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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)

Queensland v Masson (HCA) - negligence - deceased suffered asthma attack in 2002 - deceased suffered 'irreversible brain damage' and died in 2016 - ambulance officers not negligent in treatment of deceased - appeal allowed (I B C G)

Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; Minister for Jobs and Industrial Relations v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (HCA) - industrial law - statutory construction - calculation of 'entitlement to paid personal/carer's leave' is under s96(1) *Fair Work Act 2009* (Cth) - appeals allowed (I B C G)

Motorola Solutions, Inc. v Hytera Communications Corporation Ltd (Lay Opinion Evidence) (FCA) - evidence - copyright - applicant objected to parts of witness's affidavit - rulings made (I B C G)

Quinn v O'Rourke, in the matter of O'Rourke (No 2) (FCA) - bankruptcy - service - applicants sought sequestration order against respondents - application allowed (B)

Michael Kuehn & Jennifer Kuehn v Masterton Homes (NSW) Pty Ltd t/as Masterton Homes (NSW) Pty Ltd (NSWSC) - contract - compromise - plaintiffs claims against first defendant not compromised - proceedings against lawyers dismissed (I B C G)

Page v Rankine (NSWSC) - wills and estates - probate - plaintiff executor of deceased's estate sought to set aside notice to produce to set aside defendant's notice of motion 'with liberty to the defendant to file an amended notice of motion limited in two respects' - orders granted (I B C G)

Mackenzie v Head, Transport for Victoria (Costs) (VSC) - costs - plaintiffs sought review of assessment and decisions by Minister - proceedings dismissed - plaintiffs to pay defendants' costs on standard basis (I B C G)

Summaries With Link (Five Minute Read)

Queensland v Masson [2020] HCA 28

High Court of Australia

Kiefel CJ; Bell, Keane, Nettle & Gordon JJ

Negligence - deceased suffered asthma attack in in 2002 - deceased suffered 'irreversible brain damage' and died in 2016 - respondent sued appellant in negligence - trial judge found ambulance officers not negligent in administering salbutamol - Court of Appeal of Queensland found ambulance officer negligent in not administering adrenaline 'at the outset' and that appellant vicariously liable - whether Court of Appeal had departed from settled principle' in determining standard of care - whether Court of Appeal erred in overturning findings of trial judge - held: trial judge correct to find salbutamol's administration to deceased was 'within the range of reasonable clinical judgments that an ordinary skilled intensive care paramedic might make' - appeal allowed.

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

Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; Minister for Jobs and Industrial Relations v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2020] HCA 29

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Industrial law - statutory construction - appeals concerning calculation of 'entitlement to paid personal/carer's leave' is under s96(1) *Fair Work Act 2009* (Cth) (Fair Work Act) - whether "day" in "10 days" in s96(1) Fair Work Act referred to "notional day" or "working day" - statutory construction - Fair Work Act's 'legislative purposes' - 'extrinsic materials' - 'legislative history' - competing constructions - held: "day" referred to notional day 'consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week period' - appeals allowed.

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

Motorola Solutions, Inc. v Hytera Communications Corporation Ltd (Lay Opinion Evidence) [2020] FCA 1129

Federal Court of Australia

Perram J

Evidence - copyright - applicant objected to parts of witness's affidavit - expert opinion - principle in *Makita v Sprowles* [2001] NSWCA 305 - whether respondent could repackage witness's evidence as 'lay evidence' - whether witness's evidence came within principles that 'permit lay witnesses to give opinion evidence - s78 *Evidence Act 1995* (Cth) (*Evidence Act*) - 'threshold relevance requirement' in s55 *Evidence Act* - *Copyright Act 1968* (Cth) - held: rulings made.

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

Quinn v O'Rourke, in the matter of O'Rourke (No 2) [2020] FCA 1156

Federal Court of Australia

Gleeson J

Bankruptcy - service - applicants sought sequestration order against respondent under s43 *Bankruptcy Act 1966* (Cth) - whether bankruptcy notice served on respondent - whether bankruptcy notice defective for failure to attach judgment - respondent's 'last known address' - whether email service of bankruptcy notice - *Civic Video Pty Ltd v Warburton* [2013] FCA 934 - *Napiat Pty Ltd v Salinger (No 7)* [2011] FCA 1322; 202 FCR 264 - held: sequestration order made - application allowed.

[Quinn](#) (B)

Michael Kuehn & Jennifer Kuehn v Masterton Homes (NSW) Pty Ltd t/as Masterton Homes (NSW) Pty Ltd [2020] NSWSC 1049

Supreme Court of New South Wales

Hammerschlag J

Contract - compromise - proceedings concerning whether plaintiffs had compromise 'in binding fashion' claim against first defendant 'home builder' in NSW Civil & Administrative Tribunal - plaintiffs denied 'binding compromise' had been reached - plaintiffs contended that if binding compromise reached, compromise had occurred due to breaches by plaintiffs' lawyers - plaintiffs had joined lawyers as defendant - whether plaintiffs had compromised claims such that they could not claim against first defendant - held: there was no 'binding compromise or settlement' - proceedings against lawyers dismissed.

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

Page v Rankine [2020] NSWSC 902

Supreme Court of New South Wales

Ward CJ in Eq

Wills and estates - probate - plaintiff executor of deceased's estate sought to set aside notice to produce which defendant issued to plaintiff - plaintiff also sought orders under ss61 and/or 63 *Civil Procedure Act 2005* (NSW) setting aside defendant's notice of motion 'with liberty to the defendant to file an amended notice of motion limited in two respects' - held: orders granted.

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

Mackenzie v Head, Transport for Victoria (Costs) [2020] VSC 436

Supreme Court of Victoria

Richards J

Costs - plaintiffs sought review of assessment by Minister of 'Stage 2 project' under *Environment Effects Act 1978* (Vic) and decisions by Minister under *Planning and Environment Act 1987* (Vic) - proceeding was dismissed - determination of costs - whether to depart from 'general rule' that costs follow event - whether 'disqualifying conduct' - whether plaintiffs unreasonably failed to accept Calderbank offer - held: plaintiffs to pay defendants costs on standard basis.

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

CRIMINAL

Executive Summary

Summaries With Link



From: In the Moonlight

By: David McKee Wright

THE MOON is bright, and the winds are laid, and the river is
roaring by;
Orion swings, with his belted lights low down in the western
sky;
North and south from the mountain gorge to the heart of the
silver plain
There's many an eye will see no sleep till the east grows
bright again;
There's many a hand will toil to-night, from the centre down
to the sea; 5
And I'm far from the men I used to know—and my love is far
from me.

Where the broad flood eddies the dredge is moored to the
beach of shingle white,
And the straining cable whips the stream in a spray of silver
light;
The groaning buckets bear their load, and the engine throbs
away,
And the wash pours red on the turning screen that knows
not night or day; 10
For there's many an ounce of gold to save, from the gorge
to the shining sea—
And there's many a league of the bare brown hills between
my love and me.

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

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