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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)

**Unique International College Pty Ltd v Australian Competition and Consumer Commission** (FCAFC) - consumer law - unconscionable conduct - insufficient evidence to establish "system of conduct or pattern of behaviour" in breach of s21(1) Australian Consumer Law - appeal allowed

**Bell Group N.V. v Bell Group Finance Pty Ltd, in the matter of Western Interstate Pty Ltd** (FCA) - cross-vesting - corporations - fifth defendant sought transfer of proceedings to Supreme Court of Western Australia - application granted

**Bauer Media Pty Ltd t/as Network Services Company v Khedrlarian** (NSWCA) - negligence - plaintiff employee of labour hire company claimed injury at premises - claim against labour hire company and occupier - appeal and cross-appeal against judgment in plaintiff's favour allowed - retrial

**Freeman v Londish** (NSWSC) - contract - oral contract - joint venture agreement - repudiation - plaintiff entitled to recover amount advanced

**Lana Clarice Photios as Executor of the Estate of Henry Basil Photios & Anor v David Peter Photios** (NSWSC) - pleadings - wills and estates - probate - leave to further amend cross claim to seek revocation of grant of probate and prove earlier Will refused

**Chung-Yi Pty Limited v Justin Chih-Yang Chang (No 3)** (NSWSC) - costs - indemnity costs - delinquency - first plaintiff successful - 'individual plaintiffs' unsuccessful - defendant to pay first plaintiff's costs - indemnity costs order refused

**Citigroup Pty Ltd v Jackman** (VSC) - judgments and orders - assignee of plaintiff's debt granted leave issue warrant to enforce judgment in plaintiff's favour

## Summaries With Link (Five Minute Read)

### **Unique International College Pty Ltd v Australian Competition and Consumer Commission [2018] FCAFC 155**

Full Court of the Federal Court of Australia

Allsop CJ; Middleton & Mortimer JJ

Consumer law - respondent claimed against appellant for contraventions of Australian Consumer Law in relation to 'vocational education' courses - appellant appealed against finding on part of respondent's cause of action alleging unconscionability in breach of s21 Australian Consumer Law - requirements for establishing of s21(1) ACL on basis of "system of conduct or pattern of behaviour" - s21(4) ACL - held: there was 'insufficient evidence' to support primary judge's findings of unconscionable conduct - appeal allowed.

[Unique](#)

### **Bell Group N.V. v Bell Group Finance Pty Ltd, in the matter of Western Interstate Pty Ltd [2018] FCA 1440**

Federal Court of Australia

McKerracher J

Cross-vesting - corporations - fifth defendant sought, pursuant to s1337H *Corporations Act 2001* (Cth), transfer of proceeding to Supreme Court of Western Australia - 'commercial and case management factors' - whether in interests of justice to transfer proceedings - held: 'case management issue' was 'overwhelming in support' of proceeding's transfer - application for transfer of proceedings granted.

[Bell Group](#)

### **Bauer Media Pty Ltd t/as Network Services Company v Khedrlarian [2018] NSWCA 208**

Court of Appeal of New South Wales

McColl, Macfarlan & Leeming JJA

Negligence - Ms Khedrlarian employed by labour hire company alleged she was injured while working in premises occupied by Bauer Media - respondent sued Bauer Media and labour hire company - Workers Compensation Nominal Insurer substituted for labour hire company - primary judge gave judgment for Ms Khedrlarian - Bauer Media appealed - Workers Compensation Nominal Insurer cross-appealed - grounds of appeal concerning failure to exclude expert report tended by Ms Khedrlarian, or parts of it - challenge to findings of breach of duty - whether erroneous failure to deal with causation - whether erroneous implied finding that any breach of duty caused loss - apportionment - quantification of her loss - damages - *Civil Liability Act 2002* (NSW) - *Workers Compensation Act 1987* (NSW) - held: appeal and cross-

appeal allowed - retrial ordered.

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## **Freeman v Londish [2018] NSWSC 1425**

Supreme Court of New South Wales

Stevenson J

Contract - parties entered 'oral joint venture agreement' to develop land into a retirement village - parties had falling out - parties each alleged the other had repudiated the agreement - plaintiff sought to recover amount he had advanced - funding obligations under agreement - 'disputed implied terms' - whether repudiation of agreement - whether acceptance of repudiation - held: defendant had repudiated agreement - plaintiff had accepted defendant's repudiation - plaintiff entitled to recover amount advanced - judgment for plaintiff.

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## **Lana Clarice Photios as Executor of the Estate of Henry Basil Photios & Anor v David Peter Photios [2018] NSWSC 1414**

Supreme Court of New South Wales

Rees J

Pleadings - wills and estates - probate - application to further amend cross claim to seek revocation of grant of probate and prove earlier Will - testamentary capacity - acquiescence - whether explanation for delay - prejudice - *Succession Act 2006* (NSW) - *Probate and Administration Act 1898* (NSW) - held: Court not satisfied to grant leave to amend cross claim as claims 'doomed to fail' - leave refused.

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## **Chung-Yi Pty Limited v Justin Chih-Yang Chang (No 3) [2018] NSWSC 1428**

Supreme Court of New South Wales

Ball J

Costs - indemnity costs - Court gave judgment for first plaintiff against defendant - Court dismissed defendant's cross-claim against plaintiffs - plaintiffs sought whole of costs of proceedings on indemnity basis - defendant contended plaintiffs entitled only to receive some costs and that costs should be paid on ordinary basis - whether plaintiffs entitled to all costs - whether indemnity costs orders should be granted - delinquency - fabrication of evidence - held: defendant to pay successful first plaintiff's costs- individual plaintiffs had not succeeded - defendant not required to pay costs in addition to costs of first plaintiff - indemnity costs order refused.

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## **Citigroup Pty Ltd v Jackman [2018] VSC 545**

Supreme Court of Victoria

Matthews JR

Judgments and orders - company (Credit Corp) was assignee of debt from plaintiff - Credit Corp



sought, pursuant to r68.02(1)(a) *Supreme Court (General Civil Procedure) Rules 2015* (Vic), leave to issue warrant to enforce a Local Court of New South Wales judgment given in plaintiff's favour on 18 February 2008 - plaintiff, on 28 February 2017, registered judgment with Magistrates' Court of Victoria - Magistrates' Court issued certificate pursuant to s112 *Magistrates' Court Act 1989* (Vic), which was registered on 29 November 2017 - notice of assignment - requirement of written notice for legal assignment but not equitable assignment - delay - explanation for delay - held: Court satisfied to grant application.

[Citigroup](#)

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