

# Challenges in Wills & Estates Practice

Thursday, 1st December 2011

9.30 am - 1.00 pm

For the non-specialist practitioner, the wills & estates area of practice can give rise to many and varied challenges. This seminar will address challenges which are less frequently the subject of seminars but are more and more frequently the subject of difficulties for legal practitioners.

The seminar will cover the following:

### A Drafting Complex Wills

For example, high net worth individuals with both national and international corporate, trust and superannuation interests and/or particular spouse/family circumstances. The following matters will be discussed:

- Strategies for drawing and settling
- Use of precedents - a will exemplar will be examined
- Retaining a specialist legal practitioner to draw or settle

### B Rectification and/or Will Construction proceedings

In what circumstances are they applied for and how are such applications made?

- Section 31 of the *Wills Act*
- Order 54 RSC proceedings
- The connection between construction and rectification proceedings
- Liability for errors in drafting

### C Limited Grants

- Types of limited grants
- When and how to make an application for a limited grant

### D Informal Testamentary documents

- Identifying informal testamentary documents
- What to do about them (for example, when acting for an executor named in a formal will)
- Obtaining a grant on the basis of an informal document

### E Finalising the Estate

- Distribution issues:
  - Utilising Section 33 of the *Trustee Act*
  - Availing the protections afforded by Sections 99A (1) & (2) of the *Administration & Probate Act*
  - The perils of early distributions and the protection granted by Section 99A(3) of the *Administration & Probate Act*
- The perils of contemporaneously delaying distributions and requesting approval of a claim for executors commission
- Troublesome beneficiaries



**Compulsory CPD field:**  
Professional Skills



**Compulsory CPD field:**  
Substantive Law 3.25 CPD units

### About the Presenter

The presenter at this seminar will be Peter Pascoe. Peter signed the Victorian Bar Roll in 1988 and now practises exclusively in superannuation, equity, property, wills and estates. Peter has given many seminar papers in his areas of practice.

[www.cpd.com.au](http://www.cpd.com.au)

# Loss and Damage from Breach, Termination or Repudiation of a Contract

Thursday, 1st December 2011

2.00 pm - 5.15 pm

This seminar covers the key principles to identify, quantify and prove the various types of damages. Practical examples will be used to explore the legal principles.

The seminar will begin by examining the general principles of measurement of damage, including causation, remoteness and mitigation.

Then the seminar will explore particular situations and relevant cases that deal with specific areas of contract, including:

- Lease agreements (retail and commercial)
- Sale of land agreements (domestic and commercial)
- Sale of goods or equipment agreements
- Construction of a building or general building works
- Service based agreements

Liquidated damages will be discussed in the context of building contracts.

The seminar will also examine recent case developments in relation to consequential losses and investigate its application in different situations.

This seminar will consider exclusion and limitation clauses as well as exemplary damages.

Practical examples will be included in the seminar to open up discussion in the relevant areas.

While the key principles in damages are easy to identify (ie the plaintiff is to be compensated for his/her/its losses), it is often difficult to determine, plead and prove. If it cannot be identified and proven, it cannot be obtained.

This seminar will focus on what damages can be claimed and how to get them.



**Compulsory CPD field:**  
Substantive Law 3.0 CPD units

### About the Presenter

The presenter at this seminar will be Peter Little. Peter is a barrister who specialises in commercial law, predominantly in the common law area. Before going to the Bar, Peter lectured in contract law, tort law, property law and international law at The University of Melbourne. Prior to this he worked with Baker & McKenzie for almost 4 years in its Litigation Section and was a member of its Public International and Corporate Responsibility Practice Group. Peter's litigation experience at Baker & McKenzie included litigating numerous commercial, banking and construction cases.

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# CPD Information

### Mandatory Continuing Education Scheme

All legal practitioners who hold a Victorian Practising Certificate are required to complete 10 units of CPD activities every CPD year. The CPD year runs from 1 April to 31 March. If a CPD activity is relevant to a practitioner's practice needs and practise of the law, the practitioner may claim 1 CPD unit for each hour of attendance at a CPDS seminar, excluding refreshment breaks.

