

PROVIDING YOUR

10

CPD UNITS

INCLUDING THE
COMPULSORY
SUBJECTS.

THE 9TH ANNUAL MELBOURNE WILLS & ESTATES CONFERENCE

Knowledge and Approval and Testamentary Capacity

The Dangers of Joint Ownership in the Succession Plan

When Meaning and Intent of Wills is Unclear

Tax Bombs in the Will

Trustee Discretion: Understanding the Limits of Power

The Bad Executor: Stop, Wrong Way, Turn Around Now

The Right to Know: Disclosure Obligations in Wills and Estate Matters

Beware of Promises: When will Proprietary Estoppel Trump a Will?

Family Provision Claims: Lessons from the Frontline

PROFESSIONAL SKILLS:

Negotiating and Drafting Terms of Settlement in Wills and Estate Matters

PRACTICE MANAGEMENT:

Managing Cyber Risk and Control in Your Succession Law Practice

ETHICS AND PROFESSIONAL RESPONSIBILITY:

Practitioner Liability in Wills and Estate Matters

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REGISTRATION
OPTIONS

FACE TO FACE
OR ONLINE

A Two-day Conference

Thursday 10 & Friday 11 February 2022

The Victoria Hotel, Melbourne or Online

Feedback from last year's conference:

“It gave me lots to think about, things to address in day to day practice challenging and informative.”

“Speakers were engaging in their presentation and were obviously totally across their subject area.”

“The seminar was excellent. It was presented in an articulate and engaging manner.”

“The topics were broad and very relevant to the current changing climate of succession planning.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 10 FEBRUARY 2022

CHAIR DAY 1 - MORNING: TERI KONSTANTINOOU, BARRISTER, VICTORIAN BAR, MELBOURNE

MORNING THEME: STRUCTURING THE WILL

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: When Meaning and Intent of Wills is Unclear

Poor drafting and ambiguous terms in wills may complicate estate administration and lead to disputes. This session looks at the court's approach to ambiguity, including:

- How do courts interpret unclear wills?
- Giving effect to the intentions of the testator - what does this really mean?
- The process of reconciling conflicting provisions of a will
- What happens with an obvious ambiguity or omission?
- When can extrinsic evidence be used to resolve an ambiguity?
- Rectification for unilateral mistake
- Case update, including *Benaroon Pty Ltd v Larmar & Ors* [2020] QCA
- Prevention better than cure - key drafting strategies to minimise risk of ambiguity

Speaker: Angela Cornford-Scott, Director, Cornford-Scott Lawyers, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: The Dangers of Joint Ownership in the Succession Plan

Joint tenancy is often used by couples as a means of owning shared assets, such as the family home. While joint ownership and the right of survivorship can work well for couples in long-standing relationships, complications can arise when dealing with blended families, or assets jointly owned by parent and child. This session examines the complexities, including:

- Joint tenancy v tenants in common - when are they appropriate?
- Survivorship rights and bank accounts - does joint signatory equate to joint owner?
- When is a joint account regarded as an estate asset?
- Family law consequences of joint ownership
- Joint ownership and Centrelink and tax consequences
- Case study: blended families and joint ownership
- Case update, including *Gambacorta v Di Giovanni* [2021] NSWSC 61

Speaker: Kimberley Martin, Director, WMM Law, Hobart

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Afternoon Tea

11.25am - 12.10pm

Session 3: Tax Bombs in the Will

Many clients may be unaware that they are leaving a tax bomb in their will. This practical session examines some of the key tax issues to navigate when structuring a client's succession plan. It covers:

- Understanding how a will provides opportunities for tax planning
- Tax implications of non-resident status of intended beneficiaries
- Leaving super to non-tax dependents
- When will CGT be triggered?
- Unpacking the recent excepted trust income reforms for minors
- When stamp duty and land tax surcharges may apply on dispositions
- Adjustments provisions in wills to deal with assets that have big capital gains

