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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Duncan v Independent Commission Against Corruption (HCA) - statutory interpretation - declaration refused that findings in report made in excess of ICAC's jurisdiction - application dismissed (I B)

Mulligan v Virgin Australia Airlines Pty Ltd (FCAFC) - human rights - discrimination - airline's conduct in not permitting dog to accompany appellant in cabin of its aircraft was unlawful direct discrimination - appeal allowed (I)

Underwood v Gaudron (NSWCA) - bias - succession - bias not established - family provision order refused - appeal dismissed (B)

Barclay v Reynolds (VSC) - testator's family maintenance - family provision order granted to adult son of deceased (B)

Culleton v Dakin Farms Pty Ltd (WASCA) - contract - repudiation of agreement for lease and sale of land - entitlement to loss of bargain damages - appeal dismissed (B)

Sunlea Enterprises Pty Ltd as Trustee for Drummond Cove Unit Trust v Pollock [No 3] (WASC) - pleadings - strike out application - allegation of implication in breach of trust by participation with actual knowledge - application dismissed (I B C)

In the Estate of Milind Bedake (ACTSC) - succession - intestacy - Public Trustee granted order for distribution of balance of deceased's estate to deceased's father (B)

Summaries With Link (Five Minute Read)

Duncan v Independent Commission Against Corruption [2015] HCA 32

High Court of Australia

Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Statutory interpretation - applicant sought declaration that findings in report were made in excess of respondent's jurisdiction - report found applicant engaged in conduct which adversely or could have adversely affected efficacy of performance of functions by officials of New South Wales executive government - respondent concluded conduct was "corrupt conduct" within s8(2) *Independent Commission Against Corruption Act 1988* (NSW) - applicant submitted that cl 34 and 35 of Pt 13 did not deem applicant's conduct to be "corrupt conduct". - decision as to meaning of "corrupt conduct" in the Act in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 - invalidation of some past acts of respondent by *Cunneen* - insertion of Pt 13 to validate otherwise invalid acts - 'Kable' principle - 'Kirk' principle - held: cl 34 & 35 widened scope of "corrupt conduct" and widened respondent's jurisdiction in relation to its investigation - principal ground of challenge to validity of Pt 13 not made out - other challenges to validity of Pt 13 failed - application dismissed.

[Duncan](#) (I B)

Mulligan v Virgin Australia Airlines Pty Ltd [2015] FCAFC 130

Full Court of the Federal Court of Australia

Flick, Reeves & Griffiths JJ

Human rights - discrimination - respondent operated passenger airline - appellant claiming to suffer cerebral palsy tried to book flight - respondent refused to allow appellant's assistance dog to accompany him in aircraft cabin - whether primary judge erred in not finding airline unlawfully discriminated against appellant - proper construction and application of provisions of *Disability Discrimination Act 1992* (Cth) (DDA) and interrelationship with laws and instruments affecting civil aviation - held: primary judge's reasons revealed numerous appellable errors - primary judge erred in proceeding on basis that two instruments made by Civil Aviation Safety Authority (CASA) were relevant to appellant's individual circumstances - misconstruction of instruments led to further related error - primary judge misconstrued reg 256A(2) *Civil Aviation Regulations 1988* (Cth) accompanied by further errors - primary judge erred in finding instruments were a 'prescribed law' for the purposes of s47(2) DDA - primary judge erred in interpreting and applying s54A(5) & 9 DDA - primary judge erred in finding that s47(2) applied in circumstances - respondent's conduct in not permitting dog to accompany appellant in cabin of its aircraft constituted unlawful direct discrimination contrary to s24 DDA - appellant entitled to compensatory damages of \$10,000 - appeal allowed.

