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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)

Rangi v Kmart Australia Ltd (No 2) (FCA) - costs - industrial law - dismissal of applications for leave to appeal - applicant to pay costs in fixed sum of \$15,000 (I B)

Australian Securities and Investments Commission v Merlin Diamonds Limited (No 2) (FCA) - corporations - 'non-party shareholders/noteholders' in defendant sought to inspect copy of report which defendant's provision liquidators prepared - leave to inspect granted - 'limited suppression order' made (B)

Schlaepfer v ASIC (NSWSC) - defamation - injurious falsehood - claims arising from alleged publication of oral statements - judgment for defendants (I)

David v Kazal (NSWSC) - private international law - notice of motion - defendants sought that plaintiffs pay security for costs and stay of proceeding pending appeals against 'US judgments' - plaintiffs to pay security for costs - Court otherwise dismissed defendants' notice of motion (I B C G)

EZY Global Ltd v Miller Crescent P/L & Ors (VSC) - caveat - applicant sought to restrain Registrar of Titles from registering mortgage lodged by company on title of land - application dismissed (I B C G)

Steicke v Pederick & Anor (SASCFC) - consent orders - mediation - solicitors' costs -

applicant sought to appeal against dismissal of interlocutory application - leave to appeal refused (I B C G)

Casey v Loone (TASSC) - pleadings - contract - trade practices - first and second defendants sought leave to amend defence to allege plaintiffs' claims were apportionable - application granted (I B C G)

Summaries With Link (Five Minute Read)

Rangi v Kmart Australia Ltd (No 2) [2019] FCA 2083

Federal Court of Australia

Steward J

Costs - industrial law - in one decision Judge Hartnett dismissed applicant's claims under *Fair Work Act 2009* (Cth) (Fair Work Act) and in other decision ordered costs against applicant - Court dismissed applicant's applications for leave to appeal - determination of costs - s570 Fair Work Act - whether 'leave proceedings' instituted 'with reasonable cause' - quantum - s43(2) *Federal Court of Australia Act 1976* (Cth) - "in a specified sum" - held: applicant to pay costs in fixed sum of \$15,000.

[Rangi](#) (I B)

Australian Securities and Investments Commission v Merlin Diamonds Limited (No 2) [2019] FCA 2094

Federal Court of Australia

O'Bryan J

Corporations - 'non-party shareholders/noteholders' in defendant sought, pursuant to r2.32 *Federal Court Rules 2011* (Cth), to inspect copy of report which defendant's provision liquidators prepared - provisional liquidators, under s37AF *Federal Court of Australia Act 1976* (Cth), sought that parts of report be suppressed - held: Court granted leave for non-party shareholders/noteholders' to inspect report' - Court made 'limited suppression order' concerning aspect of report.

[Australian Securities and Investments Commission](#) (B)

Schlaepfer v ASIC [2019] NSWSC 1644

Supreme Court of New South Wales

Fagan J

Defamation - injurious falsehood - first plaintiff brought defamation action in respect of 'statements alleged to have been published orally by' second defendant officer of first defendant - first and second plaintiffs also made injurious falsehood claim arising from 'substantially the same published matter' - 'oral statements to brokers' - identification of first plaintiff - 'imputations and true innuendos' - justification - qualified privilege - elements of injurious falsehood - damages - *Australian Securities and Investments Commission Act 2001* (Cth) - *Corporations*

Act 2001 (Cth) - Defamation Act 2005 (NSW) - held: judgment for defendants.

[Schlaepfer](#) (I)

David v Kazal [2019] NSWSC 1763

Supreme Court of New South Wales

Adamson J

Private international law - plaintiff sought 'recognition and enforcement' of judgments in plaintiff's favour which were entered in Central District Court of California ('US judgments') - defendants, by notice of motion, sought security for costs and that proceedings be stayed pending determination of two defendants' appeals against the US judgments - held: plaintiffs to pay security for costs - Court otherwise dismissed defendants' notice of motion.