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

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.20pm Luncheon

DAY 1 - THURSDAY 10 FEBRUARY 2022

CHAIR DAY 1 - AFTERNOON: ELEANOR COATES, BARRISTER, VICTORIAN BAR, MELBOURNE

AFTERNOON THEME: AUTHORITY ISSUES

1.20 - 2.05pm

Session 4: Trustee Discretion: Understanding the Limits of Power

The case of Re Marsella raised issues on the nature of trustee discretion. This session looks at developments since that case and the ambit of its reach. It includes:

- Revisiting Re Marsella; Marsella v Wareham (No.2)
- Trustee's duty to act in good faith
- Duty of trustee to avoid conflict of interest
- Do the same principles apply to trustees of discretionary trusts?
- Key inclusions in the trust deed to minimize conflicts
- Trustee communication with potential beneficiaries
- Obligation of trustee to give reasons for exercise of discretion
- Best practice in dealing with trustee's discretion

Speaker: Carolyn Sparke QC, Victorian Bar, Melbourne

2.05pm - 2.15pm Panel Comments and Questions

2.15 - 3.00pm

Session 5: Knowledge and Approval and Testamentary Capacity: Getting it Right from the Starting Block

Objections to a will being admitted to probate are generally based on either the testator lacking testamentary capacity, or failing to know and approve the particular will. Disputes can be complex and the costs substantial. This session examines how succession lawyers can prevent these types of disputes at the will-making stage, including:

- Testator's knowledge and approval essential to validity - what are the parameters?
- Relationship between testamentary capacity and knowledge and approval
- Evidentiary burdens in testing capacity - an overview
- Assessing whether the will is the product of a free and capable mind
- Assessing capacity remotely and in person - differences in evidentiary burden
- Communicating with client over capacity assessment
- Recording of initial mental capacity assessment
- Determining when to refer for further assessment
- When capacity is at issue - key dos and don'ts of solicitors
- Case update

Speaker: Andrew Verspaandonk, Barrister, Victorian Bar, Melbourne

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3:30pm Networking Break and Afternoon Tea

3.30 - 4.15pm

Session 6: The Bad Executor: Stop, Wrong Way, Turn Around Now

When executor(s) turn out to be either bad or incompetent what do you do? Removing the executor is only part of the story. This session looks at the main issues, including:

- The role of executor and where things may go wrong - an overview
- Time frames for executor to act and consequences when failing to do so
- Executor obligations to beneficiaries - detecting bad behaviour
- Executor by chain of representation - risks in the system
- Standing to remove executor
- Passing over and removal of executors
- Accountability for self-dealing transactions
- Case update

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

4.15 - 4.25pm Panel Comments and Questions

DAY 2 - FRIDAY 11 FEBRUARY 2022

CHAIR DAY 2 - MORNING: MARK MAIER, DIRECTOR, MCNAB MCNAB & STARKE, MELBOURNE

MORNING THEME: DISPUTES

9.00 - 9.45am

Session 7: The Right to Know: Disclosure Obligations in Wills and Estate Matters

They say that knowledge is power, and that maxim certainly applies in the context of succession law. However, when can information be shared, and when is it inappropriate? Through the use of practical case studies, this session examines disclosure obligations and the interplay with professional and fiduciary obligations. It covers:

- Disclosure of documents and information in contested wills and estate matters
- Power of executor to gain access to will files of practitioners
- Who pays for the cost to copy files where they are requested?
- Does an executor or trustee have a duty to maintain confidentiality?
- Does the trustee have a duty to provide the trust deed and other information to potential beneficiaries?
- Family provision claims and access to financial records
- Confidentiality requirements with medical records
- Confidentiality and disclosing information after death
- Preliminary discovery application in wills and estate matters
- Case update, including *Jordon v Goldspring* [2021] NSWSC 7

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

9.45 - 9.55am Panel Comments and Questions

9.55 - 10.40am

Session 8: Beware of Promises: When will Proprietary Estoppel Trump a Will?