### Compulsory CPD Fields

Each year a practitioner must complete as part of their obligations at least 1 CPD unit in each of the following fields:



Ethics and Professional Responsibility



Professional Skills



Substantive Law



Practice Management and Business Skills

### Mandatory Schemes in Other States

Practitioners can usually claim CPD points/units for interstate mandatory CPD schemes when attending a CPDS seminar in Victoria. If in doubt, please check with your local law society. Please note that CPDS is an organisation that has been approved by the Legal Practice Board of Western Australia as a quality assured provider of professional development activities.

### Enquiries

For all enquiries regarding application of CPD points to individual seminars:

Continuing Professional Development Seminars  
Postal Address: PO Box 598, North Melbourne, VIC 3051  
Telephone: (03) 9328 2688  
Facsimile: (03) 9328 4688  
Email: [seminars@cpds.com.au](mailto:seminars@cpds.com.au)  
Website: [www.cpd.com.au](http://www.cpd.com.au)

Please note that the above is provided for informational purposes. Practitioners should make their own enquiries before relying on the information supplied above.

[www.cpd.com.au](http://www.cpd.com.au)



- Challenges in Wills & Estates Practice
- Loss and Damage from Breach, Termination or Repudiation of a Contract
- Domestic Building Disputes
- Testator's Family Maintenance Claims

**CPDS Seminars December 2011**

**Melbourne**

Rydges Melbourne  
186 Exhibition Street

# Domestic Building Disputes – Possibilities for Resolution

Thursday, 1st December 2011

9.30 am - 1.00 pm

This seminar will examine the options available when a dispute arises out of domestic building works.

Such disputes might involve any combination of:

- A complaint about defective works
- A claim for monies owed
- A disagreement about time
- A breach of the Building Regulations or Standards
- Incomplete works

Victoria has recognised that consumers (and often providers) of domestic building services rarely have the financial resources to litigate such disputes and that even if they do, the amounts involved usually make such litigation uneconomical. The State also plays a significant role in regulating the building industry and its work for the protection of the public generally.

Accordingly, the State has established a variety of avenues and procedures to assist in the resolution of domestic building disputes which are outside the traditional court system.

This seminar will look at the following jurisdictions and advise practitioners on how they can add value to these processes, whether acting for owners, builders or other parties:

1. Building Advice & Conciliation Victoria - which aims to resolve disputes before litigation is commenced
2. The Victorian Civil & Administrative Tribunal (VCAT) Domestic Building List - with its emphasis on alternative dispute resolution methods and use of inquisitorial, rather than the traditional adversarial processes

3. Statutory bodies dealing with compliance, enforcement and professional standards -

- The Building Appeals Board
- The Building Commission
- The Building Practitioners Board



### Compulsory CPD field:

Substantive Law 3.25 CPD units

## About the Presenter

The presenter at this seminar will be Suzanne Kirton. Suzanne has been a member of the Victorian Bar for 10 years and practises predominantly in the area of building and construction litigation, both domestic and commercial. She appears regularly in VCAT's Domestic Building, Real Property and Civil Claims Lists for owners, builders, architects, engineers and indemnity/warranty insurers. She is also a member of the DBL's Users Group. Suzanne also appears frequently at inquiries conducted by the Building Appeals Board and the Building Practitioners' Board. Prior to coming to the Bar she was Company Solicitor of the Housing Guarantee Fund for 5 years.

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# Testator's Family Maintenance Claims Domestic Relationships and Recent Case Law

Thursday, 1st December 2011

2.00 pm - 5.15 pm

What is a "moral duty"?

How does it apply to domestic relationships under the current legislative regime?

What is the relevance of community standards in relation to domestic relationships within that legislative regime?

