



Friday, 14 March 2025

## 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 (One Minute Read)

**Wesley Community Services Limited trading as Wesley Mission v Smith (NSWSC)** - Court found a will, on its proper construction, created a charitable trust, and imposed a cy pres scheme

**Bain & Anor v Ingham & Anor (SASC)** - one grandchild succeeded in family provision claim, while other grandchild failed

## HABEAS CANEM

Dive with pike



## Summaries With Link (Five Minute Read)

### **Wesley Community Services Limited trading as Wesley Mission v Smith [2025] NSWSC 154**

Supreme Court of New South Wales

Meek J

Charitable trusts - deceased left a will leaving real property to executors on trust, intending to benefit Wesley Mission - Wesley commenced proceedings, and there was no real dispute that relevant clauses of will, on their proper construction, created a charitable trust within the meaning of the *Charitable Trusts Act 1993* (NSW), that the sole surviving executor should be removed and Wesley appointed in his stead, or that the property should be transferred to Wesley to hold as trustee under s71 and s80 of the *Trustee Act 1925* (NSW) - held: absence of any real dispute between the parties did not *per se* justify the Court in finding a charitable trust or that removal of the executor was appropriate - property was in very poor condition, was not habitable, and was not suitable for any of the activities conducted by Wesley - object of construction of a will is to give effect to what the will-maker intended by the words used, having regard to admissible extrinsic evidence - here, deceased intended to create a trust for charitable purposes - words used more consistent with trust than other legal institution or relation, given use of the word 'purpose' on multiple occasions - Wesley using the property would divert resources away from its other works in order to renovate the property, and, even then, difficulty of access would severely limit the potential use of the land - original purpose had ceased to provide a suitable and effective method of using the trust property, engaging power in s9 of *Charitable Trusts Act* to apply a *cy pres* scheme - *cy pres* scheme imposed, under which Wesley was to sell the property and invest the proceeds of sale, and use the income from that investment in any of four named programs - on the proper construction of the will, Wesley was intended to be the trustee of the trust - order that Wesley replace executor as trustee.

[View Decision](#)

[From Benchmark Friday, 14 March 2025]

### **Bain & Anor v Ingham & Anor [2025] SASC 22**

Supreme Court of South Australia

Flouretzou AsJ

Family provision - deceased's daughter predeceased her and son survived her - daughter had son and daughter - deceased's will appointed her son as sole executor and gave him the entire estate - grandchildren made family provisions claims - held: *Inheritance (Family Provision) Act 1972* (SA) was in force when proceedings commenced and trial heard, but had since been repealed and replaced by the *Succession Act 2023* (SA) - transitional provision in new Act provided any proceedings commenced under the old Act but not finally determined should be continued and completed under the old Act - question regarding a testator's moral obligation to make provision for a grandchild is complex - grandchildren entitled to claim under old Act without needing to satisfy any other preconditions - new Act would have imposed additional precondition that either the intermediate parent predeceased the deceased, or the deceased

had maintained, or been legally obliged to maintain, the grandchild - relative remoteness of grandchild relationship a factor to be taken into account in determining adequate provision for proper advancement life - in particular circumstances the blood relationship can give rise to a valid moral claim by a grandchild on the bounty of the deceased - value of estate was about \$630,000 - given the modest size of this estate, unfortunate the matter needed to proceed to trial - both grandchildren had valid moral claims - grandson had not established he had been left without adequate provision for his maintenance, education and advancement in life - granddaughter had established that she has been left without adequate provision for her maintenance, education and advancement in life - granddaughter awarded fixed legacy of \$70,000.

