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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)

Robinson Helicopter Company Incorporated v McDermott (HCA) - negligence - helicopter crash - maintenance manual provided adequate instructions for identifying defect which caused crash - appellant not liable - appeal allowed (I B C G)

TSG Franchise Management Pty Ltd v Cigarette & Gift Warehouse (Franchising) Pty Ltd (No 2) (FCA) - contract - franchise agreements - procuring or inducing breach of contract - trade practices - applicant entitled to declaratory relief and injunction (I B C G)

Titan Enterprises (Qld) Pty Ltd v Cross (FCA) - service - leave granted to effect personal service on first respondent by personal service document to email addresses known to have been used by first respondent (I B C G)

Croucher v Cachia (NSWCA) - negligence - trespass to person - altercation between neighbours leading to injury to one neighbour - appeal allowed in part - retrial (I B C G)

Coope v LCM Litigation Fund Pty Ltd (NSWCA) - corporations - contract - appellant breached employment contract and fiduciary duties - appellant's conduct constituted 'serious misconduct' - no wrongful termination of contract - appeal dismissed (I B C G)

AFP v Wang (VSC) - examination orders - Commissioner granted orders for examination of persons concerning purchase of vehicle (I B C G)

Maund v Racing Victoria Ltd & The Victorian Civil and Administrative Tribunal (VSCA) - administrative law - breach of Australian Rules of Racing prohibiting administration of medication to horse on race day - trainer disqualified for six months - leave to appeal refused (I B G)

Summaries With Link (Five Minute Read)

Robinson Helicopter Company Incorporated v McDermott [2016] HCA 22

High Court of Australia

French CJ; Bell, Keane, Nettle & Gordon JJ

Negligence - proceedings arising from helicopter crash which resulted in death of pilot and in which first respondent seriously injured - issue was adequacy of inspection procedure in helicopter's Maintenance Manual for detecting defect which caused crash - primary judge found Manual provided adequate instructions and dismissed first respondent's claims against appellant - Court of Appeal of Queensland held by majority that Manual did not provide adequate instructions to detect defect and found appellant liable either in negligence or under *Trade Practices Act 1974* (Cth) - ss9(1)(c) & 12 *Civil Liability Act 2003* (Qld) - regs 31, 42V(1) & 42ZC *Civil Aviation Regulations 1988* (Cth) - held: Court of Appeal erred in interpreting evidence and overturning primary judge's findings of fact - Court of Appeal also erred in relation to causation - appeal allowed.

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

TSG Franchise Management Pty Ltd v Cigarette & Gift Warehouse (Franchising) Pty Ltd (No 2) [2016] FCA 674

Federal Court of Australia

Davies J

Procuring or inducing breach of contract - trade practices - applicant alleged respondent induced franchisee to terminate franchise agreements with applicant by offering financial incentives to sign with respondent - applicant also alleged respondent knowingly and intentionally induced or procured franchisee to breach her contracts and made false and misleading representations to its franchisees to induce termination of contracts with applicant and enter franchise agreements with respondent - applicant also sued respondent for contravening s18 *Australian Consumer Law* - held: judgment given for applicant on each of its claims - applicant entitled to declaratory relief and injunction - parties to bring in short minutes of order.

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

Titan Enterprises (Qld) Pty Ltd v Cross [2016] FCA 664

Federal Court of Australia

Edelman J

Service - Titan Enterprises and two related companies (Titan Enterprises) alleged respondents infringed its copyright and registered marks, committed tort of injurious falsehood, engaged in misleading or deceptive conduct and made false or misleading representations - Titan Enterprises sought orders for substituted service against first respondent - Titan Enterprises had failed to discover first respondent's address for service - held: despite Titan Enterprises' 'apparently exhaustive searches' it had only discovered two email addresses for first respondent - it was impracticable for Titan Enterprises to serve document personally upon first respondent - appropriate that Titan Enterprises have leave to serve documents by substituted service - Titan Enterprises granted leave pursuant to r10.24 *Federal Court Rules 2011* (Cth) to effect personal service document on first respondent by sending it to the two email addresses first respondent was known to have used.

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

Croucher v Cachia [2016] NSWCA 132

Court of Appeal of New South Wales

Beazley P; Ward & Leeming JJA

Negligence - trespass to person - altercation between two neighbours - respondent seriously injured by gardening shears wielded by appellant - appellant appealed against judgment obtained by respondent - ss3A, 3B, 5, 21, 27, 52, 53 & 54 *Civil Liability Act 2002* (NSW) - s13 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) - ss59 & 61 *Crimes Act 1900* (NSW) - s140 *Evidence Act 1995* (NSW) - legal and factual grounds of appeal - challenge to findings of fact and failure to "grapple" with 'diametrically opposed cases' - whether appellant's conduct 'intentional' 'reckless' or merely 'negligent' or without fault - whether appellant's response to respondent's conduct tortious, or criminal - statutory self-defence - damages - held: primary judge did not deal with some legal issues and was deficient in dealing with some legal issues - Court could not reconcile factual and legal issues between 'diametrically opposed accounts of the events' concerning self-defence - appeal allowed - retrial.

