



Friday, 17 August 2018

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)

Australian Competition and Consumer Commission v LG Electronics Australia Pty Ltd (No 2) (FCAFC) - costs - consumer law - appellant partially successful in proceedings - respondent to pay 40% of appellants costs (I B C G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 7) (FCA) - costs - 'CITIC parties' succeeded in trial proceedings and appeal proceedings - applications by 'CITIC parties' for lump sum costs orders - applications granted (I B C G)

Hunter Quarries Pty Ltd v Alexandra Mexon as Administrator for the Estate of the Late Ryan Messenger (NSWCA) - administrative law - workers compensation - appellant not obliged to pay compensation for permanent impairment for period of seconds between worker's injury and death - appeal allowed (B C I G)

Maharaja's Palace Pty Ltd v Raj & Jai Construction Pty Ltd (NSWSC) - land law - leases and tenancies - Court not satisfied binding agreement for lease was concluded - statement of claim dismissed (B C I G)

Southern Classic Group Pty Ltd t/as Southern Classic Cars v Arch Underwriting at Lloyd's Ltd on behalf of Syndicate 2012 (NSWSC) - insurance - claim for indemnity under management liability policy - insured entitled to indemnity (B C I G)

In the Matter of Bernstein Pty Ltd (In Liq) (No 2) (SASC) - costs - plaintiff's claim dismissed - non-party sought that plaintiff pay his costs - Court not satisfied to make costs order in non-party's favour - no order for costs (I B C G)

Jones v Alessi & Ors (SASC) - succession - family provision - plaintiff daughter of deceased granted further provision from deceased's estate (B)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v LG Electronics Australia Pty Ltd (No 2) [2018] FCAFC 128

Full Court of the Federal Court of Australia

Allsop CJ; Jagot & Lee JJ

Costs - apportionment - consumer law - Court allowed appellant's appeal in part on basis that respondent had contravened Australian Consumer Law on two occasions - appellant sought that respondent pay 60% of its costs - respondent sought that appellant pay its costs on basis that appellant had succeeded on only two of its multiple claims - 'broad-brush estimate' - held: respondent's position was 'unrealistic' - appellant's success was the 'relevant event' - respondent to pay 40% of appellant's costs.

[Australian Competition and Consumer Commission](#) (I B C G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 7) [2018] FCA 1217

Federal Court of Australia

McKerracher J

Costs - two applications for lump sum costs orders - respondents and cross-claimants (CITIC parties) 'wholly successful' at trial - trial judge ordered applicant and cross-respondent (Mineralogy) to pay CITIC parties' costs - CITIC parties sought lump sum costs order - CITIC parties wholly successful in appeal proceedings - Full Court ordered appellant (Mineralogy) to pay CITIC parties' costs - CITIC parties sought lump sum costs order - s43(3)(d) *Federal Court of Australia Act 1976* (Cth) - r40.02(b) *Federal Court Rules 2011* (Cth) - Costs General Practice Note - quantification - 10% discount for benefit of fixing of finite sum - held: Court satisfied to grant lump sum costs orders in respect of both proceedings.

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

Hunter Quarries Pty Ltd v Alexandra Mexon as Administrator for the Estate of the Late Ryan Messenger [2018] NSWCA 178

Court of Appeal of New South Wales

Basten, Gleeson & Payne JJA; Sackville & Simpson AJJA

Administrative law - workers compensation - appellant operated quarry - worker injured and died at quarry - appellant paid death benefits to worker's dependants under ss25-26 *Workers Compensation Act 1987* (NSW) (Workers Compensation Act) - respondent was administrator of

worker's estate - respondent sought, on worker's behalf, payment of compensation under s66 Workers Compensation Act for "permanent impairment" of worker for period of "a few minutes" between injury and death - Workers Compensation Appeal Panel found that appellant should pay respondent lump sum compensation in respect of worker's 100 per cent permanent impairment - primary judge upheld Appeal Panel's decision - appellant appealed - meaning of "permanent impairment" - whether Appeal Panel erroneously set aside "Reconsideration Medical Assessment Certificate" - held: appeal allowed - application to Workers Compensation Appeal Panel dismissed.

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

Maharaja's Palace Pty Ltd v Raj & Jai Construction Pty Ltd [2018] NSWSC 1269

Supreme Court of New South Wales

Darke J

Land law - leases and tenancies - plaintiff sought declaration of binding agreement for lease, which should be specifically performed, between first plaintiff or third plaintiff and defendant - defendant denied existence of alleged agreement - whether binding agreement for lease concluded - whether part performance gave rise to enforceable right to grant of lease - ss23C & 54A *Conveyancing Act 1919* (NSW) - held: Court not satisfied binding agreement was concluded - statement of claim dismissed.

