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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)

National Roads and Motorists' Association Limited v Construction, Forestry, Maritime, Mining and Energy Union (FCA) - trade mark - consumer law - injurious falsehood - applicant failed to establish causes of action against respondent - proceedings dismissed (I B C G)

Frigger v Banning (No 8) (FCA) - pleadings - defamation - malicious prosecution - bankruptcy - application to amend statement of claim dismissed - application to remove deceased respondent and add executor as party in deceased's place allowed (I B)

Stapleton v Fairfax Media Publications Pty Ltd (FCA) - security for costs - defamation - respondents sought security for costs against applicant - application granted (I)

Small v Phillips (NSWCA) - wills and estates - appeal against dismissal of summons seeking order that Court authorise making of will on fourth defendant's behalf - parties to bring in short minutes, including 'draft will', to effect Court's conclusions (B)

State of New South Wales v Ouhammi (NSWCA) - assault - battery - negligence - respondent's thumb injured when caught in cell door frame as police officer shutting cell door - primary judge found in respondent's favour - appeal allowed (I)

Pitard Consortium Pty Ltd & Ors v Les Denny Pty Ltd & Ors (VSC) - trusts - six plaintiffs, each validly appointed as trustee of one of six trusts - plaintiffs each entitled to order vesting

trust property subject to 'equitable liens' of defendants concerning their liabilities - defendants not entitled to return trust property's possession (B)

Nanosecond Corporation Pty Ltd & Anor v Glen Carron Pty Ltd & Anor (SASC) - security for costs - contract - injurious falsehood - defamation - conspiracy by unlawful means - misleading and deceptive conduct - defendants sought that plaintiffs provide security for costs of appeal - security for costs granted (I B)

Summaries With Link (Five Minute Read)

National Roads and Motorists' Association Limited v Construction, Forestry, Maritime, Mining and Energy Union [2019] FCA 1491

Federal Court of Australia

Griffiths J

Trade mark - consumer law - injurious falsehood - proceeding arising from 'industrial dispute' concerning 'wages and conditions' of 'My Fast Ferry' employees - My Fast Ferry operated by applicant's 'wholly owned subsidiary' - applicant claimed against respondent for infringement of trade marks, misleading or deceptive conduct and injurious falsehood - ss120(1) & 120(3) *Trademarks Act 1995* (Cth) - 'safety representation' - 'non-permanency representations' - 'wages representation' - 'derogatory representations' - 'licence representation' - malice - implied freedom of political communication - 'actual damage' - held: applicant failed to establish causes of action - proceedings dismissed.

[National Roads](#) (I B C G)

Frigger v Banning (No 8) [2019] FCA 1319

Federal Court of Australia

Colvin J

Pleadings - defamation - malicious prosecution - bankruptcy - applicants sought to amend statement of claim to add claims against 'additional respondents' - applicants were made bankrupt prior to delivery of proposed statement of claim - whether applicants could continue to advance proceedings as bankrupts - whether proposed pleading complied with Court's previous orders - whether to join additional respondents - whether to grant application for removal of deceased as respondent as party and substitution of executor - 'statutory stay' - ss60 & 116 *Bankruptcy Act 1966* (Cth) - held: application to amend statement of claim dismissed - application to remove deceased respondent and add executor as party in deceased's place allowed.

[Frigger](#) (I B)

Stapleton v Fairfax Media Publications Pty Ltd [2019] FCA 1418

Federal Court of Australia

Flick J

Security for costs - defamation - respondents sought security for costs - s56 *Federal Court of Australia Act 1976* (Cth) - r19.01 *Federal Court Rules 2011* (Cth) - 'risk management' - applicant 'not ordinarily resident in Australia' - applicant without assets in jurisdiction - failure by applicant to satisfy costs orders in 'other proceedings' - held: Court satisfied to grant security for costs.

