



Friday, 15 December 2017

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Tiuta International Limited (in liquidation) (Respondent) v De Villiers Surveyors Limited (Appellant)** (UKSC) - negligence - claim by lender against surveyors - negligent valuations in respect of loan facility - limit of loss - quantum of damages - measure of damages - surveyors' appeal allowed (I B C G)

**Regional Express Holdings Limited v Australian Federation of Air Pilots** (HCA) - industrial relations - statutory interpretation - standing - refusal of summary dismissal of claim seeking imposition of pecuniary penalty orders for contraventions of under item 11 of table in s539(2) *Fair Work Act 2009* (Cth) - appeal dismissed (I B C G)

**Innes v AAL Aviation Limited** (FCAFC) - superannuation - negligence - limitations - no error in dismissal of negligent misstatement and negligence claims - appeal dismissed - notice of contention dismissed (I B C G)

**Perazzoli v BankSA, a division of Westpac Banking Corporation Limited** (FCAFC) - legal professional privilege - class action - appeal against part-refusal of claim for legal professional privilege in respect of documents - appeal allowed - cross-appeal dismissed (I B C G)

**Dandaloo Pty Ltd v Iali** (NSWSC) - contract for sale of land - summary judgment refused - default judgment and specific performance orders granted (I B C G)

**Collier v Country Women's Association of NSW (No 2)** (NSWFC)- costs - indemnity costs granted under s40 *Defamation Act 2005* (NSW) in defamation proceedings and r42.15A *Uniform Civil Procedure Rules 2005* (NSW) in equity proceedings (I B C G)

**SR Contracting Pty Ltd v Liberty Mutual Insurance Company** (WASC) - pleadings - limitations - insurance - application to amend writ refused (I B C G)

## Summaries With Link (Five Minute Read)

### **Tiuta International Limited (in liquidation) (Respondent) v De Villiers Surveyors Limited (Appellant) [2017] UKSC 77**

Supreme Court of the United Kingdom

Lady Hale, President; Lord Kerr, Lord Sumption, Lord Lloyd-Jones & Lord Briggs

Negligence - negligent valuations of property in respect of loan facility - respondent was lender of business finance which went into administration in 2012 - respondent sued appellant surveyors, contending they negligently valued a property over which it sought to 'take a charge to secure a loan' - appeal arose from appellant's application for summary judgment on part of respondent's claim - assumed for appeal's purposes that valuations in respect of 'Second Facility' were negligent and that advances under Second Facility would not have been made but for negligence - no negligence alleged in respect of 'First Valuation' - in summary judgment application appellant argued respondent would have suffered loss in any event because there would have been no sums advanced under Second Facility if not for negligence and, as a result, sums owed to respondent under First Facility would have remained unpaid - thus appellant sought dismissal of part of claim arising from 'refinancing element of the advances under the Second Facility' - Deputy High Court Judge found in appellant's favour - Court of Appeal allowed respondent's appeal - quantum of damages - identification of 'basic measure of damages' - whether respondent's loss limited to 'new money advanced under Second Facility' - held: appeal allowed.

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

### **Regional Express Holdings Limited v Australian Federation of Air Pilots [2017] HCA 55**

High Court of Australia

Kiefel CJ; Keane, Nettle, Gordon & Edelman JJ

Industrial relations - statutory interpretation - respondent sought that pecuniary penalty orders be imposed on appellant for contraventions under item 11 of table in s539(2) *Fair Work Act 2009* (Cth) - appellant sought summary dismissal of claim on basis respondent lacked standing - Federal Circuit Court refused summary dismissal of claim - Full Court of the Federal Court dismissed appellant's appeal - appeal to High Court concerned question: 'whether the fact that a person is eligible for membership of an industrial association in accordance with its eligibility rules is sufficient to make the industrial association "entitled to represent the industrial interests of" that person within the meaning of s540(6)(b)(ii) of the Fair Work Act 2009 (Cth)' - *Dunlop*

# Benchmark

*Rubber principle* - 'entitled to represent the industrial interests of' - whether 540(6) Fair Work Act applied to registered organisations - held: Court concluded that it was sufficient in the case of an industrial association registered as organisation under *Fair Work (Registered Organisations) Act 2009* (Cth) - appeal dismissed.

[Regional Express](#) (I B C G)

## **Innes v AAL Aviation Limited [2017] FCAFC 202**

Full Court of the Federal Court of Australia

Tracey, Bromberg & White JJ

Superannuation - negligence - limitations - appellants employed by company (TAA) and then employed by company (Qantas) - appellants retrenched - appellants contended they were given 'incorrect advice and information' about ability to join superannuation schemes with result they had less entitlements than they would have had benefit of - appellants claimed against respondent including for negligent misstatement and negligence, misleading or deceptive conduct, unconscionable conduct, breach employment contracts and deceit - all claims failed - whether primary judge came to erroneous conclusion on negligent misstatement and negligence claims, and also erred indicating he would have found appellants failed to mitigate loss - whether primary judge should have found claims statute-barred - held: appeal and notice of contention dismissed.

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

## **Perazzoli v BankSA, a division of Westpac Banking Corporation Limited [2017] FCAFC 204**

Full Court of the Federal Court of Australia

Perram, Foster & Murphy JJ

Legal professional privilege - appellants brought class action under Part IVA *Federal Court of Australia Act 1976* (Cth) representing people who advanced money to private lender (Adelaide Lending Centre) which was allegedly a Ponzi scheme - appellants appealed against interlocutory judgment partly refusing their legal professional privilege claims - respondents' cross-appeal concerned documents for which privilege claims were allowed - primary judge had refused privilege claims in respect of document which came into existence before certain date but allowed claims in respect of documents which came into existence after that date - whether primary judge erroneously concluded that certain documents did not attract legal professional privilege under 'legal advice' or 'litigation' heads - held: appeal allowed - cross-appeal dismissed.

