

Friday, 14 March 2025

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (One Minute Read)

Monteiro v State of New South Wales (NSWSC) - Court granted State an adjournment of one week to put on further evidence to address the Court's concerns about its claim for public interest immunity (I)

Li v Perpetual Holdings Pty Ltd (NSWSC) - lender failed to show company held advanced money on a Quistclose trust (I B C)

Hungry Hampers Catering v Rossington (VSC) - Magistrate erred by simply adopting analysis of medical panel where she had not been required to do so (I)

In the matter of Braithwaite as executor of the estate of Braithwaite (SASC) - Court was satisfied presumption of survivorship had been rebutted regarding a joint tenant not seen since 1960s and now unlocatable, based largely on evidence of Australian Bureau of Statistics life expectancy data (I B)

Williamson, Williamson v Recorder of Titles (TASSC) - Recorder justified his decision to reinstate six easements to a registered plan from which they had been deleted by mistake (I B C)

HABEAS CANEM

Dive with pike



Benchmark

Summaries With Link (Five Minute Read)

Monteiro v State of New South Wales [2025] NSWSC 184

Supreme Court of New South Wales

Garling J

Public interest immunity - plaintiff was the subject of an Extended Supervision Order (ESO), and applied for the ESO to be revoked in its entirety - in accordance with Court orders, State served an affidavit attaching records relevant to the ESO, including case notes, Justice Health records, and Corrective Services records - the affidavit contained a limited number of redactions on the basis of public interest immunity - plaintiff contended the State was not entitled to the redactions - held: it had been proper for the Court to ask questions of the State regarding issues on which it needed persuasion, and request information from the State to enable a proper consideration of the claim for public interest immunity - this is the procedure the Supreme Court has followed for a long time, which had been approved by the Court of Appeal public interest in not revealing the identity of informants is well known and has been developed over many years - Court had indicated it was not satisfied the material sought to be redacted fell within this category, and State sought an adjournment to produce more evidence - delay of a week in the resolution of a claim public interest immunity over a small percentage of the documents produced was unlikely to disadvantage the plaintiff in his preparation for the hearing set down for May - plaintiff's threat to attempt to have the matter decided by the Victorian Supreme Court rather than the NSW Supreme Court may or may not have merit, but was not a matter the Court should take into consideration - when a Court is considering an application for public interest immunity, given the nature of the application and the importance of it, such consideration must occur in a calm environment in which both sides are given an adequate opportunity to put forward, or resist, the claim for immunity - given this consideration, Court was satisfied an adjournment of one week should be granted.

[View Decision](#) (I)

Li v Perpetual Holdings Pty Ltd [2025] NSWSC 175

Supreme Court of New South Wales

Peden J

Quistclose trusts - Jiawen lent about \$10million Nina and Marlas Zhu, who had property development experience in Sydney - he paid the money to a company controlled by Marlas, and the money was disbursed to other companies controlled Marlas - there was no written agreement, but all parties agreed there was agreement at least (1) Nina would use Jiawen's principal for property investments together with others' money; (2) if Nina sold the property within one year, Jiawen would receive 35% of the profit earned; and (3) if the property was not sold within one year, Nina would return Jiawen's principal to him without interest or profit - one year later, Jiawen knew Nina was not going to return the money within the year, and he prepared a loan agreement that was executed by Nina, Marlas, and Jiawen, requiring repayment of Jiawen's original advance and interest on terms - Jiawen claimed that Nina and Marlas breached the loan agreement by failing to make repayments as agreed - however, Nina

was never served with Jiawen's statement of claim, and Marlas became bankrupt, so that Jiawen could not enforce the loan agreement against them - Jiawen therefore sought relief against the companies, alleging the original company held the money pursuant to a Quistclose trust, and the companies that later received the money were knowingly involved in breach of that trust - held: on the evidence, Court was not satisfied the terms of the agreement included purpose of facilitating relevant development, or that the money would be solely be used for that development - trust claim must fail - in any event, however, there had been no intention to create a trust - further, the loan agreement would have terminated any Quistclose trust that had existed - knowing assistance claims would also have failed - proceedings dismissed.

