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

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Executive Summary (1 minute read)

Kason Kek-Gardner Ltd v PCL (EWCA) - contract - sale agreement - licence agreement - intellectual property - contractual construction - no acquisition of intellectual property rights under sale agreement - licence agreement validly terminated - appeal dismissed (I B C G)

Valve Corporation v Australian Competition and Consumer Commission (FCAFC) - consumer law - private international law - misleading and deceptive representations by US-based company - appeal and cross-appeal dismissed (I B C G)

Eisele v Commonwealth of Australia (FCA) - sex discrimination - disability discrimination - migration law - no error in dismissal of claims - appeal dismissed (I B C G)

Charan v Nationwide News Pty Ltd (VSC) - defamation - plaintiff defamed by newspaper article - defendant established defence of substantial truth in respect of imputations (I B)

Miller v Miller (VSCA) - transfer of proceedings - trial judge did not have power to order that application for transfer of proceeding to County Court under pt 5 *Courts (Case Transfer) Act 1991* (Vic) be withdrawn under s47 *Civil Procedure Act 2010* (Vic) appeal allowed (I B C G)

Laharum Bulk Handling Company Pty Ltd & Ors v National Australia Bank (SASC) - discovery - legal professional privilege - non-party disclosure - no error in ruling that privilege applied to documents - appeal dismissed (I B C G)

Built Environs WA Pty Ltd v Perth Airport Pty Ltd [No 2] (WASC) - contract - email did not constitute binding agreement - plaintiff's claim dismissed - defendant entitled to call on performance bonds - defendant entitled to succeed on claim against plaintiff for unpaid money (I B C G)

Summaries With Link (Five Minute Read)

Kason Kek-Gardner Ltd v PCL [2017] EWCA Civ 2132

**Lord Justice Lewison, Lord Justice Kitchin & Lord Justice Floyd
England & Wales Court of Appeal**

Contract - intellectual property - company (KPTL) operated in 'powder processing and handling' field - KPTL was proprietor of registered trademark and owned other intellectual property rights (IPR) - board resolved KPTL should enter administration - administrators accepted bid by company (PCL) for KPTL's assets - PCL was new company formed by certain former directors of KPTL - contract entered between administrators and PCL (PCL agreement) - administrators subsequently entered sale agreement (KGL agreement) with Kason Kek-Gardner Ltd (KGL) - KGL was also new company formed other KPTL directors - PCL and KGL entered licence agreement - under licence agreement PCL licensed KGL to use IPR formerly belonging to KPTL - whether KGL, under KGL agreement acquired IPR formerly belonging to KPTL - whether PCL validly terminated licence agreement - interpretation of contracts - held: KGL did not acquire IPR - licence validly terminated - appeal dismissed.

[Kason Kek-Gardner](#) (I B C G)

Valve Corporation v Australian Competition and Consumer Commission [2017] FCAFC 224

Full Court of the Federal Court of Australia
Dowsett, McKerracher & Moshinsky JJ

Consumer law - private international law - appellant (Valve) was based in United States of America - Valve operated 'online game distribution network' (Steam) - Steam had Australian subscriber accounts - respondent (ACCC) contended Valve contravened s18 *Australian Consumer Law* on basis of alleged misrepresentations concerning consumer guarantees in Australian Consumer Law - 'acceptable quality guarantee' - primary judge found all alleged misleading misrepresentations were made in Steam Subscriber Agreement, and one of two alleged misleading representations was made in 'Steam Refund Policy' - primary judge imposed penalty of 3 million dollars, and made declarations and orders - Valve appealed - ACCC appealed against rejection of its case for based on alleged 'chat room representations' - 'conflict of laws' - 'carrying on business in Australia' - *Competition and Consumer Act 2010* (Cth) - held: appeal and cross-appeal dismissed.

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

Eisele v Commonwealth of Australia [2018] FCA 15

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Federal Court of Australia

Moshinsky J

Sex discrimination - disability discrimination - migration law - subpoena - proceedings concerning second respondent's refusal of appellant's application for Subclass 457 visa - appellant sued first respondent Commonwealth and second respondent - appellant contended respondents discriminated against her in breach of *Sex Discrimination Act 1984* (Cth) - appellant also claimed respondents discriminated against her in breach of *Disability Discrimination Act 1992* (Cth), contending, in reliance on ss7 & 8 of Disability Discrimination Act, that she was a person who had associate with disability, and was subject of discrimination - primary judge dismissed appellant's claims, finding Sex Discrimination Act did not apply, and no disability discrimination - whether primary judge erred in setting aside subpoenas - whether erroneous reliance on 'Department of Immigration and Border Protection processes' - whether erroneous application of ss7 & 8 Disability Discrimination Act - whether primary judge erroneously ignored evidence of second respondent's failure to comply with Sex Discrimination Act, Disability Discrimination Act, *Privacy Act 1988* (Cth), *Migration Act 1958* (Cth) and *Commonwealth of Australia Constitution Act* while executing duties as Commonwealth employee - appeal dismissed.

