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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)

**Minister for Home Affairs v DUA16; Minister for Home Affairs v CHK16** (HCA) - migration law - migration agent's fraud did not vitiate decisions of Authority - in case of DUA16, failure by Authority to invite provision by agent of 'correct submissions containing any new information' was legally unreasonable - appeal in case of DUA16 allowed - in case of CHK16, Authority not legally unreasonable in failing 'to seek new information' - appeal in case of CHK16 dismissed (I B C G)

**Roy v O'Neill** (HCA) - evidence - admissibility of evidence - trespass - domestic violence - criminal law - police did not lack power to knock on door of unit to inquire concerning the welfare of occupant - appeal dismissed (I B C G)

**Bulga Coal Management Pty Ltd v Hope Wine Group Pty Ltd** (NSWSC) - discovery - lease - defendant, by notice of motion, sought discovery from plaintiff of 'categories of documents' - notice of motion dismissed (I B C G)

**Gebrehiwot v State of Victoria** (VSCA) - battery - false imprisonment - criminal law - human rights - 'lawful justification' defence - erroneous direction - miscarriage of justice - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Minister for Home Affairs v DUA16; Minister for Home Affairs v CHK16 [2020] HCA 4616,**

High Court of Australia

Kiefel CJ; Bell, Keane, Gordon & Edelman JJ

Migration law - 'registered migration agent' (agent) provided submissions on behalf HK16 and DUA16 - 'common ground' conduct of agent fraudulent - in each case Authority unaware of agent's fraud - Full Court of the Federal Court of Australia, in each case, found Authority's decision vitiated by agent's fraud - Minister appealed - Minister contended fraud not 'shown to have any effect on a statutory function' - CHK16 and DUA16 each sought, by notices of contention, to uphold decision of Full Court on basis Authority was 'legally unreasonable' in not exercising 'power to obtain; from agent 'corrected submissions, involving potentially new information', when Authority knew submissions 'concerned the wrong person either entirely or in part' - Pt 7AA *Migration Act 1958* (Cth) - held: fraud of agent did not vitiate decisions - in respect of CHK16, Authority legally unreasonable in not exercising power to invite provision by agent of 'correct submissions containing any new information' - in respect of DUA16, not legally unreasonable in failing 'to seek new information' - held: appeal in case of DUA16 allowed - appeal in case of CHK16 dismissed.

[Minister for Home Affairs](#) (I B C G)

### **Roy v O'Neill [2020] HCA 45**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane & Edelman JJ

Evidence - admissibility of evidence - trespass - domestic violence - criminal law - appellant occupied unit together with 'co-habiting partner' (Mr Johnson) - appellant 'described herself' as Mr Johnson's carer - appellant was subject to domestic violence order to protect Mr Johnson - police suspected appellant 'of abusing and manipulating Mr Johnson' - police visited unit - unchallenged evidence of police was that "one of the main reasons for the visit" was to check on Mr Johnson's welfare - police did not enter the unit - appeal concerned whether police had power to knock on door of unit to inquire concerning Mr Johnson's welfare - appellant contended police lacked 'implied licence' if communication's purpose concerned investigation of crime which an occupier was 'suspected of committing', even if other occupier was crime's 'suspected victim' - appellant also contended police lacked licence to enter premises' curtilage if enquiry's purpose was accompanied by intention that 'police might exercise coercive power' - held: appeal dismissed.

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

### **Bulga Coal Management Pty Ltd v Hope Wine Group Pty Ltd [2020] NSWSC 1783**

Supreme Court of New South Wales

Ward CJ in Eq

Discovery - lease - defendant, by notice of motion, sought discovery from plaintiff of 'categories of documents' - plaintiff contended a 'substantial number' of categories irrelevant - plaintiff also

objected on grounds of oppression with particular regard to utility - plaintiff also objected on basis of delay - Practice Note SC Eq 11 - s133A *Conveyancing Act 1919* (NSW) - held: notice of motion dismissed.

