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

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Executive Summary (1 minute read)

Behman v Behman (NSWCA) - equity - estoppel - son entitled to charge over father's property - no error in findings of common intention or expectation - appeal dismissed (B)

Buckley & Anor v Independent Liquor and Gaming Authority & Anor (NSWSC) - administrative law - refusal of application to increase gaming machine threshold - jurisdictional error established - decision quashed - matter remitted (I B G)

Bird v Anambah Land Pty Ltd (No 2) (NSWSC) - costs - construction of costs order - order did not include of mediation and expert determination - declaration (I)

Re Tomker Pty Ltd (In Liq) (VSC) - corporations - winding up - permission to lodge objection to proof of debt - order made that objection not invalid (B)

Frigger v Lean (WASCA) - bias - application for recusal of judge on basis of actual or apprehended bias refused (I)

Armada Balnaves Pte Ltd v Woodside Energy Julimar Pty Ltd (WASC) - security for costs - contract - claim for 'massive damages' by plaintiff Singaporean company against defendant for breach of contract - plaintiff's major asset a ship moored in Indonesian waters - security for costs granted (I B C G)

Sandy v Yindjibarndi Aboriginal Corporation RNTBC (WASC) - contempt - publications did

not bring improper pressure on plaintiff which had 'real or definite tendency to interfere with the course of justice' - charge dismissed (I B C G)

Summaries With Link (Five Minute Read)

Behman v Behman [2016] NSWCA 295

Court of Appeal of New South Wales

McColl, Meagher & Gleeson JJA

Equity - estoppel - appeal from decision in which primary judge found respondent son entitled to charge over appellant father's property to secure repayment of amount to satisfy equity found to have arisen due to payments by son to father to assist with mortgage obligations - primary judge found equity founded on 'reliance on a common understanding or intention shared' by parties - appellant challenged primary judge's finding there was common intention or understanding - appellant also challenged finding as to respondent's expectation as to joint interest in property - held: challenges to primary judge's finding rejected - appeal dismissed.

[Behman](#) (B)

Buckley & Anor v Independent Liquor and Gaming Authority & Anor [2016] NSWSC 1533

Supreme Court of New South Wales

N Adams J

Administrative law - plaintiffs sought judicial review of Independent Liquor and Gaming Authority's refusal of application to increase gaming machine threshold on basis hotel containing machines would be in primary school's 'immediate vicinity' - held: Authority failed to explain process of reasoning for conclusion that 350 school students walked past hotel site in morning and afternoon - Authority took into account irrelevant consideration of foot traffic in finding school was in hotel's immediate vicinity - Authority acted 'illogically or irrationally' - jurisdictional error established - decision quashed - application remitted.

[Buckley](#) (I B G)

Bird v Anambah Land Pty Ltd (No 2) [2016] NSWSC 1552

Supreme Court of New South Wales

Stevenson J

Costs - Court ordered that plaintiff pay defendant's costs but that parties equally share two experts' costs - issue was whether costs order included parties' costs of expert determination, of unsuccessful mediation, as well as costs of earlier 'Parties' Meeting' - construction of order - *Civil Procedure Act 2005* (NSW) - *Legal Profession Uniform Law Application Act 2014* (NSW) - held: Court concluded costs order did not include costs of mediation and expert determination - declaration.

[Bird](#) (I)

Re Tomker Pty Ltd (In Liq) [2016] VSC 656

Supreme Court of Victoria

Randall AsJ

Corporations - winding up - second plaintiff's liquidator sought relief for insolvent trading pursuant to s588M *Corporations Act 2001* (Cth) - amount sought composed of debt claimed proven by Deputy Commissioner of Taxation - defendant director of second plaintiff objected to proof of debt and wished to lodge objection under Part IVC *Taxation Administration Act 1953* (Cth) - defendant sought order under s471A(1A)(d) *Corporations Act* that lodgement of objection was approved and order under s1322(4) *Corporations Act* that objection's lodgement was not invalid due to having occurred prior to Court's approval - held: Court determined prejudice likely to be suffered by defendant if objection unheard would be greater than Commissioner or liquidator would suffer if winding up was delayed - orders granted.

