



Friday, 17 November 2017

## 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)

**LFDB v SM** (FCAFC) - private international law - relationship property - refusal to set aside registration of judgment of High Court of New Zealand - appeal dismissed (I B C G)

**Zaia v Eshow** (NSWSC) - defamation - Facebook posts - entitlement to damages established on six of seven publications - damages - permanent injunction (I B)

**State of New South Wales v Le** (NSWSC) - false imprisonment - assault - transport police justified to stop and detain respondent for production of Opal card and evidence of concession entitlement - appeal allowed (I B C G)

**Kemp v Medical Board of Australia** (VSC) - judicial review - privilege in s28 *Evidence (Miscellaneous Provisions) Act 1958* (Vic) applied to determination of disciplinary charges in VCAT under *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic) - appeal allowed (I B G)

**Amos v Wiltshire** (QCA) - want of prosecution - dismissal of proceedings for want of prosecution - appeal dismissed (I B C G)

**Australian Securities & Investments Commission v Mortgages North Pty Ltd** (QSC) - corporations - winding up - order for liquidator's remuneration granted (I B C G)

**Brooks & Anor v Young & Ors** (SASC) - summary judgment - family provision - limitations - fiduciary duties - claim against defendants had no reasonable basis - summary judgment granted (B)

## Summaries With Link (Five Minute Read)

### **LFDB v SM [2017] FCAFC 178**

Full Court of the Federal Court of Australia

Besanko, Jagot & Lee JJ

Private international law - relationship property - costs - Registrar registered two judgments of High Court of New Zealand pursuant to s68 *Trans-Tasman Proceedings Act 2010* (Cth) (Act) (Relevant Judgment and Costs Judgment) - primary judge dismissed appellants' application to set judgments' registration aside - appellants challenged registration of Relevant Judgment - appellants contended primary judge erroneously failed to set aside Relevant Judgment's registration under s72(1)(a) of the Act on basis its enforcement 'would be contrary to public policy in Australia' - s51(xxxvii) Constitution - *Family Law Act 1975* (Cth) - *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth) - held: appellants' arguments misconceived - appeal dismissed.

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

### **Zaia v Eshow [2017] NSWSC 1540**

Supreme Court of New South Wales

McCallum J

Defamation - action brought by His Beatitude, the Archbishop of the Assyrian Church of the East against former parishioner arising from nine publications - plaintiff pressed claim in respect of seven publications - posts on Facebook - defence of honest opinion - whether imputations conveyed - ss25, 31, 34, 35, 39 *Defamation Act 2005* (NSW) - held: plaintiff entitled to damages in respect of six of seven publications - verdict for plaintiff in sum of \$150,000 - permanent injunction granted to restrain defendant from repeating defamation.

[View Decision](#) (I B)

### **State of New South Wales v Le [2017] NSWCA 290**

Court of Appeal of New South Wales

Basten, Leeming & Payne JJA

False imprisonment - assault - respondent claimed damages for assault and false imprisonment arising from incident in which transport police stopped him and asked him to produce Opal card, and photo identification as evidence he was entitled to concession - respondent obtained judgment in District Court for \$3,201 - State sought leave to appeal, contending appeal raised issue of public importance concerning police officers' power to detain people to check they had valid Opal card - whether detention justified - *Civil Liability Act 2002* (NSW) - *Passenger Transport Regulation 2007* (NSW) - *Road Transport Act 2013* (NSW) - held: officers justified to

stop and detain - appeal allowed.

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

## **Kemp v Medical Board of Australia [2017] VSC 691**

Supreme Court of Victoria

J Forrest J

Judicial review - privilege - respondent brought charges against applicant concerning treatment of patients - respondent sought that Victorian Civil & Administrative Tribunal issue summonses to medical practitioners including applicant for production of patients' records - applicant contended that privilege in s28 *Evidence (Miscellaneous Provisions) Act 1958* (Vic) (EMPA Act) applied to information in records and that the information could not be disclosed without patients' consent - whether statutory privilege extended to determination of disciplinary charges in VCAT under *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic) - whether statutory privilege confined to court proceedings - 'civil suit action or proceeding' - held: referral of applicant under National Law was a proceeding under s28(2) EMPA Act - s28 EMPA Act applied in VCAT proceeding - appeal allowed.

[Kemp](#) (I B G)

## **Amos v Wiltshire [2017] QCA 279**

Court of Appeal of Queensland

Gotterson & Morrison JJA; Flanagan J

Want of prosecution - appellant successfully brought proceedings against respondent in 2009 - Court of Appeal set judgment aside in 2010 and ordered new trial - appellant did not progress new trial - between 2010 and 2016, appellant brought applications in Court of Appeal and Supreme Court, trial of remitted questions in Supreme Court, appeals to Court of Appeal and applications for special leave in High Court - primary judge dismissed proceedings for want of prosecution - appellant challenged several findings of primary judge: that District Court had jurisdiction to strike out or dismiss the proceeding where Court of Appeal had ordered retrial; that appeal was not part of proceeding and step in appeal was not step in proceeding, and that there was substantial risk to retrial's fairness warranting strike out or dismissal of proceedings - held: grounds of appeal failed - appeal dismissed.

