


Friday, 7 August 2020

## Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Singh v The Queen** (HCA) - criminal law - revocation of special leave to appeal - appellant had died since hearing of matter - special leave to appeal revoked (I B C G)

**Lewis v Australian Capital Territory** (HCA) - damages - false imprisonment - appellant awarded nominal damages only for false imprisonment - appeal dismissed (I B C G)

**Berry v CCL Secure Pty Ltd** (HCA) - damages - trade practices - misleading or deceptive conduct - respondent engaged in misleading or deceptive conduct - Full Court of the Federal Court erred in assessment of damages recoverable by appellant - appeal allowed (I B C G)

**Houston v State of New South Wales** (FCA) - costs - refusal to make 'maximum costs order' - leave to appeal refused (I B C G)

**Energy City Qatar Holding Company v Hub Street Equipment Pty Ltd (No 2)** (FCA) - arbitration - application for enforcement of foreign award under *International Arbitration Act 1974* (Cth) - application granted (I B C G)

**Magann v The Trustees of the Roman Catholic Church for the Diocese of Parramatta** (NSWCA) - deed - separate question - child sexual abuse claim - 'deed of settlement and release' extinguished respondents' liability to appellant - appeal dismissed (I B C G)

**Re Exore Resources Ltd; Ex Parte Exore Resources Ltd (WASC)** - corporations - - plaintiff sought orders concerning 'proposed scheme of arrangement' - orders granted (B)

## Summaries With Link (Five Minute Read)

### **Singh v The Queen [2020] HCA 25**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Criminal law - revocation of special leave to appeal - appellant sought that conviction be quashed and that there be a re-trial - appellant had died since matter's hearing - whether Court could make any other appropriate order - held: no order appropriate - special leave to appeal revoked.

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

### **Lewis v Australian Capital Territory [2020] HCA 26**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon & Edelman JJ

Damages - false imprisonment - appellant sentenced to 12 months in prison for 'recklessly or intentionally inflicting actual bodily harm on another' - appellant failed to attend 'periodic detention' - appellant failed to attend Sentence Administration Board inquiry - Board cancelled periodic detention - appellant 'arrested and imprisoned' - appellant succeeded in challenging periodic detention's cancellation on basis of denial of procedural fairness - Board's decision found to be invalid - appellant had been granted bail pending challenge's hearing - appellant sought damages from respondent for false imprisonment for 82 days served in prison before grant of bail - primary judge ordered payment of only nominal damages on basis that, even if appellant was not denied procedural fairness, cancellation of order for period detention 'was inevitable' and appellant 'would have been imprisoned full-time' - Full Court of the Supreme Court of the Australian Capital Territory dismissed appellant's appeal - whether entitlement to "vindictory damages", compensatory damages, aggravated damages and/or exemplary damages - held: appeal dismissed.

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

### **Berry v CCL Secure Pty Ltd [2020] HCA 27**

High Court of Australia

Bell, Gageler, Keane, Nettle & Edelman JJ

Damages - trade practices - misleading or deceptive conduct - respondent engaged in misleading or deceptive conduct contrary to s52 *Trade Practices Act 1974* (Cth) (Trade Practices Act) - respondent's conduct had caused appellants 'to give up an agreement beneficial to them' - were it not for respondent's misleading or deceptive conduct, respondent 'would have been entitled lawfully to terminate agreement' - appeal concerned question whether

Full Court of the Federal Court of Australia erred in assessment damages recoverable by appellants under s82 Trade Practices Act - whether 'termination letter' effective - 'onus of proof' - 'reversal of onus of proof' - 'innocent hypothesis' - *Sellars v Adelaide Petroleum NL* (1994) 179 CLR 332 - *Pitcher Partners Consulting Pty Ltd v Neville's Bus Service Pty Ltd* (2019) 271 FCR 392 - held: Full Court of the Federal Court erred in assessment of damages - appeal allowed.