[View Decision](#) (I B C)

Hungry Hampers Catering v Rossington [2025] VSC 84

Supreme Court of Victoria

K Judd J

Workers compensation - in 2011 worker suffered right shoulder injury in the course of employment with previous employer, and claimed impairment benefits - assessed as having WPI of 11%, and worker accepted offer representing that WPI - in 2018, worker suffered right shoulder injury in course of employment with current employer, and claimed impairment benefits - employer's insurance agent accepted liability, determined WPI of 0% and nil entitlement - worker disputed this and agent referred medical questions to a medical panel - medical panel found 7% WPI - agent reduced benefit to nil by reason of the earlier lump sum paid, asserting for the first time that the current impairment was a recurrence, aggravation, acceleration, exacerbation, or deterioration of the earlier injury - worker sued in Magistrates' Court, which held the worker was entitled to the full amount arising from the 7% WPI - employer appealed - held: medical panel's opinion is binding under s314 of the *Workplace Injury Rehabilitation Act 2013* (Vic) - in contrast, medical panel's reasons may be admitted into evidence as expert opinion, but are not binding - relevant question to medical panel had been to calculate WPI, and its opinion on this calculation was binding - whether current impairment was a recurrence, aggravation, acceleration, exacerbation, or deterioration of the earlier injury had not been a question asked of medical panel, although it overlapped to a considerable degree with the question asked - medical panel's analysis as to recurrence, etc, was therefore non-binding expert opinion, rather than a statutorily binding opinion - Magistrate had had to determine this issue for herself on all of the evidence - Magistrate had erred in thinking the analysis of the medical panel was binding, and in simply adopting and applying that analysis - appeal allowed, and matter remitted to Magistrates' Court for determination in accordance with law.

[Hungry Hampers Catering](#) (I)

In the matter of Braithwaite as executor of the estate of Braithwaite [2025] SASC 26

Supreme Court of South Australia

Stanley J

Succession - deceased died, leaving will naming wife as executor - estate had been fully administered except for one property - deceased and former wife were joint tenants of this

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property - executor wife contended former wife had been arrested for bigamy in the 1960s on account of an earlier marriage, and the deceased had never seen nor heard from her again - executor wife had conducted extensive searches to locate former wife but had been unsuccessful - executor applied for advice and directions pursuant to s69 of the *Administration and Probate Act 1919* (SA) - held: it was neither open to the Court nor necessary to determine whether the deceased's marriage with his former wife had been legitimate - the sole issue was whether the presumption of survivorship in respect of the former wife had been rebutted so that the Court could determine the deceased had been sole proprietor of the property at his death - on evidence, former wife would have been between 8801 and 85 at time of deceased's death - Court considered Australian Bureau of Statistics records as to life expectance of Australian female born at relevant time - on the basis of these records, expected death date of ex-wife would have been about nine years before death of deceased - more than reasonable enquiries had been made into the ex-wife's fate or whereabouts - presumption of survivorship had been overturned, and Court was satisfied her death occurred before the death of the deceased - Court therefore satisfied that, at time of death, the deceased had been the sole proprietor of the property - executor was entitled to sell the property and be reimbursed for the costs and expenses of maintaining that property, of searching for the former wife, and of this litigation. [In the matter of Braithwaite as executor of the estate of Braithwaite](#) (I B)

