
**THE PRIORITY OF THE TRUST IN
THE AGE OF SUPERANNUATION**

By

(Maree)

Lisa M Butler

B Com, LLB (Hons)

**Barrister and Solicitor of the Supreme Court of
Victoria**

**Submitted in fulfilment of the requirements for the
Degree of Doctor of Philosophy**

University of Tasmania

Faculty of Law

October 2003

Cent
Thesis
BUTLER
Ph.D.
2004

THE
UNIVERSITY
OF TASMANIA
LIBRARY

Statements

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidate's knowledge and belief no material previously published or written by another person except where due acknowledgment is made in the text of the thesis.

This thesis may be made available for loan and limited copying in accordance with the *Copyright Act 1968* (Cth).



.....

Lisa M Butler

12 October 2003

This thesis states the law as at 1 September 2003

ABSTRACT

The phrase *superannuation law* does not signify a single faceted law that governs superannuation. To the contrary, it can be conceptualised as an umbrella that shades the intersection of various competing bodies of law that together govern the superannuation industry.

This thesis identifies, through an evolutionary analysis of the historical development of superannuation in Australia, three main features that characterise the regulation of the superannuation industry. *First*, superannuation schemes operate in a regulated environment. *Secondly*, the provision of superannuation is usually effected through the mechanism of the trust. *Finally*, the provision of superannuation is intrinsically linked with the contractual employment relationship. It is the bodies of law at the foundation of these features that interact together to provide a core basis of regulation of superannuation, not only in Australia but also in the four comparator jurisdictions addressed in this thesis, the United Kingdom, New Zealand, Ontario (Canada) and Hong Kong.

Inherent in any interactionary relationship is the presence of conflicts or tensions. This thesis proposes a mechanism for improving the structured interaction of the foregoing bodies of law, thereby providing a basis for the minimisation of conflict and tension in superannuation law. The mechanism proposed for the achievement of this objective is the "superannuation relationship framework".

The superannuation relationship framework is premised upon a schema of priorities that orders the application of the various competing bodies of law. At the heart of the framework is the concept of priority of the trust. Thus, according to the *first* limb of the framework, trust law and accompanying equitable principles must be used in priority to all other principles of law for the settlement of any issues arising in the context of a superannuation fund. The elevation of trust principles is premised upon the attributes of the trust being the preferred vehicle for the delivery of the social objectives of superannuation.

However, in recognition that the trust is the "preferred" vehicle as opposed to a "perfect" vehicle, and to mitigate against a rigid adherence to trust principles where the social objectives of superannuation are denied, the *second* limb of the superannuation relationship

framework dictates that principles of trust law be used in priority to all other principles except where:

- the use of trust principles deny the fulfilment of a main objective of superannuation; or
- the rationale underlying the relevant trust principle is redundant in the context of superannuation.

The framework provides a standard against which current statutory provisions, new legislative initiatives and the reasoning of the judiciary can be analysed in areas where the interaction of the various bodies of law produces tension or conflict. Moreover, in that the trust is argued to be the ideal vehicle for the delivery of superannuation objectives but not the “perfect” vehicle, the framework is relevant for the purpose of assessing the suitability of general trust principles in their application to superannuation issues. In the context of this thesis, the framework is applied to selective issues that have raised concern and debate, including: (i) the statutory duties imposed on trustees; (ii) the statutory restrictions placed upon the influence and participation of the employer; and (iii) the general law decisions in respect of surpluses, amendment of trust deeds, and the powers and duties of employers and trustees.

Acknowledgements and Thanks

Pension schemes resemble cricket, or horse racing, or poker – the list could be extended almost indefinitely – in that either you are fascinated by them or you find them stupefyingly boring; there is no middle ground for “don’t knows”. It will be apparent that I am not ashamed to be counted among the former faction. I hope I may have persuaded some of you that there is real interest in seeing how some long-standing trust principles are being tested in this relatively new and very important field.

Sir Robert Walker

“Some Trust Principles in the Pensions Context”

in Oakley (ed), *Trends in Contemporary Trust Law* (Clarendon Press, 1996), p 134

Like Sir Robert Walker, I am clearly to be counted as among the “former faction”. In the pursuit of this interest I have many acknowledgements and thanks to make. First and foremost to my supervisors, Associate Professor Gino Dal Pont and Professor Donald Chalmers for their support and encouragement. Especial thanks goes to Associate Professor Dal Pont for his efficiency and timeliness in the review of drafts as well as his absolute attention to detail.

A challenge in the completion of this thesis has been accessing materials. As superannuation law is not generally a subject on the law curriculum or a typical research area for academics it has been difficult to find suitable materials. To this end I am grateful for the funds extended to me to enable national and international research travel. I particularly acknowledge in this regard receipt of the Archibald McDougall Scholarship (University of Tasmania) and the Libby Slater Award (International Pensions and Employee Benefits Lawyers Association).

I am grateful also for the extension of discounts to conferences held by the Law Council of Australia Superannuation Committee and the International Pensions and Employee Benefits Lawyers Association. Moreover, I extend thanks to the Faculty of Law, particularly my supervisors, for the provision of funds for additional research and travel expenditure.

