



Friday, 16 November 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)

Stuart Henry Masters & Anor v NSW Trustee & Guardian as trustee for Genniece Merlene Gorey (NSWSC) - wills and estates - trusts and trustees - shares in company and 'associated water rights' formed part of testamentary trust - shares to be transferred to trustees

Royal Botanic Gardens and Domain Trust v The Attorney General of New South Wales (NSWSC) - judgement and orders - trusts and trustees - charitable trust - Court satisfied to order administrative scheme in respect of "The Lorna and Clive Backhouse of Mt Tomah Scholarship"

NSW Trustee & Guardian v Eleison (NSWSC) - judicial advice - wills and estates - application for judicial advice pursuant to s63 *Trustee Act 1925* (NSW) - form of question inappropriate for judicial advice - advice given only on preliminary question

Re Savio (VSC) - wills and estates - probate - defendant sought to amend objection to grant of probate to add ground of 'testamentary undue influence' - amendment refused

Re Gawley (deceased) (QSC) - wills and estates - probate - deceased executed three last wills 'of identical content' - Court satisfied Registrar should 'simply select and place an identifying mark' on one of the Wills for purposes of grant of probate

Summaries With Link (Five Minute Read)

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Stuart Henry Masters & Anor v NSW Trustee & Guardian as trustee for Genniece Merlene Gorey [2018] NSWSC 1670

Supreme Court of New South Wales

Rees J

Wills and estates - trusts and trustees - deceased made Will in 1969 leaving 'farming lands' on trust for grandsons - when deceased died in 2006 she owned farm and shares in company 'with associated water rights' - whether to appoint replacement trustees to testamentary trust - whether, at time of deceased's death, shares and associated water rights formed part of testamentary trust by law or Constitution of company - if shares and associated water rights did not form part of testamentary trust whether, on proper construction of Will, water rights were included in testamentary trust - whether, if water rights not included in testamentary trust, Will should be rectified - held: shares in company and associated water rights formed part of testamentary trust - shares to be transferred to trustees.

[View Decision](#)

[From Benchmark Friday, 16 November 2018]

Royal Botanic Gardens and Domain Trust v The Attorney General of New South Wales [2018] NSWSC 1666

Supreme Court of New South Wales

Kunc J

Judgments and orders - trusts and trustees - charitable trust - deceased by will left part of estate's residue to plaintiff on trust for establishment of "The Lorna and Clive Backhouse of Mt Tomah Scholarship" 'to be awarded every two years' to staff member at Mt Tomah Garden (Scholarship Trust) - Scholarship fund valued at approximately \$1.3 million - plaintiff sought to 'award scholarship annually and to more than one person in any year' - parties agreed, that subject to Court's consent, an administrative scheme be ordered giving plaintiff's intention effect (Scheme) - parties had agreed on orders - whether Court satisfied to order Scheme - Scheme's provision for income's accumulation - public interest - costs - held: Court satisfied to order Scheme - parties' costs should be paid from Scholarship Trust on indemnity basis.

[View Decision](#)

[From Benchmark Friday, 16 November 2018]

NSW Trustee & Guardian v Eleison [2018] NSWSC 1691

Supreme Court of New South Wales

Pembroke J

Judicial advice - trusts and trustees - wills and estates - trustee and executor sought judicial advice pursuant to s63 *Trustee Act 1925* (NSW) - issues which underpinned question's formulation were whether testator's death was caused by 'unlawful killing' of 'sole beneficiary' and whether forfeiture rule thus applied - whether form of propounded question was appropriate for application - whether appropriate to give advice - held: Court not satisfied that form of question was appropriate - advice given only on preliminary question - trustee not justified to distribute estate to Lenore Cusack's children as tenants in common in equal shares -

not appropriate to give advice on 'four substantive questions' following from the preliminary question.

[View Decision](#)

[From Benchmark Friday, 16 November 2018]

Re Savio [2018] VSC 676

Supreme Court of Victoria

McMillan J

Wills and estates - probate - plaintiff sought grant of probate of testatrix's last will - defendant caveator objected to plaintiff's application on basis testatrix lacked testamentary capacity - defendant sought to amend objection to add ground of 'testamentary undue influence' - whether demonstration of prima facie case for testamentary undue influence - held: summons dismissed.

[Re Savio](#)

[From Benchmark Friday, 16 November 2018]

Re Gawley (deceased) [2018] QSC 242

Supreme Court of Queensland

Henry J

Wills and estates - deceased executed three last wills 'of identical content' - executor sought grant of probate - proceedings concerned which of the three wills executed last - whether wills contained 'revocation clause' - whether 'temporal inconsistency or content inconsistency' between wills - *Townsend v Moore* [1905] P66, 83 - held: Court satisfied Registrar should 'simply select and place an identifying mark' on one of the Wills for purposes of grant of probate.

[Re Gawley](#)

[From Benchmark Friday, 16 November 2018]



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Spring, the sweet spring

By: Thomas Nashe

Spring, the sweet spring, is the year's pleasant king,
Then blooms each thing, then maids dance in a ring,
Cold doth not sting, the pretty birds do sing:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The palm and may make country houses gay,
Lambs frisk and play, the shepherds pipe all day,
And we hear aye birds tune this merry lay:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The fields breathe sweet, the daisies kiss our feet,
Young lovers meet, old wives a-sunning sit,
In every street these tunes our ears do greet:

Cuckoo, jug-jug, pu-we, to witta-woo!

Spring, the sweet spring!

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

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