Williamson, Williamson v Recorder of Titles [2025] TASSC 9

Supreme Court of Tasmania

Marshall AJ

Easements - applicants purchased property at Murdunna - applicants requested amendment of the sealed plan - new plan had six easements relating to right of carriageway and service easement struck through - second respondent bought a nearby property and raised with Recorder of Titles whether access easements had been deleted by mistake - Recorder of Titles' office confirmed those easements had been deleted by mistake - Recorder reinstated the six easements - applicants applied under s144(2) of the *Land Titles Act 1980* (Tas) for the Recorder to justify the reinstatement - held: s143C provides that the Recorder may, or his or her own motion, correct an error on a plan or accompanying document - applicants' contention that s143C only authorised correction of an error on a document as lodged, and did not authorise correction of an error the Recorder herself made, was too restrictive - nothing on the face of s143C supported this construction - nothing said in previous authority suggested s143C was so restricted - on its face, s143C applies to circumstances subsisting on the Register, including registered instruments such as a Schedule of Easements, without reference to accrued rights - indefeasibility of title is an essential feature of the Torrens system - given that the wrongful deletion of the six easements would have been evident from a proper search of the Register prior to the applicant's purchase of the land, indefeasibility, if it applies in respect of action taken under s143C at all, did not apply in the current circumstances - further, s40(3)(e)(ib) of the *Land Titles Act* provided another exception to indefeasibility, applying to an easement that has been created under this Act but unintentionally omitted from the folio of the Register for this servient land - Recorder had justified his decision to reinstate the easements - application dismissed.

[Williamson, Williamson](#) (I B C)



Poem for Friday

The Love Song of J. Alfred Prufrock

By T. S. Eliot

*S'io credesse che mia risposta fosse
A persona che mai tornasse al mondo,
Questa fiamma staria senza piu scosse.
Ma perciocche giammai di questo fondo
Non torno vivo alcun, s'i'odo il vero,
Senza tema d'infamia ti rispondo.*

Let us go then, you and I,
When the evening is spread out against the sky
Like a patient etherized upon a table;
Let us go, through certain half-deserted streets,
The muttering retreats
Of restless nights in one-night cheap hotels
And sawdust restaurants with oyster-shells:
Streets that follow like a tedious argument
Of insidious intent
To lead you to an overwhelming question ...

Oh, do not ask, "What is it?"
Let us go and make our visit.

In the room the women come and go
Talking of Michelangelo.

The yellow fog that rubs its back upon the window-panes,
The yellow smoke that rubs its muzzle on the window-panes,
Licked its tongue into the corners of the evening,
Lingered upon the pools that stand in drains,
Let fall upon its back the soot that falls from chimneys,
Slipped by the terrace, made a sudden leap,
And seeing that it was a soft October night,
Curled once about the house, and fell asleep.

And indeed there will be time
For the yellow smoke that slides along the street,
Rubbing its back upon the window-panes;



There will be time, there will be time
To prepare a face to meet the faces that you meet;
There will be time to murder and create,
And time for all the works and days of hands
That lift and drop a question on your plate;
Time for you and time for me,
And time yet for a hundred indecisions,
And for a hundred visions and revisions,
Before the taking of a toast and tea.

In the room the women come and go
Talking of Michelangelo.

And indeed there will be time
To wonder, "Do I dare?" and, "Do I dare?"
Time to turn back and descend the stair,
With a bald spot in the middle of my hair —
(They will say: "How his hair is growing thin!")
My morning coat, my collar mounting firmly to the chin,
My necktie rich and modest, but asserted by a simple pin —
(They will say: "But how his arms and legs are thin!")
Do I dare
Disturb the universe?
In a minute there is time
For decisions and revisions which a minute will reverse.

For I have known them all already, known them all:
Have known the evenings, mornings, afternoons,
I have measured out my life with coffee spoons;
I know the voices dying with a dying fall
Beneath the music from a farther room.
So how should I presume?

And I have known the eyes already, known them all—
The eyes that fix you in a formulated phrase,
And when I am formulated, sprawling on a pin,
When I am pinned and wriggling on the wall,
Then how should I begin
To spit out all the butt-ends of my days and ways?
And how should I presume?

