

CHALLENGING THE WILL: WHEN THE GLOVES COME OFF IN ESTATE LITIGATION

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A SERIES OF 5 ON DEMAND VIDEO WEBINARS

TELEVISION EDUCATION NETWORK PTY LTD



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ABOUT THIS SERIES

What's covered

Practitioners operating in the area of wills and estates know first-hand the myriad of ways in which a testator's wishes can be challenged. However, fore-warned is certainly fore-armed, especially when it comes to estate litigation. This five part webinar series examines the key issues in this area of practice, and how they have been dealt with by practitioners and the courts. Sessions covered include rebutting the presumption of knowledge and approval, will challenges for undue influence, as well as lessons from recent family provision cases. It also includes sessions on litigating proprietary estoppel, as well as a deep dive into estate litigation costs.

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THE PROGRAMS

What, When and How: Knowledge and Approval in Estate Litigation

The recent case of *Lewis v Lewis* [2021] NSWCA 168 highlights 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

The Power of Persuasion: Will Challenges for Undue Influence

Economic challenges and an ageing society have resulted in the elderly becoming increasingly vulnerable to influences from family for financial support. But when does such behaviour change from suggestion to influence and when should a will be challenged on the basis of undue influence? This session examines the law of undue influence and provides a guide to legal practitioners faced with claims of this nature, including:

- Red flags and other signs of undue influence
- Where to draw the line between suggestion, persuasion and undue influence
- What should a solicitor do if they suspect their client has been subject to undue influence?
- Who has standing to make a claim of undue influence following death of the will-maker?
- What standard of proof is required?
- Where undue influence is proved what effect will the finding have on the will?
- Recent cases including *Hayward (as Executor of Felton Estate) v Speedy & Felton* [2021] NSWSC 943; *Estate of Rofe* [2021] NSWSC 257

THE PROGRAMS

All in the Family: Lessons from Family Provision Cases

The family provision jurisdiction has provided an outlet for claims by dissatisfied family members seeking a slice, or a bigger share, of the inheritance pie. This session will examine some general themes in these cases and provide a guide to what practitioners should be advising their clients before bringing a family provision claim, including:

- Does the mantra “it’s my money and I can leave it to whoever I choose” have any weight anymore?
- Eligibility requirements for making a claim for insufficient provision
- How far will the courts consider fairness or moral duty over relationship circumstances?
- Acting for the claimant and strategies for overcoming obstacles including:
 - Estrangement
 - Bad relationships
 - Unequal distribution
- Presenting evidence and what the courts want to hear
- Costs considerations and the risk of claimant liability for costs
- Case law update

Promises Promises: Litigating Proprietary Estoppel Estate Claims

A number of recent decisions highlight the availability of proprietary estoppel as an alternative to a family provision claim in challenging the will maker. This session will explore the evidentiary and other requirements of bringing a claim in estoppel, including:

- Common examples of proprietary estoppel
- Who has standing to bring a claim?
- Time limits for making a claim
- What orders can the claimant seek?
- Proving the promise – what evidence is required to show:
 - The promise was made
 - Reliance on the promise
 - Reliance resulted in a detriment to the claimant
- Will the court always order specific performance?
- Cases including *Re Mahoney* [2015] VSC 600; *Moore v Aibusson* [2020] NSWSC 1466; *Nendy v Armstrong & Ors* [2020] QSC 380; *Harris v Harris* [2021] VSCA 138

THE PROGRAMS

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:

- 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:
 - The cause of the litigation
 - Investigations as a result of capacity or drafting
- The proportionality principle: *Oslen v Oslen* [2019] NSWSC; *Harris v Harris* [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: *The estate of Milan Zlatevski*; *Geroska v Zlatevski (No 2)* [2020] NSWSC 388; *Re Veca* [2015] VSC74; *In the Estate of Amuso (No 2)* [2021] SASC 61; *Re Howden*; *Howden v Rackshaw* [2020] VSC 315; *Trinder v Ciniglio* [2020] QSC 176

THE FACULTY

Angela Cornford-Scott, Director, Accredited Specialist in Succession Law, Cornford-Scott Lawyers, Brisbane

Angela has worked in the area of succession law for over 20 years and has a particular interest in estate planning, trust matters and estate administration issues.



