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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)

Work Health Authority v Outback Ballooning Pty Ltd (HCA) - constitutional law - *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) was not inconsistent with 'Commonwealth aviation law' - appeal allowed (I B C G)

TTY167 v Republic of Nauru (HCA) - migration law - Refugee Status Review Tribunal 'legally unreasonable' in failing to adjourn hearing - appeal allowed (I B C G)

Lacson v Australian Postal Corporation (FCA) - industrial law - statutory construction - work performed at different locations - operation of enterprise agreements - "particular employment" - s52(2) *Fair Work Act 2009* (Cth) - appeal dismissed (I B C G)

Australia and New Zealand Banking Group Limited v Giannaklis (NSWSC) - possession - loans - plaintiff granted possession of property - plaintiff granted summary judgment on one of two loans - defendant granted opportunity to amend defence and serve evidence in respect of other loan (B C I G)

Hera Resources Pty Ltd v Gekko Systems Pty Ltd (NSWSC) - evidence - privilege - plaintiff sought rulings on admissibility of two documents - defendant's claims of privilege in respect of documents failed - plaintiff entitled to rely on documents (B C I G)

Re Webster (VSC) - wills and estates - informal will - application for grant of probate in respect

of informal document granted (B)

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd (SASC) - restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs prima facie entitled to recover superannuation payments in respect of 'exempt employees' (I B C G)

Summaries With Link (Five Minute Read)

Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2

High Court of Australia

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

Constitutional law - appellant, under s32 *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) ('NT WHS Act'), alleged first respondent failed to comply with duty in s19(2) NT WHS Act 'to eliminate or minimise risks to embarking passengers that arose from the use of a fan to inflate' hot air balloon - Northern Territory Court of Summary Jurisdiction dismissed appellant's claim as invalid, finding complaint's subject matter covered by 'Commonwealth regulatory scheme' concerning aviation (scheme) - Magistrate found scheme extended to 'pre-flight operations affecting' passengers' safety on ground - Supreme Court of Northern Territory found Magistrate erred in finding lack of jurisdiction - Court of Appeal upheld appeal, finding 'Commonwealth aviation law' was a 'complete statement' of 'relevant law' and that there was 'indirect inconsistency' between law of Northern Territory and Commonwealth aviation law - "prescription and enforcement of the standards of safety in the conduct of air navigation or air operations" - whether inconsistency between NT WHS Act and Commonwealth aviation law - held: appeal allowed.

[Work Health Authority](#) (I B C G)

TTY167 v Republic of Nauru [2018] HCA 61

High Court of Australia

Gageler, Nettle & Edelman JJ

Migration law - Refugee Status Review Tribunal found appellant was not a refugee and was not 'owed complementary protection' - Supreme Court of Nauru upheld Tribunal's decision - whether appellant was given invitation to appear before Tribunal and, if invitation was not given, Tribunal did not have jurisdiction - whether Tribunal was 'legally unreasonable' not to adjourn hearing when appellant and lawyers did not attend - held: Tribunal was required to give invitation to appellant to attend hearing - appeal ground concerning invitation not raised in Supreme Court - 'too late' to raise appeal point - Tribunal, in 'exceptional circumstances' of the case, was legally unreasonable in failure to adjourn hearing - appeal allowed.

[TTY167](#) (I B C G)

Lacson v Australian Postal Corporation [2019] FCA 51

Federal Court of Australia

Mortimer J

Industrial law - appeal concerning construction of s52(2) *Fair Work Act 2009* (Cth) - appellant performed work for respondent at 'two different locations, at two different times, and in the performance of two different sets of duties' - question was whether the work, for purposes of enterprise agreements, was 'one "particular employment"' - whether Federal Circuit Court erred in finding that the work should not be seen as one "particular employment" - whether appellant had 'two different jobs' with respondent - operation of enterprise agreements on contracts of employment - held: no error in Federal Court's decision - appeal dismissed.

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

Australia and New Zealand Banking Group Limited v Giannaklis [2019] NSWSC 32

Supreme Court of New South Wales

Davies J

Possession - loans - plaintiff sought possession of property, judgment in respect of loan made to defendant ('home loan'), and judgment in respect of loan made to defendant's company ('business loan') - defendant had provided guarantee in respect of loan to defendant's company - plaintiff sought summary judgment - default on both loans - no defence pleaded concerning home loan - '*Collier v Morlend* principle' - *Contracts Review Act 1980* (NSW) - unconscionability - whether to grant defendant's solicitor leave to withdraw - held: possession of property granted - summary judgment granted in respect of home loan - summary judgment refused in respect of business loan - defendant granted opportunity to amend defence and serve evidence.

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

Hera Resources Pty Ltd v Gekko Systems Pty Ltd [2019] NSWSC 37

Supreme Court of New South Wales

Ball J

Evidence - privilege - plaintiff, pursuant to s192A *Evidence Act 1995* (NSW) sought rulings on two documents' admissibility - letter from defendant to plaintiff- report provided with letter - defendant contended documents were not admissible - defendant contended communication in letter was privileged under s131 of the Act, and that report was privileged under s131 of the Act or ss118 or 119 of the Act - 'without prejudice privilege' - 'client legal privilege' - held: defendant's privilege claims failed in respect of both documents - plaintiff 'entitled to rely' on the documents.

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

Re Webster [2019] VSC 28

Supreme Court of Victoria

McMillan J

Wills and estates - informal will - 'handwritten document' on A4 sheet of paper - plaintiff sought admission to probate of 'informal document' - whether there was a 'document' - whether document expressed or recorded deceased's testamentary intentions - whether deceased

intended document to be her will - whether testamentary capacity established - ss7 & 9 *Wills Act 1997* (Vic) - balance of probabilities - held: Court satisfied to grant probate of informal document.

[Re Webster](#) (B)

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd [2019]

SASC 5

Supreme Court of South Australia

Blue J

Restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs sought to recover in restitution from defendants payments 'in respect of exempt employees', contending payments made by 'operative mistake' - determination of preliminary issue - whether plaintiffs had 'prima facie entitlement to recover the payments in restitution, subject to any defences and assessment of quantum' - whether payroll manager's knowledge that plaintiffs were making the payments to exempt employees negated operative mistake finding in respect of the payments - held: plaintiffs were prima facie - entitled to recover superannuation payments in respect of exempt employees subject to 'defences' and assessment of quantum - preliminary issue determined.

[North Adelaide Service Partnership](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Fishmonger

By: Marsden Hartley

I have taken scales from off

The cheeks of the moon.

I have made fins from bluejays' wings,

I have made eyes from damsons in the shadow.

I have taken flushes from the peachlips in the sun.

From all these I have made a fish of heaven for you,

Set it swimming on a young October sky.

I sit on the bank of the stream and watch

The grasses in amazement

As they turn to ashy gold.

Are the fishes from the rainbow

Still beautiful to you,

For whom they are made,

For whom I have set them,

Swimming?

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

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