Thanks are also due to the many practitioners who have kindly allowed access to materials and or given of their time to meet with me and discuss issues of superannuation law. In particular, I extend my thanks to the following persons and institutions:

- Ms Dona Campbell (Lawyer, Sack Goldblatt Mitchell (Ontario))
- Mr Robin Ellison (Head of Strategic Developments (Pensions), Pinsent Curtis Biddle (UK))
- Mr John Evans (Partner, Gadens Lawyers)
- Justice Eileen Gillese (Ontario Court of Appeal)
- Mr Mark Grant (Partner, CMS Cameron McKenna (UK))
- Associate Professor Lusina Ho (University of Hong Kong, Faculty of Law)
- Ms Florence Holden (Senior Consultant, Towers Perrin (Ontario))
- Mr Martin Horan (Managing Solicitor, Mellon Legal)
- Professor Kathryn Kennedy (The John Marshall Law School (Chicago))

- Dr Elizabeth Lanyon (formerly of Monash University, Faculty of Law)
- Professor Julie Maxton (University of Auckland, Faculty of Law)
- Ms Pamela McAlister (Director of Legal and Technical Operations in the Financial Services Regulation Directorate at ASIC)
- Professor Peter McGovern (John Marshall Law School (Chicago))
- Ian McSweeney (Partner, Osler, Hoskin & Harcourt (Ontario))
- John Morgan (Partner, Allens Arthur Robinson (Sydney))
- Ms Karen Mumgaard (Solicitor, CMS Cameron McKenna (London))
- David Reckenberg (AXA (Melbourne))
- Professor Ralph Scane (University of Western Ontario, Faculty of Law)
- Mr Mark Todd (Partner, Bell Gully (NZ))
- Ms Marita Wall (Superannuation Complaints Tribunal)
- Mr Donovan Waters QC (Counsel to Bull, Housser and Tupper (British Columbia))
- Monash University, Faculty of Law
- University of Hong Kong, Faculty of Law

I extend many thanks to the staff of the University of Tasmania Law Library for their continual willingness to assist, particularly in finding those obscure citations. Also, I extend my appreciation to all staff and postgraduates at the University of Tasmania Faculty of Law for having provided a friendly and supportive environment for the completion of this work. In this respect, special thanks goes to Samantha and Jenny for their comic relief, and also to the latter for some editorial support.

Finally, I extend thanks to my family, especially my Mum, for their support, patience and encouragement.

TABLE OF CONTENTS

Table of Cases	vi
Table of Statutes	xvi
Selected Abbreviations	xx

CHAPTER 1: INTRODUCTION

1.1 Context	2
1.2 Historical Underpinnings	4
1.2.1 The Age of the Entrepreneur.....	5
1.2.2 The Age of the Professional Business Manager	7
1.2.3 The Age of the Portfolio Manager	9
1.2.4 The Age of Superannuation	12
1.2.5 Synthesis	14
1.3 The Nature of the Superannuation Law	14
1.4 Objectives	16
1.5 Methodology and Structure	17
1.6 Scope	18
1.7 Terminological Note	20

CHAPTER 2: THE AGE OF SUPERANNUATION: CURRENT REGULATION

Introduction	22
2.1 The Statutory Regulation of Superannuation	23
2.1.1 The SIS Act and Regulations.....	24
2.1.2 The RSA Act and Regulations	31
2.1.3 The Superannuation Complaints Tribunal.....	32
2.2 Superannuation and Trusts	33
2.2.1 Generally.....	33
2.2.2 The Provisions of a Superannuation Trust Deed	34
2.2.3 Trustees.....	35
2.2.3.1 Capacity.....	35
2.2.3.2 Constitution	36
2.2.3.3 Appointment and Removal	37
2.2.3.4 Duties of Superannuation Fund Trustees	38
2.2.4 Trust Property	43
2.2.4.1 Contributions	44
2.2.4.2 Duty to Invest	45
2.2.4.3 Preservation of Benefits.....	46

2.2.5	Beneficiaries.....	46
2.3	Superannuation, Trust and the Employment Relationship.....	49
2.3.1	Construction of Trust Instruments.....	51
2.3.2	Amendment of Trust Deeds.....	51
2.3.3	The Employer's Implied Obligation of Good Faith.....	52
2.3.4	Surpluses.....	53
2.3.5	Conflicts of Interest.....	55
2.3.6	Duty of Impartiality.....	56
Conclusion	.....	57

CHAPTER 3: JURISDICTIONS OTHER THAN AUSTRALIA

Introduction	.....	59
3.1 United Kingdom	.....	60
3.1.1	The United Kingdom Legislative Scheme.....	63
3.1.2	Occupational Pension Schemes and Trusts.....	66
3.1.2.1	Scheme Documentation.....	67
3.1.2.2	Trustees.....	68
3.1.2.3	Trust Property.....	70
3.1.2.4	Beneficiaries.....	74
3.1.3	Pension Schemes, Trusts and the Employment Relationship.....	75
3.2 Canada	.....	80
3.2.1	The Ontario Pensions Legislative Scheme.....	81
3.2.2	Pension Plans and Trusts.....	84
3.2.2.1	Documentation.....	85
3.2.2.2	Administrators.....	86
3.2.2.3	Trustees.....	89
3.2.2.4	Trust Property.....	90
3.2.2.5	Beneficiaries.....	91
3.2.3	Pension Plans, Trusts and the Employment Relationship.....	92
3.3 New Zealand	.....	94
3.3.1	The New Zealand Superannuation Legislative Scheme.....	95
3.3.2	Superannuation Schemes and Trusts.....	96
3.3.2.1	Provisions of the Trust Instrument.....	96
3.3.2.2	Trustees.....	97
3.3.2.3	Trust Property.....	98
3.3.2.4	Beneficiaries.....	98
3.3.3	Superannuation Schemes, Trusts and the Employment Relationship.....	98
3.4 Hong Kong Special Administrative Region	.....	100
3.4.1	The Mandatory Provident Fund Legislative Scheme.....	101
3.4.2	The Mandatory Provident Fund and Trusts.....	104
3.4.2.1	Scheme Documentation.....	105
3.4.2.2	Trustees.....	106
3.4.2.3	Trust Property.....	110
3.4.2.4	Beneficiaries.....	114
3.4.3	MPF, Trusts and the Employment Relationship.....	114
Conclusion	.....	115

