

THE 7TH ANNUAL MELBOURNE WILLS & ESTATES CONFERENCE

A TWO-DAY CONFERENCE ORGANISED BY
TELEVISION EDUCATION NETWORK PTY LTD

MARRIOTT HOTEL, MELBOURNE
THURSDAY 20 AND FRIDAY 21 FEBRUARY 2020

INCLUDES
THE

3

COMPULSORY
SUBJECTS

Challenging wills for lack of knowledge and approval

Complex family provision claims

The costs of contentious probate – who foots the bill?

The rise and rise of informal wills

Bedside wills and testamentary capacity

Statutory wills – planning ahead when capacity is lost

Dodging the hazards of enduring powers of attorneys

When executors fall out and other joint executor conundrums

When trustees or executors behave badly

THE COMPULSORY SUBJECTS:

Professional Skills:

A Battle of Wills: Using ADR in Succession Law Matters

Ethics:

Will Drafting: Drafting with Ethics in Mind

Practice Management & Business Skills:

Managing Money in Your Succession Law Practice

FEEDBACK FROM LAST YEAR'S CONFERENCE:

"Great quality of presenters, papers. Well organised. Great opportunity to meet interstate practitioners."

"The content and relevance of topics of the conference each year is the best I've experienced at any conference. Well organised & delivered on the whole."



The professional development specialists

DAY 1 THURSDAY 20 FEBRUARY 2020

TODAY'S CHAIR: TERI KONSTANTINO, BARRISTER, VICTORIAN BAR, MELBOURNE

MORNING THEME: CHALLENGES TO THE ESTATE

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: All in the Family - Complex Family Provision Claims

Recent case law in family provision matters highlights 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?
- Step children - the current reality in blended families
- 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
- When is it appropriate to settle family provision claims?
- When costs don't always follow the event in family provision claims
- Case update, including *Stone v Stone* [2019] NSW SC 233

Speaker: Andrew Verspaandonk, Barrister, Victorian Bar, Melbourne

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Challenging Wills for Lack of Knowledge and Approval

The requirement that a testator knows and approves 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

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 THURSDAY 20 FEBRUARY 2020

11.25am - 12.10pm

Session 3: 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: Justin Rizzi, Barrister, Victorian Bar, Melbourne

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.20pm Luncheon

AFTERNOON THEME: MAKING THE WILL

1.20 - 2.05pm

Session 4: 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: Angela Cornford-Scott, Director, Cornford-Scott Lawyers, Brisbane

2.05 - 2.15pm Panel Comments and Questions

DAY 1 THURSDAY 20 FEBRUARY 2020

2.15 - 3.00pm

Session 5: 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: Edward Skilton, Special Counsel, Sladen Legal, Melbourne

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.30pm Networking Break and Afternoon Tea

3.30 - 4.15pm

Session 6: Statutory Wills: Planning Ahead When Capacity Is Lost

A statutory will can be a useful way of ensuring a person's testamentary intentions are fulfilled - even if capacity to make a will has been lost. A number of recent cases have highlighted how statutory will applications will be considered by the courts and the care needed when bringing an application of this type.

This session covers:

- Application for a statutory will - the essential criteria
- Evidence a court takes into account on 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
- When is it reasonable for the court to make the orders on a statutory will?
- Circumstances where a court is likely to reject an application
- Case update

Speaker: John Armfield, Barrister, Second Floor Wentworth Chambers, Sydney

4.15 - 4.25pm Panel Comments and Questions

DAY 2 FRIDAY 21 FEBRUARY 2020

**DAY 2 CHAIR: ELEANOR COATES,
BARRISTER, VICTORIAN BAR,
MELBOURNE**

**MORNING THEME: ATTORNEY, TRUSTEE AND
EXECUTOR ISSUES**

9.00 - 9.45am

Session 7: Dodging the Hazards of Enduring Powers of Attorneys

Advice on powers of attorney is an essential part of your wills and estate practice. However, the appointment of a power of attorney creates potential for many ethical dilemmas, not least of which is conflicts of interest. Recognizing them, avoiding them or at the very least managing these risks is the subject of this session. It covers:

- The scope of agent's authority and limitations
- Identifying conflict situations in powers of attorney
- How to sanction conflict transactions - what are the options
- Conflicts which arise before the power takes effect
- Inter vivos gifts and powers of attorney - where does it cross the line?
- Power of attorney and ademption issues
- Liability of attorney in conflict situations
- Charging clauses - ethics and conflict issues where solicitor is power of attorney
- Case update, including *McFee v Reilly* [2018] NSWCA 322; *Re Narumon Pty Ltd* [2018] QSC185

Speaker: Frances Fredriksen, Special Counsel, Parsons Law, Gold Coast

9.45 - 9.55am Panel Comments and Questions

9.55 - 10.40am

Session 8: When Executors Fall Out and Other Joint Executor Conundrums

The appointment of joint executors is not unusual. Nor is the potential for things to go wrong. This session looks at what can happen when joint executors fall out and the type of orders a court can make. It includes:

- Duties of joint executors and how they should be exercised
- Key issues to consider when deciding on joint executors:
 - Is an executor a surviving spouse?
 - Who are the beneficiaries?
 - Executors interests conflicting with beneficiaries' interests
 - Complexity of estate
 - Likelihood of will being challenged
 - History of co-executors
- Executor's obligation to explore solutions to any dispute
- Problems with settlements involving executors:
 - What do you protect?
 - What if beneficiary does not consent
 - Risks in settling
 - Mediation
- Powers of a court - removal and the appointment of an administrator
- Costs orders that can be made against warring executors
- Rights to commission where there are disputes
- Risk management to deal with executor deadlock

