



Friday, 14 March 2025

## Weekly Corporate Governance A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Corporate Governance Law

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### Executive Summary (One Minute Read)

**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

**Re Australian Institute of Professional Photography Ltd (in liq)** (VSC) - Court ordered liquidation stayed, and terminated once liquidator paid, as there was no reason why terminating the winding up would be detrimental to commercial morality or contrary to the public interest

## HABEAS CANEM

Dive with pike



## Summaries With Link (Five Minute Read)

### **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) - 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](#)

[From Benchmark Thursday, 13 March 2025]

### **Re Australian Institute of Professional Photography Ltd (in liq) [2025] VSC 71**

Supreme Court of Victoria

Heytey AsJ

Corporations law - AIPP was an unlisted not-for-profit public company limited by guarantee - AIPP's liquidator sought leave to distribute surplus assets of the company and resign - several other parties said the surplus should be apportioned between them - two other persons who purported to be past or current members of the company applied for the winding up to be stayed or terminated, which would have the effect that the surplus would remain with the company - held: s482 of the *Corporations Act 2001* (Cth) empowers Court to stay or terminate winding

upon on application by liquidator, creditor, or contributory - 'contributory' includes 'a person liable as a member or past member to contribute to the property of the company if it is wound up' - power is wholly discretionary, and court must generally be satisfied: (1) the state of affairs that required that the company be wound up no longer exists; and (2) it would be reasonable to entrust the affairs of the company once again to the directors under whose management it previously failed; and (3) there exists a continuing undertaking of the company, the operation of which may be returned to its directors - all creditors had been paid and membership fees refunded, and the company may now be regarded as solvent - no identifiable reason why terminating the winding up of AIPP would be detrimental to commercial morality or contrary to the public interest - liquidator not prejudiced as there were adequate funds for his reasonable remuneration and expenses - winding up should be initially stayed and then terminated on payment of the liquidator's reasonable remuneration and expense.

[Re Australian Institute of Professional Photography Ltd \(in liq\)](#)

[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,





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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