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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)

Commonwealth Bank of Australia v Doggett (FCA) - bankruptcy - application for review of Registrar's decision to make sequestration order in respect of estates - application dismissed (I B C G)

Director of Consumer Affairs Victoria v Gibson (No 3) (FCA) - consumer law - pecuniary penalties - penalties of \$410,000 imposed concerning charitable donations representations - not appropriate to make publication orders (I B C G)

Goodfellow v Fairfax Media Publications Pty Limited (FCA) - pleadings - defamation - no basis to strike out pleaded imputations - application dismissed (I B C G)

Jiang v Monaygon Pty Ltd (VSC) - real property - modifications to restrictive covenants would not substantially injure landholders with benefit of covenants - appropriate to modify covenants as sought (I B C G)

Clarricoats v JJ Richards & Sons Pty Ltd (QSC) - negligence - worker alleged back injury suffered in course of employment while driving truck with defective seat - no breach of duty by employer in directing worker to drive truck - judgment for employer (I B C G)

Coleman v Orr & Ors (QSC) - wills and estates - construction of Will - substitutional gift - 'issue' - questions concerning proper construction of Will and codicil - declaration granted (B)

Accommodation West Pty Ltd v Aikman (WASC) - costs - defamation - unreasonable conduct by unsuccessful plaintiffs - defendant awarded indemnity costs (I B C G)

Summaries With Link (Five Minute Read)

Commonwealth Bank of Australia v Doggett [2017] FCA 1176

Federal Court of Australia

O'Callaghan J

Bankruptcy - respondents sought review of Registrar's decision to make sequestration order in respect of each respondent's estate - applicant had brought creditor's petitions for making of orders for estates' sequestration - creditor's petitions based on respondents' failure to comply with bankruptcy notices issue by applicant - respondents did not challenge bankruptcy notices - onus - whether 'sufficient cause' why sequestration orders should not be made - s35A *Federal Court of Australia Act 1976* (Cth) - r3.11 *Federal Court Rules 2011* (Cth) - held: respondents' application dismissed.

[Commonwealth Bank of Australia](#) (I B C G)

Director of Consumer Affairs Victoria v Gibson (No 3) [2017] FCA 1148

Federal Court of Australia

Mortimer J

Consumer law - pecuniary penalties - Court found first respondent (Ms Gibson) and second respondent (Ms Gibson's company) contravened ss18 & 21 *Australian Consumer Law* (Vic) - Ms Gibson's company in liquidation - Director sought penalties and publication orders against Ms Gibson - pecuniary penalties sought only for contravention of s21 - publication orders sought in respect of contravening conduct concerning charitable donations, cancer claims, and claims concerning natural remedies - held: penalties of \$410,000 imposed concerning charitable donations representations - not appropriate to make publication orders.

[Director of Consumer Affairs](#) (I B C G)

Goodfellow v Fairfax Media Publications Pty Limited [2017] FCA 1152

Federal Court of Australia

Wigney J

Pleadings - defamation - action arising from print and online versions of article - respondent contended that some defamatory imputations in statement of claim were "bad in form" and that article had no capacity to give rise to imputations - respondents sought separate determination of questions pursuant to r30.01 *Federal Court Rules 2011* (Cth) or that impugned imputations be struck out under r16.21 - ss8, 25 & 26 *Defamation Act 2005* (NSW) - held: respondents did not demonstrate impugned particulars should be struck out or article incapable of conveying imputations' meanings - interlocutory applicant dismissed.

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

Jiang v Monaygon Pty Ltd [2017] VSC 591

Supreme Court of Victoria
Derham AsJ

Real property - restrictive covenant - plaintiff was sole registered proprietor of properties - plaintiff sought to modify covenants over properties under s84(1) *Property Law Act 1958* (Vic) to consolidate them and construct building on consolidated land - s84 *Property Law Act 1958* (Vic) - held: plaintiff established modifications would not substantially injure landholders with benefit of covenants - it was appropriate to modify covenants as sought - parties to be heard on appropriate orders.

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

Clarricoats v JJ Richards & Sons Pty Ltd [2017] QSC 214

Supreme Court of Queensland
McMeekin J

Negligence - plaintiff claimed damages for back injury in course of employment while driving defendant employer's truck a distance of 160 km - plaintiff claimed injury occurred after shock-absorber of driver's seat broke from bracket - plaintiff contended defendant breached duty by instructing him to drive the distance in truck with defective seat - causation - credit - r165 *Uniform Civil Procedure Rules 1999* (Qld) - *Workers' Compensation and Rehabilitation Act 2003* (Qld) - *Superannuation Guarantee (Administration) Act 1992* (Cth) - held: Court not persuaded that employer breached duty in directing plaintiff to drive truck - judgment for defendant.

