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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)

Rinehart v Hancock Prospecting Pty Ltd; Rinehart v Rinehart (HCA) - contract - arbitration - appellants' "validity claims" in respect of deeds were within scope of deeds' 'arbitral clauses' - appeal dismissed - cross-appeal allowed (I B C G)

Chhabra v McPherson as Trustee for the McPherson Practice Trust (No 2) (FCA) - costs - Court dismissed amended originating application - applicants' refusal of offer to compromise was unreasonable - respondents' granted indemnity costs order (B C I G)

Hyperbaric Health International Pty Ltd v Healing Chambers of Australia Pty Ltd (No 2) (FCA) - costs - freezing order - interlocutory application for vacation of freezing order and extra time to pay amount of 'costs judgment' - interlocutory application dismissed (B C I G)

Crocker, in the matter of Crocker (FCA) - vexatious proceedings - application for leave to bring proceedings subject to vexatious proceedings order - application dismissed (B C I G)

Visual Building Construction Pty Ltd v David Armistead (NSWCA) - security for costs - corporations - respondents sought that appellant pay security for costs of appeal - appellant to pay security for costs in amount of \$15,000 (B C I G)

Yilmaz v Specialty Fashion Group Pty Ltd (VSCA) - accident compensation - 'serious injury' - dismissal of application under s134AB(16)(b) *Accident Compensation Act 1985* (Vic) - failure to

established compensable injury - leave to appeal refused (I B C G)

Thomson v State of Queensland & Anor (No 2) (QSC) - costs - negligence - indemnity costs order against first defendant to include costs of plaintiff's pursuit of second defendant (I B C G)

Summaries With Link (Five Minute Read)

Rinehart v Hancock Prospecting Pty Ltd; Rinehart v Rinehart [2019] HCA 13

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Contract - arbitration - appeal concerned three deeds: 'Deed of Obligation and Release', 'Hope Downs Deed' and 'April 2007 Deed' - deeds contained 'releases or abandonment of claims' and 'promises not to make further claims' - deeds contained 'arbitral clauses' - appellants contended they were not bound by deeds' terms because appellants' assent to deeds 'procured by misconduct' by 'Mrs Rinehart, HPPL and others' - appellants sought declarations deeds void against them ("validity claims") - appeals concerned whether validity claims were subject to deeds' 'arbitral clauses' - sixth, seventh and eighth respondents, who were not parties to deed, cross-appealed, seeking stay of appellants' claims against them - ss2 & 8 *Commercial Arbitration Act 2010* (NSW) - held: no error in decision of Full Court of the Federal Court that validity claims were within arbitral clauses' scope - appeals dismissed - cross-appeal allowed.

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

Chhabra v McPherson as Trustee for the McPherson Practice Trust (No 2) [2019] FCA 448

Federal Court of Australia

Yates J

Costs - copyright - passing off - consumer law - Court dismissed amended originating application - successful respondents sought 'special costs order' on basis of offer to compromise - whether applicants' rejection of offer reasonable - r25.01 of the *Federal Court Rules 2011* (Cth) - s196(3) *Copyright Act 1968* (Cth) - held: applicants' failure to accept' respondents' offer unreasonable - indemnity costs order granted.

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

Hyperbaric Health International Pty Ltd v Healing Chambers of Australia Pty Ltd (No 2) [2019] FCA 513

Federal Court of Australia

Nicholas J

Costs - freezing order - Court dismissed application and fixed costs in sum of \$100,000 payable to respondents by first applicant company in liquidation - two directors of first applicant sought vacation of freezing and order allowing 'additional 11 months' to pay 'costs judgment' - whether respondents should be permitted to enforce costs judgment - whether 'sufficient reason' to discharge freezing order - held: interlocutory application dismissed.

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

Crocker, in the matter of Crocker [2019] FCA 432

Federal Court of Australia

Logan J

Vexatious proceedings - Court made 'vexatious proceedings order' in respect of respondent - respondent sought leave to institute proceedings subject to vexatious proceedings order - whether to dismiss application under s37AS *Federal Court of Australia Act 1976* (Cth) (FCA) - whether to grant application under s37AT FCA - held: proposed proceedings were vexatious - respondent's application dismissed under s37AS(2) FCA.

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

Visual Building Construction Pty Ltd v David Armistead [2019] NSWCA 92

Court of Appeal of New South Wales

Meagher JA

Security for costs - corporations - District Court judge gave judgment for respondents, awarding damages for breach of contract by 'appellant builder' - respondents sought that appellant pay security for costs of appeal - whether 'reason to believe' appellant would not be able to pay costs if appeal dismissed - whether reason not to grant security for costs - determination of amount of security - s1335(1) *Corporations Act 2001* (Cth) - held: appellant to pay security for costs in amount of \$15,000.

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

Yilmaz v Specialty Fashion Group Pty Ltd [2019] VSCA 100

Court of Appeal of Victoria

Beach & Niall JJA

Accident compensation - 'serious injury' - applicant employed by respondent - applicant, pursuant to s134AB(16)(b) *Accident Compensation Act 1985* (Vic), sought to claim damages for injuries allegedly suffered in course of employment - applicant sought to claim damages for 'pain and suffering' and for 'pecuniary loss' - primary judge dismissed application, finding applicant had not suffered compensable injury in course of employment - credibility - absence of any complaint by applicant in medical consultation history concerning alleged injury - held: applicant's proposed appeal grounds did not have prospects of success - leave to appeal refused.

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

Thomson v State of Queensland & Anor (No 2) [2019] QSC 115

Supreme Court of Queensland

Applegarth J

Costs - negligence - plaintiff obtained judgment and against second defendant - judgment against first defendant exceeded plaintiff's offers of settlement to first defendant - 'no contest' first defendant should pay plaintiff's costs on indemnity basis - whether costs order in plaintiff's



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favour against first defendant should include costs of pursuit of second defendant - whether *Paskins v Hail Creek Coal Pty Ltd (No 2)* [2017] QSC 213 distinguishable - s316 *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: Court satisfied indemnity costs order against first defendant should include costs of plaintiff's pursuit of second defendant.

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

CRIMINAL

Executive Summary

Summaries With Link



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Dream-Time

By: Ella Higginson

It is the time when crimson stars
 Weary of heaven's cold delight,
And take, like petals from a rose,
 Their soft and hesitating flight
Upon the cool wings of the air
 Across the purple night.

It is the time when silver sails
 Go drifting down the violet sea,
And every poppy's crimson mouth
 Kisses to sleep a lovesick bee;
The fireweed waves her rosy plumes
 On pasture, hill and lea.

It is the time to dream—and feel
 The languid rocking of a boat,
The pushing ripple round the keel
 Where cool, deep-hearted lilies float,
And hear thro' wild syringas steal
 Some songster's drowsy note.

It is the time, at eve, to lie
 And in a hammock faintly sway,
To watch the golds and crimsons die
 Across the blue stretch of the bay;
To hear the sweet dusk tiptoe by
 In the footsteps of the day.

[Ella Higginson](#)

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