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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)

Wheatley v Kavanagh (NSWSC) - contract - trusts and trustees - sale of land - claim for unpaid deposit - contract validly terminated - claim against first defendant upheld - claim against second defendant dismissed (B C I G)

New South Wales Crime Commission v Acharya (NSWSC) - proceeds of crime - application to vary restraining order made pursuant to s10A *Criminal Assets Recovery Act 1990* (NSW) - application granted (B C I G)

Mustica Holdings Pty Ltd v Coghlan de Luca Pty Ltd & Ors; West Grove Project Pty Ltd & Ors v Coghlan de Luca Pty Ltd & Ors (VSC) - discovery - application for further and better discovery - discovery granted in respect of certain categories of documents (I B C G)

Estate of Elzow (VSC) - wills and estates - informal will - deceased died before executing 'New Will' - deceased had not seen 'New Will' - deceased had been given opportunity to sign 'New Will' but did not sign it - Court satisfied to admit New Will to probate (B)

Ganesh & Radakrishnan v National Australia Bank Limited (VSCA) - judgments and orders - loans and mortgages - bank granted summary judgment on part of its claim - extension of time to seek leave to appeal refused (I B C G)

Anderson v Westpac Banking Corporation (ABN 33 007 457 141) (VSCA) - contract -

unconscionable conduct - loans and mortgages - judgment in respondent's favour - order for possession - appeal dismissed - leave to appeal on further grounds refused - leave to appeal against order for possession refused (I B C G)

Woodley v Woodley (WASCA) - wills and estates - probate - procedural fairness - appellant passed over as executor - no error in decision of primary judge to uphold respondents' counterclaim - appeal dismissed (B)

Summaries With Link (Five Minute Read)

Wheatley v Kavanagh [2018] NSWSC 1359

Supreme Court of New South Wales
Ward CJ in Eq

Contract - sale of land - plaintiff (Ms Wheatley) as vendor and first defendant (Mrs Kavanagh) as purchaser entered contract for sale of land - Ms Wheatley terminated contract for Mrs Kavanagh's failure to pay deposit - Ms Wheatley sued Mrs Kavanagh and second defendant (Mr Kavanagh) for unpaid deposit - Ms Wheatley claimed Mrs Kavanagh entered contract as Mr Kavanagh's trustee, and held contract's benefit, 'wholly, or as to half' on trust for him - Ms Wheatley claimed entitlement by subrogation, to 'indemnity out of, and to exoneration from' Mr Kavanagh's assets for whole or half of judgment against Mrs Kavanagh - whether binding contract - whether contract for sale conditional on purchaser 'obtaining funds' for deposit or purchase price - whether valid termination of contract - what money was recoverable for purchaser's default - whether Mr Kavanagh had beneficial interest in contract - whether Ms Wheatley could enforce indemnity against Mrs Kavanagh as trustee - held: Court gave judgment for Ms Wheatley on claim against Mrs Kavanagh - claim against Mr Kavanagh dismissed.

[View Decision](#) (I B C G W WI WB WC WG)

(B C I G)

New South Wales Crime Commission v Acharya [2018] NSWSC 1372

Supreme Court of New South Wales
Davies J

Proceeds of crime - Crime Commission sought to vary restraining order which had already been made pursuant to s10A *Criminal Assets Recovery Act 1990* (NSW) in respect defendant's property interests - Crime Commission and defendant's wife had reached agreement concerning certain property, so that fund could be created which an 'unexplained wealth order' could be made in respect of - arrangement's details set out in deed - variation to restraining order sought to 'put into place in present proceedings' the arrangement - held: Court satisfied

to grant variation as sought.

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

Mustica Holdings Pty Ltd v Coghlan de Luca Pty Ltd & Ors; West Grove Project Pty Ltd & Ors v Coghlan de Luca Pty Ltd & Ors [2018] VSC 509

Supreme Court of Victoria

Clayton JR

Discovery - plaintiffs were trustees or former trustees of family trusts - two proceedings concerning 'financial advice and accounting services' provided by defendants to plaintiffs. - plaintiffs alleged that defendants recommended that they invest in Project and that recommendations were made in breach of obligations and s945A *Corporations Act 2001* (Cth) - plaintiff contended they invested on defendants' advice, suffering loss and damage - each proceeding's third defendant sought further and better discovery - r29.08(2) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: discovery granted in respect of certain categories of documents.

