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

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### Executive Summary (1 minute read)

**Croft v Sanders** (NSWCA) - wills and estates - probate - testamentary capacity - no error in primary judge's finding that deceased had testamentary capacity when making will - appeal dismissed (B)

**In the matter of Orinoco Gold Limited (subject to Deed of Company Arrangement)** (NSWSC) - corporations - application for leave to inspect company's books granted on conditions (I B C G)

**Attorney General for NSW v Peckham (Final)** (NSWSC) - mental health - plaintiff sought two-year extension of defendant's 'status as a forensic patient' - summons dismissed (I B C G)

**Dasame Developments Pty Ltd & Ors v Pakenham Racing Club Inc** (VSC) - interlocutory injunction - plaintiffs sought interlocutory injunctions to restrain defendant from constructing equine pool or permitting its construction - applications refused (I B C G)

**Dance v Jemeas Pty Ltd (No 2)** (QSC) - negligence - employer's duty of care - 'safe system of work' - plaintiff baker injured back in course of employment while - employer liable - judgment for plaintiff in sum of \$620,255.97 (I)

**Civmec Electrical & Instrumental Pty Ltd v Southern Cross Electrical Engineering Limited & Ors** (QSC) - security of payments - applicant sought declaration 'adjudication decision' was void or 'liable to be set aside' - application dismissed (I B C G)

**Kalhmera Pty Ltd v Planning for People Inc & Anor** (NTSC) - planning and environment - Tribunal revoked Development Consent Authority's determination to grant consent to 'applicant's proposed residential development' - leave to appeal refused (I B C G)

## Summaries With Link (Five Minute Read)

### **Croft v Sanders [2019] NSWCA 303**

Court of Appeal of New South Wales

Bathurst CJ; Gleeson & White JJA

Wills and estates - probate - testamentary capacity - respondents were executors named in deceased's will (October will) - appellants were 'substitute executors' named in 'earlier will' of deceased - appellants contended deceased lacked testamentary capacity when making October will - primary judge rejected appellants' contention and granted probate of October will to respondents - appellants appealed - 'lay evidence as to hallucinations or delusions' - 'contemporaneous medical evidence' - will's 'form and content' - whether 'underlying dementia' deprived deceased of testamentary capacity - whether deceased's 'hallucinatory or delusional beliefs' affected deceased's testamentary dispositions - held: appeal dismissed.

[View Decision](#) (B)

### **In the matter of Orinoco Gold Limited (subject to Deed of Company Arrangement) [2019] NSWSC 1771**

Supreme Court of New South Wales

Rees J

Corporations - applicant shareholder of company (Orinoco) made application under s247A *Corporations Act 2001* (Cth) (Corporations Act) for 'order to inspect' Orinoco's books - issues arising where company subject to deed of company arrangement - ss440D & 444E Corporations Act - Court's concern that deed administrators 'not be distracted from their tasks' - confidentiality - *In the matter of Tolco Pty Limited* [2016] NSWSC 1069 - held: Court satisfied to grant plaintiff access to 'books and records' once 'sunset date has passed' and on certain conditions - orders made.

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

### **Attorney General for NSW v Peckham (Final) [2019] NSWSC 1775**

Supreme Court of New South Wales

Cavanagh J

Mental health - plaintiff sought two year extension of defendant's 'status as a forensic patient' - whether Court satisfied to grant 'extension order' - whether 'unacceptable risk of causing serious harm to others' - onus - *Mental Health (Forensic Provisions) Act 1990* (NSW) - held: Court not satisfied to grant extension order - summons dismissed.

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

**Dasame Developments Pty Ltd & Ors v Pakenham Racing Club Inc [2019] VSC 816**

Supreme Court of Victoria

Macaulay J

Interlocutory injunction - damages - contract - equitable estoppel - misleading and deceptive conduct - plaintiffs claimed 'damages and permanent injunctions' against defendant to restrain defendant from constructing 'equine pool and other facilities at particular locations' on basis viability of plaintiffs' 'training centre' would be jeopardised by the constructions - plaintiffs sought interlocutory injunctions to restrain defendant from constructing equine pool or permitting its construction in particular location - whether serious question to be tried - balance of convenience - whether damages would be 'inadequate remedy' - held: interlocutory injunctions refused - applications refused.

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

**Dance v Jemeas Pty Ltd (No 2) [2019] QSC 303**

Supreme Court of Queensland

Crow J

Negligence - employer's duty of care - plaintiff baker injured back in course of employment while 'lifting a bowl with quad-mixture' - plaintiff sued defendant employer in negligence - 'safe system of work' - 'factual causation' - whether scope of defendant's liability extended to plaintiff's injury - whether contributory negligence - quantum - credit - whether 'false and misleading conduct' by plaintiff - ss305B, 305F, 305H, 306J, 306N, 306O & 306P *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: defendant negligent - no contributory negligence - plaintiff 'honest and credible' - judgment for plaintiff in sum of \$620,255.97.

[Dance](#) (I)

**Civmec Electrical & Instrumental Pty Ltd v Southern Cross Electrical Engineering Limited & Ors [2019] QSC 300**

Supreme Court of Queensland

Mullins J

Security of payments - first respondent made 'adjudication decision' under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) - applicant sought declaration that adjudication decision was void or 'liable to be set aside' due to adjudicator's refusal to consider applicant's submissions in 'adjudication response' - adjudicator found adjudication response had gone "well beyond" reasons given in payment schedule - held: jurisdictional error not established - application dismissed.

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

**Kalhmera Pty Ltd v Planning for People Inc & Anor [2019] NTSC 85**

Supreme Court of the Northern Territory

Barr J

Planning and environment - Northern Territory Civil and Administrative Tribunal revoked

Development Consent Authority's determination to grant consent to 'applicant's proposed residential development' - applicant sought to appeal - whether erroneous revocation of consent determination - 'specific use zone' - *Planning Act 1999* - *Northern Territory Civil and Administrative Tribunal Act 2014* - held: leave to appeal refused.

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

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