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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)

ZXC v YPOL Pty Ltd (NSWCA) - contempt - criminal contempt conviction - vacation of suppression orders - 'fitness to plead' - 'substantial miscarriage of justice' - appeal allowed in part - summons for leave to appeal dismissed (B C I G)

MetLife Insurance Ltd v Hellessey (NSWCA) - insurance - life insurance - total and permanent disablement - no error in primary judge's finding that appellant's dismissal of respondent's claim was invalid - appeal dismissed (B I)

Ko v CKAS Enterprises Pty Ltd (NSWSC) - real property - lease - common assumption - tenant did not exercise option to renew - landlord estopped from giving notice terminating tenancy until payment of 'equitable compensation' (B C I G)

Grewal v Layton (No 2) (NSWSC) - costs - indemnity costs - gross sum costs order - three offers of compromise - indemnity costs order granted - gross sum costs order refused (B C I G)

Burke v Ash Sounds Pty Ltd (VSC) - damages - negligence - consumer law - group proceeding - separate question - Pts VB & VBA *Wrongs Act 1958* (Vic) applied to claim for non-compliance with guarantees if services subject of ss61(1) or 61(2) Australian Consumer Law 'supplied pursuant to a contract between the group member and the defendant' (I B C G)

James v State of Queensland (QSC) - negligence - plaintiff claimed damages for psychiatric

injury in course of employment against employer - breach of duty of care not established - claim dismissed (I)

Jordan v Jordan (WASC) - wills and estates - trusts and trustees - determination of entitlements to property comprising deceased's estate - determination of date from which account to be taken in respect of property (B)

Summaries With Link (Five Minute Read)

ZXC v YPOL Pty Ltd [2018] NSWCA 306

Court of Appeal of New South Wales

Beazley P, Meagher JA & Simpson AJA

Contempt - criminal contempt - suppression orders - appellant convicted of criminal contempt in civil proceedings against respondent solicitors' firm - appellant was found, on basis of expert reports, to be a person under legal incapacity - tutor appointed - appellant deemed unfit to defend sentence proceeding - no penalty imposed except for conviction's entry - appellant appealed against conviction and against vacation of suppression orders - appellant also sought leave to appeal against restraining order, appointment of tutor and costs orders - challenge to contempt proceedings' characterisation as criminal - challenge to conviction and sentence - challenge to sentence under s10A *Crimes (Sentencing Procedure) Act 1999* (NSW) - 'appellate function in relation to questions of fitness to plead' - whether primary judge 'could not reasonably have found' appellant 'unfit to plead' - r51.53 *Uniform Civil Procedure Rules 2005* (NSW), whether miscarriage of justice - held: appeal allowed in part - leave to appeal refused. [View Decision](#) (B C I G)

MetLife Insurance Ltd v Hellessey [2018] NSWCA 307

Court of Appeal of New South Wales

McColl, Meagher & White JJA

Insurance - respondent police officer claimed benefits under First State Superannuation scheme (scheme) on basis she was 'totally and permanently disabled' - appellant was 'group life insurer' under scheme - primary judge found that appellant's 'third rejection' of respondent's claim was invalid and concluded that respondent met the definition of total and permanent disablement - whether primary judge applied 'incorrect legal test as to the "first-stage" question' - whether primary judge erroneously had regard to 'considerations and evidence' irrelevant to first stage - whether primary judge erred in finding appellant's determination unreasonable - whether 'reversal of onus' - held: no error in primary judge's finding that appellant's third rejection was invalid - appeal dismissed.

[View Decision](#) (B I)

Ko v CKAS Enterprises Pty Ltd [2018] NSWSC 1876

Supreme Court of New South Wales

Emmett AJA

Real property - lease - plaintiff/cross-defendant (tenant) claimed defendant/cross-claimant (landlord) was estopped from denying she validly exercised option to renew lease (option) of premises ('Demised Premises') - landlord by cross-claim sought declaration tenant had failed to exercise option and that 'purported notice' of option's exercise was ineffective - whether lessors had waived requirement for 'strict compliance' with terms of lease - whether tenant occupied 'Demised Premises' on basis of 'common assumption' by tenant and landlord that tenant's occupation was under 'renewed lease' - held: there was common assumption that tenant entitled to occupy premises under 'substantial leasehold term' - unconscionable for landlord to resile from common assumption without giving 'equitable compensation' for tenant's expenses in reliance on common assumption - tenant did not exercise option to renew but landlord estopped from terminating tenancy unless it paid 'reasonable compensation' to tenant for certain incurred costs.

