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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)

**Hurford Hardwood Kempsey Pty Ltd v Kempsey Timbers (Sawmilling) Pty Ltd (No 4)** (NSWSC) - costs - Court dismissed plaintiff's application for freezing orders - Court not satisfied to depart from ordinary rule - plaintiff to pay defendants' costs (I B C G)

**Wang v Botany View Hotel (No 4)** (NSWSC) - vexatious proceedings - Attorney General sought to be joined to proceedings; proceedings' summary dismissal and variation of vexatious proceeding order - orders granted (I B C G)

**Karlsson v Griffith University** (NSWSC) - trade mark - amended statement of claim struck out - plaintiff granted leave to replead - defendant excused from filing defence until further order or by 10/12/19 - orders made (I B C G)

**In the matter of Yinsanity Pty Ltd** (NSWSC) - corporations - second plaintiff granted leave to bring proceedings on company's behalf (B I)

**Re Kizelis** (VSC) - wills and estates - caveator objected to grant of probate to plaintiffs - caveat dismissed (B)

**Bennett & Philp Lawyers v Winn** (QCA) - security for costs - want of prosecution - application for leave to appeal against refusal to set aside order for security for costs dismissed (I B C G)

**Ryan v Australian College of Mental Health Nurses Incorporated (ACTSC)** - injunction - employment law - applicant sought continuation of interlocutory injunction - amended application dismissed (I)

## Summaries With Link (Five Minute Read)

### **Hurford Hardwood Kempsey Pty Ltd v Kempsey Timbers (Sawmilling) Pty Ltd (No 4) [2019] NSWSC 1331**

Supreme Court of New South Wales  
Stevenson J

Costs - Court dismissed plaintiff's application for freezing orders - plaintiff sought that Court depart from usual order that costs follow event on basis defendants had engaged in 'disentitling conduct' - plaintiff sought that there be no order as to costs - r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - *Cellarit Pty Ltd v Cawarra Holdings Pty Ltd (No 2)* [2018] NSWCA 266 - held: Court not satisfied to depart from ordinary rule concerning costs - plaintiff to pay defendants' costs.

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

### **Wang v Botany View Hotel (No 4) [2019] NSWSC 1323**

Supreme Court of New South Wales  
Adamson J

Vexatious proceedings - Attorney General for the State of New South Wales sought to be joined to proceedings; proceedings' summary dismissal and variation of McCallum J's vexatious proceeding order - variation sought to prevent plaintiff from commencing proceedings in New South Wales without Supreme Court of New South Wales' leave - r13.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: orders granted.

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

### **Karlsson v Griffith University [2019] NSWSC 1335**

Supreme Court of New South Wales  
Adamson J

Trade mark - defendant, pursuant to r14.28 *Uniform Civil Procedure Rules 2005* (NSW) (Rules), sought to strike out amended statement of claim - defendant also sought that it 'be excused from filing a defence under r14.3 Rules 'until further order', orders concerning service and costs order - defendant contended statement of claim was embarrassing and 'disclosed no reasonable cause of action' - held: amended statement of claim struck out - plaintiff granted leave to replead - defendant excused from filing defence until further order or by 10/12/19 - orders made.

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

### **In the matter of Yinsanity Pty Ltd [2019] NSWSC 1290**

Supreme Court of New South Wales

Black J

Corporations - second plaintiff, under s237 *Corporations Act 2001* (Cth), sought to bring proceedings in name of company (Yinsanity) - causes of action included 'breach of directors' duties, breach of fiduciary duty and diversion of corporate assets' - whether Yinsanity would bring proceedings - whether second plaintiff 'acting in good faith' - whether proceedings in best interests of Yinsanity - whether 'serious question to be tried' - held: Court satisfied to grant leave to second plaintiff to bring proceedings on Yinsanity's behalf.

[View Decision](#) (B I)

### **Re Kizelis [2019] VSC 667**

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiffs sought grant of probate of deceased's will - caveator objected to grant of probate - caveator contended lack of testamentary capacity, undue influence and that deceased did not 'know and approve of' will's contents - standing - whether 'case for investigation' - *Gardiner v Hughes [No 2]* [2019] VSCA 198 - held: caveat dismissed.

[Re Kizelis](#) (B)

### **Bennett & Philp Lawyers v Winn [2019] QCA 196**

Court of Appeal of Queensland

McMurdo J

Security for costs - Judge Koppenol made order for security for costs in favour of respondent against Ms Winn - Judge Reid declined to set order aside - Ms Winn sought leave to appeal against Judge Reid's decision - respondent sought that Ms Winn's application for leave be struck out for want of prosecution - explanation for default - interests of justice - *Bell Lawyers Pty Ltd v Pentelow* (2019) 93 ALJR 1007 - held: application for leave to appeal dismissed for want of prosecution.

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

### **Ryan v Australian College of Mental Health Nurses Incorporated [2019] ACTSC 268**

Supreme Court of the Australian Capital Territory

Crowe AJ

Injunction - employment law - applicant sought to restrain respondent from terminating applicant's employment - applicant sought respondent's compliance with certain clause of 'written employment contract' before any steps were taken to terminate employment under other clause of contract - applicant sought continuation of interlocutory injunction - *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148 - held: Court not satisfied to continue interlocutory injunction - amended application dismissed.

[Ryan](#) (I)





# Benchmark

## CRIMINAL

**Executive Summary**

**Summaries With Link**



# Benchmark

## The Ruin

**By:** Walter de la Mare

When the last colours of the day  
Have from their burning ebbed away,  
About that ruin, cold and lone,  
The cricket shrills from stone to stone;  
And scattering o'er its darkened green,  
Bands of the fairies may be seen,  
Chattering like grasshoppers, their feet  
Dancing a thistledown dance round it:  
While the great gold of the mild moon  
Tinges their tiny acorn shoon.

[https://en.wikipedia.org/wiki/Walter\\_de\\_la\\_Mare](https://en.wikipedia.org/wiki/Walter_de_la_Mare)

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