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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Legal Services Board v Gillespie-Jones (HCA) - legal practitioners - barristers fees - claim against Fidelity Fund - no relevant pecuniary loss - appeal allowed (I, G)

Channel Seven Adelaide Pty Ltd v Australian Communications and Media Authority (FCA) - judicial review - broadcast segment was a *tobacco advertisement* - application dismissed (G)

Peters v Comcare (FCA) - administrative law - compensation claim rejected - extension of time to appeal - applicant to pay respondent's costs (I, G)



Josifovski as Administrator of the estates of the late Veleviski and the late Veleviska v Veleviski (NSWSC) - wills and estates - man who murdered wife held her interest in property on trust for administrator of estate (B)

Dank v Cronulla-Sutherland District Rugby League Football Club (NSWSC) - defamation - pleadings struck out - opportunity to draft further form of interrogatory (I)

Mashane Pty Ltd v Owners Corporation RN 328577 (VSC) - owners corporation permitted to levy costs of balcony works from lot-holder without balcony - appeal dismissed (C)

Russell v Win Corporation Pty Ltd, Nine Network Australia Pty Ltd, McKinnon and Bailey (ACTSC) - defamation - pleadings - no real or sufficient difference in substance between two imputations - imputation struck out (I)

Summaries with links (5 minute read)

Legal Services Board v Gillespie-Jones [2013] HCA 35

High Court of Australia

French CJ; Hayne, Crennan, Kiefel, Bell, Gageler & Keane JJ

Legal practitioners - barristers' fees - barrister briefed in criminal proceedings - client made payments to solicitor for barrister's fees - solicitor misappropriated money leaving insufficient funds to pay barrister - barrister claimed compensation from Legal Practitioners Fidelity Fund under Pt 3.6 *Legal Profession Act 2004* (Vic) on basis he suffered pecuniary loss as a result of solicitor's default - Legal Services Board rejected claim - respondent successfully appealed to County Court - Court of Appeal upheld decision - held: barrister did not suffer relevant pecuniary loss - there could be no failure to pay or deliver trust money unless client instructed solicitor to pay or deliver it and instruction was not complied with - County Court made no finding that client's instructions to solicitor amounted to instruction to pay barrister - High Court could not revisit County Court's findings - appeal allowed.

[Legal Services Board](#) (I, G)

Channel Seven Adelaide Pty Ltd v Australian Communications and Media Authority [2013] FCA 812

Federal Court of Australia

Yates J

Administrative law - applicant held commercial television broadcasting licence under Pt4 *Broadcasting Services Act 1992* (Cth)(BSA) - applicant broadcast segment concerning importation and sale of budget brand cigarettes - respondent found segment was a tobacco advertisement broadcast in contravention of s13 *Tobacco Advertising Prohibition Act 1992* (Cth) constituting a breach of licence condition in Sch 2, cl 7(1)(a) BSA - applicant sought judicial review of decision under s5 *Administrative Decisions (Judicial Review) Act 1977* (Cth) and s39B *Judiciary Act 1903* (Cth) - tobacco advertisement - incidental accompaniment - promotion - exception for political discourse - held: applicant failed to establish error in respondent's decision - application for judicial review dismissed.

[Channel Seven Adelaide Pty Ltd](#) (G)

Peters v Comcare [2013] FCA 808

Federal Court of Australia

Bromberg J

Administrative law - costs - employee of Australian Taxation Officer made claim for compensation under *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) which respondent rejected - applicant applied to Administrative Appeals Tribunal for review - AAT affirmed respondent's decision - applicant sought to appeal pursuant to s44 *Administrative Appeals Tribunal Act 1975* (Cth) but failed to institute appeal within time limit under s44(2A) AAT Act - factors relevant to exercise of discretion to extend time - held: explanation for delay supported grant of extension of time - no prejudice to respondent - arguable case that AAT misconstrued exclusion in s5A(1) SRC Act and that as a result decision was tainted by legal error - appropriate to grant of extension of time - good reason to depart from ordinary rule as to costs - applicant to pay respondent's costs of application.