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

Coope v LCM Litigation Fund Pty Ltd [2016] NSWCA 37

Court of Appeal of New South Wales

Gleeson, Leeming & Payne JJA

Corporations - employment contract - employment dispute between appellant and respondent company of which appellant was a joint managing director - respondent sought declaration appellant engaged in serious misconduct justifying termination of appellant's employment - primary judge found appellant engaged in serious misconduct and employment was not wrongfully terminated - appellant appealed - ss200AB, 200B, 200C, 200D & 200F *Corporations Act 2001* (Cth) - ss6.1 & 9.2 *Criminal Code Act 1995* (Cth) - s75A *Supreme Court Act 1970* (NSW) - held: no error in finding appellant breached employment contract and fiduciary duties - no error in conclusion that conduct was 'serious misconduct' - appeal dismissed.

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

AFP v Wang [2016] VSC 243

Supreme Court of Victoria

Zammit J

Examination orders - Commissioner of the Australian Federal Police sought orders pursuant to s180 *Proceeds of Crime Act 2002* (Cth) for examination of respondents concerning purchase of vehicle - reasons dealt only with two of the respondents - whether connection between proposed examinee and 'process in attaining the alleged proceeds of crime' - held: discretion to grant examination order should be exercised with caution - Court refused to make examination order in respect of one person as there was nothing to indicate that examination of that person would be 'necessary' - there was forensic purpose to examination of one person - orders made.

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

Maund v Racing Victoria Ltd & The Victorian Civil and Administrative Tribunal [2016] VSCA 132

Court of Appeal of Victoria

Maxwell P, Ashley & Kaye JJA

Administrative law - applicant was licensed racehorse trainer - Racing Appeals and Disciplinary Board found applicant breached Australian Rules of Racing (Rules) prohibiting administration of medication to horse on race day - Board disqualified applicant for six months - applicant appealed to Victorian Civil and Administrative Tribunal - Tribunal affirmed Board's findings - applicant sought to appeal - ss97 & 98 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - ss5F, 5G & Part III BA *Racing Act 1958* (Vic) - manner by which Racing Victoria Limited sought to establish who administered slurry to horse - admissibility of statements - procedural fairness - *Jones v Dunkel* - held: grounds of appeal failed - leave to appeal refused.

[Maund](#) (I B G)

CRIMINAL

Executive Summary

Martin v R (NSWCCA) - criminal law - aggravated break enter and larceny - assault with intent to rob armed with offensive weapon - totality principle - special circumstances - sentences quashed - applicant resentenced

Zanon v The State of Western Australia (WASCA) - criminal law - sale or supply of prohibited drug - leave to appeal against convictions refused - sentencing appeals dismissed

Summaries With Link

Martinv R [2016] NSWCCA 104

Court of Criminal Appeal of New South Wales

Bathurst CJ, Hall & R A Hulme JJ

Criminal law - applicant sought to appeal pursuant to s5(1)(c) *Criminal Appeal Act 1912* (Cth) against sentences imposed for offence of aggravated break, enter and larceny and offence of assault with intent to rob armed with an offensive weapon - applicant had pleaded guilty to offences - ss112(2) & 97(1) *Crimes Act 1900* (NSW) - held: no merit in contention sentencing judge failed to correctly apply 'guideline judgment on armed robbery' - sentencing judge failed to correctly apply totality principle and 'to give full effect to a finding of special circumstances' - head sentences not manifestly excessive - applicant resentenced.

[Martin](#)

Zanon v The State of Western Australia [2016] WASCA 91

Court of Appeal of Western Australia

McLure P, Buss JA & Mitchell J

Criminal law - appellants (Zanon and Quaid) appealed against conviction following joint trial of one count of having sold or supplied on certain date a prohibited drug contrary to s6(1)(c) *Misuse of Drugs Act 1981* (WA) - one appellant (Quaid) appealed against conviction in same trial of having sold or supplied prohibited drug on another date - whether miscarriage of justice resulting from prosecution opening - whether miscarriage of justice resulting from prosecution adducing evidence from Detective or from inadmissible evidence led by prosecution - whether failure to direct jury concerning relationship between accomplice direction and identification direction - whether erroneous direction concerning evidence of accomplice - whether breach of parity principle or manifestly excessive sentence - whether prohibited use of information provided in compulsory interview resulting in miscarriage of justice - *Criminal Property Confiscation Act 2000* (WA) - held: grounds of appeal failed - appeals against conviction dismissed - sentencing appeals taken to be dismissed due to refusal of leave to appeal.

[Zanon](#)



Benchmark

**Of a Poynted Diamond given by the Author to his Wife,
at the Birth of his Eldest Son**

John Harington

Deare, I to thee this diamond commend,
In which a modell of thyself I send.
How just unto thy joints this circlet sitteth,
So just thy face and shape my fancy fitteth.
The touch will try this ring of purest gold,
My touch tries thee, as pure though softer mold.
That metal precious is, the stone is true,
As true, and then how much more precious, you.
The gem is cleare, and hath nor needes no foyle,
Thy face, nay more, thy fame is free from soil.
Youle deem this deere, because from me you have it,
I deem your faith more deer, because you gave it.
This pointed Diamond cuts glass and Steele,
Your love's like force in my firme heart I feele.
But this, as all things else, time wastes with wearing,
Where you my jewels multiply with bearing.

[John Harington](#)

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