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

Grewal v Layton (No 2) [2018] NSWSC 1910

Supreme Court of New South Wales

Ball J

Costs - indemnity costs - gross sum costs order - Court delivered judgment in plaintiff's favour in proceedings - plaintiff sought indemnity costs orders on basis of three offers of compromise - plaintiff also sought gross sum costs order - whether first and second offers genuine - whether refusal to accept first and second offers unreasonable - whether plaintiff obtained judgment no less favourable than third offer's terms - whether to make gross sum costs order - s98(4)(c) *Civil Procedure Act 2005* (NSW) - r42.14 *Uniform Civil Procedures Rules 2005* (NSW) to third offer - held: indemnity costs order granted - gross sum costs order refused.

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

Burke v Ash Sounds Pty Ltd [2018] VSC 771

Supreme Court of Victoria

McDonald J

Damages - negligence - consumer law - group proceeding - claim arising from injuries allegedly suffered at festival - plaintiff made 'breach of duty' claims and claims for breach of guarantees in ss60 & 61 Australian Consumer Law - liability admitted - separate questions - first question was whether Pts VB & VBA *Wrongs Act 1958* (Vic) (*Wrongs Act*) applied to claim for non-compliance with guarantees if services subject of ss61(1) or 61(2) Australian Consumer Law 'were supplied pursuant to a contract between the group member and the defendant' - second question was whether claimants precluded from non-economic loss damages regardless of whether 'purpose and guarantee claims' required 'proof of fault' and regardless of any contract's nature and existence, due to 'long arm operation' of s28LE *Wrongs Act* - held: first question determined in the affirmative - Court declined to answer second question as it was not 'raised in the proceedings.

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

James v State of Queensland [2018] QSC 188

Supreme Court of Queensland

Henry J

Negligence - 'employer's duty of care' - plaintiff worked as paramedic - plaintiff claimed damages for psychiatric injury 'caused by his exposure to traumatic events' during work - plaintiff claimed defendant did not respond reasonably to risk of injury - whether failure to provide 'safe system of work' - whether failure 'to take reasonable care to avoid psychiatric injury' plaintiff - adequacy of 'Priority One programme' - whether defendant failed to activate 'critical incident stress debriefing' and/or failed to respond to 'training incident' - held: breach of duty not established - claim dismissed.

[James](#) (I)

Jordan v Jordan [2018] WASC 384

Supreme Court of Western Australia

Master Sanderson

Wills and estates - deceased's estate consisted of house and land (property) - proceedings concerned which of deceased's children were entitled to estate and in what proportion - whether there was agreement between parties concerning property's purchase and parties' interests in property - whether, if one child made additional contributions to mortgage, he would be 'entitled in equity' to 'greater interest' in property - date from which account in relation to property should be taken - 'private fixed express trust' - whether interests should be adjusted on basis of 'varying contributions' - held: first plaintiff, defendant and estate each entitled to one third interest in property - date from which account to be taken determined.

[Jordan](#) (B)

CRIMINAL

Executive Summary

Summaries With Link



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Summer Wind

By: William Cullen Bryant

It is a sultry day; the sun has drunk
The dew that lay upon the morning grass;
There is no rustling in the lofty elm
That canopies my dwelling, and its shade
Scarce cools me. All is silent, save the faint
And interrupted murmur of the bee,
Settling on the sick flowers, and then again
Instantly on the wing. The plants around
Feel the too potent fervors: the tall maize
Rolls up its long green leaves; the clover droops
Its tender foliage, and declines its blooms.
But far in the fierce sunshine tower the hills,
With all their growth of woods, silent and stern,
As if the scorching heat and dazzling light
Were but an element they loved. Bright clouds,
Motionless pillars of the brazen heaven—
Their bases on the mountains—their white tops
Shining in the far ether—fire the air
With a reflected radiance, and make turn
The gazer's eye away. For me, I lie
Languidly in the shade, where the thick turf,
Yet virgin from the kisses of the sun,
Retains some freshness, and I woo the wind
That still delays his coming. Why so slow,
Gentle and voluble spirit of the air?
Oh, come and breathe upon the fainting earth
Coolness and life! Is it that in his caves
He hears me? See, on yonder woody ridge,
The pine is bending his proud top, and now
Among the nearer groves, chestnut and oak
Are tossing their green boughs about. He comes;
Lo, where the grassy meadow runs in waves!
The deep distressful silence of the scene
Breaks up with mingling of unnumbered sounds
And universal motion. He is come,
Shaking a shower of blossoms from the shrubs,
And bearing on their fragrance; and he brings
Music of birds, and rustling of young boughs,
And sound of swaying branches, and the voice
Of distant waterfalls. All the green herbs



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Are stirring in his breath; a thousand flowers,
By the road-side and the borders of the brook,
Nod gayly to each other; glossy leaves
Are twinkling in the sun, as if the dew
Were on them yet, and silver waters break
Into small waves and sparkle as he comes.
https://en.wikipedia.org/wiki/William_Cullen_Bryant

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