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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)

GBF v The Queen (HCA) - criminal law - appellant convicted of 'six sexual offences' - miscarriage of justice arising from direction to jury - appeal allowed (I B C G)

Deguisa v Lynn (HCA) - real property - appellants not notified of restrictive covenants under s69 *Real Property Act 1886* (SA) - appeal allowed (I B C G)

Colagrande v Telstra Corporation Limited (FCA) - preliminary discovery - defamation - 'prospective applicant' sought that defendant 'make preliminary discovery of 'all documents in its control' relating to description of a prospective respondent' - orders granted (I B C G)

Shangri-La Construction Pty Ltd v Hyatt, in the matter of GVE Hampton Pty Ltd (in liquidation) (FCA) - corporations - respondents sought discharge of examination summons or limitation on examinations' scope and on documents to be produced - discharge of summonses refused - parties to bring in 'minutes of proposed orders' concerning scope of documents (B)

Jess, in the matter of Westside Group Pty Ltd (in liq) (FCA) - corporations - first plaintiff sought orders to facilitate first plaintiff's 'dealing with, and distribution of' second plaintiff's assets - orders granted 'largely in the form sought' (B)

Downes v Maitland City Council (NSWSC) - summary disposal - negligence - nuisance - defendant sought dismissal of proceedings on basis 'no reasonable cause of action' disclosed -

notice of motion dismissed (I B C G)

Hodgetts v Nine Network Australia Pty Ltd & Ors (WASC) - summary judgment - defamation - first and third defendants sought summary judgment against plaintiff - summary judgment granted (I)

Summaries With Link (Five Minute Read)

GBF v The Queen [2020] HCA 40

High Court of Australia

Kiefel CJ; Bell, Keane, Gordon & Edelman JJ

Criminal law - appellant convicted of 'six sexual offences' - Court of Appeal of the Supreme Court of Queensland dismissed appellant's appeal - appellant challenged judge's direction that 'absence of evidence from him might make it easier to return verdicts of guilty' ('impugned statement') - Court of Appeal acknowledged impugned statement 'should not have been made' but that there had been no miscarriage of justice - appellant contended Court of Appeal incorrect to find there was no miscarriage of justice arising from impugned statement - appellant contended impugned state had invited jury to reason to appellant's guilt 'from his exercise of the right to silence' and that impugned statement indistinguishable from impugned comment in *Azzopardi v The Queen* [2001] HCA 25 - Court of Appeal bound to allow appeal unless prosecution established 'no substantial miscarriage of justice had actually occurred' - whether 'impugned statement allowed the jury to reason to guilt by an impermissible path' - held: appeal allowed.

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

Deguisa v Lynn [2020] HCA 39

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon & Edelman JJ

Real property - restrictive covenant - appellants were registered proprietors of land - appellants had 'planning approval' for subdivision of land and building of 'two townhouses' - first and second respondents were daughters of owner of land including '52 smaller parcels of land' which included Lot 3 and was sold as 'part of' 'common building scheme' - third respondent was registered proprietor of two lots, one of which was claimed to be 'derived from the common building scheme' - respondent contended 'extent of construction permitted on Lot 3' was restricted by covenants in common building scheme - appellants contended restrictive covenants did not bind them because appellants not "notified" under s69 *Real Property Act 1886* (SA) (Real Property Act) - appellants also contended respondents lacked standing and that covenants' terms did not prevent construction - held: appellants had not been notified of covenants under Real Property Act - appeal allowed.

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

Colagrande v Telstra Corporation Limited [2020] FCA 1595

Federal Court of Australia

Derrington J

Preliminary discovery - defamation - 'prospective applicant', under r7.22 *Federal Court Rules 2011* (Cth) (Rules), sought that defendant 'make preliminary discovery to' prospective applicant of 'all documents in its control that relate to the description of a prospective respondent' - whether requirements under r7.22 Rules satisfied - held: orders granted.

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

Shangri-La Construction Pty Ltd v Hyatt, in the matter of GVE Hampton Pty Ltd (in liquidation) [2020] FCA 1577

Federal Court of Australia

Beach J

Corporations - respondents were examinees - respondents, under r11.5 *Federal Court (Corporations) Rules 2000* (Cth), sought discharge of 'summonses for examination' - respondents alternatively sought limitation on examinations' scope and documents examinees were to produce - ss596A & 596B *Corporations Act 2001* (Cth) - held: discharge of summonses refused - parties to bring in 'minutes of proposed orders' concerning scope of documents.

[Shangri-La](#) (B)

Jess, in the matter of Westside Group Pty Ltd (in liq) [2020] FCA 1586

Federal Court of Australia

O'Bryan J

Corporations - first plaintiff was second plaintiff's liquidator - first plaintiff sought orders under *Corporations Act 2001* (Cth) and *Trustee Act 1958* (Vic) to facilitate first plaintiff's 'dealing with, and distribution of' second plaintiff's assets, including completion of second plaintiff's winding up - uncertainty attending second plaintiff's 'current status' as corporate trustee of trust - held: orders granted 'largely in the form sought'.

[Jess](#) (B)

Downes v Maitland City Council [2020] NSWSC 1555

Supreme Court of New South Wales

Adamson J

Summary disposal - negligence - nuisance - plaintiffs alleged defendant, by approval of development of property, 'negligently exposed' plaintiffs to 'risk of harm caused by disruption to drainage on' plaintiff's property - plaintiffs also contended defendant had 'created a nuisance' adversely affecting 'use, enjoyment and value of' property - defendant denied claims and alleged defence under s733 *Local Government Act 1993* (NSW) - defendant sought dismissal of proceedings on basis 'no reasonable cause of action' disclosed - r13.4(1)(b) *Uniform Civil Procedure Rules 2005* (NSW) - whether 'no triable issue' concerning defendant's good faith in its approval of property - held: notice of motion dismissed.

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

Hodgetts v Nine Network Australia Pty Ltd & Ors [2020] QSC 330

Supreme Court of Queensland

Flanagan J

Defamation - plaintiff sought damages for defamation from first, second and third defendants - plaintiff obtained default judgment concerning second defendant - first defendant and third defendant filed notices of intention to defend - first defendant, pursuant to r293 *Uniform Civil Procedure Rules 1999* (Qld) (Rules), sought summary judgment - third defendant submitted if first defendant succeeded in 'obtaining summary judgment', Court should make order against plaintiff in first and third defendants' favour - first defendant alternatively sought strike out of paragraphs of amended statement of claim - r171 Rules - held: first and third defendants granted summary judgment.

[Hodgetts \(I\)](#)

Summaries With Link

Benchmark

Summer Dawn

By William Morris

PRAY but one prayer for me 'twixt thy closed lips,
Think but one thought of me up in the stars.
The summer night waneth, the morning light slips
Faint and gray 'twixt the leaves of the aspen, betwixt the
cloud-bars,
That are patiently waiting there for the dawn: 5
Patient and colourless, though Heaven's gold
Waits to float through them along with the sun.
Far out in the meadows, above the young corn,
The heavy elms wait, and restless and cold
The uneasy wind rises; the roses are dun; 10
Through the long twilight they pray for the dawn
Round the lone house in the midst of the corn.
Speak but one word to me over the corn,
Over the tender, bow'd locks of the corn.

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

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