[Stapleton](#) (I)

Small v Phillips [2019] NSWCA 222

Court of Appeal of New South Wales

Brereton & McCallum JJA; Emmett AJA

Wills and estates - succession - appeal concerned question whether Court, under *Succession Act 2006* (NSW), should authorise making of will on fourth defendant's behalf - fourth defendant lacked testamentary capacity - appellant sought that Court authorise will's making - appellant was a grandson of fourth respondent - primary judge dismissed summons - consideration of clauses of 'Draft Will' - whether deceased fourth respondent's intentions reflect by Draft Will - held: parties to bring in short minutes, including draft will, to effect Court's conclusions.

[View Decision](#) (B)

State of New South Wales v Ouhammi [2019] NSWCA 225

Court of Appeal of New South Wales

Basten & Brereton JJA; Simpson AJA

Assault - battery - negligence - police officers apprehended respondent - respondent intoxicated - respondent 'placed in a holding cell' - respondent's thumb caught in door frame while police officer was closing door to cell - respondent's thumb injured and later amputated at 'distal joint' - respondent claimed against appellant for assault battery and negligence, contending appellant vicariously liable for conduct of police officer - primary judge gave judgment for respondent - appeal raised question whether, in 'absence of proof of an intention to harm the plaintiff', the plaintiff could bring proceedings alleging assault and battery which were not governed by *Civil Liability Act 2002* (NSW) (Civil Liability Act) - whether trial judge erroneously failed to apply Civil Liability Act - whether trial judge erred in relation to onus of proof - whether damages incorrectly assessed - whether trial judge failed to rely on appellant's 'statutory defences' - held: appeal allowed.

[View Decision](#) (I)

Pitard Consortium Pty Ltd & Ors v Les Denny Pty Ltd & Ors [2019] VSC 614

Supreme Court of Victoria

McDonald J

Trusts - proceedings concerning 'two principal issues' - whether appointments of first to sixth plaintiffs as 'trustees of one of six discretionary trusts' valid - whether plaintiffs entitled to orders 'vesting trust property' in defendants' possession - whether defendants, as trusts' former trustees entitled to retain trust property's possession pending 'satisfaction of their accrued right of indemnity' concerning incurred liabilities - held: plaintiffs each validly appointed - plaintiffs each entitled to order vesting trust property subject to 'equitable liens' of defendants concerning

their liabilities - defendants not entitled to retain trust property's possession.

[Pitard](#) (B)

Nanosecond Corporation Pty Ltd & Anor v Glen Carron Pty Ltd & Anor [2019] SASC 124

Supreme Court of South Australia

Peek J

Security for costs - contract - injurious falsehood - defamation - conspiracy by unlawful means - misleading and deceptive conduct - first and second plaintiffs (plaintiffs) sought to appeal against dismissal of claims against first and second defendants (defendants) - defendants, by interlocutory applications, sought that plaintiffs provide security for costs - r295(1)(g) *Supreme Court Rules 2006 (SA)* - impecuniosity - prospects of success - 'failures to comply' with 'supplementary rule' 239 - stultification - 'balancing process' - held: Court satisfied to make order for security for costs.

[Nanosecond](#) (I B)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

'From Cocoon forth a Butterfly'

By: Emily Dickinson :

From Cocoon forth a Butterfly
As Lady from her Door
Emerged—a Summer Afternoon—
Repairing Everywhere—

Without Design—that I could trace
Except to stray abroad
On Miscellaneous Enterprise
The Clovers—understood—

Her pretty Parasol be seen
Contracting in a Field
Where Men made Hay—
Then struggling hard
With an opposing Cloud—

Where Parties—Phantom as Herself—
To Nowhere—seemed to go
In purposeless Circumference—
As 'twere a Tropic Show—

And notwithstanding Bee—that worked—
And Flower—that zealous blew—
This Audience of Idleness
Disdained them, from the Sky—

Till Sundown crept—a steady Tide—
And Men that made the Hay—
And Afternoon—and Butterfly—
Extinguished—in the Sea—

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

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