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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Australian Securities and Investments Commission v One Tech Media Limited (FCA) - discovery - contempt - discovery sought in connection with contempt application orders - discovery orders granted (I B C G)

Ivanna Ann-Marie Ferenc Stojic v Simon Stojic (NSWSC) - succession - wills and estates - probate - application for removal of executor refused (B)

Mercy Centre Lavington Ltd v Kiely & Ors (NSWSC) - judicial review - workplace injury - statutory assessment of Medical Appeal Panel affected by error - decision set aside (I B C G)

Wilson v Bauer Media Pty Ltd (VSC) - defamation - publication of articles to effect that actress and comedian Rebel Wilson was a 'serial liar' - special damages assessed at value of lost opportunity awarded in sum of \$3,917,472 - general damages including aggravated damages awarded in sum of \$650,000 (I B C G)

Skarbek v The Society of Jesus in Victoria & Ors (VSC) - pleadings - plaintiff granted leave to file amended statement of claim substantially in exhibited form - certain amendments made (I B C G)

Landorf v Wyndham & Anor (QSC) - real property - encroachment - applicant to transfer area of land subject of encroachment to respondents - respondents to compensate applicant (I B C G)

G)

St John of God Health Care Inc - v - Kezic [No 2] (WASC) - vexatious proceedings - respondent prohibited from instituting certain proceedings against applicant without leave (I B C G)

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v One Tech Media Limited [2017] FCA 1080

Federal Court of Australia

Moshinsky J

Discovery - contempt - plaintiff sought discovery of documents in connection with application that certain defendants and solicitors' firm be punished for contempt - s19 *Australian Securities and Investments Act 2001* (Cth) - ss1323 & 1324 *Corporations Act 2001* (Cth) - s187 *Evidence Act 1995* (Cth) - whether 'waiver of 'privilege against exposure to penalty' - held: Court satisfied discovery orders should be made substantially as ASIC sought in respect of defendant Companies, except as to date range's narrowing - narrower discovery orders than those sought by ASIC should be made in respect of firm - orders made.

[Australian Securities and Investments Commission](#) (I B C G)

Ivanna Ann-Marie Ferenc Stojic v Simon Stojic [2017] NSWSC 1235

Supreme Court of New South Wales

Kunc J

Succession - wills and estates - disputed wills - probate - application for removal of executor - plaintiffs contended estate was 'at hazard' with executor and that executor unfit to administer estate irrespective of outcome of appeal against Court's decision to grant executor probate of deceased's will - held: there was lack of evidence demonstrating need for 'urgent intervention' - Lindsay J had made orders in nature of stay in respect of executor's powers - evidence did not disclose that anything against estate's interests was likely to happen in short term - appeal in proceedings was imminent - common ground that if appeal succeeded grant of probate to executor would be revoked - motion dismissed.

[View Decision](#) (B)

Mercy Centre Lavington Ltd v Kiely & Ors [2017] NSWSC 1234

Supreme Court of New South Wales

Wilson J

Judicial review - workplace injury - plaintiff challenged validity of Medical Appeal Panel's statutory assessment of 'secondary psychological impairment' - whether Medical Appeal Panel acted beyond power in s328 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - whether Medical Appeal Panel made use of s323 of the Act which was

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unavailable to it - whether legal unreasonableness - held: grounds of error made out - Medical Appeal Panel's decision set aside.

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

Wilson v Bauer Media Pty Ltd [2017] VSC 521

Supreme Court of Victoria

John Dixon J

Defamation - plaintiff was actress and comedian - defendants were publishers of Woman's Day magazine in Australia and information on websites - proceedings arising from defendants' publication of article in Woman's Day print and articles on websites to effect plaintiff was a 'serial liar' - plaintiff claimed injury to feelings, credit and reputation, humiliation, embarrassment and that she suffered loss and damage - defendants denied plaintiff's claims - defendants raised defences of justification, triviality and qualified privilege - jury found publications conveyed defamatory imputations as alleged and did not accept defences - assessment of damages - determination of remaining qualified privilege defences - held: statutory cap under s35 *Defamation Act 2005* (Vic) did not apply - plaintiff's damage aggravated by circumstances of publication - publications caused plaintiff to lose chance of 'new screen roles' - plaintiff's special damages assessed as value of lost opportunity, which Court found to be sum of \$3,917,472 - general damages including aggravated damages assessed at \$650,000.

