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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)

Western Australian Planning Commission v Southregal Pty Ltd; Western Australian Planning Commission v Leith (HCA) - planning and development - respondents refused applications to develop land which they purchased after land reserved by planning scheme - respondents not entitled to compensation - appeal allowed (I B C G)

Commissioner of State Revenue v ACN 005 057 349 Pty Ltd (HCA) - taxation - no error in Commissioner's refusals to issue amended assessments or refusal to grant refund for excess payment - appeal allowed (I B C G)

Palmer v Ayres; Ferguson v Ayres (HCA) - constitutional law - question for determination - 'Is s596A of the *Corporations Act 2001* (Cth) invalid as contrary to Chapter III of the Constitution in that it confers non-judicial power on federal courts and on courts exercising federal jurisdiction?' - question answered in the negative (I B C G)

In the matter of Tetbury Pty Ltd (NSWSC) - corporations - winding up - statutory demand - genuine dispute established - demand varied (I B C)

Wearne v State of Victoria (VSC) - negligence - psychiatric injury - workplace bullying - breach of duty of care by employer - causation established - judgment for plaintiff (I)

Apple and Pear Australia Ltd v Pink Lady America LLC (No 2) (VSCA) - judgments and

orders - trademarks - interlocutory relief refused pending determination of application for leave to appeal to High Court (I B)

Devil Dog Pty Ltd v Cook (WASC) - restraint of trade - application for interlocutory injunction restraining defendant from breaching restraint of trade provisions in Deed of Restraint granted (I B)

Summaries With Link (Five Minute Read)

Western Australian Planning Commission v Southregal Pty Ltd; Western Australian Planning Commission v Leith [2017] HCA 7

High Court of Australia

Kiefel, Bell, Gageler, Keane & Nettle JJ

Planning and development - respondents in appeals purchased land affected by planning scheme which reserved it for 'regional open space' and sought application to develop it - applications refused due to the reservation - respondents sought compensation under Pt 11 *Planning and Development Act 2005* (WA) ('PD Act') - appellant refused claims on basis compensation only available to person who owned land when it was reserved - question arising on special case in proceedings before Supreme Court of Western Australia was: 'Whether a person to whom s177(2)(b) of [the PD Act] would otherwise apply can be entitled to compensation pursuant to ss173 & 177(1)(b) of the PD Act, in circumstances where the land has been sold following the date of the reservation, and where no compensation has previously been paid under s177(1) of the PD Act' - primary judge and Court of Appeal answered question in affirmative - statutory construction - held: question answered in the negative - respondents not entitled to compensation - appeal allowed.

[Western Australian Planning Commission](#) (I B C G)

Commissioner of State Revenue v ACN 005 057 349 Pty Ltd [2017] HCA 6

High Court of Australia

Kiefel, Bell, Gageler, Keane & Gordon JJ

Taxation - respondent in each appeal owned adjoining properties - respondent assessed for land tax under *Land Tax Act 1958* (Vic) - assessments paid - senior revenue officer of appellant detected error (duplication error) in certain assessments - property listed in assessments had twice been subject of land tax - Commissioner issued refund cheque - taxpayer subsequently formed view other assessment contained same duplication error - time limit for making objections had expired and Commissioner refused to consider objections - taxpayer sought amended assessments - Commissioner refused request - taxpayer commenced proceedings against Commissioner - primary judge dismissed proceedings - Court of Appeal allowed appeals - held: proceedings precluded by s90AA of the *Land Tax Act* - Commissioner's amendment power in s19 is discretionary - purpose of amendment power to be determined by reference to operation of all the Act's provisions - no basis for finding of conscious

maladministration - appeal allowed.

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

Palmer v Ayres; Ferguson v Ayres [2017] HCA 5

High Court of Australia

Kiefel, Gageler, Keane, Nettle & Gordon JJ

Constitutional law - company (Queensland Nickel) placed under administration under s436A *Corporations Act 2001* (Cth) - creditors resolved Queensland Nickel be wound up in insolvency - 'Special Purpose Liquidators' obtained order for summons requiring two former directors of Queensland Nickel to attend for examination and order they produce specified books (together, the 'summons order') - directors sought declarations summons order invalid, and that s596A was not valid conferral of power upon Federal Court to extent it was 'exercised in conjunction with s511', and to permanently restrain Special Purpose Liquidators from pursuing proceedings - question for consideration was: 'Is s596A of the *Corporations Act 2001* (Cth) invalid as contrary to Chapter III of the Constitution in that it confers non-judicial power on federal courts and on courts exercising federal jurisdiction?' - held: determination of summons for examination under s596A engaged Commonwealth's judicial power - s596A did not confer non-judicial power on federal courts or courts exercising federal jurisdiction - s596A not invalid contrary to Ch III of the Constitution - question answered in the negative.

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

In the matter of Tetbury Pty Ltd [2017] NSWSC 37

Supreme Court of New South Wales

Black J

Corporations - winding up - statutory demand - plaintiff under ss459H & 459J *Corporations Act 2001* (Cth) sought to set aside statutory demand which defendant, trading as 'Mahony Law' served on him - form of affidavit accompanying demand - whether genuine dispute arising under *Legal Profession Act 2004* (NSW) - held: plaintiff established genuine dispute in respect of part of debt relating to three invoices and in relation to counsel's fees - demand varied.

