

Friday, 14 March 2025

Weekly Civil Law Review

Selected from our Daily Bulletins covering Insurance, Banking,
Construction & Government

Search Engine

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Executive Summary (One Minute Read)

Commonwealth of Australia v Yunupingu (HCA) - s122 of the Constitution is subject to abstraction (by implication from s51(xxxi)) of power to make laws with respect to the acquisition of property otherwise than on just terms - law is with respect to the acquisition of property otherwise than on just terms to the extent it purported to appropriate an interest in land inconsistent with native title rights before the commencement of the *Native Title Act 1993* (Cth) (I B C)

Bogan v Estate of Smedley (Deceased) (HCA) - *Corporations Act 2001* (Cth) sections that allow transfer of proceedings between states, and that procedural steps and orders carry over, did not mean a Victorian order allowing costs of class action to be a proportion of amount recovered would carry over to NSW where NSW courts cannot make that type of order (B I)

WorkCover Queensland v Asbestos Injuries Compensation Fund Ltd (NSWCA) - judicial advice given to trustee of James Hardie compensation fund regarding payments where WorkCover Queensland had already paid workers compensation payments reversed (I B C)

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 (I B)

Insurance Australia Ltd t/as NRMA Insurance v Kirkpinar (NSWSC) - review panel under *Motor Accidents Compensation Act 1999* (NSW) erred by not making causation finding in respect of one particular impairment and by giving inadequate reasons (I B)



Succar v Dominium Homes Pty Ltd (NSWSC) - property owners entitled to recover costs of remedying defects and bringing the works to completion following termination of building contract for defective work (I B C)

Wesley Community Services Limited trading as Wesley Mission v Smith (NSWSC) - Court found a will, on its proper construction, created a charitable trust, and imposed a cy pres scheme (I B)

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

Re Duke Ventures Wellington Street Pty Ltd (VSC) - application to set aside statutory demand to enforce adjudication under *Building and Construction Industry Security of Payment Act 2002 (Vic)* - debtor could rely on offsetting claims to extent adjudicator had not made allowance for them (B C I)

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)

Van Der Wolf v TAC (VSCA) - incident where an alarm in an alcohol interlock device went off causing hearing damage was not directly caused by the driving of a motor vehicle, and so was not compensable under the *Transport Accident Act 1986 (Vic)* (I B)

HABEAS CANEM

Dive with pike



Summaries With Link (Five Minute Read)

Commonwealth of Australia v Yunupingu [2025] HCA 6

High Court of Australia

Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ

Constitutional law - Governor-General made appropriations to Commonwealth and third parties of interests in land in the Gove Peninsula in the Northern Territory under the *Northern Territory (Administration) Act 1910* (Cth), an Act supported by s122 of the Constitution - *Native Title Act 1993* (Cth) provides that a past act attributable to the Commonwealth is valid and is taken always to have been valid, but that native title holders are entitled to compensation in certain circumstances - Gumatj Clan claimed compensation - Full Federal Court found: (1) Commonwealth power to make laws for the government of territories under s122 of the Constitution does not permit making a law with respect to the acquisition of property otherwise than on just terms within the meaning of s51(xxxi) of the Constitution; and (2) a law is with respect to the acquisition of property otherwise than on just terms to the extent it purported to appropriate an interest in land inconsistent with native title rights before the commencement of the *Native Title Act* - Commonwealth granted special leave to appeal to High Court - held: (by Gageler CJ, Gleeson, Jagot, & Beech-Jones JJ; Gordon J and Edelman J agreement for separate reasons, and Steward J dissenting): s51(xxxi) is a grant of power to make laws with respect to the acquisition of property on just terms - it has long been recognised that the existence of this grant of power impliedly abstracts power to make laws for compulsory acquisition of property other than on just terms from other legislative powers - majority now clarified that the abstraction by implication from s51(xxxi) does apply to s122 - majority rejected Commonwealth's argument that extinguishing native title rights by the grant of inconsistent rights was not a 'taking' of property, and therefore not the 'acquisition' of property within the meaning of s31(xxxi), in that native title was inherently susceptible to a valid exercise of the Crown's sovereign power to grant interests in land - majority also rejected Commonwealth argument that a pastoral lease granted by South Australia in 1903 had already extinguished relevant native title before the *Northern Territory (Administration) Act 1910* (Cth) was enacted - Steward J would have held that the *Northern Territory Mining Act 1903* (SA) extinguished native title rights regarding minerals in the claim area and would have remitted the matter to a docket judge for redetermination of the claim in light of this - appeal dismissed (by majority).