[Re Tomker](#) (B)

Frigger v Lean [2016] WASCA 190

Court of Appeal of Western Australia

Martin CJ

Bias - applicants sought to appeal from stay of proceedings against respondent on basis they were abuse of process - applicants sought that judge recuse himself from hearing appeal due to actual and apprehended bias - disclosed association with valuer who had given evidence in proceedings - refusal of permission to adduce further evidence - decision as to costs of appeal - refuse of applicant's attempt to reopen earlier appeal decision - assertion of humiliation of counsel - advice to counsel and applicants concerning time available for oral submissions - assertion of statement that applicant lied - assertion that judge had already made up his mind - held: no matter raised provided basis for fair-minded lay observer's apprehension that judge might not bring impartial and unprejudiced mind to questions - application refused.

[Frigger](#) (I)

Armada Balnaves Pte Ltd v Woodside Energy Julimar Pty Ltd [2016] WASC 353

Supreme Court of Western Australia

K Martin J

Security for costs - contract - plaintiff Singaporean corporation sued defendant for 'massive damages' for breach of contract - defendant sought security for costs against plaintiff on interim basis until parties completed discovery - O 25 *Rules of the Supreme Court 1971* (WA) - s1335 *Corporations Act 2001* (Cth) - held: determinative factors in favour of security order were that plaintiff held no assets in court's jurisdiction, and that its significant asset was a 'highly mobile' ship, not located in Singapore, but moored in Indonesian waters - plaintiff was capable of procuring security and would not be prejudiced - security order made.

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

Sandy v Yindjibarndi Aboriginal Corporation RNTBC [2016] WASC 350

Supreme Court of Western Australia

Le Miere J



Contempt - plaintiff sought that first defendant be punished for contempt for interfering with due administration of justice by publishing email on its website and publishing articles on Facebook and website which placed 'improper pressure' on plaintiff to not proceed with action - public interest - *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) - O 55 r4 *Rules of the Supreme Court 1971* (WA) - held: Court not convinced beyond reasonable doubt that publications brought improper pressure on plaintiff which had 'real or definite tendency to interfere with the course of justice' - charge dismissed.

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



Old Pardon, the Son of Reprieve

By [Banjo Paterson](#)

You never heard tell of the story?
Well, now, I can hardly believe!
Never heard of the honour and glory
Of Pardon, the son of Reprieve?
But maybe you're only a Johnnie
And don't know a horse from a hoe?
Well, well, don't get angry, my sonny,
But, really, a young un should know.

They bred him out back on the `Never',
His mother was Mameluke breed.
To the front -- and then stay there -- was ever
The root of the Mameluke creed.
He seemed to inherit their wiry
Strong frames -- and their pluck to receive --
As hard as a flint and as fiery
Was Pardon, the son of Reprieve.

We ran him at many a meeting
At crossing and gully and town,
And nothing could give him a beating --
At least when our money was down.
For weight wouldn't stop him, nor distance,
Nor odds, though the others were fast,
He'd race with a dogged persistence,
And wear them all down at the last.

At the Turon the Yattendon filly
Led by lengths at the mile-and-a-half,
And we all began to look silly,
While HER crowd were starting to laugh;
But the old horse came faster and faster,
His pluck told its tale, and his strength,
He gained on her, caught her, and passed her,
And won it, hands-down, by a length.

And then we swooped down on Menindie
To run for the President's Cup --
Oh! that's a sweet township -- a shindy



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To them is board, lodging, and sup.
Eye-openers they are, and their system
Is never to suffer defeat;
It's 'win, tie, or wrangle' -- to best 'em
You must lose 'em, or else it's 'dead heat'.

We strolled down the township and found 'em
At drinking and gaming and play;
If sorrows they had, why they drowned 'em,
And betting was soon under way.
Their horses were good 'uns and fit 'uns,
There was plenty of cash in the town;
They backed their own horses like Britons,
And, Lord! how WE rattled it down!

With gladness we thought of the morrow,
We counted our wagers with glee,
A simile homely to borrow --
'There was plenty of milk in our tea.'
You see we were green; and we never
Had even a thought of foul play,
Though we well might have known that the clever
Division would 'put us away'.

Experience 'docet', they tell us,
At least so I've frequently heard,
But, 'dosing' or 'stuffing', those fellows
Were up to each move on the board:
They got to his stall -- it is sinful
To think what such villains would do --
And they gave him a regular skinful
Of barley -- green barley -- to chew.

He munched it all night, and we found him
Next morning as full as a hog --
The girths wouldn't nearly meet round him;
He looked like an overfed frog.
We saw we were done like a dinner --
The odds were a thousand to one
Against Pardon turning up winner,
'Twas cruel to ask him to run.



