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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)

Clubb v Edwards; Preston v Avery (HCA) - constitutional law - 'implied constitutional freedom of political communication' - challenges to validity of *Reproductive Health (Access to Terminations) Act 2013* (Tas) and *Public Health and Wellbeing Act 2008* (Vic) rejected (B C I G)

Williamson v Michell (Trustee) (FCA) - bankruptcy - two proceedings - 'annulment proceeding' dismissed - in respect of first applicant's bankrupt estate, Trustee's decision to admit portion of proof of debt varied - in respect of second applicant's bankrupt estate, Trustee's decision to admit portion of proof of debt reversed (B)

Lu v AAI Ltd t/as AAMI (NSWSC) - motor accident compensation - permanent impairment - applicant sought to quash determination of review panel - summons dismissed (I B C G)

Trampoline Enterprises Pty Ltd & Ors v Fresh Retailing Pty Ltd & Anor (VSCA) - contract - purchase of 'franchise business' - appeal against rejection of claim for adjustment for 'accrued leave entitlements' upheld (B)

MZY v RYI (QSC) - wills and estates - 'statutory will' - applicant sought that will be made for daughter suffering from 'severe cognitive impairment' - orders granted (B)

Thomson v State of Queensland & Anor (QSC) - damages - negligence - plaintiff employed by second defendant contracted Q Fever while working on farm operated by first defendant -

liability admitted - assessment of damages (B C I G)

Travis Royce Smith as trustee of the Smith Investment Trust v Sandalwood Properties Ltd (WASC) - corporations - plaintiffs not bound by deed of company arrangement purportedly extinguishing and releasing their 'deferral rights' - declaratory relief (B C I G)

Summaries With Link (Five Minute Read)

Clubb v Edwards; Preston v Avery [2019] HCA 11

High Court of Australia

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

Constitutional law - Tasmanian Parliament enacted *Reproductive Health (Access to Terminations) Act 2013* (Tas) (RHAT Act) - Victorian Parliament enacted *Public Health and Wellbeing Act 2008* (Vic) (PHW Act) - s185B(1) PHW Act prohibited, 'in certain circumstances', "communicating by any means in relation to abortions" - s9(2) RHAT Act prohibited 'in certain circumstances', "a protest in relation to terminations" - appellant (Clubb) convicted of offence under s185B(1) PHW Act - appellant (Preston) convicted of offence under s9(2) RHAT Act - whether provisions of RHAT Act and PHW Act were contrary to 'implied constitutional freedom of political communication' - 'test for invalidity' in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 - held: Court not satisfied provisions of RHAT Act and PHW were invalid.

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

Williamson v Michell (Trustee) [2019] FCA 481

Federal Court of Australia

Moshinsky J

Bankruptcy - first applicant and second applicant each became bankrupt pursuant to a debtor's petition - two proceedings heard together - in one proceeding applicants sought annulment of bankruptcies under s153B *Bankruptcy Act 1966* (Cth) ('annulment proceeding') - in other proceeding applicants sought review of Trustee's decision to admit proofs of debt lodged by liquidator of company ('proof of debt proceeding') - Trustee, by interlocutory application, sought adjournment of proof of debt proceeding on basis it lacked utility - held: interlocutory application dismissed - application for bankruptcies' annulment dismissed - in respect of first applicant's bankrupt estate, Trustee's decision to admit portion of proof of debt varied - in respect of second applicant's bankrupt estate, Trustee's decision to admit portion of proof of debt reversed.

[Williamson](#) (B)

Lu v AAI Ltd t/as AAMI [2019] NSWSC 368

Supreme Court of New South Wales

N Adams J

Motor accidents compensation - plaintiff injured in motor vehicle accident - plaintiff claimed

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damages under *Motor Accidents Compensation Act 1999* (NSW) - medical assessor assessed plaintiff's permanent impairment at 16% - review panel revoked assessor's certificate, finding plaintiff's permanent impairment was 8% - plaintiff sought to quash review panel's determination - whether breach of the Act due to 'medical examination by only two members of review panel' - adequacy of reasons - assessment of shoulder injury - assessment of spine injury - held: summons dismissed.

