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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)

**Felix v NULIS Nominees (Australia) Ltd** (FCA) - superannuation - total and permanent disablement - rejection of total and permanent disablement benefit under insurance policy - appeal dismissed (I B)

**Hanwha Solutions Corporation v LONGi Green Energy Technology Co. Ltd** (FCA) - patent - consumer law - 'further and better discovery' - interim confidentiality orders - determination of interlocutory applications (I B C G)

**Ziegler as trustee for the Doris Gayst Testamentary Trust v Cenric Group Pty Ltd** (NSWCA) - corporations - application for leave to appeal against primary judge's decision to set aside statutory demand on basis of 'arguable offsetting claim' - leave to appeal refused (B)

**Westpac Banking Corporation v Southern Environmental Services Pty Ltd** (NSWSC) - interference with goods - determination of cross-claim - cross-claimant sought compensation from cross-defendants for 'detention of and conversion' of machinery items - cross-claim dismissed (B C I G)

**Nicol v Nicole; The Estate of Peter Nicole** (NSWSC) - costs - wills and estates - probate - parties resolved proceedings - no order for costs (B)

**196 Hawthorn Road Pty Ltd v Duszniak** (VSC) - real property - restrictive covenant -

construction of covenant - determination of preliminary questions (I B C G)

**Dent v Burke** (ACTCA) - defamation - separate question - primary judge found defamatory imputations not conveyed - appeal dismissed (I B)

## Summaries With Link (Five Minute Read)

### **Felix v NULIS Nominees (Australia) Ltd [2020] FCA 591**

Federal Court of Australia

Stewart J

Superannuation - total and permanent disablement - applicant claimed total and permanent disablement (TPD) benefit under insurance policy which second respondent provided - applicant had obtained cover under policy by membership of fund of which first respondent was trustee - second respondent denied claim - trustee affirmed decision - Superannuation Complaints Tribunal affirmed second respondent's decision and first respondent's affirmation on basis decision 'was fair and reasonable in the circumstances' - applicant appealed - construction of TPD definition's 'first limb' - whether erroneous application of facts to TPD definition's second limb' - "alternative duties" - "three identified employment options" - "reasonably qualified" - whether failure 'to consider actual likelihood of being able to find work' - held: appeal dismissed.

[Felix](#) (I B)

### **Hanwha Solutions Corporation v LONGi Green Energy Technology Co. Ltd [2020] FCA 580**

Federal Court of Australia

Burley J

Patent - consumer law - applicant, by interlocutory application in proceedings, sought leave to amend patent under s105 *Patents Act 1990* (Cth) - plaintiff ordered to give discovery of "all documents relevant to the [a]mendment [a]pplication" - respondents contended applicant 'failed to discover all relevant documents' - respondents, by interlocutory applications, sought that applicant provide 'further and better discovery' and 'produce in unredacted form' all documents in its list of documents - applicant sought 'interim confidentiality orders' - held: respondents' application failed 'for the most part' - interim confidentiality orders granted.

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

### **Ziegler as trustee for the Doris Gayst Testamentary Trust v Cenric Group Pty Ltd [2020] NSWCA 85**

Court of Appeal of New South Wales

Meagher, Gleeson & McCallum JJA

Corporations - winding up - statutory demand - applicant sought to appeal against primary judge's decision to set aside statutory demand she served on respondent - primary judge set demand aside on basis respondent had 'arguable offsetting claim' exceeding debt which

statutory demand claimed - primary judge made decision on basis of 'sufficient supporting affidavit' - applicant contended primary judge erred in finding respondent had arguable offsetting claim 'sufficiently articulated in the affidavit accompanying the originating process' - applicant challenged primary judge's application of principles concerning supporting affidavit's 'appropriate formulation' - s459G *Corporations Act 2001* (Cth) - whether injustice - held: leave to appeal refused.

[View Decision](#) (B)

## **Westpac Banking Corporation v Southern Environmental Services Pty Ltd [2020] NSWSC 448**

Supreme Court of New South Wales

Ierace J

Interference with goods - determination of cross-claim - cross-claimant ("Southern Environmental") sought compensation from cross-defendants ("Gloucester" and "Klondu") for cross-defendants' 'detention of and conversion' of machinery items - 'right to possession' - abandonment - 'estoppel in pais' - 'jus tertii' - 'claim in detinue' - whether cross-defendants failed to comply with demand - *Uncollected Goods Act 1995* (NSW) - held: cross-claim dismissed.

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

## **Nicol v Nicole; The Estate of Peter Nicole [2020] NSWSC 419**

Supreme Court of New South Wales

Hallen J

Costs - wills and estates - probate - plaintiff sought declaration defendant 'be passed over' as executor and order that probate of deceased's Will be granted to him - defendant filed defence and cross-claim - parties resolved proceedings, agreeing that an 'accredited specialist in wills and estates' be appointed 'independent administrator' - determination of costs - conduct - whether apportionment appropriate - whether to separate costs incurred after defendant made offer that parties bear own costs - s98 *Civil Procedure Act 2005* (NSW) - r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - held: no order for costs.

[View Decision](#) (B)

## **196 Hawthorn Road Pty Ltd v Duszniak [2020] VSC 235**

Supreme Court of Victoria

Lansdowne AsJ

Real property - restrictive covenant - plaintiff was registered proprietor of 'two parcels of adjoining land' - plaintiff sought declaration that covenant on title to land was limited to transferor/covenantee's life so land no longer affected by any restriction in covenant - alternatively, plaintiff sought covenant's discharge or modification - determination of two preliminary questions: 'Is the restriction in instrument of transfer 1223428 limited to the life of the covenantee, Sophie Sarah Annie Langdon?'; and 'Does it follow that the subject land is now not affected by any purported restriction contained in instrument of transfer 1223428?' -



construction of covenant - held: Court answered both questions in the negative.  
[196 Hawthorn Road](#) (I B C G)

## **Dent v Burke [2020] ACTCA 22**

Court of Appeal of the Australian Capital Territory  
Burns, Loukas-Karlsson and Charlesworth JJ

Defamation - appellant sued respondent in defamation - action arose from television interview in which respondent participated - appellant contended interview conveyed imputations which were defamatory - question whether defamatory imputations conveyed was 'decided separately' in advance of other issues - primary judge found the imputations were not conveyed - appellant appealed - whether 'hypothetical ordinary reasonable viewer would understand the publication to have the meaning alleged' - whether primary judge's conclusion unsupported by 'weight of the evidence' - whether primary judge erroneously conflated publication made by respondent during interview with "later publication" of interview - r1521 *Court Procedures Rules 2006* (ACT) - held: appeal dismissed.

[Dent](#) (I B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## Fairy Land ii

**By:** William Shakespeare

YOU spotted snakes with double tongue,  
Thorny hedgehogs, be not seen;  
Newts and blind-worms, do no wrong;  
Come not near our fairy queen.

Philomel, with melody,  
Sing in our sweet lullaby;  
Lulla, lulla, lullaby; lulla, lulla, lullaby!  
Never harm,  
Nor spell nor charm,  
Come our lovely lady nigh;  
So, good night, with lullaby.

Weaving spiders, come not here;  
Hence, you long-legg'd spinners, hence!  
Beetles black, approach not near;  
Worm nor snail, do no offence.

Philomel, with melody,  
Sing in our sweet lullaby;  
Lulla, lulla, lullaby; lulla, lulla, lullaby!  
Never harm,  
Nor spell nor charm,  
Come our lovely lady nigh;  
So, good night, with lullaby.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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