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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Victoria v Tatts Group Ltd (HCA) - contract - Tatts not entitled to terminal payment from State under agreement - State's appeal allowed (I B C G)

Tabcorp Holdings Ltd v Victoria (HCA) - statutory interpretation - Tabcorp not entitled to terminal payment provided for in s4.3.12(1) *Gambling Regulation Act 2003* (Vic) - appeal dismissed (I B C G)

Lee v Elgammal (NSWCA) - professional negligence - primary judge erred in concluding client suffered any loss or damage due to solicitor's advice - appeal allowed (I B)

Norris v Routley (NSWSC) - costs - continuation of proceedings in Court unwarranted - no order for costs even though plaintiff successful - plaintiff to pay indemnity costs to defendant - plaintiff to pay defendant's costs unnecessarily incurred for abandoned claim (I)

ANZ v Loftus (VSC) - mortgage - fraud - bank could enforce judgment debt against mortgagor - mortgage was valid - bank's security interest not defeasible for fraud (I B C)

Hunt v Black (VSC) - testator's family maintenance - deceased had no obligation to provide for step-grand-daughter - deceased did have obligation to provide for step-son - additional provision granted to step-son (B)

Galbally & O'Bryan Lawyers (a firm) v Awadallah (VSC) - solicitors' costs - review of costs - no error in decision of Associate judge - appeal dismissed (I G)

Summaries With Link (Five Minute Read)

Victoria v Tatts Group Ltd [2016] HCA 5

High Court of Australia

French CJ; Kiefel, Bell, Keane & Gordon JJ

Contract - appeal concerning parties' entry into agreement in 1995 after privatisation of TAB - agreement provided for terminal payment to be made to respondent (Tatts) "[i]f the Gaming Operator's Licence expires without a new gaming operator's licence having issued to [Tatts]" - whether Tatts entitled to payment under clause of agreement due to State's allocation of gaming machine entitlements under *Gambling Regulation Act 2003* (Vic) - meaning of "new gaming operator's licence" in clause of agreement - held: "new gaming operator's licence" meant a gaming operator's licence granted under Pt 3 *Gaming Machine Control Act 1991* (Vic) - a "new gaming operator's licence" was never issued - respondent not entitled to payment under clause of agreement - appeal allowed.

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

Tabcorp Holdings Ltd v Victoria [2016] HCA 4

High Court of Australia

French CJ; Kiefel, Bell, Keane & Gordon JJ

Statutory interpretation - appellant (Tabcorp) claimed entitlement to terminal payment under s4.3.12(1) *Gambling Regulation Act 2003* (Vic) - Tabcorp contended allocation of gambling machine entitlements was "grant of new licences" under of s4.3.12(1) as the entitlements were "substantially similar" to Tabcorp's licences - meaning of "grant of new licences" in s4.3.12(1) - statutory construction - held: "grant of new licences" meant "grant of wagering licence and gaming licence" issued under Pt 3 of Ch 4 *Gambling Regulation Act 2003* (Vic) - Tabcorp not entitled to terminal payment - appeal dismissed.

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

Lee v Elgammal [2016] NSWCA 26

Court of Appeal of New South Wales

Gleeson JA; Tobias & Emmett JJA

Professional negligence - evidence - appeal concerning whether appellant solicitor liable to respondent client for liability client incurred under guarantee he gave in bank's favour for loan made by bank to customer - client had retained solicitor to advise him on liabilities and obligations under guarantee and contended solicitor failed to advise him properly - solicitor admitted breach of retainer and negligence but disputed client suffered loss - primary judge gave judgment in client's favour - whether client would have signed guarantee if liability limited to certain amount - whether bank would not have released term deposit if provided with

guarantee with client's liability limited - held: primary judge erred in concluding client suffered any loss or damage due to solicitor's advice - appeal allowed.

[Lee](#) (I B)

Norris v Routley [2016] NSWSC 147

Supreme Court of New South Wales

Harrison J

Costs - offer of compromise - Court gave judgment for plaintiff in proceedings against defendant - plaintiff contended she should have costs in accordance with general rule - defendant contended plaintiff not entitled to costs as she failed to demonstrate "commencement and continuation of the proceedings in the Supreme Court, rather than the District Court, was warranted" - defendant also contended he should have costs of response to claim for lost income abandoned by plaintiff on hearing's second day, and was also entitled to indemnity costs due to plaintiff's rejection of offer of compromise - r42.34 *Uniform Civil Procedure Rules 2005* (NSW) - held: continuation of proceedings in Court not warranted - no order made in respect of costs even though plaintiff succeeded - plaintiff required to pay defendant's costs expended on abandoned claim - plaintiff obtained judgment no more favourable than terms of offer - defendant entitled to costs on indemnity basis.

