



Friday, 11 October 2019

## 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)

**Connective Services Pty Ltd v Sleat Pty Ltd** (HCA) - corporations - appeal concerning scope of 'implied prohibition against financial assistance' in s260A(1) *Corporations Act 2001* (Cth) - no error in finding appellant companies contravened s260A(1) - appeal dismissed (I B C G)

**BVD17 v Minister for Immigration and Border Protection** (HCA) - migration law - refusal of protection visa - procedural fairness - Authority not obliged 'to disclose fact of notification to referred applicant in a review under Pt 7AA' *Migration Act 1958* (Cth) - appeal dismissed (I B C G)

**Mann v Paterson Constructions Pty Ltd** (HCA) - contract - restitution - unjust enrichment - proceedings concerning respondent's entitlement to payment for work under domestic building contract - appeal allowed (B C I G)

**University of Sydney v ObjectiVision Pty Limited** (FCA) - contract - patent - copyright - licensing agreements validly terminated - cross-claim failed - judgment for applicant (I B)

**Dominello v Harbour Radio Pty Ltd t/as 2GB (No.2)** (NSWSC) - defamation - determination of issues arising from 'Amended Offer of Amends' which plaintiff had accepted - proceedings dismissed - costs determined (I B)

**Weeks v Nationwide News Pty Ltd [No 4]** (WASC) - defamation - pleadings - certain words

struck out of one of defendants' justification particulars - application for strike out of justification particulars otherwise dismissed - defendants to answer request for further and better particulars (I)

**ACT Planning and Land Authority v 50 Emu Drive Pty Ltd (ACTSC)** - planning and development - appeal against conditional approval of 'proposed development' - proposed development inconsistent with r56 *Commercial Zones Development Code* (ACT) - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Connective Services Pty Ltd v Sleat Pty Ltd [2019] HCA 33**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon & Edelman JJ

Corporations - appeal concerned scope of 'implied prohibition against financial assistance' in s260A(1) *Corporations Act 2001* (Cth) (Corporations Act) - respondents sought injunction to restrain appellant companies from continuing proceedings' commenced at companies' expense in which they alleged shareholders' 'pre-emptive rights' to be offered companies' shares for purchase had been breached - injunction sought on basis appellant companies had breached s260A(1) Corporations Act - whether Court of Appeal of the Supreme Court of Victoria correct to find appellant companies had contravened s260A(1) Corporations Act - onus - 'material prejudice' - held: appeal dismissed.

[Connective Services](#) (I B C G)

### **BVD17 v Minister for Immigration and Border Protection [2019] HCA 34**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Migration law - procedural fairness - appellant's application for protection visa refused - appeal concerned whether giving of notification under s473GB(2)(a) *Migration Act 1958* (Cth) (Migration Act) triggered procedural fairness obligation on Immigration Assessment Authority (Authority) to disclose 'fact of notification' to 'referred applicant in a review under Pt 7AA' Migration Act (Pt 7AA) - whether reasoning in *Minister for Immigration and Border Protection v SZMTA* [2019] HCA 3, in which Court accepted that giving of notification under s438(2)(a) Migration Act triggered procedural fairness obligation on Administrative Appeals Tribunal to disclose fact of notification to review applicant under Pt 7 Migration Act was transferable to s473GB(2)(a) 'within Pt 7AA' scheme - whether obligation 'precluded from arising' by s473DA Migration Act - whether 'insufficient evidence' to infer failure by Authority to consider exercise of discretion under s473GB(3)(b) Migration Act - held: Authority not obliged to disclose fact of notification to referred applicant in a review under Pt 7AA Migration Act - s473DA Migration Act precluded obligation from arising - appeal dismissed.