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

## **Houston v State of New South Wales [2020] FCA 1099**

Federal Court of Australia

Jagot J

Costs - applicant, by interlocutory application, sought 'maximum costs order' under r40.51 *Federal Court Rules 2011* (Cth) - primary judge refused application - applicant sought to appeal - applicant contended primary judge erred in finding litigation was not 'public interest litigation', that primary judge took irrelevant considerations into account, misapplied law and denied applicant procedural fairness - whether 'sufficient doubt' as to 'correctness of the primary judge's decision' 'to warrant' matter's reconsideration - held: leave to appeal refused.

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

## **Energy City Qatar Holding Company v Hub Street Equipment Pty Ltd (No 2) [2020] FCA 1116**

Federal Court of Australia

Jagot J

Arbitration - application for enforcement of foreign award under *International Arbitration Act 1974* (Cth) (International Arbitration Act) - whether Court should enforce award 'as if it were a judgment of this Court' - whether grounds to refuse enforcement - whether 'procedural requirements for enforcement' satisfied - ss8(5), 8(7) & 8(3) International Arbitration Act - notice - whether arbitral authority's composition and/or 'arbitral procedure' not in accordance with contract between parties - natural justice - held: application granted.

[Energy City](#) (I B C G)

## **Magann v The Trustees of the Roman Catholic Church for the Diocese of Parramatta [2020] NSWCA 167**

Court of Appeal of New South Wales

Bell P; Macfarlan & Payne JJA

Deed - separate question - child sexual abuse claim - Harrison AsJ ordered determination of separate question whether 'deed of settlement and release' (deed) extinguished respondents' liability to appellant - primary judge answered question in affirmative - appellant contended primary judge erroneously failed to find deed constituted 'unjust contract' under *Contracts Review Act 1980* (NSW) (Contracts Review Act), that deed's entry was unconscionable and had involved respondents 'taking advantage of a special disadvantage' of appellant's Post Traumatic Stress Disorder - held: no error in decision of primary judge - appeal dismissed.



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

**Re Exore Resources Ltd; Ex Parte Exore Resources Ltd [2020] WASC 285**

Supreme Court of Western Australia

Vaughan J

Corporations - scheme of arrangement - plaintiff sought orders under s411(1) *Corporations Act 2001* (Cth) concerning 'proposed scheme of arrangement' - whether to grant orders convene meeting of plaintiff's members 'to consider and vote on the proposed scheme' and ancillary orders - whether to approve scheme booklet's distribution - *Re Wesfarmers Ltd; Ex parte Wesfarmers Ltd* - held: orders granted.

[Re Exore](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

## Illa Creek

By: Henry Kendall

(Excerpt)

A STRONG sea-wind flies up and sings  
Across the blown-wet border,  
Whose stormy echo runs and rings  
Like bells in wild disorder.

Fierce breath hath vext the foreland's face, 5  
It glistens, glooms, and glistens;  
But deep within this quiet place  
Sweet Illa lies and listens.

Sweet Illa of the shining sands,  
She sleeps in shady hollows 10  
Where August flits with flowerful hands  
And silver Summer follows.

Far up the naked hills is heard  
A noise of many waters;  
But green-haired Illa lies unstirred 15  
Amongst her star-like daughters.

The tempest pent in moaning ways  
Awakes the shepherd yonder;  
But Illa dreams, unknown to days  
Whose wings are wind and thunder. 20

Here fairy hands and floral feet  
Are brought by bright October;  
Here stained with grapes, and smit with heat,  
Comes Autumn sweet and sober.

Here lovers rest, what time the red 25  
And yellow colors mingle,  
And daylight droops with dying head  
Beyond the western dingle.

And here, from month to month, the time  
Is kissed by Peace and Pleasure, 30

While Nature sings her woodland rhyme  
And hoards her woodland treasure.

[https://en.wikipedia.org/wiki/Henry\\_Kendall\\_\(poet\)](https://en.wikipedia.org/wiki/Henry_Kendall_(poet))

[Click Here to access our Benchmark Search Engine](#)