



Friday, 9 May 2025

## Weekly Wills, Estates and Superannuation Law

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

### 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 (One Minute Read)

**Broadus v Craddock** (NSWSC) - Court dismissed claim for family provision by adult grandchild of deceased

**Lennan v Chao** (VSC) - family provision claim by domestic partner failed as domestic partnership had begun later than plaintiff alleged, estate was substantial but not 'large' in the way estates in relevant previous cases had been, and deceased had therefore adequately discharged her moral duty to the plaintiff

**Muhl v Bailey** (TASSC) - family provision claim by adopted child of deceased's husband succeeded



## HABEAS CANEM

New puppy - 2018

## Summaries With Link (Five Minute Read)

### **Broadus v Craddock [2025] NSWSC 402**

Supreme Court of New South Wales

Lindsay J

Family provision - deceased's will made no provision for one adult grandson - all grandchildren default beneficiaries if principal beneficiary (deceased's one surviving child) predeceased him - grandson sought family provision from notional estate - held: record told a story of opportunistic, cascading ambit claims, falling away under challenge, without realistic articulation of needs reasonably able to be addressed or a plan for management of provision, if made - disturbing feature was a refusal to accept the moral legitimacy of the surviving son's marriage of a 'Filipino bride after years of a bachelor's life' - real question regarding definition of 'eligible person' in s57(1) of the *Succession Act 2006* (NSW) was whether the grandson was 'at any particular time, wholly or partly dependent' on the deceased - in general, 'dependent' connotes a person who relies upon financial or emotional support of another - it is not sufficient for 'membership of a household' that a person visit premises on a regular basis without regularly staying overnight - Court not satisfied grandson was ever a member of the deceased's household - plaintiff was never, at any particular time, wholly or partly dependent on the deceased - further, there were no 'factors warranting' the plaintiff's application for a family provision order - deceased was under no duty to make provision for the grandson in competition with the claims made on his bounty by his surviving son, and, through that son, the son's family - general rule is that a grandparent does not have a responsibility to make provision for a grandchild, particularly an adult grandchild - Court would not have been inclined to make an order for designation of property as notional estate - proceedings dismissed.

[View Decision](#)

[From Benchmark Friday, 9 May 2025]

### **Lennan v Chao [2025] VSC 220**

Supreme Court of Victoria

Moore J

Family provision - deceased died at 45 years of age - only provision in her will for the plaintiff (her domestic partner) was for superannuation to be paid to him - remainder of estate was to be distributed between deceased's two siblings - plaintiff applied for family provision - held: relationship between the deceased and the plaintiff was a domestic partnership so as to make the plaintiff an eligible person - defendants conceded moral duty to provide for plaintiff's proper maintenance and support - question was whether deceased had made adequate provision - period of domestic partnership was shorter than plaintiff contended - before 2019, relationship had not matured into a shared life together as a couple - although couples may elect to conduct a shared life without living in a common residence, it will be an exceptional case where two people not doing so can be said to be 'living together as a couple on a genuine domestic basis' - it is not enough that the couple intend eventually to live in the same residence - although the estate of \$2.8 million was substantial, in contemporary circumstances it was not in the same

order as the estates which the Court had characterised as 'large' so that the principles relevant to large estates should apply, such as ignoring competing claims, adopting a generous approach, not being limited to standard of living to which claimant had been accustomed, and making provision for contingencies that would be disregarded in respect of non-large estates - Court unpersuaded that deceased's exercise of her freedom of testation miscarried - deceased had not failed to make adequate provision for plaintiff's proper maintenance and support - proceedings dismissed.

[Lennan](#)

[From Benchmark Friday, 9 May 2025]

## **Muhl v Bailey [2025] TASSC 24**

Supreme Court of Tasmania

Pearce J

Family provision - applicant was adopted child of married couple - left home in circumstances of dispute with her adoptive father who told her to either return home or 'never darken the doorstep again', and who the applicant discovered was having an affair - the wife died in 1980 and husband remarried the person with whom he had been having the affair in 1982 - husband died in 2015 - second wife died in 2021 - second wife made provision for two natural children of the original married couple in her will, but expressly made no provision for the applicant, stating in the will that she had not 'considered her to be my child (step/adopted or otherwise)' and that she had only met the applicant about four times in her life - applicant sought family provision from estate of second wife - held: as the husband's adopted child, the applicant was the husband's child within the meaning of the *Testators Family Maintenance Act 1912 (Tas)* - the applicant was therefore the second wife's stepchild at the date of the second wife's death, and thus also the child of the second wife within the meaning of the Act - the applicant was therefore entitled to claim under the Act - although second wife did not assume any responsibility for the financial and emotional security of the applicant, in the circumstances she had a moral duty to of the applicant arising from the relationship between the applicant and her father, the absence of any provision for the applicant during the life of her mother and father, the size and nature of the estate, and the ability to provide for the applicant without affecting those beneficiaries with any competing moral claim - further provision should be made for the applicant in the amount of \$90,000.

