

Friday, 30 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)

**Petersen Superannuation Fund Pty Ltd v Bank of Queensland Limited (No 3) (FCA)** - judgments and orders - approval of settlement - 'fraudulent Ponzi scheme' - settlement approved with disallowance of 'substantial amount' of claimed legal costs and funding charges

**Re Estate McNamara (NSWSC)** - succession - family provision - 'testamentary disclaimer of any intention to benefit the plaintiff' - Court satisfied to grant provision from deceased's estate in amount of \$75,000

**Re Kohout; Rubinstein v D'Aquino (VSC)** - wills and estates - probate - plaintiff sought probate of deceased's last will - caveator objected on basis there were circumstances giving rise to suspicion that deceased 'did not know and approve' of last will's contents - prima facie case not established - caveat struck out

**Application by Horner (VSC)** - wills and estates - probate - application for Court's directions concerning six questions of law in relation to 'cremated remains' of applicant's parents - inappropriate to consider questions - proceeding dismissed

**Lopes v Taranto (VSCA)** - contract - deed of loan - wills and estates - applicants liable under guarantees they executed in favour of first applicant's uncle - appeal dismissed

### Summaries With Link (Five Minute Read)

# Benchmark

## **Petersen Superannuation Fund Pty Ltd v Bank of Queensland Limited (No 3) [2018] FCA 1842**

Federal Court of Australia

Murphy J

Judgements and orders - approval of settlement - applicant sought Court's approval of class action's settlement - class action had arisen due to 'fraudulent Ponzi scheme' in which financial advisor 'and associated companies misappropriated people's 'retirement savings' by withdrawing money from 'Money Market Deposit Accounts which respondents operated - disproportionality between amount of settlement money and amount of legal costs and 'litigation funding charges' - s33V *Federal Court of Australia Act 1976* (Cth) - held: Court satisfied to approve settlement but disallowed 'substantial amount' of claims for legal costs and funding charges.

[Petersen](#)

[From Benchmark Friday, 30 November 2018]

## **Re Estate McNamara [2018] NSWSC 1661**

Supreme Court of New South Wales

Lindsay J

Succession - family provision - defendant was deceased's older son - plaintiff was defendant's younger son - deceased died, granting probate to defendant - deceased made 'testamentary disclaimer of any intention to benefit the plaintiff' - plaintiff, under chapter 3 *Succession Act 2006* (NSW), sought family provision order from deceased's estate or notional estate - plaintiff's relationship with deceased - defendant's 'greater claim' on deceased's bounty - held: Court satisfied to grant provision from deceased's estate in amount of \$75,000.

[View Decision](#)

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## **Re Kohout; Rubinstein v D'Aquino [2018] VSC 686**

Supreme Court of Victoria

McMillan J

Wills and estates - probate - plaintiff sought grant of probate of deceased's last will - caveator was beneficiary under penultimate will of deceased - caveator objected to application on basis there were circumstances giving rise to suspicion that deceased 'did not know and approve' of last will's contents - whether caveator established prima facie case - held: caveator's objection did not establish prima facie case - caveat struck out.

[Re Kohout](#)

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## **Application by Horner [2018] VSC 736**

Supreme Court of Victoria

McMillan J

Wills and estates - probate - applicant sought directions on six questions of law in relation to

'cremated remains' of his parents - father had been executor of mother's estate - applicant and his two siblings (John and Jane) were executors of father's estate - John and Jane were not parties to proceeding - application's 'basis and breadth' - whether siblings aware of application - whether applicant 'had obtained legal advice or representation' - whether applicant had sought pro bono assistance - O54. *Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Re Atkinson* [1971] VicRp 73 - held: Court found it was inappropriate to consider the questions where there were disputes between applicant, John and Jane, and 'unknown contested issues of fact' - proceeding dismissed.

[Horner](#)

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### **Lopes v Taranto [2018] VSCA 288**

Court of Appeal of Victoria

Kyrou, McLeish & Hargrave JJA

Contract - deed of loan - wills and estates - County Court held applicants liable under guarantees they executed in favour of first applicant's uncle - respondent was executor of uncle's deceased estate - question was whether uncle 'was ever owed' money claimed by his estate under guarantees - applicants contended that, in finding uncle made loan to 'alleged debtor', judge had relied on an estoppel which respondent had not pleaded - applicants also contended judge erred in finding estoppel established - applicants also contended judge erred in alternatively finding respondent established 'alleged debtor' indebted to uncle 'other than by way of loan' - whether borrower owed amount to respondent's uncle at time of execution of deed of loan - whether 'guarantees constituted security' for deed of loan - whether privity between applicants and borrower - whether deed of loan bound guarantors - whether estoppel arose on deed of loan's proper construction - whether proper pleadings - held: appeal dismissed.

[Lopes](#)

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# Benchmark

## **Autumn**

**By:** Alexander Posey

In the dreamy silence  
Of the afternoon, a  
Cloth of gold is woven  
Over wood and prairie;  
And the jaybird, newly  
Fallen from the heaven,  
Scatters cordial greetings,  
And the air is filled with  
Scarlet leaves, that, dropping,  
Rise again, as ever,  
With a useless sigh for  
Rest—and it is Autumn.

[https://en.wikipedia.org/wiki/Alexander\\_Posey](https://en.wikipedia.org/wiki/Alexander_Posey)

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