[Commonwealth of Australia](#) (I B C)

[From Benchmark Thursday, 13 March 2025]

Bogan v Estate of Smedley (Deceased) [2025] HCA 7

High Court of Australia

Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ

Transfer of proceedings - all Australian jurisdictions prohibit legal costs as proportion of amount recovered in proceeding - Victoria alone has exception where Supreme Court can make 'group costs order' (GCO) in class action - applicants commenced class action in Victorian Supreme Court against directors and auditor, pleading claims under *Corporations Act 2001* (Cth) -

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applicants applied for GCO - auditor applied for transfer to NSW under s1337H(2), *Corporations Act* - Victorian Supreme Court made GCO - Court then found that, but for the GCO, NSW was more appropriate forum, but reserved questions to Victorian Court of Appeal: (1) was GCO relevant to exercise of discretion under s1337H(2) whether to transfer? (2) if case transferred: (a) would GCO remain in force and be enforceable by NSW Supreme Court? and (b) if so, would NSW Court have power to vary or revoke GCO? and (3) should proceedings be transferred? - Court of Appeal answered: (1) Yes; (2)(a) No; (b) Does not arise; and (3) No - questions removed to High Court under s40(2), *Judiciary Act 1903* (Cth) - held (by Gageler CJ, Gordon, Gleeson, Jagot, & Beech-Jones JJ; with Edelman J agreeing in the majority's answers but dissenting as to costs; and Steward J dissenting): Court could not entertain auditor's argument Supreme Court should have determined transfer before GCO - auditor should have sought to appeal GCO if it wanted to make such argument - GCO, in terms and legislative context, only operated in class action constituted in Victorian Court - issue was whether s1337P(2), *Corporations Act*, would give GCO force and effect if case transferred - s1337P(2) provided that (subject to contrary order), NSW Court must proceed as if steps in Victorian Court (including making orders), or similar steps, had been taken in NSW Court - on proper construction, s1337P(2) only applied to steps of a nature NSW court could have taken if case commenced in NSW - removal of GCO may stultify proceedings - Court of Appeals answers correct - Steward J would have held GCO not relevant to exercise of discretion under s1337H(2), as it was merely an advantage for one side, a disadvantage for the other, and courts should not play favourites in assessing the interests of justice.

[Bogan](#) (B I)

[From Benchmark Thursday, 13 March 2025]

WorkCover Queensland v Asbestos Injuries Compensation Fund Ltd [2024] NSWCA 317

Court of Appeal of New South Wales

Ward P, Leeming, & Payne JJA

Judicial advice - In 2006, James Hardie established trust fund to pay asbestos claims against former subsidiaries, including Amaca, pursuant to a tripartite arrangement involving the *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005* (NSW), a funding agreement, and a trust deed - s32(2) of the Act provided payment may not be made where claimant had already been paid compensation - WorkCover Queensland had paid compensation and had a statutory right to reimbursement from Amaca and a charge over any further damages payable - primary judge advised trustee would be justified in not paying judgments against Amaca to the extent claimants had already recovered from WorkCover Queensland (because trustee lacked power to do so) or where WorkCover Queensland had asserted a charge over any payments made by the trustee (as a justified exercise of trustee's discretion) (see Benchmark 17 September 2025) - WorkCover Queensland and claimants appealed - held: the point of the decades-long winding up of James Hardie subsidiaries and the tripartite arrangement was to permit claims by Australians exposed to James Hardie's products to be paid in full - very clear language would be required to prevent a natural person who sustained personal injury from James Hardie's asbestos products, and who obtained judgment

against Amaca, from being compensated in full - 'they' in phrase 'to the extent they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy' should be construed as referring to specific claims (that is, claims of the same juristic nature as the claim potentially to be excluded), not the injury generally from which various claims might flow - that such a construction involved surplusage was of relatively little weight in documents replete with surplusage - appeal allowed - trustee advised it would be justified in paying the judgments obtained against Amaca in full.

