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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)

Bhagwan Marine Pty Ltd v The Ship "Lauren Hansen" (FCA) - service - plaintiff sought orders for 'alternative service' concerning writ and execution of warrant - orders granted (I B C G C)

El-Zein v Barton Nine Pty Limited as trustee of the Barton Nine Settlement (FCA) - representative proceedings - application for approval of settlement - application granted (I B C G)

Gould v Jordan (FCA) - defamation - interlocutory application - application for order for separate hearing and determination of questions - application granted (B C I G)

Catriona Smith v OnePath Life Limited (NSWSC) - insurance - life insurance - fraud - misrepresentations - plaintiff wife of deceased claimed under deceased's life insurance policy - defendant 'entitled to avoid' policy (I B)

The application of New South Wales Independent Education Union; in the matter of Industrial Relations Act 1996 (NSW) (NSWSC) - industrial law - plaintiff sought order for cancellation of registration - order granted (I B C G)

EPA & Anor v Australian Sawmilling Company Pty Ltd (in liq) & Ors (VSC) - corporations - environmental law - plaintiffs sought to set aside disclaimer - undertaking - disclaimer set aside

(I B C G)

Brose v Arnold (QCA) - defamation - applicant's claim against respondent was dismissed - applicant sought to appeal - application out of time - leave to appeal refused (I B C G)

Summaries With Link (Five Minute Read)

Bhagwan Marine Pty Ltd v The Ship "Lauren Hansen" [2020] FCA 1225

Federal Court of Australia

McKerracher J

Service - plaintiff sought orders for 'alternative service' concerning writ and execution of warrant - whether, pursuant to r6A *Admiralty Rules 1988* (Cth) (Rules), to waive compliance with r30 Rules to extent required for writ's service - whether, pursuant to r6A Rules, to waive compliance with r43 Rules to extent required for arrest warrant's execution - whether to make directions concerning service of writ by 'Admiralty Marshal' by email - held: orders granted.

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

El-Zein v Barton Nine Pty Limited as trustee of the Barton Nine Settlement [2020] FCA 1197

Federal Court of Australia

Lee J

Representative proceedings - application for approval of settlement - whether settlement 'fair and reasonable compromise' of claims made on group members' behalf - s33V *Federal Court of Australia Act 1976* (Cth) (FCA Act) - 'function of' orders made under s33ZB (FCA Act) - held: Court satisfied to approve settlement.

[El-Zein](#) (I B C G)

Gould v Jordan [2020] FCA 1191

Federal Court of Australia

White J

Defamation - interlocutory application - applicant, pursuant to r30.01 *Federal Court Rules 2011* (Cth), for order for separate hearing and determination of questions - whether 'exceptional case' - justification - contextual truth - *Uniform Defamation Act* - held: application granted.

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

Catriona Smith v OnePath Life Limited [2020] NSWSC 1185

Supreme Court of New South Wales

Hammerschlag J

Insurance - life insurance - deceased suicided in California - deceased, prior to death, 'took out a life insurance policy with' defendant (policy) - plaintiff was 'nominated beneficiary' under policy - plaintiff claimed under policy - defendant 'denied cover' - defendant claimed it had avoided

policy on basis of deceased 'fraudulently failed to comply' with disclosure duty and deceased's misrepresentations concerning 'smoking and drug use' - whether defendant 'entitled to avoid policy' - ss21(1), 26 & 29 *Insurance Contracts Act 1984* (Cth) - held: deceased entitled to avoid policy.

[View Decision](#) (I B)

The application of New South Wales Independent Education Union; in the matter of Industrial Relations Act 1996 (NSW) [2020] NSWSC 1187

Supreme Court of New South Wales

Adamson J

Industrial law - plaintiff sought order for cancellation of its registration - whether Court had power to cancel registration - whether affidavit 'read with' summons 'sufficient to establish' plaintiff had applied for registration's cancellation under s226(f) *Fair Work (Registered Organisations) Act 2009* (Cth) - *Industrial Relations Act 1996* (NSW) - held: Court had power to cancel registration - registration cancelled.

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

EPA & Anor v Australian Sawmilling Company Pty Ltd (in liq) & Ors [2020] VSC 550

Supreme Court of Victoria

Garde J

Corporations - environmental law - plaintiffs, under s568B(2) *Corporations Act 2001* (Cth), sought to set aside disclaimer liquidators of company - whether liquidators occupiers of 'subject land' for purpose of s62(3) *Environmental Protection Act 1970* (Vic) (EP Act) - whether liquidators ceased to be subject land's occupiers because Environmental Protection Authority (EPA) 'entered subject land' and was 'conducting a clean up' under s62(1) EP Act - whether EPA's clean up costs claim barred by s545(1) *Corporations Act 2001* (Cth) if company had 'insufficient available property to meet' costs - whether plaintiffs were persons who had or claimed to have interest in subject land under ss568B(1) & (3) *Corporations Act* - whether 'liquidators' disclaimer would 'cause prejudice' 'grossly out of proportion' to prejudice caused to company's creditors under s568B(3) *Corporations Act* by setting aside of disclaimer - whether Court should exercise discretion to set aside disclaimer - held: disclaimer set aside on basis of undertaking given by plaintiffs.

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

Brose v Arnold [2020] QCA 162

Court of Appeal of Queensland

McMurdo & Mullins JJA; North J

Defamation - applicant's claim against respondent was dismissed - applicant sought to appeal - application out of time - *Praxis Pty Ltd v Hewbridge Pty Ltd* [2004] 2 Qd R 433 - s118(3) *District Court of Queensland Act 1967* (Qld) - whether applicant had been denied opportunity of having 'reputation vindicated' - held: leave to appeal refused.

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



CRIMINAL

Executive Summary

Summaries With Link



Bag-Pipes at Sea

By: Clinton Scollard

ABOVE the shouting of the gale,
The whipping sheet, the dashing spray,
I heard, with notes of joy and wail,
A piper play.

Along the dipping deck he trod, 5
The dusk about his shadowy form;
He seemed like some strange ancient god
Of song and storm.

He gave his dim-seen pipes a skirl
And war went down the darkling air; 10
Then came a sudden subtle swirl,
And love was there.

What were the winds that flailed and flayed
The sea to him, the night obscure?
In dreams he strayed some brackened glade, 15
Some heathery moor.

And if he saw the slanting spars,
And if he watched the shifting track,
He marked, too, the eternal stars
Shine through the wrack. 20

And so amid the deep sea din,
And so amid the wastes of foam,
Afar his heart was happy in
His highland home!

https://en.wikipedia.org/wiki/Clinton_Scollard

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