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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Hawcroft v Hawcroft General Trading Co Pty Ltd (NSWSC) - contract - defendant to pay proceeds of Comminsure Life Policy to estate on basis of deed of indemnity (I B)

Kidu v Fifer (No. 2) (NSWSC) - equity - plaintiffs granted extension of scope of injunction in relation to documentary film (I)

Thiess Pty Ltd v Dobbins Contracting Pty Ltd (No 2) (NSWSC) - costs - offer of compromise not accepted by unsuccessful plaintiffs - indemnity costs granted (I B C)

Construction Engineering (Aust) Pty Ltd v Adams Consulting Engineering Pty Ltd (Ruling No 2) (VSC) - contract - negligence - misleading and deceptive conduct - assessor appointed to assist in liability trial (I B C)

Menegazzo v Pricewaterhousecoopers (A Firm) (QSC) - pleadings - equity - rescission - mistake - limitations - plaintiff granted leave to amend pleadings in certain respects - other amendments refused (I B C)

Lester v Anaguku Arts and Culture Aboriginal Corporation (No 2) (SASC) - pleadings - plaintiffs seeking declaration of "wrongful and enjoining future disclosures" of sensitive aspects of Anaguku people's spiritual and cultural beliefs - certain parts of statement of claim struck out - other parts struck out with leave to replead (I)

Roy Hill Holdings Pty Ltd v Samsung C&T Corporation (WASC) - costs - stay of proceedings brought in breach of arbitration agreement - plaintiff to pay defendant's costs on party/party basis - indemnity costs refused (I B C)

Summaries With Link (Five Minute Read)

Hawcroft v Hawcroft General Trading Co Pty Ltd [2016] NSWSC 555

Supreme Court of New South Wales

Young AJ

Contract - plaintiff sought that defendant pay proceeds of Comminsure Life Policy to estate of Martin Hawcroft in accordance with clause of "General Indemnity" which plaintiff and defendant entered (deed) - plaintiff sought in alternative declaration that Martin Hawcroft was beneficial owner of policy at time of death - defendant cross-claimed for declaration it was beneficial owner of policy's proceeds and that deed should be set aside for mistake - Art 91 Table A Fourth Schedule *Companies Act 1961* (NSW) - held: plaintiff entitled to relief sought due to binding nature of deed.

[Hawcroft](#) (I B)

Kidu v Fifer (No. 2) [2016] NSWSC 550

Supreme Court of New South Wales

Slattery J

Equity - injunction - plaintiffs granted restraint against defendants in relation to documentary - plaintiff sought supplementary orders extending scope of restraint on basis version of documentary supplied to festival for exhibition contained material derived from or descriptive of material subject of undertakings and injunction - serious question to be tried - balance of convenience - held: there was proper basis for extension of injunction - injunction extended in scope.

[Kidu](#) (I)

Thiess Pty Ltd v Dobbins Contracting Pty Ltd (No 2) [2016] NSWSC 547

Supreme Court of New South Wales

McDougall J

Costs - indemnity costs - plaintiffs sued defendants for damages arising from destruction of excavator by fire - claim against first defendant was resolved at mediation - claim against second defendant went to trial and failed - second defendant sought special costs order on basis of offer of compromise or Calderbank offer - rr20.26 & 42.15A *Uniform Civil Procedure Rules 2005*(NSW) - held: offer allowed reasonable time for plaintiffs to accept it - Court not of view that it was appropriate to "otherwise order" - indemnity costs granted.

[Thiess](#) (I B C)

Construction Engineering (Aust) Pty Ltd v Adams Consulting Engineering Pty Ltd (Ruling

No 2) [2016] VSC 209

Supreme Court of Victoria

Vickery J

Contract - negligence - misleading and deceptive conduct - action arising from upgrading of shopping centre - plaintiff claimed it suffered cost overrun caused by defects in structural engineering drawings produced by defendant - whether expert's input best provided by report following reference under O50 *Supreme Court (General Procedure Civil Rules) 2015* (Vic) or pursuant to appointment of assessor under s77 *Supreme Court Act 1986* (Vic) and s65M *Civil Procedure Act 2010* (Vic) - held: Court satisfied it was appropriate to appoint an assessor to assist in liability trial.

[Construction Engineering](#) (I B C)

Menegazzo v Pricewaterhousecoopers (A Firm) [2016] QSC 94

Supreme Court of Queensland

Applegarth J

Pleadings - equity - rescission - mistake - limitations - plaintiff sought leave to amend claim and further amend pleading - defendants contended amendments raised time-barred new causes of action and did not fall within r 376(4) *Uniform Civil Procedure Rules 1999* (Qld) - defendants also contended proposed causes of action were bad in law or defective in pleading - "equitable common mistake" - ss10(2), 10(6), 27(1), 27(2), 27(2A), 38(1)(b) & 38(1)(c) *Limitation of Actions Act 1974* (Qld) - rr5, 171, 222, 371, 375, 376, 376(4)(a), 376(4)(b) & 377(1)(c) *Uniform Civil Procedure Rules 1999* (Qld) - held: plaintiff granted leave to amend in certain respects - certain amendments refused - applications adjourned to allow parties to confer and bring in forms of order.