And I have known the arms already, known them all—



Benchmark

Arms that are braceleted and white and bare
(But in the lamplight, downed with light brown hair!)
Is it perfume from a dress
That makes me so digress?
Arms that lie along a table, or wrap about a shawl.
And should I then presume?
And how should I begin?

Shall I say, I have gone at dusk through narrow streets
And watched the smoke that rises from the pipes
Of lonely men in shirt-sleeves, leaning out of windows? ...

I should have been a pair of ragged claws
Scuttling across the floors of silent seas.

And the afternoon, the evening, sleeps so peacefully!
Smoothed by long fingers,
Asleep ... tired ... or it malingers,
Stretched on the floor, here beside you and me.
Should I, after tea and cakes and ices,
Have the strength to force the moment to its crisis?
But though I have wept and fasted, wept and prayed,
Though I have seen my head (grown slightly bald) brought in upon a platter,
I am no prophet — and here's no great matter;
I have seen the moment of my greatness flicker,
And I have seen the eternal Footman hold my coat, and snicker,
And in short, I was afraid.

And would it have been worth it, after all,
After the cups, the marmalade, the tea,
Among the porcelain, among some talk of you and me,
Would it have been worth while,
To have bitten off the matter with a smile,
To have squeezed the universe into a ball
To roll it towards some overwhelming question,
To say: "I am Lazarus, come from the dead,
Come back to tell you all, I shall tell you all"—
If one, settling a pillow by her head
Should say: "That is not what I meant at all;
That is not it, at all."

And would it have been worth it, after all,



Benchmark

Would it have been worth while,
After the sunsets and the dooryards and the sprinkled streets,
After the novels, after the teacups, after the skirts that trail along the floor—
And this, and so much more?—

It is impossible to say just what I mean!
But as if a magic lantern threw the nerves in patterns on a screen:

Would it have been worth while
If one, settling a pillow or throwing off a shawl,
And turning toward the window, should say:

“That is not it at all,
That is not what I meant, at all.”

No! I am not Prince Hamlet, nor was meant to be;
Am an attendant lord, one that will do
To swell a progress, start a scene or two,
Advise the prince; no doubt, an easy tool,
Deferential, glad to be of use,
Politic, cautious, and meticulous;
Full of high sentence, but a bit obtuse;
At times, indeed, almost ridiculous—
Almost, at times, the Fool.

I grow old ... I grow old ...
I shall wear the bottoms of my trousers rolled.

Shall I part my hair behind? Do I dare to eat a peach?
I shall wear white flannel trousers, and walk upon the beach.
I have heard the mermaids singing, each to each.

I do not think that they will sing to me.

I have seen them riding seaward on the waves
Combing the white hair of the waves blown back
When the wind blows the water white and black.
We have lingered in the chambers of the sea
By sea-girls wreathed with seaweed red and brown
Till human voices wake us, and we drown.

Jeremy Irons reads The Love Song of J. Alfred Prufrock "The Love Song of J. Alfred Prufrock" by T. S. Eliot

<https://www.youtube.com/watch?v=adNOs1izBlS>



Thomas Stearns Eliot OM was born on 26 September 1888 in St Louis, Missouri. By the time he was 15, he spoke Greek, Latin, French and English, with some German. He was a leading poet, editor and publisher. He is also well known as an essayist. He started his working life as a clerk in the Colonial and Foreign department of Lloyd's as a linguist. By that time he had also studied Sanskrit, and knew French, Italian and German.

Well known works include *The Waste Land* and *The Hollow Men*. He regarded *Four Quartets* as his greatest masterpiece. He wrote that "*only those who will risk going too far can possibly find out how far one can go*". He received the Nobel Prize in Literature. He relinquished his American citizenship to become a British citizen. Having smoked heavily for most of his life, he suffered worsening problems with his lungs, until his death.

[https://en.wikipedia.org/wiki/T. S. Eliot](https://en.wikipedia.org/wiki/T._S._Eliot)

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