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

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Executive Summary (1 minute read)

CIVIL

Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd (HCA) - ACMA empowered to find person committed criminal offence in determining whether licensee breached condition under *Broadcasting Services Act 1992* (Cth) (I G)

Korda v Australian Executor Trustees (SA) Ltd (HCA) - trusts and trustees - investment scheme - investors did not hold beneficial interest in companies' sale proceeds on receipt by companies - appeal allowed (B)

Hofman; Sly, Powderly & Cunnington v State of NSW (NSWSC) – pleadings – limitation of actions – joint tortfeasors – leave to amend cross-claims (I)

Chapman v Colson (NSWSC) – loan agreement – self-represented litigant – limitation defence – procedural fairness – appeal dismissed (I B)

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) (NSWSC) – costs – receivers to have costs of application to make interim distribution to creditors as costs in receivership of company (I B C)

Kirkham v Tassone (SASCFC) – security for costs – defamation – permission to appeal against decision to grant security for costs refused (I)

Broadhead v Prescott (SASC) – succession – family provision – wise and just testator - family provision order in favour of children of deceased (B)



CRIMINAL

El-Haddad v R (NSWCCA) - conviction for importation of drugs - coincidence/tendency evidence admissible - appeal dismissed

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Summaries with links (5 Minute Read)

CIVIL

Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd [2015] HCA 7

High Court of Australia

French CJ; Hayne, Kiefel, Bell, Gageler & Keane JJ

Administrative law - statutory interpretation - commercial radio broadcast of hoax call to UK hospital at which Duchess of Cambridge was a patient - ACMA conducted investigation and prepared report pursuant to ss170 & 178(1) *Broadcasting Services Act 1992* (Cth) (BSA) - primary judge dismissed Today FM's application for declaration that ss10 & 12 *Australian Communications and Media Authority Act 2005* (Cth) and ss5, 178(2) & Sch 2, Pt 4, cl8(1)(g) BSA prevented ACMA from finding commercial radio licence-holder breached licence condition unless and until a competent court adjudicated that licensee had used broadcasting service in commission of offence against another Act or law of State or Territory - Full Court of Federal Court found primary judge erred in construction of relevant provisions of BSA and set aside determination that Today FM breached licence condition in cl8(1)(g) - ACMA appealed - held: ACMA had power to make administrative finding that person committed criminal offence for purpose of determining licence-holder had breached licence condition prescribed by cl 8(1)(g) - appeal allowed.

[Australian Communications and Media Authority](#) (I G)

Korda v Australian Executor Trustees (SA) Ltd [2015] HCA 6

High Court of Australia

French CJ; Hayne, Kiefel, Gageler & Keane JJ

Korda v Australian Executor Trustees (SA) Ltd [2014] VSCA 65

Court of Appeal of Victoria

Maxwell P, Osborn JA & Robson AJA

Trusts - equity - investment scheme - investors funded commercial enterprise of timber growing and harvesting carried on by companies - companies went into administration before sale proceeds paid to trustee to hold for investors - receivers of companies sought leave to appeal from decision that investors held beneficial interest in balance of proceeds before they were handed to trustee - Court of Appeal of Victoria held by majority that parties intended proceeds from harvesting of timber or from sale of plantation lands to be held on trust for investors on receipt by companies - held: scheme documentation did not support existence of trust or trusts over proceeds in hands of companies - proceeds were not subject to an express trust in favour of the scheme investors - appeal allowed.

[Korda](#) (B)

Hofman; Sly, Powderly & Cunnington v State of NSW [2015] NSWSC 129

Supreme Court of New South Wales

Davies J

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Pleadings - limitation of actions – joint tortfeasors – four plaintiffs claimed assault including sexual assault and mistreatment by second defendant when they were students at school – matters settled between plaintiffs and NSW – judgment entered only against first defendant – first defendant sought to amend cross-claims against second defendant pursuant to s26 *Limitation Act 1969* (NSW) – held: first defendant not statute-barred from amending cross-claims – no other basis suggested for amendments being futile – leave granted to first defendant in each matter to file amended cross-claim.

