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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)

State of New South Wales v Wraydeh (NSWCA) - defamation - pleadings - defences - primary judge permitted respondent to amend pleading to adopt 'two contextual imputations' - appeal dismissed (I)

Mekhail v Hana; Mekail v Hana (NSWCA) - wills and estates - succession - probate - two 'competing wills' - Court granted probate of 2014 will - onus - appeals allowed - probate of 2001 will granted (B)

Re Lapalme; Daley v Leeton (VSC) - wills and estates - judicial advice - construction of will - eligibility for inclusion in 'class of beneficiaries' - questions determined (B)

Kowalski v Sim & Ors (SASCFC) - limitations - professional negligence - 16-year extension of time to file or reinstate appeal refused (I B C G)

Ballantyne v National Heavy Vehicle Regulator (SASC) - statutory interpretation - appellant convicted of offence contrary to s250(1)(a) *Heavy Vehicle National Law (South Australia) Act 2013* (SA) - appeal dismissed (I B)

Porter v Steinberg (WASC) - contempt - failure to comply with order of State Administrative Tribunal - contumacious contempt established - declaration and orders made (I B C G)

Pidcock v Milosis (ACTSC) - negligence - motor vehicle collision - damages - breach of duty admitted - judgment for plaintiff in sum of \$218,045.25 (I)

Summaries With Link (Five Minute Read)

State of New South Wales v Wraydeh [2019] NSWCA 192

Court of Appeal of New South Wales

McCallum JA; Emmett & Simpson AJJA

Defamation - pleadings - defences - 'contextual imputations' - respondent brought proceedings against appellant, contending police officer published material defamatory of him - appellant's defence relied on s26 *Defamation Act 2005* (NSW) - respondent sought to amend pleading to adopt 'two contextual imputations' - primary judge allowed amendment - appellant sought to appeal - sufficiency of evidence - 'good faith' - 'abuse of process' - significance of 'prior convictions' - held: appeal dismissed.

[View Decision](#) (I)

Mekhail v Hana; Mekail v Hana [2019] NSWCA 197

Court of Appeal of New South Wales

Basten & Leeming JJA; Emmett AJA

Wills and estates - two appeals - proceedings concerned question of which of two 'competing wills' (2001 will and 2014 will) of deceased Court should admit to probate - primary judge granted probate of 2014 will to respondent and dismissed appellants' cross-claim seeking that Court grant probate of 2001 will to New South Wales Trustee & Guardian - primary judge also dismissed appellants' application, under *Succession Act 2006* (NSW), for family provision orders - Court also found no basis to justify deceased's transfer of property to Ms Hana prior to death - appellants appealed - whether to admit 2014 will to probate - "suspicious circumstances" - "testamentary capacity" - "knowledge and approval" - onus - whether erroneous refusal of family provision order - *Gill v Woodall* [2011] Ch 380; [2010] EWCA Civ 1430 - held: probate of 2001 will granted - appeal allowed.

[View Decision](#) (B)

Re Lapalme; Daley v Leeton [2019] VSC 534

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiff, represented by litigation guardian, was deceased's 'minor grandchild' - plaintiff sought judicial advice on construction of will - judicial advice sought in relation to questions concerning who was 'eligible to be considered' as part of 'class of beneficiaries' which the words 'those of my grandchildren as shall survive me and attain the age of eighteen (18) years' created - whether 'en ventre sa mère' applied - 'class-closing principle' - 'survive' - held: questions answered.

[Re Lapalme](#) (B)

Kowalski v Sim & Ors [2019] SASCFC 96

Full Court of the Supreme Court of South Australia
Kourakis CJ; Peek & Parker JJ

Limitations - professional negligence - primary judge dismissed appellant's claim against respondent in 2002 - appellant sought 16-year extension of time to file appeal or reinstate appeal dismissed for failure to set down for hearing - appellant had been previously declared a vexatious litigant, with declarations involving matters 'bearing on' present proceedings - ss117 & 296 *Supreme Court Rules* - delay - abuse of process - *Anshun* principles - whether explanation for delay - previous unsuccessful attempts to challenge judgment and to recover amount 'by other forms of litigation' - whether grounds of appeal "reasonably arguable" - oppression - held: extension of time refused.

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

Ballantyne v National Heavy Vehicle Regulator [2019] SASC 135

Supreme Court of South Australia
Peek J

Statutory interpretation - Heavy Vehicle National Law - statutory interpretation - appellant convicted of offence contrary to s250(1)(a) *Heavy Vehicle National Law (South Australia) Act 2013* (SA) due to working for more than 12 hours in a '24 hour period' which the prosecution specified - appellant appealed - *Heavy Vehicle (Fatigue Management) National Regulation* - 'critical risk breach' - *Police v Barnes (Barnes)* (2017) 129 SASR 575 - whether prosecution erroneously 'selected or calculated' 24 hour period - held: appeal dismissed.

[Ballantyne](#) (I B)

Porter v Steinberg [2019] WASC 291

Supreme Court of Western Australia
Tottle J

Contempt - applicant owned 'first floor unit' - 'first and second contemnors' owned 'Unit 2' - first contemnor admitted contempt by non-compliance with State Administrative Tribunal order - whether contempt allegations established - whether contempt contumacious - s86 *State Administrative Tribunal Act 2004 (WA)* - s98 *Civil Judgments Enforcement Act 2004 (WA)* - held: contumacious contempt established - declaration and orders made.

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

Pidcock v Milosis [2019] ACTSC 209

Supreme Court of the Australian Capital Territory
Murrell CJ

Negligence - motor vehicle accident - vehicle driven by first defendant collided with rear of plaintiff's vehicle - breach of duty of care admitted by defendants - defendants accepted that a 'temporary aggravation' of plaintiff's 'pre-existing condition' had been occasioned by collision - whether collision had caused injury to plaintiff's ankle - extent to which ankle injury had

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restricted plaintiff's activities given activities 'already restricted' by pre-existing condition - assessment of damages - pre-existing condition's impact on damages - *Seltsam Pty Ltd v Ghaleb* [2005] NSWCA 208 *Civil Law (Wrongs) Act 2002 (ACT)* - held: causation established - damages assessed - judgment for plaintiff in sum of \$218,045.25.

[Pidcock \(I\)](#)

CRIMINAL

Executive Summary

Summaries With Link

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Down By the Carib Sea (VI: Sunset in the Tropics)

By: James Weldon Johnson

A silver flash from the sinking sun,
Then a shot of crimson across the sky
That, bursting, lets a thousand colors fly
And riot among the clouds; they run,
Deepening in purple, flaming in gold,
Changing, and opening fold after fold,
Then fading through all of the tints of the rose into gray.
Till, taking quick fright at the coming night,
They rush out down the west,
In hurried quest
Of the fleeing day.

Now above where the tardiest color flares a moment yet,
One point of light, now two, now three are set
To form the starry stairs,—
And, in her firefly crown,
Queen Night, on velvet slippered feet, comes softly down.

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

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