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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)

Bester v Australian Securities and Investments Commission, in the matter of Marcel Holdings Pty Ltd (in liquidation) (FCA) - corporations - application for order that defendant reinstate deregistered company and for appointment of receiver - orders granted (B C I G)

Roads and Maritime Services v United Petroleum Pty Ltd (NSWCA) - compulsory acquisition of land - challenge to compensation paid to respondent - s59(f) *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) - appeal allowed (B C I G)

O'Connor v GEO Group Australia Pty Ltd (NSWSC) - negligence - plaintiff on remand at centre injured in assault by inmates - defendant negligent - no contributory negligence - verdict for plaintiff on liability (B I)

The Owners-Strata Plan 47027 v McGinn (No 2) (NSWSC) - costs - application for gross sum costs order - conduct - plaintiffs entitled to 'costs in a specified gross sum' (B C I G)

Pacific Wireless Pty Ltd v Breeze Logistics Australia Pty Ltd (No 2) (VSC) - costs - Court allowed appeal against decision of Civil and Administrative Tribunal - determination of costs of Tribunal proceedings (I B C G)

Charan v Nationwide News Pty Ltd (VSCA) - defamation - costs - justification - indemnity costs - leave to appeal on one ground allowed - appeal dismissed (I)

Public Trustee (Dean Hudson Memorial Fund Trust) v Attorney-General (SA) (SASC) - trusts and trustees - charities - Public Trustee sought approval of 'trust variation scheme' or scheme for trust's administration - application refused (B)

Summaries With Link (Five Minute Read)

Bester v Australian Securities and Investments Commission, in the matter of Marcel Holdings Pty Ltd (in liquidation) [2019] FCA 278

Federal Court of Australia

Griffiths J

Corporations - plaintiff, under s601AH(2) *Corporations Act 2001* (Cth), sought that defendant be ordered to reinstate deregistered company - application unopposed by defendant - plaintiff also sought that Court appoint receiver - whether "just" to make orders - whether plaintiff was "person aggrieved" - held: Court satisfied to grant application and to appoint receiver - orders granted as sought.

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

Roads and Maritime Services v United Petroleum Pty Ltd [2019] NSWCA 41

Court of Appeal of New South Wales

Basten, Macfarlan & Payne JJA, Sackville AJA & Preston CJ of LEC

Compulsory acquisition of land - appellant compulsorily acquired land - 'two special purpose companies' owned land, leasing it to respondent third company - owners accepted compensation - appeal concerned assessment of compensation payable to respondent - primary judge accepted respondent's claim for "loss attributable to disturbance" compensation - appellant challenged award of compensation and award of difference between rent respondent would have paid were it not for land's acquisition and 'higher sum' respondent paid appellant for land's 'continued occupation' from compulsory acquisition date to date on which appellant obtained vacant possession - s59(f) *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) - held: appeal allowed.

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

O'Connor v GEO Group Australia Pty Ltd [2019] NSWSC 202

Supreme Court of New South Wales

Lonergan J

Negligence - plaintiff on remand at centre injured in assault by inmates - plaintiff sued defendant managers of centre in negligence - defendant denied negligence and contended plaintiff was contributorily negligent - separate determination of liability - prison authority's duty of care to inmate - whether defendant took 'reasonable care' - whether 'failure to segregate and transfer' plaintiff was 'necessary condition' of harm's occurrence - ss5B, 5C & 5D *Civil Liability Act 2002* (NSW) - held: defendant was negligent - no contributory negligence by plaintiff -

verdict of plaintiff on liability.

[View Decision](#) (B I)

The Owners-Strata Plan 47027 v McGinn (No 2) [2019] NSWSC 219

Supreme Court of New South Wales

Darke J

Costs - plaintiffs sought gross sum costs order in respect of 'certain costs': costs in plaintiffs' favour in application to set aside subpoena - costs 'to be ordered' in favour of plaintiffs - whether to grant gross sum costs order - conduct - calculation of 'fair and reasonable' sum - s98(4)(c) *Civil Procedure Act 2005* (NSW) - held: plaintiffs entitled to 'costs in a specified gross sum' - application granted.

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

Pacific Wireless Pty Ltd v Breeze Logistics Australia Pty Ltd (No 2) [2019] VSC 130

Supreme Court of Victoria

Lyons J

Costs - Court granted leave to appeal and allowed appeal against decision of Victorian Civil and Administrative Tribunal - determination of costs of Tribunal proceeding - offers of settlement - whether jurisdiction to determine costs - prima facie position that each party pay own costs - *Civil Procedure Act 2010* (Vic) - whether remittal to Tribunal warranted - held: not appropriate to order defendant to pay plaintiff's costs.

[Pacific Wireless](#) (I B C G)

Charan v Nationwide News Pty Ltd [2019] VSCA 36

Court of Appeal of Victoria

Beach, Niall and Ashley JJA

Defamation - costs - plaintiff sued defendant for defamation - trial judge found plaintiff established two defamatory imputations but that defendant established imputations 'substantial truth' - trial judge also found that if was wrong in finding justification, it was not possible to find plaintiff entitled to damages for reputation's vindication or for 'reparation for injury' - trial judge granted indemnity costs order in defendant's favour - plaintiff sought to appeal - held: plaintiff granted leave to appeal on one ground alleging error by trial judge in certain findings concerning imputations - leave to appeal on other grounds - appeal dismissed.

[Charan](#) (I)

Public Trustee (Dean Hudson Memorial Fund Trust) v Attorney-General (SA) [2019] SASC 20

Supreme Court of South Australia

Hinton J

Trusts and trustees - charities - Public Trustee was trustee of 'charitable trust' (trust) - Public Trustee, pursuant to s69B *Trustee Act 1936* (SA) sought approval of 'trust variation scheme' concerning trust or scheme for trust's administration - 'trust corpus' insufficient to generate



income which could support trust purpose - cy-prés doctrine - whether 'original purpose' was 'impossible or impracticable' - whether expedient to make scheme - held: application refused.
[Public Trustee](#) (B)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

The White Rabbit's Evidence

By: Lewis Carroll

'They told me you had been to her,

And mentioned me to him:

She gave me a good character,

But said I could not swim.

He sent them word I had not gone

(We know it to be true):

If she should push the matter on,

What would become of you?

I gave her one, they gave him two,

You gave us three or more;

They all returned from him to you,

Though they were mine before.

If I or she should chance to be

Involved in this affair,

He trusts to you to set them free,

Exactly as we were.



My notion was that you had been

(Before she had this fit)

An obstacle that came between

Him, and ourselves, and it.

Don't let him know she liked them best,

For this must ever be

A secret, kept from all the rest,

Between yourself and me.'

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

en.wikipedia.org

Charles Lutwidge Dodgson (/ ˈ l ʊ t w ɪ d ʒ d ɒ d ʒ s ɒ n /; 27 January 1832 – 14 January 1898), better known by his pen name Lewis Carroll, was an English writer of world-famous children's fiction, notably Alice's Adventures in Wonderland and its sequel Through the Looking-Glass. He was noted for his facility at word play, logic and fantasy. The poems Jabberwocky and The Hunting of the

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