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

Estate of Elzow [2018] VSC 498

Supreme Court of Victoria

Lyons J

Wills and estates - informal will - deceased executed '2010 Will' - shortly before death deceased instructed solicitor to prepare 'New Will' - New Will prepared - deceased said New Will was 'exactly what she wanted' and asked solicitor to come to nursing home 'as soon as possible' so she could sign it - solicitor said he was 'busy and preparing to go overseas' and suggested another solicitor attend - deceased did not wish another solicitor to attend - deceased died before executing New Will - plaintiffs were executors named in 2010 Will and New Will - plaintiffs sought admission of New Will to probate under s9 *Wills Act 1997* (Vic) even though deceased had not seen or read it, and had not signed it even though she had had an opportunity to sign it - whether deceased intended New Will to constitute Will - whether testamentary capacity - whether undue influence - held: Court satisfied to admit New Will to probate.

[Estate of Elzow](#) (B)

Ganesh & Radakrishnan v National Australia Bank Limited [2018] VSCA 224

Court of Appeal of Victoria

Hargrave JA

Judgments and orders - loans and mortgages - applicants sought extension of time to seek leave to appeal against Vickery J's dismissal of appeal against orders of Mukhtar J that respondent was entitled to summary judgment on part of its claims against applicants and company applicants controlled - r64.05 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - delay - merits of proposed appeal - held: application was 'extraordinarily late' - unnecessary to consider whether there was reasonable explanation for delay because

proposed appeal was 'devoid of merit' - application for leave to appeal dismissed.

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

Anderson v Westpac Banking Corporation (ABN 33 007 457 141) [2018] VSCA 226

Court of Appeal of Victoria

McLeish, Niall & Ashley JJA

Contract - unconscionable conduct - loans and mortgages - two proceedings: appeal on certain grounds and application for leave to appeal on further proposed grounds from judgment in respondent's favour in which Court found appellant was indebted to respondent under loan agreements secured by mortgage; and application for leave to appeal from order granting respondent possession of property - whether appellant had defence to respondent's claim - whether appellant owed money to respondent which she had not paid - whether erroneous dismissal of appellant's counterclaim - whether further proposed grounds had prospects of success - held: appeal dismissed - leave to appeal on further grounds refused - application for leave to appeal against order for possession refused.

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

Woodley v Woodley [2018] WASCA 149

Court of Appeal of Western Australia

Murphy, Mitchell & Beech JJA

Wills and estates - parents were farmers who had five children - parents deceased - children in dispute concerning parents' estates - appeal concerned who should be executor of mother's will - appellant sought orders pronouncing will's validity, and granting him probate of will 'as sole executor and trustee' - appellant sought that first and second respondents be passed over as executors - certain respondents by counter-claim sought orders pronouncing different will's force and validity, grant of probate of will to first and second respondents, and that appellant be passed over as executor - primary judge dismissed appellant's claim and upheld respondents' counter-claim - appellant appealed - whether denial of procedural fairness - whether erroneous refusal to pass over first and second respondents - credibility - whether to permit additional evidence to be adduced - held: application to adduce additional evidence dismissed - appeal dismissed.

[Woodley](#) (B)

CRIMINAL

Executive Summary

Summaries With Link



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To a Louse, On Seeing one on a Lady's Bonnet at Church

By: Robert Burns

Ha! whare ye gaun, ye cowlan ferlie!
Your impudence protects you sairly:
I canna say but ye strunt rarely,
Owre gawze and lace;
Tho' faith, I fear ye dine but sparely,
On sic a place.

Ye ugly, creepan, blastet wonner,
Detested, shunn'd, by saunt an' sinner,
How daur ye set your fit upon her,
Sae fine a Lady!
Gae somewhere else and seek your dinner,
On some poor body.

Swith, in some beggar's haffet squattle;
There ye may creep, and sprawl, and sprattle,
Wi' ither kindred, jumping cattle,
In shoals and nations;
Whare horn nor bane ne'er daur unsettle,
Your thick plantations.

Now haud you there, ye're out o' sight,
Below the fatt'rels, snug and tight,
Na faith ye yet! ye'll no be right,
Till ye've got on it,
The vera topmost, towrin height
O' Miss's bonnet.

My sooth! right bauld ye set your nose out,
As plump an' gray as onie grozet:
O for some rank, mercurial rozet,
Or fell, red smeddum,
I'd gie you sic a hearty dose o't,
Wad dress your droddum!

I wad na been surpriz'd to spy
You on an auld wife's flainen toy;
Or aiblins some bit duddie boy,



Benchmark

On 's wylecoat;
But Miss's fine Lunardi, fye!
How daur ye do 't?

O Jenny dinna toss your head,
An' set your beauties a' abroad!
Ye little ken what cursed speed
The blastie's makin!
Thae winks and finger-ends, I dread,
Are notice takin!

O wad some Pow'r the giftie gie us
To see oursels as others see us!
It wad frae monie a blunder free us
An' foolish notion:
What airs in dress an' gait wad lea'e us,
And ev'n Devotion!

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

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