

Friday, 14 June 2019

## 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)

**Plaintiff M74/2018 v Minister for Home Affairs & Anor** (HCA) - migration law - challenge to lawfulness of plaintiff's detention - special case - questions of law stated - plaintiff's inferences were not open - stated questions did not arise (I B C G)

**Australian Securities and Investments Commission v Kobelt** (HCA) - trade practices - respondent's 'book-up system' for supplying credit to 'residents of remote communities in the Anangu Pitjantjatjara Yankunytjatjara Lands' was not unconscionable - appeal dismissed (I B C G)

**RRG Nominees Pty Ltd v Visible Temporary Fencing Australia Pty Ltd (No 4)** (FCA) - consumer law - corporations - deceit - respondents breached s1041H *Corporations Act 2001* (Cth) and s18 Australian Consumer Law - deceit established - judgment for applicants (I B C G)

**Findex Group Ltd v McKay** (NSWCA) - defamation - applicants sought to appeal from interlocutory orders concerning documents produced in response to 'Search Order' - leave to appeal refused (I B C G)

**James Bromfield v New South Wales Gun Club** (NSWSC) - administrative law - corporations - bias - 'Wednesbury Principle' - plaintiff relief in relation to resolution of Board to expel him and other resolutions of Board - relief granted on certain grounds (I B C G)

**Mohareb v Harbour Radio Pty Limited;; Mohareb v Fairfax Media Publications Pty Limited;; Mohareb v State of NSW** (NSWSC) - defamation - one of three proceedings transferred to District Court under s146(1) *Civil Procedure Act 2005* (NSW) (I B C G)

**Foundation for Alcohol Research and Education Ltd v Northern Territory Liquor Commission & Ors** (NTSC) - administrative law - plaintiff sought relief concerning third defendant's application under s46A *Liquor Act 1979* (NT) (Liquor Act) 'for substitution of other premises for the premises specified in Liquor Licence No 81000242' - application dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Plaintiff M74/2018 v Minister for Home Affairs & Anor [2019] HCA 17**

High Court of Australia

Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Migration law - plaintiff was 'unlawful non-citizen' in immigration detention - defendants relied on ss189 & 196 *Migration Act 1958* (Cth) as authority to detain plaintiff "for the purpose of removal from Australia as soon as that becomes reasonably practicable" - plaintiff sought declaration detention not authorised by ss189 & 196 Migration Act and that detention was unlawful - plaintiff sought issue of 'writ of habeas corpus' or that he be released from custody - parties, pursuant to r27.08 *High Court Rules 2004* (Cth), agreed on special case - questions of law stated - plaintiff provided 'inferences of fact' which it invited Court to draw - 'inconsistent statements' - whether plaintiff's options for removal exhausted - whether basis to apply minority view in *Al-Kateb v Godwin* [2004] HCA 37 - held: plaintiff's inferences not open - questions stated in special case did not arise.

[Plaintiff M74/2018](#) (I B C G)

### **Australian Securities and Investments Commission v Kobelt [2019] HCA 18**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Trade practices - consumer law - respondent ran general store, selling goods including second-hand cars - respondent maintained a 'book-up system' for purposes of 'advancing and administering credit' - appeal concerned whether the 'supply of credit to the residents of remote communities in the Anangu Pitjantjatjara Yankunytjatjara Lands' under book-up system contravened s12CB(1) *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) - meaning of "unconscionability" - whether Full Court of the Federal Court erred in finding book up system was not unconscionable - held (by majority; Nettle, Gordon & Edelman JJ dissenting): book-up system was not unconscionable - appeal dismissed.

[Australian Securities](#) (I B C G)

### **RRG Nominees Pty Ltd v Visible Temporary Fencing Australia Pty Ltd (No 4) [2019] FCA**

686

Federal Court of Australia

White J

Consumer law - corporations - deceit - applicants contended they were induced to invest in 'State Companies' by respondents' misleading or deceptive conduct - applicants sought damages under *Misrepresentation Act 1972 (SA)* and damages for deceit - whether misleading or deceptive representations made - reliance - causation - loss - held: Court satisfied respondents breached s1041H *Corporations Act 2001 (Cth)* and s18 Australian Consumer Law - deceit established - judgment for applicants.

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

### **Findex Group Ltd v McKay [2019] NSWCA 93**

Court of Appeal of New South Wales

Basten JA; Sackville & Emmett AJJA

Defamation - applicants sought to appeal from interlocutory orders of primary judge concerning documents produced in response to 'Search Order' - Rein J had made Search Order under r25.19 *Uniform Civil Procedure Rules 2005 (NSW)* - applicants contended applicants' solicitors 'should have been granted leave to show' documents to applicants with view to proceedings' 'commencement or prosecution' - applicants also contended documents' identification by respondent 'involved a denial of procedural fairness' - applicants contended that the effect of the order that identified documents be returned to respondent was that the documents would 'no longer be preserved as evidence' - held: leave to appeal refused.

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

### **James Bromfield v New South Wales Gun Club [2019] NSWSC 430**

Supreme Court of New South Wales

Sackar J

Administrative law - plaintiff sought to set aside Board's resolution to expel plaintiff - plaintiff also sought declaratory relief that resolution was void and in relation to other resolutions of Board - plaintiff also claimed resolutions invalid due to bias of Board - plaintiff also claimed decisions were unreasonable - *Corporations Act 2001 (Cth)* - *Registered Clubs Act 1976 (NSW)* - 'Wednesbury Principle' - held: relief refused concerning contention of bias - relief granted in respect of Board's resolution to expel plaintiff - relief granted on 'unreasonableness grounds' concerning certain complaint.

[James Bromfield](#) (I B C G)

### **Mohareb v Harbour Radio Pty Limited;; Mohareb v Fairfax Media Publications Pty Limited;; Mohareb v State of NSW [2019] NSWSC 270**

Supreme Court of New South Wales

Hoeben CJ at CL

Defamation - plaintiff commenced 'three matters' in Supreme Court Defamation List - parties 'asked to show cause' why matters' should not be transferred to the District Court' under s146(1)

*Civil Procedure Act 2005 (NSW)* - considerations relevant to a 'removal application' - *Bodenstein v Hope Street Urban Compassion* [2014] NSWSC 174 - held: one set of proceedings to be transferred to District Court.

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

**Foundation for Alcohol Research and Education Ltd v Northern Territory Liquor Commission & Ors [2019] NTSC 45**

Supreme Court of the Northern Territory  
Grant CJ

Administrative law - plaintiff sought relief concerning third defendant's application under s46A *Liquor Act 1979 (NT)* (Liquor Act) 'for substitution of other premises for the premises specified in Liquor Licence No 81000242' - plaintiff contended referral by second defendant of application to first defendant was invalid because there was no 'extant licence' - plaintiff also contended licence's issue to third defendant would breach s24(2) *Liquor Act* - 'statutory moratorium' - held: application dismissed.

[Foundation for Alcohol Research](#) (I B C G)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

**From 'A Pastoral'**

**By:** George Essex Evans

Nature feels the touch of noon;  
Not a rustle stirs the grass;  
Not a shadow flecks the sky,  
Save the brown hawk hovering nigh;  
Not a ripple dims the glass  
Of the wide lagoon.

Darkly, like an armed host  
Seen afar against the blue,  
Rise the hills, and yellow-grey  
Sleeps the plain in cove and bay,  
Like a shining sea that dreams  
Round a silent coast.

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