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

Trampoline Enterprises Pty Ltd & Ors v Fresh Retailing Pty Ltd & Anor [2019] VSCA 74

Court of Appeal of Victoria

Kaye, McLeish & Hargrave JJA

Contract - first applicant and first respondent entered agreement for purchase of first respondent's 'franchise business' - first applicant claimed against respondents in relation to agreement - first respondent counterclaimed against first applicant and second applicant - trial judge dismissed all by one of first applicant's claims - trial judge upheld first respondent's cross-claims - first applicant sought to appeal against rejection of its claim for 'adjustment in respect of the accrued annual leave entitlements' of 'excluded employees', and against decision to uphold cross-claim for 'Earn Out fee' under 'Earn Out Deed' - whether 'manifest error' in Independent Accountant's determination concerning 'employee entitlements' - held: claim for adjustment for accrued leave entitlements upheld - appeal allowed.

[Trampoline](#) (B)

MZY v RYI [2019] QSC 89

Supreme Court of Queensland

Wilson J

Wills and estates - 'statutory will' - applicant was mother of 'SGA' - SGA suffered from 'severe cognitive impairment' - applicant sought to apply for order under s21 *Succession Act 1981* (Qld) authorising applicant will to be made for SGA - principles concerning statutory wills - *Re APB, ex parte Sheehy* [2017] QSC 201 - held: applicant granted leave under s22 of the Act to seek order authorising will to be made for SGA - will to be made for SGA - orders made.

[MZY](#) (B)

Thomson v State of Queensland & Anor [2019] QSC 95

Supreme Court of Queensland

Applegarth J

Damages - negligence - plaintiff employed by second defendant - plaintiff contracted Q Fever on farm in course of employment and Q Fever Debility Syndrome as a result of Q fever - plaintiff subsequently developed depressive disorder and adjustment disorder - plaintiff sued first defendant operator of farm second defendant employer - liability admitted by both defendants - defendants agreed first defendant was 80 per cent responsible and second defendant is 20 per cent responsible - assessment of damages - general damages - 'likely employment and income' if plaintiff had not contracted Q Fever - special damages - 'future medical and other

expenses' - 'past and future care' - held: damages assessed - judgment against first defendant in sum of \$1,179,872 - judgment against second defendant in sum of \$240,975.

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

Travis Royce Smith as trustee of the Smith Investment Trust v Sandalwood Properties Ltd [2019] WASC 109

Supreme Court of Western Australia

Vaughan J

Corporations - plaintiffs invested in managed investment schemes which certain defendants promoted - some defendants executed deed of company arrangement (DOCA) purportedly extinguishing and releasing plaintiffs' 'deferral rights' - plaintiffs contended DOCA ineffective in extinguishing and releasing the deferral rights - statutory construction - s444D *Corporations Act 2001* (Cth) - whether deferral rights were, or concerned, plaintiffs' claims as creditors under 444D(1) of the Act - held: plaintiffs not bound by deferral rights' 'purported extinguishment and release' - plaintiffs granted declaratory relief.

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

CRIMINAL

Executive Summary

Summaries With Link



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A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]

By: William Shakespeare, 1564 - 1616

A wood near Athens. A Fairy speaks.

Over hill, over dale,
Thorough bush, thorough brier,
Over park, over pale,
Thorough flood, thorough fire,
I do wander every where,
Swifter than the moon's sphere;
And I serve the fairy queen,
To dew her orbs upon the green:
The cowslips tall her pensioners be;
In their gold coats spots you see;
Those be rubies, fairy favours,
In those freckles live their savours:
I must go seek some dew-drops here
And hang a pearl in every cowslip's ear.
Farewell, thou lob of spirits: I'll be gone;
Our queen and all her elves come here anon.

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

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