Speaker: Ursula Stanisich, Barrister, Victorian Bar, Melbourne

10.40 - 10.50am Panel Comments and Questions

10.50 - 11.10am Networking Break and Morning Tea

11.10 - 11.55am

Session 9: When Trustees or Executors Behave Badly - Legal Parameters and Control

Recent developments in case law have highlighted an increase in executors and trustees behaving very badly. The legal issues created and how the law has responded is examined in this session, including:

- What is an invalid exercise of power by executor or trustee?
- Executors and trustees acting in breach of fiduciary obligations - what to do next
- When not acting in good faith - legal consequences and controls
- Challenging exercise of discretion by executors and trustees
- Applications for advice, directions and authorization where risk of conflict of interest
- Advising executors and trustees wearing a number of different 'hats'
- Case update, including *Re Marsella; Marsella v Wareham (No.2)* [2019] VSC 65

Speaker: Scott Whitla, Partner, McCullough Robertson Lawyers, Brisbane

11.55 - 12.05pm Panel Comments and Questions

12.05 - 1.05pm Lunch

DAY 2 FRIDAY 21 FEBRUARY 2020

AFTERNOON THEME: COMPULSORY TOPICS

1.05 - 1.55pm

Session 10: Professional Skills

A Battle of Wills: Using ADR in Succession Law Matters

Use of alternative dispute resolution in succession matters makes sense, especially for smaller estate. This session looks at the key skills required to run a successful ADR, including:

- Use of alternative dispute resolution in succession matters – an overview
- Family provision – Use of judicial settlement conferences
- Preparing the client
- Cost issues
- Conducting the conference – essential dos and don'ts
- Exchanging offers – what not to do at crucial moments
- Case study – examples of successful alternate dispute resolution

Speaker: John Armfield, Barrister, Second Floor Wentworth Chambers, Sydney

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.55pm

Session 11: Practice Management & Business Skills

Managing Money in Your Succession Law Practice

Succession law practice requires careful trust account money management over the longer term. This involves planning and effective management systems to make things work. This session looks at the key issues, including:

- Deceased estate trust account management – a risk management checklist
- Authorized journal entries and narrations to explain actions
- Best practice supervision of trust accounts for succession matters
- Dealing with long standing credit balances
- Documenting your trust account succession matters
- Long running trust account management – steps in place for money in trust account
- Reporting to clients about funds in trust – essential do's and don'ts
- The importance of annual reports for client with continuing balances
- Bespoke billing for succession matters – hard wiring openness and transparency
- Checklist for trust account management on succession matters
- Case study – checklist for efficient trust account management succession matters

Speaker: Belinda Marschke, Principal, DBM Horizons, Brisbane

2.55 - 3.05pm Panel Comments and Questions

3.05 - 3.25pm Networking Break and Afternoon Tea

3.25 - 4.15pm

Session 12: Ethics

Will Drafting: Drafting with Ethics in Mind

As a practitioner there are occasions when the client provides unethical instructions. The client may also create an ethics dilemma in the nature of dispositions proposed for wills. This session is designed to address ethical will making in all its dimensions, including:

- Ethical challenges in obtaining instructions on wills – dealing with pushy beneficiaries
- When client's testamentary wishes appear improper or impractical – How to respond
- Ethics and maintaining confidentiality obligations
- Responding to beneficiary fraud or misrepresentation when drafting
- Addressing the risk of challenge to a will when drafting – what to advise client
- Ethical considerations when, after death when acting for an estate, a beneficiary threatens a claim, or you have the view they would have a claim
- When choosing an executor – extent of practitioner obligation
- Obtaining instructions from elderly clients – ethical issues in determining capacity
- When should you include explanatory statements in wills?

Speaker: Carolyn Sparke QC, Barrister, Victorian Bar, Melbourne

4.15 - 4.25pm Panel Comments and Questions

GENERAL INFORMATION

Conference Registration Fee

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

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

Conference 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 conference (as the papers become available), during the conference 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 conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

Lawyers - CPD Units/Points

Lawyers (except WA): 10 CPD units (7 substantive law + the 3 compulsory subjects)

WA Lawyers: 6 CPD points (either 6 substantive law or a combination of substantive law and the compulsory subjects to the maximum of 6 CPD points you can claim from attending a conference)

The Conference Venue

Melbourne Marriott Hotel

Corner Exhibition & Lonsdale Streets, Melbourne

Phone: (03) 9662 3900

Conference Accommodation Discount Rate

Television Education Network has organised a discount rate with the Marriott for delegates of **10% discount** off the best rate available. To access this rate please quote "**LOKA**" when making your booking.

This rate is strictly subject to availability. Delegates are advised to make their own accommodation arrangements directly with the Melbourne Marriott Hotel.

If you encounter any problems booking your accommodation please do not hesitate to contact our Conference Executive, Jenna Pickrell, on (03) 8601-7729 or email: jenna@tved.net.au

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable. *(note: the temperature in the conference room varies depending on where you are sitting. Light dress 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 Conference for a 85% refund. Substitute delegates accepted at any time.

Conference Terms

Program subject to change without notice. The information and views presented in the conference 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 conference 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.