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

## **Australian Securities & Investments Commission v Mortgages North Pty Ltd [2017] QSC 267**

Supreme Court of Queensland

Davis J

Corporations - winding up - first respondent operated managed investment scheme - Australian Securities and Investment Commission sought that scheme be wound up - White J ordered winding up of scheme - applicant liquidator appointed - applicant sought remuneration - applicant's affidavit exhibited account of work done and amount charged - held: Court concluded rates used to calculate remuneration were reasonable, and that sum charged was

'reasonable remuneration' for work done in relevant period - orders made.

[Australian Securities & Investment Commission](#) (I B C G)

## **Brooks & Anor v Young & Ors [2017] SASC 162**

Supreme Court of South Australia

Stanley J

Summary judgment - family provision - limitations - deceased survived by four adult children including the two plaintiffs and first defendant - probate of deceased's will granted to first defendant and son - plaintiffs brought proceedings pursuant to s7 *Inheritance (Family Provision) Act 1972* (SA) (the Act) eight days after limitation period's expiration - plaintiffs sought extension of time to bring application - plaintiffs contended first defendant liable to them for provision under the Act - alternatively plaintiffs contended defendants as executors breached fiduciary duty for distributing estate before limitation period expired, and were liable to account to them or the estate - first defendant sought dismissal of proceedings on basis no reasonable cause of action or basis for claim was disclosed - held: Court satisfied there was no reasonable basis for plaintiffs' claim - summary judgment granted.

[Brooks](#) (B)

## CRIMINAL

### Executive Summary

**Caratti v Commissioner of the Australian Federal Police** (FCAFC) - criminal law - administrative law - challenge to validity of issue and execution of search warrants failed - appeal dismissed

**R v Paz** (QCA) - criminal law - child sex offences - appellant convicted of 11 child sex offences against step-son - appeal dismissed

### Summaries With Link

## **Caratti v Commissioner of the Australian Federal Police [2017] FCAFC 177**

Full Court of the Federal Court of Australia

Logan, Rangiah & Bromwich JJ

Criminal law - administrative law - police obtained search warrants in respect of premises and motor vehicles - warrants were in aid of 'joint tax fraud investigation' which Australian Taxation Office officers were conducting in Western Australia - warrants issued by Magistrate in Perth under s3E *Crimes Act 1914* (Cth) - challenge to validity of warrants' issue and execution brought under *Administrative Decisions (Judicial Review) Act 1977* (Cth) and s39B *Judiciary Act*



1903 (Cth) 'mostly failed' - appellant contended primary judge erred in finding search areas' "perimeters", specified in warrants, were sufficiently precise, erred in finding perimeters did not exceed reasonable justification, erred in considering that an offence in warrants 'might be severable', erred in finding warrants lawfully executed, and erred in permitting 'further copying and examination of data' which was copied from equipment found to be seized unlawfully - held: grounds of appeal failed - appeal dismissed.

[Caratti](#)

## **R v Paz [2017] QCA 263**

Court of Appeal of Queensland

Morrison & Philippides JJA; Boddice J

Criminal law - child sex offences - appellant convicted of 11 child sex offences against step-son - appellant contended verdicts unreasonable or could not be supported by the evidence - appellant also contended there was miscarriage of justice because six of the counts were no longer criminal offences at time of trial - appellant also contended there was miscarriage of justice arising from failure to properly direct jury concerning reception of evidence of sexual acts when complainant aged between 16 and 18 - ss11, 554, 560 & 590 *Criminal Code* (Qld) - *Health and Other Legislation Amendment Act 2016* (Qld) - *Justices Act 1886* (Qld) - *Acts Interpretation Act 1954* (Qld) - held: grounds of appeal failed - appeal dismissed.

[R v Paz](#)



# Benchmark

## The Argument of His Book

**By:** Robert Herrick

I sing of brooks, of blossoms, birds, and bowers,  
Of April, May, of June, and July-flowers.  
I sing of maypoles, hock-carts, wassails, wakes,  
Of bridegrooms, brides, and of their bridal cakes.  
I write of youth, of love, and have access  
By these to sing of cleanly wantonness.  
I sing of dews, of rains, and, piece by piece,  
Of balm, of oil, of spice, and ambergris.  
I sing of time's trans-shifting; and I write  
How roses first came red, and lilies white.  
I write of groves, of twilights, and I sing  
The court of Mab, and of the fairy king.  
I write of Hell; I sing (and ever shall)  
Of Heaven, and hope to have it after all.

[https://en.wikipedia.org/wiki/Robert\\_Herrick\\_\(poet\)?](https://en.wikipedia.org/wiki/Robert_Herrick_(poet)?)

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