[Bain & Anor](#)

[From Benchmark Friday, 14 March 2025]



# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Dewberry Group v Dewberry Engineers** (SCOTUS) - Disgorgement of profits in a trade mark infringement dispute brought under the United States Lanham Act may only be awarded against parties that are named defendants. Profits of defendant's affiliates are not statutorily subject to disgorgement

### Summaries With Link (Five Minute Read)

**Dewberry Group v Dewberry Engineers 604 US \_\_ (2025)**

Supreme Court of the United States

Plaintiff, Dewberry Engineers successfully sued Dewberry Group for trade mark infringement. Pursuant to the Lanham Act, the plaintiff sought damages measured by the amount of defendant's profits, known as disgorgement of profits. The plaintiff was awarded US\$43million. The judgment was affirmed by the Court of Appeals. However, the named defendant did not show any profits on its books. The profits attributable to the infringement appeared on the books of defendant's affiliated companies, and the trial court attributed the profits to the named defendant for purposes of ordering disgorgement. The Supreme Court (per Curiam by Kagan J; Sotomayor J concurring) reversed and remanded based on the plain meaning of the statutory language which permits as a measure of loss, disgorgement of the 'defendant's' profits. The Court found that the word 'defendant' in the statute can only refer to a party so named in the proceedings. The plaintiff had also argued that the Lanham Act allows for a 'just-sum' award of damages where a court is persuaded that the traditional measures of losses are inadequate. The Court declined to decide if the award of damages could be justified on the just-sum theory because this had not been employed by the trial court.

[Dewberry Group](#)



## Poem for Friday

### The Love Song of J. Alfred Prufrock

By T. S. Eliot

*S'io credesse che mia risposta fosse  
A persona che mai tornasse al mondo,  
Questa fiamma staria senza piu scosse.  
Ma perciocche giammai di questo fondo  
Non torno vivo alcun, s'i'odo il vero,  
Senza tema d'infamia ti rispondo.*

Let us go then, you and I,  
When the evening is spread out against the sky  
Like a patient etherized upon a table;  
Let us go, through certain half-deserted streets,  
The muttering retreats  
Of restless nights in one-night cheap hotels  
And sawdust restaurants with oyster-shells:  
Streets that follow like a tedious argument  
Of insidious intent  
To lead you to an overwhelming question ...

Oh, do not ask, "What is it?"  
Let us go and make our visit.

In the room the women come and go  
Talking of Michelangelo.

The yellow fog that rubs its back upon the window-panes,  
The yellow smoke that rubs its muzzle on the window-panes,  
Licked its tongue into the corners of the evening,  
Lingered upon the pools that stand in drains,  
Let fall upon its back the soot that falls from chimneys,  
Slipped by the terrace, made a sudden leap,  
And seeing that it was a soft October night,  
Curled once about the house, and fell asleep.

And indeed there will be time  
For the yellow smoke that slides along the street,  
Rubbing its back upon the window-panes;



There will be time, there will be time  
To prepare a face to meet the faces that you meet;  
There will be time to murder and create,  
And time for all the works and days of hands  
That lift and drop a question on your plate;  
Time for you and time for me,  
And time yet for a hundred indecisions,  
And for a hundred visions and revisions,  
Before the taking of a toast and tea.

In the room the women come and go  
Talking of Michelangelo.

And indeed there will be time  
To wonder, "Do I dare?" and, "Do I dare?"  
Time to turn back and descend the stair,  
With a bald spot in the middle of my hair —  
(They will say: "How his hair is growing thin!")  
My morning coat, my collar mounting firmly to the chin,  
My necktie rich and modest, but asserted by a simple pin —  
(They will say: "But how his arms and legs are thin!")  
Do I dare  
Disturb the universe?  
In a minute there is time  
For decisions and revisions which a minute will reverse.

For I have known them all already, known them all:  
Have known the evenings, mornings, afternoons,  
I have measured out my life with coffee spoons;  
I know the voices dying with a dying fall  
Beneath the music from a farther room.  
So how should I presume?

And I have known the eyes already, known them all—  
The eyes that fix you in a formulated phrase,  
And when I am formulated, sprawling on a pin,  
When I am pinned and wriggling on the wall,  
Then how should I begin  
To spit out all the butt-ends of my days and ways?  
And how should I presume?

