

Friday, 15 February 2019

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

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### Executive Summary (1 minute read)

**Re Webster** (VSC) - wills and estates - informal will - application for grant of probate in respect of informal document granted

**Re Black** (VSC) - wills and estates - informal will - Court satisfied to grant probate in respect of informal document

**North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd** (SASC) - restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs prima facie entitled to recover superannuation payments in respect of 'exempt employees'

**Monks v Monks** (WASC) - wills and estates - probate - deceased lacked testamentary at time of making will - declaration as to will's invalidity granted

**Southwell v Staite** (ACTSC) - wills and estates - family provision - defendants to pay plaintiff further amount to which she was entitled - extension of time to seek family provision order granted - family provision order refused

### Summaries With Link (Five Minute Read)

**Re Webster [2019] VSC 28**

Supreme Court of Victoria

McMillan J

Wills and estates - informal will - 'handwritten document' on A4 sheet of paper - plaintiff sought admission to probate of 'informal document' - whether there was a 'document' - whether document expressed or recorded deceased's testamentary intentions - whether deceased intended document to be her will - whether testamentary capacity established - ss7 & 9 *Wills Act 1997* (Vic) - balance of probabilities - held: Court satisfied to grant probate of informal document.

[Re Webster](#)

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## **Re Black [2019] VSC 29**

Supreme Court of Victoria

McMillan J

Wills and estates - informal will - handwritten document on both sides of notebook page - plaintiff, pursuant to s9 *Wills Act 1997* (Vic), sought admission of 'informal document' to probate - whether there was a 'document' - whether document expressed or recorded deceased's testamentary intentions - whether deceased intended document to be her will - whether testamentary capacity established - balance of probabilities - held: Court satisfied that probate be granted in respect of informal document without the alterations made on 7/9/14.

[Re Black](#)

[From Benchmark Friday, 15 February 2019]

## **North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd [2019] SASC 5**

Supreme Court of South Australia

Blue J

Restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs sought to recover in restitution from defendants payments 'in respect of exempt employees', contending payments made by 'operative mistake' - determination of preliminary issue - whether plaintiffs had 'prima facie entitlement to recover the payments in restitution, subject to any defences and assessment of quantum' - whether payroll manager's knowledge that plaintiffs were making the payments to exempt employees negated operative mistake finding in respect of the payments - held: plaintiffs were prima facie - entitled to recover superannuation payments in respect of exempt employees subject to 'defences' and assessment of quantum - preliminary issue determined.

[North Adelaide Service Partnership](#)

[From Benchmark Friday, 15 February 2019]

## **Monks v Monks [2019] WASC 16**

Supreme Court of Western Australia

Master Sanderson

Wills and estates - probate - plaintiff sought declaration that deceased's will was invalid due deceased's lack of testamentary capacity when will made - evidence supporting 'pleaded

particulars' - evidence of eighth defendant, who cared for deceased - medical evidence - held: 'crucial evidence' was 'Montreal Cognitive Assessment' - Court satisfied deceased lacked testamentary capacity - declaration granted that will was 'of no force and effect'.

[Monks](#)

[From Benchmark Wednesday, 13 February 2019]

**Southwell v Staite [2019] ACTSC 2**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Wills and estates - family provision - plaintiff, by Further Amended Application, contended she was not 'paid her one third share' of residue under Will - plaintiff also sought further provision from deceased's estate - plaintiff sought order under s57 *Administration and Probate Act 1929* (ACT) that defendants administer Will and also sought extension of time to seek family provision order under s8 *Family Provision Act 1969* (ACT) - whether plaintiff agreed to limit her claim in accordance with defendants' offer ("Acknowledgement and Acceptance of Terms of Offer") - delay - adequacy of explanation for delay - prejudice - held: defendants to pay plaintiff further amount to which she was entitled - extension of time granted - family provision order refused - proceeding 'otherwise dismissed'.

[Southwell](#)

[From Benchmark Friday, 15 February 2019]



# Benchmark

## **A Sonnet to the Noble Lady, the Lady Mary Wroth**

**By:** Ben Jonson

I that have been a lover, and could show it,  
Though not in these, in rithmes not wholly dumb,  
Since I exscribe your sonnets, am become  
A better lover, and much better poet.  
Nor is my Muse or I ashamed to owe it  
To those true numerous graces, whereof some  
But charm the senses, others overcome  
Both brains and hearts; and mine now best do know it:  
For in your verse all Cupid's armory,  
His flames, his shafts, his quiver, and his bow,  
His very eyes are yours to overthrow.  
But then his mother's sweets you so apply,  
Her joys, her smiles, her loves, as readers take  
For Venus' ceston every line you make.

[https://en.wikipedia.org/wiki/Ben\\_Jonson](https://en.wikipedia.org/wiki/Ben_Jonson)

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