



Friday, 30 August 2024

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 (One Minute Read)

Pillinger v Lees (NSWSC) - family provision should be made to long term wife for whom insufficient provision had been made in a will

Re Johnson; Blackham v Blackham (VSC) - co-executor removed as executor due to a conflict of interest that he had shown an inability to manage in a manner that protected the interests and welfare of all beneficiaries

HABEAS CANEM

McGregor the puppy



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Summaries With Link (Five Minute Read)

Pillinger v Lees [2024] NSWSC 1067

Supreme Court of New South Wales

Hmelnitsky J

Family provision; a wife sought family provision under s59 of the *Succession Act 2006* (NSW) in relation to the estate of her late husband - the estate contained parcels of real property - the will left the wife two thirds of one of those properties - held: it was common ground that the will made insufficient provision for the plaintiff - she had been married to the deceased for 40 years, was dependent on him, and cared for him during his illness until his death - she required a fund to produce income and to help her meet contingencies - the bond of matrimony gives rise to a testamentary obligation - children of the deceased had also demonstrated financial needs that the Court considered to be quite pressing - it was just and equitable that one of the children should bear significantly more of the burden of the additional provision for the wife than either of other two children - the Court raised with the parties possible ways of structuring the further provision, but did not express any concluded view - parties to file and serve submissions as to the orders appropriate to give effect to the Court's conclusions.

[View Decision](#)

[From Benchmark Friday, 30 August 2024]

Re Johnson; Blackham v Blackham [2024] VSC 497

Supreme Court of Victoria

Keogh J

Succession - siblings who were co-executors and trustees of their deceased mother's estate obtained probate of the deceased's last will - the estate was comprised almost entirely of a residential property, in which the one of the co-executors (the defendant) lived but did not pay rent to the estate - the plaintiff co-executor wished to sell the property, administer the estate, and discharge her duties to the beneficiaries - the plaintiff alleged the defendant had failed to fulfill his duties as executor, by having an irreconcilable conflict between his duty as executor and his personal interest, having failed to cooperate to ensure the efficient and timely sale of the property, and having adopted an unreasonably antagonistic approach - the plaintiff sought that the defendant be removed as co-executor and trustee - held: s34 of the *Administration and Probate Act 1958* (Vic) gives the Court power to discharge or remove an executor - not every conflict of duty and interest requires removal of an executor - the will itself may show that the testator was aware that his or her executor would face a potential conflict of duty and interest - the paramount consideration is the welfare of the beneficiaries and the protection of their interests in the estate - there was a clear conflict of interest here - by his conduct, the defendant had shown an inability to manage that conflict in a manner that protected the interests and welfare of all beneficiaries - there had been unreasonable delay by the defendant in providing documents and taking necessary steps to discharge the mortgage on the property and transmit it into the names of the executors - the defendant had not taken any step towards selling the property in circumstances where he acknowledged the obvious benefit he derived from

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continuing to live in the property rent-free - the antagonistic behaviour by the defendant towards his siblings and the legal practitioners involved in the administration of the estate suggested that future cooperation with the plaintiff to administer the estate was unlikely - defendant removed as co-executor and trustee.

[Re Johnson; Blackham](#)

[From Benchmark Friday, 30 August 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd (UKSC) - Manchester Ship Canal company was not barred from bringing a common law damages claim for trespass and nuisance against a public utilities company that discharged raw, untreated and foul sewage into the canal from outfalls lawfully maintained by the sewerage authority

Summaries With Link (Five Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd [2024] UKSC 22

Supreme Court of the United Kingdom

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Rose, Lord Richards

In a declaratory ruling, the Supreme Court was asked to decide whether the Manchester Ship Canal Company could bring a claim against the statutory sewerage authority for discharges of foul sewage into the canal. The defendant, United Utilities, was the statutory sewerage authority for North West England and owned about 100 outfalls from which treated sewage was discharged into the canal. However, sometimes untreated sewage was discharged into the canal as well. No allegation was made that the discharge of untreated sewage was caused by negligence. However, it could have been avoided through improved infrastructure. The High Court, upheld by the Court of Appeal, found that a canal owner could not bring a claim based on nuisance or trespass against a sewerage operator unless the discharge was the result of negligence or deliberate wrongdoing. The Supreme Court unanimously allowed the Canal Company's appeal. Sewerage is regulated by the *Water Industry Act 1991* and the Supreme Court held that nothing in the legislation permitted or authorised a sewerage authority to discharge foul water through outfalls. Inasmuch as the statute did not authorise the activity, common law remedies were available. The Court rejected the defence that the only way to avoid fouling the canal would be to construct sewerage infrastructure and that was a matter for Parliament. The Court found that there was nothing in the legislation indicating that Parliament intended to extinguish common law rights of action. While an injunction against further discharge presented questions relating to the process of regulatory approval for capital expenditures by the sewerage authority, that did not mean that common law-based awards for damages for invasion of property rights were precluded.

[Manchester Ship Canal Co](#)



Poem for Friday

i carry your heart with me

by e.e. cummings (1894-1962)

i carry your heart with me (i carry it in
my heart) i am never without it (anywhere
i go you go, my dear; and whatever is done
by only me is your doing, my darling)

i fear

no fate (for you are my fate, my sweet) i want
no world (for beautiful you are my world, my true)
and it's you are whatever a moon has always meant
and whatever a sun will always sing is you

here is the deepest secret nobody knows
(here is the root of the root and the bud of the bud
and the sky of the sky of a tree called life; which grows
higher than soul can hope or mind can hide)
and this is the wonder that's keeping the stars apart

i carry your heart (i carry it in my heart)

Edward Estlin Cummings (e.e. cummings), an American poet, essayist and playwright was born on 14 October 1894 in Cambridge Massachusetts. His parents encouraged his creativity, and included in their circle of friends artists, philosophers and writers. Cummings's father was a professor at Harvard, and later a minister of the Unitarian church. Cummings wrote poetry from the age of 8. Cummings was an ambulance driver during the first world war. He was interned in a camp in Normandy in the first world war, for having expressed anti-war sentiments. During his life he wrote about 2900 poems. He returned to Paris many times throughout his life. It has been written of Cummings that "No one else has ever made avant-garde, experimental poems so attractive to the general and the special reader," and "Cummings is a daringly original poet, with more vitality and more sheer, uncompromising talent than any other living American writer."

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian parents. He trained at the Royal Central School of Speech and Drama in London. In the



UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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