

Friday, 7 September 2018

Weekly Wills Estates and Superannuation Law Selected Bulletins covering Weekly Wills Estates and Superannuation Law

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Executive Summary (1 minute read)

Kronen v Commercial Motor Industries Pty Ltd (trading as CMI Toyota) (FCAFC) - industrial law - superannuation - South Australian Employment Tribunal did not have jurisdiction in respect of application to reopen proceedings in Industrial Relations Court of South Australia, which had been dissolved from 1 July 2017 - applicant could continue application by effect of s16 *Acts Interpretation Act 1915* (SA) - appeal dismissed

Estate of Elzow (VSC) - wills and estates - informal will - deceased died before executing 'New Will' - deceased had not seen 'New Will' - deceased had been given opportunity to sign 'New Will' but did not sign it - Court satisfied to admit New Will to probate

Hamill and Anor v Wright and Ors (QSC) - wills and estates - real property - testamentary capacity - deceased lacked capacity to make last will and to sever joint tenancy

Brooks & Anor v Young & Ors (SASCFC) - succession - family provision - claim for provision and related claims - fiduciary duties of executors - summary dismissal granted in defendant's favour - appeal dismissed

Woodley v Woodley (WASCA) - wills and estates - probate - procedural fairness - appellant passed over as executor - no error in decision of primary judge to uphold respondents' counterclaim - appeal dismissed

Summaries With Link (Five Minute Read)

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Kronen v Commercial Motor Industries Pty Ltd (trading as CMI Toyota) [2018] FCAFC 136

Full Court of the Federal Court of Australia

White, Perry & Charlesworth JJ

Industrial law - applicant sought payment of superannuation payments against respondent - applicant challenged decision of South Australian Employment Tribunal in which it found it did not have jurisdiction to determine application for proceedings' reopening in Industrial Relations Court of South Australia (IRCSA) - IRCSA had been dissolved in 1 July 2017 - s16 *Acts Interpretation Act 1915* (SA) (Acts Interpretation Act) - s28(1)(c) *Federal Court of Australia Act 1976* (Cth) - held: Tribunal did not have jurisdiction in respect of reopening application - applicant could continue application in IRCSA by effect of s16 Acts Interpretation Act - no open to Court to make order concerning matter's remittal - appeal dismissed.

[Kronen](#)

[From Benchmark Friday, 7 September 2018]

Estate of Elzow [2018] VSC 498

Supreme Court of Victoria

Lyons J

Wills and estates - informal will - deceased executed '2010 Will' - shortly before death deceased instructed solicitor to prepare 'New Will' - New Will prepared - deceased said New Will was 'exactly what she wanted' and asked solicitor to come to nursing home 'as soon as possible' so she could sign it - solicitor said he was 'busy and preparing to go overseas' and suggested another solicitor attend - deceased did not wish another solicitor to attend - deceased died before executing New Will - plaintiffs were executors named in 2010 Will and New Will - plaintiffs sought admission of New Will to probate under s9 *Wills Act 1997* (Vic) even though deceased had not seen or read it, and had not signed it even though she had opportunity to - whether deceased intended New Will to constitute Will - whether testamentary capacity - whether undue influence - held: Court satisfied to admit New Will to probate.

[Estate of Elzow](#)

[From Benchmark Friday, 7 September 2018]

Hamill and Anor v Wright and Ors [2018] QSC 197

Supreme Court of Queensland

Applegarth J

Wills and estates - real property - proceedings concerned whether deceased had testamentary capacity to make a second will and a final will, and whether deceased had capacity to sever a joint tenancy - whether deceased suffered from delusions when he made final will and instructed that joint tenancy be severed - whether delusions material to testamentary capacity and capacity to sever joint tenancy - whether defendants satisfied Court deceased was not under delusions' influence when made last will and severed joint tenancy - held: Court satisfied deceased lacked capacity at time he made last will and lacked capacity to sever joint tenancy - judgment for plaintiffs.

[Hamill](#)

[From Benchmark Friday, 7 September 2018]

Brooks & Anor v Young & Ors [2018] SASCFC 8

Full Court of the Supreme Court of South Australia

Kelly, Bampton & Doyle JJ

Succession - family provision - primary judge dismissed plaintiffs' claim for provision under *Inheritance (Family Provision) Act 1972 (SA)* (IFP Act) and related claims - primary judge ordered summary judgment in defendants' favour - plaintiffs contended primary judge erred in concluding there was 'no reasonable basis' for their claims - extension of time - potential liability of executors to claimants for family provision - whether executors owed fiduciary duties to plaintiffs 'as potential claimants' - 'premature distributions' - prospects of success - held: appeal dismissed.

[Brooks](#)

[From Benchmark Friday, 7 September 2018]

Woodley v Woodley [2018] WASCA 149

Court of Appeal of Western Australia

Murphy, Mitchell & Beech JJA

Wills and estates - parents were farmers who had five children - parents deceased - children in dispute concerning parents' estates - appeal concerned who should be executor of mother's will - appellant sought orders pronouncing will's validity, and granting him probate of will 'as sole executor and trustee' - appellant sought that first and second respondents be passed over as executors - certain respondents by counter-claim sought orders pronouncing a different will's force and validity, grant of probate of will to first and second respondents, and that appellant be passed over as executor - primary judge dismissed appellant's claim and upheld respondents' counter-claim - appellant appealed - whether denial of procedural fairness - whether erroneous refusal to pass over first and second respondents - credibility - whether to permit additional evidence to be adduced - held: application to adduce additional evidence dismissed - appeal dismissed.

[Woodley](#)

[From Benchmark Friday, 7 September 2018]



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To a Louse, On Seeing one on a Lady's Bonnet at Church

By: Robert Burns

Ha! whare ye gaun, ye cowlan ferlie!
Your impudence protects you sairly:
I canna say but ye strunt rarely,
 Owre gawze and lace;
Tho' faith, I fear ye dine but sparely,
 On sic a place.

Ye ugly, creepan, blastet wonner,
Detested, shunn'd, by saunt an' sinner,
How daur ye set your fit upon her,
 Sae fine a Lady!
Gae somewhere else and seek your dinner,
 On some poor body.

Swith, in some beggar's haffet squattle;
There ye may creep, and sprawl, and sprattle,
Wi' ither kindred, jumping cattle,
 In shoals and nations;
Whare horn nor bane ne'er daur unsettle,
 Your thick plantations.

Now haud you there, ye're out o' sight,
Below the fatt'rels, snug and tight,
Na faith ye yet! ye'll no be right,
 Till ye've got on it,
The vera topmost, towrin height
 O' Miss's bonnet.

My sooth! right bauld ye set your nose out,
As plump an' gray as onie grozet:
O for some rank, mercurial rozet,
 Or fell, red smeddum,
I'd gie you sic a hearty dose o't,
 Wad dress your droddum!

I wad na been surpriz'd to spy
You on an auld wife's flainen toy;
Or aiblins some bit duddie boy,



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On 's wylecoat;
But Miss's fine Lunardi, fye!
How daur ye do 't?

O Jenny dinna toss your head,
An' set your beauties a' abroad!
Ye little ken what cursed speed
The blastie's makin!
Thae winks and finger-ends, I dread,
Are notice takin!

O wad some Pow'r the giftie gie us
To see oursels as others see us!
It wad frae monie a blunder free us
An' foolish notion:
What airs in dress an' gait wad lea'e us,
And ev'n Devotion!

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

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