



Friday, 29 March 2024

Weekly Wills, Estates and Superannuation Law

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

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 (One Minute Read)

Re Bourikas (VSC) - Court granted probate of a copy will where the original was probably under the control of one of the named executors, who had not responded in accordance with Court orders

HABEAS CANEM

The scent on the breeze



Summaries With Link (Five Minute Read)

Re Bourikas [2024] VSC 96

Supreme Court of Victoria

Gobbo AsJ

Succession - a deceased left a will naming his three children as executors and leaving the whole of his estate to them in equal shares - two of the children commenced proceedings in the Supreme Court seeking orders that the third child show cause why she should not bring the will of the deceased into Court and either prove the will or renounce probate; that that third child be passed over as executor of the deceased's estate; that the plaintiff children be entitled to prove the will; and that the plaintiffs' costs be paid by the third child personally - a Judicial Registrar made self-executing orders as sought, to take effect if the third child did not file any affidavits in accordance with the orders by a certain date - the third child did not file any affidavits, and did not bring the will into Court - the plaintiff children then commenced proceedings, seeking that a copy of the will be admitted to probate - held: where the original will is unavailable, a copy will may be admitted to probate, if the Court is satisfied that copy will is a true copy and the original was duly executed - the propounder must establish: (1) the will existed; (2) the will revoked all previous wills; (3) the presumption of destruction by the deceased *animo revocandi* is overcome; (4) evidence of the terms of the will; and (5) evidence of due execution of the will - the evidence established that the deceased left a duly executed will, the terms of which were clear with a photocopy available - an affidavit of due execution has been filed by the solicitor who witnessed the will, who was independent - based on the unchallenged evidence, the Court accepted that the evidence established that, irrespective of whether the presumption of destruction arose or not, it was comfortably rebutted - the evidence suggested that the original will was probably at the deceased's former residence under the control of the third child, or that the third child had destroyed it - grant of probate made - costs to be borne by the third child's share of the estate.

[Re Bourikas](#)

[From Benchmark Friday, 29 March 2024]



INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Lifestyle Equities v Amazon UK Services Ltd (UKSC) - In a cross-border sale of merchandise where the same trade mark was owned by different entities in USA and UK, Amazon was liable for trade mark infringement where UK customers were targeted by Amazon's US website

Summaries With Link (Five Minute Read)

Lifestyle Equities v Amazon UK Services Ltd [2024] UKSC 8,

Supreme Court of the United Kingdom

Lord Hodge, Lord Briggs, Lord Hamblen, Lord Burrows, & Lord Kitchin

The trade mark at issue was the 'Beverly Hills Polo Club' brand. The holder of the mark in the EU/UK was Lifestyle Equities which is unrelated to the brand owner in the USA. A UK resident ordered US sourced goods bearing the trade mark through Amazon's US website. The owner of the EU trade mark contended that Amazon was liable for trade mark infringement because it targeted consumers in the UK/EU. This matter concerned conduct that occurred before Brexit. Applying EU law, the Supreme Court said that Amazon could only be liable for trade mark infringement in a cross-border sale if it in fact targeted consumers in the UK. The mere fact that a foreign website is accessible to a UK resident is insufficient to establish targeting of a UK consumer. The question for the court was whether an average consumer within the UK, who is reasonably well-informed and observant, would consider the website targeted at that consumer. The Court found that targeting had occurred because Amazon offered to deliver to the UK, in a dialog box Amazon specified which goods could be shipped to the UK, and specified UK delivery times and featured the option to pay in British currency. The Supreme Court also stated that Amazon's subjective intent was not the key issue. Rather, the question was one of objective fact taken from the perspective of the average consumer. Intent may, however, be taken into account to the extent it is relevant to the objective assessment made by the court.

[Lifestyle Equities](#)

Poem for Friday

The Nightingale

By: Sara Coleridge (1802-1852)

In April comes the Nightingale,
That sings when day's departed;
The poets call her Philomel,
And vow she's broken-hearted.

To them her soft, sweet, ling'ring note
Is like the sound of sorrow;
But some aver, no need hath she
The voice of grief to borrow.

No, 'tis the merry Nightingale,
Her pipe is clear and thrilling;
No anxious care, no keen regret,
Her little breast is filling.

She grieves when boys have robb'd her nest,
But so would Stork or Starling;
What mother would not weep and cry
To lose her precious darling?

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