[Menegazzo](#) (I B C)

Lester v Ananguku Arts and Culture Aboriginal Corporation (No 2) [2016] SASC 43

Supreme Court of South Australia

Kourakis CJ

Pleadings - plaintiffs sought declaration of "wrongful and enjoining future disclosures" by defendant of sensitive aspects of Ananguku people's spiritual and cultural beliefs by exhibition and in book - first defendant sought to strike out paragraphs of statement of claim, or dismissal or stay of proceedings - held: parts of claim seeking relief in relation to exhibition and relying on s35 *Aboriginal Heritage Act 1988* (SA) struck out without leave to replead - parts of claim relying on *Competition and Consumer Act 2010* (Cth) struck out with leave to replead - remaining part of claim seeking declarations and injunctions in relation to book struck out - leave granted to replead their claims based on "breach of confidence and misuse of cultural information" in relation to book.

[Lester](#) (I)

Roy Hill Holdings Pty Ltd v Samsung C&T Corporation [2015] WASC 458 (S)

Supreme Court of Western Australia

Le Miere J

Costs - international arbitration - defendant sought stay of proceeding under s7(2) *International Arbitration Act 1974* (Cth) and referral of parties to arbitration - Court granted stay and referral of proceedings - defendant sought costs on indemnity basis - defendant contended that party commencing legal proceedings concerning dispute within an arbitration agreement should pay costs actually incurred by innocent party applying for a stay - s7 *International Arbitration Act 1974* (Cth) - held: Court found it was relevant that stay application was in respect of proceedings brought in breach of arbitration agreement but Court not persuaded there were special circumstances justifying indemnity costs order - plaintiff to pay costs on party/party basis.

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

CRIMINAL

Executive Summary

DPP (Cth) and DPP v Watson (VSCA) - criminal law - child pornography - State and Commonwealth offences - sentences manifestly below reasonably available sentencing range - appeal allowed - respondent resentenced

Marasco v The Queen (VSCA) - criminal law - theft - obtaining financial advantage by deception - delay causing anxiety and stress constituted material consideration and additional punishment - appeal allowed - sentence varied

Summaries With Link

DPP (Cth) and DPP v Watson [2016] VSCA 73

Court of Appeal Victoria

Redlich, Priest & Priest JJA

Criminal law - child pornography - State and Commonwealth offences - respondent pleaded guilty to child pornography offences and sentenced to 7 years' imprisonment with a non-parole period of 4 years and 8 months - Commonwealth and Victorian Directors of Public Prosecution jointly appealed against total effective sentence and sentence on rolled up charges - *Criminal Code Act 1995* (Cth) - *Crimes Act 1958* (Vic) - whether sentences manifestly inadequate - held: Directors demonstrated some individual sentences and total effective sentence manifestly below reasonably available sentencing range - appeal allowed - respondent resentenced to 10 years and 5 months' imprisonment with non-parole period of 7 years and 3 months.

[Watson](#)



Marasco v The Queen [2016] VSCA 85

Court of Appeal of Victoria

Osborn & Priest JJA

Criminal law - applicant found guilty of theft and obtaining financial advantage by deception - applicant contended sentencing judge erred by mistaking absence of cooperation by applicant as explanation for delay, failing to take into account that delay exacerbated applicant's anxiety and depression; and failing to acknowledge delay constituted additional punishment - held: five year delay between discovery of offending and sentence date was "substantially due to matters which were not the applicant's fault" - delay had caused anxiety and stress to applicant constituting material consideration and additional punishment - on consideration of all circumstances, Court varied order to "substantially substitute time served for the term of imprisonment imposed" - Court maintained imposition of two year Community Corrections Order - appeal allowed - applicant resentenced.

[Marasco](#)



Benchmark

Slow, Slow, Fresh Fount

By Ben Jonson

Slow, slow, fresh fount, keep time with my salt tears;
Yet slower, yet, O faintly, gentle springs:
List to the heavy part the music bears,
Woe weeps out her division, when she sings.
Droop, herbs and flowers,
Fall grief in showers;
Our beauties are not ours:
O, I could still,
Like melting snow upon some craggy hill,
Drop, drop, drop, drop,
Since nature's pride is, now, a withered daffodil.

[BEN JONSON](#)

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