[Peters](#) (I, G)



Josifovski as Administrator of the estates of the late Velevski and the late Velevska v Velevski [2013] NSWSC 1103

Supreme Court of New South Wales

Kunc J

Wills and estates - defendant was registered proprietor of land as joint tenant with his wife - defendant was convicted of murdering wife and their infant children - plaintiff was wife's father and administrator of her estate - plaintiff invoked forfeiture rule, seeking declarations and consequential relief that defendant held wife's interest in property on trust for plaintiff as administrator of her estate and that plaintiff be appointed trustee for sale of property - re-proof of defendant's guilt to civil standard - application of forfeiture rule - intestate succession provisions - held: plaintiff entitled to relief sought in summons - declarations and order for sale made.

[Josifovski](#) (B)

Dank v Cronulla-Sutherland District Rugby League Football Club [2013] NSWSC 1101

Supreme Court of New South Wales

McCallum J

Defamation - interrogatories - plaintiff commenced proceedings for defamation arising out of allegations he administered performance-enhancing substances to footballers - club and its former chairman sought to have statement of claim against them struck out on basis it was embarrassing - plaintiff, in event pleadings struck out, sought order under r22.1 *Uniform Civil Procedure Rules 2005* (NSW) that defendants answer interrogatories in form sent - ss56 & 58 *Civil Procedure Act 2005* (NSW) - held: particulars plainly incapable of sustaining allegation of liability as original publisher - pleading of oral publication was embarrassing because it did not provide the whole of any single publication sought to be sued on, or the context - particulars and pleading struck out - current form of interrogatory inadequate - plaintiff given opportunity to draft further form of interrogatory.

[Dank](#) (I)

Mashane Pty Ltd v Owners Corporation RN 328577 [2013] VSC 417

Supreme Court of Victoria

Macaulay J

Administrative law - owners corporation - applicant owned apartment g - owners corporation resolved to use funds derived from contributions from apartment owners to pay for works done to balconies - applicant did not have a balcony and objected to contributing to cost - Victorian Civil and Administrative Tribunal dismissed application to set aside resolutions and to require



owners corporation to levy whole cost only from lot owners who had balconies - applicant sought leave to appeal pursuant to s148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - construction of *Owners Corporation Act 2006* (Vic) - operation of benefit principle in ss28(3) & 49(2) of the Act in relation to payment of money out of maintenance fund - fee levying principle - fund payout principle - held: leave to appeal granted - grounds of appeal raised for decision on questions of law rejected - appeal dismissed.

[Mashane Pty Ltd](#) (C)

Russell v Win Corporation Pty Ltd, Nine Network Australia Pty Ltd, McKinnon and Bailey
[2013] ACTSC 159

Supreme Court of the Australian Capital Territory

Burns J

Defamation - pleadings - plaintiff claimed damages for defamation arising out of material published on television program - defendants were licensee of television station, producer and distributor of program and presenters on program - defendants sought orders striking out paragraphs of statement of claim pursuant to r425 *Court Procedures Act 2006* (ACT) - held: court satisfied there was no real or sufficient difference in substance between two imputations - one imputation struck out - three other imputations allowed on grounds they raised, or potentially raised, different issues - orders made.

[Russell](#) (I)

Summer Moods

by John Clare

I love at eventide to walk alone
Down narrow lanes o'erhung with dewy thorn
Where from the long grass underneath, the snail,
Jet black, creeps out and sprouts his timid horn.
I love to muse o'er meadows newly mown
Where withering grass perfumes the sultry air;
Where bees search round, with sad and weary drone
In vain for flowers that bloomed but newly there;
While in the juicy corn the hidden quail
Cries "wet my foot!" and hid as thoughts unborn;
The fairy-like and seldom-seen landrail
Utters "craik, craik" like voices underground,
Right glad to meet the evening's dewy veil
And see the light fade into gloom around.

[John Clare](#)

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