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

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Executive Summary (1 minute read)

Shord v Commissioner of Taxation (FCAFC) - taxation - procedural fairness - Commissioner included payments appellant received for work overseas in assessable income - Tribunal erred in finding that appellant was not an employee under s23AG(7) *Income Tax Assessment Act 1936* (Cth) - appeal allowed (I B C G G)

InterPharma Pty Ltd v Hospira, Inc (No 2) (FCA) - costs - Court granted Pfizer's application for interim injunction relief - costs of application reserved (I B C G)

Cassaniti v Ruse NSW Pty Ltd (NSWCA) - judgments and orders determination of separate question in respondents' favour - findings of fraud not pleaded or argued for - remaining issues to be determined before hearing of any appeal - leave to appeal refused (I B C G)

Mobis Parts Australia Pty Ltd v XL Insurance Company SE (No 8) (NSWSC) - damages - aspects of claim not established - determination of issues concerning quantum of claim (I B C G)

Maylord Equity Management Pty Ltd as trustee of the Batterham Retirement Fund v Nauer (No. 2) (NSWSC) - summary disposal - proceedings dismissed for want of prosecution (I B C G)

Holcombe v Hunt & Anor VSC (VSC) - limitation of actions - medical negligence - application for extension of time to bring proceedings against surgeon and hospital refused (I)

Strano v Australian Capital Territory (ACTCA) - judgments and orders - limitation of actions - human rights - unlawful detention - expiry of limitation period - proceedings dismissed - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Shord v Commissioner of Taxation [2017] FCAFC 167

Full Court of the Federal Court of Australia

Siopis, Logan & White JJ

Taxation - appellant worked overseas for foreign companies - Commissioner included payments appellant received for work overseas in assessable income - Commissioner disallowed appellant's objection to amended assessments, shortfall interest charges and administrative penalties - Administrative Appeals Tribunal affirmed Commissioner's decision - primary judge dismissed appeal - whether appellant exempt from income tax because he was engaged in foreign service under s23AG(7) *Income Tax Assessment Act 1936* (Cth) - whether entitlement to tax offsets for foreign income tax paid under s770-10(1) *Income Tax Assessment Act 1997* (Cth) - whether appellant an "employee" under s23AG(7) - whether Commissioner had duty under s33(1AA) *Administrative Appeals Tribunal Act 1975* (Cth) to assist in obtaining evidence of appellant's payment of tax in foreign countries - held: Tribunal erred in finding that appellant was not an employee under s23AG(7) - there was denial of procedural fairness to appellant - appeal allowed.

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

InterPharma Pty Ltd v Hospira, Inc (No 2) [2017] FCA 1280

Federal Court of Australia

Kenny J

Costs - Court granted interim injunctive relief to Pfizer to restrain InterPharma from offering to supply and supplying 'InterPharma Products' until Pfizer's claim for interlocutory injunctive relief determined - InterPharma opposed order it pay Pfizer's costs of application for interim injunctive relief - r43(2) *Federal Court of Australia Act 1976* (Cth) - held: injunctive relief was on interim basis only, granted to preserve status quo pending determination of claim for interlocutory relief - Court satisfied in all circumstances costs of interim injunction application should be reserved - order may be revisited after interlocutory hearing.

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

Cassaniti v Ruse NSW Pty Ltd [2017] NSWCA 285

Court of Appeal of New South Wales

McColl & Meagher JJA; Emmett AJA

Judgments and orders - leave to appeal - parties entered Deed of Release and Indemnity obliging two entities which sixth respondent controlled to provide first ranking mortgage over

property - property's registered proprietor not party to Deed - applicants contended sixth respondent was land's beneficial owner - property transferred to first respondent, which was controlled by sixth respondent - first applicant claimed entitlement to equitable mortgage over property under Deed - primary judge ordered separate determination of construction issues concerning Deed - though it was not pleaded or argued, primary judge found defendant committed fraud under s42 *Real Property Act 1900* (NSW) - applicants sought to appeal from primary judge's decision of separate question in respondents' favour - whether countervailing considerations favouring grant of leave - held: no countervailing considerations - determination of appeal on separate question would require Court to decide issue which primary judge did not determine - leave should not be granted so that fraud findings could be addressed - fraud findings should not have been made - in interests of justice for proceedings' remaining issues to be determined before any appeal - leave to appeal refused.

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

Mobis Parts Australia Pty Ltd v XL Insurance Company SE (No 8) [2017] NSWSC 1507

Supreme Court of New South Wales

Stevenson J

Damages - assessment of damages - issues concerning determination of quantum of plaintiff's claim - plaintiff did not establish aspects of claim - one possible consequence was for Court to reject aspects entirely - submissions invited as to alternative course - held: Court deducted amount of \$100,000 from building claim, and \$125,000 from claim for stock - no amount allowed for loss of profit - part of claim for additional labour costs not allowed - damages to be calculated taking account of these matters - parties to agree on amount of judgment to be entered for plaintiff against defendant.

