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

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### Executive Summary (One Minute Read)

**The Queen v Rolfe** (HCA) - criminal law - murder - manslaughter - referred question - 'function' - s148B *Police Administration Act 1978* (NT) - question restated and answered in the negative - appeal allowed (I B C G)

**Park v The Queen** (HCA) - criminal law - sentencing - - 'multiple offences' - 'taking a conveyance without the consent of the owner' - appeal concerning 'correct interpretation of' s22 *Crimes (Sentencing Procedure) Act 1999* (NSW) - no error in Court of Criminal Appeal of New South Wales' interpretation - appeal dismissed (I B C G)

**Hofer v The Queen** (HCA) - criminal law - sexual offences - 'sexual intercourse with another person knowing that the other person does not consent' - no 'substantial miscarriage of justice' - appeal dismissed (I B C G)

**Rana v Google Inc** (FCA) - defamation - service - applicant brought proceedings 'against six respondents' - applicant, in respect of three respondents, sought to serve proceedings out of jurisdiction - in respect of two respondents, applicant sought to serve application under s21 *Defamation Act 2005* (SA) - applications refused (I B C G)

**Bryan v Beveridge** (NSWSC) - wills and estates - succession - family provision - plaintiff sought 'interim provision' from late father's estates under s62 *Succession Act 2006* (NSW) - order made (B)

## HABEAS CANEM

### Focus





## Summaries With Link (Five Minute Read)

### **The Queen v Rolfe [2021] HCA 38**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon, Edelman, Steward, Gleeson JJ

Criminal law - murder - manslaughter - trial judge referred four questions to Full Court of the Supreme Court of the Northern Territory - appeal from answer to 'third question' - third question, 'as redrawn by Full Court', was: "[B]ased upon the assumed facts, at the time the accused fired the second and third shots resulting in the deceased's death, would it be open to the jury to find that the accused was acting in the exercise or the purported exercise of a power, or the performance or purported performance of a function under the Police Administration Act, such that section 148B of the Act arises for the jury's consideration?" - Full Court answered question in the affirmative - Crown contended Full Court should have answered question in the negative - proper construction of s148B *Police Administration Act 1978* (NT) - held: question restated: "Does a 'function' under s 148B of the Police Administration Act 1978 (NT) include the functions listed in s 5(2) of the Police Administration Act 1978 (NT)?" - questions answered in the negative - appeal allowed.

[The Queen](#) (I B C G)

### **Park v The Queen [2021] HCA 37**

High Court of Australia

Kiefel CJ; Gageler, Keane, Edelman, Gleeson JJ

Criminal law - sentencing - 'multiple offences' - 'taking a conveyance without the consent of the owner' - appeal concerning 'correct interpretation of' s22 *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA) - whether Court of Criminal Appeal of New South Wales 'correctly interpreted' s22 CSPA - "related offence" - "it would otherwise have imposed" - "impose a lesser penalty" - "[a] lesser penalty imposed under this section" - s53A(2) - *Mundine v The Queen* [2017] NSWCCA 97 - s154A(1)(a) *Crimes Act 1900* (NSW) - held: no error in Court of Criminal Appeal of New South Wales' interpretation of s22 CSPA - appeal dismissed.

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

### **Hofer v The Queen [2021] HCA 36**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon, Gleeson JJ

Criminal law - sexual offences - appeal arising from appellant's conviction for 'eight counts of having sexual intercourse with another person knowing that the other person does not consent' - s61I *Crimes Act 1900* (NSW) - whether questions which Crown prosecutor asked appellant in cross-examination 'were impermissible and prejudicial' resulting in miscarriage of justice - whether trial miscarried due to incompetence of appellant's counsel - 'proviso to' s6(1) *Criminal Appeal Act 1912* (NSW) - whether 'substantial miscarriage of justice' - held: appeal dismissed.

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

## **Rana v Google Inc [2021] FCA 1360**

Federal Court of Australia

Colvin J

Defamation - service - applicant brought proceedings 'against six respondents' - applicant, in respect of three respondents, sought to serve proceedings out of jurisdiction - in respect of two respondents, applicant sought to serve application under s21 *Defamation Act 2005* (SA) - r10.43 *Federal Court Rules 2011* (Cth) - *Voth v Manildra Flour Mills Pty Ltd* [1990] HCA 55 - *Trina Solar (US), Inc v Jasmin Solar Pty Ltd* [2017] FCAFC 6 - *Nyoni v Murphy* [2018] FCAFC 75 - held: applications refused.

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

## **Bryan v Beveridge [2021] NSWSC 1406**

Supreme Court of New South Wales

Slattery J

Wills and estates - succession - family provision - plaintiff sought 'interim provision' from late father's estates under s62 *Succession Act 2006* (NSW) - *Young v Salkeld* (1985) 4 NSWLR 375 - *Roberts v Moses* [2015] NSWSC 1504 - held: order made - issues concerning order's enforcement 'reserved for further consideration.

[View Decision](#) (B)

## Poem for Friday

### **Forever – is composed of Nows – (690)**

**By:** Emily Dickinson

Forever – is composed of Nows –  
'Tis not a different time –  
Except for Infiniteness –  
And Latitude of Home –

From this – experienced Here –  
Remove the Dates – to These –  
Let Months dissolve in further Months –  
And Years – exhale in Years –

Without Debate – or Pause –  
Or Celebrated Days –  
No different Our Years would be  
From Anno Dominies –

[https://en.wikipedia.org/wiki/Emily\\_Dickinson](https://en.wikipedia.org/wiki/Emily_Dickinson)

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