

THE TENTH ANNUAL WILLS AND ESTATES CONFERENCE

A two-day conference organised by Television Education Network Pty Ltd

Palazzo Versace, Gold Coast, Thursday 22 August and Friday 23 August 2019

Challenging wills for lack of knowledge and approval
Complex family provision claims
Spotlight on will construction and rectification
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
Protecting the vulnerable from elder abuse
The trouble with testamentary trusts

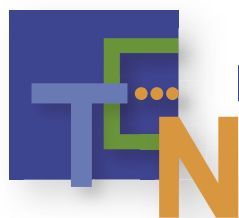
FEEDBACK FROM LAST YEAR'S CONFERENCE:

"Great speakers, content relevant, venue and staff great."

"The conference content is relevant and practical. The conference itself is exceptionally well organised and run."

"You have created a space where it is easy for an attendee to engage. The presenters are a high quality and captivating. The location is a bonus!"

"Great all round and diverse topics in the succession area and quality of speakers and depth of preparation of topics."



**Television
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The professional development specialists

DAY 1 - THURSDAY 22 AUGUST 2019

MORNING THEME: CHALLENGES TO THE ESTATE

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Not Seeing the Forest for the Trees: Spotlight on Will Construction and Rectification

Wills can be complex documents and an executor may find errors or ambiguous parts that need to be clarified. Understanding where problems can arise in will construction and the process of rectification is the subject of this session, including:

- Principles of will construction - clarity and the true intention of the testator
- Common disputes arising in the interpretation of wills:
 - Ambiguous descriptions of property
 - Identifying the extent of interest given in a will
 - Identifying the beneficiaries named in a will
- Rules of interpretation - common law and legislative
- Court asked to rectify will - when and how
- Powers of courts to supply, omit or change words
- Misdescribed gift in will inhibiting transfer - rights of rectification
- Case update, including *Fitzgerald & Anor v Rowley & Anor* [2019] QSC 21; *In the Estate of Koppie* [2019] ACTSC 106

Speaker: Richard Williams, Barrister, T&P, Queensland Bar, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: 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?
- 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

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 - THURSDAY 22 AUGUST 2019

11.25am - 12.10pm

Session 3: 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

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: 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, Wardell Chambers, Sydney

1.05 - 1.15pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

DAY 1 - THURSDAY 22 AUGUST 2019

AFTERNOON THEME: MAKING THE WILL

2.15 - 3.00pm

Session 5: 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, Leura, NSW

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: 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

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: 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

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 23 AUGUST 2019

MORNING THEME: ATTORNEY, TRUSTEE AND EXECUTOR ISSUES

9.00 - 9.05am

Introduction and Welcome

9.05 - 9.50am

Session 8: 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: Ines Kallweit, Principal, KHQ Lawyers, Melbourne

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: 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

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 23 AUGUST 2019

11.15am - 12.00pm

Session 10: 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

12.00 - 12.10pm Panel Comments and Questions

12.10 - 1.05pm Lunch

AFTERNOON THEME: CONTEMPORARY CHALLENGES IN PRACTICE

1.05 - 1.50pm

Session 11: Protecting the Vulnerable from Elder Abuse

Undue influence and duress may be the start of a series of events designed to challenge how an older Australian wants to bequeath their property. This session looks at how succession lawyers can identify undue influence and duress and how to respond when it arises. It covers:

- Inheritance impatience or something more?
- Ensuring the will is the true expression of the testator's intention
- What must be shown to prove undue influence or duress?
- Is there a presumption of undue influence?
- Can you prevent undue influence - a risk management perspective
- Lessons from recent cases

Speaker: Kim Boettcher, Barrister, Frederick Jordan Chambers, Sydney

1.50 - 2.00pm Panel Comments and Questions

2.00 - 2.45pm

Session 12: The Trouble with Testamentary Trusts

A recent ruling by the ATO has highlighted that missing the vesting date of a trust can have significant tax consequences, including the creation of CGT and income tax obligations. The session looks at vesting problems on testamentary trusts, as well as key planning issues involved with establishing testamentary trusts for your clients. It covers:

- Planning for the life-span of the testamentary trust - key considerations
- Control issues - thinking long-term
- ATO guidance on trust vesting TR 2018/6
- Amending trust deeds:
 - What powers of amendment arise under the trust deed?
 - What makes an amendment valid?
 - Which types of amendments will attract stamp duty or resettlement?
- Effective strategies to defer trust vesting

Speaker: Kimberley Martin, Director, Worrall Moss Martin Lawyers, Hobart

2.45 - 2.55pm Panel Comments and Questions

2.55pm Conference Close

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.

CPD Units/Points

Lawyers (except WA): 7 CPD units (substantive law)

WA Lawyers: 6 CPD points (substantive law)

The Conference Venue

Palazzo Versace Gold Coast, Sea World Drive, Main Beach

The Palazzo Versace is located in Main Beach in the heart of the Gold Coast, Queensland.

Conference Delegate Rate at Palazzo Versace

Television Education Network has negotiated a special conference delegate rate with Palazzo Versace:

Superior Room (for single or twin share)

(this room rate includes a buffet breakfast for 1 person)

\$309 (GSTinc)

This rate is strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with Palazzo Versace.**

Hotel Reservations:

Phone: 1800 098 000 (toll free) Phone: (07) 5509 8000 Fax: (07) 5509 8074

Email: reservations@palazzoersace.com.au

www.palazzoersace.com.au

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

The Gold Coast is easily accessed via Coolangatta Airport - 20 kms away and Brisbane Airport is an easy 1 hour drive. There are also rail and coach services from Brisbane into the Gold Coast.

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.

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 the **10th Annual Wills & Estates Conference** – a 2-day conference to be held at the Gold Coast on Thursday 22 & Friday 23 August 2019 [conf code: GDEAUG19]

Early Bird Registration – for registrations made on or before **5 July 2019** – **\$1870** (\$1700 + \$170 GST)

Full Price Registration – **\$2145** (\$1950 + \$195 GST)

Subscriber First Discount Registration – I am a Subscriber First member and entitled to a **10% discount** off the full registration fee – **\$1930.50** (\$1755 + \$175.50 GST)

Multiple registration discount? If you would like to send more than one person from your company to this conference, 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.

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).

The papers from this conference will be available in electronic form only approximately 2 weeks 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: PGDEAUG19].

Personal Details

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