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

Charan v Nationwide News Pty Ltd [2018] VSC 3

Supreme Court of Victoria

J Forrest J

Defamation - proceedings arising from publication of article in newspaper - plaintiff owned vocational education and training (VET) organisations before selling most interests in companies - plaintiff contended article conveyed that VET organisations 'acted unscrupulously' under his management and he had made 'a large amount of money' resulting from that conduct - defence of substantial truth - *Defamation Act 2005* (Vic) - *Evidence Act 2008* (Vic) - admissibility of evidence - business records - held: plaintiff defamed by article; which had conveyed imputations that he managed VET organisation engaged in 'unscrupulous business practices' which resulted in him making large amount of money; and which was 'significantly non-compliant with quality standards' - defendant established defence of substantial truth in respect of the imputations.

[Charan](#) (I B)

Miller v Miller [2018] VSCA 1

Court of Appeal of Victoria

Maxwell P & Kyrrou J

Transfer of proceedings - applicant sought leave to appeal against trial judge's order that application for transfer of proceeding to County Court under pt 5 *Courts (Case Transfer) Act 1991* (Vic) (CCT Act) be withdrawn under s47 *Civil Procedure Act 2010* (Vic) (CP Act) - Court granted applicant leave to appeal on ground trial judge erred in finding that s 47 CP Act empowered trial judge to make order - whether trial judge empowered to prevent transfer -

interaction of provisions of CCT Act and s47 CP Act - whether s47 'cut across' CCT Act's provisions concerning choice of forum - held: trial judge did not have power to make impugned order - appeal allowed.

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

Laharum Bulk Handling Company Pty Ltd & Ors v National Australia Bank [2018] SASC 3

Supreme Court of South Australia

Parker J

Discovery - legal professional privilege - Master ordered non-party disclosure against liquidators of two companies - documents were communications between first defendant's employees and advisers, an companies' officers and advisors - liquidators' solicitors identified documents potentially subject to legal professional privilege claim by third parties - Master ruled documents subject to legal professional privilege - dominant purpose of documents' creation - held: Court satisfied that privilege applied to the documents - appeal dismissed.

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

Built Environs WA Pty Ltd v Perth Airport Pty Ltd [No 2] [2018] WASC 17

Supreme Court of Western Australia

Tottle J

Contract - plaintiff was head contractor for construction of project - defendant was principal - parties entered construction contract - plaintiff claimed defendant wrongly had recourse to performance bonds provided under contract and breached contract by presenting them for payment - plaintiff contended that presenting performance bonds breached not the contract, but separate agreement by email - whether email constituted binding agreement - whether parties intended to create legal relations - if there was an agreement, whether defendant breached its terms - whether, if email not agreement, defendant was estopped from contending it had no legal effect and/or estopped from taking steps to recover liquidated damages from plaintiff under contract - held: email did not constitute binding agreement - even it was an agreement, defendant did not breach it - estoppel claim failed - Court upheld counter-claim - defendant entitled to declaration of entitlement call on performance bonds - defendant entitled to succeed against plaintiff in claim for unpaid money.

[Built Environs](#) (I B C G)



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The House of Life: 19. Silent Noon

By: Dante Gabriel Rossetti

Your hands lie open in the long fresh grass,—
The finger-points look through like rosy blooms:
Your eyes smile peace. The pasture gleams and glooms
'Neath billowing skies that scatter and amass.
All round our nest, far as the eye can pass,
Are golden kingcup fields with silver edge
Where the cow-parsley skirts the hawthorn-hedge.
'Tis visible silence, still as the hour-glass.

Deep in the sun-searched growths the dragon-fly
Hangs like a blue thread loosened from the sky:—
So this wing'd hour is dropt to us from above.
Oh! clasp we to our hearts, for deathless dower,
This close-companioned inarticulate hour
When twofold silence was the song of love.

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