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

## **Dandaloo Pty Ltd v Iali [2017] NSWSC 1738**

Supreme Court of New South Wales

Darke J

Summary judgment - specific performance - plaintiff sought specific performance or default judgment in proceedings - plaintiff claimed it made contract for sale of land with first defendant -

# Benchmark

plaintiff sought specific performance of contract and ancillary relief - first defendant became bankrupt - third defendant appointed trustee of bankrupt estate (trustee) - trustee served with statement of claim, had taken no steps and did not oppose relief sought by plaintiff - second defendant bank had mortgage over land - bank and plaintiff reached agreement that plaintiff would not disturb bank's priority if bank 'did everything necessary to enable settlement of the contract for sale' - held: proceedings' outcome not so certain to warrant summary judgment - default judgment entered in plaintiff's favour against third defendant under r16.10 *Uniform Civil Procedure Rules 2005* (NSW) - orders for specific performance granted.

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

## **Collier v Country Women's Association of NSW (No 2) [2017] NSWSC 1729**

Supreme Court of New South Wales

Adamson J

Costs - defamation - Court made orders in defamation proceedings and equity proceedings - defendant sought indemnity costs of whole proceedings under s40 *Defamation Act 2005* (NSW) or that plaintiff should pay indemnity costs due to offers of compromise and Calderbank offers - interests of justice - held: plaintiff unreasonably failed to accept defendant's offers within s40(2)(b) *Defamation Act* in defamation proceedings - not in interests of justice to require plaintiff to pay defendant's costs on indemnity basis from proceedings' commencement - plaintiff to pay indemnity costs from date of offer - in equity proceedings, defendant made offer which plaintiff did not accept, and defendant had obtained judgment not less favourable to it than offer's terms - plaintiff to pay defendants costs from date of offer pursuant to r42.15A *Uniform Civil Procedure Rules 2005* (NSW) - indemnity costs granted.

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

## **SR Contracting Pty Ltd v Liberty Mutual Insurance Company [2017] WASC 359**

Supreme Court of Western Australia

Allanson J

Pleadings - limitations - claims under two insurance contracts - plaintiffs sought to amend writ - whether proposed amended writ added new cause of action - whether action statute-barred - O21 r1 & O21 r5 *Rules of the Supreme Court 1971* (WA) - held: proposed amended writ added indemnity claim and damages claim under different insurance policy - proposed amended writ added new cause or causes of action - plaintiff's case statute-barred - proposed amended writ and evidence patently inconsistent with plaintiffs' proposed pleaded case - application to amend writ refused.

[SR Contract Pty Ltd](#) (I B C G)

## CRIMINAL

### Executive Summary



# Benchmark

**Director of Public Prosecutions (Cth) v Beattie** (NSWCCA) - criminal law - sexual offences against children - Crown appeal against adequacy of sentences for offences against s272.8(2) *Criminal Code 1995* (Cth) - appeal allowed

**DPP v Dalgliesh (a Pseudonym)** (VSCA) - criminal law - sexual offences against children - sentence for charge of incest was manifestly inadequate - new sentence, new total effective sentence and new non-parole period imposed - appeal allowed

## Summaries With Link

### **Director of Public Prosecutions (Cth) v Beattie [2017] NSWCCA 301**

Court of Criminal Appeal of New South Wales

Basten JA, Walton & Price JJ

Criminal law - sentence appeal - sexual offences against children - appeal by Crown under s5D *Criminal Appeal Act 1912* (NSW) against sentences for offences in breach of s272.8(2) *Criminal Code 1995* (Cth) - possession of child abuse material - causing child to engage in sexual intercourse and sexual activity in respondent's presence - *De Simoni* principle - principle of totality - whether sentences manifestly inadequate - *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth) - held: Crown appeal allowed.

[View Decision](#)

### **DPP v Dalgliesh (a Pseudonym) [2017] VSCA 360**

Court of Appeal of Victoria

Ferguson CJ; Weinberg & Whelan JJ

Criminal law - sentence appeal - child sexual abuse - parent - child incest resulting in pregnancy - respondent pleaded guilty to four charges involving sexual abuse of two girls - Director contended sentence on charge 1 manifestly inadequate and cumulation orders resulted in manifestly inadequate total effective sentence - Court of Appeal dismissed Director's appeal - High Court of Australia allowed appeal against dismissal and remitted matter to be heard again - whether sentence on charge 1 (incest) was manifestly inadequate - held: appeal allowed - new sentence on charge 1, new total effective sentence and new non-parole period imposed.

[Dalgliesh](#)



# Benchmark

## Sonnet 59

**By:** William Shakespeare

If there be nothing new, but that which is  
Hath been before, how are our brains beguil'd,  
Which, labouring for invention, bear amiss  
The second burthen of a former child!  
O, that record could with a backward look,  
Even of five hundred courses of the sun,  
Show me your image in some antique book,  
Since mind at first in character was done!  
That I might see what the old world could say  
To this composed wonder of your frame;  
Whether we are mended, or whe'r better they,  
Or whether revolution be the same.  
O! sure I am, the wits of former days  
To subjects worse have given admiring praise.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

[Click Here to access our Benchmark Search Engine](#)