**CHAPTER 4:
A SUPERANNUATION RELATIONSHIP FRAMEWORK**

Introduction	118
4.1 Trust: The Chosen One	119
4.2 The Analysis of Regulation	121
4.2.1 Regulatory Analysis: Stage One – Objectives of Regulation.....	123
4.2.1.1 SG Scheme.....	124
4.2.1.2 SIS Scheme	129
4.2.2 Regulatory Analysis: Stages Two & Three – Alternatives & Selection	133
4.2.2.1 Trust	134
4.2.2.2 Contract.....	150
4.2.2.3 Company	165
4.3 Industry Preference	181
4.4 Superannuation Relationship Framework – Outline and Application	186
Conclusion	190

**CHAPTER 5:
THE INTERACTION OF TRUST AND LEGISLATION**

Introduction	193
5.1 Trustees: Capacity	194
5.1.1 Disqualified Persons.....	196
5.1.2 Approved Trustees	198
5.1.3 The Proposed Universal Licensing Regime.....	202
5.1.3.1 Competency	205
5.1.3.2 Risk Management Plans.....	207
5.1.3.3 Resource Assessment – The Relevance of Capital	210
5.1.3.4 Ongoing Supervision.....	221
5.1.3.5 Registration	222
5.1.3.6 Extension to Employer-Sponsored Funds?.....	222
5.1.3.7 Synthesis	229
5.2 Trustees: Constitution & Representative Trusteeship	231
5.2.1 Lack of Independence	236
5.2.2 Concerns regarding Competence	238
5.2.3 Balance of Representation	240
5.3 Trustees: Duties & Covenants	242
5.3.1 General Approach	244
5.3.2 Covenant (a) – Honesty	245
5.3.3 Covenant (b) – Standard of Care	247
5.3.3.1 Ordinary Person versus Business Person.....	250
5.3.3.2 The Property of Another	259
5.3.3.3 Care, Diligence and “Skill”	260
5.3.3.4 Professional Trustees	261
5.3.3.5 Synthesis.....	265
5.3.4 Covenant (f) – Investment	267
5.3.5 Covenant (g) – Reserves	270
Conclusion	270

**CHAPTER 6:
THE INTERACTION OF TRUST AND THE EMPLOYMENT
RELATIONSHIP**

Introduction	273
6.1 The General Interpretation of Superannuation Trust Deeds	276
6.1.1 A General Interpretative Approach	277
6.1.2 A Limited Influence	280
6.2 Surplus	283
6.2.1 The General Approach to "Ownership"	286
6.2.2 Actuarial Surplus	289
6.2.2.1 Contribution Holidays	293
6.2.2.2 Payments to Employers	302
6.2.3 Realised Surplus	303
6.2.3.1 Source of Contributions	306
6.2.3.2 Application of the Presumption	310
6.2.4 Statutory Initiatives	318
6.3 Amendment	323
6.3.1 General Law	323
6.3.1.1 The Main Purpose of the Fund	325
6.3.1.2 The Permanent Alienation Clause	329
6.3.1.3 Protection of Members' Interests and Benefits	332
6.3.1.4 Synthesis: General Principles of Amendment	334
6.3.2 Statutory Initiatives	335
6.4 Employers: The Exercise of Powers and Discretions	338
6.4.1 Fiduciary Powers and Discretions	338
6.4.2 Non-Fiduciary Powers and Discretions	339
6.4.2.1 The Implied Obligation of Good Faith – Meaning and Scope	340
6.4.2.2 Analysis – SRF and the Implied Obligation of Good Faith	347
6.4.2.3 A Preferred Approach?	350
6.4.3 Statutory Initiatives	355
6.5 Trustees: The Exercise of Duties, Powers and Discretions	357
6.5.1 General Principles	357
6.5.2 The Relevance of the Employer's Interest	358
6.5.1.1 Support for a Reformulation of the Best Interests Duty?	359
6.5.1.2 The Juristic Nature of the Best Interests Duty	363
6.5.1.3 Appropriate Consideration of the Employer's Interest	366
6.5.3 Reasons	368
6.5.1.1 Inapplicable Rationale	369
6.5.1.2 Arguments Against Relaxation of the "No Reasons" Rule	380
6.5.1.3 Implementation	385
Conclusion	388

