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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

IAG Limited Trading as NRMA Insurance v Ozdemir (NSWSC) - administrative law - no error in award of damages to first respondent - summons dismissed (I G)

Sellak v Sellak, estate of the late Corrado Simon Sellak; Sellak v Sellak (No. 2) (NSWSC) - succession - family provision - orders for provision granted to two adult children of deceased (B)

Swan v Uecker (VSC) - leases and tenancies - agreement between tenants and AirBnB guests was a sub-lease in breach of provisions of lease - appeal allowed - landlord granted possession (I B C G)

CDPV Pty Ltd v Commissioner of State Revenue (VSC) - taxation - land tax - appellants failed to prove land was 'used primarily for cultivation for the purpose of selling the produce of cultivation' - appeal dismissed - Commissioner's assessments confirmed (I B C G)

Annesley v Westpac (VSC) - summary judgment - possession - plaintiff had no reasonable prospects of establishing he was tenant in possession of property - plaintiff's claims against bank dismissed (I B C G)

Sierra Property Qld Pty Ltd v National Construction Management Pty Ltd (No 2) (QSC) - costs - Court found that adjudicator had erred in part - both parties to proceedings to pay 50% of adjudicator's fees (I B C G)

Parker v Australian Executor Trustees Ltd (SASC) - succession - family provision - five adult children of deceased granted further provision from deceased's estate (B)

Summaries With Link (Five Minute Read)

IAG Limited Trading as NRMA Insurance v Ozdemir [2016] NSWSC 756

Supreme Court of New South Wales

Wilson J

Administrative law - first defendant injured in motor vehicle collision - plaintiff sought review of second defendant's assessment concerning personal injury damages awarded to first defendant - plaintiff contended second defendant erred in awarding substantial sum to first defendant - credit - medical evidence - assessment of damages - adequacy of reasons - s94(6) *Motor Accidents Compensation Act 1999* (NSW) - held: assessor did not fail to take into account a 'relevant consideration' under the Act or fail to respond to a substantial argument - no denial of procedural fairness - summons dismissed.

[IAG](#) (I G)

Sellak v Sellak, estate of the late Corrado Simon Sellak; Sellak v Sellak (No. 2) [2016] NSWSC 396

Supreme Court of New South Wales

Slattery J

Succession - family provision - two adult children of deceased sought family provision from deceased's estate under Ch 3 *Succession Act 2006* (NSW) - adequacy of provision - estrangement - ss57, 59(2), 66(2) & 99 *Succession Act* - held: plaintiffs had been left 'without provision for their proper maintenance, education or advancement in life' under deceased's Will - case of estrangement against plaintiffs did not disentitle them from provision - provision orders granted in plaintiffs' favour.

[Sellak](#) (B)

Swan v Uecker [2016] VSC 313

Supreme Court of Victoria

Croft J

Leases and tenancies - applicant owner of apartment leased apartment to respondents pursuant to residential tenancy agreement - applicant sought possession on basis respondents breached provisions of lease by granting leases to third parties who stayed in apartment - respondents conceded 'AirBnB' guests stayed at apartment booked through AirBnB website - Victorian Civil & Administrative Tribunal dismissed application on basis respondents only granted licences to AirBnB guests and therefore they had not sublet apartment - nature of occupancy by AirBnB guests - consequences of occupancy under lease - ss244, 253, 263, 288, 314, 317ZF, 317ZG & 319 *Residential Tenancies Act 1997* (Vic) - held: AirBnB Agreement for occupation was a lease between respondents and the AirBnB guests - agreement was a sub-

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lease - respondents breached provisions of lease - applicant granted possession in form complying with the Act - appeal allowed.

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

CDPV Pty Ltd v Commissioner of State Revenue [2016] VSC 322

Supreme Court of Victoria

Croft J

Taxation - land tax - land jointly owned by appellants as tenants in common - Commissioner disallowed objections to one re-assessment and three assessments to land tax under *Land Tax Act 2005* (Vic) - appellants had objected on grounds that "the subject land was used for the purposes of primary production in the relevant period pursuant to an oral crop share farming agreement" - ss64, 66 & 68 Land Tax Act - Pt 10 *Taxation Administration Act 1997* (Vic) - held: appellants failed to prove land was 'used primarily for cultivation for the purpose of selling the produce of cultivation' - appeal dismissed - Commissioner's assessments confirmed.

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

Annesley v Westpac [2016] VSC 323

Supreme Court of Victoria

Derham AsJ

Summary judgment - possession - third defendant was registered proprietor of property - second defendant was previously registered proprietor of property with third defendant and borrowed money from first defendant bank with third defendant - loan secured by mortgage over property - borrowers defaulted and bank obtained possession - bank sought that plaintiff's claim against it be summarily dismissed pursuant to ss62 & 63 *Civil Procedure Act 2010* (Vic) - plaintiff claimed to be a tenant of property and its purchaser under contract for sale - held: no real prospect of Mr Annesley establishing that he was a tenant in possession of the Property - tenancy agreement was foundation of claim's major parts - other claims unsustainable - plaintiff's claims dismissed.

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

Sierra Property Qld Pty Ltd v National Construction Management Pty Ltd (No 2) [2016] QSC 125

Supreme Court of Queensland

Jackson J

Costs - Court declared part of adjudication decision affected by jurisdictional error - s58 *Civil Proceedings Act 2011* (Qld) - dispute concerned amount which applicant should pay in respect of adjudicator's fees - adjudicator had ordered applicant to pay the fees in full - applicant sought order for repayment of the fees - respondent sought order that respondent and applicant each pay half of the fees - held: one party should bear whole loss - error was by adjudicator not by parties - no reason why respondent should pay all fees or indemnify applicant - respondent's submission accepted.

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

Parker v Australian Executor Trustees Ltd [2016] SASC 64

Supreme Court of South Australia

Lovell J

Succession - family provision - five adult children of deceased sought further provision from deceased's Will - testator had given majority of estate to executor for charitable purposes - relatively large estate - no competing claims - s7 *Inheritance (Family Provision) Act 1972 (SA)* - whether adequate provision for 'proper maintenance, education or advancement in life' - estrangement - held: each plaintiff had been left without adequate provision - plaintiffs granted orders for provision from deceased's estate.

[Parker](#) (B)

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