[Tetbury](#) (I B C)

Wearne v State of Victoria [2017] VSC 25

Supreme Court of Victoria

John Dixon J

Negligence - psychiatric injury - workplace bullying - employer's duty of care - plaintiff alleged bullying and harassment in 2007 and 2008 by supervisor exacerbated pre-existing psychiatric condition and/or that she was 'unnecessarily exposed to psychiatric harm in her workplace through negligent supervision' - plaintiff claimed damages from defendant - defendant conceded it was on notice that plaintiff was at risk of psychiatric injury since 2005 - held: Court satisfied defendant breached duty of care of reasonable employer - causation established - damages assessed - judgment for plaintiff in sum of \$625,345.

[Wearne](#) (I)

Apple and Pear Australia Ltd v Pink Lady America LLC (No 2) [2017] VSCA 10

Court of Appeal of Victoria

Tate & McLeish JJA

Judgments and orders - trademarks - Pink Lady America LLC ('PLA') sought orders pending determination of application for special leave to appeal to High Court from a judgment of Court, effect of which was to recognise that Apple and Pear Australia Ltd ('APAL') had ownership and control of PINK LADY trademarks in Chile and PLA not entitled to use the trademarks in Chile - PLA sought to restrain APAL from encumbering PINK LADY trademarks in Chile and from taking steps to prevent PLA from issuing Brand Export Licences in Chile, and order requiring parties to keep accounts of royalties arising from issuing Brand Export Licences in Chile - prospects of success - balance of convenience - undertakings - whether irreparable loss - held: interlocutory relief refused.

[Apple and Pear Australia Ltd](#) (I B)

Devil Dog Pty Ltd v Cook [2017] WASC 27

Supreme Court of Western Australia

Tottle J

Restraint of trade - plaintiff sought interlocutory injunction restraining defendant from breaching restraint of trade provisions in Deed of Restraint between parties - Deed of Restraint made pursuant to a term of agreement between plaintiff and company to purchase business - whether prima facie case established - whether inconvenience or injury plaintiff likely to suffer if injunction refused outweighed injury to defendant if injunction granted - whether damages would be adequate remedy - balance of convenience - area and time period of restraint - held: plaintiff established prima facie case - balance of convenience favoured grant of injunction - interlocutory injunction granted.

[Devil Dog](#) (I B)

CRIMINAL

Executive Summary

Woods v R (NSWCCA) - criminal law - supplying prohibited drug - drug not prohibited by *Drug Misuse and Trafficking Act 1985* (NSW) - indictment quashed - applicant had been 'discharged in relation to the offence concerned' within meaning of *Costs in Criminal Cases Act 1967* (NSW) - certificate granted - appeal allowed

Allan v R (NSWCCA) - criminal law - attempted sexual intercourse without consent - being armed with weapon with intent to commit assault - open to jury to find applicant guilty - appeal dismissed

Summaries With Link

Woods v R [2017] NSWCCA 5

Court of Criminal Appeal of New South Wales

Price, Davies & Garling JJ

Criminal law - applicant and co-accused arraigned on indictment that each 'knowingly took part in the supply of a prohibited drug, namely dextromethorphan' contrary to s25(2) *Drug Misuse and Trafficking Act 1985* (NSW) - applicant sought to quash indictment on ground dextromethorphan not a prohibited drug - judge rejected applicant's challenge - on appeal, Crown conceded dextromethorphan not a prohibited drug for Act's purposes - Court allowed appeal, vacated judgment and quashed indictment - applicant sought certificate under *Costs in Criminal Cases Act 1967* (NSW) ('Costs in Criminal Cases Act') - whether applicant 'discharged in relation to the offence concerned' under s2(1)(a) *Costs in Criminal Cases Act* - held: applicant had been 'discharged in relation to the offence concerned' - applicant granted Certificate under s2(1)(a) *Costs in Criminal Cases Act* - appeal allowed.

[Woods](#)

Allan v R [2017] NSWCCA 6

Court of Criminal Appeal of New South Wales

Gleeson JA; Harrison & Campbell JJ

Criminal law - applicant found guilty of 'attempted sexual intercourse without consent knowing that the complainant was not consenting' in breach of ss61I & 61P *Crimes Act 1900* (NSW) ('Count 2'), and being 'armed with a weapon, namely a knife, with intent to commit an indictable offence, namely assault' in breach of s114(1)(a) of the *Act* ('Count 3') - applicant appealed on grounds of 'mishandling and contamination of DNA and blood', improper assessment of scientific evidence's reliability by jury, inconsistency of guilty verdict with not guilty verdict on first count of 'sexual intercourse without consent knowing that the complainant was not consenting' ('Count 1'), inability of jury to properly assess his credibility, and unreasonableness of guilty verdict on Count 3 - held: grounds of appeal failed - open to jury to be satisfied beyond reasonable doubt applicant was guilty on Count 2 and Count 3 - appeal dismissed.

[Allan](#)



Benchmark

Astrophil and Stella 72: Desire, though thou my old companion art

By [Sir Philip Sidney](#)

Desire, though thou my old companion art,
And oft so clings to my pure Love that I
One from the other scarcely can descry,
While each doth blow the fire of my heart,
Now from thy fellowship I needs must part;
Venus is taught with Dian's wings to fly;
I must no more in thy sweet passions lie;
Virtue's gold now must head my Cupid's dart.
Service and honor, wonder with delight,
Fear to offend, will worthy to appear,
Care shining in mine eyes, faith in my sprite:
These things are let me by my only dear;
But thou, Desire, because thou wouldst have all,
Now banished art. But yet alas how shall?

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