**CHAPTER 7:
CONCLUSION**

7.1 Overview..... 396

7.2 Synthesis and Conclusions 397

 7.2.1 Superannuation Relationship Framework – Foundations 397

 7.2.2 Superannuation Relationship Framework – Application 398

7.3 Specific Recommendations 404

7.4 Other Jurisdictions..... 406

7.5 The Future 407

7.6 Concluding Remark 407

Bibliography..... 408

TABLE OF CASES

Australia

- AA and Australian Prudential Regulation Authority, Re* (2002) 66 ALD 443
- Adamson v Reid* (1880) 6 VLR (E) 164
- Amalgamated Metal Workers' Union v Shell Refining (Australia) Pty Ltd* (1993) 27 ATR 195
- Ansett Australia Ground Staff Superannuation Plan Pty Ltd v Ansett Australia Ltd* [2002] VSC 576
- Ascot Investments Pty Ltd v Harper* (1981) 148 CLR 337
- Asea Brown Boveri Superannuation Fund No 1 Pty Ltd v Asea Brown Boveri Pty Ltd* [1999] 1 VR 144
- Attorney-General v Breckler* (1999) 197 CLR 83
- Austin v Austin* (1906) 3 CLR 516
- Australian Home Finance Ltd, Re* [1956] VLR 1
- Australian Metropolitan Life Assurance Co Ltd v Ure* (1923) 33 CLR 199
- Australian Securities Commission v AS Nominees Ltd* (1995) 133 ALR 1
- BHLSPF Pty Ltd v Brashs Pty Ltd* [2001] VSC 512
- Brady v Stapleton* (1952) 88 CLR 322
- Breckler v Leshem* (Unreported, Full Court of the Federal Court of Australia, Lockhart, Heerey and Sundberg JJ, 12 February 1998)
- Breen v Williams* (1996) 186 CLR 71
- Burton, Re* (1994) 126 ALR 557
- Caboche v Ramsay* (1993) 119 ALR 215
- Cachia v Westpac Financial Services Ltd* (2000) 170 ALR 65
- Case 22/98* 98 ATC 282
- Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337
- Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373
- Coram, Re* (1992) 109 ALR 353

- Corporate Affairs Commission v Papoulias* (1990) 20 NSWLR 503
- Coulls v Bagot's Executor and Trustee Co Ltd* (1967) 119 CLR 460
- Craig, Re* (1952) 52 SR (NSW) 265
- Croton v R* (1967) 41 ALJR 289
- Daniels v Anderson* (1995) 16 ACSR 607
- Daniels v Anderson* (1995) 37 NSWLR 438
- Dawson v Dawson* [1945] VLR 99
- Distillers Company Bio-Chemicals (Australia) Pty Ltd v AJAX Insurance Co Ltd* (1973) 130 CLR 1
- DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties* [1980] 1 NSWLR 510
- Duke Group Ltd (in liq) v Pilmer* (1998) 27 ACSR 1
- Dyer, Re* [1935] VLR 273
- Elder's Trustee and Executor Company Ltd v Higgins* (1962) 113 CLR 426
- Enhill Pty Ltd, Re* [1983] 1 VR 561
- Esso Australia Ltd v Australian Petroleum Agents' & Distributors' Association* [1999] 3 VR 642
- Fitzsimmons v R* (1997) 23 ACSR 355
- Fouche v Superannuation Fund Board* (1952) 88 CLR 609
- Furs Ltd v Tomkies* (1936) 54 CLR 583
- Gamble v Hoffman* (1997) 24 ACSR 369
- Gas and Fuel Corporation of Victoria v Fitzmaurice* (1991) 22 ATR 10
- Glenn v Federal Commissioner of Land Tax* (1915) 20 CLR 490
- Graham Australia Pty Ltd v Perpetual Trustee WA Ltd* (1989) 1 WAR 65
- Graham v Gibson* (1882) 8 VLR (Eq) 43
- Guazzini v Paterson* (1918) 18 SR (NSW) 275
- Hartigan Nominees Pty Ltd v Rydge* (1992) 29 NSWLR 405
- Herskope v Perpetual Trustees (WA) Ltd* (2002) 41 ACSR 707
- HIH Superannuation, Re* [2003] NSWSC 65
- Hobart Bridge Co Ltd v Federal Commissioner of Taxation* (1951) 82 CLR 372
- Hurley v BGH Nominees Pty Ltd* (1982) 1 ACLC 387
- Inge v Inge* (1990) 3 ACSR 63
- International Vending Machines Pty Ltd and the Companies Act, Re* (1961) WN (NSW) 465

- James Miller Holdings Ltd v JD Graham* (1978) 3 ACLR 604
- Karger v Paul* [1984] VR 161
- Kelly v New Zealand Insurance Company Ltd* (1996) 9 ANZ Ins Cas ¶61-317
- Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722
- Knudsen v Kara Kar Holdings Pty Ltd* [2000] NSWSC 715
- Koczorowski, Re* [1974] Qd R 177
- Lawrence v Morris* (2002) 115 IR 385
- LGSS Pty Ltd v Egan* [2002] NSWSC 1171
- Lock v Westpac Banking Corporation* (1991) 25 NSWLR 593
- Lutheran Church of Australia South Australia District Incorporated v Farmers' Co-operative Executors and Trustees Ltd* (1970) 121 CLR 628
- Maciejewski v Telstra Super Pty Ltd* (1998) 44 NSWLR 601
- Maciejewski v Telstra Super Pty Ltd (No 2)* [1999] NSWSC 341
- Manning v Federal Commissioner of Taxation* (1928) 40 CLR 506
- Marchesi v Barnes* [1970] VR 434
- McLean v Burns Philip Trustee Co Pty Ltd* (1985) 2 NSWLR 623
- McMahon v Cooper* (1904) 4 SR(NSW) 433
- McMillian v McMillian* (1891) 17 VLR 33
- Meat Industry Employees Superannuation Fund Pty Ltd v Petrucelli* (Unreported, Supreme Court of Victoria, Nathan J, 28 February 1992)
- Miller v Cameron* (1936) 54 CLR 572
- Minehan v AGL Employees Superannuation Pty Ltd* (1998) 134 ACTR 1
- Mitchell (decd), Re* [1955] VLR 120
- Muschinski v Dodds* (1985) 160 CLR 583
- National Wage Case 1983* (1983) 4 IR 429
- National Wage Case June 1986* (1985) 14 IR 187
- National Wage Case March 1987* (1987) 17 IR 65
- National Wage Case 1991* (1991) 36 IR 120
- Ngurli Ltd v McCann* (1953) 90 CLR 425
- Nicholson v Permakraft (NZ) Ltd (in liq)* (1985) 3 ACLC 453
- Octavo Investments Pty Ltd v Knight* (1979) 144 CLR 360

