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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)

**Wells v Council of the City of Orange (No 2)** (NSWSC) - negligence - motorcyclist injured in collision with water-filled barrier which defendant placed across street as part of works - defendant not liable (I B C G)

**Estate MPS, deceased** (NSWSC) - succession - family provision - protective jurisdiction - grant of legacy to plaintiff with mental health disability subject to consideration whether to make orders on exercise of protective jurisdiction (B)

**Brandon Lynch v Independent Liquor & Gaming Authority** (NSWSC) - administrative law - Authority's decision to refuse to transfer hotelier's licence to alternative premises set aside (I B C G)

**Downer EDI Rail Pty Ltd v John Holland Pty Ltd; Kellogg Brown & Root Pty Ltd v John Holland Pty Ltd** (NSWSC) - contract - arbitration - application for determination of separate questions refused (I B C G)

**Wilson v Transport Accident Commission** (VSC) - administrative law - plaintiff injured in collision with parked vehicle while bike riding recreationally - compensation refused on basis collision injured during bike ride which was not work-related - appeal dismissed (I B C G)

**Ramadan v ACN 098 408 176 Pty Ltd** (SASC) - loan contract - equity - circumstances of

transaction were unconscionable - Court to hear further from parties as to appropriate remedy (I B C G)

**Construction Occupations Registrar v Bates (ACTCA)** - building and construction - administrative law - dismissal of application for occupational discipline orders against building certifier - appeal allowed - matter remitted (I B C G)

## Summaries With Link (Five Minute Read)

### **Wells v Council of the City of Orange (No 2) [2017] NSWSC 510**

Supreme Court of New South Wales

Hoeben CJ at CL

Negligence - defendant controlled public roads - defendant was carrying out road works - defendant placed water-filled barriers across street as part of road works - plaintiff motorcyclist injured when he collided with barrier - plaintiff sued defendants in negligence - plaintiff contended defendant negligently failed to provide adequate lighting and delineation - plaintiff also contended defendant negligently used a Traffic Control Plan (TCP) which failed to comply with Australian Standard and of which barrier was a part - determination of liability - ss5B, 5D, 5R, 43A, 50 & 54 *Civil Liability Act 2002* (NSW) - held: plaintiff failed to establish that defendant was negligent - even if Court wrong in concluding plaintiff failed to establish negligence, claim would fail because defendant would have made out defences under ss43A & 54 *Civil Liability Act* - judgment for defendant.

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

### **Estate MPS, deceased [2017] NSWSC 482**

Supreme Court of New South Wales

Lindsay J

Succession - family provision - intestacy - protective jurisdiction - plaintiff with mental health disability sought family provision under Ch 3 *Succession Act 2006* (NSW) from deceased's estate - plaintiff claimed he was living in 'close personal relationship' with deceased - whether plaintiff was 'living together' with deceased at time of death in "close personal relationship attended by the provision of 'domestic support and personal care'" - whether 'disentitling conduct' - held: operation of intestacy rules as to deceased's estate did not make adequate provision for plaintiff's proper maintenance, education or advancement in life - legacy granted, subject to consideration whether to make orders on exercise of protective jurisdiction.

[Estate MPS](#) (B)

### **Brandon Lynch v Independent Liquor & Gaming Authority [2017] NSWSC 513**

Supreme Court of New South Wales

Sackar J

Administrative law - statutory construction - plaintiffs sought to quash first defendant Authority's

# Benchmark

refusal of first plaintiff's application under s59 *Liquor Act 2007* (NSW) to transfer hoteliers licence relating to hotel to alternative premises - held: Authority's decision premised on two false assumptions: the false assumption that applicant was required to be a licensee at the time of determination of s59 application; and the false assumption that a dispossessed licensee was not a licensee for purposes of application - applicant need only be a licensee at time of making s59 application - a dispossessed licensee was still a licensee for purposes of s59 - there was jurisdictional error by Authority - Authority's decision set aside.

[Brandon Lynch](#) (I B C G)

## **Downer EDI Rail Pty Ltd v John Holland Pty Ltd; Kellogg Brown & Root Pty Ltd v John Holland Pty Ltd [2017] NSWSC 529**

Supreme Court of New South Wales

Stevenson J

Contract - arbitration - proceedings arising from damage to water detention system and rail maintenance facility - first defendant in proceedings sought determination of two separate questions: whether, on proper construction of subcontract between it and first plaintiff, it had no liability to first plaintiff for 'pure economic loss', and whether loss claimed by first plaintiff was of kind for which first plaintiff was not liable - second defendant sought separate determination of substantially the same questions - held: Court not persuaded it should determine separate questions - application refused.

