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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)

Career Step, LLC v TalentMed Pty Ltd (No 2) (FCA) - copyright - contract - breach of copyright in education course materials established - breach of contract established (I B)

Sparks v Hobson; Gray v Hobson (NSWCA) - medical negligence - patient became paraplegic as a result of operation to straighten spine - anaesthetist's appeal against finding of liability allowed - surgeon's appeal against finding of liability dismissed (I B C G)

DJ Singh v DH Singh and Others (No 2) (NSWCA) - bias - apprehended bias not established - recusal application refused (I B C G)

Bernard-Ross v State of NSW (NSWSC) - administrative law - challenge to Commissioner's decision to deny plaintiff in custody access to laptop computer with 'write and edit' function - proceedings dismissed (I B C G)

Greyhound Racing Victoria Stewards v Anderton (VSC) - administrative law - greyhound racing - offences against Greyhound Racing Victoria Local Racing Rules and Greyhounds Australasia Rules in relation to use of live rabbit were offences of strict liability - appeal allowed in part - matter remitted (I B C G)

Charan v Nationwide News Pty Ltd (Costs Ruling) (VSC) - costs - defamation - Calderbank offer - indemnity costs order granted (I B C G)

Mulholland v Winslow (WASCA) - statutory construction - *Criminal Property Confiscation Act 2000* (WA) - 'possession' - no error in conclusion of primary judge - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Career Step, LLC v TalentMed Pty Ltd (No 2) [2018] FCA 132

Federal Court of Australia

Robertson J

Copyright - contract - dispute concerning educational course in relation to medical transcription skills - first respondent was applicant's licensee - second and third respondents were first respondent's directors - applicant contended respondents 'copied and used its course materials' to develop course in competition with its course - applicant brought claim pursuant to *Copyright Act 1968* (Cth) - applicant also claimed breach of contract - whether proof of 'subsistence or ownership of copyright' - whether first respondent breached copyright and/or breached contract in respect of Version 1 of its course (Talentmed v1) and/or Version 2 of its course (Talentmed v2) - whether authorisation of infringement by second and/or third respondents - whether second and/or third respondents were joint tortfeasors - accessorial liability - contractual construction - Academic Partner Agreement - Memorandum of Understanding - Discount Agreement - *Copyright (International Protection) Regulations 1969* (Cth) - held: breach of copyright and breach of contract by first respondent established in respect of Talentmed v1 - second and third respondents authorised infringement of copyright - parties to bring in agreed minutes to give effect to reasons.

[Career Step](#) (I B)

Sparks v Hobson; Gray v Hobson [2018] NSWCA 29

Court of Appeal of New South Wales

Basten, Macfarlan & Simpson JJA

Medical negligence - respondent suffered from Noonan Syndrome - respondent became paraplegic as result of operation to straighten his spine - respondent claimed damages against hospital, surgeon and anaesthetist - primary judge found both doctors liable on basis they should have terminated operation earlier than they did and that if they had done so respondent would not have become paraplegic - doctors challenged finding of liability and assessment of damages - doctors contended primary judge erred in finding them negligent and also relied on ss51 & 50 *Civil Liability Act 2002* (NSW) - 'materialisation of inherent risk' - 'standard of care for professionals' - held: breach of duty by anaesthetist not established - anaesthetist's appeal allowed - surgeon's appeal dismissed.

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

DJ Singh v DH Singh and Others (No 2) [2018] NSWCA 31

Court of Appeal of New South Wales

Gleeson JA

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Bias - appellant was appellant in two appeals from judgment in four proceedings heard together in respect of deceased's estate - appellant sought that judge recuse himself for apprehended bias arising from statements in interlocutory judgment on stay application - 'apprehended pre-judgment' - apprehension of bias test - held: apprehended bias not established - recusal application refused.

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

Bernard-Ross v State of NSW [2018] NSWSC 182

Supreme Court of New South Wales

Garling J

Administrative law - plaintiff in custody sought judicial review of Commissioner for Corrective Services' decision to deny plaintiff a laptop computer with 'write and edit function' for plaintiff's use in cell - held: plaintiff failed to demonstrate Commissioner's decision was unreasonable - no error of law - Commissioner, in making decision was 'applying broad policy' to deny inmates laptop computers with functionality sought by plaintiff - Commissioner's decision to provide plaintiff access to green computers for purposes of court cases was an 'entirely favourable exercise of discretion' to plaintiff - no failure to act in good faith - no improper purpose - proceedings dismissed.

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

Greyhound Racing Victoria Stewards v Anderton [2018] VSC 64

Supreme Court of Victoria

Zammit J

Administrative law - respondent 'greyhound trainer and breeder' was registered with Greyhound Racing Victoria (GRV) - GRV's Board (Board) suspended respondent's licence - Board charged respondent with two disciplinary offences arising from greyhounds' trialling in contravention of Local Racing Rules and Greyhounds Australasia Rules - GRV contended respondent had used or caused to be used a live rabbit as lure - GRV contended offences were offences of 'of absolute or strict liability' - Board found charges proved - respondent disqualified for eight years - Victorian Civil and Administrative Tribunal held that the offences were 'of ordinary liability' and found that respondent did not 'use' or 'cause to use' a live rabbit - GRV sought to appeal - Greyhound Racing Victoria Local Racing Rules LR 18.5 - Greyhounds Australasia Rules GAR 86(af) - held: offences were of strict liability - presumption not rebutted that defendant could plead defence of 'honest and reasonable mistake' - appeal allowed in part - matter remitted to Tribunal for determination.

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

Charan v Nationwide News Pty Ltd (Costs Ruling) [2018] VSC 89

Supreme Court of Victoria

J Forrest J

Costs - defamation - Court found plaintiff defamed by defendant but that defendant established defence of substantial truth in respect of defamatory imputations - defendant contended it was



entitled to indemnity costs on basis of Calderbank offers - s40 *Defamation Act 2005* (Vic) - held: majority of offers not genuine offers - one offer required consideration - held: plaintiff not reasonable to reject offer 'notwithstanding that it was an offer to capitulate' - defendant entitled to indemnity costs order.

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

Mulholland v Winslow [2018] WASCA 19

Court of Appeal of Western Australia

Martin CJ, Beach JA & Chaney J

Statutory construction - appellant sought judicial review of first respondent's decisions under ss73 & 76 - *Criminal Property Confiscation Act 2000* (WA) - appeal concerned meaning of 'possession' in s73(1) of the Act - appellant contended 'possession' meant only 'physical' possession - trial judge had found that 'possession' included 'a right to possess as against everyone except another person' - whether lawfully exercise by respondent of powers in ss73 & 76 - held: trial judge correct in concluding 'possession' was not confined in meaning as contended by appellant - appeal dismissed.

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

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