When will estoppel for breach of promise override the contents of a will? The recent case of *Moore v Abusson* has shone a spotlight on the power of estoppel to trump a will. This session examines the key issues, including:

- When will an understanding between the deceased testator and another party give rise to a claim of estoppel?
- Navigating the key elements of estoppel in the context of will disputes
- When is estoppel preferable to a family provision claim?
- Key tips and tricks for preventing estoppel claims
- Case update, including *Moore v Abusson* [2020] NSWSC 1466; *Gill v Garrett* [2020] NSWSC 795

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

10.40 - 10.50am Panel Comments and Questions

10.50 - 11.10am Networking Break and Morning Tea

11.10 - 11.55am

Session 9: Family Provision Claims: Lessons from the Frontline

This session considers recent developments in family provision claims across different jurisdictions and the lessons practitioners can learn from recent cases. It includes:

- Are judgements taking a harder line?
- Are we seeing a more genuine assessment of the needs of the applicant?
- Establishing financial need - what are the relevant factors in recent decisions
- *Calderbank* offers in family provision claims
- Cost consequences when failing to establish financial need
- Impact of living together despite separation
- Lessons from recent cases, including *Cowap v Cowap* [2020] NSWCA 19; *Sarant v Sarant* [2020] NSWSC 1640

Speaker: Ursula Stanisich, Barrister, Victorian Bar, Melbourne

11.55am - 12.05pm Panel Comments and Questions

12.05 - 1.05pm Lunch

DAY 2 - FRIDAY 11 FEBRUARY 2022

CHAIR DAY 2 - AFTERNOON: INES KALLWEIT, PRINCIPAL SOLICITOR, KHQ LAWYERS, MELBOURNE

AFTERNOON THEME: 3 COMPULSORY CPD TOPICS

1.05 - 1.55pm

Session 10: Professional Skills - Negotiating and Drafting Terms of Settlement in Wills and Estate Matters

Negotiating and settling wills and estate disputes require refined skills. This session looks at what these are, with practical advice on implementation. It includes:

- Understanding the timing of negotiations and its practical effects
- Process and procedure in disclosing financials
- Determining the property pool
- Having some bargaining power whilst maintaining ethics and fairness
- Knowing when to reach the settlement middle ground
- Construction of terms of settlement - what to put in and what to leave out
- How to ensure terms of settlement are binding
- Case study - a settlement agreement checklist

Speaker: Christian Teese, Special Counsel, Rigby Cooke Lawyers, Melbourne

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.55pm

Session 11: Practice Management & Business Skills - Cyber Security: Managing Cyber Risk and Control in Your Succession Law Practice

No one wants to be the target of a cyber security attack. However, lawyers are particularly vulnerable and every succession lawyer has a professional obligation to be cyber safe. This session examines the key issues, and the unique risks succession lawyers face, including:

- Understanding your cyber security risk
- Has COVID-19 changed the risk profile?
- Common threats explained and what practitioners should do to avoid a cyber attack when working from home
- Warning clients about cyber security risks
- Key cyber security checklists from an individual and firm audit perspective
- Consequences of a successful cyber-attack or data breach
- Case studies

Speaker: Simone Herbert-Lowe, Legal Practitioner & Founder, Law & Cyber, Sydney

2.55 - 3.05pm Panel Comments and Questions

3.05 - 3.25pm Networking Break and Afternoon Tea

3.25 - 4.15pm

Session 12: Ethics and Professional Responsibility - Practitioner Liability in Wills and Estate Matters - A Precautionary Approach

This session examines some precautionary risk management tips for wills and estate practitioners to ensure they satisfy their ethical and professional obligations. It includes:

- Liability of practitioner in wills and estate matters - an overview
- Timeliness, prompt attention and file notes on will and estate matters
- The lawyer's duty in drafting wills:
 - to whom is it owed?
 - how and when do the ethical challenges arise?
 - recognising and managing conflicts of interest
- Liability to persons who do not receive an intended benefit under a will
- Right of disappointed beneficiary to recover damages
- Are there any limitations on the practitioner duty of care?
- Ethical and professional risks in not clearly following client or court's instruction
- Case update

Speaker: Warwick Gilbertson, Partner, Turnbull Hill Lawyers, Sydney

4.15 - 4.25pm Panel Comments and Questions

4.25pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, conference papers, refreshment breaks and lunch on both conference days.