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

Coleman v Orr & Ors [2017] QSC 215

Supreme Court of Queensland
Mullins J

Wills and estates - construction of Will - substitutional gift - applicant was executor of deceased's estate - applicant sought declaration concerning proper construction of codicil and will - question was whether: 'clause 4 of the will confers in respect of any beneficiary named in clause 3 who failed to survive the deceased for 30 days leaving a child or children who survived the deceased for 30 days, an interest in favour of those children, so that they take, and if more than one equally, the share which their parent would have taken had such parent survived the deceased for 30 days' - construction of term 'issue' - held: Court answered question in the affirmative.

[Coleman](#) (B)

Accommodation West Pty Ltd v Aikman [2017] WASC 157 (S)

Supreme Court of Western Australia
Kenneth Martin J

Costs - defamation - Court dismissed plaintiffs' defamation actions against defendant -

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defendant sought costs on indemnity basis - defendant contended plaintiffs, by conduct, 'unnecessarily increased the cost of the litigation', had persisted in what they should have seen as a 'hopeless action', and had engaged in improper or unreasonable conduct - held: plaintiffs' conduct was unreasonable - Court satisfied it should 'mark its disapproval' of the conduct - indemnity costs order granted accordingly.

[Accommodation West](#) (I B C G)

CRIMINAL

Executive Summary

Hurmz v R (NSWCCA) - criminal law - drug offences - sentence imposed by judge for supplying commercial quantity of cocaine was not manifestly excessive - appeal dismissed

Moussa v R (NSWCCA) - criminal law - joint enterprise - manslaughter - application of High Court's decision in *IL v The Queen* [2017] HCA 27 - appeal allowed - conviction quashed

Summaries With Link

Hurmz v R [2017] NSWCCA 235

Court of Criminal Appeal of New South Wales

Macfarlan JA; Beech-Jones & Wilson JJ

Criminal law - drug offences - applicant sought leave to appeal from sentence imposed by judge for supplying commercial quantity of cocaine contrary to s25(2) *Drug Misuse and Trafficking Act* (NSW) - applicant contended sentence of 9 years 9 months was manifestly excessive - applicant also sought variation of commencement date of sentence for causing grievous bodily harm with intent to cause grievous bodily harm contrary to s33(1)(b) *Crimes Act 1900* (NSW) if he was resentenced for drug offence - 'comparable cases and statistics' held: sentence was not manifestly excessive - leave to appeal granted - appeal dismissed.

[View Decision](#)

Moussa v R [2017] NSWCCA 237

Court of Criminal Appeal of New South Wales

Ward JA; Fagan & N Adams JJ

Criminal law - joint criminal enterprise - manslaughter - appellant convicted of intentionally damaging property by fire while in company with deceased and manslaughter by causing deceased's death - appellant appealed against conviction for manslaughter - appellant contended manslaughter verdict could not be supported in absence of evidence of act causing another's death (Ground 1) and that judge erred in summing up directions concerning



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manslaughter charge (Grounds 2(a) and 2(b)) - whether s18 *Crimes Act 1900* (NSW) - encompassed self-killing - ss18(1)(b) & 195(1A)(b) *Crimes Act 1900* (NSW) - r4 *Criminal Appeal Rules* (NSW) - held: Ground 1 and Ground 2(a) upheld on application of High Court's decision in *IL v The Queen* [2017] HCA 27 - appeal allowed - conviction quashed.

[View Decision](#)



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The Oak

Letitia Elizabeth Landon

. . . It is the last survivor of a race
Strong in their forest-pride when I was young.
I can remember when, for miles around,
In place of those smooth meadows and corn-fields, There
stood ten thousand tall and stately trees, Such as had
braved the winds of March, the bolt Sent by the summer
lightning, and the snow Heaping for weeks their boughs.
Even in the depth Of hot July the glades were cool; the
grass, Yellow and parched elsewhere, grew long and fresh,
Shading wild strawberries and violets, Or the lark's nest;
and overhead the dove Had her lone dwelling, paying for
her home With melancholy songs; and scarce a beech Was
there without a honeysuckle linked Around, with its red
tendrils and pink flowers; Or girdled by a brier-rose, whose
buds Yield fragrant harvest for the honey-bee There dwelt
the last red deer, those antler'd kings . . .
But this is as dream,—the plough has pass'd Where the stag
bounded, and the day has looked On the green twilight of
the forest-trees.
This oak has no companion!

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

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