Angela is the current Chair of the QLS Succession Law Committee. Angela is a member of STEP and a previous Chair of the Queensland Branch. She has lectured for QUT, the College of Law and is a regular presenter of seminars. She also co-authors the Lexis Nexis practical guidance publications in Succession law and Elder law for Queensland.

Angela is regularly named in the Doyles Guide as a pre eminent lawyer in the areas of both Wills and Estates and Estate Litigation in Queensland and was the only Queensland lawyer named as pre eminent in both categories in the 2018, 2019 and 2020 Doyles Guide Australia.

Angela was also named the Lawyer of the Year for 2020 and 2022 in Succession Planning by Best Lawyers.

Scott Whitla, Accredited Specialist in Succession Law, Partner, McCullough Robertson Lawyers, Brisbane

As an accredited specialist in succession law, Scott specialises in all aspects of succession planning, estate administration and estate and trust litigation. He manages the firm's Equity and Private Client team, having been made a Partner in 2009. His clients include high-net worth individuals, accountants, financial advisers and other legal firms and their clients.



Scott assists clients to find effective succession planning solutions which protect and preserve assets for the intended beneficiaries, while also minimising the taxation and stamp duty implications which might otherwise arise. He is a leading lawyer in the area of preparing, interpreting and contesting wills, administering deceased estates and applications to the Queensland Civil and Administrative Tribunal.

Scott also assists clients with estate administration and estate litigation. In addition to his substantial experience in these areas, Scott is also an expert on guardianship and administration issues, including matters involving questions of capacity, and the validity of transactions and decisions made under enduring powers of attorney.

THE FACULTY

Ursula Stanisich, Barrister, Victorian Bar, Melbourne

Ursula practises exclusively in the areas of trust, equity and succession law. Her trial experience includes disputes as to family provision, validity of wills, removal of executors, statutory wills, informal wills, executor's commission, estate accounting, construction and rectification of wills, cy-pres applications, and professional negligence claims and disciplinary proceedings in relation to deceased estates on behalf of the Legal Services Commissioner.



Ursula is a Nationally Accredited Mediator and a full member of the Society of Trust and Estate Practitioners (STEP). She is a co-author of the LexisNexis loose-leaf service "Wills Probate and Administration Service Victoria" and regularly presents papers to various groups on topics related to succession law.

Ursula is named in Doyle's Guide 2021 as Preeminent Wills & Estates Litigation Barrister (Victoria) and Leading Wills & Estates Litigation Barrister (Australia). She has also been named in Doyle's Guide in 2015, 2016, 2017, 2018, 2019 and 2020.

Asheetha Jelliffe, Accredited Specialist Wills & Estates Law, Partner, Bridges Lawyers, Sydney

Asheetha has 18 years' experience in Wills and Estates Law and became an Accredited Specialist in 2011. Her main area of practice is in contested estate litigation, including testamentary capacity and other probate related matters, family provision cases and estate administration suits. She also has experience in Elder Law related issues, estate planning and applying for 'out of the ordinary' grants of probate and letters of administration.



Asheetha is a member of the Society of Trust and Estate Practitioners.

Asheetha has been listed as 'Preeminent' in the 2021 Doyles Guide's list of Leading Estates Litigation Lawyers and as 'Leading' in their list of Leading Wills, Estates & Succession Planning Lawyers in New South Wales.

THE FACULTY

Christian Teese, Special Counsel, Rigby Cooke Lawyers, Melbourne

Christian has specialised practice expertise in Wills & Estates and Trust litigation with more than 10 years of experience.

Christian has significant experience acting for independent administrators and trustees in relation to Estate and Trust administration issues, as well as for claimants pursuing claims in relation to a diverse range of Wills, Estates and Trusts issues. He also has particular experience advising not-for-profit entities.

Christian has earned recognition for taking a cost-effective and sensible approach to litigation and has significant experience in disputes concerning legal costs. In 2021, Christian was ranked by Doyle's Guide as a Rising Star in its Wills & Estates rankings for Victoria.



WHAT YOU GET

This video webinar series includes the following components:

- Online access to the 5 on demand webinar programs covering the subjects listed in this brochure. Programs are expected to be 1 hour each in length.
- The 5 programs will be recorded in late May and available to subscribers online in early June 2022.
- Online access to the technical support papers and/or powerpoint presentations accompanying each program



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