

Friday, 15 March 2019

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

 Follow @Benchmark_Legal

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 (1 minute read)

Re Serar (VSC) - wills and estates - informal will - application for grant of probate of informal will - application refused

Naismith v Fraser (No 2) (VSC) - costs - wills and estates - Calderbank offer - unsuccessful application by plaintiff for provision from deceased's estate - plaintiff to pay defendants' costs - indemnity costs order granted

IMO the Will of Margaret Szadovszky, deceased (VSC) - wills and estates - application for executor's commission - application dismissed

Cranitch v Cranitch & Ors (QSC) - wills and estates - daughter of deceased did not duly exercise option to purchase property - property formed part of deceased's residuary estate for distribution under will - declarations granted

Ryan v Louie Zekas (WASC) - wills and estates - family provision - executors refused summary judgment in proceedings seeking order for sale of property - plaintiff granted injunction to restrain executors until determination of his family provision claim

Summaries With Link (Five Minute Read)

Re Serar [2019] VSC 139
Supreme Court of Victoria

McMillan J

Wills and estates - informal will - plaintiff sought grant of probate of informal will consisting of 'three typed pages and a cover page' - whether there was a 'document' expressing deceased's testamentary intentions - whether deceased intended that document be his last will - whether deceased had testamentary capacity - whether deceased 'knew and approved of' will - ss7 & 9 *Wills Act 1997* (Vic) - held: Court not satisfied deceased intended informal will to be his will - application refused.

[Re Serar](#)

[From Benchmark Friday, 15 March 2019]

Naismith v Fraser (No 2) [2019] VSC 19

Supreme Court of Victoria

Zammit J

Costs - wills and estates - plaintiff, under Pt IV *Administration and Probate Act 1958* (Vic) unsuccessfully sought provision from deceased's estate - determination of costs - whether parties' costs should be paid out of estate - whether failure to accept Calderbank offer unreasonable - r63.28 *Supreme Court (General Civil Procedure) Rule 2015* (Vic) - abolition of ss97(6) & 97(7) of the Act - downward revision of estate's net value after probate granted - held: plaintiff to pay defendants' costs - indemnity costs order granted.

[Naismith](#)

[From Benchmark Friday, 15 March 2019]

IMO the Will of Margaret Szadovszky, deceased [2019] VSC 85

Supreme Court of Victoria

Englefield JR

Wills and estates - plaintiff executor, under s65 *Administration and Probate Act 1958* (Vic), sought order for 'executor's commission' - 'central requirement' of s65 of the Act that the commission be 'just and reasonable' - 'pains and troubles' - 'seeking the Beneficiary's Consent' - administration's legal fees - opinion of counsel - criticisms of conduct of application - 'open offer' - held: application dismissed.

[IMO the Will](#)

[From Benchmark Friday, 15 March 2019]

Cranitch v Cranitch & Ors [2019] QSC 42

Supreme Court of Queensland

Davis J

Wills and estates - deceased by will gave daughter option to purchase property - daughter purported to exercise option - another daughter of deceased sought, pursuant to s6 *Succession Act 1981* (Qld), declarations that option to purchase property was not duly exercised and that the property formed part of deceased's residuary estate for distribution under will - proper construction of will - held: declarations granted.

[Cranitch](#)



[From Benchmark Friday, 15 March 2019]

Ryan v Louie Zekas [2019] WASC 11

Supreme Court of Western Australia

Master Sanderson

Wills and estates - family provision - two related proceedings - plaintiff in first proceeding (Mr Ryan) was seeking relief under *Family Provision Act 1972 (WA)* from deceased's estate - plaintiffs in second proceeding were executors of deceased's estate - executors sought order for property's sale - property owned by Mr Ryan and deceased's estate - executors sought summary judgment - Mr Ryan sought injunction to restrain property's sale - whether injunction should be granted pending determination of family provision claim - whether serious question to be tried - balance of convenience - held: summary judgment refused - injunction granted.

[Ryan](#)

[From Benchmark Friday, 15 March 2019]



Benchmark

Upon the Mountain's Distant Head

By: William Cullen Bryant

Upon the mountain's distant head,
With trackless snows for ever white,
Where all is still, and cold, and dead,
Late shines the day's departing light.

But far below those icy rocks,
The vales, in summer bloom arrayed,
Woods full of birds, and fields of flocks,
Are dim with mist and dark with shade.

'Tis thus, from warm and kindly hearts,
And eyes where generous meanings burn,
Earliest the light of life departs,
But lingers with the cold and stern.

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

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