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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)

Commissioner of Taxation v Sharpcan Pty Ltd (HCA) - taxation - income tax - sum paid by Trustee to State for gaming machine entitlements' acquisition was an 'outgoing on capital account' - sum not deductible under s8-1 or s40-880 *Income Tax Assessment Act 1997* (Cth) - appeal allowed (I B C G)

Pettiona v Nationwide News Pty Limited (FCA) - defamation - two proceedings commenced separately - damages severable under s35(1) *Defamation Act 2005* (NSW) - proceedings consolidated (I)

Zoo Sport (Europe) Ltd v Zoo International Pte Ltd (FCA) - want of prosecution - security for costs - trade mark - application for proceedings' dismissal for want of prosecution granted (I)

Jordan, Commissioner of Taxation v Second Commissioner of Taxation (FCA) - taxation - defamation - exceptions to prohibition on disclosure of "protected information" - Court satisfied disclosure of documents permitted (B I)

Allianz Australia Insurance Ltd v Akopyan (NSWSC) - motor accidents compensation - plaintiff sought to quash certificate of Medical Review Panel - error not established - summons dismissed (I B G)

Pilbara Ports Authority v Ashton (NSWSC) - cross-vesting - negligence - statutory duty -

occupational safety and health - application for transfer of proceedings to Supreme Court of Western Australia refused (I B C G)

UDP Holdings Pty Ltd (subject to deed of company arrangement) (rec and mgr apptd) v Ironshore Corporate Capital Ltd (No 3) (VSC) - costs - offer of compromise - defendants to pay successful plaintiff's costs on standard basis - indemnity costs order refused (I B)

Summaries With Link (Five Minute Read)

Commissioner of Taxation v Sharpcan Pty Ltd [2019] HCA 36

High Court of Australia

Kiefel CJ; Bell, Gageler, Nettle & Gordon JJ

Taxation - income tax - company ("Trustee") paid sum to State of Victoria for allocation of 'gaming machine entitlements' to it under *Gambling Regulation Act 2003* (Vic) - Full Court of the Federal Court of Australia found that sum was 'outgoing on revenue account' and thus deductible under s8-1 *Income Tax Assessment Act 1997* (Cth) (ITAA) - Federal Court also found that if sum was not outgoing deductible under s8-1 ITAA it was deductible under s40-880 ITAA - held: sum paid for gaming machine entitlements' acquisition was an 'outgoing on capital account' - sum not deductible under s8-1 or s40-880 ITAA - appeal allowed.

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

Pettiona v Nationwide News Pty Limited [2019] FCA 1690

Federal Court of Australia

Lee J

Defamation - two proceedings commenced which made 'essentially the same allegations' - proceedings separately commenced to 'safeguard against the prospect' that damages cap in s35(1) *Defamation Act 2005* (NSW) (Defamation Act) would jointly be applied 'to multiple applicants in a single set of proceedings' - whether applicants' 'wariness' necessary - whether damages were severable under s35(1) Defamation Act - whether proceedings should be consolidated - held: damages severable - proceedings consolidated.

[Pettiona](#) (I)

Zoo Sport (Europe) Ltd v Zoo International Pte Ltd [2019] FCA 1660

Federal Court of Australia

Rangiah J

Want of prosecution - security for costs - trade mark - applicants failed to comply with order that they provide security for respondents' costs - proceeding stayed - applicants' lawyers filed 'notice of ceasing to act' - respondents sought proceedings' dismissal for want of prosecution - whether applicants by defaults had demonstrated that they were unable or unwilling to cooperate with Court and parties in readying matter for trial - r5.22 *Federal Court Rules 2011* (Cth) - held: proceedings dismissed.

