



Friday, 14 March 2025

Weekly Business Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Business Law

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Executive Summary (One Minute Read)

Jeffreys v Sheer (NSWCA) - Court of Appeal upheld finding that founder's offer to buy employee's shares at a stated price was contractually binding and that employee was entitled to specific performance

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

HABEAS CANEM

Dive with pike



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Summaries With Link (Five Minute Read)

Jeffreys v Sheer [2025] NSWCA 31

Court of Appeal of New South Wales

Mitchelmore & Adamson JJA, & Basten AJA

Contracts - Jeffreys was an entrepreneur who achieved success with Go Get, then founded Dresden - Sheer was an IT expert who, while driving an Uber, had a conversation with Jeffreys as passenger, which developed into employment with Dresden - Sheer received higher offer from Optus - Jeffreys convinced Sheer to stay by offering to buy Sheer's 2.5% of Dresden shares for \$2.5 million in 5 years - in 2018, in context of obtaining Sheer's consent to dilution of shareholding by new investor, Jeffreys sent letter saying commitment to buy shares 'still stands' - Sheer sought specific performance - Jeffreys cross-claimed, alleging any contract was induced by misleading or deceptive conduct - primary judge found binding contract and granted specific performance, and dismissed cross-claim (see Benchmark 17 September 2024) - Jeffreys appealed - held: further evidence Jeffreys sought to adduce on appeal rejected as it lacked probative value - primary judge had not erred in the way he treated evidence of each witness - 2018 letter showed objective intention that Jeffreys be legally bound - Jeffreys' subjective intention not relevant - entire agreement clause in later shareholders' agreement did not affect contractual force of 2018 letter, as Jeffreys was party to that agreement only as founder, not as shareholder - no procedural unfairness in primary judge permitting Sheer to run slightly different case than pleaded - need for approval from other shareholders did not mean Jeffreys could not bind himself to buy shares - appeal dismissed.

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[From Benchmark Thursday, 13 March 2025]

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.

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[From Benchmark Friday, 14 March 2025]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Dewberry Group v Dewberry Engineers (SCOTUS) - Disgorgement of profits in a trade mark infringement dispute brought under the United States Lanham Act may only be awarded against parties that are named defendants. Profits of defendant's affiliates are not statutorily subject to disgorgement

Summaries With Link (Five Minute Read)

Dewberry Group v Dewberry Engineers 604 US __ (2025)

Supreme Court of the United States

Plaintiff, Dewberry Engineers successfully sued Dewberry Group for trade mark infringement. Pursuant to the Lanham Act, the plaintiff sought damages measured by the amount of defendant's profits, known as disgorgement of profits. The plaintiff was awarded US\$43million. The judgment was affirmed by the Court of Appeals. However, the named defendant did not show any profits on its books. The profits attributable to the infringement appeared on the books of defendant's affiliated companies, and the trial court attributed the profits to the named defendant for purposes of ordering disgorgement. The Supreme Court (per Curiam by Kagan J; Sotomayor J concurring) reversed and remanded based on the plain meaning of the statutory language which permits as a measure of loss, disgorgement of the 'defendant's' profits. The Court found that the word 'defendant' in the statute can only refer to a party so named in the proceedings. The plaintiff had also argued that the Lanham Act allows for a 'just-sum' award of damages where a court is persuaded that the traditional measures of losses are inadequate. The Court declined to decide if the award of damages could be justified on the just-sum theory because this had not been employed by the trial court.

[Dewberry Group](#)



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—



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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,



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=adNOs1izBl8>



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)

<https://tseliot.com/>

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