[Downer EDI](#) (I B C G)

## **Wilson v Transport Accident Commission [2017] VSC 209**

Supreme Court of Victoria

Bell J

Administrative law - statutory interpretation - plaintiff lived and worked on farm - plaintiff injured in collision with parked vehicle while bike riding recreationally - plaintiff sought compensation under *Transport Accident Act 1986* (Vic) on basis he was travelling to or from place of employment - Transport Accident Commission rejected application on basis collision occurred during bicycle ride that wasn't work-related - Victorian Civil and Administrative Tribunal dismissed application for review - plaintiff contended Tribunal misconstrued Transport Accident Act - 'travelling to or from [the] place of employment' - ss3(1), 3(1A) & 35(1) Transport Accident Act - ss82(1) & 83(2)(b) *Accident Compensation Act 1985* (Vic) - held: requirement of connection between travel and place of employment not satisfied - no error of law by Tribunal - appeal dismissed.

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

## **Ramadan v ACN 098 408 176 Pty Ltd [2017] SASC 63**

Supreme Court of South Australia

Master Dart

Contract - equity - plaintiff and her husband entered loan contract with first defendant lender secured by mortgage over property - plaintiff contended it was unconscionable for first

# Benchmark

defendant to rely on or seek to enforce transaction - plaintiff contended right to relief under *Trade Practices Act 1974* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth) and in equity - plaintiff also contended she was entitled to rescind transaction under Ch 7 *Corporations Act 2001* (Cth) - held: plaintiff succeeded on liability - circumstances of transaction were unconscionable - Court to hear further from parties on appropriate orders as to remedy.  
[Ramadan](#) (I B C G)

## **Construction Occupations Registrar v Bates [2017] ACTCA 15**

Court of Appeal of the Australian Capital Territory

Elkaim, Rangiah & Mossop JJ

Building and construction - administrative law - ACT Civil and Administrative Tribunal ('ACAT') dismissed appellant's application for occupational discipline orders against respondent building certifier under *Construction Occupations (Licensing) Act 2004* in relation to grant of building approval granted by respondent - Appeal Tribunal and primary judge dismissed appeals - proper interpretation of Building Act - distinction between situations where building work had, and those in which it hadn't, begun - whether it was possible for owners of land to appoint respondent in relation to work that yet to be undertaken - whether exercise undertaken by certifier only involved review of plans - whether plans could be approved as plans without considering work completed on site - held: there was error by primary judge and at both levels of Tribunal - appeal allowed - matter remitted to ACAT for further hearing.

[Construction Occupations Registrar](#) (I B C G)

## CRIMINAL

### Executive Summary

**BD v The Queen** (NTCCA) - criminal law - appellant found guilty of two counts of indecently dealing with a child 16 contrary to s132(2)(a) *Criminal Code* (NT) - appeal allowed - findings of guilt quashed

**Dickson v R** (NSWCCA) - criminal law - theft - joint criminal enterprise - conviction on five counts in relation to theft - grounds of appeal concerning reasonableness of verdicts and trial judge's direction to jury failed - appeal dismissed

### Summaries With Link

#### **BD v The Queen [2017] NTCCA 2**

Court of Criminal Appeal of the Northern Territory

Grant CJ; Kelly & Barr JJ

Criminal law - appellant charged with six counts of indecently dealing with a child under the age of 16 contrary to s132(2)(a) *Criminal Code* (NT) - appellant was teacher and complainants were appellant's pupils - appellant found guilty on counts 1 and 2 of indictment - appellant appealed against findings of guilt - appellant contended Crown's evidence did not disclose indecency, that trial judge failed to properly direct jury on motive, that tendency evidence was erroneously admitted or that its probative value did not outweigh its prejudicial effect, that unanimous verdicts of guilty did not represent jury's true verdicts, and/or integrity of deliberations compromised, or that an enquiry was required to determine whether there was miscarriage of justice in relation to deliberations - whether failure by trial judge to explain to jury the duty owed by a teacher in the circumstances - whether failure by Crown to particularise case - admissibility of evidence - held: appeal allowed - findings of guilt quashed.

[BD](#)

## **Dickson v R [2017] NSWCCA 78**

Court of Criminal Appeal of New South Wales

Bathurst CJ; Johnson & Fullerton JJ

Criminal law - theft - joint criminal enterprise - applicant charged with five offences concerning thefts - there were other individuals said to be applicant's co-offenders but applicant was tried alone - applicant convicted on all counts - applicant appealed against convictions - applicant contended jury verdict on each count was unreasonable or could not be supported by evidence - applicant also contended trial judge erred in directing jury that 'in order to find the applicant guilty under the principles of joint criminal enterprise, it must be satisfied that the applicant was present when each offence was committed' - held: grounds of appeal failed - appeal dismissed.

[Dickson](#)



# Benchmark

## **Wash of Cold River**

**By** [Hilda Doolittle](#)

*Wash of cold river  
in a glacial land,  
Ionian water,  
chill, snow-ribbed sand,  
drift of rare flowers,  
clear, with delicate shell-  
like leaf enclosing  
frozen lily-leaf,  
camellia texture,  
colder than a rose;*

*wind-flower  
that keeps the breath  
of the north-wind—  
these and none other;*

*intimate thoughts and kind  
reach out to share  
the treasure of my mind,  
intimate hands and dear  
drawn garden-ward and sea-ward  
all the sheer rapture  
that I would take  
to mould a clear  
and frigid statue;*

*rare, of pure texture,  
beautiful space and line,  
marble to grace  
your inaccessible shrine.*

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