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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)

Dunkerley v Comcare (FCAFC) - bankruptcy - dismissal of application to set aside bankruptcy notice - appeal dismissed (B)

Kabbabe v Google LLC (FCA) - service - defamation - preliminary discovery - prospective applicant sought to serve originating application on respondent in United States of America - application granted (I B C G)

Polglase by his tutor Jeffrey Polglase v Coffs Harbour City Council (No 2) (NSWSC) - negligence - child plaintiff injured in fall through railing on jetty - judgment for plaintiff against Council and Trust - damages to be assessed (I)

Sydney Capitol Hotels Pty Ltd v Bandelle Pty Ltd (NSWSC) - limitations - statutory construction - separate question - plaintiff's claim against defendant not statute-barred due to s6.20 *Environmental Planning and Assessment Act 1979* (NSW) (I)

Victorian WorkCover Authority v Sapalovski (VSC) - accident compensation - Magistrate ordered appellant to pay compensation and expenses to respondent - appeal allowed (I)

Waterford PPG Pty Ltd v Civil Constructors (Aust) Pty Ltd (QSC) - building and construction industry payments - applicant sought declaratory relief concerning adjudication decision - decision not void - originating application dismissed (I B C G)

Le Cornu v Thomas (Dewnr) (SASCFC) - environmental law - criminal law - defendants convicted of offences under *Marine Parks Act 2007* (SA) - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Dunkerley v Comcare [2020] FCAFC 8

Full Court of the Federal Court of Australia

Katzmann, Robertson & Abraham JJ

Bankruptcy - appellant sought that bankruptcy notice be set aside - primary judge dismissed application - primary judge found appellant did not establish 'sufficient basis' for Court to go behind judgments which had resulted in the costs orders which formed basis of bankruptcy notice - primary judge also found appellant did not make out allegations of 'abuse of process, fraud, and other misconduct' by respondent - primary judge found appellant was attempting to relitigate the same issues which had been 'considered and rejected in the previous proceedings' - appellant appealed - held: appeal dismissed.

[Dunkerley](#) (B)

Kabbabe v Google LLC [2020] FCA 126

Federal Court of Australia

Federal Court of Australia

Service - defamation - preliminary discovery - prospective applicant, pursuant to Pt 10 *Federal Court Rules 2011* (Cth) (Rules), sought to serve originating application on respondent in United States of America - prospective applicant sought preliminary discovery from respondent to enable identification of 'unknown prospective respondent' - r7.22 Rules - whether appropriate to grant leave to serve proceeding on respondent in accordance with 'Hague Service Convention' - held: application granted.

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

Polglase by his tutor Jeffrey Polglase v Coffs Harbour City Council (No 2) [2019] NSWSC 1848

Supreme Court of New South Wales

Cavanagh J

Negligence - child plaintiff injured in fall through railing on jetty - plaintiff alleged Trust, State and plaintiff's grandparents each caused accident - plaintiff claimed negligence in railing's 'design and construction' during jetty's restoration and contended railing 'should have been altered' before accident occurred to make jetty safe for children's use - plaintiff also claimed negligence by grandparents in caring for plaintiff - 'nature and extent of' State's duty of care and of Council's duty of care - 'existence and scope' of any duty of care owed by plaintiff's grandparents - jetty's restoration - railing's design - responsibility for jetty - occupier's liability - *Civil Liability Act 2002* (NSW) - *Dovuro Pty Ltd v Wilkins* (2003) 215 CLR 317 - held: judgment for plaintiff against

Council and Trust - damages to be assessed.

[View Decision](#) (I)

Sydney Capitol Hotels Pty Ltd v Bandelle Pty Ltd [2019] NSWSC 1825

Supreme Court of New South Wales

Hammerschlag J

Limitations - statutory construction - separate question - fire occurred in building - plaintiff occupied level of building - sprinkler system caused 'material damage and consequential loss' to plaintiff - fire 'said to have been caused by' defendant's 'defective building work' - plaintiff sued defendant, contending it breached duty of care to avoid risk of harm to plaintiff - defendant contended plaintiff's claim statute-barred due to s6.20 *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) - determination of defence's availability - whether plaintiff's 'loss or damage' was 'loss or damage "arising out of or in connection with" defective building work' - held: claim not statute barred by s6.20 EPA Act.

