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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)

Kuterba v Sirtex Medical Limited (No 2) (FCA) - judgments and orders - 'shareholder class action' - interlocutory application for orders that respondent provide 'at least three business days' written notice' to them before implementing any decision resulting in decline of its 'consolidated liquid assets' to below \$80 million - application granted (B C I G)

Fuller-Wilson v State of New South Wales (NSWCA) - summary dismissal - negligence - psychological harm - claim by family members of deceased against State arising from visiting site of truck accident - alleged breach of duty of care by police officers for failure to remove all deceased's body parts and effects from accident site and failure to warn that such body parts and effects might have been left at site - erroneous summary dismissal of proceedings - appeal allowed (B C I G)

Antov v Bokan (NSWSC) - wills and estates - trusts and trustees - estoppel - equity - plaintiff sought relief concerning property which he claimed to be held on constructive trust for him - claims dismissed (B)

Re Settree Estates; Robinson v Settree (NSWSC) - judgments and orders - succession - forfeiture rule - defendant was plaintiff's brother - defendant killed parents but was found not guilty due to mental illness - 'conditional forfeiture application orders' granted (B C I G)

Gurwinder Singh v Slater and Gordon (VSC) - solicitors' costs - dismissal of application for

review of 'Court Costs Order' - application for review dismissed (I B C G)

MD Commercial Pty Ltd & AJ Commercial Pty Ltd v Commissioner of State

Revenue (VSC) - taxation - administrative law - disallowance of objection to assessment of duty under s35(1)(a) *Duties Act 2000* (Vic) in respect of land transfers - appeal dismissed (B C I G)

Playford Vineyard Pty Ltd (ACN 604 608 157) v Wishford Nominees Pty Ltd (ACN 008 077 236) (No 2) (SASC) - judgments and orders - stay - corporations - winding up - leases and tenancies - conditional stay of orders pending appeal granted (B C I G)

Summaries With Link (Five Minute Read)

Kuterba v Sirtex Medical Limited (No 2) [2018] FCA 1489

Federal Court of Australia

Murphy J

Judgments and orders - applicants brought 'shareholder class action' against respondent - applicants, by interlocutory application, sought orders that respondent provide 'at least three business days' written notice' to them before implementing any decision resulting in decline of its 'consolidated liquid assets' to below \$80 million - onus - whether prima facie case - danger of removal of respondent's assets from jurisdiction - s3 *Federal Court of Australia Act 1976* (Cth) - held: Court satisfied to grant application - respondent granted leave to apply to Court on four hours' notice should orders operate as freezing order.

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

Fuller-Wilson v State of New South Wales [2018] NSWCA 218

Court of Appeal of New South Wales

Basten & White JJA; Emmett AJA

Summary dismissal - negligence - deceased died in cabin of truck following collision - appellants were family members who, eight months after accident, visited accident site - appellants contended they found body parts and clothing belonging to deceased at accident site - appellants claimed psychological harm and sued respondent - appellants claimed police officers were negligent by "failing to remove all parts of the deceased's body and personal effects from the scene of the accident" and "failing to warn" them of possibility that body parts had been left at accident site - primary judge summarily dismissed proceedings, finding officers did not owe alleged duty of care - whether police owed family members of deceased duty of care concerning removal of deceased's 'body and effects' from scene - held: Court satisfied primary judge erred in granting in summarily dismissing proceedings - appeal allowed.

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

Antov v Bokan [2018] NSWSC 1474

Supreme Court of New South Wales

Ward CJ in Eq

Wills and estates - trusts and trustees - estoppel - equity - plaintiff sought relief concerning property he claimed to be held on constructive trust for him - claim based on representations in two documents, 'Macedonian Power of Attorney' and 'Contract for a Gift', which his deceased grandmother 'allegedly executed' - property was principal asset of deceased's estate - first defendant was estate's executor - second defendant was plaintiff's mother - presumption of undue influence - unconscionable conduct - promissory estoppel - held: Court satisfied 'Macedonian Power of Attorney' was an authentic document - Court not satisfied 'Contract for a Gift' was 'authentic document' - Court not satisfied grandmother executed 'Contract for a Gift' as alleged by plaintiff - claims dismissed.

[View Decision](#) (B)

Re Settree Estates; Robinson v Settree [2018] NSWSC 1413

Supreme Court of New South Wales

Lindsay J

JJudgments and orders - succession - forfeiture rule - defendant was plaintiff's brother - defendant killed parents but was found not guilty due to mental illness - plaintiff sought under s11 *Forfeiture Act 1995* (NSW) that "forfeiture rule" apply to defendant brother in administration parents' deceased estates - forfeiture rule as 'modern rule of public policy' - interests of justice - held: Court satisfied that forfeiture rule should apply 'in some form' as if defendant had been convicted of murder - 'conditional forfeiture application orders' granted.

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

Gurwinder Singh v Slater and Gordon [2018] VSC 574

Supreme Court of Victoria

Keogh J

Solicitors' costs - applicant represented by respondent in proceedings arising from transport accident - applicant filed summons for taxation of costs - respondent filed bill of costs - bill assessed under r63.88 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - 'Costs Court Order' made - applicant sought review of Costs Court Order on basis of challenge to certain disbursements - Associate Justice dismissed applicant's application - applicant sought review - held: Court found against applicant on each ground of application - application dismissed.

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

MD Commercial Pty Ltd & AJ Commercial Pty Ltd v Commissioner of State Revenue [2018] VSC 560

Supreme Court of Victoria

Croft J

Taxation - administrative law - application arising from two land transfers by which a 50% interest as tenant in common was transferred to appellants as named beneficiary's trustee under Deed of Trust (deeds) - trustee empowered by deeds to hold land for beneficiary - deeds

also obliged trustee, on beneficiary's direction, 'to develop, subdivide and sell the land' - Commissioner disallowed objection to assessment of duty under s35(1)(a) *Duties Act 2000* (Vic) in respect of transfers - question on appeal was whether Victorian Civil and Administrative Tribunal was correct to affirm Commissioner's decision - held: appeal dismissed.

[MD Commercial](#) (B C I G)

Playford Vineyard Pty Ltd (ACN 604 608 157) v Wishford Nominees Pty Ltd (ACN 008 077 236) (No 2) [2018] SASC 152

Supreme Court of South Australia

Stanley J

Judgments and orders - stay - corporations - winding up - leases and tenancies - Court made orders in proceedings concerning dispute in respect of vineyard and set aside statutory demand - application for stay of execution of orders pending appeal pending determination of appeal - prejudice - whether Court should secure defendant's position - held: Court satisfied to grant stay conditional on plaintiff paying amount it owed to defendant into Court - Court satisfied to set statutory demand aside if conditions satisfied and judgment sum's execution stayed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

A Sonnet to the Noble Lady, the Lady Mary Wroth

By: Ben Jonson

I that have been a lover, and could show it,
Though not in these, in rithmes not wholly dumb,
Since I exscribe your sonnets, am become
A better lover, and much better poet.
Nor is my Muse or I ashamed to owe it
To those true numerous graces, whereof some
But charm the senses, others overcome
Both brains and hearts; and mine now best do know it:
For in your verse all Cupid's armory,
His flames, his shafts, his quiver, and his bow,
His very eyes are yours to overthrow.
But then his mother's sweets you so apply,
Her joys, her smiles, her loves, as readers take
For Venus' ceston every line you make.

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

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