



Friday, 14 June 2024

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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (One Minute Read)

**Warwick v National Disability Insurance Agency** (FCA) - costs of relocation are not day-to-day expenses for the purposes of r5.1(d) of the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) (I B)

**SC v Ability One Financial Management Pty Ltd** (NSWSC) - Court refused to order a change in the management of the protected estate of an elderly man (I B)

**The Star Pty Ltd v AB** (NSWSC) - Court issued permanent injunctions where an unsuccessful applicant for employment at a casino tried to blackmail the casino by threatening the release of confidential information (I B)

**Runacres v The Coroners Court of Victoria** (VSC) - doctor at correctional centre failed in appeal against certain adverse findings by the Coroner (I)

**Duke Unley Pty Ltd & Ors v The Corporation of the City of Unley** (SASC) - Court dismissed claim for recognition of easements of carriageway and footway burdening a Council carpark and benefiting an adjoining private shopping centre carpark (I B C)

## HABEAS CANEM

Wet dog with green grass



# Benchmark

## Summaries With Link (Five Minute Read)

### **Warwick v National Disability Insurance Agency [2024] FCA 616**

Federal Court of Australia

Perram J

Administrative law - Warwick had Parkinson's disease which caused him increasing disability, and which made it necessary for him to move to a new home with better accessibility and less risk of falling - the Administrative Appeals Tribunal affirmed a decision of the National Disability Insurance Agency that Warwick could not recover the costs of relocation, including a real estate agent's fees and commission, two sets of removalist costs, conveyancing fees, and stamp duty - r5.1(d) of the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) provides that support will not be funded if it relates to day-to-day living costs - r5.2 provides that costs are not excluded as day-to-day living costs if they are additional living costs that are incurred by a participant solely and directly as a result of their disability support need - the AAT had found that the relocation expense were day-to-day living costs, and the exception in r5.2 did not apply because relocation was also partly motivated by Warwick's desire to be near his daughter - Warwick appealed on a question of law under s44 of the *Administrative Appeals Tribunal Act 1975* (Cth) - held: relocation expenses are not day-to-day living costs - the costs of engaging an agent to sell one's home, the costs of moving from one home to another, conveyancing fees and the payment of stamp duty on the conveyance of a new home are not everyday costs which are incurred in the course of living for the purpose of living - they are extraordinary expenses to which not everyone has the good fortune to become liable and which, even amongst those who are that fortunate, can scarcely be described as 'day-to-day' costs - had it been necessary to decide, the Court would not have found that the AAT erred in applying a sole purpose test under r5.2 - AAT's decision set aside, and matter remitted to the AAT to be redetermined in accordance with law.

[Warwick](#) (I B)

### **SC v Ability One Financial Management Pty Ltd [2024] NSWSC 637**

Supreme Court of New South Wales

Lindsay J

Protected estates - the Court had made orders transferring management of the management of the protected estate of an elderly man from the NSW Trustee to Ability One Financial Management, and then appointing SR as a committee of the person (in colloquial terms, a "guardian") of the elderly man - a nephew of the elderly man, with whom the man lived in Queensland, sought a change in the manager of the estate - this was opposed by the man's surviving son - the son contended that the plaintiff was the effective cause of the elderly man moving to Queensland away from his family home in Greystanes, near the son, and that, suffering from dementia, the elderly man lived not only in the care of the nephew but under his controlling influence, that the nephew had obstructed his access to his father, and that the nephew was motivated by a desire to secure the man's wealth for himself, if not during his lifetime then upon his death, under a will ostensibly made in favour of the nephew at the time

# Benchmark

the elderly man moved to Queensland - held: the jurisdiction the Court was called upon to exercise was not a "consent jurisdiction", and an order for the appointment, removal, or replacement of a particular manager is not to be made merely because a party, or some other person, seeks it, consents to it or acquiesces in it - the governing purpose of the jurisdiction exercised by the Court is protection of the welfare and interests of the particular protected person concerned - in the choice of a manager, consultation of the welfare and interests of a protected person may favour appointment of a member of his or her family over the appointment of an institutional manager - a manager does not have a legal entitlement to be, or to remain, manager of a particular protected estate - a decision about whether a manager should be replaced may need to be approached differently from one made about the identity of an appointment as an initial manager because of a perceived need to identify an acceptable reason for change - the material breakdown in relationships here was between Ability One and the nephew, not the company and the elderly man - Ability One had not mismanaged the estate, and had, on the whole, acted diligently and reasonably in management of the elderly man's affairs - the nephew had no real insight into his lack of independence in dealing with questions relating to management of the elderly man's affairs - the Court was affirmatively satisfied that it was in the best interests of the elderly man for Ability One to remain in office as manager.