And I have known the arms already, known them all—



# Benchmark

Arms that are braceleted and white and bare  
(But in the lamplight, downed with light brown hair!)  
Is it perfume from a dress  
That makes me so digress?  
Arms that lie along a table, or wrap about a shawl.  
    And should I then presume?  
    And how should I begin?

Shall I say, I have gone at dusk through narrow streets  
And watched the smoke that rises from the pipes  
Of lonely men in shirt-sleeves, leaning out of windows? ...

I should have been a pair of ragged claws  
Scuttling across the floors of silent seas.

And the afternoon, the evening, sleeps so peacefully!  
Smoothed by long fingers,  
Asleep ... tired ... or it malingers,  
Stretched on the floor, here beside you and me.  
Should I, after tea and cakes and ices,  
Have the strength to force the moment to its crisis?  
But though I have wept and fasted, wept and prayed,  
Though I have seen my head (grown slightly bald) brought in upon a platter,  
I am no prophet — and here's no great matter;  
I have seen the moment of my greatness flicker,  
And I have seen the eternal Footman hold my coat, and snicker,  
And in short, I was afraid.

And would it have been worth it, after all,  
After the cups, the marmalade, the tea,  
Among the porcelain, among some talk of you and me,  
Would it have been worth while,  
To have bitten off the matter with a smile,  
To have squeezed the universe into a ball  
To roll it towards some overwhelming question,  
To say: "I am Lazarus, come from the dead,  
Come back to tell you all, I shall tell you all"—  
If one, settling a pillow by her head  
    Should say: "That is not what I meant at all;  
    That is not it, at all."

And would it have been worth it, after all,





Would it have been worth while,  
After the sunsets and the dooryards and the sprinkled streets,  
After the novels, after the teacups, after the skirts that trail along the floor—  
And this, and so much more?—  
It is impossible to say just what I mean!  
But as if a magic lantern threw the nerves in patterns on a screen:  
Would it have been worth while  
If one, settling a pillow or throwing off a shawl,  
And turning toward the window, should say:  
    “That is not it at all,  
    That is not what I meant, at all.”

No! I am not Prince Hamlet, nor was meant to be;  
Am an attendant lord, one that will do  
To swell a progress, start a scene or two,  
Advise the prince; no doubt, an easy tool,  
Deferential, glad to be of use,  
Politic, cautious, and meticulous;  
Full of high sentence, but a bit obtuse;  
At times, indeed, almost ridiculous—  
Almost, at times, the Fool.

I grow old ... I grow old ...  
I shall wear the bottoms of my trousers rolled.

Shall I part my hair behind? Do I dare to eat a peach?  
I shall wear white flannel trousers, and walk upon the beach.  
I have heard the mermaids singing, each to each.

I do not think that they will sing to me.

I have seen them riding seaward on the waves  
Combing the white hair of the waves blown back  
When the wind blows the water white and black.  
We have lingered in the chambers of the sea  
By sea-girls wreathed with seaweed red and brown  
Till human voices wake us, and we drown.

Jeremy Irons reads The Love Song of J. Alfred Prufrock "The Love Song of J. Alfred Prufrock" by T. S. Eliot

<https://www.youtube.com/watch?v=adNOs1izBl8>

Thomas Stearns Eliot OM was born on 26 September 1888 in St Louis, Missouri. By the time he was 15, he spoke Greek, Latin, French and English, with some German. He was a leading poet, editor and publisher. He is also well known as an essayist. He started his working life as a clerk in the Colonial and Foreign department of Lloyd's as a linguist. By that time he had also studied Sanskrit, and knew French, Italian and German.

Well known works include *The Waste Land* and *The Hollow Men*. He regarded *Four Quartets* as his greatest masterpiece. He wrote that "*only those who will risk going too far can possibly find out how far one can go*". He received the Nobel Prize in Literature. He relinquished his American citizenship to become a British citizen. Having smoked heavily for most of his life, he suffered worsening problems with his lungs, until his death.

[https://en.wikipedia.org/wiki/T. S. Eliot](https://en.wikipedia.org/wiki/T._S._Eliot)

<https://tseliot.com/>

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