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

[From Benchmark Tuesday, 11 March 2025]

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.

[View Decision](#) (I B)

[From Benchmark Thursday, 13 March 2025]

Insurance Australia Ltd t/as NRMA Insurance v Kirkpinar [2025] NSWSC 162

Supreme Court of New South Wales

Mitchelmore J

Administrative law - first defendant injured in a motor vehicle accident - claimed under *Motor Accidents Compensation Act 1999* (NSW) - insurer of vehicle at fault accepted liability subject to assessment of injury and damages - insurer later dispute whether degree of permanent impairment as a result of injuries caused by the motor accident was greater than 10% (the threshold for damages for non-economic loss under s131 of the Act) - first medical assessor assessed permanent impairment at less than 10% - after total left hip replacement, second medical

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assessor assessed it at 20% - insurer referred matter to review panel, which assessed it at 15% - insurer sought judicial review - held: contrary to insurer's submission, hip replacement surgery was central to second assessment as part of claim of deterioration in level of impairment as a result of injuries caused by motor accident, not as claim surgery was itself an injury to be separately considered - all assessments under the Act involve a determination as to whether the injured person's impairment is related to the accident in question - the fact that the review panel referred to causation for other injuries highlighted the contrast with its conclusions regarding the lumbar spine, where it said nothing about causation and recorded no determination - review panel failed to determine the question of causation for this particular impairment - gaps in reasons may be filled by necessary inference but cannot be filled by an assumption that a decision was made according to law - inadequacy of the review panel's reasons also constituted an error of law on the face of the record - order in the nature of certiorari quashing review panel's determination, and matter remitted for referral to differently constituted review panel for determination according to law.

[View Decision](#) (I B)

[From Benchmark Tuesday, 11 March 2025]

Succar v Dominion Homes Pty Ltd [2025] NSWSC 183

Supreme Court of New South Wales

Stevenson J

Building contracts - residential property owners entered into contract with builder for the construction of 10 townhouses on their land - issues arose as to adequacy of builder's performance of the works - after a number of breach notices did not resolve issues, property owners terminated the contract before the works were completed - property owners sued for breaches of statutory warranties implied into the contract by s18B of the *Home Building Act 1989* (NSW) - builder filed a Technology and Construction List Response and cross-claim - Supreme Court judge struck out the Response and cross claim and entered default judgment for the plaintiffs - Court now assessed damages - held: measure of damages for defective building work is the reasonable costs of rectification, so as to give the plaintiff the equivalent of a building which is substantially in accordance with the contract - any rectification work claimed for must be necessary to produce conformity with the contract, and must also be a reasonable course to adopt - necessity and reasonableness are questions of fact in each case - work that is necessary to produce conformity with the contract will only be unreasonable in a rare case, such as where the plaintiff is using a technical breach to secure an uncovenanted profit - evidence here satisfied Court that total cost of remedying defects and bringing the works to completion was about \$3.8million - evidence showed proposed work was necessary to produce conformity with the contract and was the reasonable course to adopt - no suggestion plaintiffs were seeking to secure an uncovenanted profit or that costs were out of proportion to the benefit to be gained - appropriate to allow an uplift of 15% on the costings in an expert's report that had been prepared over four years previously - also appropriate for the plaintiffs to recover an amount equivalent to the GST payable in respect of rectification and completion costs.

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

[From Benchmark Wednesday, 12 March 2025]

Wesley Community Services Limited trading as Wesley Mission v Smith [2025] NSWSC 154

