

Friday, 12 May 2017

Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Bligh Consulting Pty Ltd v Ausgrid (NSWCA) - compulsory acquisition - proceedings arising from respondent's compulsory acquisition of three easements - assessment of compensation - appeal dismissed (I B C G)

Rafidi v Commonwealth Bank of Australia Ltd (NSWCA) - judgments and orders - refusal to re-open consent orders - summons seeking leave to appeal dismissed (I B C G)

Hawcroft General Trading Co Pty Ltd v Hawcroft (NSWCA) - equity - assignment - estoppel - entitlement to proceeds of life insurance policy - appellant company beneficially entitled to proceeds - appeal allowed (I B C G)

Pel-Air Aviation Pty Ltd v Casey (No 2) (NSWCA) - costs - offer of compromise - Calderbank offer - determination of costs of appeal (I B C G)

Parnell Manufacturing Pty Ltd v Lonza Ltd (NSWSC) - conflict of laws - contract - proceedings permanently stayed - injunctions discharged (I B C G)

Scott-Mackenzie v Bail (VSCA) - administration and probate - family provision - statutory construction - child of deceased's former domestic partner was deceased's stepchild and eligible to make claim for family provision - appeal dismissed (B)

Sante Wines P/L v Heirloom Vineyards Wine Co P/L & ANor (SASC) - corporations - statutory demand - dismissal of application to set aside two statutory demands on basis of defective originating process - dismissal of application to amend originating process - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Bligh Consulting Pty Ltd v Ausgrid [2017] NSWCA 95

Court of Appeal of New South Wales

McColl, Basten & Sackville JJA

Compulsory acquisition - proceedings arising from respondent's compulsory acquisition of three easements - three easements were a crane swing easement, a rock anchor easement and a scaffolding easement - primary judge assessed compensation for easements' acquisition at \$682,000 - primary judge, subject to one exception, had assessed compensation by reference to each easement's market value - appellant contended primary judge erroneously failed to determine under s55(f) *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) decrease in value of its remaining interest in its land - injurious affection claim - 'before' and 'after' test - whether s62(1) applied to rock anchor easement - whether failure to consider *Besmaw Pty Ltd v Sydney Water Corporation* (2001) 113 LGERA 246 in relation to crane swing easement - held: appeal dismissed.

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

Hawcroft General Trading Co Pty Ltd v Hawcroft [2017] NSWCA 91

Court of Appeal of New South Wales

Basten & Leeming JJA; Emmett AJA

Equity - assignment - estoppel - at time of deceased's death, deceased's life was insured under policy taken out by appellant - widow of deceased sought declaration policy's proceeds were held on trust for deceased's estate - appellant cross-claimed, seeking declaration it was entitled to policy's proceeds - widow of deceased filed amended summons clarifying that she was suing as executor - primary judge found that, pursuant to deed of indemnity, respondent entitled to policy's proceeds - construction and effect of Indemnity Deed and Development Agreement - held: trial judge erred in concluding that respondent was entitled to proceeds - appellant was beneficial owner of proceeds of policy - appeal allowed.

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

Rafidi v Commonwealth Bank of Australia Ltd [2017] NSWCA 96

Court of Appeal of New South Wales

Basten JA & Emmett AJA

Judgments and orders - respondent sought judgment against applicant in respect of loan it made to company associated with applicant - applicant consented to judgment in respondent's favour and accepted dismissal of cross-claims - orders made by consent - applicant sought to

set aside judgment - primary judge declined to set aside consent judgment - applicant sought leave to appeal against refusal to re-open consent orders - whether consent vitiated by respondent's conduct in seeking to have papers referred to Attorney-General - held: applicant failed to establish error which was more than reasonably arguable, issue of principle, or demonstrated need for Court's intervention to avoid substantial injustice - purpose of application was to avoid a 'misapprehended collateral consequence' - appeal incompetent - summons seeking leave to appeal dismissed.

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

Pel-Air Aviation Pty Ltd v Casey (No 2) [2017] NSWCA 92

Court of Appeal of New South Wales

Macfarlan, Ward & Gleeson JJA

Costs - offer of compromise - Calderbank offer - Court gave judgment allowing appellant's appeal and respondent's cross-appeal - parties at issue as to costs of appeal proceedings - held: judgment in respondent's favour was less favourable than amount in respondent's offer of compromise - appellant's refusal to accept offer of compromise was not unreasonable - appeal had two facets - appellant to have costs of 'first facet of the appeal' on which it succeeded - no order for costs on second facet, on which neither party successful - appellant pay costs of respondent's successful cross-appeal - orders made.