[Hofman; Sly, Powderly & Cunnington](#) (I)

Chapman v Colson [2015] NSWSC 120

Supreme Court of New South Wales

Harrison AsJ

Loan agreement – unrepresented litigant – plaintiff was defendant in Local Court proceedings concerning dispute over loan agreement – plaintiff sought to appeal from decision of Magistrate – plaintiff contended Magistrate erred by failing to give reasons for rejecting his reliance on s14(1) *Limitation Act 1969* (NSW) as a defence, by failing to identify the limitation ground as an issue to be determined, by failing to dismiss proceedings as result of limitation ground – plaintiff also claimed denial of procedural fairness – held: plaintiff abandoned limitation issue – not incumbent on Magistrate to identify it in reasons as issue to be determined – no obligation to dismiss proceeding on basis of limitation issue – no denial of procedural fairness – plaintiff could not now rely on limitation defence – appeal dismissed.

[Chapman](#) (I B)

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) [2015] NSWSC 59

Supreme Court of New South Wales

Black J

Costs – Court granted leave to receivers to make interim distribution to creditors – receivers sought order that Anglican Property Trust Diocese of Bathurst (APT) pay their costs incurred from date on which APT informed receivers they were opposing distribution application – held: APT's submissions had raised matters relevant to Court's decision and which were reflected in Court's form of orders – APT was at least a proper party to the application - APT had a degree of success in application - there was proper basis for APT to identify concern as to issue of independence - no order as to APT's costs of application - receivers to have costs of the application as costs in the receivership of Anglican Development Fund Diocese of Bathurst Board (ADF).

[In the matter of Anglican Development Fund Diocese of Bathurst Board](#) (I B C)

Kirkham v Tassone [2015] SASFC 21

Full Court of the Supreme Court of South Australia

Gray, Sulan & Nicholson JJ

Security for costs – defamation – Court found respondent established special circumstances warranting security for costs - appellants contended Chief Justice erred in finding special

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circumstances existed pursuant to r295(1)(g) *Supreme Court Rules 2006* (SA) and in assessing merits of appeal – appellant contended Chief Justice made errors of fact, failed to have regard to all grounds of appeal and erred in finding contingency arrangement with his solicitors relevant to assessment of application – held: matters raised by appellant did not justify permission to appeal – Chief Justice’s decision not attended with sufficient doubt to warrant reconsideration on appeal – permission to appeal refused.

[Kirkham](#) (I)

Broadhead v Prescott [2015] SASC 34

Supreme Court of South Australia

Dart J

Succession – family provision – plaintiffs were deceased’s children – plaintiff made claim under *Inheritance (Family Provision) Act 1972* (SA) – deceased had left whole estate to two other children – ss7, 8 & 14 – wise and just testator – words in the will - held: Court satisfied that each of the plaintiffs left without adequate provision for proper maintenance, education or advancement in life – Court satisfied wise and just testator would have made provision for plaintiffs – provision order made.

[Broadhead](#) (B)

CRIMINAL

El-Haddad v R [2015] NSWCCA 10

Court of Criminal Appeal of New South Wales

Leeming JA; McCallum & RA Hulme JJ

Importation of drugs - tendency and coincidence evidence - appellant convicted of four counts (Counts 1, 2, 3 and 5) of importing marketable quantities of drugs contrary to ss307.2(1) & 307.12(1) *Criminal Code 1995* (Cth) and one count of importing commercial quantity of border controlled drug contrary to s307.1(1) (Count 4) - appellant challenged admission of evidence with respect to Counts 1, 2, 3 and 5 as tendency or coincidence evidence with respect to Count 4 and vice versa - insertion of new definition of *import* into the Code by *Crimes Legislation Amendment (Serious and Organised Crime) Act (No 2) 2010* (Cth) - probative value of evidence - relevance of dissimilarities - held: coincidence evidence was admissible and also admissible as tendency evidence - requirements of ss98 & 101 Evidence Act 1995 (NSW) satisfied - similarities sufficient to give evidence significant probative value - primary judge correct to reject application for directed verdict on Count 4 - appeal dismissed.

[El-Haddad](#)



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Sunday Evening in the Common

By John Hall Wheelock

LOOK—on the topmost branches of the world
The blossoms of the myriad stars are thick;
Over the huddled rows of stone and brick,
A few, sad wisps of empty smoke are curled
Like ghosts, languid and sick.

One breathless moment now the city's moaning
Fades, and the endless streets seem vague and
dim;
There is no sound around the whole world's rim,
Save in the distance a small band is droning
Some desolate old hymn.

Van Wyck, how often have we been together
When this same moment made all mysteries clear;
—The infinite stars that brood above us here,
And the gray city in the soft June weather,
So tawdry and so dear!

[John Hall Wheelock](#)

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