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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)

Rambaldi v Meletsis, in the matter of Karas (Bankrupt) (FCA) - trusts and trustees - bankruptcy - three interlocutory applications - trustees empowered to acquire assigned causes of action - judicial advice granted - Deputy Commissioner of Taxation granted leave to intervene (B)

AD v Commissioner of the Australian Federal Police (No 2) (NSWCA) - judgments and orders - proceeds of crime - dismissal of application for exclusion order under s94 *Proceeds of Crime Act 2002* (Cth) - appeal summarily dismissed - application for variation of judgment or to set it aside - notice of motion dismissed (B C I G)

Rogers v The Independent Liquor and Gaming Authority (No 2) (NSWSC) - administrative law - Authority's variation of hotel's authorisation was invalid due to failure to comply with requirements imposed by s51(13) *Liquor Act 2007* (NSW) - relief granted (B I G)

Application of Miguela Alvarez Macatangay (NSWSC) - judgments and orders - vexatious proceedings - leave to commence proceedings against State refused (B C I G)

Taylor v Fisher (WASCA) - negligence - occupier's liability - appellant's elbow lacerated by edges of soap dish in residential property - property owner not liable - appeal dismissed (I B C G)

Larussa v Anna Carr as administratrix of the estate of The Late Giuseppe

Larussa (WASCA) - wills and estates - probate - dismissal of claim for proof of lost will - appeal dismissed (B)

Cutting v Public Trustee for the Northern Territory (No 2) (NTSC) - wills and estates -

succession - family provision - application for extension of time to seek provision from deceased's Will under s8 *Family Provision Act* (NT) or declaration that 'Purported Agreement' was 'valid and binding' - application dismissed (B)

Summaries With Link (Five Minute Read)

Rambaldi v Meletsis, in the matter of Karas (Bankrupt) [2018] FCA 791

Federal Court of Australia

Davies J

Trusts and trustees - bankruptcy - three interlocutory applications - third and fourth defendants sought summary dismissal of "assigned claims" which plaintiffs had sued on, such claims being causes of action assigned by liquidator to plaintiffs as trustees of bankrupt's estate - trustees sought declaration and/or direction that they had power to acquire the assigned claims and that deed of assignment was 'valid and enforceable', and also sought judicial advice that they were justified to acquire assigned claims - Deputy Commissioner of Taxation (DCT) sought leave to intervene on 'limited basis' - s90-20(1)(a) *Insolvency Practice Schedule (Bankruptcy)*, Sch 2 *Bankruptcy Act 1966* (Cth) - s30 *Bankruptcy Act* - r9.12 *Federal Court Rules* - held: trustees had power to acquire the causes of action - judicial advice granted as sought - DCT granted leave to intervene.

[Rambaldi](#) (B)

AD v Commissioner of the Australian Federal Police (No 2) [2018] NSWCA 169

Court of Appeal of New South Wales

Beazley P; Meagher & Gleeson JJA

Judgments and orders - summary dismissal - Court summarily dismissed applicant's appeal from dismissal of application for exclusion order under s94 *Proceeds of Crime Act 2002* (Cth) in respect of property items subject of restraining orders under the Act - applicant, by notice of motion, sought variation of judgment, or to set it aside - r36.16(3A) *Uniform Civil Procedure Rules 2005* (NSW) - procedural fairness - whether Court had failed to take into consideration applicant's arguments - whether Court had failed to consider relevant authorities - held: applicant's notice of motion and submissions were misconceived - applicant was attempting to have appeal heard in circumstances where Court had summarily dismissed it - notice of motion dismissed.

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

Rogers v The Independent Liquor and Gaming Authority (No 2) [2018] NSWSC 1177

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Supreme Court of New South Wales
Schmidt J

Administrative law - defendant refused Commissioner of Police's application for revocation of 'extended trading authorisation' of hotel - defendant, however, acting on own initiative, varied authorisation to reduce trading hours of hotel - plaintiffs sought relief and to set aside defendant's decision - whether defendant's decision was invalid due to alleged failure to comply with requirements imposed by s51(13) *Liquor Act 2007* (NSW) - procedural fairness - whether plaintiffs 'wrongly deprived' of merits review before New South Wales Civil and Administrative Tribunal - held: defendant failed to comply with 'mandatory prerequisites' imposed by s51(13) to the exercise of s51(9)(b) powers - disputed decision invalid - relief granted as sought.

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

Application of Miguela Alvarez Macatangay [2018] NSWSC 1183

Supreme Court of New South Wales
Fagan J

Judgments and orders - vexatious proceedings - applicant was subject of order under s8(7) *Vexatious Proceedings Act 2008* (NSW) - applicant sought leave pursuant to s14(2) of the Act to commence proceedings against State - 'repetitious application' - whether changed circumstances - whether 'new or different material' - held: Court not satisfied to grant applicant leave to institute proceedings - leave to appeal refused.