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

## **Gebrehiwot v State of Victoria [2020] VSCA 315**

Court of Appeal of Victoria

Tate, Kaye & Emerton JJA

Battery - false imprisonment - criminal law - human rights - proceedings arising from incident between applicant and police officers - applicant claimed damages against respondent for battery and false imprisonment - respondent admitted force used - respondent relied on defence under s462A *Crimes Act 1958* (Vic) that 'police officers acted with lawful justification' (lawful justification defence) - jury accepted respondent's lawful justification defence - appellant sought to appeal, contending trial judge misdirected jury concerning lawful justification defence - trial judge also contended verdict unreasonable and that trial judge gave misdirection that 'allegation that one of the police officers was lying was not directly put to him' - applicant also sought to appeal against trial judge's ruling that issue of police officers' compatibility with Charter of Human Rights and Responsibilities 'was not to be left to the jury' - whether miscarriage of justice - held: appeal allowed.

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

## Summaries With Link



**To a Skylark**

**By:** Percy Bysshe Shelley

Hail to thee, blithe Spirit!  
Bird thou never wert,  
That from Heaven, or near it,  
Pourest thy full heart  
In profuse strains of unpremeditated art.

Higher still and higher  
From the earth thou springest  
Like a cloud of fire;  
The blue deep thou wingest,  
And singing still dost soar, and soaring ever singest.

In the golden lightning  
Of the sunken sun,  
O'er which clouds are bright'ning,  
Thou dost float and run;  
Like an unbodied joy whose race is just begun.

The pale purple even  
Melts around thy flight;  
Like a star of Heaven,  
In the broad day-light  
Thou art unseen, but yet I hear thy shrill delight,

Keen as are the arrows  
Of that silver sphere,  
Whose intense lamp narrows  
In the white dawn clear  
Until we hardly see, we feel that it is there.

All the earth and air  
With thy voice is loud,  
As, when night is bare,  
From one lonely cloud  
The moon rains out her beams, and Heaven is overflow'd.

What thou art we know not;  
What is most like thee?  
From rainbow clouds there flow not



Drops so bright to see  
As from thy presence showers a rain of melody.

Like a Poet hidden  
In the light of thought,  
Singing hymns unbidden,  
Till the world is wrought  
To sympathy with hopes and fears it heeded not:

Like a high-born maiden  
In a palace-tower,  
Soothing her love-laden  
Soul in secret hour  
With music sweet as love, which overflows her bower:

Like a glow-worm golden  
In a dell of dew,  
Scattering unbeholden  
Its aëreal hue  
Among the flowers and grass, which screen it from the view:

Like a rose embower'd  
In its own green leaves,  
By warm winds deflower'd,  
Till the scent it gives  
Makes faint with too much sweet those heavy-winged  
thieves:

Sound of vernal showers  
On the twinkling grass,  
Rain-awaken'd flowers,  
All that ever was  
Joyous, and clear, and fresh, thy music doth surpass.

Teach us, Sprite or Bird,  
What sweet thoughts are thine:  
I have never heard  
Praise of love or wine  
That panted forth a flood of rapture so divine.

Chorus Hymeneal,  
Or triumphal chant,





Match'd with thine would be all  
But an empty vaunt,  
A thing wherein we feel there is some hidden want.

What objects are the fountains  
Of thy happy strain?  
What fields, or waves, or mountains?  
What shapes of sky or plain?  
What love of thine own kind? what ignorance of pain?

With thy clear keen joyance  
Languor cannot be:  
Shadow of annoyance  
Never came near thee:  
Thou lovest: but ne'er knew love's sad satiety.

Waking or asleep,  
Thou of death must deem  
Things more true and deep  
Than we mortals dream,  
Or how could thy notes flow in such a crystal stream?

We look before and after,  
And pine for what is not:  
Our sincerest laughter  
With some pain is fraught;  
Our sweetest songs are those that tell of saddest thought.

Yet if we could scorn  
Hate, and pride, and fear;  
If we were things born  
Not to shed a tear,  
I know not how thy joy we ever should come near.

Better than all measures  
Of delightful sound,  
Better than all treasures  
That in books are found,  
Thy skill to poet were, thou scorner of the ground!

Teach me half the gladness  
That thy brain must know,

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Such harmonious madness  
From my lips would flow  
The world should listen then, as I am listening now.

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