

Friday, 3 April 2020

Weekly Wills, Estates and Superannuation Law

A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering Wills Estates and
Superannuation Law

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Executive Summary (1 minute read)

Shahin Enterprises Pty Ltd v Mathew (FCAFC) - industrial law - appellant contravened s323 *Fair Work Act 2009* (Cth) by underpaying employee - appellant ordered to make payment to employee - appeal dismissed

The Estate of Ron Tee Lim (deceased); The Application of Kaye Lim (NSWSC) - wills and estates - probate - executrix sought leave to 'retract renunciation of probate' - application granted

Ross v Ross (VSC) - costs - plaintiff's application for further provision from deceased's estate dismissed - determination of costs

In the Will of Valerie Eve Robson (deceased) (QSC) - wills and estates - application for admission to probate of 2004 'photocopied Will' of deceased - application granted

Talent v Official Trustee in Bankruptcy & Anor (No 5) (ACTSC) - adjournment - applicant sought adjournment of proceeding on basis of medical condition - adjournment granted

Summaries With Link (Five Minute Read)

[Shahin Enterprises Pty Ltd v Mathew \[2020\] FCAFC 57](#)
Full Court of the Federal Court of Australia

White, Bromwich & Charlesworth JJ

Industrial law - South Australian Employment Tribunal 'sitting as' South Australian Employment Court declared appellant, by underpaying respondent employee, contravened s323 *Fair Work Act 2009* (Cth) - Court ordered that appellant make payment to respondent - Deputy President reserved question whether to impose penalty - appellant appealed - complaints concerning Deputy President's findings in respect of respondent's 'commencement time', 'meal breaks; and 'overtime claim' - procedural fairness - held: grounds of appeal failed - appeal dismissed.

[Shahin](#)

[From Benchmark Thursday, 2 April 2020]

The Estate of Ron Tee Lim (deceased); The Application of Kaye Lim [2020] NSWSC 322

Supreme Court of New South Wales

Hallen J

Wills and estates - probate - applicant executrix sought leave to 'retract a renunciation of probate' - s69 *Probate and Administration Act 1898* (NSW) - *Re Estate of Daphne Lillian May Thurston* [2001] NSWSC 144 - *Estate de Wild, deceased* [2019] NSWSC 1128 - whether retraction of probate's renunciation would benefit estate - held: application granted.

[View Decision](#)

[From Benchmark Thursday, 2 April 2020]

Ross v Ross [2020] VSC 148

Supreme Court of Victoria

Moore J

Costs - plaintiff sought further provision from deceased mother's estate - Court dismissed application - plaintiff sought indemnity costs order and that costs of defendants be paid from defendants' share of estate - defendants sought that their costs 'be had and retained from the estate on a trustee basis' - defendants also sought indemnity costs order - settlement offers - alleged 'wrongful conduct' by defendants - whether plaintiff had 'no alternative' but to bring proceeding - whether plaintiff's rejection of offer unreasonable - held: costs orders made.

[Ross](#)

[From Benchmark Friday, 3 April 2020]

In the Will of Valerie Eve Robson (deceased) [2020] QSC 52

Supreme Court of Queensland

Brown J

Wills and estates - application for admission to probate of 2004 'photocopied Will' of deceased - deceased diagnosed with Alzheimer's disease in 2012 and died in 2019 - photocopied Will was 'duly executed' and witnessed - whether deceased had capacity when executing photocopied Will - principle in *Cahill v Rhode* [2002] NSWSC 561 - held: Court satisfied to grant probate of photocopied Will.

[In the Will of Valerie](#)

[From Benchmark Monday, 30 March 2020]



Talent v Official Trustee in Bankruptcy & Anor (No 5) [2020] ACTSC 64

Supreme Court of the Australian Capital Territory

Elkaim J

Adjournment - succession - family provision - applicant sought adjournment of proceeding on basis his medical condition put him 'at greater risk should he be exposed to the COVID-19 virus' - 'potential consequences' if adjournment refused - prejudice - held: adjournment granted.

[Talent](#)

[From Benchmark Monday, 30 March 2020]



Benchmark

The Wind

By: Harold Monro

SO wayward is the wind to-night

'Twill send the planets tumbling down;

And all the waving trees are dight

In gauzes wafted from the moon.

Faint streaky wisps of roaming cloud

Are swiftly from the mountains swirl'd;

The wind is like a floating shroud

Wound light about the shivering world.

I think I see a little star

Entangled in a knotty tree,

As trembling fishes captured are

In nets from the eternal sea.

There seems a bevy in the air

Of spirits from the sparkling skies:

There seems a maiden with her hair

All tumbled in my blinded eyes.

O, how they whisper, how conspire,

And shrill to one another call!



I fear that, if they cannot tire,

The moon, her shining self, will fall.

Blow! Scatter even if you will

Like spray the stars about mine eyes!

Wind, overturn the goblet, spill

On me the everlasting skies!

https://en.wikipedia.org/wiki/Harold_Monro

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