TEN will be live streaming the conference. Delegates have the option of attending the conference in person or attending it online.

All delegates will receive recordings of all sessions regardless of registration type.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

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

WA Lawyers: 6 CPD points (WA practitioners can claim a maximum of 6 CPD points for attending a conference – you can choose whether to claim substantive law or a mix of the compulsory subjects + substantive law).

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

The Victoria Hotel

215 Little Collins Street, Melbourne

Phone: (03) 9669 0000

Web: The Victoria Hotel Melbourne - By Rydges ffl Accommodation with Free WiFi

COVID-19 Vaccination Requirement

At this point in time it is a condition of entry to The Victoria Hotel that you must be fully vaccinated and produce proof of vaccination. This applies to the conference rooms as well as guest accommodation.

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 rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

TERMS AND CONDITIONS

1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - 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. "Plan" means the COVID-Safe Plan for the conference described below.
 - d. "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).
 - e. "live conference" means a conference other than a recorded conference.
 - f. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - g. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - h. "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.

COVID SAFE PLAN – FACE TO FACE CONFERENCES

What happens if you are diagnosed with COVID-19 or you are otherwise unwell?

5. If the conference is held face to face, TEN will conduct the conference in accordance with a COVID Safe Plan. You agree to comply with that Plan at the conference. If you fail to comply with the Plan, you agree to leave the conference immediately at the request of a TEN staff member or venue staff member. If you leave under these circumstances, you will not be entitled to a refund of any part of the registration fee. TEN will not be responsible for any travel or accommodation costs or fees incurred by you in relation to the conference or as a result of you leaving the conference early.
6. The COVID safe plan will prevent your attendance at a face to face conference if you are diagnosed with COVID-19 prior to or during the conference and the infection has not been cleared by two negative PCR tests, if you have a fever (ie raised temperature) at the time of registration or if you have a respiratory illness (including a cold or cough) at the start of or during the conference. In these circumstances:
 - a. You will be entitled to attend the live online version of the conference and/or recorded online version if that is offered; or
 - b. If not, you will be entitled to a full refund of the registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Conversion of face to face conferences to live online conferences

7. 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.
8. 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.
9. 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.

Copyright

10. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
11. You are entitled to use those materials for private study and research only.
12. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
13. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

14. TEN reserves the right to cancel a conference for any reason.
15. 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

16. 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

17. 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 **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) 8601 7700 Enquiries Jenna Pickrell (03) 8601 7729

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

Please register me for the **9th Annual Melbourne Wills & Estates Conference** – a 2-day conference to be held in Melbourne on Thursday 10 & Friday 11 February 2022

Delegates have 2 options for attending the 2022 conference – both cost the same.

Registration type 1: Attend in person * [code: MWEFEB22]

Registration type 2: Attend online * [code: MWEFEB22L0]

* all delegates will receive recordings of all sessions regardless of registration type

Discount Registration – for registrations made on or before 21 January 2022 – **\$2013** (\$1830 + \$183 GST)

Full Price Registration – **\$2178** (\$1980 + \$198 GST) ffff

Multiple registration discount? Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by registering using the “multiple registrations” option online, or contact our Conference Manager, Jenna Pickrell, to organise your registrations. jenna@tved.net.au or phone (03) 8601 7729.

- 3 registrations – **5% discount** for each delegate
- If you register 4 people at the same time you are entitled to a **10% discount** for each delegate
- If you register 5 people or more people at the same time you are entitled to a **15% discount** for each delegate.

One-day only? We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

Conference Papers The papers from this conference will be available in electronic format approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au. The papers are \$198 (\$180 + \$18 GST) [code: PMWEFEB22].

Mr/Mrs/Miss/Ms First Name

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