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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Centaurea International Pte Ltd (in liquidation) v Citus Trading Pte Ltd (SGHC) - insolvency - corporations - winding up - transactions in between commencement of winding up and winding up order - payments to defendants validated - liquidators' application to recover payments dismissed (B)

CAA Technologies Pte Ltd v Newcon Builders Pte Ltd (SGHC) - building and construction - repudiatory breaches of contract - defendant entitled to terminate - plaintiff's claim for breach of contract substantially failed - defendant's counterclaim for breach of contract substantially allowed (B C)

Cheong Woon Weng v Cheong Kok Leong (SGHC) - real property - trusts and trustees - plaintiff entitled to equal share in property as tenants-in-common with defendant on basis he contributed amount to purchase price - declaration and orders made (B)

Carrigan v Honourable Senator Michaelia Cash (FCA) - summary judgment - pleadings - judicial review - no prospects of successfully prosecuting action in relation to Minister's report - summary judgment granted (G)

Wotton v State of Queensland (No 5) (FCA) - human rights - racial discrimination - representative proceedings in relation to death of Aboriginal man (Mulrunji) in police custody - breaches of s9(1) *Racial Discrimination Act 1975* (Cth) by members of Queensland Police

Service on Palm Island - declarations and orders (I B C G)

HP Mercantile Pty Ltd v Hartnett (NSWCA) - contract - separate questions - failed agricultural investment scheme - loan agreements - construction of 'limited recourse provision' in clause of Investor Loan Agreement - appeal dismissed (I B C G)

Tegonikos v Bexley RSL & Community Club Ltd (NSWSC) - negligence - proposed settlement was beneficial to plaintiff under legal incapacity - approval of settlement granted (I)

Ross v Gippsreal (NSWSC) - corporations - liquidators' remuneration - liquidators entitled at least to amount in Deed of Settlement - extent to which lien existed required further consideration - matter referred to Associate Judge (B)

AAI Limited v McQuitty (QCA) - damages - motor vehicle collision - no error in assessment of damages - appeal dismissed (I)

The Queensland Local Government Superannuation Board v Allen (QCA) - superannuation - total and permanent disablement - privilege - waiver - erroneous disclosure of advice - appeal allowed (B)

Summaries With Link (Five Minute Read)

Centaurea International Pte Ltd (in liquidation) v Citus Trading Pte Ltd [2016] SGHC 264

High Court of the Republic of Singapore

Steven Chong J

Insolvency - corporations - winding up - case concerned transactions between parties and corresponding payments which plaintiff made in between commencement of winding up and winding up order - plaintiff's liquidators sought to recover payments - defendant sought to validate payments - s259 *Companies Act* (Cap 50, 2006 Rev Ed) - whether Court satisfied payments would be for company's benefit and therefore creditors' benefit - whether there should be distinction between prospective and retrospective validation - held: payments to defendants validated - liquidators' application dismissed.

[Centaurea](#) (B)

CAA Technologies Pte Ltd v Newcon Builders Pte Ltd [2016] SGHC 246

High Court of the Republic of Singapore

Vinodh Coomaraswamy J

Building and construction - defendant was main contractor for building project which sub-contracted elements of project to plaintiff - plaintiff failed to deliver the elements and failed to meet revised schedule - plaintiff delivered some elements 'out of sequence, incomplete and

badly behind schedule' - defendant terminated contract with plaintiff - plaintiff sued defendant for breach of contract - defendant counterclaimed for plaintiff's breach of contract in 'failing to deliver the structural elements as promised' - held: defendant entitled to terminate contract as a result of plaintiff's repudiatory breaches of express and implied terms of contract - plaintiff's claim substantially failed - defendant's counterclaim substantially allowed.

[CAA Technologies](#) (B C)

Cheong Woon Weng v Cheong Kok Leong [2016] SGHC 263

High Court of the Republic of Singapore

Audrey Lim JC

Real property - trusts and trustees - property purchased and registered in defendant's name - plaintiff claimed entitlement to equal share in property as tenants-in-common with defendant on basis he contributed amount to purchase price - defendant contended amount was loan made to assist him to purchase the property - defendant claimed he repaid loan and lent additional amount to plaintiff - defendant counterclaimed for further sum's repayment - evaluation of evidence in relation to factual disputes - held: plaintiff proved case - counter-claim dismissed - defendant established amount paid to plaintiff, which was to be set-off from any sum due from defendant - declaration and orders made.