Litigation under Part IV of the *Administration and Probate Act 1958* raises important questions about the responsibility of a testator to make adequate provision for the proper maintenance and support of his or her domestic partner.

Recently, some key issues have arisen in this jurisdiction which are relevant to this question of "moral duty" in domestic relationships.

These issues include the following:

- Whether the testator and his or her domestic partner live together or maintain separate residences
- Whether the testator's domestic partner was financially dependent upon the testator or conducted him or herself with financial independence
- The existence and relevance of emotional dependence between testator and his or her domestic partner in the context of a Part IV claim
- The extent of intimacy and affection expressed and displayed by the testator and his or her domestic partner towards each other
- What intentions (if any) the testator expressed, whether in his or her will or otherwise, in relation to provision for his or her domestic partner and the future of the domestic relationship

This seminar will address these important questions and how they relate to a testator's responsibility to provide for his or her domestic partner.

*Forsyth v Sinclair* [2010] VSCA 147 is a critical case in this regard. The decisions at first instance and on appeal will be discussed, along with the correlation between certain aspects of domestic relationships on the one hand and the court's findings in relation to a testator's responsibility, to make adequate provision for the proper maintenance and support of his or her domestic partner on the other.



### Compulsory CPD field:

Substantive Law 3.0 CPD units

## About the Presenter

The presenter at this seminar will be Tammy Leane. Tammy practises primarily in general commercial litigation, trade practices, common law, property, wills, estates and probate. She has a keen interest in the estates and probate jurisdiction. Since signing the Bar Roll, Tammy has appeared in the Magistrates, Federal Magistrates, County, Supreme, Federal and Full Federal Courts in a variety of cases. Prior to signing the Bar Roll, Tammy practised as a solicitor at Maddens Lawyers in Warrnambool and at O'Donnell Salzano Lawyers in Melbourne.

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# Registration Form & Tax Invoice

## Please Register me for:

- ☐ Challenges in Wills & Estates Practice
- ☐ Loss and Damage from Breach, Termination or Repudiation of a Contract
- ☐ Domestic Building Disputes - Possibilities for Resolution
- ☐ Testator's Family Maintenance Claims - Domestic Relationships and Recent Case Law

## Registration Fees \$440 each seminar

Registration fees are inclusive of 10% GST. A tax invoice will be issued upon payment. Discounts are also available for early registration, online registration and group bookings – see below for details.

Name:

Firm:

Address:

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Method of Payment

- ☐ Cheque ☐ Visa
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Credit Card No:

Name on Credit Card:

Signature

Exp. Date /

Complete this registration form with your credit card details and fax it to: (03) 9328 4688 or post with cheque attached to:

CPDS  
PO Box 598  
North Melbourne, VIC 3051

## Venue

Level 1 Conference Rooms  
Rydges Melbourne  
186 Exhibition Street  
Melbourne

## Discounts

A discounted registration fee of \$395 is available for all fully paid registrations received at least 30 days prior to the date of the seminar. A group discount of 10% off the full registration fee is offered for bookings of three or more persons from the same firm. Please send all registrations together clearly labelled "group booking". A discounted registration fee of \$395 is also available for all online registrations. You can search and register for all CPDS seminars at [www.cpd.com.au](http://www.cpd.com.au). Only one discount category can be claimed for each registration.

## Cancellations

Registrations may be cancelled up to 14 days prior to the seminar or workshop and a refund will be provided but an administrative fee of \$44 will be deducted. No refunds will be available within 14 days of the seminar or workshop. Should a seminar or workshop be cancelled by CPDS for any reason, a full refund of all fees paid will be made. CPDS reserves the right to cancel or reschedule courses, and to change speakers or revise content as necessary.

## Mandatory CPD Schemes

If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included. Further Information is provided on the back of this brochure.

## Enquiries

For all enquiries regarding the course content or registration: Continuing Professional Development Seminars  
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Postal Address: PO Box 598, North Melbourne, VIC 3051  
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