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## Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Otsuka Pharmaceutical Co., Ltd v Generic Health Pty Ltd** (FCA) - patent - proceedings seeking enforcement of undertakings as to damages - Commonwealth sought to strike out paragraphs of Points of Defence - interlocutory application dismissed (I B C G)

**Globe Church Incorporated v Allianz Australia Insurance Ltd** (NSWCA) - insurance - separate questions - limitations - claims against two insurers under 'Industrial Special Risks Insurance Policy (the 2008 Policy)' - determination of separate questions concerning whether claim or claims statute-barred (B C I G)

**Guirgis v JEA Developments Pty Limited** (NSWSC) - conveyancing - conduct of Conveyancer - Court not satisfied that Conveyancer should be referred to NSW Fair Trading (B C I G)

**Zeng v Leeda Projects Pty Ltd** (VSC) - administrative law - contract - erroneous failure to award appellant damages for breach of implied term of 'fit-out contract' - appeal allowed (B C I G)

**Corby v Bendigo and Adelaide Bank Limited** (ACTSC) - stay - possession - Court satisfied to grant interim stay of enforcement order for possession of land (I B C G)

**Liyanage v Medical Board of Australia** (NTSC) - administrative law - cancellation of medical

registration following suspension - leave to appeal refused (I B C G)

## Summaries With Link (Five Minute Read)

### **Otsuka Pharmaceutical Co., Ltd v Generic Health Pty Ltd [2019] FCA 230**

Federal Court of Australia

Yates J

Patent - interlocutory application - Commonwealth brought proceedings seeking 'to enforce undertakings as to damages' which 'Otsuka/BMS' had given in 'patent infringement proceedings' and appeal - Commonwealth filed Amended Points of Claim - Commonwealth sought to strike out paragraphs of Points of Defence filed by Otsuka/BMS - whether abuse of process - whether "inconsistent pleadings" were prohibited by r16.06 *Federal Court Rules 2011* (Cth) - held: interlocutory application refused.

[Otsuka](#) (I B C G)

### **Globe Church Incorporated v Allianz Australia Insurance Ltd [2019] NSWCA 27**

Court of Appeal of New South Wales

Bathurst CJ; Beazley P; Ward, Meagher & Leeming JJA

Insurance - separate questions - limitations - proceedings arising from 'alleged property damage' to church and contents - plaintiff claimed against two insurers under 'Industrial Special Risks Insurance Policy (the 2008 Policy)' - determination of separate questions: '(a) In respect of any of the alleged damage to the Properties that occurred between 8 June 2007 and 31 March 2008, which (if any) of the plaintiff's claims in these proceedings in respect of the 2008 Policy accrued at the time of alleged damage, for the purposes of s14(1) of the *Limitation Act 1969* (NSW)?'; and '(b) In light of the answer to (a), which (if any) of the plaintiff's claims in these proceedings in respect of the 2008 Policy for that damage are maintainable?' - questions to be answered on basis of 'agreed facts' - whether claim or claims statute-barred - r28.2 *Uniform Civil Procedure Rules 2005* (NSW) - s191 *Evidence Act 1995* (NSW) - held: separate questions answered.

[View Decision](#) (B C I G)

### **Guirgis v JEA Developments Pty Limited [2019] NSWSC 164**

Supreme Court of New South Wales

Kunc J

Conveyancing - conduct of Conveyancer - plaintiff commenced proceedings against defendant seeking removal of caveat and compensation - Court, on basis of evidence, formed 'prima facie view' concerning Conveyancer's conduct - whether Court should refer certain papers to NSW Fair Trading for consideration - whether 'disciplinary action' warranted - apology by Conveyancer - acknowledgment by Conveyancer of 'departure from appropriate standards' - undertaking by Conveyancer to do 'further study' - held: Court determined that further action by Court was unnecessary - Conveyancer not referred to NSW Fair Trading.

