



2 Half Day Masterclasses

MAKING AND CHALLENGING A WILL:

Organised by Television Education Network Pty Ltd

Radisson Hotel & Suites, Sydney, Wednesday 18 September 2019

The rise and rise of informal wills

Too ill to will? Bedside wills and testamentary capacity

Statutory wills: Planning ahead when capacity is lost

Challenging wills for lack of knowledge and approval

All in the family – complex family provision claims

The costs of contentious probate: Who foots the bill?

ALSO BOOKABLE AS
SEPARATE HALF DAYS
- (AM) MAKING A WILL
- (PM) CHALLENGING A WILL



**Television
Education
Network**

The professional development specialists

TIMETABLE – WEDNESDAY, 18 SEPT, 2019

**CHAIR: JOHN STINSON, PARTNER,
DIAMOND CONWAY LAWYERS,
SYDNEY**

MORNING MASTERCLASS: MAKING THE WILL

9.00 - 9.10am

Introduction and welcome

9.10 - 10.00am

Session 1: The Rise and Rise of Informal Wills

From video recordings, post-it notes, and unsent text messages, what has been admitted into probate in recent years may well surprise probate lawyers with long memories. This session looks at legal challenges created by the use of technology in will making, including:

- Defining an informal will and identifying recent trends
- Executors dealing with informal testamentary documents of unknown validity
- Evidence required in informal wills - on balance of probabilities
- The interplay of testamentary capacity and informal wills
- Use of subpoenas to access potential will or other informal testamentary documents
- Informal revocation or variation of wills - what is allowable?
- Case update, including *Radford v White* [2018] QSC 306, *Re Carrigan* [2018] QSC 206

Speaker: Darryl Browne, Principal, Browne Linkenbach Legal Services, NSW

10.00 - 10.10am Panel Comments and Questions

10.10 - 11.00am

Session 2: Too Ill to Will? Bedside Wills and Testamentary Capacity

When wills become urgent, practitioners need to not only act fast, but also manage risk in difficult circumstances. This session looks at the key issues in urgent wills, with a focus on lessons from recent case law. It covers:

- Testamentary capacity and urgent wills:
 - Applying the *Banks v Goodfellow* test
 - Mistakes by the testator with beneficiaries' names or assets - is close enough good enough?
 - Are certain people cut out of the will - is it rational?
 - Doctors and capacity reports - what if the hospital refuses to provide a report?
 - Timing of capacity reports
 - How to proceed if you are unsure about capacity
- Complex versus simple wills:
 - Knowledge and approval issues
 - Should you do multiple wills?
- Importance of solicitor file notes - what needs to be included?
- Lessons from *Re Menzies* [2019] VSC 179

Speaker: Stephen Lynch, Director, Somerville Legal, North Sydney

11.00 - 11.10am Panel Comments and Questions

11.10 - 11.30am Networking Break and Morning Tea

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11.30am - 12.20pm

Session 3: Statutory Wills and Testamentary Capacity in the Spotlight

The Supreme Court of NSW has had jurisdiction to authorise the making of a statutory will for a person who does not have testamentary capacity since the commencement of the Succession Act 2006 (NSW) on 1 March 2008 but the jurisdiction is still developing, and each case is different.

A number of recent cases have highlighted the care needed when bringing an application of this type. This session covers:

- Application for a statutory will – the matters about which the Court must be satisfied
- Evidence of a person's testamentary intentions
- How are the courts dealing with costs in statutory will cases?
- Relevance of potential future family provision claims
- Key differences between lost, nil and pre-empted capacity cases
- Common circumstances in which a statutory will has been authorised
- Circumstances where a court is likely to reject an application
- Recent amendments to Part 2.2 of the Succession Act 2006 (NSW)
- Case update including *Re MP's Statutory Will* [2019] NSWSC 331

Speaker: Craig Birtles, Barrister, Second Floor Wentworth Chambers, Sydney

12.20 - 12.30pm Panel Comments and Questions

12.30 - 1.30pm Luncheon

AFTERNOON MASTERCLASS: CHALLENGING THE WILL

1.30 - 2.20pm

Session 4: Challenging Wills for Lack of Knowledge and Approval

The requirement that a testator know and approve the contents on their will is a separate and distinct requirement for validity. It is being increasingly used as a weapon by disappointed beneficiaries where it is not possible to prove a lack of capacity or undue influence. This session examines the interplay between complex wills and alleged lack of knowledge and approval, with a focus on the following:

- Testator's knowledge and approval essential to validity - what are the parameters?
- Relationship between testamentary capacity and knowledge and approval
- Establishing the true intention of the testator
- Who bears the onus of proof and what is the relevant standard?
- What presumptions apply and how can they be rebutted?
- Doctrine of suspicious circumstances - how does this apply and when?
- Factors relevant to knowledge and approval:
 - Absence of legal advice
 - Post-will statements of testator
 - Testator disabilities
 - Relativities to previous wills
 - Behaviour of primary beneficiaries
 - Will complexity
- Use of medical evidence in knowledge and approval cases
- Obtaining evidence - when can you obtain access to a solicitor's file?
- Case update

