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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

PT Bayan Resources TBK v BCBC Singapore Pte Ltd (HCA) - contract - freezing orders - Supreme Court of Western Australia had power to make freezing order in relation to prospective judgment of foreign court - appeal dismissed (I B C)

Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd (HCA) - contract - construction of contract - ore mined in Mount Bruce Mining Pty Ltd's (MBM's) area by entities deriving title through or under MBM - MBM obliged to pay royalty to respondents - appeal dismissed (I B C)

Lawrence v Gunner (NSWCA) - stay - possession - residential tenancies - remittal of proceedings - money judgment - stay of certain orders of primary judge granted - application otherwise dismissed (I B C G)

Roberts v Moses (NSWSC) - wills and estates - succession - application for interim family provision - letters of administration pendente lite granted and maintenance distribution ordered (B)

O'Brien v Luscombe (NSWSC) - wills and estates - succession - extension of time refused to bring application for provision outside prescribed period (B)

Robinson v Robinson (NSWSC) - contract - oppression - separate question as to existence of accord and satisfaction answered in negative (B C)

Diploma Construction (WA) Pty Ltd v CIMC Modular Building Systems (Australia) Pty Ltd (WASC) - subpoena - insurer's objection to inspection of insurance policy dismissed (I B C)

Summaries With Link (Five Minute Read)

PT Bayan Resources TBK v BCBC Singapore Pte Ltd [2015] HCA 36

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Freezing orders - corporations - appellant incorporated in Indonesia - appellant owned shares in Australian company (KRL) - respondent incorporated in Singapore - parties owned all shares in company incorporated in Indonesia (KSC) - parties rights as shareholders in KSC subject of joint venture agreement governed by law of Singapore - respondent commenced proceedings against appellant in High Court of Singapore claiming damages for breach of joint venture agreement - proceeding was pending - BCBC sought freezing orders against appellant and KRL in respect of appellant's shares in KRL - freezing orders sought in Supreme Court of Western Australia pursuant to O 52A *Supreme Court Rules 1971 (WA)* - whether Supreme Court of Western Australia had power to make freezing order in relation to prospective judgment of foreign court registrable under *Foreign Judgments Act 1991 (Cth)* - held: Supreme Court had inherent power to make freezing order within authority to adjudicate conferred by s39(2) *Judiciary Act 1903 (Cth)* - exercise of power regulated by O 52A r5 validly made under s167(1)(a) *Supreme Court Act 1935 (WA)* and applied by S79 *Judiciary Act* - no inconsistency with *Foreign Judgments Act* - appeal dismissed.

[PT Bayan](#) (I B C)

Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd [2015] HCA 37

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Contract - Wright Prospecting Pty Ltd (WPPL), Hancock Prospecting Pty Ltd (HPPL) (together Hanwright), Hamersley Iron Pty Ltd (Hamersley Iron) and appellant (MBM) entered agreement (1970 Agreement) - dispute concerned construction of provision agreement in respect of payment of royalties by MBM in relation to ore mined from areas of land subject of agreement - Hanwright commenced proceedings against Hamersley Iron and MBM in Supreme Court of New South Wales - Hanwright claimed royalties payable by MBM in respect of iron ore won from two areas (Eastern Range and Channar) - trial judge upheld Hanwright's claim against MBM - Court of Appeal of New South Wales allowed appeal in part - whether Eastern Range and Channar A were within MBM area - if yes then whether ore mined in those parts of MBM area was mined by entities "deriving title through or under" MBM - common ground that if Eastern Range within MBM area then royalty payable - ss48, 50, 53, 276 & 277 *Mining Act 1904 (WA)* - held: "MBM area" in 1970 Agreement was physical area indicated on map attached to 1970 Agreement - Ore had been mined in MBM area (which included Eastern Range and

Channar A) by entities deriving title through or under MBM - MBM obliged, under 1970 Agreement to pay Hanwright a royalty on ore being won from MBM area - appeal dismissed.

[Mount Bruce](#) (I B C)

Lawrence v Gunner [2015] NSWCA 322

Court of Appeal of New South Wales

Gleeson JA

Stay - applicants sought for stay of decisions made by primary judge pending appeal - first judgment concerned remittal to New South Wales Civil and Administrative Tribunal of Consumer Traders and Tenancy Tribunal proceedings for making orders terminating residential tenancy agreement and for possession of property - second judgment was money judgment made against applicants for \$315,000 for breach of fiduciary duty in relation to sale of property - whether proper basis for stay established - balance of convenience - held: Court satisfied it was appropriate to grant stay of money judgment insofar as it exceeded \$15,000 and interest - stay not granted in respect of other orders.

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

Roberts v Moses [2015] NSWSC 1504

Supreme Court of New South Wales

Kunc J

Wills and estates - succession - plaintiff was niece of deceased and beneficiary of deceased's estate - plaintiff sought interim family provision order - held: plaintiff was totally financially dependent on deceased and undoubtedly beneficiary of estate - plaintiff was in considerable urgent financial need - Court satisfied interim distribution should be made if proper basis could be identified - proper basis for present action in plaintiff's favour was s92A *Probate and Administration Act 1898* (NSW) - letters of administration pendente lite granted - maintenance distribution ordered

[Roberts](#) (B)

O'Brien v Luscombe [2015] NSWSC 140

Supreme Court of New South Wales

Slattery J

Wills and estates - succession - deceased died in 2005 - plaintiff step-child of deceased sought order for provision out of deceased's estate pursuant to s7 *Family Provision Act 1982* (NSW) - application commenced almost eight years after expiration of limitation period - plaintiff sought extension of time for bringing application under s 16(2) - held: plaintiff was eligible person under Act - but for delay, a legacy in certain amount may have been appropriate - claim would not qualify as "special circumstances" allowing designation of notional estate when time extended - application well out of time - delay principally explained by plaintiff's unreasonable and imprudent conduct - there would be prejudice to defendant if extension of time granted - time not extended - claim dismissed.

