

Friday, 31 July 2020

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)

Rushton v Commonwealth Superannuation Corporation (No 2) (FCA) - costs - first respondent sought that costs of 'notice of objection to competency' and 'interlocutory application' 'be its costs in the cause' - application refused

Re Janson; Gash v Ruzicka (VSC) - wills and estates - succession - plaintiff sought further provision from deceased father's estate - lack of evidence of plaintiff's 'financial situation' - provision order refused

Re Vidal (VSC) - wills and estates - probate - plaintiff sought probate of document as 'informal will' of deceased under s9 *Wills Act 1997* (Vic) - application granted

Royal Brisbane and Women's Hospital Foundation v Attorney-General for the State of Queensland & Anor (QSC) - wills and estates - succession - applicant sought declaration whether, on will's proper construction, applicant was 'entitled to both the income and capital of the funds held on trust in perpetuity' - applicant entitled only to income - declaration made

The Will of Edwin Marsden Tooth, Re; Ex parte Corporation of the Synod of the Diocese of Brisbane (QSC) - wills and estates - application for declarations as to will's proper construction - 'true nature' of gift in will - declaration made

Hookway v Hookway (TASSC) - contract - wills and estates - corporations - Heads of Agreement was 'void, unenforceable, and of no effect' - judgment for plaintiff

Summaries With Link (Five Minute Read)

Rushton v Commonwealth Superannuation Corporation (No 2) [2020] FCA 1049

Federal Court of Australia

Griffiths J

Costs - first respondent sought that costs of costs of 'notice of objection to competency' and 'interlocutory application' 'be its costs in the cause' - whether to vary orders - whether first respondent should have benefit of 'favourable costs order' - approach of first respondent to seek 'multiple alternative forms of relief' - 'scatter-gun approach' - conduct - s43 *Federal Court of Australia Act 1976* (Cth) - ordinary rule that costs follow event - held: application refused.

[Rushton](#)

[From Benchmark Monday, 27 July 2020]

Re Janson; Gash v Ruzicka [2020] VSC 449

Supreme Court of Victoria

McMillan J

Wills and estates - succession - plaintiff, pursuant to pt IV *Administration and Probate Act 1958* (Vic), sought further provision from deceased father's estate - defendant agreed deceased had 'moral duty' to make provision for 'proper maintenance and support' of plaintiff and that deceased's will did not 'provide adequate provision' for plaintiff - insufficiency of 'moral claim alone' - plaintiff's onus to 'lead sufficient evidence of her financial situation' - lack of evidence of financial situation of plaintiff - held: further provision refused.

[Re Janson](#)

[From Benchmark Monday, 27 July 2020]

Re Vidal [2020] VSC 451

Supreme Court of Victoria

McMillan J

Wills and estates - 'handwritten document' - deceased died intestate - 'intestacy beneficiaries' were his three siblings - plaintiff was niece of deceased - plaintiff sought probate of document as 'informal will' of deceased under s9 *Wills Act 1997* (Vic) - 'single sheet of paper, handwritten in Spanish' - *Re Application of Brown; Estate of Springfield* (1991) 23 NSWLR 535 - whether document recorded deceased's testamentary intentions - whether deceased intended document to act as will - testamentary capacity - held: application granted.

[Re Vidal](#)

[From Benchmark Tuesday, 28 July 2020]

Royal Brisbane and Women's Hospital Foundation v Attorney-General for the State of Queensland & Anor [2020] QSC 222

Supreme Court of Queensland

Boddice J

Wills and estates - succession - applicant was 'statutory successor' of 'Foundation' - applicant was beneficiary under deceased's will - applicant sought declaration whether, on will's proper construction, applicant was 'entitled to both the income and capital of the funds held on trust in perpetuity' - *Congregational Union of New South Wales v Thistlethwayte* [1952] HCA 48 - *Melbourne Jewish Orphan and Children's Aid Society Inc v ANZ Executors and Trustee Company Ltd* [2007] VSC 26 - held: deceased did not intend applicant 'to take anything more than the income' - declaration made.

[Royal](#)

[From Benchmark Tuesday, 28 July 2020]

The Will of Edwin Marsden Tooth, Re; Ex parte Corporation of the Synod of the Diocese of Brisbane [2020] QSC 214

Supreme Court of Queensland

Martin J

Wills and estates - deceased left 'detailed will with two codicils' - proceedings concerned 'true nature' of gift in will - whether gift 'absolute' - whether gift 'subject to a trust' - Corporation of the Synod of the Diocese of Brisbane (Corporation) submitted gift was for 'charitable purpose' and that 'a trust was created' - Corporation sought declarations as to will's proper construction - whether clause of will created 'absolute gift' - held: Corporations 'beneficially entitled' to gift - Corporation had 'all the powers of an absolute owner' in respect of gift.

[The Will of Edwin Marsden](#)

[From Benchmark Wednesday, 29 July 2020]

Hookway v Hookway [2020] TASSC 36

Supreme Court of Tasmania

Blow CJ

Contract - wills and estates - corporations - parties signed "Heads of Agreement" which commenced with statement: "It is intended that these heads of agreement shall be binding and that the terms will be reflected in a more formal document to be executed prior to 14 December 2018." - no 'formal document' executed - parties accepted Heads of Agreement 'intended to constitute a binding and enforceable contract' but plaintiff contended no binding and enforceable contract was created - plaintiff sought declaration Heads of Agreement was "void, unenforceable or otherwise legally ineffective" - defendant contended there was a binding and enforceable contract - defendant counterclaimed for specific performance orders - held: Heads of Agreement was 'void, unenforceable, and of no effect' - judgment for plaintiff on counterclaim.

[Hookway](#)

[From Benchmark Friday, 31 July 2020]



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About Ben Adhem

By: Leigh Hunt

Abou Ben Adhem (may his tribe increase!)

Awoke one night from a deep dream of peace,

And saw, within the moonlight in his room,

Making it rich, and like a lily in bloom,

An angel writing in a book of gold:—

Exceeding peace had made Ben Adhem bold,

And to the presence in the room he said,

"What writest thou?"—The vision raised its head,

And with a look made of all sweet accord,

Answered, "The names of those who love the Lord."

"And is mine one?" said Abou. "Nay, not so,"

Replied the angel. Abou spoke more low,

But cheerly still; and said, "I pray thee, then,

Write me as one that loves his fellow men."

The angel wrote, and vanished. The next night

It came again with a great wakening light,

And showed the names whom love of God had blest,

And lo! Ben Adhem's name led all the rest.

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

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