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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)

Roy v O'Neill (HCA) - evidence - admissibility of evidence - trespass - domestic violence - criminal law - police did not lack power to knock on door of unit to inquire concerning the welfare of occupant - appeal dismissed (I B C G)

Rockment Pty Ltd t/a Vanilla Lounge v AAI Limited t/a Vero Insurance (FCAFC) - insurance - exclusions - 'business interruption losses' - determination of separate question (I B)

Commissioner of Taxation v Douglas (FCAFC) - taxation - superannuation - three appeals - "test cases" - 'taxation of invalidity benefits' - two appeals dismissed - one appeal allowed (B)

Stone v Guli; Stone v Smith; Stone v Mount Isa Mines Limited & Anor (QCA) - industrial law - criminal law - *Mining and Quarrying Safety and Health Act 1999* (Qld) - want of jurisdiction - complaints struck out - appeals dismissed (I B C G)

Hill v Zuda Pty Ltd (WASCA) - superannuation - reg 6.17A(4), (6) & (7) *Superannuation Industry (Supervision) Regulations 1994* (Cth) did not apply to self managed superannuation funds (I B)

Summaries With Link (Five Minute Read)

Roy v O'Neill [2020] HCA 45

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane & Edelman JJ

Evidence - admissibility of evidence - trespass - domestic violence - criminal law - appellant occupied unit together with 'co-habiting partner' (Mr Johnson) - appellant 'described herself' as Mr Johnson's carer - appellant was subject to domestic violence order to protect Mr Johnson - police suspected appellant 'of abusing and manipulating Mr Johnson' - police visited unit - unchallenged evidence of police was that "one of the main reasons for the visit" was to check on Mr Johnson's welfare - police did not enter the unit - appeal concerned whether police had power to knock on door of unit to inquire concerning Mr Johnson's welfare - appellant contended police lacked 'implied licence' if communication's purpose concerned investigation of crime which an occupier was 'suspected of committing', even if other occupier was crime's 'suspected victim' - appellant also contended police lacked licence to enter premises' curtilage if enquiry's purpose was accompanied by intention that 'police might exercise coercive power' - held: appeal dismissed.

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

Rockment Pty Ltd t/a Vanilla Lounge v AAI Limited t/a Vero Insurance [2020] FCAFC 228

Full Court of the Federal Court of Australia

Besanko, Derrington & Colvin JJ

Insurance - exclusions - determination of separate question - plaintiff sought indemnity under insurance policy it held with defendant - indemnity sought for 'business interruption losses' which plaintiff claimed it suffered after State of Victoria imposed lockdowns 'in response to the COVID-19 pandemic' - question concerned construction of exclusion in policy - question was: "Is it sufficient to exclude coverage under the exclusion in clause 8 in section 5 of Insurance Policy SPX015934895 if the claim is for loss or damage that is directly or indirectly caused by or arises from, or is in consequence of, or contributed by a human disease specified in a declaration of a human biosecurity emergency under the Biosecurity Act 2015 (Cth)?" - "declared" - relevance of exclusion's 'concluding words' - whether defendant's construction would 'subvert the policy's coverage' - 'commerciality of construction' - exclusion's purpose - conceptual difference between "disease" and "emergency" - held: Court answered separate question in the negative.

[Rockment](#) (I B)

Commissioner of Taxation v Douglas [2020] FCAFC 220

Full Court of Federal Court of Australia

Griffiths, Davies & Thawley JJ

Taxation - superannuation - determination of three appeals - "test cases" - 'taxation of invalidity benefits received pursuant to' *Military Superannuation and Benefits Act 1991* (Cth) and *Defence Force Retirement and Death Benefits Act 1973* (Cth) - ss307-65 and 307-70 *Income Tax Assessment Act 1997* (Cth) (ITAA) - 'superannuation lump sum' - 'superannuation income stream' - 'superannuation income stream benefit' - whether invalidity benefits which respondents

received were superannuation lump sums under s307-65 ITAA because payments were not superannuation income stream benefits - whether payments not "from a superannuation income stream" as required by s307-70(1) ITAA - *Superannuation Industry (Supervision) Regulations 1994* (Cth) - *Superannuation Industry (Supervision) Act 1993* (Cth) - "arrears payment" - *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018* (Cth) - held: two appeals dismissed - one appeal allowed.

[Commissioner of Taxation](#) (B)

Stone v Guli; Stone v Smith; Stone v Mount Isa Mines Limited & Anor [2020] QCA 288

Court of Appeal of Queensland

McMurdo & Mullins JJA; Davis J

Industrial law - criminal law - appellant contended respondents committed offences against *Mining and Quarrying Safety and Health Act 1999* (Qld) (MQSHA) - appellant 'swore complaints' under *Justices Act 1886* (Qld) - respondents contended, unsuccessfully, that appellant lacked authority to commence criminal proceedings so Industrial Magistrates Court lacked jurisdiction to hear complaints - Industrial Court of Queensland accepted arguments of respondents - complaints 'struck out for want of jurisdiction' - appellant appealed and sought to reinstate Industrial Magistrates Court's orders - construction of ss234 & 257 MQSHA - 'power of delegation' - whether 'authority to prosecute' in s234(5)(b) MQSHA a 'power referred to' in s257 MQSHA - '*Anthony Hordern*' principle - held: appeals dismissed.

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

Hill v Zuda Pty Ltd [2021] WASCA 59

Court of Appeal of Western Australia

Buss P; Murphy & Mitchell JJA

Superannuation - precedent - wills and estates - trusts and trustees - statutory interpretation - appeal concerned question whether reg 6.17A(4), (6) & (7) *Superannuation Industry (Supervision) Regulations 1994* (Cth) (SISR) applied to self managed superannuation funds - whether to adopt construction in *Cantor Management Services Pty Ltd v Booth* [2017] SASCFC 122 - held: Court 'bound to hold' t reg 6.17A(4), (6) & (7) SISR did not apply to self managed superannuation funds - no error in master's construction - appeal dismissed.

[Hill](#) (I B)

Summaries With Link



Sunset on the Spire

By: Elinor Wylie

All that I dream
 By day or night
Lives in that stream
 Of lovely light.
Here is the earth,
 And there is the spire;
This is my hearth,
 And that is my fire.
From the sun's dome
 I am shouted proof
That this is my home,
 And that is my roof.
Here is my food,
 And here is my drink,
And I am wooed
 From the moon's brink.
And the days go over,
 And the nights end;
Here is my lover,
 Here is my friend.
All that I
 Could ever ask
Wears that sky
 Like a thin gold mask.

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

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