

Friday, 16 October 2020

Weekly Wills, Estates and Superannuation Law

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering 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)

Battenberg v Phillips (NSWCA) - wills and estates - primary judge granted probate of deceased's will to executors - testatrix 'knew and approved' will's contents - appeal dismissed

Shelley v Prager (NSWSC) - wills and estates - succession - plaintiff adult daughter of deceased sought further provision from deceased father's estate - application dismissed

Re Sebasio (No 2) (QSC) - costs - wills and estates - probate - offer of compromise - conduct - applicant obtained grant of probate - respondent to pay applicant's costs on standard basis

Archibald v Field (WASC) - wills and estates - plaintiff by writ of summons sought grant of letters of administration of deceased's will - orders sought in writ of summons granted - application of 'proposed interveners' dismissed

Summaries With Link (Five Minute Read)

Battenberg v Phillips [2020] NSWCA 249

Court of Appeal of New South Wales

Macfarlan & Meagher JJA; Emmet AJA

Wills and estates - primary judge granted probate of deceased's will ('2016 Will') to respondents (executors) - appellant appealed - whether primary judge erroneously found executors discharged onus to prove testatrix 'knew and approved' 2016 Will's contents - whether, 'on the

totality of the evidence', primary judge should have found executors did not prove testatrix knew and approved 2016 Will's contents - whether testatrix had read 2016 Will 'out aloud' - held: appeal dismissed.

[View Decision](#)

[From Benchmark Monday, 12 October 2020]

Shelley v Prager [2020] NSWSC 1393

Supreme Court of New South Wales

Williams J

Wills and estates - succession - family provision - plaintiff was adult daughter of deceased - plaintiff sought further provision from deceased father's estate - whether deceased's will did not make adequate provision for 'proper maintenance, education or advancement in life' of plaintiff
Page v Hull-Moody [2020] NSWSC 411 - *Harris v Carter* [2020] NSWSC 196 - Ch 3 *Succession Act 2006* (NSW) - held: application dismissed.

[View Decision](#)

[From Benchmark Wednesday, 14 October 2020]

Re Sebasio (No 2) [2020] QSC 312

Supreme Court of Queensland

Callaghan J

Costs - wills and estates - probate - applicant obtained grant of probate - applicant sought indemnity costs order on basis of respondent's rejection of offer of compromise - alternatively applicant sought costs on standard basis - conduct - Court's 'absolute and unfettered discretion to award costs' - 'special consideration' for self-represented litigants - held: respondent to pay applicant's costs on standard basis.

[Re Sebasio](#)

[From Benchmark Monday, 12 October 2020]

Archibald v Field [2020] WASC 369

Supreme Court of Western Australia

Master Sanderson

Wills and estates - plaintiff by writ of summons sought grant of letters of administration of deceased's will - plaintiff was sister of deceased - remaining three sisters of deceased ('proposed interveners') sought that all four sisters be 'joint administrators' - held: proposed interveners' application dismissed - orders sought in writ of summons granted.

[Archibald](#)

[From Benchmark Friday, 16 October 2020]



Benchmark

To the Nightingale

By: John Milton

O NIGHTINGALE, that on yon bloomy spray
Warblest at eve, when all the woods are still;
Thou with fresh hope the lover's heart dost fill,
While the jolly Hours lead on propitious May.
Thy liquid notes that close the eye of day,
First heard before the shallow cuckoo's bill,
Portend success in love; O, if Jove's will
Have linked that amorous power to thy soft lay,
Now timely sing, ere the rude bird of hate
Foretell my hopeless doom, in some grove nigh;
10
As thou from year to year, hast sung too late
For my relief, yet had'st no reason why:
Whether the Muse or Love call thee his mate,
Both them I serve, and of their train am I.

5

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

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