


Friday, 5 June 2020

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Cumberland v The Queen (HCA) - criminal law - offences under *Misuse of Drugs Act 1990* (NT) - prosecution contended appellant's sentence manifestly inadequate - prosecution's appeal allowed - appellant granted special leave to appeal - denial of procedural fairness - appeal allowed (I B C G)

Orfali v Chief Executive Officer, Services Australia (FCA) - administrative law - freedom of information - self-represented litigant - applicant sought extension of time to appeal against dismissal of application against respondent - application dismissed (I B C G)

Capilano Honey Ltd v Dowling (NSWSC) - defamation - injurious falsehood - self-represented litigant - refusal to undertake to not make recording - defendant to be excluded from courtroom (I B C G)

Cooper bht Cooper v Australian Karting Association Limited t/as Karting Australia (NSWSC) - approval of settlement - plaintiff injured while watching a go kart race in Queensland - Court satisfied to approve proceeding's settlement (I B C G)

Adoption of K (anonymised) (NSWSC) - family law - adoption - application for adoption of 5-year-old child - orders made (B C I G)

EC Newstead Property Group Pty Ltd v H&T Qld Pty Ltd (VSC) - corporations - statutory

demand - service - limitations - application to set aside statutory demand under s459G *Corporations Act 2001* (Cth) was within time (B)

Hill v Zuda Pty Ltd as trustee for The Holly Superannuation Fund (WASCA) - security for costs - superannuation - respondents sought security for costs of appeal - application granted (I B C G)

Summaries With Link (Five Minute Read)

Cumberland v The Queen [2020] HCA 21

High Court of Australia

Bell, Gageler & Nettle JJ

Criminal law - appellant pleaded guilty to offences under *Misuse of Drugs Act 1990* (NT) - appellant sentenced to 'aggregate term' of 4 years 6 months in prison - judge directed appellant's release from custody after 2 years, with sentence's balance suspended for 3 years - prosecution contended sentence manifestly inadequate - Court of Criminal Appeal of the Northern Territory (Court of Criminal Appeal) allowed appeal - appellant resentenced to 8 years in prison with 5 years 5 months and 1 week non-parole period - appellant not provided opportunity to place material before Court of Criminal Appeal concerning his 'progress in custody' or make submissions concerning re-sentence or appeal's dismissal in exercise of "residual discretion" - appellant granted special leave to appeal - whether Court of Criminal Appeal erroneously failed to 'consider and apply the principles relating to Crown appeals' - whether Court of Criminal Appeal erred in 'separately determining' that appeal 'should be allowed' when circumstances 'of any re-sentencing' were unknown - whether Court of Criminal Appeal erroneously failed to afford appellant procedural fairness - respondent's concession of denial of procedural fairness - whether to remit matter to Court of Criminal Appeal - whether remittal would be futile - delay - held: Court of Criminal Appeal's orders set aside - appeal allowed.

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

Orfali v Chief Executive Officer, Services Australia [2020] FCA 747

Federal Court of Australia

O'Bryan J

Administrative law - freedom of information - self-represented litigant - applicant brought 'freedom of information application' against respondent - Administrative Appeals Tribunal dismissed application under s42A(5) *Administrative Appeals Tribunal Act 1975* (Cth) (AAT Act) finding applicant failed to proceed with application 'within a reasonable time' and failed to comply with its directions - applicant sought extension of time to appeal - ss44(2A) & 44(1) AAT Act - held: application dismissed.

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

Capilano Honey Ltd v Dowling [2020] NSWSC 660

Supreme Court of New South Wales

Button J

Defamation - injurious falsehood - self-represented litigant - parties, due to COVID-19, 'appeared remotely by way of audio and video link' - Court emphasised that there should be no recording made, 'whether that be audio, or visual or both, or indeed a still image' - defendant revealed he was making recording and intended to keep doing so despite Court's request that he not make recording - defendant refused to undertake not to make recording - 'possible commission of a criminal offence' - ss9(2)(a) & 12(1)(a)(iii) *Court Security Act 2005* (NSW) - s7(3)(b)(i) *Surveillance Devices Act 2007* (NSW) - held: defendant to be excluded from courtroom - proceedings to continue *ex parte*.

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

Cooper bht Cooper v Australian Karting Association Limited t/as Karting Australia [2020] NSWSC 664

Supreme Court of New South Wales

Harrison AsJ

Approval of settlement - plaintiff injured while watching a go kart race in Queensland - defendants contested liability and raised defences under ss13 & 19 *Civil Liability Act* (Qld) - parties attended mediation - defendants offered to settle - whether risk to plaintiff of losing agreed 'sum certain' was outweighed by possibility of plaintiff 'receiving more' following a hearing - held: settlement approved.

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

Adoption of K (anonymised) [2020] NSWSC 683

Supreme Court of New South Wales

Sackar J

Family law - adoption - proceedings concerning application for adoption of 5-year-old child - birth parents had withdrawn opposition to adoption but had not formally consented to it - whether Court satisfied 'statutory requirements' met - whether adoption 'clearly preferable option' - whether to dispense with consent of birth parents - 'proposed name change' - 'maternal and paternal plans' - *Adoption Act 2000* (NSW) - *Children and Young Persons (Care and Protection) Act 1998* (NSW) - held: 'Adoption Orders Made'.

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

EC Newstead Property Group Pty Ltd v H&T Qld Pty Ltd [2020] VSC 322

Supreme Court of Victoria

Randall AsJ

Corporations - statutory demand - defendant served statutory demand on plaintiff - plaintiff, under s459G *Corporations Act 2001* (Cth), sought to set aside statutory demand (application) - statutory demand and 'accompanying affidavit' (documents) dated 4 February 2020 - plaintiff contended it received documents on 7 February 2020 'by express post' - if plaintiff received

documents on that date application was in time - defendant, however, contended documents' service 'effected by email transmission on 4 February 2020' - if service effected on 4 February 2020 application was out of time - whether appropriate to consider whether email transmission was 'informal service' - 'strict time limits' for making of application - held:

[EC Newstead](#) (B)

Hill v Zuda Pty Ltd as trustee for The Holly Superannuation Fund [2020] WASCA 87

Court of Appeal of Western Australia

Murphy JA

Security for costs - appellant commenced action against first, second and third respondents - appellant contended that a 'binding death benefit nomination under an amended superannuation deed' for superannuation fund was invalid - master granted respondents' application for summary judgment - appellant appealed - first, second and third respondents sought security for costs - principles in *George 218 Pty Ltd v Bank of Queensland Limited* [2016] WASCA 56 - held: security for costs granted.

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

CRIMINAL

Executive Summary

Summaries With Link



To Spring

By: William Blake

THOU with dewy locks, who lookest down
Through the clear windows of the morning, turn
Thine angel eyes upon our western isle,
Which in full choir hails thy approach, O Spring!

The hills tell one another, and the listening
Valleys hear; all our longing eyes are turn'd
Up to thy bright pavilions: issue forth
And let thy holy feet visit our clime!

5

Come o'er the eastern hills, and let our winds
Kiss thy perfumèd garments; let us taste
Thy morn and evening breath; scatter thy pearls
Upon our lovesick land that mourns for thee.

O deck her forth with thy fair fingers; pour
Thy soft kisses on her bosom; and put
Thy golden crown upon her languish'd head,
Whose modest tresses are bound up for thee.

15

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

[Click Here to access our Benchmark Search Engine](#)