[Mulligan](#) (I)

Underwood v Gaudron [2015] NSWCA 269

Court of Appeal of New South Wales

Basten, Macfarlan & Ward JJA

Bias - succession - deceased died in 2010 - deceased survived by four of her children: first respondent, second respondent, appellant and Paul Edward Gaudron - first respondent was retired High Court judge - appellant estranged from mother since mid-1987 -- deceased by Will left legacies to four grandchildren and residue to be divided equally between first and second respondent - Will made no provision for appellant due to estrangement - appellant sought provision under Ch 3 *Succession Act 2006* (NSW) - primary judge found although appellant established need for provision, estrangement militated against making order - primary judge found no satisfactory explanation for delay in commencing proceedings to justify granting extension of time - appellant appealed - whether first respondent's seniority and standing gave rise to subconscious bias by trial judge - whether first respondent's financial standing disadvantaged appellant - held: bias not established - trial judge's reasoning was sound - final conclusion not to make an order within range of reasonable available conclusions - appellant's excuse for delay failed to adequately justify passage of time from when she found out about mother's death to commencement of proceedings - estate had been distributed - both respondents provided evidence they had disposed of their respective shares by time proceedings commenced - there would have been prejudice had extension been granted - application should have been dismissed without full consideration of claim - appeal dismissed.

[Underwood](#) (B)

Barclay v Reynolds [2015] VSC 447

Supreme Court of Victoria

Zammit J

Testator's family maintenance - brothers (Peter Barclay and David Barclay) sought further provision from estate deceased father pursuant to Part IV *Administration and Probate Act 1958* (Vic) - David Barclay had intellectual disability - relief sought by David Barclay not opposed - whether deceased's dispositions in Will amounted to adequate provision for Peter Barclay's proper maintenance and support - held: deceased intended to ensure David Barclay was secure into future and left him larger portion of estate - Court satisfied Peter Barclay was person for whom deceased had responsibility to make further provision- deceased, in terms of s91(1), had responsibility to make adequate provision for Peter Barclay's proper maintenance and support - Court considered provision should be made for Peter Barclay by way of lump sum from estate - remainder subject to other bequests to be made in David Barclay's favour.

[Barclay](#) (B)

Culleton v Dakin Farms Pty Ltd [2015] WASCA 183

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JAA

Contract for lease and sale of land - second respondent claimed damages arising from appellants' alleged repudiation of an agreement in relation to lease and sale of farm land from second respondent to appellants - primary judge found in favour of second respondent and ordered appellants to pay damages - appellants contended that absent evidence of amount of

loss or benefit that would have accrued to second respondent from sale of the property, second respondent did not establish entitlement to loss of bargain damages - appellants contended second respondent entitled to only nominal damages - held: second respondent entitled to loss of bargain damages - second respondent established substantial damages obligations - no evidence of countervailing advantages - second respondent not seeking to enlarge its damages for appellants' failure to proceed with purchase - appeal dismissed.

[Culleton](#) (B)

Sunlea Enterprises Pty Ltd as Trustee for Drummond Cove Unit Trust v Pollock [No 3] [2015] WASC 330

Supreme Court of Western Australia

Allanson J

Pleadings - strike out application by first defendant - plea concerned challenged borrowings and payments - plaintiff sought to implicate first defendant in breach of trust by alleging he participated in it with actual knowledge - first defendant contended material facts pleaded did not provide proper basis for attributing 'an intimate knowledge of the source and limitations on Sandpiper's authority' to him as pleaded - O20 r 8 *Rules of the Supreme Court 1971* (WA) - held: there was arguable case of knowledge pleaded - Court satisfied plea gave first defendant sufficient notice of case to be met and disclosed reasonable cause of action - application dismissed.

[Sunlea](#) (I B C)

In the Estate of Milind Bedake [2015] ACTSC 267

Supreme Court of the Australian Capital Territory

Mossop AsJ

Succession - Public Trustee sought order under s97 *Administration and Probate Act 1929* (ACT) (the Act) requiring it to distribute balance of deceased's estate to his father - at time of death deceased lived in India - deceased died intestate - at relevant times deceased a person under a disability as a result of brain injury - which law was to be applied to distribution of property held by Public Trustee - deceased's domicile at date of his death - to whom property should be distributed - *Guardianship and Management of Property Act 1991* (ACT) - ss8 & 10 *Domicile Act 1982* (Cth) - held: law to be applied in relation to movable property was law of intestate's domicile at time of death - more likely than not deceased unable to form intention to change place of domicile and hence domicile remained in Australian Capital Territory at date of death - deceased's father entitled to whole of estate and to distribution of assets in Australian Capital Territory - appropriate to make order sought by Public Trustee.

[Bedake](#) (B)

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