

Friday, 26 April 2019

Weekly Wills Estates and Superannuation Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Wills Estates and Superannuation Law

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Executive Summary (1 minute read)

Murray v McOnie (No 2) (NSWSC) - costs - indemnity costs - wills and estates - judicial advice - executor's costs of bringing application - costs orders made

Demediuk v Demediuk (VSCA) - wills and estates - probate - revocation - refusal of leave to amend Grounds of Objection to grant of probate of Will - appeal allowed

In The Estate of Leslie Wayne Quinn (deceased) (QSC) - wills and estates - informal will - applicant sought declaration that 'video recording' was deceased's will - applicant sought grant of letters of administration with copy of recording's transcript attached - application granted

Finnegan & Anor v Garner & Ors (QSC) - wills and estates - estate's executors and trustees sought directions concerning estate's distribution and orders barring claims on estate - directions and orders granted

Summaries With Link (Five Minute Read)

Murray v McOnie (No 2) [2019] NSWSC 392

Supreme Court of New South Wales

Ward CJ in Eq

Costs - wills and estates - executor of deceased's estate sought judicial advice - executor sought costs on indemnity basis from deceased's estate - executor sought that orders' burden

'should fall on the defendants' out of defendants' share of proceeds of sale estate's 'main asset' - whether certain costs should be granted on indemnity basis from deceased's estate - whether certain costs should be borne by defendant or defendants - held: costs orders made.

[View Decision](#)

[From Benchmark Friday, 26 April 2019]

Demediuk v Demediuk [2019] VSCA 79

Court of Appeal of Victoria

Kaye & T Forrest JJA; Champion AJA

Wills and estates - probate - revocation - trial judge refused to grant applicants leave to amend their Grounds of Objection to grant of probate of late father's Will - applicants sought to appeal - presumption of revocation - whether, in determining whether a testator 'intentionally revoked' a Will which testator executed and which was missing at time of death of testator, Court could consider matters 'antecedent to or contemporaneous with' missing Will's execution - whether 'appropriate basis' to exclude matters from objections grounds concerning revocation - held: appeal allowed.

[Demediuk](#)

[From Benchmark Friday, 26 April 2019]

In The Estate of Leslie Wayne Quinn (deceased) [2019] QSC 99

Supreme Court of Queensland

Lyons SJA

Wills and estates - deceased took own life in 2015 - deceased had 'made a video recording on his iPhone' (video recording) in 2011 - deceased called the video recording his Will - video recording recorded deceased's wishes concerning disposition of deceased's property after death of deceased - video recording did not meet valid Will's requirements - applicant wife of deceased sought declaration that video recording was deceased's Will - applicant also sought grant of letters of administration with copy of recording's transcript attached - whether video recording was informal will which met requirements of s18 *Succession Act 1981* (Qld) - testamentary capacity - held: application granted.

[In The Estate of Leslie Wayne Quinn](#)

[From Benchmark Friday, 26 April 2019]

Finnegan & Anor v Garner & Ors [2019] QSC 100

Supreme Court of Queensland

Crow J

Wills and estates - applicants were executors and trustees of deceased's will - applicants, pursuant to s96 *Trusts Act 1973* (Qld) (Trusts Act) and s6 *Succession Act 1981* (Qld), sought direction they were justified to distribute estate under 'Deed of Agreement' notwithstanding Will's terms, and were justified 'in not pursuing' second respondent concerning debts which second respondent owed to estate - applicants, pursuant to s68(3) Trusts Act, also sought barring of second and third respondents' claims on estate, enabling trust property to be dealt with



regardless of claims - held: directions granted - orders barring second and third respondents' claims granted.

[Finnegan](#)

[From Benchmark Friday, 26 April 2019]



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From: The Tempest

By: William Shakespeare, 1564 - 1616

Come unto these yellow sands,
And then take hands:
Court'sied when you have, and kiss'd,--
The wild waves whist--
Foot it featly here and there;
And, sweet sprites, the burthen bear.
Hark, hark!
Bow, wow,
The watch-dogs bark:
Bow, wow.
Hark, hark! I hear
The strain of strutting chanticleer
Cry, Cock-a-diddle-dow!

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