[View Decision](#) (B C I G)

## **Zeng v Leeda Projects Pty Ltd [2019] VSC 106**

Supreme Court of Victoria

McDonald J

Administrative law - contract - damages - question on appeal was whether Tribunal erred in finding applicant not entitled to general damages for respondent's breach of implied term of 'fit-out contract' requiring it to complete building works within 'reasonable time' - held: appellant granted leave to appeal - appellant was entitled to general damages - order awarding nominal damages in appellant's favour set aside - respondent, after set-off of amount awarded to it in proceedings, liable to pay appellant \$145,555.80 in damages - Court rejected respondent's submission that proceeding should be remitted for consideration whether damages should be reduced due to appellant's 'failure to mitigate' loss - appeal allowed - leave to cross-appeal refused.

[Zeng](#) (I B C G W WI WB WC WG) (B C I G)

## **Corby v Bendigo and Adelaide Bank Limited [2019] ACTSC 3**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Stay - possession - applicant sought stay of enforcement order for possession of land under r2013 *Court Procedures Rules 2006* (ACT) (Rules) with view to setting order aside under r2051 of the Rules - whether proper basis for stay - delay - financial and personal circumstances - hardship - prejudice - held: Court satisfied to grant interim stay of enforcement order.

[Corby](#) (I B C G)

## **Liyanage v Medical Board of Australia [2019] NTSC 11**

Supreme Court of the Northern Territory

Blokland J

Administrative law - applicant sought to appeal against Northern Territory Civil and Administrative Tribunal's cancellation of applicant's 'medical registration' for a period of 21 months - at time registration cancelled applicant had been suspended from practice for 15 months - applicant contended Tribunal erred in exercise of discretion - whether 'manifestly excessive' penalty - held: leave to appeal refused.

[Liyanage](#) (I B C G)

## CRIMINAL

### Executive Summary



## Summaries With Link



# Benchmark

## Two in the Campagna

**By:** Robert Browning

I

I wonder do you feel to-day  
As I have felt since, hand in hand,  
We sat down on the grass, to stray  
In spirit better through the land,  
This morn of Rome and May?

II

For me, I touched a thought, I know,  
Has tantalized me many times,  
(Like turns of thread the spiders throw  
Mocking across our path) for rhymes  
To catch at and let go.

III

Help me to hold it! First it left  
The yellowing fennel, run to seed  
There, branching from the brickwork's cleft,  
Some old tomb's ruin: yonder weed  
Took up the floating weft,

IV

Where one small orange cup amassed  
Five beetles,—blind and green they grope  
Among the honey-meal: and last,  
Everywhere on the grassy slope  
I traced it. Hold it fast!

V

The champaign with its endless fleece  
Of feathery grasses everywhere!  
Silence and passion, joy and peace,  
An everlasting wash of air—  
Rome's ghost since her decease.

VI

Such life here, through such lengths of hours,  
Such miracles performed in play,  
Such primal naked forms of flowers,  
Such letting nature have her way



# Benchmark

While heaven looks from its towers!

VII

How say you? Let us, O my dove,  
Let us be unashamed of soul,  
As earth lies bare to heaven above!  
How is it under our control  
To love or not to love?

VIII

I would that you were all to me,  
You that are just so much, no more.  
Nor yours nor mine, nor slave nor free!  
Where does the fault lie? What the core  
O' the wound, since wound must be?

IX

I would I could adopt your will,  
See with your eyes, and set my heart  
Beating by yours, and drink my fill  
At your soul's springs,—your part my part  
In life, for good and ill.

X

No. I yearn upward, touch you close,  
Then stand away. I kiss your cheek,  
Catch your soul's warmth,—I pluck the rose  
And love it more than tongue can speak—  
Then the good minute goes.

XI

Already how am I so far  
Out of that minute? Must I go  
Still like the thistle-ball, no bar,  
Onward, whenever light winds blow,  
Fixed by no friendly star?

XII

Just when I seemed about to learn!  
Where is the thread now? Off again!  
The old trick! Only I discern—  
Infinite passion, and the pain



# Benchmark

Of finite hearts that yearn.

[https://en.wikipedia.org/wiki/Robert\\_Browning](https://en.wikipedia.org/wiki/Robert_Browning)

[Robert Browning - Wikipedia](#)

en.wikipedia.org

Robert Browning (7 May 1812 – 12 December 1889) was an English poet and playwright whose mastery of the dramatic monologue made him one of the foremost Victorian poets. His poems are known for their irony, characterization, dark humour, social commentary, historical settings, and challenging vocabulary and syntax.. Browning's early career began promisingly, but collapsed.

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