[View Decision](#) (I B)

## **The Star Pty Ltd v AB [2024] NSWSC 690**

Supreme Court of New South Wales

Meek J

Confidential information - the defendant applied for employment with the plaintiff, who ran a casino in Sydney - the defendant was in a relationship with an existing employee of the plaintiff - after starting the process to employ the defendant, the plaintiff decided not to proceed with the offer of employment when a police check revealed several criminal offences which the plaintiff had not declared - the defendant later sent a text message to the defendant seeking termination of the partner's employment and threatening to expose confidential details of the plaintiff's patrons - the plaintiff sought final orders to restrain the defendant from disclosure of the confidential details - held: an obligation of confidentiality can be recognised even if there is no particular relationship between the parties and no deliberate misfeasance, but where a person receives information that, by virtue of the circumstances in which it is received, he or she knows or ought to know is confidential - there is a general equitable jurisdiction to grant relief against an actual or threatened abuse of confidential information which does not involve any tort or any breach of some express or implied contractual provision, and its basis does not lie in proprietary right, but rather in the notion of an obligation of conscience arising from the circumstances in or through which the information was communicated or obtained - the elements of a claim of breach of the equitable obligation of confidence are: (1) the plaintiff must be able to identify with specificity, and not merely in global terms, that which is said to be the information in question; (2) the information must have the necessary quality of confidence; (3) the information must have been received by the defendant in such circumstances as to import an obligation of confidence; and (4) there must be actual or threatened misuse of the information - here, the information

whose disclosure was sought to be restrained, and the material to be delivered up, had been identified with sufficient specificity - the information accessed by the defendant had the necessary quality of confidence - It must have been self-evident to the defendant that the information was confidential - actual or threatened misuse of the information was established - the confidential information was of a sufficient highly private or sensitive nature so as to justify issuing a permanent injunction.

[View Decision](#) (I B)

## **Runacres v The Coroners Court of Victoria [2024] VSC 304**

Supreme Court of Victoria

Quigley J

Coronial inquests - a 37 year old Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, passed away while in the State's custody at a correctional centre - the Coroner found she died of complications of withdrawal from chronic opiate use and Wilkie Syndrome in the setting of malnutrition - the Coroner made a large number of statutory findings across a range of matters connected with her death, including adverse findings as to her medical assessment and care, and the underlying processes and policies relevant to her care whilst she was at the correctional centre - a doctor employed by the private entity which provided primary health care serves at the correctional centre appealed under s87 of the *Coroners Act 2008* (Vic), seeking sought to quash certain adverse findings made against him by the Coroner - held: Coroners are required to investigate a 'reportable death' - this death was a reportable death, as it was unexpected, and occurred in Victoria where the deceased was in custody - in order to succeed in an appeal under s87, an applicant must identify an error of law in the Coroner's findings - all coronial findings must be made on proof of relevant facts on the balance of probabilities, and in determining those matters the principles enunciated in *Briginshaw* apply - the task of the Coroner was not to find guilt or blame in a civil or criminal sense, but to make findings as to the factual circumstances of the death - the Court was not satisfied that the Coroner erred in law in finding that it was not open to him to find that the doctor conducted physical examinations while in the reception cell - the Coroner's finding that the doctor did not physically examine the deceased at all was not against the evidence and the weight of the evidence to such an extent that no coroner could have made it, and the evidence relied upon was competent according to the *Briginshaw* standard - the 'finding' that the doctor set in motion a chain of events in which the deceased's medical treatment and care was inadequate in an ongoing way, was a statutory finding or (an unappealable) comment or other kind of observation, and was a causative conclusion which was not itself a finding, but part of the Coroner's reasoning in respect of the flawed course of conduct in the deceased's assessment and inadequate medical treatment - it was clearly an adverse statement but was one that was open to the Coroner - appeal dismissed.