[Cheong Woon Weng](#) (B)

Carrigan v Honourable Senator Michaelia Cash [2016] FCA 1466

Federal Court of Australia

White J

Pleadings - judicial review - first respondent Minister appointed second respondent 'to inquire into and report on complaints and related issues concerning the Honourable Michael Lawler' who was Vice President of the Fair Work Commission - second respondent provided report to Minister - Minister tabled redacted copy and caused circulation of copies - applicant, who had made complaints, claimed second respondent denied her procedural fairness in report's preparation and provision, and Minister had denied her procedural fairness in tabling redacted version leading to general publication - applicant contended report 'void and is of no effect' - respondents sought to strike out pleadings or summary judgment on basis applicant's claims would require Court to deal with matters proscribed by s16(3) *Parliamentary Privileges Act 1987* (Cth) - held: applicant had no reasonable prospects of prosecuting action - applicant would be unable to adduce evidence of matters on which claims depended - summary judgment granted.

[Carrigan](#) (G)

Wotton v State of Queensland (No 5) [2016] FCA 1457

Federal Court of Australia

Mortimer J

Human rights - racial discrimination - representative proceeding - applicant alleged contraventions of s9(1) *Racial Discrimination Act 1975* (Cth) in relation to death of Aboriginal man (Mulrunji) in police custody - action brought on applicants' behalf and on behalf of

Indigenous people resident on Palm Island - respondents were State of Queensland and Commissioner of Police for Queensland - whether Queensland Police Service ('QPS') officers contravened s9(1) in police investigation into Mulrunji's death, management of community concerns, tensions and anger, and responses to protests and fires - held: QPS officers contravened s9(1) by 'inappropriate and partial treatment' of officer in charge of police station, treatment of Aboriginal witnesses, conduct of detective senior sergeant in relation to the autopsy report, failure to suspend officer in charge or to communicate with Palm Islanders and defuse tensions, making and continuation of emergency declaration, and 'arrests, entries and searches' of applicants' houses - declarations and orders made.

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

HP Mercantile Pty Ltd v Hartnett [2016] NSWCA 342

Court of Appeal of New South Wales

Bathurst CJ; Leeming & Payne JJA

Contract - agricultural investment scheme - appeal concerned 'limited recourse provision' in clause of Investor Loan Agreement between Tumut Rover Orchard Management ('TROM') and respondent Growers - scheme promoted by TROM failed - TROM assigned interest in loan to appellant - appellant sued Growers for outstanding amounts under respective loan agreements - appeal concerned answers separate questions which were designed to resolve issue of whether clause applied in circumstances of case - held: appropriate to answer separate questions - Court of Appeal preferred respondents' construction of clause - appeal dismissed.

[HP Mercantile](#) (I B C G)

Tegonikos v Bexley RSL and Community Club Ltd [2016] NSWSC 1740

Supreme Court of New South Wales

Schmidt J

Negligence - approval of settlement - plaintiff was person under legal incapacity - plaintiff injured when struck by door at 6 years old and continued to suffer complications - plaintiff now 24 - whether Court should approve proposed settlement - s76 *Civil Procedure Act 2005* (NSW) - held: Court satisfied that proposed settlement was beneficial to plaintiff and should be approved.

[Tegonikos](#) (I)

Ross v Gippsreal [2016] VSC 753

Supreme Court of Victoria

Cameron J

Corporations - equity - plaintiffs appointed as company's receivers and managers by defendant pursuant to standard charge document - receivers sought payment from defendant for costs and expenses in relation to receivership on basis of indemnity given to them by defendant or under equitable lien - defendant contended receivers' fees were capped and argued it was not obliged to pay above that amount - defendant contended receivers could not claim fees against it until they had exhausted their rights against third parties as required under agreement -

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defendants also contended there was no basis for equitable lien - construction of deeds - waiver - held: receivers were entitled to remuneration at least in amount claimed in Deed of Settlement - Court found lien existed but extent to which lien existed required further consideration - matter referred to Associate Judge for determination.

