



Friday, 10 August 2018

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)

An NHS Trust and others (Respondents) v Y (by his litigation friend, the Official Solicitor) and another (Appellants) (UKSC) - judgments and orders - Court order was not, in all circumstances, required before 'clinically assisted nutrition and hydration' could be withdrawn from a person with 'prolonged disorder of consciousness' - appeal dismissed (I B C G)

Honest Reveira v Registrar of Trade Marks (FCA) - judicial review - application for review of decision to grant extension of time for filing notice of intention to oppose application for trade marks' removal - application dismissed (I B C G)

Hutchinson v Comcare (No 2) (FCA) - summary judgment - proceeding against respondent under *Public Interest Disclosure Act 2013* (Cth) - application for summary judgment dismissed (I B C G)

Quach v New South Wales Health Care Complaints Commission; Quach v New South Wales Civil and Administrative Tribunal (NSWCA) - vexatious proceedings - three notices of motion seeking to set aside vexatious proceedings orders - notices of motion dismissed (B C I G)

Strata Plan 47027 v McGinn (NSWSC) - judgments and orders - strata titles - determination of three interlocutory applications in cross-claim (I B C G)

McDonald Murholme Pty Ltd v Victorian Radio Network Pty Ltd (VSC) - judgments and orders - appeal from Magistrates' Court - 'Booking Agreement' - no error in Magistrate's decision that appellant owed debt to respondent under agreements - appeal dismissed (I B C G)

Sparway Pty Ltd v CPQ Corporation Pty Ltd (ACTSC) - landlord and tenant - leases and tenancies - two applications - tenants' application for declarations they had valid sublease dismissed - landlords' application for possession allowed 'subject to final orders' (I B C G)

Summaries With Link (Five Minute Read)

An NHS Trust and others (Respondents) v Y (by his litigation friend, the Official Solicitor) and another (Appellants) [2018] UKSC 46

Supreme Court of the United Kingdom

Lady Hale, President; Lord Mance, Lord Wilson, Lord Hodge, & Lady Black

Judgments and orders - appeal concerned question whether, in all circumstances, a Court order must be obtained before 'clinically assisted nutrition and hydration' (CANH) could be withdrawn from a person with a 'prolonged disorder of consciousness' - whether 'mandatory requirement', under common law and/or European Convention on Human Rights (ECHR), to obtain Court's approval for withdrawal of CANH - whether Court's approval required to ensure proper safeguarding of a patient's 'vulnerable position' - Mental Capacity Act Code of Practice - s42(1) *Mental Capacity Act 2005* (MCA 2005) - Court Protection Rules 2007 - held: neither domestic law nor ECHR required that Court be involved in deciding best interests of every patient with 'prolonged disorder of consciousness' before withdrawal of CANH could occur - Court satisfied that if MCA 2005's provisions were followed, 'relevant guidance' observed, and there was agreement on patient's best interests - patient could be treated in accordance with agreement - appeal dismissed.

[An NHS Trust](#) (I B C G)

Honest Reveira v Registrar of Trade Marks [2018] FCA 1122

Federal Court of Australia

Moshinsky J

Judicial review - trade mark - applicants sought judicial review of first respondent's decision to grant extension of time for second respondent to file notice of intention to oppose application for trade marks' removal - *Trade Marks Act 1955* (Cth) - *Trade Marks Regulations 1995* (Cth) (Regulations) - whether decision authorised by Regulations - whether delegate had jurisdiction to make decision - sufficiency of delay in requesting extension of time - held: application dismissed.

[Honest Reveira](#) (I B C G)

Hutchinson v Comcare (No 2) [2018] FCA 1179

Federal Court of Australia

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Bromberg J

Summary judgment - proceeding concerned applicant's claim against respondent under *Public Interest Disclosure Act 2013* (Cth) - respondent sought summary judgement in respect of whole or parts of applicant's claim, or that claim be stayed until 'assessed and reformulated by lawyers' - prospects of success - abuse of process - s31A *Federal Court of Australia Act 1976* (Cth) - r26.01 *Federal Court Rules 2011* (Cth) - s13 *Public Interest Disclosure Act 2013* (Cth) - held: application for summary judgment dismissed.