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

Maylord Equity Management Pty Ltd as trustee of the Batterham Retirement Fund v Nauer (No. 2) [2017] NSWSC 1467

Supreme Court of New South Wales

Slattery J

Summary disposal - defendant sought dismissal of proceedings for want of due dispatch - whether to grant dismissal for want of due dispatch where proceedings' continuation conditional on plaintiff's payment of previous costs orders, which were unpaid and unlikely to be paid - whether third party who played role in plaintiff maintaining proceedings and stood to benefit from proceedings should pay costs order against plaintiff - *Civil Procedure Act 2005* (NSW) - *Superannuation Industry (Supervision) Act 1993* (Cth) - held: not in interests of administration of justice, or fair to defendant to require his further expenditure of litigation costs - litigation had 'no prospect of advancement' - proceedings dismissed pursuant to r12.7 *Uniform Civil Procedure Rules 2005* (NSW) for want of due dispatch.

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

Holcombe v Hunt & Anor [2017] VSC 666

Supreme Court of Victoria
Ierodionou AsJ

Limitation of actions - medical negligence - plaintiff was truck driver with leg condition - plaintiff had surgery 16 years ago on leg - plaintiff wished to claim against surgeon and hospital - plaintiff 13 years out of time - whether to extend time for plaintiff to proceed with medical negligence claim - reasons for long delay - presumptive prejudice - whether fair trial possible - ignorance of limitation period - decision not to seek legal advice - ss27K & 27L *Limitation of Actions Act 1958 (Vic)* - held: Court concluded it was not, on synthesis of all circumstances, just and reasonable to extend time - application refused.

[Holcombe \(I\)](#)

Strano v Australian Capital Territory [2017] ACTCA 51

Court of Appeal of the Australian Capital Territory
Elkaim & Bromwich JJ; Robinson AJ

Judgments and orders - limitations - human rights - unlawful detention - in 2005 appellant charged with driving while unlicensed with aggravating circumstance of being repeat offender - appellant pleaded guilty - Magistrate sentenced to three months in prison - in 2007 another Magistrate noticed appellant was incorrectly charged in 2005: that he was not a repeat offender and should not have been imprisoned - appellant appealed against 2005 orders - primary judge did not overturn conviction but allowed appeal on sentence - appellant sought damages for unlawful detention under s18(7) *Human Rights Act 2004 (ACT)* - respondent sought that proceedings be struck out due to commencement outside limitation period - primary judge gave judgment for respondent - appellant challenged primary judge's 'decision' on existence of right to compensation under s18(7) Human Rights Act, findings on limitation in relation to date of accrual of cause of action - whether distinction between human right under s18(7) and unlawful imprisonment affected limitation period - held: appeal dismissed.

[Strano \(I B C G\)](#)



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An Idyll of Dandaloo

By: A.B 'Banjo' Paterson

On Western plains, where shade is not,
 'Neath summer skies of cloudless blue,
Where all is dry and all is hot,
 There stands the town of Dandaloo —
A township where life's total sum
Is sleep, diversified with rum.
It's grass-grown streets with dust are deep,
 'Twere vain endeavour to express
The dreamless silence of its sleep,
 Its wide, expansive drunkenness.
The yearly races mostly drew
A lively crowd to Dandaloo.
There came a sportsman from the East,
 The eastern land where sportsmen blow,
And brought with him a speedy beast —
 A speedy beast as horses go.
He came afar in hope to 'do'
The little town of Dandaloo.
Now this was weak of him, I wot —
 Exceeding weak, it seemed to me —
For we in Dandaloo were not
 The Jugginses we seemed to be;
In fact, we rather thought we knew
Our book by heart in Dandaloo.
We held a meeting at the bar,
 And met the question fair and square —
'We've stumped the country near and far
 To raise the cash for races here;
We've got a hundred pounds or two —
Not half so bad for Dandaloo.
'And now, it seems, we have to be
 Cleaned out by this here Sydney bloke,
With his imported horse; and he
 Will scoop the pool and leave us broke
Shall we sit still, and make no fuss
While this chap climbs all over us?'

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The races came to Dandaloo,
And all the cornstalks from the West,
On ev'ry kind of moke and screw,
Came forth in all their glory drest.
The stranger's horse, as hard as nails,
Look'd fit to run for New South Wales.
He won the race by half a length —
QUITE half a length, it seemed to me —
But Dandaloo, with all its strength,
Roared out 'Dead heat!' most fervently;
And, after hesitation meet,
The judge's verdict was 'Dead heat!'
And many men there were could tell
What gave the verdict extra force:
The stewards, and the judge as well —
They all had backed the second horse.
For things like this they sometimes do
In larger towns than Dandaloo.
They ran it off; the stranger won,
Hands down, by near a hundred yards
He smiled to think his troubles done;
But Dandaloo held all the cards.
They went to scale and — cruel fate! —
His jockey turned out under-weight.
Perhaps they'd tampered with the scale!
I cannot tell. I only know
It weighed him OUT all right. I fail
To paint that Sydney sportsman's woe.
He said the stewards were a crew
Of low-lived thieves in Dandaloo.
He lifted up his voice, irate,
And swore till all the air was blue;
So then we rose to vindicate
The dignity of Dandaloo.
'Look here,' said we, 'you must not poke
Such oaths at us poor country folk.'
We rode him softly on a rail,
We shied at him, in careless glee,
Some large tomatoes, rank and stale,
And eggs of great antiquity —
Their wild, unholy fragrance flew
About the town of Dandaloo.



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He left the town at break of day,
He led his race-horse through the streets,
And now he tells the tale, they say,
To every racing man he meets.
And Sydney sportsmen all eschew
The atmosphere of Dandaloo.

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

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