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

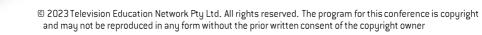
9.00 – 9.05am	Introduction and Welcome Morning Chair: Dr John de Groot, Special Counsel, De Groots Wills & Estate Lawyers, Brisbane, Qld
9.05 – 9.55am	 Session 1: What, When and How: Knowledge and Approval in Estate Litigation The case of Lewis v Lewis highlighted the challenges of overturning the presumption 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: 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: 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
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	

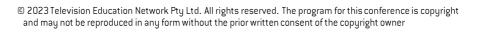


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11.25am – 12.15pm	Session 3: Double Trouble? The Perils and Pitfalls of Mutual Wills
	 The benefits of mutual wills can be significant, but in practice mutual wills have their problems and limitations in terms of drafting, enforcement and family impact. 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
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: 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
2.05 – 2.15pm	Questions and Discussion



2.15pm – 3.05pm Session 5: Testamentary Trusts: Holding Trustees to Account in Discretionary Decision-Making

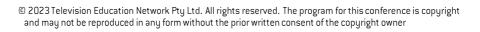
Being a trustee of a testamentary trust brings with it great responsibility and sometimes onerous obligations. While in most cases the duties are carried out in accordance with the law and testamentary powers, the courts have also had to deal with decision-making that goes beyond the powers and even 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	
5.15 5.55pm	Alterioon 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 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
4.25 – 4.35pm	Coast, Qld Questions and Discussion
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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.

Substantive	Anoint and Appoint: Key Clauses in Testamentary Trust Deeds
law – 1 unit	
	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:
	 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?
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	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 Cardaci v Filippo Primo Cardaci as executor of the estate
	of Marco Antonio Cardaci [2021] WASC 331; Re Owies Family Trust [2020] VSC
	716; Edwards & Anor v Brougham [2022] SASC 8
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Professional	Shades of Grey: Professional Responsibility for Determining Capacity
Skills – 1 unit	
	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:
	 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 Greer v Greer [2021]QCA 143; Estate Rofe [2021]
	 Recent cases including Greer v Greer [2021]QCA 143; Estate Role [2021] NSWSC 257; Chant v Curcuruto [2021] NSWSC 751; Gooley v Gooley [2021]
••••	NSWSC 56

Ethics – 1 unit	Practitioner Executors Dealing with Estate Assets: Practical Ethical Dilemmas
	 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: 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
Practice	Electronic Documents, the Digital Age and the Succession Law Practice
Management	
& Business Skills – 1 unit	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:
	 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].



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

Conference Terms & Conditions

- 1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd trading as TEN The Education Network
 - 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).
 - d. "live conference" means a conference other than a recorded conference.
 - 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
 - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General - all conferences

- 2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
- 3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
- 4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.
- 5. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
- 6. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
- 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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- 11. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN - all conferences

- 12. TEN reserves the right to cancel a conference for any reason.
- 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

REGISTRATION IS SIMPLE: complete the form below and fax or post your registration to us or register online.Television Education Network Pty Ltd trading as **TEN The Education Network (**ABN 19 052 319 365)Mail: GPO Box 61, Melbourne, Victoria 3001Phone (03) 8601 7700Enquiries: Contact our Event Co-Ordinator, Hayley Williams-Cameron (https://www.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 <u>www.tved.net.au</u> [go to Conference Papers]. The papers are \$165 (\$150 + \$15 GST) (Code: PSXWMAR23).

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Name on Card:	_Signature: