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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

4nature Incorporated v Centennial Springvale Pty Ltd (NSWCA) - environment and planning - challenge to validity of development consent granted by Planning Assessment Commission - incorrect approach to requirements in *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (NSW) - appeal allowed (I B C G)

Cole v Lee (NSWSC) - partnership - joint venture - notice of termination purporting to terminate partnership was ineffective - application to wind up partnership on just and equitable ground stood over (I B C G)

Guastalegname v Australian Associated Motor Insurers Ltd (VSC) - insurance - home building insurance policy - 'heave' fell within soil movement exclusion - damage to plaintiff's home caused by the heave - claim dismissed (I B C G)

Barilla v Roads Corporation (VSC) - valuation and compensation - land reserved for public purposes - application for compensation not made out - proceedings dismissed (I B C G)

Perry v Nicholson (QSC) - trusts and trustees - application for directions concerning superannuation fund and death benefit nomination form - directions given (B)

Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Ltd (ACTCA) - quantum meruit - dismissal of claim for remuneration for assistance allegedly

given to respondent in securing sponsorship for rugby union team - appeal dismissed (I B C G)

Geddes v Taleni (ACTSC) - damages - negligence - pedestrian injured in collision with cyclist - cyclist liable - no contributory negligence - judgment for plaintiff in sum of \$408,552 (I B C G)

Summaries With Link (Five Minute Read)

4nature Incorporated v Centennial Springvale Pty Ltd [2017] NSWCA 191

Court of Appeal of New South Wales

Beazley P; Basten & Leeming JJA

Environment and planning - Land and Environment Court rejected challenge to validity of development consent granted by Planning Assessment Commission to 'Springvale Mine Extension Project' - issue on appeal was whether Land and Environment Court was correct to reject the challenge - whether incorrect interpretation of requirements of cl 10(1) *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (NSW) - construction of cl 10(1) - primary judge's findings concerning Commission's determination - held: Department's approach, set out in Addendum Report, did not reflect requirements of cl 10(1) - Commission's approach was based on Department's report and 'infected by same error' - appeal allowed.

[4nature](#) (I B C G)

Cole v Lee [2017] NSWSC 1011

Supreme Court of New South Wales

Parker J

Partnership - joint venture - separate question - plaintiff, first defendant and second defendant were in partnership subject to 'Partnership Deed' (deed) - plaintiff sought to extricate from partnership without invoking 'pre-emption' procedure under deed - plaintiff served 'notice of determination' purporting to terminate partnership under *Partnership Act 1892* (NSW) - determination of validity of notice - held: plaintiff's notice was ineffective - plaintiff's claim based on notice of determination dismissed - application for winding up on just and equitable ground stood over to give plaintiff opportunity to consider position in light of judgment.

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

Guastalegname v Australian Associated Motor Insurers Ltd [2017] VSC 420

Supreme Court of Victoria

Hargrave J

Insurance - home building insurance - plaintiff obtained Home Building Insurance policy from defendant - home damage damaged by storm - inundation of hail and rain led to 'heave' of clay soil under foundation slab - soil expanded and slab was thus raised - walls and roof frames lifted by slab caused damage to building - plaintiff claimed indemnity under policy - defendant denied liability to indemnify plaintiff on basis of general exclusion in respect of 'soil movement'

(soil movement exclusion) - whether 'heave' was within soil movement's natural and ordinary meaning - construction of policy - held: Court concluded that 'heave' fell within soil movement exclusion - damage to plaintiff's home caused by the heave - claim dismissed.

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

Barilla v Roads Corporation [2017] VSC 349

Supreme Court of Victoria

Emerton J

Valuation and compensation - applicants were registered proprietors of land - applicants intended to develop land - some but not all purposes achieved - pursuant to two Public Acquisition Overlays more than a third of applicants' land was reserved for public purposes - applicants claimed compensation under Pt 5 *Planning and Environment Act 1987* (Vic) - *Land Acquisition and Compensation Act 1986* (Vic) - costs of sale - capital gains tax advice - loss of opportunity - held: application for compensation not made out - proceeding dismissed.

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

Perry v Nicholson [2017] QSC 163

Supreme Court of Queensland

Boddice J

Trusts and trustees - applicant was trustee of superannuation fund - applicant sought directions concerning trustees of superannuation fund and binding death benefit nomination form - whether applicant validly removed as trustee - whether respondent was validly appointed trustee - whether a binding nomination was invalid - held: applicant validly removed in accordance with trust deed - respondent was validly appointed to fund - not in dispute deceased 'completed and signed a binding death benefit nomination' - parties to be heard further on whether notice given to fund's trustees.

[Perry](#) (B)

Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Ltd [2017] ACTCA 29

Court of Appeal of the Australian Capital Territory

Murrell CJ; Burns & Collier JJ

Quantum meruit - primary judge dismissed plaintiff's claim for reasonable remuneration for assistance allegedly given to respondent in securing sponsorship for rugby union team - appellant had contended the value of a sponsorship which he obtained exceeded \$8.4 million and that he was entitled to substantial remuneration - primary judge found appellant's activities did not have 'positive cause effect on the ultimate transaction' and that appellant's services had no market value - multiple grounds of appeal - whether application of wrong test for causation - whether erroneous finding that appellant did not make 'material contribution' - held: grounds of appeal failed - appeal dismissed.

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

Geddes v Taleni [2017] ACTSC 183

Supreme Court of the Australian Capital Territory

Elkaim J

Damages - negligence - plaintiff pedestrian injured when struck by defendant cyclist in open area where there were many criss-crossing pedestrians - plaintiff claimed damages against defendant - defendant denied liability, alleged contributory negligence and challenged quantum of damages - Pt 4.2 *Civil Law (Wrongs) Act 2002* (ACT) - held: defendant owed plaintiff duty of care to ride in reasonable manner - risk was foreseeable - probability of harm if precautions not taken was high - defendant was negligent for failure to dismount bicycle or ride at slow speed to avoid collision with pedestrian - no contributory negligence - damages assessed - judgment for plaintiff in sum of \$408,552.

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

CRIMINAL

Executive Summary

PG v R (NSWCCA) - criminal law - sentencing - parity principle - no 'erroneous disparity' between applicant's sentence and sentence later imposed by same judge on co-offender - appeal dismissed

R v Stamatov (NSWCCA) - criminal law - sentencing - trafficking in dangerous drugs - sentencing judge erred in relation to 'exceptional circumstances' issue - same sentence imposed on independent exercise of sentencing discretion - appeal dismissed

Summaries With Link

PG v R [2017] NSWCCA 179

Court of Criminal Appeal of New South Wales

Basten JA; Button & N Adams JJ

Criminal law - parity principle - applicant sentenced on indictment containing nine serious criminal charges for which applicant was sentenced to aggregate term of 9 years in prison - sentencing was undertaken on basis of pleas of guilty and statement of agreed facts - applicant challenged sentence on basis of disparity between applicant's sentence and sentence which same judge later imposed on principal co-offender - whether 'justifiable sense of grievance' - held: applicant did not demonstrate 'erroneous disparity' - appeal dismissed.

[PG](#)

R v Stamatov [2017] QCA 158



Court of Appeal of Queensland

Gotterson JA; Atkinson & Applegarth JJ

Criminal law - drug offences - applicant pleaded guilty to trafficking in dangerous drugs - applicant sentenced to three years in prison - applicant sought to appeal against sentence trial judge erred in concluding he was not permitted to distinguish between steroids and other 'Schedule 1' dangerous drugs for sentencing purposes, and in fettering discretion by determining that "exceptional circumstances" were required to be shown before a sentence which did not involve actual imprisonment could be imposed - Schedule 1 *Drugs Misuse Act 1986* (Qld) - *Penalties and Sentences Act 1992* (Qld) - held: sentencing judge erred in relation to 'exceptional circumstances' - on independent exercise of sentencing discretion, same sentence was imposed on applicant - appeal dismissed.

[Stamatov](#)



Benchmark

Sonnet 55: Not marble nor the gilded monuments

By [William Shakespeare](#)

Not marble nor the gilded monuments
Of princes shall outlive this powerful rhyme,
But you shall shine more bright in these contents
Than unswept stone besmeared with sluttish time.
When wasteful war shall statues overturn,
And broils root out the work of masonry,
Nor Mars his sword nor war's quick fire shall burn
The living record of your memory.
'Gainst death and all-oblivious enmity
Shall you pace forth; your praise shall still find room
Even in the eyes of all posterity
That wear this world out to the ending doom.
So, till the Judgement that yourself arise,
You live in this, and dwell in lovers' eyes.

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