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

Taylor v Fisher [2018] WASCA 126

Court of Appeal of Western Australia
Martin CJ; Murphy & Beech JJA

Negligence - occupier's liability - appellant's elbow lacerated by edges of 'damaged ceramic soap dish' affixed to shower recess's wall in residential property - appellant sued respondent owner of property - trial judge found the risk of injury was not reasonably foreseeable and that reasonable person in respondent's position would not have taken 'measures proposed' on appellant's behalf to avert risk - trial judge concluded respondent had not breached duty, and dismissed appellant's claim - appellant contended trial judge erred in finding risk was not foreseeable, and should have found breach of duty of care by respondent in failing to replace soap dish - s5B *Civil Liability Act 2002* (WA) - ss5 & 9 *Occupiers Liability Act 1985* (WA) - held: appellant's contentions failed - appeal dismissed.

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

Larussa v Anna Carr as administratrix of the estate of The Late Giuseppe Larussa [2018] WASCA 127

Court of Appeal of Western Australia
Murphy & Beach JJA, Allanson J

Wills and estates - probate - lost will - appellant was child of deceased - primary judge

dismissed appellant's claim for 'proof of a lost will' - whether presumption of revocation had been displaced - credibility - challenge to trial judge's factual findings - whether rebuttal of presumption deceased destroyed will with intention of revoking it - s14 *Administration Act 1903* (WA) - s15 *Wills Act 1970* (WA) - held: grounds of appeal failed - appeal dismissed.

[Larussa](#) (B)

Cutting v Public Trustee for the Northern Territory (No 2) [2018] NTSC 51

Supreme Court of the Northern Territory

Hiley J

Wills and estates - succession - family provision - plaintiff sought extension of time to seek provision from deceased's Will under s8 *Family Provision Act* (NT) or declaration that 'Purported Agreement' between plaintiff and executors was 'valid and binding' - 'effluxion of time' - availability of evidence - whether delay excusable - whether plaintiff would suffer injustice if extension of time refused - whether unconscionable conduct by plaintiff - whether 'Purported Agreement' between plaintiff and executors required Court's approval - held: application dismissed.

[Cutting](#) (B)

CRIMINAL

Executive Summary

R v Yiu; R v Yau (NSWCCA) - criminal law - drug offences - sentences imposed respondents manifestly inadequate - appeal allowed - respondents resentenced

MM v R (NSWCCA) - criminal law - aggravated sexual assault - jury misdirected as to aggravation element - aggravation element not established beyond reasonable doubt - appeal against conviction upheld

Summaries With Link

R v Yiu; R v Yau [2018] NSWCCA 155

Court of Criminal Appeal of New South Wales

Meagher JA; Rothman & Garling JJ

Criminal law - drug offences - Crown appealed, on ground of manifest inadequacy, against sentences imposed on respondents for their roles in supply of methylamphetamine - respondents had each pleaded guilty to knowingly taking part in supply of large commercial quantity of prohibited drugs - s25(2) *Drug Misuse and Trafficking Act 1985* (NSW) - each respondent received sentence of 3 years' imprisonment with 2 year non-parole period -

whether sentence adequately reflected 'objective criminality of the offending behaviour' - whether sentence paid 'appropriate regard to the guideposts of the maximum sentence' and 'standard non-parole period' prescribed by legislation - held: appeals allowed - respondents resentenced.

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MM v R [2018] NSWCCA 158

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Walton & R A Hulme JJ

Criminal law - aggravated sexual assault - applicant found guilty of offence of aggravated sexual assault and also pleaded guilty to stealing - applicant sentenced to 7 years in prison with 3 years 6 months no-parole period - applicant sought to appeal against aggravated sexual assault conviction on basis that due to 'defect in the indictment' trial judge had misdirected jury concerning element of offence - applicant sought verdict for 'lesser non-aggravated form' of offence - Crown conceded that trial judge had misdirected jury concerning requirements for establishment of aggravation, but submitted appeal should be dismissed under proviso in a6(1) *Criminal Appeal Act 1912* (NSW) - held: jury misdirected as to aggravation element - aggravation element not established beyond reasonable doubt - appeal upheld.

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Above the Dock

By: T. E. Hulme

Above the quiet dock in mid night,
Tangled in the tall mast's corded height,
Hangs the moon. What seemed so far away
Is but a child's balloon, forgotten after play.

https://en.wikipedia.org/wiki/T._E._Hulme

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