- Pelham v Pelham* [1955] SASR 53
- Pennell (decd), Re* [1945] VLR 302
- Permanent Building Society (in liq) v Wheeler* (1994) 14 ACSR 109
- Permanent Trustee Australia Ltd, Re* (1994) 33 NSWLR 547
- Peters' American Delicacy Co Ltd v Health* (1939) 61 CLR 457
- Plimsoll v Drake* (1995) 4 Tas R 334
- Rapa v Patience* (Unreported, Supreme Court of New South Wales, McLelland J, 4 April 1985)
- Rees v Dominion Insurance Co of Australia Ltd (in liq)* (1981) 6 ACLR 71
- Registrar of Accident Compensation Tribunal v Commissioner of Taxation (Cth)* (1993) 178 CLR 145
- Rouse v IOOF Australia Trustees Ltd* (1999) 73 SASR 484
- Scott (decd), Re* [1948] SASR 193
- Simersall, Re* (1992) 108 ALR 375
- Simes & Martin Pty Ltd v Dupree* (1990) 55 SASR 278
- Sinnott v Hockin* (1882) 8 VLR (E) 205
- Sir Moses Montefiore Jewish Home v Howell & Co (No 7) Pty Ltd* [1984] 2 NSWLR 406
- Sky v Body* (1970) 92 WN (NSW) 934
- Southern Resources Ltd v Residues Treatment & Trading Co Ltd* (1990) 56 SASR 455
- Spellson v George* (1992) 26 NSWLR 666
- Spies v The Queen* (2000) 201 CLR 603
- Stephenson's Settled Estates, Re* (1906) 6 SR (NSW) 420
- Strauss v Wykes* [1916] VLR 200
- Sycotex Pty Ltd v Baseler* (1994) 122 ALR 531
- Telstra Super Pty Ltd v Flegeltaub* (2000) 45 ATR 470
- Thorby v Goldberg* (1964) 112 CLR 597
- Tierney v King* [1983] 2 Qd R 580
- Tivoli Freeholds Ltd, Re* [1972] VR 445
- Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) 165 CLR 107
- Uncle v Parker* (1994) 55 IR 120
- Vidovic v Email Superannuation Pty Ltd* (Unreported, Supreme Court of New South Wales, Bryson J, 3 March 1995)

- VX99B v Australian Prudential Regulation Authority, Re* (2003) 71 ALD 483
- Walker v Willis* [1969] VR 778
- Walker v Wimborne* (1976) 137 CLR 1
- Whitehouse, Re* [1982] Qd R 196
- Wilkinson v Clerical Administrative & Related Employees Superannuation Pty Ltd* (1998) 152 ALR 332
- William Just (No 1), Estate of* (1973) 7 SASR 508
- Wilson v Metro Goldwyn Mayer* (1980) 18 NSWLR 730
- Winthrop Investment Ltd v Winns Ltd* [1975] 2 NSWLR 666
- Zimpel (decd), Re* [1963] WAR 171
- Zurich Australian Insurance Ltd, Re* (1999) 10 ANZ Ins Cas ¶61-429

Canada

- Anova Inc Employee Retirement Pension Plan (Administrator of) v Manufacturers Life Insurance Co* (1994) 121 DLR (4th) 162
- Bathgate v National Hockey League Pension Society* (1992) 98 DLR (4th) 326
- Bobemier v Centra Gas Manitoba Inc* (1999) 170 DLR (4th) 310
- Buschau v Rogers Cablesystems Inc* (1999) 165 DLR (4th) 668
- Canada Trust Co and Cantol Ltd, Re* (1979) 103 DLR (3d) 109
- Canadian Pacific Air Lines Ltd v Canadian Imperial Bank of Commerce* (1988) 42 DLR (4th) 375
- CASAW Local 1 v Alcan Smelters and Chemicals Ltd* (2001) 198 DLR (4th) 504
- CUPE-CLC, Local 1000 v Ontario Hydro* (1989) 58 DLR (4th) 552
- Fales v Canada Permanent Trust Co* (1976) 70 DLR (3d) 257
- Froese v Montreal Trust Co of Canada* (1996) 137 DLR (4th) 725
- Hockin v Bank of British Columbia* (1989) 36 BCLR (2d) 220
- Hockin v Bank of British Columbia* (1990) 71 DLR (4th) 11
- Hockin v Bank of British Columbia* (1995) 123 DLR (4th) 538
- Hospitals of Ontario Pension Plan v Ontario Hospital Association* [1991] PLR 125
- McInerney v MacDonald* (1992) 93 DLR (4th) 415
- Molson's Brewery (Ont) Ltd v Ontario (Pension Commission)* (1969) 7 DLR (3d) 298
- National Trust Co and Sulpetro Ltd, Re* (1990) 66 DLR (4th) 271

R v Blair (1993) 106 DLR (4th) 1

Reevie and Montreal Trust Co of Canada, Re (1986) 25 DLR (4th) 312

Schmidt v Air Products of Canada Ltd (1994) 115 DLR (4th) 631

Trent University Faculty Association v Trent University (1992) 99 DLR (4th) 451

New Zealand

Beckbessinger, Re [1993] 2 NZLR 362

Board of Management of the Bank of New Zealand Officers' Provident Association v Bank of New Zealand [1999] PLR 117

Board of Management of the Bank of New Zealand Officers' Provident Association v McDonald [2002] PLR 501

