




Friday, 15 November 2019

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)

Vella v Commissioner of Police (NSW) (HCA) - constitutional law - criminal law - questions stated for Full Court's opinion - s5(1) *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW) not invalid due to inconsistency with or prohibition by Ch III Constitution (I B C G)

Fennell v The Queen (HCA) - criminal law - murder - 'extremely weak' case on opportunity and motive - 'glaringly improbably' evidence identifying alleged 'murder weapon' - appeal allowed - conviction quashed - acquittal verdict entered (I B C G)

MMD Design and Consultancy Limited v Camco Engineering Pty Ltd (FCA) - patent - preliminary discovery - 'prospective applicants' sought preliminary discovery from 'prospective respondent' - application granted with respect to certain document categories and subject to confidentiality regime (I B)

The Wilderness Society (Tasmania) Inc v Minister for the Environment (FCA) - environmental law - erroneous decision that 'proposed action' was not 'a controlled action' for purposes of *Environment Protection and Biodiversity Conservation Act 1999* (Cth) - notice set aside (I B C G)

Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd (No 6) (FCA) - evidence - objections to expert report concerning 'seaweed industry in Indonesia' - rulings on objections made - report admitted to evidence subject to rulings (I B)

Murray v Raynor (NSWCA) - defamation - defence of qualified privilege established - malice not established - damages 'manifestly excessive' - appeal allowed (I)

BI (Contracting) Pty Ltd v David Jones Ltd (SASCFC) - workers compensation - respondent claimed contribution from appellant following settlement of action brought by respondent's former employee against respondent - respondent entitled to recover 75% of its 'reasonable liability' - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Vella v Commissioner of Police (NSW) [2019] HCA 3

High Court of Australia

Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - criminal law - stated questions for Full Court's opinion - whether s5(1) *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW) (CSCPO Act) invalid, wholly or in part, due to its inconsistency with and prohibition by Ch III Constitution (first question) - if first question answered in affirmative, extent to which s5(1) CSCPO Act invalid and whether 'that part of the subsection' severable from CSCPO Act's remainder (second question) - who should pay special case's costs (third question) - statutory construction - *Kable v Director of Public Prosecutions* (NSW) [1996] HCA 24 - 'Kable principle' - held: first question answered in the negative - 'unnecessary to answer' second question - plaintiffs to pay special case's costs.

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

Fennell v The Queen [2019] HCA 37

High Court of Australia

Kiefel CJ; Keane, Nettle, Gordon & Edelman JJ

Criminal law - appellant convicted of murder - Court of Appeal of the Supreme Court of Queensland dismissed appeal - appellant appealed, contending verdict unreasonable or could not be support with regard to evidence - strength of evidence concerning 'opportunity and motive' - strength of 'identification evidence' in respect of alleged 'murder weapon' - s668E(1) *Criminal Code* (Qld) - held: Crown's case on opportunity and motive was 'extremely weak' - evidence identifying alleged murder weapon 'glaringly improbable' - appeal allowed - conviction quashed - acquittal verdict entered.

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

MMD Design and Consultancy Limited v Camco Engineering Pty Ltd [2019] FCA 1803

Federal Court of Australia

O'Bryan J

Patent - preliminary discovery - 'prospective applicants', under r7.23 *Federal Court Rules 2011* (Cth), sought preliminary discovery from 'prospective respondent' - preliminary discovery sought

in order to discover whether, 'by repairing the "tooth" component of mineral breakers used' at mine sites, prospective respondent had infringed patent held by first prospective applicant and 'licensed exclusively' to second prospective applicant - held: application granted with respect to certain document categories and subject to confidentiality regime.

[MMD Design](#) (I B)

The Wilderness Society (Tasmania) Inc v Minister for the Environment [2019] FCA 1842

Federal Court of Australia

Mortimer J

Environmental law - respondent's delegate found that 'proposed action' by company ('Wild Drake') was not 'a controlled action' for purposes of *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBCA Act) - whether erroneous reliance on impact assessment which Tasmanian Parks and Wildlife Service conducted under "Reserve Activity Assessment" process - whether erroneous failure to consider ss77A and 74A EPBCA Act - held: application 'substantially' succeeded - notice concerning delegate's decision that actions was not a controlled action set aside.

[The Wilderness Society](#) (I B C G)

Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd (No 6) [2019] FCA 1853

Federal Court of Australia

Yates J

Evidence - proceedings concerned objections to expert report concerning 'seaweed industry in Indonesia' - 'hearsay objections' - whether opinion 'not wholly or substantially based on' expert's 'specialised knowledge' - whether evidence had 'probative value' - inadmissibility objections - 'large number of miscellaneous objections - ss79(1), 135, 190(3) & 190(4) *Evidence Act 1995* (Cth) - held: rulings on objections made - report admitted to evidence subject to rulings.

[Sanda](#) (I B)

Murray v Raynor [2019] NSWCA 274

Court of Appeal of New South Wales

Macfarlan & Payne JJA; Emmett AJA

Defamation - respondent sued appellant, contending email sent by appellant was defamatory of respondent - primary judge upheld respondent's claim - respondent awarded \$120,000 - appellant had relied on qualified privilege defence - primary judge had found there was 'occasion of privilege' to which communications relevant - however primary judge found malice on appellant's part such that qualified privilege defence was unavailable - identification of 'privileged occasion' - defamatory statements' relevance to privileged occasion - whether malice established - whether quantum of damages 'manifestly excessive' - ss34 & 35 *Defamation Act 2005* (NSW) - held: malice not proved - defence of qualified privilege was established - award of damages manifestly excessive - aggravated damages not warranted - appeal allowed.

[View Decision](#) (I)

BI (Contracting) Pty Ltd v David Jones Ltd [2019] SASCFC 138

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Hinton JJ

Workers compensation - respondent's former employee brought claim against respondent for personal injury arising from asbestos exposure in course of employment - action settled - respondent paid amount to former employee - respondent, pursuant to s6 *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), brought action seeking contribution from appellant - primary judge found that respondent was entitled to recovery of 75% of its 'reasonable liability' - appellant sought extension of time to appeal - appellant contended respondent did not establish former employee had been exposed to asbestos which appellant sprayed - appellant also contended that primary judge applied 'incorrect legal test' in finding respondent proved 'quantum of it alleged loss' - held: appeal dismissed.

[BI \(Contracting\)](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

From: Lines Written in Kensington Gardens

By: Matthew Arnold

In this lone, open glade I lie,
Screen'd by deep boughs on either hand;
And at its end, to stay the eye,
Those black-crown'd, red-boled pine-trees stand!

Birds here make song, each bird has his,
Across the girdling city's hum.
How green under the boughs it is!
How thick the tremulous sheep-cries come!

Sometimes a child will cross the glade
To take his nurse his broken toy;
Sometimes a thrush flit overhead
Deep in her unknown day's employ.

Here at my feet what wonders pass,
What endless, active life is here!
What blowing daisies, fragrant grass!
An air-stirr'd forest, fresh and clear.

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

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