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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)

Gells Pty Ltd trading as Gells Lawyers v Jefferis (NSWCA) - jurisdiction - barrister's fees - judgment in barrister's favour - challenge to findings concerning District Court's jurisdiction - leave to appeal refused (B C I G)

The Commissioner of the Australian Federal Police v Dickson (NSWSC) - proceeds of crime - defendant sought injunction to restrain Official Trustee in Bankruptcy from auctioning property forfeited under *The Proceeds of Crime Act 2002* (Cth) - injunction refused (B C I G)

Data Base Corporate Pty Ltd v Strike Australia Pty Ltd (NSWSC) - leases and tenancies - 'rental determination' not carried out in accordance with sub-lease - determination not binding - declaratory relief granted (B C I G)

Re Wilson (VSC) - real property - wills and estates - severance of joint tenancies valid - registration of transfers appropriate (I B C G)

Pioneer Australia Pty Ltd & Anor v Quinn (QSC) - costs - security deed - defendant and second plaintiff by counterclaim to pay successful plaintiffs' costs of claim and counterclaim on indemnity basis (I B C G)

Seafocus Holdings Pty Ltd and Atalanta Investments Pty Ltd v Doric Contractors Pty Ltd (WASC) - summary judgment - construction contract - plaintiffs sought summary judgment

on part of claims for liquidated damages against defendant - summary judgment refused (I B C G)

Southwell v Staite (No 2) (ACTSC) - costs - wills and estates - family provision - defendants sought indemnity costs order in reliance on offers of settlement - rejection of offers not unreasonable - indemnity costs refused (I B C G)

Summaries With Link (Five Minute Read)

Gells Pty Ltd trading as Gells Lawyers v Jefferis [2019] NSWCA 59

Court of Appeal of New South Wales

Leeming JA & Emmett AJA

Jurisdiction - barrister's fees - Court found that respondent barrister was retained by applicant firm of solicitors and that respondent's fees were not paid - judgment given in respondent's favour - applicant sought to appeal - whether applicant had prospect of challenging primary judge's findings concerning District Court's jurisdiction - estoppel - misleading conduct - whether 'issue of principle' - whether 'question of public importance' - whether 'reasonably clear injustice going beyond the merely arguable' - held: leave to appeal refused.

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

The Commissioner of the Australian Federal Police v Dickson [2019] NSWSC 362

Supreme Court of New South Wales

Campbell J

Proceeds of crime - defendant sought injunction to restrain Official Trustee in Bankruptcy from auctioning his 'former home' (property) - property had been forfeited to Commonwealth under *The Proceeds of Crime Act 2002* (Cth) - "vests absolutely in the Commonwealth at the time of the forfeiture" - time at which Commonwealth could dispose or deal with property which had been forfeited - circumstances in which s99 of the Act was engaged by an appeal - whether defendant's conviction appeal had 'not been finally determined' - whether appeal had lapsed - whether appeal complying with 'statutory requirements' was 'on foot' - whether there was 'pause on right' of Commonwealth to auction property - held: injunction refused.

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

Data Base Corporate Pty Ltd v Strike Australia Pty Ltd [2019] NSWSC 271

Supreme Court of New South Wales

Darke J

Leases and tenancies - plaintiff was sub-lessor of premises - valuer appointed to determine 'Market Rent' - plaintiff contended valuer's 'rental determination' of Market Rent had not been 'carried out in accordance' with sub-lease's provisions - plaintiff sought declaratory relief - whether 'rents for premises' erroneously included - whether valuer 'did not have regard to market rents' - "in the vicinity of the Premises" - held: Court satisfied valuer's determination of

Market Rent not carried out in accordance with sub-lease - rental determination not binding - declaratory relief granted.

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

Re Wilson [2019] VSC 211

Supreme Court of Victoria

Derham AsJ

Real property - wills and estates - plaintiff was son of deceased (Leonard) - plaintiff sought declarations transfers of land which Leonard had executed in own capacity and as attorney for late mother (Austral), were 'valid and effective' - plaintiff also sought that first defendant administrator of deceased's estate lodge transfers of land for registration - whether Leonard 'validly executed severance transfers' - whether severance transfers could be registered - whether deaths of Leonard or Austral 'revoked or rendered ineffective' the transfers - 'doctrine that equity favours a tenancy in common' - whether 'Leonard and Austral became tenants in common in equal shares' - held: severance of joint tenancies valid - Leonard and Austral became tenants in common in equal shares - registration of transfers appropriate 'so as to sever' joint tenancies.

[Re Wilson](#) (I B C G)

Pioneer Australia Pty Ltd & Anor v Quinn [2019] QSC 82

Supreme Court of Queensland

Bond J

Costs - Court gave judgment for plaintiffs in proceedings and dismissed counterclaim - determination of costs - security deed - whether plaintiffs 'contractually entitled' to order for indemnity costs - whether costs order should include cost of defence of counterclaim - whether security deed covered costs of claim and counterclaim - "the moneys hereby secured" - held: Court exercised costs discretion in accordance with plaintiffs' 'contractual entitlement' - defendant and second plaintiff by counterclaim to pay plaintiffs' costs of claim and counterclaim on indemnity basis.

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

Seafocus Holdings Pty Ltd and Atalanta Investments Pty Ltd v Doric Contractors Pty Ltd [2019] WASC 100

Supreme Court of Western Australia

Master Whitby

Summary judgment - construction contract - plaintiffs sought summary judgment against defendant concerning part of claims for liquidated damages - whether prima facie case - whether 'arguably good defence' - construction of contract - 'date for practical completion' - O14 r2 *Rules of the Supreme Court 1971* (WA) - held: summary judgment refused - application dismissed.

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



Southwell v Staite (No 2) [2019] ACTSC 83

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Costs - wills and estates - family provision - Court have judgment concerning 'proper distribution' to plaintiff under deceased's will concerning plaintiff's family provision application - defendant sought variation of costs order - defendant sought indemnity costs order in reliance on 'two offers of settlement' - whether unreasonable of plaintiff to reject offers - held: rejection of offers not unreasonable - indemnity costs order refused.

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

CRIMINAL

Executive Summary

Summaries With Link



From: Baby Tortoise

By: D. H. Lawrence

You know what it is to be born alone,
Baby tortoise!

The first day to heave your feet little by little from
the shell,
Not yet awake,
And remain lapsed on earth,
Not quite alive.

A tiny, fragile, half-animate bean.

To open your tiny beak-mouth, that looks as if it would
never open
Like some iron door;
To lift the upper hawk-beak from the lower base
And reach your skinny neck
And take your first bite at some dim bit of herbage,
Alone, small insect,
Tiny bright-eye,
Slow one.

To take your first solitary bite
And move on your slow, solitary hunt.
Your bright, dark little eye,
Your eye of a dark disturbed night,
Under its slow lid, tiny baby tortoise,
So indomitable.

https://en.wikipedia.org/wiki/D._H._Lawrence

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