Boat Park Ltd v Hutchinson [1999] 2 NZLR 74

Capral Fiduciary Ltd v Ladd (1999) 1 NZSC ¶30-548

Cullen v Pensions Holdings [1992] 14 PBLR (14)

Cullen v Pensions Holdings Ltd (1993) 1 NZSC ¶30-534

Jones v AMP Perpetual Trustee Co NZ Ltd [1994] 1 NZLR 690

Kynaston v Clark. (Unreported, High Court (New Zealand), Master Venning, 7 August 1998)

Manukau City Council v Lawson [2001] 1 NZLR 599

Motorola New Zealand Superannuation Fund, Re [2001] 3 NZLR 50

Mulligan (decd), Re [1998] 1 NZLR 481

Official Assignee v NZI Life Superannuation Nominees Ltd [1995] 1 NZLR 684

UEB Industries Ltd Pension Plan, Re [1990] 3 NZLR 347

UEB Industries Ltd Pension Plan, Re [1992] 1 NZLR 294

Vermeulen v SIMU Mutual Insurance Association (1997) 4 ANZ Ins Cas ¶60-812

Wilkins v District Court at Auckland (1997) 11 PRNZ 232

United Kingdom

Abbey Malvern Wells Ltd v Ministry of Local Government and Planning [1951] Ch 728

ABC Television Ltd Pension Scheme, Re (Unreported, Chancery Division, 22 May 1973, Foster J)

Agip (Africa) Ltd v Jackson [1992] 4 All ER 385

Air Jamaica Ltd v Charlton [1999] 1 WLR 1399

- Aitken v Christy Hunt* [1991] PLR 1
- Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656
- Armitage v Nurse* [1997] 3 WLR 1046
- Ball's Settlement Trusts, Re* [1968] 1 WLR 899
- Banque Financiere de la Cite SA v Westgate Insurance Co Ltd* [1991] 2 AC 249
- Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567
- Barclays Bank plc v Holmes* [2000] PLR 339
- Barnes v Addy* (1874) LR 9 Ch App 244
- Bartlett v Barclays Trust Co (No 1)* [1980] 1 Ch 515
- Bartlett v Bartlett* (1845) 4 Hare 631; 67 ER 800
- Bath v Standard Land Co Ltd* [1911] 1 Ch 618
- Beloved Wilkes's Charity, Re* (1851) 3 Mac & G 440; 42 ER 330
- Bishopsgate Investment Management Ltd (in liq) v Maxwell (No 2)* [1994] 1 All ER 261
- Boardman v Phipps* [1967] 2 AC 46
- British Airways Pension Trustees Ltd v British Airways plc* [2002] PLR 247
- British Coal Corp v British Coal Staff Superannuation Scheme Trustees Ltd* [1995] 1 All ER 912
- Brockbank (decd), Re* [1948] Ch 206
- Buck's Constabulary Widows & Orphans Fund, Re* [1979] 1 All ER 623
- Burland v Earle* [1902] AC 83
- Buttle v Saunders* [1950] 2 All ER 193
- City Equitable Fire Insurance Co Ltd, Re* [1925] 1 Ch 407
- Courage Group's Pension Schemes, Re* [1987] 1 All ER 528
- Cowan v Scargill* [1985] 1 Ch 270
- Dan Jones & Sons (Porth) Ltd, Re* [1989] PLR 17
- Davis v Richards & Wallington Industries Ltd* [1990] 1 WLR 1511
- Drexel Burnham Lambert UK Pension Plan, Re* [1995] 1 WLR 32
- Duke of Portland v Topham* (1864) 11 HLC 32; 11 ER 1242
- Dundee General Hospitals Board of Management v Walker* [1952] 1 All ER 896
- Earl of Radnor's Will Trusts, Re* (1890) 45 Ch D 402
- Edge v Pensions Ombudsman* [1998] 3 WLR 466

- Edge v Pensions Ombudsman* [1999] 4 All ER 546
- Equitable Life Assurance Society v Hyman* [2000] 3 All ER 961
- Ferguson v Wilson* (1866) LR 2 Ch App 77
- Foley v Hill* (1848) 2 HL Cas 28; 9 ER 1002
- Forest of Dean Coal Mining Company, Re* (1878) 10 Ch D 450
- Foskett v McKeown* [2002] 2 WLR 1299
- Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189
- French Protestant Hospital, Re* [1951] Ch 567
- Fry v Tapson* (1884) 28 Ch D 268
- Gartside v Inland Revenue Commissioners* [1968] AC 533
- Gas Lighting Improvement Co Ltd v Inland Revenue Commissioners* [1923] AC 723
- German Date Coffee Co, Re* (1882) 20 Ch D 169
- Gillingham Bus Disaster Fund, Re* [1958] Ch 300
- Great Eastern Railway Company v Turner* (1872) LR 8 Ch App 149
- Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286
- Gresham Life Assurance Society, Re* (1872) 8 Ch App 446
- Gulbenkian's Settlement, Re* [1970] AC 508
- Halicyan Skies, The* [1976] 1 All ER 856
- Hallows v Lloyd* (1888) 38 Ch D 686
- Harries v Church Commissioners for England* [1992] 1 WLR 1241
- Harris v Lord Shuttleworth* [1993] PLR 47
- Harwood-Smart v Caws* [2000] PLR 101
- Hastings-Bass (decd), Re* [1975] Ch 25
- Henry v Hammond* [1913] 2 KB 515
- Hillsdown Holdings plc v Pensions Ombudsman* [1997] 1 All ER 862
- Holder v Holder* [1968] Ch 353
- Imperial Foods Pension Scheme, Re* [1986] 2 All ER 802
- Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 2 All ER 597
- Joint Stock Discount Company v Brown* (1869) LR 8 Eq 381
- Jones v Williams* [1989] PLR 17