[View Decision](#) (I)

Victorian WorkCover Authority v Sapalovski [2019] VSC 851

Supreme Court of Victoria

Ginnane J

Accident compensation - Magistrate ordered that appellant pay respondent compensation under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (WIRCA Act) 'and reasonable medical and like expenses' on basis respondent's injury 'arose out of or in the course of employment' - appellant contended Magistrate erred in finding 'neck and shoulder injury' arose out of or in the course of employment - whether misconstruction and misapplication of s46(1)(a) WIRCA Act - whether open to Magistrate to find respondent suffered his 'transport injuries during an authorised recess' - held: appeal allowed.

[Victorian WorkCover](#) (I)

Waterford PPG Pty Ltd v Civil Constructors (Aust) Pty Ltd [2020] QSC 8

Supreme Court of Queensland

Boddice J

Building and construction industry payments - applicant sought declaratory relief concerning adjudication decision made under *Building and Construction Industry Payments Act 2004* (Qld) - plaintiff contended decision void - whether first respondent breached s42(1) *Building and Construction Commission Act 1991* (Qld) 'by carrying out or undertaking to carry out building work without holding the appropriate licence' - 'building work' - exceptions to requirement for licence - whether works which first respondent undertook were works pursuant to contract - whether first respondent entitled to make payment claim - whether second respondent had jurisdiction to make decision - held: originating application dismissed.

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

Le Cornu v Thomas (Dewnr) [2019] SASFC 154

Full Court of the Supreme Court of South Australia

Peek, Bampton & Lovell JJ

Criminal law - environmental law - defendants found guilty of offences under *Marine Parks Act 2007* (SA) - defendants appealed against convictions - 'uses of the records of interview' - adequacy of reasons - whether impermissible use of 'post offence narrative' in defendants' interviews as evidence of proof of charges against both defendants - whether failure to delineate reasoning process adequately - held: appeal allowed.

[Le Cornu](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link

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The Soul of Gerontius

By: John Henry Newman

I went to sleep; and now I am refresh'd,
A strange refreshment: for I feel in me
An inexpressive lightness, and a sense
Of freedom, as I were at length myself,
And ne'er had been before. How still it is!
I hear no more the busy beat of time,
No, nor my fluttering breath, nor struggling pulse;
Nor does one moment differ from the next.
I had a dream; yes – some one softly said
“He's gone”; and then a sigh went round the room.
And then I surely heard a priestly voice
Cry “Subvenite”; and they knelt in prayer.
I seem to hear him still; but thin and low,
And fainter and more faint the accents come,
As at an ever-widening interval.
Ah! whence is this? What is this severance?
This silence pours a solitariness
Into the very essence of my soul;
And the deep rest, so soothing and so sweet,
Hath something too of sternness and of pain.
For it drives back my thoughts upon their spring
By a strange introversion, and perforce
I now begin to feed upon myself,
Because I have nought else to feed upon –

Am I alive or dead? I am not dead,
But in the body still; for I possess
A sort of confidence which clings to me,
That each particular organ holds its place
As heretofore, combining with the rest
Into one symmetry, that wraps me round,
And makes me man; and surely I could move,
Did I but will it, every part of me.
And yet I cannot to my sense bring home
By very trial, that I have the power.
'Tis strange; I cannot stir a hand or foot,
I cannot make my fingers or my lips
By mutual pressure witness each to each,
Nor by the eyelid's instantaneous stroke

Benchmark

Assure myself I have a body still.
Nor do I know my very attitude,
Nor if I stand, or lie, or sit, or kneel.

So much I know, not knowing how I know,
That the vast universe, where I have dwelt,
Is quitting me, or I am quitting it.
Or I or it is rushing on the wings
Of light or lightning on an onward course,
And we e'en now are million miles apart.
Yet ... is this peremptory severance
Wrought out in lengthening measurements of space
Which grow and multiply by speed and time?
Or am I traversing infinity
By endless subdivision, hurrying back
From finite towards infinitesimal,
Thus dying out of the expansive world?

Another marvel: some one has me fast
Within his ample palm; 'tis not a grasp
Such as they use on earth, but all around
Over the surface of my subtle being,
As though I were a sphere, and capable
To be accosted thus, a uniform
And gentle pressure tells me I am not
Self-moving, but borne forward on my way.
And hark! I hear a singing; yet in sooth
I cannot of that music rightly say
Whether I hear, or touch, or taste the tones.
Oh, what a heart-subduing melody!

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

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