



Friday, 14 March 2025

## Weekly Criminal Law

A Weekly Bulletin listing Decisions  
of Superior Courts of Australia covering criminal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary

**Bushell v R** (NSWCCA) - trial judge impermissibly directed jury so that they could find aiding and abetting self-administration of illicit drug as unlawful and dangerous act enlivening verdict of manslaughter

**Green (a pseudonym) v R** (NSWCCA) - sentencing judge erroneously arrived at starting point based on objective factors, then applied an omnibus discount for subjective factors, plea of guilty, and assistance for authorities, rather than reaching starting point based on both objective and subjective factors by instinctive synthesis, then applying identified discount for plea and assistance

## HABEAS CANEM

Dive with pike



# Benchmark

## Summaries With Link (Five Minute Read)

### **Bushell v R [2025] NSWCCA 23**

Court of Criminal Appeal of New South Wales

Davies, Lonergan, & Yehia JJ

Murder and manslaughter - applicant, co-accused, and deceased met to manufacture drugs together - deceased injected with fatal dose of heroin and cocaine - applicant and co-accused charged with murder - jury discharged in case of co-accused - Crown case before jury retired was that either applicant or co-accused had injected deceased with intention to kill - defence case was deceased had injected himself - after jury question, judge permitted widening of Crown case regarding alternative verdict of manslaughter, and redirected jury that self-administration of illicit drug was an offence, and applicant aiding and abetting deceased's self-administration might be unlawful and dangerous act enlivening verdict of manslaughter - jury returned verdict of not guilty of murder but guilty of manslaughter on basis of unlawful and dangerous act - applicant sought leave to appeal against conviction - held: if criminal liability were based on aiding and abetting, applicant could only be a principal in the second degree, and his liability would be derivative not primary - applicant could not be liable for manslaughter on that basis - High Court has stated (*IL v R* [2017] HCA 27) that s18, *Crimes Act 1900* (NSW), requires one person to kill another and does not apply where a person kills him or herself intentionally or accidentally - any aiding and abetting liability could only be in respect of self-administration offence under *Drug Misuse and Trafficking Act 1985* (NSW) - leave to appeal granted, appeal allowed, and new trial ordered on count of manslaughter.

[View Decision](#)

### **Green (a pseudonym) v R [2025] NSWCCA 16**

Court of Criminal Appeal of New South Wales

Adamson & Ball JJA, & Fagan J

Sentencing - applicant pled guilty to conspiracy to import commercial quantity of cocaine - sentenced to 21 years' imprisonment with non-parole period of 12 years and 6 months - applicant sought leave to appeal against sentence - held: correct approach is to take all subjective and objective matters into account to arrive at starting pre-discount figure in a process described as 'instinctive synthesis' - any discount for plea of guilty or assistance to authorities is to be applied to this starting figure - in this case, sentencing judge erroneously arrived at starting point of 30 years based on objective factors, then discounted that starting point, not only for pleas of guilty and assistance to authorities, but also for subjective factors including rehabilitation and contrition - sentencing judge also erred by rolling up subjective factors with plea and assistance to arrive at an omnibus discount of 30%, while giving no indication of actual discount for plea and assistance - High Court held this 'two-tier' process was erroneous in *Markarian v R* [2005] HCA 25 - further, sentencing judge did not directly take into account effect of sentence on the applicant's family, on the basis he could not do so in absence of exceptional hardship - NSW Court of Criminal Appeal subsequently held in *Totaan v R* [2022] NSWCCA 75 that there is no such restriction - leave to appeal granted, appeal allowed, and



applicant resentenced to 20 years imprisonment with non-parole period of 12 years.

[View Decision](#)



# 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=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/>

[Click Here to access our Benchmark Search Engine](#)