[Zoo Sport \(I\)](#)

Jordan, Commissioner of Taxation v Second Commissioner of Taxation [2019] FCA 1602

Federal Court of Australia

White J

Taxation - disclosure of "protected information" - defamation - Commissioner sought declaration disclosure of documents by Australian Taxation Office's officer concerning second respondent's 'taxation affairs' for defamation proceedings' purpose was within permitted exceptions to prohibition on protected information's disclosure in s355-25(1), Sch 1 *Taxation Administration Act 1953* (Cth) - 'performance of duties exception' - 'purpose of administering any taxation law' - 'purpose of civil proceedings that are related to a taxation law' - held: Court satisfied disclosure permitted - declaration granted.

[Jordan \(B I\)](#)

Allianz Australia Insurance Ltd v Akopyan [2019] NSWSC 1487

Supreme Court of New South Wales

Loneragan J

Motor accidents compensation - first defendant claimed compensation against plaintiff for injuries allegedly sustained in accident - plaintiff sought to quash Certificate of Medical Review Panel - plaintiff contended there was 'no evidence of head injury', that Panel failed 'to identify a physiological mechanism' and that Panel's reasons for decision were inadequate - *AAI Ltd trading as GIO as agent for the Nominal Defendant v McGiffen* [2016] NSWCA 229 - held: summons dismissed.

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

Pilbara Ports Authority v Ashton [2019] NSWSC 1488

Supreme Court of New South Wales

Loneragan J

Cross-vesting - negligence - statutory duty - occupational safety and health - plaintiff, under s8(1) *Jurisdiction of Courts (Cross-vesting) Act 1987* (NSW), sought proceedings' transfer from District Court of New South Wales to Supreme Court of Western Australia - *Occupational Safety and Health Act 1984* (WA) - balancing of parties' interests - interests of justice - held: Court not satisfied that proceedings' transfer was in interests of justice - amended summons dismissed.

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

UDP Holdings Pty Ltd (subject to deed of company arrangement) (rec and mgr apptd) v Ironshore Corporate Capital Ltd (No 3) [2019] VSC 708

Supreme Court of Victoria

Garde J

Costs - plaintiff successful on claim under 'buyer warranty and indemnity policy' which defendants underwrote - plaintiff sought indemnity costs order in reliance on offer of compromise refused by defendants - defendants sought that they pay 70% of plaintiff's costs on

standard basis - whether judgment 'no less favourable' than offer - r26.08 *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* - held: defendants to pay plaintiff's costs on standard basis - indemnity costs order refused.

[UDP \(I B\)](#)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

From The Lotos-eaters

By: Alfred, Lord Tennyson

"Courage!" he said, and pointed toward the land,
"This mounting wave will roll us shoreward soon."
In the afternoon they came unto a land
In which it seemed always afternoon.
All round the coast the languid air did swoon,
Breathing like one that hath a weary dream.
Full-faced above the valley stood the moon;
And like a downward smoke, the slender stream
Along the cliff to fall and pause and fall did seem.

A land of streams! some, like a downward smoke,
Slow-dropping veils of thinnest lawn, did go;
And some thro' wavering lights and shadows broke,
Rolling a slumbrous sheet of foam below.
They saw the gleaming river seaward flow
From the inner land: far off, three mountain-tops,
Three silent pinnacles of aged snow,
Stood sunset-flush'd: and, dew'd with showery drops,
Up-clomb the shadowy pine above the woven copse.

The charmed sunset linger'd low adown
In the red West: thro' mountain clefts the dale
Was seen far inland, and the yellow down
Border'd with palm, and many a winding vale
And meadow, set with slender galingale;
A land where all things always seem'd the same!
And round about the keel with faces pale,
Dark faces pale against that rosy flame,
The mild-eyed melancholy Lotos-eaters came.

Branches they bore of that enchanted stem,
Laden with flower and fruit, whereof they gave
To each, but whoso did receive of them,
And taste, to him the gushing of the wave
Far far away did seem to mourn and rave
On alien shores; and if his fellow spake,
His voice was thin, as voices from the grave;
And deep-asleep he seem'd, yet all awake,
And music in his ears his beating heart did make.

https://en.wikipedia.org/wiki/Alfred,_Lord_Tennyson

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