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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)

Timbercorp Finance Pty Ltd (in liquidation) v Collins; Timbercorp Finance Pty Ltd (in liquidation) v Tomes (HCA) - Anshun estoppel - abuse of process - corporations - group proceeding - respondents not precluded from raising defences in proceedings which followed group proceedings - appeals dismissed (I B C G)

Comcare v Martin (HCA) - workers compensation - causal connection for exclusion of injury to employee "as a result of" reasonable administrative action from *Safety, Rehabilitation and Compensation Act 1988* (Cth) - appeal allowed (I B C G)

Blank v Commissioner of Taxation (HCA) - income tax - amount paid under 'incentive profit participation agreement' was assessable income - appeal dismissed (I B C G)

Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science (FCA) - administrative law - anti-dumping measures - judicial review of decision to report to Minister under s269ZDA *Customs Act 1901* (Cth) refused (I B C G)

Patdith Services Pty Ltd v Mitronics Corporation Pty Ltd (FCA) - security for costs - security for costs of application for leave to appeal granted - orders made (B)

Mbuzi v AGL Sales Pty Limited (FCA) - judgments and orders - application to set aside discontinuance of proceedings and re-open proceedings refused (B)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 10) (NSWSC) - damages - trespass - admissibility of evidence - enquiry into damages - damages calculated (I B C G)

Summaries With Link (Five Minute Read)

Timbercorp Finance Pty Ltd (in liquidation) v Collins; Timbercorp Finance Pty Ltd (in liquidation) v Tomes [2016] HCA 44

High Court of Australia

French CJ; Kiefel, Keane, Nettle & Gordon JJ

Anshun estoppel - corporations - group proceeding - managed investment schemes - appellant subsidiary of Timbercorp Ltd (in liq) provided loans to investors in managed investment schemes operated by Timbercorp Ltd (in liq) - Timbercorp Securities Ltd (in liq) replaced Timbercorp Ltd (in liq) as responsible entity - lead plaintiff sued appellant, Timbercorp Securities and certain directors contending contraventions of *Corporations Act 2001* (Cth), *Fair Trading Act 1999* (Vic), *Trade Practices Act 1974* (Cth) & *Australian Securities and Investments Commission Act 2001* (Cth) - respondents were group members who sought loans - liquidators brought proceedings alleging respondents defaulted on repayments - appellant contended respondents precluded from raising defences due to membership in group proceeding, contending they were estopped, or that defences constituted abuse of process - separate question for determination: "Are the defendants precluded from raising any and if so what defences pleaded by them in this proceeding by reason of their participation as group members within the meaning of [Pt 4A] of the *Supreme Court Act 1986* (Vic) in [the group proceeding]?" - held: respondents were not precluded by Anshun estoppel or abuse of process from raising defences - appeals dismissed.

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

Comcare v Martin [2016] HCA 43

High Court of Australia

French CJ; Bell, Gageler, Keane & Nettle JJ

Workers compensation - appeal concerned required causal connection for exclusion of injury to employee "as a result of" reasonable administrative action from *Safety, Rehabilitation and Compensation Act 1988* (Cth) in circumstances where employee had 'suffered an aggravation of a mental condition' in reaction to perceived consequence of failure to obtain promotion - whether Tribunal correct in conclusion that deterioration of employee's mental condition was disease suffered as result of decision under s5A(1) - held: Full Court of Federal Court erred in construing "as a result of" - no error in conclusion employee suffered disease as a result of decision - appeal allowed.

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

Blank v Commissioner of Taxation [2016] HCA 42

High Court of Australia

French CJ; Kiefel, Gageler, Keane & Gordon JJ

Income tax - appellant employed by wholly owned subsidiary (Glencore Australia) of company (GI) - Glencore Australia provided appellant's services to another wholly owned subsidiary (Glencore AG) of GI - 'incentive profit participation agreement' between appellant, GI and Glencore AG provided "deferred compensation" for services to be rendered by appellant, payable after notice of employment's termination - appellant resigned and became entitled to amount - whether amount was income 'according to ordinary concepts' and thus part of assessable income under s6-5 *Income Tax Assessment Act 1997* (Cth) - held: Court rejected appellant's contention that the amount was assessable as a capital gain due to its being 'proceeds of 'the exploitation of interconnected rights that conferred on him a right to receive, in the future, a proportion of the profit of GI' - amount was income according to ordinary concepts and assessable income - appeal dismissed.

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

Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2016] FCA 1309

Federal Court of Australia

Robertson J

Judicial review - first applicant applied to Commissioner under s269ZDA *Customs Act 1901* (Cth) for review of anti-dumping measures imposed on steel hollow structural sections on basis one or more variable factors relevant to measures had changed - Commissioner was satisfied measures had changed and made recommendations - application for review of decision to report recommendations to Minister under s269ZDA - procedural fairness - whether failure to follow Act's procedures - whether erroneous determination of profit - whether erroneous use of 'benchmark price' - whether 'uplift calculation' erroneous - held: grounds of review unsuccessful - application dismissed.