[Muhl](#)

[From Benchmark Friday, 9 May 2025]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect (EUCJ1C)** - The practice of the French national railway SNCF of requiring online ticket purchasers to indicate their title as either Monsieur (Mr) or Madame (Ms) was in violation of the *European Union General Data Protection Regulation* (GDPR) because the collection of this information was not necessary for the performance of the contract for passenger travel and violated the principle of minimisation of data collection

### Summaries With Link (Five Minute Read)

**Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect, Case C-394/23**

European Court of Justice

Lenaerts P, von Danwitz VP, Arastey Sahún, Kumin, & Ziemele JJ

When purchasing a ticket online, patrons of the French national rail, the SNCF, were required to tick a box designating gender identity: either Monsieur or Madame. Arguing that this practice violated the *European Union General Data Protection Regulation* (GDPR), Mousse, an association, filed a complaint with the French data protection authority - the Commission Nationale de L'Informatique et des Libertes (CNIL). After the CNIL rejected the claim, Mousse brought an action before the highest administrative body in France, the Council of State, to have the CNIL determination annulled. In response, the Council of State referred the matter to the European Court of Justice for a preliminary ruling. Under the GDPR, data collection must be limited to what is necessary for the performance of a contract and the legitimate interests of the party collecting the data (the data controller). Here, the SNCF argued that it collected the data because it facilitated personal communication with ticket purchasers. The European Court disagreed with the SNCF, and stated that the collection of personal data must be objectively indispensable in order to enable the proper performance of the contract or necessary for the legitimate interests of the data collector. The Court found that personalisation of commercial communications based on gender as indicated in a purchaser's title did not appear to be objectively indispensable to enable the proper performance of rail transportation. Nor was the data strictly necessary for the legitimate interests of the SNCF. The Court found that the SNCF could instead communicate with patrons by means of generic expressions that have no correlation with gender identity. Under EU law, the matter now reverts to the French Council of State to dispose of the matter in accord with the decision made by the European Court of Justice.

[Mousse](#)



# Benchmark



## Poem for Friday

### Warm Summer Sun

By Mark Twain (1835-1910)

Warm summer sun,  
Shine kindly here,  
Warm southern wind,  
Blow softly here.  
Green sod above,  
Lie light, lie light.  
Good night, dear heart,  
Good night, good night.

**Mark Twain**, was the pen name of American writer and essayist Samuel Langhorne Clemens. Clemens was born in Florida, Missouri, on 30 November 1835, the sixth of seven children, only four of whom survived into adulthood. His father was a lawyer. Clemens was raised in Hannibal, Missouri. His father, by then a Judge, died when Clemens was 11 years old. After leaving school at age 11 he was an apprentice typesetter to a printer, writing articles, and educating himself in the evening in the public libraries in the cities he lived in. He was later a riverboat pilot, and then a miner for Orion in Nevada. Through his wife Olivia Langdon, Twain became friends with Frederick Douglass, Harriet Beecher Stowe, and William Dean Howells. He part-owned the Buffalo Express. He had a love of science, but lost substantial sums investing in new inventions. Mark Twain's famous novels included the *Adventures of Tom Sawyer* and the *Adventures of Huckleberry Finn*. Ernest Hemingway wrote that "*All modern American literature comes from one book by Mark Twain called Huckleberry Finn*". Mark Twain suffered a deep depression after his son Langdon died at 19 months, in 1872, and then his daughter Susy died in 1896, wife Olivia died in 1904, daughter Jean died on Christmas Eve 1909, and his good friend Henry Rogers died on 20 May 1909. Mark Twain died at the age of 74, on 21 April 1910 of a heart attack. Halley's Comet had passed the earth in the year of his birth in 1835, and passed the earth again in the year of his death in 1910. Mark Twain has been called "*The father of American Literature*".

Mark Twain's very quotable observations include:

"Only two things we'll regret on deathbed – that we are a little loved and little travelled."

"Twenty years from now you will be more disappointed by the things you didn't do than by the ones that you did do"

"Man is the only animal that blushes. Or Needs to."

"A full belly is little worth where the mind is starved."



"Travel is fatal to prejudice"

"The secret of getting ahead is getting started"

"Always do right, it will gratify some people and astonish the rest,"

"Kindness is the language which the deaf can hear and the blind can see"

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