

Benchmark

Friday, 21 September 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)

Nobarani v Mariconte (HCA) - wills and estates - unrepresented appellant - claim of interest in Will - denial of procedural fairness - appeal allowed - new trial

Newling v FSS Trustee Corporation (No 2) (NSWSC) - insurance - superannuation - refusal of total and permanent disability benefit under life insurance policy - proceedings dismissed

Bannon v Nauru Phosphate Royalties Trust (VSC) - contract - employment - superannuation - claims arising from termination of employment - plaintiff entitled to damages in respect of some claims - counterclaim upheld in part

Singer v Spiewak & Anor (VSC) - summary judgment - wills and estates - fiduciary duties power of attorney - claim concerning certain 'impugned dealings' - summary judgment refused

In the Estate of Hughes-Roberts (Deceased) (SASC) - wills and estates - deceased had Australian will and Thai will - application for probate of Australian will granted

Paton v Julie Marie Lloyd as executrix of the estate of James Laurence Paton (WASC) - wills and estates - probate - family provision - part of claim for family provision to be heard separately prior to hearing of 'revocation of grant' proceedings

Summaries With Link (Five Minute Read)

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Nobarani v Mariconte [2018] HCA 36

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Wills and estates - respondent claimed probate of will in solemn form - unrepresented appellant claimed interest in challenging handwritten will made by deceased - appeal concerned whether appellant should be granted new trial on basis of denial of procedural fairness in trial's conduct - on appeal to Court of Appeal of New South Wales, Ward JA concluded that appellant had been denied procedural fairness, but dismissed his appeal on basis a different outcome was not possible - Emmett AJA concluded appellant did not have interest in challenging Will and dismissed appeal on that basis - "substantial wrong or miscarriage" - r51.53(1) *Uniform Civil Procedure Rules 2005 (NSW)* - held: appellant had interest in will and was denied procedural fairness at hearing - denial of procedural fairness was material because possibility of successful outcome was denied to appellant - appeal allowed.

[Nobarani](#)

[From Benchmark Friday, 21 September 2018]

Newling v FSS Trustee Corporation (No 2) [2018] NSWSC 1405

Supreme Court of New South Wales

Parker J

Insurance - superannuation - plaintiff was former police officer - plaintiff discharged on medical grounds from police force - proceedings concerned plaintiff's claim for total and permanent disability (TPD) benefit under life insurance policy - first defendant was trustee of superannuation scheme (fund) - defendant provided benefits to fund members by obtaining insurance cover - second defendant issued policy to first defendant - second defendant found that plaintiff did not satisfy TPD definition under policy - held: second defendant had not failed to determine claim - no breach of duty by second defendant to plaintiff - no failure by second defendant to act reasonably in forming of opinion - second defendant did not form opinion which was not open to it - proceedings dismissed.

[View Decision](#)

[From Benchmark Friday, 21 September 2018]

Bannon v Nauru Phosphate Royalties Trust [2018] VSC 532

Supreme Court of Victoria

McDonald J

Contract - employment - superannuation - Mr Bannon employed by The Nauru Phosphate Royalties Trust (NPRT) - Mr Bannon's employment terminated - Mr Bannon claimed damages for breach of contract, contending he was entitled to fees and other amounts - estoppel by convention - held: claim for Secretary/Director fees dismissed - claim for damages for notice of termination of employment dismissed - claim for accrued annual leave upheld but quantum reduced - claim for leave loading dismissed - claim for back pay of salary increase upheld - Mr Bannon entitled to damages for 12 weeks redundancy pay, and for accrued long service leave entitlements, and for accrued sick leave - counterclaim for damages for funds advanced to Mr

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Bannon in excess of amount he expended on NPRT's behalf upheld in respect of one financial year

[Bannon](#)

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Singer v Spiewak & Anor [2018] VSC 521

Supreme Court of Victoria

Lansdowne AsJ

Summary judgment - wills and estates - fiduciary duties - power of attorney - claim concerning certain 'impugned dealings' - plaintiff sought summary judgment in respect of aspects of claim - plaintiff submitted defendants had no real prospect of success on own evidence - whether defence fanciful - scope of duty - consent - Powers of Attorney Act 2014 (Vic) - ss63 & 64 Civil Procedure Act 2010 (Vic) held: Court not satisfied to grant summary judgment - summary judgment refused.

[Singer](#)

[From Benchmark Friday, 21 September 2018]

In the Estate of Hughes-Roberts (Deceased) [2018] SASC 133

Supreme Court of South Australia

Bampton J

Wills and estates - applicant sought that probate of will executed by deceased brother be granted to her as sole executor named in will - deceased died in Thailand - deceased had two wills; an Australian will and a Thai will - whether Australian will was valid - whether Australian will was revoked by Thai will - held: deceased did not intend that Thai will should revoke Australian will - deceased intended to make Thai will to dispose of Thai assets - Court satisfied deceased intended applicant to be executor of Australian will - probate granted - disclosure of assets and liabilities required by r8 *Probate Rules 2015* (SA) need not include Thai estate's value.

[In the Estate of Hughes Roberts](#)

[From Benchmark Friday, 21 September 2018]

Paton v Julie Marie Lloyd as executrix of the estate of James Laurence Paton [2018]

WASC 273

Supreme Court of Western Australia

Smith J

Judgments and orders - wills and estates - probate - family provision - interlocutory application - defendant to two actions sought that family provision proceedings be determined before 'revocation of grant' proceedings - *Family Provision Act 1972* (WA) - O1 r4B(1) & O4A r2 *Rules of the Supreme Court 1971* (WA) - held: Court concluded that part of claim for family provision should be heard separately, prior to hearing of revocation of grant proceedings - order made.

[Paton](#)

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Page 4

Benchmark

Drifting Flowers of the Sea

By: Sadakichi Hartmann

Sadakichi Hartmann

Across the dunes, in the waning light,
The rising moon pours her amber rays,
Through the slumbrous air of the dim, brown night
The pungent smell of the seaweed strays—

From vast and trackless spaces
Where wind and water meet,
White flowers, that rise from the sleepless deep,
Come drifting to my feet.

They flutter the shore in a drowsy tune,
Unfurl their bloom to the lightlorn sky,
Allow a caress to the rising moon,
Then fall to slumber, and fade, and die.

White flowers, a-bloom on the vagrant deep,
Like dreams of love, rising out of sleep,
You are the songs, I dreamt but never sung,
Pale hopes my thoughts alone have known,
Vain words ne'er uttered, though on the tongue,
That winds to the sibilant seas have blown.

In you, I see the everlasting drift of years
That will endure all sorrows, smiles and tears;
For when the bell of time will ring the doom
To all the follies of the human race,
You still will rise in fugitive bloom
And garland the shores of ruined space.

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

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