour?
- At what stage can an application be made to remove an executor?
- What is the process for removal?
- What will the courts consider in a removal application?
- Who pays the costs of an application for removal?
- Are there alternative options for managing a poorly performing executor?
- The courts and independent third-party appointments – a new solution?
- Recent cases including *Re Hartley (deceased)* [2020] QSC 251; *Connock v Connock (in his capacity as the executor of Connock)* [2021] VSC 64; *Re Vasiliades*; *Pappas v Vasiliades* [2021] VSC 720

Speaker: *Lucy McPherson, Special Counsel, Attwood Marshall Lawyers, Gold Coast, Qld*

4.25 – 4.35pm

Questions and Discussion

4.35pm

Masterclass Close



In addition, all delegates will receive the following on demand video webinars.

These webinars will be provided online by end February 2023 for you to view at your leisure by 31.3.23 to make up the 10 CPD units.

<p>Substantive law – 1 unit</p>	<p>Anoint and Appoint: Key Clauses in Testamentary Trust Deeds</p> <p>The most important role in a trust arrangement is that of the appointor. The choice of an appointor is the first significant decision that needs to be made, with other considerations following. This session will examine why practitioners and their clients need to give serious consideration to the selection and powers of an appointor and the consequences of getting things wrong, including:</p> <ul style="list-style-type: none"> • Does a trust need to have an appointor? • What qualities does the appointor need to possess? • What powers does an appointor need to properly discharge their duties? • What happens if the appointor dies or becomes incapable of acting? How should the role pass? • What mechanisms need to be in the trust deed to change the appointor or trustee? • When should an appointor remove a trustee? • Can an appointor be personally liable? • Drafting tips for trust deed appointments and variations • Recent cases including <i>Cardaci v Filippo Primo Cardaci</i> as executor of the estate of Marco Antonio Cardaci [2021] WASC 331; <i>Re Owies Family Trust</i> [2020] VSC 716; <i>Edwards & Anor v Brougham</i> [2022] SASC 8
<p>Professional Skills – 1 unit</p>	<p>Shades of Grey: Professional Responsibility for Determining Capacity</p> <p>At a time when people are living longer than ever before, the making of a will tends to happen in later life when declining health may impact decision - making. What are the obligations of legal practitioners faced with will preparation for a client with signs of cognitive impairment? This session will provide guidance to practitioners on precautionary measures to protect both their clients and themselves from challenges, including:</p> <ul style="list-style-type: none"> • At what stage does capacity need to be tested? • Who is responsible for making a decision on capacity? Is medical evidence always conclusive? • Can a person with any level of dementia make a will? • The role and obligations of practitioners in assessing capacity and planning for will execution • Key precautionary measures to avoid challenges on the grounds of capacity • Who bears the onus of proof in a challenge? • What evidence of capacity will the courts look at? • The role of the statutory will regime when testamentary capacity is lacking • Recent cases including <i>Greer v Greer</i> [2021]QCA 143; <i>Estate Rofe</i> [2021] NSWSC 257; <i>Chant v Curcuruto</i> [2021] NSWSC 751; <i>Gooley v Gooley</i> [2021] NSWSC 56

<p>Ethics – 1 unit</p>	<p>Practitioner Executors Dealing with Estate Assets: Practical Ethical Dilemmas</p> <p>The role of executor can be onerous, and this is particularly so for solicitors acting as executors. This session looks at the ethical risks for solicitors in this role, particularly when dealing with estate assets. It includes:</p> <ul style="list-style-type: none"> • Should solicitors be executor? – an ethics perspective • Executor problems in working out who they represent • Ethics issues when managing estate property for many beneficiaries • The extent of fiduciary responsibility on an executor • When the executor does not gain proper authority – when is this an ethical breach? • When inadequate record keeping becomes an ethics problem • Case study – what executors must not do if they want to avoid ethics breaches
<p>Practice Management & Business Skills – 1 unit</p>	<p>Electronic Documents, the Digital Age and the Succession Law Practice</p> <p>The digital era is here to stay, and with it comes electronic wills, probate and communications. How should your succession law practice adapt to these challenges? This session looks at the main rules and provides practical guidance on navigating the new landscape, including:</p> <ul style="list-style-type: none"> • Sending email or hard copy letter – a professional practice issue? • Electronic communication and confidentiality issues • Electronic communication and the intersect with legal professional privilege • Without prejudice communications – risk factors in electronic communication • Electronic probate – what are the practical issues emerging in practice? • Electronic wills – It may be legal but is it practical?



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 to your local computer or portable device.

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 2023. The recorded webinars will be made available for viewing by end February 2023.

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)
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General – all conferences

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9. You are entitled to use those materials for private study and research only.
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 - 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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Enquiries: Contact our Event Co-Ordinator, Hayley Williams-Cameron (hayley@tved.net.au) [direct: (03) 8601 7730]
Register online: www.tved.net.au – go to Masterclasses

Please register me for **Wills and Estates: One Day 10 Point Masterclass Online** to be held online on Wednesday 22nd March 2023. [code: SXWMAR23]

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 31.3.23.

- Early Bird Registration – for registrations paid on or before 10 March 2023 - \$990** (\$900 + \$90 GST)
- Full Price Registration – \$1100** (\$1000 + \$100 GST)

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 [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) (Code: PSXWMAR23).

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