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

Patdith Services Pty Ltd v Mitronics Corporation Pty Ltd [2016] FCA 1315

Federal Court of Australia

Markovic J

Security for costs - applicants sought to appeal from dismissal of proceeding against first respondent and second respondent except for nominal damages for breach of terms allegedly implied agreement between them and second respondent by s71 *Trade Practices Act 1974* (Cth) - respondents sought security for costs of the application for leave to appeal and, if leave granted, security for costs of appeal - ss1335 & 1335(1) *Corporations Act 2001* (Cth) - *Federal Court of Australia Act 1976* (Cth) - *Federal Court Rules 2011* (Cth) - ss52(1), 71, 73(1), 74 & 82 *Trade Practices Act 1974* (Cth) - prospects of success - ability to meet costs order - stultification - public interest - held: Court satisfied it should make order for security for costs - application for leave to appeal stayed until security provided - orders made

[Patdith](#) (B)

Mbuzi v AGL Sales Pty Limited [2016] FCA 1313

Federal Court of Australia

Rangiah J

Judgments and orders - applicant discontinued proceeding against respondent but then sought to set aside discontinuance and reopen proceeding - primary judge dismissed application - applicant sought to appeal - ss23, 24, 37AO, 37M, & 37P *Federal Court of Australia Act 1976* (Cth) - rr1.32, 1.34, 1.35, 1.40, 17.01, 26.01, 26.12, 26.14 & 36.73 *Federal Court Rules 2011* (Cth) - r13.01 *Federal Circuit Court Rules 2001* (Cth) - held: applicant did not demonstrate proposed grounds of appeal were reasonably arguable - no sufficient prospects of success justifying grant of leave to appeal - applicant would not suffer injustice if leave to appeal refused - application dismissed.

[Mbuzi](#) (B)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 10) [2016] NSWSC 1587

Supreme Court of New South Wales

Kunc J

Damages - trespass - Court of Appeal declared defendant lessor precluded from taking possession of sites at hospital and that its eviction of plaintiff lessee was a trespass against it - Court of Appeal ordered enquiry as to amount of damages payable in respect of plaintiff being kept out of possession "between 17 March 2000 and the date of being restored to possession" - enquiry as to damages - mesne profits - user principle - admissibility of evidence - expert opinion - ss55, 56(2), 60, 79, 135, 136 *Evidence Act 1995* (NSW) - held: damages calculated.

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

CRIMINAL

Executive Summary

Gill v The Queen (VSCA) - criminal law - culpable driving causing death - no error in admission of applicant's lies at scene of collision - appeal dismissed

R v OS (QCA) - criminal law - trafficking dangerous drug - insufficient discount for co-operation when compared to discount for co-operation given to related offender - sentence reduced

Summaries With Link

Gill v The Queen [2016] VSCA 261

Court of Appeal of Victoria

Redlich, Beach & Kyrou JJA

Criminal law - collision occurred between a truck driven by applicant and motor vehicle - applicant failed to give way at the intersection and four of five of car's occupants fatally injured - not disputed that applicant lied in two versions of events which he gave - applicant convicted of four charges of culpable driving causing death and sentenced to total effective sentence of 10 years' in prison with six and half years non-parole period - applicant sought to appeal against conviction on ground 'judge erred in admitting the applicant's lies at the scene of the collision' - held: evidence of what applicant said at collision's scene was relevant and thus admissible - failure by applicant's trial counsel to object to prosecutor's reliance on evidence of lies at scene was an informed forensic decision - jury had been clearly told to determine applicant's guilt "only by reference to 'what he did and the way he did it', and not to rely upon the lies told by the applicant at the scene" - proposed ground of appeal failed - application refused.

[Gill](#)

R v OS [2016] QCA 278

Court of Appeal of Queensland

Morrison & McMurdo JJA; Atkinson J

Criminal law - applicant convicted of one count of trafficking in dangerous drugs - breach of suspended sentence proved - for trafficking applicant sentenced 10 years in prison with time in pre-sentence custody declared as imprisonment already served - conviction recorded for breach of suspended - applicant ordered to serve balance of the term of suspended imprisonment concurrently with trafficking sentence - applicant contended sentence manifestly excessive in all circumstances - applicant contended 'justifiable sense of grievance' with sentence compared to sentence imposed on 'related offender' and that judge failed to give adequate weight to applicant's undertaking to co-operate - ss13A & 159A *Penalties and Sentences Act 1992* (Qld) - ss3, 5, 7 & 9 *Vicious Lawless Association Disestablishment Act 2013* (Qld) - held: the 'extremely marked disparity in discount for co-operation' given to applicant and related offender sufficient to give rise to 'objectively justifiable sense of grievance' - discount for co-operation insufficient when compared to discount for co-operation given to related offender - sentence reduced.

[R](#)



Sonnet 98: From you have I been absent in the spring

By [William Shakespeare](#)

From you have I been absent in the spring,
When proud-pied April, dressed in all his trim,
Hath put a spirit of youth in everything,
That heavy Saturn laughed and leaped with him.
Yet nor the lays of birds, nor the sweet smell
Of different flowers in odour and in hue,
Could make me any summer's story tell,
Or from their proud lap pluck them where they grew:
Nor did I wonder at the lily's white,
Nor praise the deep vermilion in the rose;
They were but sweet, but figures of delight
Drawn after you, – you pattern of all those.
Yet seem'd it winter still, and, you away,
As with your shadow I with these did play.?

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