[BVD17](#) (I B C G)

## **Mann v Paterson Constructions Pty Ltd [2019] HCA 32**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Contract - restitution - unjust enrichment - appellants owned land - appellants contracted with respondent for townhouses' construction - respondent claimed appellants repudiated contract - respondent 'purported to terminate' contract - respondent claimed entitlement to be paid for work on a quantum meruit - Court of Appeal of the Supreme Court of Victoria upheld respondent's claim - appellants appealed - appellants contended Court of Appeal erred in finding respondent could sue on a quantum meruit for works it carried out (ground 1) - appellants alternatively contended that, if respondent entitled to sue on a quantum meruit, Court of Appeal erred in finding contract's price 'did not operate as a ceiling' on claimable amount (ground 2) - appellants also contended Court of Appeal erroneously allowed respondent to recover for variations to work on basis of incorrect finding that s38 *Domestic Building Contracts Act 1995* (Vic) 'did not apply to a quantum meruit claim for variations to works under a domestic building contract' - held: ground 2 and ground 3 upheld - appeal allowed.

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

## **University of Sydney v ObjectiVision Pty Limited [2019] FCA 1625**

Federal Court of Australia

Burley J

Contract - patent - copyright - applicant (University) contended respondent was 'infringing its patented technology' and sought that respondent accept licensing arrangements' termination - respondent cross-claimed, contending licences invalidly terminated, that first cross-respondent (University) had, in commercialising technology 'with third parties', breached agreements with it, and that University and second cross-respondent, 'in seeking to commercialise the technology', had infringed respondent's copyright and breached confidence - held: licensing agreements validly terminated - cross-claim failed.

[University of Sydney](#) (I B)

## **Dominello v Harbour Radio Pty Ltd t/as 2GB (No.2) [2019] NSWSC 1089**

Supreme Court of New South Wales

Garling J

Defamation - proceedings concerned 'final disposition' of issues arising from 'Amended Offer of Amends' ('Second Offer'), which plaintiff had accepted, and substantive proceedings' disposition - 'principal issue' concerning Second Offer was parties' inability to agree on sum representing plaintiff's 'reasonable expenses' - whether to accede to plaintiff's order in finalisation of proceedings - interests of justice - costs - held: issues determined - proceedings dismissed - costs determined.

[View Decision](#) (I B)

## **Weeks v Nationwide News Pty Ltd [No 4] [2019] WASC 350**



Supreme Court of Western Australia

Le Miere J

Defamation - pleadings - defendants gave further and better particulars in response to plaintiff's request in respect of justification particulars and qualified privilege plea - defendants declined some requests - plaintiff sought that defendant's answer some declined requests and to strike out two justification particulars - held: certain words struck out of one of defendants' justification particulars and particular to be amended - application for strike out of justification particulars otherwise dismissed - defendants to answer request for further and better particulars.

[Weeks](#) (I)

## **ACT Planning and Land Authority v 50 Emu Drive Pty Ltd [2019] ACTSC 276**

Supreme Court of South Australia

McWilliam AsJ

Planning and development - respondent applied to applicant Authority to conduct 'proposed development' on site - applicant made on 'merit track' under Ch 7 *Planning and Development Act 2007* (ACT) - Authority refused application - ACT Civil and Administrative Tribunal conditionally approved proposed development - Authority sought to appeal - appealed concerned r56 *Commercial Zones Development Code* (ACT) (Rule 56) - held: proposed development was inconsistent with Rule 56 - appeal allowed.

[ACT Planning](#) (I B C G)

## CRIMINAL

### Executive Summary

### Summaries With Link



**From: Mont Blanc**

**By: Percy Bysshe Shelley**

## LINES WRITTEN IN THE VALE OF CHAMOUNI

The everlasting universe of things  
Flows through the mind, and rolls its rapid waves,  
Now dark—now glittering—now reflecting gloom—  
Now lending splendour, where from secret springs  
The source of human thought its tribute brings  
Of waters,—with a sound but half its own,  
Such as a feeble brook will oft assume  
In the wild woods, among the mountains lone,  
Where waterfalls around it leap for ever,  
Where woods and winds contend, and a vast river  
Over its rocks ceaselessly bursts and raves.

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