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

Southern Classic Group Pty Ltd t/as Southern Classic Cars v Arch Underwriting at Lloyd's Ltd on behalf of Syndicate 2012 [2018] NSWSC 1272

Supreme Court of New South Wales

Stevenson J

Insurance - plaintiff was motor dealer owned by Mr John Volcanovski, who was its managing director - plaintiff sought indemnity under "Management Liability Insurance" policy issued by defendant concerning claim which Mr Volcanovski's brother made against it - Mr Volcanovski's brother was employed by plaintiff - Mr Volcanovski's brother claimed plaintiff had repudiated employment contract, terminated contract or constructively dismissed him, or failed to pay him remuneration and benefits - reasonableness of settlement at mediation - construction of policy - whether 'loss' for policy's purposes - whether claim excluded by policy - held: plaintiff entitled to indemnity for proportion of settlement sum which represented components of claim which policy responded to - judgment for plaintiff.

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

In the Matter of Bernstein Pty Ltd (In Liq) (No 2) [2018] SASC 113

Supreme Court of South Australia

Doyle J

Costs - Court dismissed plaintiff's claim in proceedings - non-party to proceedings who 'played an active role' sought that plaintiff pay his costs on 'indemnity or solicitor and own client basis' or 'party and party basis' - plaintiff contended there should be no order for costs - whether to

make costs order in non-party's favour - s40 *Supreme Court Act 1935* (SA) - held: Court not satisfied to make costs order in non-party's favour - Court satisfied there should be no order for costs.

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

Jones v Alessi & Ors [2018] SASC 110

Supreme Court of South Australia

Bochner J

Succession - family provision - plaintiff, pursuant to s7 *Inheritance (Family Provision) Act 1972* (SA) sought further provision from late mother's estate - plaintiff's personal and financial circumstances - estate's nature and size - competing claims - plaintiff's relationship with mother - estrangement - whether deceased fulfilled duty as 'wise and just testator' - held: Court satisfied plaintiff had been left without adequate provision - Court satisfied to grant further provision in plaintiff's favour.

[Jones](#) (B)

CRIMINAL

Executive Summary

A2 v R; Magennis v R; Vaziri v R (NSWCCA) - criminal law - female genital mutilation - appeal allowed against convictions - acquittal verdicts entered

R v Trebeck (QCA) - criminal law - murder - post-offence conduct - failure to distinguish between murder and manslaughter during directions - appeal allowed - conviction set aside - retrial ordered

Summaries With Link

A2 v R; Magennis v R; Vaziri v R [2018] NSWCCA 174

Court of Criminal Appeal of New South Wales

Hoeben CJ at CJ; Ward JA & Adams J

Criminal law - female genital mutilation - A2 was mother of complainants (C1 and C2) - A2 and Kubra Magennis found guilty of female genital mutilation - Shabbir Vaziri found guilty of being an accessory to offences - A2, Magennis and Vaziri appealed - whether to grant leave to adduce new expert evidence - s45(1)(a) *Crimes Act 1900* (NSW) - statutory interpretation - 'otherwise mutilates' - 'clitoris' - held: leave to adduce new expert evidence granted - there was now 'indisputable evidence' that 'tip of the clitoral head or glans' had not been removed - not able to be concluded that jury, if new evidence had been available, would have reached



same decision - 'potential miscarriage of justice' established - appeal allowed - acquittal verdicts entered.

[View Decision](#)

R v Trebeck [2018] QCA 183

Court of Appeal of Queensland

Morrison & McMurdo JJA; Boddice J

Criminal law - appellant convicted of murder - case was circumstantial without evidence of motive - appellant appealed - appellant challenged conviction on basis of directions to jury on use of evidence of lies and 'other post-offence conduct' - appellant contended there was miscarriage of justice, due to 'failure to distinguish between murder and manslaughter in relation to post-offence conduct's use, failure 'to precisely identify post-offence conduct', and when directing on post-offence conduct's use as proof of intention - held: ground of appeal contending failure to distinguish between murder and manslaughter during directions upheld - appeal allowed - conviction set aside - retrial ordered.

[R v Trebeck](#)



Benchmark

The Fallow Deer At The Lonely House

By: Thomas Hardy

One without looks in tonight
Through the curtain-chink
From the sheet of glistening white;
One without looks in tonight
As we sit and think
By the fender-brink.

We do not discern those eyes
Watching in the snow;
Lit by lamps of rosy dyes
We do not discern those eyes
Wandering, aglow
Four-footed, tiptoe.

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

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