- Kayford (in liq), Re* [1975] 1 WLR 279
- Keech v Sandford* (1726) Sel Cas T King; 25 ER 223
- Kemble v Hicks* [1999] PLR 287
- Kingston Cotton Mill Company (No 2), Re* [1896] 1 Ch 331
- Learoyd v Whiteley* (1887) 12 App Cas 727
- Letterstedt v Broers* (1884) 9 App Cas 371
- Londonderry's Settlement, Re* [1965] Ch 918
- LRT Pension Fund Trustee Company Ltd v Hatt* [1993] PLR 227
- Lucking's Will Trusts, Re* [1968] 1 WLR 866
- Luke v South Kensington Hotel Company* (1879) 11 Ch D 121
- Macaura v Northern Assurance Co Ltd* [1925] AC 619
- Malik v Bank of Credit and Commerce International SA (in liq)* [1997] 3 All ER 1
- Marshall's Valve Gear Co Ltd v Manning Wardle & Co Ltd* [1909] 1 Ch 267
- Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587
- Milhenstedt v Barclays Bank International Ltd* [1989] PLR 91
- Morice v Bishop of Durham* (1804) 9 Ves 399; 32 ER 656
- Municipal Mutual Insurance Ltd v Harrop* [1998] PLR 149
- National Grid Co plc v Laws* [1997] PLR 157
- National Grid Co plc v Laws* [1999] 29 PBLR (17)
- National Grid Co plc v Mayes* [2001] 1 WLR 864
- Nestle v National Westminster Bank plc* [1993] 1 WLR 1260
- Packward v British Airways Pension Scheme* [1995] PLR 189
- Paragon Finance plc v D B Thakerar & Co (a firm)* [1999] 1 All ER 400
- Parry v Cleaver* [1969] 1 All ER 555
- Pauling's Settlement Trusts, Re* [1961] 3 All ER 713
- Percival v Wright* [1902] 2 Ch 421
- Pilkington v Inland Revenue Commissioners* [1964] AC 612
- Regal (Hastings) Ltd v Gulliver* [1942] 1 All ER 378
- Robinson v Harkin* [1896] 2 Ch 415
- Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 WLR 64

- Salomon (Pauper) v A Salomon & Co Ltd* [1897] AC 22
- Schmidt v Rosewood Trust Ltd* [2003] 2 WLR 1442
- Scott v National Trust for Places of Historic Interest of Natural Beauty* [1998] 2 All ER 705
- Space Investments Ltd v Canadian Imperial Bank of Commerce Trust Co (Bahamas) Ltd* [1986] 1 WLR 1072
- Speight v Gaunt* (1883) 9 App Cas 1
- Speight, Re* (1883) 22 Ch D 727
- Spooner v British Telecommunications* [2000] PLR 65
- Stannard v Fisons Pensions Trust Ltd* [1991] PLR 225
- Store v Ford* (1844) 7 Beav 333; 49 ER 1093
- Target Holdings Ltd v Redferns* [1995] 3 WLR 352
- Taylor v Lucas Pensions Trust Ltd* [1994] PLR 9
- Tbrells Ltd v Lomas* [1993] 1 WLR 456
- Twinsectra Ltd v Yardley* [2002] 2 All ER 377
- Vandervell's Trusts (No 2), Re* [1974] Ch 269
- Vatcher v Paull* [1915] AC 372
- Venables v Hornby* [2002] PLR 377
- Waterman's Will Trusts, Re* [1952] 2 All ER 1054
- Whiteley, Re* (1886) 33 Ch D 347
- Wilson v Law Debenture Trust Corp plc* [1995] 2 All ER 337
- Wilson v Lord Bury* (1880) 5 QBD 518
- Wrightson Ltd v Fletcher Challenge Nominees Ltd* [2002] 3 NZLR 1
- York and North Midland Railways v Hudson* (1853) 16 Beav 485; 51 ER 866
- Yukong Lines Ltd of Korea v Rendsburg Investments Corporation* [1998] BCC 870

Others

- King v Talbot* 40 NY 76 (1869)
- Tek Corporation Provident Fund v Lorentz* 1999 (4) SA 884 (SCA)

TABLE OF STATUTES

Australia

Commonwealth Acts and Regulations

Australian Prudential Regulation Authority Act 1998

Australian Securities and Investments Commission Act 2001

Banking Act 1959

Bankruptcy Act 1966

Constitution

Corporations Act 2001

Financial Sector Reform (Amendments and Transitional Provisions) Act 1998

Income Tax Assessment Act 1936

Insurance and Superannuation Commissioner Act 1987 (repealed)

Insurance Contracts Act 1984

Life Insurance Act 1995

Managed Investments Act 1998

Occupational Superannuation Standards Act 1987 (repealed)

Occupational Superannuation Standards Amendment Act 1993 (repealed)

Occupational Superannuation Standards Regulations 1987 (repealed)

Retirement Savings Accounts Act 1997

Retirement Savings Accounts Regulations 1997

Superannuation (Financial Assistance Funding) Levy Act 1993

Superannuation (Resolution of Complaints) Act 1993

Superannuation (Rolled-Over Benefits) Levy Act 1993

Superannuation Guarantee (Administration) Act 1992

Superannuation Guarantee Charge Act 1992

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Consequential Amendments Act 1993

Superannuation Industry (Supervision) Regulations 1994

Superannuation Legislation Amendment Act (No 3) 1999

Superannuation Supervisory Levy Amendment Act 1993

Trade Practices Act 1974

Commonwealth Bills

Superannuation Safety Amendment Bill 2003

Retirement Savings Accounts Bill 1999

National Scheme Laws

Companies Code (repealed)