Speaker: Anthea Kennedy, Partner, Bridges Lawyers, Sydney

2.20 - 2.30pm Panel Comments and Questions

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2.30 - 3.20pm

Session 5: All in the Family - Complex Family Provision Claims

Recent case law in family provision matters highlight the complexity of modern family arrangements and the willingness of disgruntled parties to stake a claim in the deceased's estate. This session provides a round-up of recent cases and the lessons they contain for practitioners. It covers:

- Understanding what is meant by 'responsibility to provide'
- Estrangement and when it is not a bar to proceedings?
- Claims by adult children and how they can go wrong
- Is a divorce settlement fatal to a family provision claim?
- Risks where there is no full and frank disclosure in applications
- Case update, including *Stone v Stone* [2019] NSW SC 233

Speaker: Monica Ross-Maranik, Consulting Principal, Keypoint Law, Sydney

3.20 - 3.30pm Panel Comments and Questions

3.30 - 3.50pm Networking Break and Afternoon Tea

3.50 - 4.40pm

Session 6: The Costs of Contentious Probate: Who Foots the Bill?

In general litigation the rule is that costs usually follow the event. This is not always the case in contested probate matters. With a spate of recent cases, including a High Court decision, it's never been more important for practitioners to understand cost risk and how to factor it into your decision-making. This session covers:

- When might costs not be paid from the estate?
- Requiring the claimant to prove the will and its cost consequences
- Circumstances where a court will not make a cost order against the defendant
- Using cost rules tactically and their associated risks
- Costs orders associated with lodging caveats and related matters
- The benefits of executors being cooperative even towards those contesting a will
- The importance of disclosing supporting evidence as soon as possible
- Use of offers of compromise and cost consequences
- Use of Calderbank offers and their cost consequences
- Costs associated with applications for rectification
- Case update, including *Nobarani v Mariconte* [No.] [2018] HCA 49, *Epov v Epov* [2018] NSWSC

Speaker: Lindsay Ellison SC, Barrister, Wardell Chambers, Sydney

4.40 - 4.50pm Panel Comments and Questions

4.50pm

Masterclass close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the masterclass, online access to the conference papers and refreshment breaks and lunch.

This masterclass can be booked as 2 separate half day conferences or you can attend for the whole day.

Masterclass Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the masterclass (as the papers become available), during the masterclass and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the masterclass TEN will supply printed copies of the PowerPoint presentations used at the masterclass.

CPD - Lawyers

Half day morning masterclass: Making a Will – 3 CPD units (substantive law)

Half day afternoon masterclass: Challenging a Will – 3 CPD units (substantive law)

One-day Masterclass: Making & Challenging a Will – 6 CPD units (substantive law)

The Masterclass Venue

SYDNEY

Radisson Hotel & Suites

72 Liverpool St, Sydney

Web: <https://www.radisson.com/sydney-hotel-ns-2000/ausydney>

Masterclass Dress

Smart casual attire is suitable. (note: the temperature in the conference room varies depending on where you are sitting. Light attire is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)

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.

Masterclass 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 masterclass 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 conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

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REGISTRATION FORM – TAX INVOICE*

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)

GPO Box 61, Melbourne, Victoria 3001

Fax (03) 9670 0588 Phone (03) 9670 2055 Enquiries Jenna Pickrell

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for **Making & Challenging a Will: One Day Succession Law Masterclass** to be held in Sydney on Wednesday 18 September 2019 [conf code: SXSSEP19]

Early Bird Registration – for registrations made on or before 15 August 2019 - **\$880** (\$800 + \$80 GST)

Full Price Registration – \$1100 (\$1000 + \$100 GST)

The papers from this conference 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. The papers are **\$165** (\$150 + \$15 GST) [Code: PSXSSEP19].

Please register me for **Making a Will: Half Day Succession Law Masterclass** to be held in Sydney on Wednesday 18 September 2019 [conf code: SXSSEP19M]

Early Bird Registration – for registrations made on or before 15 August 2019 - **\$495** (\$450 + \$45 GST)

Full Price Registration – \$605 (\$550 + \$55 GST)

Please register me for **Challenging a Will: Half Day Succession Law Masterclass** to be held in Sydney on Wednesday 18 September 2019 [conf code: SXSSEP19]

Early Bird Registration – for registrations made on or before 15 August 2019 - **\$495** (\$450 + \$45 GST)

Full Price Registration – \$605 (\$550 + \$55 GST)

Multiple registration discount? If you would like to send more than one person from your company to this masterclass, please ask Jenna about the discounts available for multiple registrations: The more you send, the greater the discount. jenna@tved.net.au or phone (03) 8601 7729.

Fill out personal details on next page ...