We got to the course with our troubles,
A crestfallen couple were we;
And we heard the `books' calling the doubles --
A roar like the surf of the sea;
And over the tumult and louder
Rang `Any price Pardon, I lay!'
Says Jimmy, `The children of Judah
Are out on the warpath to-day.'

Three miles in three heats: -- Ah, my sonny,
The horses in those days were stout,
They had to run well to win money;
I don't see such horses about.
Your six-furlong vermin that scamper
Half-a-mile with their feather-weight up;
They wouldn't earn much of their damper
In a race like the President's Cup.

The first heat was soon set a-going;
The Dancer went off to the front;
The Don on his quarters was showing,
With Pardon right out of the hunt.
He rolled and he weltered and wallowed --
You'd kick your hat faster, I'll bet;
They finished all bunched, and he followed
All lathered and dripping with sweat.

But troubles came thicker upon us,
For while we were rubbing him dry
The stewards came over to warn us:
`We hear you are running a bye!
If Pardon don't spiel like tarnation
And win the next heat -- if he can --
He'll earn a disqualification;
Just think over THAT, now, my man!'

Our money all gone and our credit,
Our horse couldn't gallop a yard;
And then people thought that WE did it!
It really was terribly hard.
We were objects of mirth and derision
To folk in the lawn and the stand,



And the yells of the clever division
Of 'Any price Pardon!' were grand.

We still had a chance for the money,
Two heats still remained to be run;
If both fell to us -- why, my sonny,
The clever division were done.
And Pardon was better, we reckoned,
His sickness was passing away,
So he went to the post for the second
And principal heat of the day.

They're off and away with a rattle,
Like dogs from the leashes let slip,
And right at the back of the battle
He followed them under the whip.
They gained ten good lengths on him quickly
He dropped right away from the pack;
I tell you it made me feel sickly
To see the blue jacket fall back.

Our very last hope had departed --
We thought the old fellow was done,
When all of a sudden he started
To go like a shot from a gun.
His chances seemed slight to embolden
Our hearts; but, with teeth firmly set,
We thought, 'Now or never! The old 'un
May reckon with some of 'em yet.'

Then loud rose the war-cry for Pardon;
He swept like the wind down the dip,
And over the rise by the garden,
The jockey was done with the whip
The field were at sixes and sevens --
The pace at the first had been fast --
And hope seemed to drop from the heavens,
For Pardon was coming at last.

And how he did come! It was splendid;
He gained on them yards every bound,
Stretching out like a greyhound extended,



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His girth laid right down on the ground.
A shimmer of silk in the cedars
As into the running they wheeled,
And out flashed the whips on the leaders,
For Pardon had collared the field.

Then right through the ruck he came sailing --
I knew that the battle was won --
The son of Haphazard was failing,
The Yattendon filly was done;
He cut down the Don and the Dancer,
He raced clean away from the mare --
He's in front! Catch him now if you can, sir!
And up went my hat in the air!

Then loud from the lawn and the garden
Rose offers of 'Ten to one ON!'
'Who'll bet on the field? I back Pardon!'
No use; all the money was gone.
He came for the third heat light-hearted,
A-jumping and dancing about;
The others were done ere they started
Crestfallen, and tired, and worn out.

He won it, and ran it much faster
Than even the first, I believe
Oh, he was the daddy, the master,
Was Pardon, the son of Reprieve.
He showed 'em the method to travel --
The boy sat as still as a stone --
They never could see him for gravel;
He came in hard-held, and alone.

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But he's old -- and his eyes are grown hollow;
Like me, with my thatch of the snow;
When he dies, then I hope I may follow,
And go where the racehorses go.
I don't want no harping nor singing --
Such things with my style don't agree;
Where the hoofs of the horses are ringing



There's music sufficient for me.

And surely the thoroughbred horses
Will rise up again and begin
Fresh races on far-away courses,
And p'raps they might let me slip in.
It would look rather well the race-card on
'Mongst Cherubs and Seraphs and things,
'Angel Harrison's black gelding Pardon,
Blue halo, white body and wings.'

And if they have racing hereafter,
(And who is to say they will not?)
When the cheers and the shouting and laughter
Proclaim that the battle grows hot;
As they come down the racecourse a-steering,
He'll rush to the front, I believe;
And you'll hear the great multitude cheering
For Pardon, the son of Reprieve.

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