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

Skarbek v The Society of Jesus in Victoria & Ors [2017] VSC 545

Supreme Court of Victoria

Judicial Registrar Clayton

Pleadings - plaintiff sought to file amended statement of claim - defendants opposed many proposed amendments - 'allegations of actual or constructive knowledge of abuse' - foreseeability of risk of harm - breach of duty - held: pleading of actual or constructive knowledge was sufficient, thus pleading concerning foreseeability of risk of harm sufficient - plaintiff granted leave to file amended statement of claim substantially in exhibited form.

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

Landorf v Wyndham & Anor [2017] QSC 198

Supreme Court of Queensland

Brown J

Real property - applicant sought relief under s184 *Property Law Act 1974* (Qld) in respect of alleged encroachment - applicant sought repositioning of encroaching block retaining wall and drainage system so that it no longer encroached on her land - ss184, 185 & 186 of the Act - held: Court did not consider encroachment was insignificant - appropriate to grant relief - it was 'most just' to order that applicant should transfer area subject of the encroachment to respondents and that respondents compensate applicants - parties to make further submissions as to proposed order.



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

St John of God Health Care Inc - v - Kezic [No 2] [2017] WASC 265

Supreme Court of Western Australia

Pritchard J

Vexatious proceedings - applicant pursuant to s4 *Vexatious Proceedings Restriction Act 2002* (WA) sought that respondent be prohibited from instituting or commencing proceedings against the 'applicant, or its employees, agents or legal representatives ... in any court or tribunal, without the leave of that court or tribunal, pursuant to s 6(1) of the VPR Act' - whether proceedings on which applicant relied were 'vexatious proceedings' - *Workers' Compensation and Injury Management Act 1981* (WA) - held: Court satisfied respondent had 'instituted or conducted vexatious proceedings' - Court satisfied it should prohibit respondent from instituting certain proceedings against applicant without leave - orders made.

[St John of God Health Care](#) (I B C G)

CRIMINAL

Executive Summary

Pattison v Tasmania (TASCCA) - criminal law - aggravated burglary - stealing - State erroneously allowed to adduce tendency evidence and coincidence evidence - verdict unsafe and unsatisfactory - appeal allowed

Edmond and Moreen v The Queen (NTCCA) - criminal law - sentence imposed on appellants for stealing money from taxi driver was not manifestly excessive - appeals dismissed

Summaries With Link

Pattison v Tasmania [2017] TASCCA 13

Court of Criminal Appeal of Tasmania

Wood, Peach & Brett JJ

Criminal law - appellant found guilty of 'one count of aggravated burglary and three counts of stealing relating to the theft of fly-fishing equipment' - appellant sentenced to 12 months in prison - appellant appealed against convictions and sentence - probative value of tendency evidence - prejudice - coincidence evidence - held: grounds of appeal made out that trial judge erroneously allowed State to adduce tendency evidence in accordance with tendency notice, and erroneously allowed State to adduce coincidence evidence in absence of a notice - verdict was unsafe and unsatisfactory - appeal allowed.

[Pattison](#)

Edmond and Moreen v The Queen [2017] NTCCA 9

Court of Criminal Appeal of the Northern Territory

Grant CJ, Blokland and Hiley JJ

Criminal law - appellants convicted and sentenced for stealing \$460 from taxi driver (count 1) and robbing service station attendant (count 2) - each appellant sentenced to two years in prison on count 1 - for count 2, one appellant sentenced to two years and ten months' in prison and the other appellant sentenced to three years and three months' in prison - appellants each appealed against sentence for count 1 on basis it was manifestly excessive - appellants also contended their total sentences, imposed after application of totality principles, were manifestly excessive due to manifest excess of sentence for count 1 - whether error in exercise of sentencing discretion - objective seriousness of offence - protection of vulnerable community members - Courts' responsibility to impose sentences which will deter passengers from offences against taxi drivers - held: offence's objective seriousness was high - no error in sentence imposed for count 1 - appeals dismissed.

[Edmond](#)



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Today's poem, 'Thoughts 1', is the first poem from Volume 1 of '[Three Hundred Tang Poems](#)', an anthology compiled by the Qing Dynasty scholar Sun Zhu in around 1763.

Thoughts I

By Zhang Jiuling

A lonely swan from the sea flies,
To alight on puddles it does not deign.
Nesting in the poplar of pearls
It spies and questions green birds twain:
"Don't you fear the threat of slings,
Perched on top of branches so high?
Nice clothes invite pointing fingers,
High climbers god's good will defy.
Bird-hunters will crave me in vain,
For I roam the limitless sky." ?

All five volumes of the anthology may be downloaded for reading and listening from the [LibriVox website](#).

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