Supreme Court of New South Wales

Meek J

Charitable trusts - deceased left a will leaving real property to executors on trust, intending to benefit Wesley Mission - Wesley commenced proceedings, and there was no real dispute that relevant clauses of will, on their proper construction, created a charitable trust within the meaning of the *Charitable Trusts Act 1993* (NSW), that the sole surviving executor should be removed and Wesley appointed in his stead, or that the property should be transferred to Wesley to hold as trustee under s71 and s80 of the *Trustee Act 1925* (NSW) - held: absence of any real dispute between the parties did not *per se* justify the Court in finding a charitable trust or that removal of the executor was appropriate - property was in very poor condition, was not habitable, and was not suitable for any of the activities conducted by Wesley - object of construction of a will is to give effect to what the will-maker intended by the words used, having regard to admissible extrinsic evidence - here, deceased intended to create a trust for charitable purposes - words used more consistent with trust than other legal institution or relation, given use of the word 'purpose' on multiple occasions - Wesley using the property would divert resources away from its other works in order to renovate the property, and, even then, difficulty of access would severely limit the potential use of the land - original purpose had ceased to provide a suitable and effective method of using the trust property, engaging power in s9 of *Charitable Trusts Act* to apply a *cy pres* scheme - *cy pres* scheme imposed, under which Wesley was to sell the property and invest the proceeds of sale, and use the income from that investment in any of four named programs - on the proper construction of the will, Wesley was intended to be the trustee of the trust - order that Wesley replace executor as trustee.

[View Decision](#) (I B)

[From Benchmark Wednesday, 12 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

Benchmark

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)

[From Benchmark Friday, 14 March 2025]

Re Duke Ventures Wellington Street Pty Ltd [2025] VSC 75

Supreme Court of Victoria

Barrett AsJ

Security of payments - Duke engaged Cobolt to build a 10-storey apartment building - contractual dispute arose with competing claims - Cobolt served payment claim under *Building and Construction Industry Security of Payment Act 2002* (Vic) (SOPA) - adjudicator made determination in favour of Cobolt and Cobolt obtained judgment on that determination - Cobolt served statutory demand - Duke sought to have statutory demand set aside on the basis of offsetting claims - held: relying on offsetting claims to set aside statutory demand does not subvert SOPA's 'pay now, argue later' regime - effect of failure to comply with statutory demand is merely statutory presumption of insolvency in future winding up proceedings - debtor does not have to comply with statutory demand - SOPA creditor has enforcement avenues other than statutory demand/winding up - also question of how far interpretation of Commonwealth Act (statutory demand provisions of *Corporations Act 2001* (Cth) should be determined by policy underlying state Acts (the SOPAs) - where statutory demand relies on debt from SOPA adjudication: (1) debtor may not rely on genuine dispute; (2) debtor may not rely on offsetting claim to the extent adjudicator made allowance for that claim; (3) debtor may rely on offsetting claim to the extent claim raised before adjudicator but rejected; (4) debtor may rely on offsetting claim not raised before adjudicator; and (5) debtor may rely on offsetting claim that arises from transactions separate to the one giving rise to the debt - adjudicator had not made allowances for Duke's alleged offsetting debts - statutory demand set aside.

[Re Duke Ventures Wellington Street Pty Ltd](#) (B C I)

[From Benchmark Tuesday, 11 March 2025]

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

Benchmark

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 \(I\)](#)

[From Benchmark Friday, 14 March 2025]

Van Der Wolf v TAC [2025] VSCA 24

Court of Appeal of Victoria

Beach JA, Forbes, & J Forrest AJJA

Transport accidents - applicant convicted of drink driving, and had to have alcohol interlock device fitted to any motor vehicle he drove for six months - while applicant driving, interlock requested a retest, and, when he did not complete retest within five minutes, an alarm sounded for 45 seconds, until he successfully completed the retest - applicant claimed he sustained sensory neural hearing loss from the alarm and claimed compensation for a 'transport accident' under the *Transport Accident Act 1986* (Vic) - Transport Accident Commission denied claim on basis accident not directly caused by the driving of a motor vehicle - Victorian Civil and Administrative Tribunal affirmed - Supreme Court dismissed appeal on question of law against Tribunal's decision - applicant sought leave to appeal - held: s3(1) of the Act defines a transport accident as 'an incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram' - the statutory language was clear, and the Tribunal was required to address an issue of fact, namely, whether the sounding of the alarm was directly caused by the driving of the vehicle - to satisfy the test under the Act, the incident which produces the injury must have a direct connection with the movement or propulsion of the vehicle - it is not enough that the incident would not have occurred but for the driving - not only was it open to the Tribunal to reach the conclusion it did, the Tribunal's conclusion was correct - the alarm sounded independently of the applicant's driving or control of his vehicle - applicant had not established



that there was an error of law in the decision of the Tribunal - leave to appeal refused.

[Van Der Wolf](#) (I B)

[From Benchmark Monday, 10 March 2025]

Benchmark

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—



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,



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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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