[Runacres](#) (I)

## **Duke Unley Pty Ltd & Ors v The Corporation of the City of Unley [2024] SASC 78**

Supreme Court of South Australia

Kourakis CJ

Easements - Duke purchased a shopping centre and a two storey carpark - Unley Council owned a carpark that adjoined the purchased carpark - Duke claimed, that, shortly after the purchase, Council installed bollards obstructing vehicular traffic between the two car parks - Duke claimed an easement, being a right of carriageway and footway, burdening the Council carpark and benefiting its carpark, pursuant to s36 of the *Law of Property Act 1936* (SA), as well as implied terms in the contract for sale, the doctrine of lost modern grant and prescription, and equitable recognition of an easement arising from a set of unexecuted deeds between Council and Duke's predecessor in title - held: the exchange of two unexecuted deeds between Council and Duke's predecessor in title did not give rise to an equitable easement - the deeds did not purport to grant an easement - in any event, the deeds had no legal effect as they were not executed - the forms of conveyancing historically adopted by, and known to, the common law were arcane and oblique - on the evidence, the bollards were in place before the purchase - there was therefore no existing user capable of metamorphosis into an easement under s36 of the *Law of Property Act* - there was similarly no existing user capable of supporting an implied grant of easement under the caselaw - Council's statutory power to certify land as complying with relevant fire standards did not extend to creating a proprietary right to the extent necessary to ensure that the certificate of classification was properly issued - proceedings dismissed.

[Duke Unley Pty Ltd](#) (I B C)



## Poem for Friday

### The Good-Morrow

By John Donne (1572-1631)

I wonder, by my troth, what thou and I  
Did, till we loved? Were we not weaned till then?  
But sucked on country pleasures, childishly?  
Or snorted we in the Seven Sleepers' den?  
'Twas so; but this, all pleasures fancies be.  
If ever any beauty I did see,  
Which I desired, and got, 'twas but a dream of thee.

And now good-morrow to our waking souls,  
Which watch not one another out of fear;  
For love, all love of other sights controls,  
And makes one little room an everywhere.  
Let sea-discoverers to new worlds have gone,  
Let maps to other, worlds on worlds have shown,  
Let us possess one world, each hath one, and is one.

My face in thine eye, thine in mine appears,  
And true plain hearts do in the faces rest;  
Where can we find two better hemispheres,  
Without sharp north, without declining west?  
Whatever dies, was not mixed equally;  
If our two loves be one, or, thou and I  
Love so alike, that none do slacken, none can die.

**John Donne**, was born in 1571 or 1572. His parents, John Donne, a warden of the Ironmongers Company, and Elizabeth Heywood, the daughter of John Heywood, playwright, were Roman Catholic at a time when it was illegal to practise the Catholic religion in England. When he was four years old his father died. His mother raised the family. He was later educated at the University of Cambridge, where he could not obtain a degree because he refused to take the Oath of Supremacy. He studied Law at Thavies Inn, one of the Inns of Chancery. He was admitted to Lincoln's Inn, as a lawyer in May 1592. He married Anne More, in opposition to her father, Lieutenant of the Tower of London. As a result he was incarcerated in Fleet Prison, when the wedding was discovered, with Samuel Brooke, the Church of England priest who had married the couple, and his brother Christopher who had given away the bride at the wedding, in the place of her father George More. They were released when it was determined that the

marriage was valid. Of his twelve children, two were still births three died in early childhood, and a daughter died at aged 18. The deaths drove Donne to thoughts of suicide. He worked as a country lawyer and as an ordained priest of the Church of England. His poetry was highly regarded by his contemporaries. He was the Dean of St Paul's Cathedral for two years from 1621. During the Restoration, following the execution of Charles 1 in 1649, and for centuries later Donne's his work was ignored or rejected. However late in the 19th century and continuing his prose and poetry received acclaim. Ben Jonson described him as "*The first poet in the world in some things*". Donne is considered the greatest of the metaphysical poets. Donne died on 31 March 1631 and is buried in old St Paul's Cathedral.

The reading today is by **Colin McPhillamy**. Colin was born in London to Australian parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan's cousin Patricia Conolly, the renowned actor and stage actress [https://en.wikipedia.org/wiki/Patricia\\_Conolly](https://en.wikipedia.org/wiki/Patricia_Conolly) and

<https://trove.nla.gov.au/newspaper/article/47250992>.

**Richard Burton** reads, John Donne's poem "**The Good - Morrow**"

[https://www.youtube.com/watch?v=K0a8MoJTh\\_E](https://www.youtube.com/watch?v=K0a8MoJTh_E)

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