[O'Brien](#) (B)

Robinson v Robinson [2015] NSWSC 1503

Supreme Court of New South Wales

Darke J

Contract - oppression suit - determination of separate question whether accord and satisfaction reached in relation to claims made in proceedings - plaintiff contended such accord and satisfaction involved obligation on or more active defendants to acquire his shares in corporate defendants for fair value as determined by Court - ss232 & 233 *Corporations Act 2001* (Cth) - held: Court not satisfied accord and satisfaction reached - not demonstrated parties reached agreement whereby they would give up respective claims in consideration of mutual promises for purchase and sale of plaintiff's shares in corporate defendants for fair value - separate question answered in the negative.

[Robinson](#) (B C)

Diploma Construction (WA) Pty Ltd v CIMC Modular Building Systems (Australia) Pty Ltd [2015] WASC 384

Supreme Court of Western Australia

Allanson J

Subpoena - plaintiff claimed damages and indemnity for loss, damage and expenses from defendant alleging breach of contract and common law duties - defendant filed defence and counterclaim - insurer obliged by subpoena to produce all policies of insurance maintained under general condition of contract - insurer produced one policy and copy with parts obscured - defendant objected to inspection and copying of policy but not to inspection of redacted copy - masking done to enable reader of redacted copy to see what categories of information deleted - objection based on commercial sensitivity and irrelevance of obscured material - onus - held: no question policy relevant and plaintiff had legitimate forensic purpose - edited information related to identity of party and terms of commercial agreement - no evidence insurer was trade rival of either party to action - no evidence of any prejudice to insurer if inspection permitted - general claim that masked content was commercially sensitive not enough - objection to inspection dismissed.

[Diploma](#)

CRIMINAL

Executive Summary

R v Ali (QCA) - criminal law - unlawfully and indecently dealing with teenage boy - failure to give direction to jury when video recording containing complainant's evidence-in-chief replayed - substantial miscarriage of justice - appeal allowed - conviction set aside - retrial

Keenan v The Queen (ACTCA) - criminal law - armed robbery - trial judge did not err in ordering appellant to be hand-cuffed during trial - no miscarriage of justice - verdict not unreasonable - appeal dismissed

Summaries With Link

R v Ali [2015] QCA 191

Court of Appeal of Queensland

Gotterson JA; P McMurdo & P Lyons JJ

Criminal law - appellant convicted of offence against s210(1)(a) *Criminal Code* (Qld) of unlawfully and indecently dealing with a teenage boy who was then 14 years old - appellant sentenced to release on entering into recognisance in amount \$200 on condition he keep peace and be of good behaviour for two years - appellant appealed against conviction - held: respondent properly conceded ground of appeal concerning trial judge's failure to direct the jury when video recording of interview, tendered pursuant to s93A *Evidence Act 1977* (Qld), was replayed at jury's request, not to place undue weight on it - interview contained complainant's evidence-in-chief - respondent further conceded failure to give direction was substantial miscarriage of justice - appeal allowed in conformity with s668E(1) of the Code - conviction set aside - retrial ordered.

[Ali](#)

Keenan v The Queen [2015] ACTCA 52

Court of Appeal of the Australian Capital Territory

Refshauge ACJ; Penfold & North JJ

Criminal law - appellant found guilty of armed robbery by jury - appellant appealed against conviction - s370(2) *Supreme Court Act 1933* (ACT) - ss23A(6) & 23F *Crimes Act 1914* (Cth) - s 138 *Evidence Act 2011* (ACT) - s43 *Evidence (Miscellaneous Provisions) Act 1991* (ACT) - held: Court not satisfied jury's verdict unreasonable or could not be supported having regard to evidence - Court not satisfied trial judge made wrong decision on question of law in ordering appellant to be handcuffed or in what trial judge said to the jury about the matter - no miscarriage of justice as result of appellant being handcuffed during trial or on any other ground - appeal dismissed.

[Keenan](#)

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La Belle Dame sans Merci: A Ballad

By John Keats

O what can ail thee, knight-at-arms,
Alone and palely loitering?
The sedge has withered from the lake,
And no birds sing.

O what can ail thee, knight-at-arms,
So haggard and so woe-begone?
The squirrel's granary is full,
And the harvest's done.

I see a lily on thy brow,
With anguish moist and fever-dew,
And on thy cheeks a fading rose
Fast withereth too.

I met a lady in the meads,
Full beautiful—a faery's child,
Her hair was long, her foot was light,
And her eyes were wild.

I made a garland for her head,
And bracelets too, and fragrant zone;
She looked at me as she did love,
And made sweet moan

I set her on my pacing steed,
And nothing else saw all day long,
For sidelong would she bend, and sing
A faery's song.

She found me roots of relish sweet,
And honey wild, and manna-dew,
And sure in language strange she said—
'I love thee true'.

She took me to her Elfin grot,
And there she wept and sighed full sore,
And there I shut her wild wild eyes
With kisses four.



Benchmark

And there she lullèd me asleep,
And there I dreamed—Ah! woe betide!—
The latest dream I ever dreamt
On the cold hill side.

I saw pale kings and princes too,
Pale warriors, death-pale were they all;
They cried—‘La Belle Dame sans Merci
Thee hath in thrall!’

I saw their starved lips in the gloam,
With horrid warning gapèd wide,
And I awoke and found me here,
On the cold hill’s side.

And this is why I sojourn here,
Alone and palely loitering,
Though the sedge is withered from the lake,
And no birds sing.

[John Keats](#)

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