

Friday, 10 August 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)

Estate Reid; Roberts v Moses and Palmer (NSWSC) - wills and estates - family provision - determination of disputed construction question in relation to deceased's testamentary instruments - declarations and orders to be made

Kupronow v NSW Trustee & Guardian (NSWSC) - wills and estates - intestacy - application for Benjamin Order concerning administration of brother's intestate estate - application granted

Power v Smart (WASC) - costs - wills and estates - successful plaintiffs' application for costs order against defendants dismissed - unsuccessful defendants' application for payment of costs from estate dismissed - defendants to bear own costs

Booth v Brooks (TASSC) - wills and estates - family provision - testator's family maintenance - daughter of deceased granted sum of \$800,000 from deceased's estate

Cutting v Public Trustee for the Northern Territory (No 2) (NTSC) - wills and estates - succession - family provision - application for extension of time to seek provision from deceased's Will under s8 *Family Provision Act* (NT) or declaration that 'Purported Agreement' was 'valid and binding' - application dismissed

Summaries With Link (Five Minute Read)

[Estate Reid; Roberts v Moses and Palmer \[2018\] NSWSC 1145](#)

Supreme Court of New South Wales

Lindsay J

Wills and estates - family provision - determination of disputed construction questions in relation to deceased's testamentary instruments in family provision proceedings brought by deceased's niece by marriage - estate of about \$76 million - multitudinous claims on bounty - 'indulgent number of contestable testamentary instruments' - wills and codicils - 'gift of "income from dividends received" on shares' - Ch 3 *Succession Act 2006* (NSW) - *Income Tax Assessment Act 1997* (Cth) - held: declarations and orders to be made on construction of the wills and codicils.

[View Decision](#)

[From Benchmark Friday, 10 August 2018]

Kupronow v NSW Trustee & Guardian [2018] NSWSC 1169

Supreme Court of New South Wales

Kunc J

Wills and estates - intestacy - plaintiff sought Benjamin Order concerning administration of brother's intestate estate - held: Court satisfied that the last time family had heard of plaintiff's brother was when he left family home in Poland in 'early 1950s' - Court satisfied no family members had seen or heard of plaintiff's brother since then - enquiries had been made in Poland and with United States consulate in Australia - in appropriate to declare brother deceased - Court satisfied to grant application for Benjamin order.

[View Decision](#)

[From Benchmark Friday, 10 August 2018]

Power v Smart [2018] WASC 168 (S)

Supreme Court of Western Australia

Derrick J

Costs - wills and estates - plaintiffs were executors of deceased will - plaintiffs sought to pronounce will's 'force and validity' - defendants challenged will on bases of lack of testamentary capacity, lack of knowledge and approval of will's contents, and undue influence - Court upheld will's validity - defendants sought that no costs order be made against them, and that costs be paid out of estate - plaintiffs sought that defendants pay their costs, and that costs be paid on indemnity basis from certain date - whether unreasonable conduct - whether 'sufficient and reasonable grounds' for defendants to make undue influence allegations - held: Court not satisfied to grant costs order sought by plaintiffs - Court not satisfied to order that costs be paid out of estate - no costs order made against defendants - defendants to bear own costs.

[Power](#)

[From Benchmark Friday, 10 August 2018]

Booth v Brooks [2018] TASSC 35

Supreme Court of Tasmania

Holt AsJ

Wills and estates - family provision - applicant daughter of deceased sought provision from deceased's estate under *Testator's Family Maintenance Act 1912* (Tas) - deceased did not make provision for applicant - financial position of applicant - estate's 'size and nature' - relationship between deceased and applicant - relationship between deceased and those persons with competing claims to bounty - reasons for testator's lack of provision for applicant - whether applicant had been left without adequate provision - held: applicant had been left without adequate provision - applicant to be paid sum of \$800,000 from estate.

[Booth](#)

[From Benchmark Friday, 10 August 2018]

Cutting v Public Trustee for the Northern Territory (No 2) [2018] NTSC 51

Supreme Court of the Northern Territory

Hiley J

Wills and estates - succession - family provision - plaintiff sought extension of time to seek provision from deceased's Will under s8 *Family Provision Act* (NT) or declaration that 'Purported Agreement' between plaintiff and executors was 'valid and binding' - 'effluxion of time' - availability of evidence - whether delay excusable - whether plaintiff would suffer injustice if extension of time refused - whether unconscionable conduct by plaintiff - whether 'Purported Agreement' between plaintiff and executors required Court's approval - held: application dismissed.

[Cutting](#)

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Sonnet 76

By: William Shakespeare

Why is my verse so barren of new pride,
So far from variation or quick change?
Why with the time do I not glance aside
To new-found methods and to compounds strange?
Why write I still all one, ever the same,
And keep invention in a noted weed,
That every word doth almost tell my name,
Showing their birth and where they did proceed?
O, know, sweet love, I always write of you,
And you and love are still my argument;
So all my best is dressing old words new,
Spending again what is already spent:
For as the sun is daily new and old,
So is my love still telling what is told.

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

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