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## Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Stejskal v Hely & Ors** (NSWSC) - wills and estates - succession - son of deceased sought further provision from deceased's estate - application granted

**Deputy Commissioner of Taxation v Buzadzic** (VSCA) - constitutional law - taxation - income tax - refusal to grant summary judgment - appeal dismissed

**Harbour Radio Pty Limited & Ors v Wagner & Ors** (QCA) - defamation - appeal against trial judge's decision to grant injunctions - appeal dismissed

**Ammon v Colonial Leisure Group Pty Ltd** (WASCA) - nuisance - dismissal of private nuisance claim concerning emanation of noise from hotel - appeal dismissed

**Campbell v Blackshaw (No 2)** (ACTCA) - costs - administrative law - two appeals dismissed - respondents sought indemnity costs - indemnity costs refused

### Summaries With Link (Five Minute Read)

#### **Stejskal v Hely & Ors [2019] NSWSC 1417**

Supreme Court of New South Wales

Kunc J

Wills and estates - succession - family provision - plaintiff was son of deceased - plaintiff sought further provision from deceased's estate - adequacy of provision - son's accommodation needs -

whether deceased had 'moral duty' to son - size of estate - son's needs in respect of accommodation, 'necessary expenses and contingencies' - whether 'policy interest' in making of 'provision sufficient to free the public purse from supporting' plaintiff - ss59 & 60 *Succession Act 2006* (NSW) - held: Court satisfied to make order for further provision in son's favour.

[View Decision](#)

## **Deputy Commissioner of Taxation v Buzadzic [2019] VSCA 221**

Court of Appeal of Victoria

Kyrou, McLeish & Niall JJA

Constitutional law - taxation - summary judgment - applicant sought to recover amount of income tax from respondents - applicant sought summary judgment - trial judge dismissed applications, finding 'impugned provisions' of *Income Tax Assessment Act 1936* (Cth) and *Taxation Administration Act 1953* (Cth) would 'impermissibly confer judicial power' on applicant, requiring Court 'to act in manner inconsistent with its position as a repository of federal judicial power' - trial judge alternatively found summary judgment was not in interests of justice - applicant sought to appeal - whether primary judge erred in statutory construction of impugned provisions - whether erroneous exercise of discretion under s64 *Civil Procedure Act 2004* (Vic) - ss175 & 175A *Income Tax Assessment Act 1936* (Cth) - ss350-10(1), Sch 1 & 14ZZM *Taxation Administration Act 1953* (Cth) - held: defences had no real prospects of success - not in interests of justice to proceed to 'full hearing' - appeal allowed.

[Deputy Commissioner](#)

## **Harbour Radio Pty Limited & Ors v Wagner & Ors [2019] QCA 221**

Court of Appeal of Queensland

Fraser & Morrison JJA; Burns J

Defamation - respondents succeeded in defamation claim against appellants - appellants appealed against injunctions restraining appellants from 'again publishing' defamatory matter or imputation which was not different in substance from conveyed imputations - whether failure to give adequate reasons - whether injunctions unjustified - whether appellants 'impermissibly or unreasonably restrained' by orders - whether 'no grounds' for grant of injunctions - respondent sought 'to adduce fresh evidence' - s9 *Civil Proceedings Act 2011* (Qld) - held: leave to adduce fresh evidence refused - appeal dismissed.

[Harbour Radio](#)

## **Ammon v Colonial Leisure Group Pty Ltd [2019] WASCA 158**

Court of Appeal of Western Australia

Murphy, Mitchell & Beech JJA

Nuisance - master dismissed appellant's private nuisance claim against respondent - appellant contended master erred in finding 'noise levels' coming from hotel were not 'substantial and unreasonable interference with' appellant's 'comfort and quiet enjoyment' of appellant's adjacent apartment - appellant also contended master erred in finding noise 'now consistent' with level appellant 'could have anticipated' at time of purchasing apartment - appellant also contended

master erroneously refused to grant injunction - appellant sought 'to adduce further evidence' - *Environmental Protection Act 1986 (WA) - Environmental Protection (Noise) Regulations 1997 (WA)* - held: leave to adduce further evidence refused - appeal dismissed.

[Ammon](#)

## **Campbell v Blackshaw (No 2) [2019] ACTCA 28**

Court of Appeal of New South Wales

Burns, Elkaim and Loukas-Karlsson JJ

Costs - administrative law - Court dismissed 'two concurrent appeals' from ACT Civil and Administrative Tribunal decisions - first and second respondents (respondents) sought that appellants pay costs on indemnity basis - respondents sought indemnity costs on ground appeal was 'hopeless case', and on grounds of 'delay, non-compliance and abuse of process' - r1721 *Court Procedures Rules 2006 (ACT)* - s5A *Court Procedures Act 2004 (ACT)* - *Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Limited (No 2) [2017] ACTCA 40* - held: indemnity costs refused.

[Campbell](#)

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