[Pel-Air Aviation](#) (I B C G)

Parnell Manufacturing Pty Ltd v Lonza Ltd [2017] NSWSC 562

Supreme Court of New South Wales

Ball J

Conflict of laws - contract - plaintiff owner of intellectual property in relation to compound entered manufacturing services agreement with defendant company - plaintiff claimed damages for breach of contract and misleading and deceptive conduct in contravention of Australian Consumer Law - defendant commenced proceedings in Superior Court of the State of Delaware for amounts due under agreement (Delaware proceedings) - plaintiff sought to restrain defendant from taking any steps in the Delaware proceedings and steps to restrain prosecution by plaintiff of present proceedings - injunctions granted - defendant sought stay - determination of stay motion and whether interlocutory injunctions should continue - jurisdiction clause - ss4(2), 18 & 236 *Australian Consumer Law* - held: proceedings permanently stayed - injunctions discharged.

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

Scott-Mackenzie v Bail [2017] VSCA 108

Court of Appeal of Victoria

Beach & Ferguson JJA; McMillan AJA

Administration and probate - family provision - statutory interpretation - respondent was child of deceased's former domestic partner - respondent claimed she was deceased's stepchild and eligible to make claim for provision pursuant to pt IV *Administration and Probate Act 1958* (Vic)

as amended by *Justice Legislation Amendment (Succession and Surrogacy) Act 2014* - appellant sought summary dismissal of respondent's claim on basis respondent was not an eligible person under s90 and claim had no real prospects of success - primary judge found respondent was an eligible person - appellant contended child of deceased's former domestic partner could not be deceased's stepchild unless deceased was married to child's other parent - held: 'stepchild' encompassed 'child of a deceased's former domestic partner' - appeal dismissed.

[Scott-Mackenzie](#) (B)

Sante Wines P/L v Heirloom Vineyards Wine Co P/L & Anor [2017] SASC 65

Supreme Court of South Australia

Nicholson J

Corporations - statutory demand - Master dismissed appellant's application to set aside two statutory demands issued pursuant to s459E *Corporations Act 2001* (Cth) - Master dismissed application on basis originating process was defective because appellant had sought to set aside both statutory demands in one order - Master dismissed appellant's application to amend originating process on basis Court lacked jurisdiction to allow amendment - whether originating process satisfied requirements of s459G - held: appeal allowed against both judgments - matter remitted to Master.

[Sante Wines](#) (I B C G)

CRIMINAL

Executive Summary

Lazarus v R (NSWCCA) - criminal law - appellant convicted on one count of sexual intercourse without consent contrary to s61I *Crimes Act 1900* (NSW) - belief of consent - judge's directions as to test in s61HA(3)(c) - appeal allowed - conviction quashed - retrial

Gant v The Queen (VSCA) - criminal law - joint criminal enterprise - obtaining, and attempting to obtain financial advantage by deception - verdict of jury unreasonable or could not be supported with regard to evidence - convictions quashed

Summaries With Link

Lazarus v R [2016] NSWCCA 52

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL

Criminal law - appellant convicted on one count of sexual intercourse without consent contrary

to s611 *Crimes Act 1900* (NSW) - appellant contended jury's verdict was unreasonable and contrary to the evidence (ground 1) - appellant also challenged directions of trial judge as to appellant 'having no reasonable grounds to believe that the complainant was consenting to the sexual intercourse' (ground 2) - in relation to ground 2, appellant contended directions imposed 'an objective test of reasonableness of belief in consent where no such test existed', misstated onus of proof and failed to 'detail or explain the evidentiary basis' for appellant's claim of reasonable belief - test in s61HA(3)(c) - held: ground 1 not made out - ground 2 made out - appeal allowed - conviction quashed - new trial ordered.

[Lazarus](#)

Gant v The Queen [2017] VSCA 104

Court of Appeal of Victoria

Weinberg, Priest & McLeish JJA

Criminal law - joint criminal enterprise - proceedings arising from sale of allegedly fake Brett Whiteley paintings - applicants convicted of two charges of obtaining financial advantage by deception and one charge of attempting to obtain financial advantage by deception - applicants each contended verdict of jury was unreasonable or could not be supported with regard to evidence - Director of Public Prosecutions conceded ground of each appeal - whether convictions unsafe and unsatisfactory - circumstantial case - whether jury 'must' have entertained doubt about guilt based on whole evidence - 'the only rational inference that the circumstances would enable them to draw' - held: convictions unreasonable and could not be supported with regard to evidence under s276(1)(a) *Criminal Procedure Act 2009* (Vic) - Court accepted concession, quashed convictions and entered verdicts of acquittal.

[Gant](#)



Benchmark

Delia 31: Look, Delia, how we 'steem the half-blown rose (1592 version)

By [Samuel Daniel](#)

Look, Delia, how we 'steem the half-blown rose,
The image of thy blush and summer's honour,
Whilst in her tender green she doth enclose
That pure sweet beauty time bestows upon her.
No sooner spreads her glory in the air
But straight her full-blown pride is in declining;
She then is scorn'd that late adorn'd the fair:
So clouds thy beauty after fairest shining.
No April can revive thy wither'd flowers,
Whose blooming grace adorns thy beauty now;
Swift speedy time, feather'd with flying hours,
Dissolves the beauty of the fairest brow.
O let not then such riches waste in vain,
But love whilst that thou mayst be lov'd again.

[Click Here to access our Benchmark Search Engine](#)