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

EZY Global Ltd v Miller Crescent P/L & Ors [2019] VSC 815

Supreme Court of Victoria

Croucher J

Caveat - real property - plaintiff lodged caveat, claiming interest in land - applicant, under s90(2) *Transfer of Land Act 1958* (Vic), sought to restrain third defendant Registrar of Titles from registering mortgage lodged by second company on title of land - first defendant was land's registered proprietor - whether 'prima facie case giving rise to a serious question to be tried' that applicant had 'caveatable interest' in land - balance of convenience - whether 'loan agreement' contained 'charging clause' - whether prima facie case of 'constructive trust' or 'equitable lien' - held: application dismissed.

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

Steicke v Pederick & Anor [2019] SASCFC 148

Full Court of the Supreme Court of South Australia

Kelly, Nicholson & Lovell JJ

Interlocutory application - consent orders - mediation - solicitors' costs - applicant, by interlocutory application, sought referral of proceedings to mediation or that time for compliance with 'self-executing consent orders' be extended - applicant sought to appeal against Master's dismissal of interlocutory application - whether to grant applicant leave 'to adduce further evidence' - jurisdiction - interests of justice - whether consent orders correctly identified as contract between parties - whether application of correct test concerning extension of time - whether erroneous determination by Master that he was unable to stay orders and refer the proceedings to mediation' - whether 'misrepresentation by silence' by respondents - r286 *Supreme Court Civil Rules 2006* (SA) - whether application's dismissed 'plainly unreasonable' - held: leave to appeal refused.

[Steicke](#) . (I B C G)

Casey v Loone [2019] TASSC 47

Supreme Court of Tasmania

Holt AsJ

Pleadings - trade practices - contract - first and second defendants sought leave to amend defence by inclusion of allegation that plaintiffs' claims were apportionable - application made 'at a very late stage' in proceeding - 'proportionate liability defence' - whether explanation for delay satisfactory - whether, if application granted, trial would be delayed - held: Court satisfied to grant leave to amend defence.

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

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

The Jumblies

By: Edward Lear

They went to sea in a Sieve, they did,
In a Sieve they went to sea:
In spite of all their friends could say,
On a winter's morn, on a stormy day,
In a Sieve they went to sea!
And when the Sieve turned round and round,
And every one cried, 'You'll all be drowned!'
They called aloud, 'Our Sieve ain't big,
But we don't care a button! we don't care a fig!
In a Sieve we'll go to sea!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

II

They sailed away in a Sieve, they did,
In a Sieve they sailed so fast,
With only a beautiful pea-green veil
Tied with a riband by way of a sail,
To a small tobacco-pipe mast;
And every one said, who saw them go,
'O won't they be soon upset, you know!
For the sky is dark, and the voyage is long,
And happen what may, it's extremely wrong
In a Sieve to sail so fast!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

III

The water it soon came in, it did,
The water it soon came in;
So to keep them dry, they wrapped their feet

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In a pinky paper all folded neat,
And they fastened it down with a pin.
And they passed the night in a crockery-jar,
And each of them said, 'How wise we are!
Though the sky be dark, and the voyage be long,
Yet we never can think we were rash or wrong,
While round in our Sieve we spin!
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

IV

And all night long they sailed away;
And when the sun went down,
They whistled and warbled a moony song
To the echoing sound of a coppery gong,
In the shade of the mountains brown.
'O Timballo! How happy we are,
When we live in a sieve and a crockery-jar,
And all night long in the moonlight pale,
We sail away with a pea-green sail,
In the shade of the mountains brown!
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

V

They sailed to the Western Sea, they did,
To a land all covered with trees,
And they bought an Owl, and a useful Cart,
And a pound of Rice, and a Cranberry Tart,
And a hive of silvery Bees.
And they bought a Pig, and some green Jack-daws,
And a lovely Monkey with lollipop paws,
And forty bottles of Ring-Bo-Ree,
And no end of Stilton Cheese.

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Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

VI

And in twenty years they all came back,
In twenty years or more,
And every one said, 'How tall they've grown!'
For they've been to the Lakes, and the Terrible Zone,
And the hills of the Chankly Bore;
And they drank their health, and gave them a feast
Of dumplings made of beautiful yeast;
And everyone said, 'If we only live,
We too will go to sea in a Sieve,—
To the hills of the Chankly Bore!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

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

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