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

Quach v New South Wales Health Care Complaints Commission; Quach v New South Wales Civil and Administrative Tribunal [2018] NSWCA 175

Court of Appeal of New South Wales

Gleeson, Payne & White JJA

Vexatious proceedings - three notices of motion in which applicant, under s9 *Vexatious Proceedings Act 2008* (NSW), sought to set aside vexatious proceedings orders - whether Court which made vexatious proceedings orders was 'invalidly constituted' because one judge exceeded 70 years - whether reliance on s72 Constitution misconceived - whether requirement of leave in s14 *Vexatious Proceedings Act* applied to applicant's application under s9 *Vexatious Proceedings Act* - whether applicant should be permitted to rely on point not raised at show cause hearing - held: notices of motion dismissed.

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

Strata Plan 47027 v McGinn [2018] NSWSC 1228

Supreme Court of New South Wales

Parker J

Judgments and orders - strata titles - three interlocutory applications in cross-claim - cross-claimant sought default judgment against cross-defendants to cross-claim - cross - defendants sought to strike out Statement of Cross-Claim struck out - s54(1) *Supreme Court Act 1970* (NSW) - held: Court not satisfied to grant default judgment application - Statement of Claim struck out - proceedings on first cross-claim transferred to common law division to be entered in Defamation list.

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

McDonald Murholme Pty Ltd v Victorian Radio Network Pty Ltd [2018] VSC 434

Supreme Court of Victoria

Sloss J

Judgments and orders - appeal from Magistrates' Court - appellant operated employment law firm - respondent operated radio stations - appellant entered two agreements with respondent for 'provision of broadcast radio advertising services' - appellant ceased payments to respondent - respondent terminated agreements and sought payment of money allegedly owing under agreements - Magistrate ordered appellant to pay amount to respondent - appellant appealed - construction of agreements - 'Booking Agreement' - whether appellant liable to pay

debt to respondent - s109 *Magistrates' Court Act 1989* (Vic) - held: no error in Magistrate's decision - appeal dismissed.

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

Sparway Pty Ltd v CPQ Corporation Pty Ltd [2018] ACTSC 210

Supreme Court of the Australian Capital Territory

Elkaim J

Landlord and tenant - leases and tenancies - two applications - in first application tenants sought declarations they had valid sublease in respect of premises - in second application, landlords sought possession of premises and damages - whether landlords entitled not to abide by obligation to renew lease once its renewal was requested by tenant under clause - held: tenants' application dismissed - landlords entitled to treat lease as ended - landlords' application granted 'subject to final orders'.

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

CRIMINAL

Executive Summary

Weribone v R (NSWCCA) - criminal law - robbery in company - leave to appeal against sentence refused

R v Shashati (NSWCCA) - criminal law - aggravated driving occasioning death - Director of Public Prosecution's appeal against sentence allowed

Summaries With Link

Weribone v R [2018] NSWCCA 172

Court of Criminal Appeal of New South Wales

White JA; Bellew & Wilson JJ

Criminal law - applicant convicted of offence of robbery in company - applicant sentenced to 3 years in prison with 18 months non-parole period - sentence 'imported' 25% discount to reflect plea's early entry - applicant sought to appeal against sentence - deterrence - whether material error by judge - whether sentence manifestly excessive - whether sentence 'unreasonably or plainly unjust' - 'Mothers and Children Programme' - 'specific and general deterrence' - held: leave to appeal against sentence refused.

[View Decision](#)

R v Shashati [2018] NSWCCA 167



Court of Criminal Appeal of New South Wales

Basten JA; Wilson & Lonergan JJ

Criminal law - respondent sentenced on charge of aggravated dangerous driving occasioning death - respondent's overall sentence was 4 years 6 months - Director of Public Prosecutions appealed on basis sentence manifestly inadequate - Director also contended judge erroneously failed to take offender's driving prior to accident into account, erroneously failed into account length of journey 'during which others were exposed to risk', and erred in assessment of offending's objective seriousness - s52A(2) *Crimes Act 1900* (NSW) - held: appeal allowed - respondent resentenced.

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Sonnet 76

By: William Shakespeare

Why is my verse so barren of new pride,
So far from variation or quick change?
Why with the time do I not glance aside
To new-found methods and to compounds strange?
Why write I still all one, ever the same,
And keep invention in a noted weed,
That every word doth almost tell my name,
Showing their birth and where they did proceed?
O, know, sweet love, I always write of you,
And you and love are still my argument;
So all my best is dressing old words new,
Spending again what is already spent:
For as the sun is daily new and old,
So is my love still telling what is told.

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

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