[Ross \(B\)](#)

AAI Limited v McQuitty [2016] QCA 326

Court of Appeal of Queensland

Gotterson & Morrison JJA; Dalton J

Damages - negligence - motor vehicle accident - respondent passenger of motor vehicle injured in car crash - appellant appealed against assessment of damages for personal injuries - s61(1)(a) *Civil Liability Act 2003* (Qld) - Sch 3 *Civil Liability Regulation 2003* (Qld) - held: no error in assessment of general damages, past gratuitous care, or future care needs - appeal dismissed.

[AAI Limited \(I\)](#)

The Queensland Local Government Superannuation Board v Allen [2016] QCA 325

Court of Appeal of Queensland

M McMurdo P, Philippides JA & Burns J

Superannuation - privilege - waiver - total and permanent disablement - trial judge ordered Board to disclose legal advice to respondent in proceeding seeking entitlement to total and permanent disablement benefit under superannuation scheme - issue in court below was whether Board impliedly waived privilege concerning advice - Board sought leave to appeal against disclosure order - s101 *Superannuation Industry (Supervision) Act 1993* (Cth) - ss6, 12, 14, 15 & 19 *Superannuation (Resolution of Complaints) Act 1993* (Cth) - r211 *Uniform Civil Procedure Rules 1999* (Qld) - held: primary judge erred in ordering disclosure of advice - appeal allowed - orders set aside.

[The Queensland Local Government Superannuation Board \(B\)](#)

CRIMINAL

Executive Summary

Moore v R (NSWCCA) - criminal law - dishonestly obtaining financial advantage by deception and dealing with proceeds of crime - not established appellant did not have authority to withdraw funds from bank - convictions quashed

Mulvihill v R (NSWCCA) - criminal law - murder - self-defence - unlawful and dangerous act manslaughter - appeals against conviction and sentencing dismissed

Summaries With Link

Moore v R [2016] NSWCCA 260

Court of Criminal Appeal of New South Wales

Leeming JA, Fagan & N Adams J

Criminal law - appellant convicted of one count of dishonestly obtaining financial advantage by deception contrary to s192E(1)(b) *Crimes Act 1900* (NSW) and one count of dealing with proceeds of crime contrary to s193B(2) - appellant had opened bank account which permitted negative balance to be reached - appellant had borrowed and dissipated funds he knew he had no realistic prospect of repaying - appellant sentenced to concurrent terms of imprisonment - appellant appealed against convictions and sentence - appellant had been granted conditional bail following conviction - nature of bank's mistake - statutory notion of deception in s192B(1)(b) - 'conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make' - held: appellant had acted dishonestly but not 'deceived' bank - no question appellant owed civil debt - not established that appellant not authorised to withdraw funds - convictions quashed - appeal allowed.

[Moore](#)

Mulvihill v R [2016] NSWCCA 259

Court of Criminal Appeal of New South Wales

Ward JA; Beech-Jones & Fagan JJ

Criminal law - applicant convicted of murder of former lover - applicant had contended death resulted from accident having been inflicted by deceased herself in struggle after argument - applicant sought to appeal against conviction and sentence - whether failure to leave manslaughter by unlawful and dangerous act to jury - terms on which self-defence left to jury - provocation - whether erroneous directions - rule in *Browne v Dunn* - prior misconduct - mental illness - held: leave to appeal against conviction granted on grounds concerning self-defence and unlawful and dangerous act manslaughter - grounds of appeal rejected - no error in sentencing - appeals dismissed.

[Mulvihill](#)



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The Sea and the Skylark

By [Gerard Manley Hopkins](#)

On ear and ear two noises too old to end
Trench—right, the tide that ramps against the shore;
With a flood or a fall, low lull-off or all roar,
Frequenting there while moon shall wear and wend.
Left hand, off land, I hear the lark ascend,
His rash-fresh re-winded new-skeinèd score
In crisps of curl off wild winch whirl, and pour
And pelt music, till none 's to spill nor spend.
How these two shame this shallow and frail town!
How ring right out our sordid turbid time,
Being pure! We, life's pride and cared-for crown,
Have lost that cheer and charm of earth's past prime:
Our make and making break, are breaking, down
To man's last dust, drain fast towards man's first slime.

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