[Norris](#) (I)

ANZ v Loftus [2016] VSC 58

Supreme Court of Victoria

Cameron J

Mortgage - fraud - defendant was registered proprietor of property - defendant defaulted on repayment pursuant to loan agreement with plaintiff bank - bank sought possession of property alleging that defendant agreed to grant registered mortgage over property as security - defendant contended he never signed mortgage, that signature was forged and bank's mortgage security was defeasible - Associate judge found in favour of bank and ordered payment of judgment debt - whether mortgage procured by fraud - whether bank could enforce judgment debt over property in reliance on mortgage - ss42, 76 & 78. *Transfer of Land Act 1958* (Vic) - held: bank could enforce judgment debt - mortgage was valid - bank's security interest not defeasible for fraud - judgment for bank.

[ANZ](#) (I B C)

Hunt v Black [2016] VSC 59

Supreme Court of Victoria

Cameron J

Testator's family maintenance - two applications for further provision from deceased's Will - plaintiff in one proceeding was deceased's disabled step-granddaughter - plaintiff in other proceeding was deceased's step-son - s91 *Administration and Probate Act 1958* (Vic) - held: deceased did not have responsibility to provide for step-grand-daughter - further provision refused - deceased had moral responsibility to stepson - stepson's needs were substantial - additional amount provided to stepson out of deceased's Will.

[Hunt \(B\)](#)

Galbally & O'Bryan Lawyers (a firm) v Awadallah [2016] VSC 68

Supreme Court of Victoria

Cameron J

Solicitors' costs - respondent was former client of applicant law firm - applicant represented respondent in negligence proceedings against former solicitors - respondent refused to pay applicant's costs, contending applicant overcharged him and was negligent - Associate judge upheld certain objections in relation to bill of costs - amount was taxed off bill - respondent's appeal dismissed pending reconsideration of Associate judge's earlier decision - Associate judge ordered payment of amount of \$51,177.87 - respondent appealed - held: no error in Associate judge's decision - appeal dismissed.

[Galbally \(I G\)](#)

CRIMINAL

Executive Summary

The Queen v GW (HCA) - criminal law - evidence - act of indecency in presence of daughter under 10 years - capacity to give sworn testimony - adequacy of directions - appeal allowed

PA v R (NSWCCA) - criminal law - act of indecency against 13-year-old - appeal against conviction dismissed

Summaries With Link

The Queen v GW [2016] HCA 6

High Court of Australia

French CJ; Bell, Gageler, Keane & Nettle JJ

Criminal law - evidence - directions - respondent convicted for act of indecency in presence of daughter under 10 years - recording of daughter's unsworn evidence tendered at trial - respondent contended presumption of competence to give sworn evidence not applied by pre-trial judge and that trial judge failed to direct jury concerning significance of fact that evidence unsworn - Court of Appeal upheld both grounds of appeal - appellant granted special leave to appeal - Uniform Evidence legislation (UEL) in relation to witnesses' competence and warnings about reliability -s61(1). *Crimes Act 1900 (ACT)* - Sch 1, ss12, 13, 21, 165 & 165A *Evidence Act 2011 (ACT)* - s70 *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* - held: pre-trial judge did not express conclusion on capacity to give sworn evidence in terms of UEL but this did not entail he was not satisfied that daughter lacked capacity - no inadequacy of directions - appeal

allowed.

[GW](#)

PA v R [2015] NSWCCA 18

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL, Johnson & Hamill JJ

Criminal law - applicant indicted regarding five counts alleging sexual assault on daughter - applicant acquitted of three counts and jury unable to agree on another count - applicant sought leave to appeal against conviction on one count for act of decency - whether inconsistent verdicts - whether jury's failure to agree was analogous to a verdict - s61M(2) *Crimes Act 1900* (NSW) - s6(1) *Criminal Appeal Act 1912* (NSW) - s165B *Evidence Act 1999* (NSW) - held: ground of appeal failed that jury's verdict should be set aside because it was irreconcilable with failure to agree on another count - it was open to jury to be satisfied beyond reasonable doubt that accused guilty of offence - appeal dismissed.

[PA](#)



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Not for That City

BY CHARLOTTE MEW

Not for that city of the level sun,
Its golden streets and glittering gates ablaze—
The shadeless, sleepless city of white days,
White nights, or nights and days that are as one—
We weary, when all is said , all thought, all done.
We strain our eyes beyond this dusk to see
What, from the threshold of eternity
We shall step into. No, I think we shun
The splendour of that everlasting glare,
The clamour of that never-ending song.
And if for anything we greatly long,
It is for some remote and quiet stair
Which winds to silence and a space for sleep
Too sound for waking and for dreams too deep.

BY [CHARLOTTE MEW](#)

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