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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)

Chaoping (Steve) chu v Da Cheng (Eddie) (NSWSC) - defamation - plaintiff, by notice of motion, sought interim injunctions restraining publication of 'allegedly defamatory imputations' - notice of motion dismissed (I B C G)

Tutzing Pty Ltd v Upper Lachlan Shire Council (NSWSC) - joinder - plaintiff accessed its property 'via a public road' which was vested in defendant - plaintiff and defendant entered Deed - plaintiff sought Deed's specific performance - applicants, by notice of motion, sought joinder as defendants to proceedings - application granted (I B C G)

Kesser v West (VSC) - damages - negligence - plaintiff injured when struck by car - defendant admitted liability - assessment of damages - plaintiff awarded \$693,000 'plus 5% for funds administration and interest' (I B)

Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd (TASFC) - environment and planning - first respondent sought permit under *Land Use Planning and Approvals Act 1993* (LUPA) - Council refused application - Resource Management and Planning Appeal Tribunal set aside decision of Council and decided that a conditional permit should be issued - primary judge dismissed appeal - appeal allowed (I B C G)

In the Estate of Thompson (NTSC) - wills and estates - applicant was son of deceased, executor of deceased's Will and beneficiary under Will - applicant sought to prove copy of Will

and that Court admit it to probate - application granted (B)

Summaries With Link (Five Minute Read)

Chaoping (Steve) chu v Da Cheng (Eddie) [2021] NSWSC 956

Supreme Court of New South Wales

Sackar J

Defamation - plaintiff, by notice of motion, sought interim injunctions restraining publication of 'allegedly defamatory imputations' - defendant opposed application - 'great caution' - serious question to be tried - balance of convenience - 'freedom of speech' - *Bonnard v Perryman* [1891] 2 Ch 269 - *ABC v O'Neill* (2006) 227 CLR 57 - held: notice of motion dismissed.

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

Tutzing Pty Ltd v Upper Lachlan Shire Council [2021] NSWSC 1221

Supreme Court of New South Wales

Darke J

Joinder - plaintiff accessed its property 'via a public road' which was vested in defendant - plaintiff and defendant entered Deed - plaintiff sought Deed's specific performance - applicants, by notice of motion, sought joinder to proceedings - applicants contended they were 'necessary parties' on basis relief sought would 'directly affect their rights in relation to the public road' - *Ross v Lane Cove Council* (2014) 86 NSWLR 34 - *John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd* (2010) 241 CLR 1 - *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* [2019] NSWSC 1547 - 'direct effect test' - 'so-called rule in' *Tasker v Small* (1837) 3 My & Cr 63 - held: application granted.

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

Kesser v West [2021] VSC 621

Supreme Court of Victoria

Incerti J

Damages - negligence - plaintiff injured when struck by car - defendant admitted liability - parties disagreed concerning 'extent, if any' to which psychiatric injury was 'new injury' caused by accident and extent to which psychiatric injury was 'aggravation of pre-existing psychiatric injuries' - parties also disagreed concerning whether and if so in what amount damages should be awarded for loss of earnings - assessment of damages - held: plaintiff awarded \$693,000 'plus 5% for funds administration and interest'.

[Kesser](#) (I B)

Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd [2021] TASFC 12

Full Court of the Supreme Court of Tasmania

Blow CJ, Brett J & Porter AJ

Environment and planning - first respondent sought permit under *Land Use Planning and*



Approvals Act 1993 (Tas) (LUPA) - Council refused application - Resource Management and Planning Appeal Tribunal set aside decision of Council and decided that a conditional permit should be issued - primary judge dismissed appeal against Tribunal's decision - appellants appealed - 'meaning of' "undertaken in accordance with a reserve management plan" in cl 29.3.1-A1 of Central Highlands Interim Planning Scheme 2015 - *National Parks and Reserves Management Act 2002* (Tas) - held: appeal allowed.

[Wilderness Society](#) (I B C G)

In the Estate of Thompson [2021] NTSC 72

Supreme Court of the Northern Territory

Grant CJ

Wills and estates - applicant was son of deceased, executor of deceased's Will and beneficiary under Will - applicant sought to prove copy of Will and that Court admit it to probate - deceased had signed Will but Will could not be located - whether 'presumption of revocation' rebutted - onus - held: presumption of revocation rebutted - application granted.

[Thompson](#) (B)

Summaries With Link



A Bird Song

By: Christina Rossetti

It's a year almost that I have not seen her:
Oh, last summer green things were greener,
Brambles fewer, the blue sky bluer.

It's surely summer, for there's a swallow:
Come one swallow, his mate will follow,
The bird race quicken and wheel and thicken.

Oh happy swallow whose mate will follow
O'er height, o'er hollow! I'd be a swallow,
To build this weather one nest together.

https://en.wikipedia.org/wiki/Christina_Rossetti

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