Corporations Law (repealed)

Corporations Regulations (repealed)

Australian Capital Territory

Trustee Act 1925

New South Wales

Trustee Act 1925

Northern Territory

Trustee Act 1893

Queensland

Trusts Act 1973

South Australia

Trustee Act 1936

Tasmania

Trustee Act 1898

Victoria

Companies Act 1958 (repealed)

General Rules of Procedure in Civil Proceedings 1996

Trustee Act 1958

Western Australia

Trustees Act 1962

Canada

Bankruptcy and Insolvency Act RSC 1985, c B3

Business Corporations Act RSO 1990, c B16

Canada Pension Plan Investment Board Act SC 1997, c 40

Financial Services Commission of Ontario Act RSO 1997, c 28

Loan and Trust Corporations Act RSO 1990, c L25

Pension Benefits Act RRO 1990, Reg 909

Pension Benefits Act RSO 1990, c P8

Pension Benefits Standards Act RSC 1985, c 32

Pension Fund Societies Act RSC 1985, c P8

Hong Kong

Mandatory Provident Fund Schemes (Exemption) Regulation 1998 (Cap 485B)

Mandatory Provident Fund Schemes (General) Regulation 1998 (Cap 485A)

Mandatory Provident Fund Schemes Ordinance 1995 (Cap 485)

Occupational Retirement Schemes Ordinance 1992 (Cap 236)

New Zealand

Income Tax Act 1994

Income Tax Amendment Act (No 5) 1988 (repealed)

Income Tax Amendment Act 1989 (repealed)

Superannuation Schemes Act 1976 (repealed)

Superannuation Schemes Act 1989

Trustee Act 1956

United Kingdom

Companies Act 1948 (repealed)

Companies Act 1967 (repealed)

Companies Act 1976 (repealed)
Companies Act 1980 (repealed)
Company Directors Disqualification Act 1986
Employment Rights Act 1996
Finance Act 1921 (repealed)
Income and Corporation Taxes Act 1988
Income Tax Act 1952 (repealed)
Insolvency Act 1986
Occupational Pension Schemes (Contracting-out) Regulations 1996 SI 1996/1172
Occupational Pension Schemes (Disclosure of Information) Regulations 1996 SI 1996/1655
Occupational Pension Schemes (Investment) Regulations 1996 SI 1996/3127
Occupational Pension Schemes (Modification of Schemes) Regulations 1996 SI 1996/2516
Occupational Pension Schemes (Modification of Schemes) Regulations 1996 SI 1996/2516
Pension Scheme Surpluses (Valuation) Regulations 1987 SI 1987/412
Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations 1987 SI 1987/1108
Pensions Act 1995
Pension Schemes Act 1993
Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996 SI 1996/2475
Retirement Benefit Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 SI 1993/3016
Stakeholder Pension Schemes Regulations 2000 SI 2000/1403
Trustee Act 2000
Welfare Reform and Pensions Act 1999

SELECTED ABBREVIATIONS

ABS	Australian Bureau of Statistics
ABA	Australian Banking Association
ACTU	Australian Council of Trade Unions
ADF	Approved Deposit Fund
AIRC	Australian Industrial Relations Commission
ARISA	Australian Retirement Income Streams Association Ltd
AIST	Australian Institute of Superannuation Trustees
ALP	Australian Labor Party
ALRC	Australian Law Reform Commission
APRA	Australian Prudential Regulation Authority
ASFA	Association of Superannuation Funds of Australia
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
BC	British Columbia
BCCA	British Columbia Court of Appeal
BCSC	British Columbia Supreme Court
CA	Court of Appeal
CPA	Australian Society of Certified Practising Accountants
CSA	Corporate Super Association
CSAC	Companies and Securities Advisory Committee
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court

FCA	Federal Court of Australia
HC	High Court
HL	House of Lords
IAA	Institute of Actuaries of Australia
ICTA	<i>Income and Corporation Taxes Act 1988 (UK)</i>
IFSA	Investment and Financial Services Association Ltd
Inland Revenue	Department of Inland Revenue
ISC	Insurance and Superannuation Commission
ITAA	<i>Income Tax Assessment Act 1936 (Cth)</i>
MPF	Mandatory Provident Fund
NSWSC	Supreme Court of New South Wales
NZ	New Zealand
NZCA	New Zealand Court of Appeal
NZHC	New Zealand High Court
OntCA	Ontario Court of Appeal
OPRA	Occupational Pensions Regulatory Authority
OSSA	<i>Occupational Superannuation Standards Act 1987 (Cth)</i>
PC	Privy Council
PSA	<i>Pension Schemes Act 1993 (UK)</i>
PST	Pooled Superannuation Trust
PWC	PricewaterhouseCoopers Global
RBA	Reserve Bank of Australia
RPI	Retail Price Index
S2P	State Second Pension
SC	Supreme Court
SCA	The Supreme Court of Appeal of South Africa
SCC	Supreme Court of Canada
SCT	Superannuation Complaints Tribunal

SERPS	State Earnings Related Pension Scheme
SISFA	Small Independent Superannuation Funds Association
SRF	Superannuation Relationship framework
SSA	<i>Superannuation Schemes Act</i> 1989 (NZ)
SSAB(ED)	Superannuation Safety Amendment Bill 2003 (Cth) (Exposure Draft)
SIS Regulations	<i>Superannuation Industry (Supervision) Regulations</i> 1994 (Cth)
VCA	Supreme Court of Victoria, Court of Appeal