

Friday, 10 May 2019

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)

Liprini v McIntyre (NSWSC) - negligence - professional negligence - solicitors' duties - 'risk of harm' - risk of harm not identified - breach of duty not established - statement of claim dismissed - judgment for defendants

Re Munro (Costs) (VSC) - costs - dismissal of caveator's application for 'probate caveat' - caveator to pay plaintiffs' costs from time at which 'it should have been clear' that sustaining caveat grounds had 'no real prospect'

In the Estate of Kunnen (Deceased) (SASC) - wills and estates - probate - 'unexecuted copy of a document' admitted to probate - applicant granted probate

Troy SMSF Pty Ltd as trustee for The Troy Superannuation Fund v Bux.Com Global Limited (WASC) - access to documents - non-party sought access to documents - application dismissed

Spry v McKenzie & Anor (NTSC) - wills and estates - succession - plaintiff de facto partner of deceased sought further provision from deceased's estate - claim dismissed

Summaries With Link (Five Minute Read)

[Liprini v McIntyre \[2019\] NSWSC 355](#)

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Supreme Court of New South Wales

Simpson AJ

Negligence - professional negligence - solicitors' duties - wills and estates - plaintiff sued 'former solicitors' in relation to their 'performance of legal services' - defendants were partners of firm - whether failure 'to discharge' duty of care by failure to bring proceedings prior to date of mediation - whether breach of duty by failure to make proposals in relation to content of orders agreed on at mediation - 'duty to take reasonable precautions against a risk of harm' - 'negligent formulation of orders' - advocates' immunity - s5B(1) *Civil Liability Act 2002* (NSW) - held: plaintiff failed to identify any risk of harm arising from failure to bring proceedings before mediation - even if risk identified, breach of duty not established - no breach of duty established in respect of formulation of agreement's terms and orders - judgment for defendants.

[View Decision](#)

[From Benchmark Friday, 10 May 2019]

Re Munro (Costs) [2019] VSC 243

Supreme Court of Victoria

Derham AsJ

Costs - Court summarily dismissed application for 'probate caveat' - plaintiff sought indemnity costs order against caveator - caveator sought that parties' costs be paid from estate or that there be no order concerning caveator's costs - prospects of success - held: caveator to pay plaintiffs' costs from time at which 'it should have been clear to the caveator's legal advisors that there was no real prospect' of sustaining caveat grounds - order made.

[Re Munro](#)

[From Benchmark Friday, 10 May 2019]

In the Estate of Kunnen (Deceased) [2019] SASC 53

Supreme Court of South Australia

Bampton J

Wills and estates - applicant sought admission to probate under s12(2) *Wills Act 1936* (SA) of 'unexecuted copy of a document' ("2015 document") - 2015 document appointed applicant executor - whether Court satisfied original 2015 document 'could not be found' - whether 'due execution' - whether 2015 document revoked prior wills - whether to draw inference original executed 2015 document was not destroyed - whether 2015 document expressed deceased's testamentary intentions - whether deceased intended 2015 document to constitute will - s12(2) *Wills Act 1936* (SA) - r64 *Probate Rules 2015* (SA) - held: 2015 document admitted to probate - probate of will granted to applicant.

[In the Estate of Kunnen](#)

[From Benchmark Friday, 10 May 2019]

Troy SMSF Pty Ltd as trustee for The Troy Superannuation Fund v Bux.Com Global Limited [2019] WASC 116

Supreme Court of Western Australia



Acting Principal Registrar Whitby

Access to documents - applicant non-party sought access to statement of claim and 'Minute of Consent Orders' - whether documents and been 'referred to in open court' - whether applicant demonstrated 'sufficient legitimate interest' - O67B r16(1) *Rules of the Supreme Court 1967* (WA) - held: application dismissed.

[Troy](#)

[From Benchmark Friday, 10 May 2019]

Spry v McKenzie & Anor [2019] NTSC 25

Supreme Court of the Northern Territory

Barr J

Wills and estates - succession - family provision - plaintiff, pursuant to s8 *Family Provision Act 1970*, sought order for provision from deceased's estate - whether plaintiff and deceased were 'de facto partners' at time of deceased's death - whether 'adequate provision' not made for plaintiff by deceased's will - held: plaintiff's claim dismissed.

[Spry](#)

[From Benchmark Friday, 10 May 2019]



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Dream-Time

By: Ella Higginson

It is the time when crimson stars
 Weary of heaven's cold delight,
And take, like petals from a rose,
 Their soft and hesitating flight
Upon the cool wings of the air
 Across the purple night.

It is the time when silver sails
 Go drifting down the violet sea,
And every poppy's crimson mouth
 Kisses to sleep a lovesick bee;
The fireweed waves her rosy plumes
 On pasture, hill and lea.

It is the time to dream—and feel
 The languid rocking of a boat,
The pushing ripple round the keel
 Where cool, deep-hearted lilies float,
And hear thro' wild syringas steal
 Some songster's drowsy note.

It is the time, at eve, to lie
 And in a hammock faintly sway,
To watch the golds and crimsons die
 Across the blue stretch of the bay;
To hear the sweet dusk tiptoe by
 In the footsteps of the day.

[Ella Higginson](#)

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