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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Deputy Commissioner of Taxation v Hawach (FCA) - default judgment - summary judgment - service - respondent had no reasonable prospects of defending Commissioner's proceedings for recovery of pecuniary liabilities - judgment for Commissioner (I B C G)

Australia Capital Financial Management Pty Ltd v Linfield Developments Pty Ltd; Guan v Linfield Developments Pty Ltd (NSWCA) - contract - specific performance - two appeals arising from disputes concerning acquisition of land by company (Shuangxing Development Pty Ltd) - one appeal upheld in part - other appeal dismissed (I B C G)

McHutchison v Asli (VSC) - real property - contract - sale of land - rescission notice valid - contract duly rescinded - plaintiff not entitled to relief sought - summons dismissed (I B C G)

O'Connor & Ors v Hough & Ors (No 2) (QSC) - contempt - contempt of Court by breach of undertaking - declaration made - parties to make submissions concerning penalty, compensation if any, and costs (I B C G)

Captain v Wosomo & Anor (QSC) - negligence - joint criminal enterprise - motor vehicle accident - plaintiff, defendant and two others stole car - plaintiff passenger injured when car driven by defendant crashed into pole - plaintiff had not withdrawn from joint criminal enterprise at time of incident - defendant owed no duty of care to plaintiff - claim dismissed (I B C G)

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Croft v National Trust of Australia (WA) (WASCA) - summary judgment - leases and tenancies - possession - respondent obtained summary judgment for unpaid rent and possession of premises - appeal dismissed (I B C G)

Cristovao v Tan and Tan Lawyers Pty Ltd (WASCA) - costs - solicitors' duties - orders for statement of special case on questions of law prior to filing of Appellant's Case refused (I B C G)

Summaries With Link (Five Minute Read)

Deputy Commissioner of Taxation v Hawach [2017] FCA 536

Federal Court of Australia

Pagone J

Default judgment - summary judgment - service - Commissioner sought summary judgment against respondent under r26.01 *Federal Court Rules 2011* (Cth) or default judgment against under r5.23 - Commissioner had obtained interim freezing order and substituted service orders - there was evidence that respondent had been served - Commissioner contended respondent had no reasonable prospect of defending claim - held: material before Court sufficient to establish respondent had no reasonable prospects of defending proceedings for recovery of pecuniary liabilities - order made in Commissioner's favour.

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

Australia Capital Financial Management Pty Ltd v Linfield Developments Pty Ltd; Guan v Linfield Developments Pty Ltd [2017] NSWCA 99

Court of Appeal of New South Wales

McColl, Ward & Gleeson JJA

Contract - specific performance - appeals arising from disputes concerning acquisition of land by Shuangxing Development Pty Ltd (SXG) - Linfield sought to enforce a call option contained in development agreement - SXG was in administration - SXG agreed to purchase land and entered development agreement with third party - development agreement contained call option in Linfield's favour - event of default occurred - Linfield called for land under option - Australia Capital Financial Management Pty Limited (ACFM) claimed its interest as equitable mortgagee had priority over Linfield's interest in respect of call option - primary judge found in favour of Linfield - ACFM, and Ms Guan, who controlled SXG at time of purchase of land and various companies which guaranteed SXG's obligations, appealed - date on which Linfield's equitable interest arose - whether primary judge erroneously drew adverse inferences resulting in denial of procedural fairness - whether ACFM engaged in disentitling conduct - time of assessment of allegedly penal nature of call option - use of expert evidence - whether call option unenforceable - whether SXG entitled to relief against forfeiture - held: ACFM's appeal allowed in part - Ms Guan's appeal dismissed.

[Australia Capital Financial Management](#) (I B C G)

McHutchison v Asli [2017] VSC 258

Supreme Court of Victoria

Digby J

Real property - contract - sale of land - plaintiff sought declaration that defendants' purported rescission notice in respect of contract for sale of land was void and of no effect, and that defendants specifically perform obligations under the contract - ss32(1), 32(2), 32D, 32H, 32K, 32K(4)(1) & (2) *Sale of Land Act 1962* (Vic) - held: defendants' rescission notice was valid - contract duly rescinded by notice - plaintiff not entitled to relief sought - summons dismissed.

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

O'Connor & Ors v Hough & Ors (No 2) [2017] QSC 68

Supreme Court of Queensland

Burns J

Contempt - second applicant sought orders under Ch 20 *Uniform Civil Procedure Rules 1999* (Qld) against second respondent for contempt by breach of undertakings in Court orders - held: Court satisfied beyond reasonable doubt that second respondent breached an undertaking and 'with the accompanying state of mind necessary to found a contempt' - declaration made that second respondent was in contempt of Court - parties to make submissions concerning penalty, compensation, if any, and costs.

[O'Connor](#) (I B C G)

Captain v Wosomo & Anor [2017] QSC 86

Supreme Court of Queensland

Daubney J

Negligence - joint criminal enterprise - motor vehicle accident - plaintiff was passenger in vehicle driven by first defendant - plaintiff injured when vehicle crashed into pole - defendant, plaintiff, and two other boys had stolen the car - determination of liability - plaintiff conceded potential application of "s45 ('Criminals not to be awarded damages') of the *Civil Liability Act 2003* (Qld)" but argued plaintiff had withdrawn from joint criminal activity at time of incident, or Court should find application of exclusion 'would operate harshly and unjustly' - defendants contended there was no duty owed by defendant to plaintiff so s45 did not arise for consideration - contributory negligence arising from plaintiff not wearing seatbelt - held: as long as parties were complicit in joint illegal enterprise, defendant did not owe plaintiff duty to take reasonable care - Court not satisfied plaintiff had withdrawn from joint criminal enterprise at time of accident - claim dismissed.

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

Croft v National Trust of Australia (WA) [2017] WASCA 95

Court of Appeal of Western Australia

Murphy & Mitchell JJA

Summary judgment - leases and tenancies - possession - appellant and representative of

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respondent executed a letter agreement for lease of premises - respondent issued notice of termination of lease for failure to pay rent - respondent obtained summary judgment for outstanding rent and possession - respondent contended decision was unreasonable and unsupported by evidence, that decision was made without hearing on 'full merits' and that decision was made illegally irregularly and against good faith as made ex parte - held: no merit in respondent's grounds of appeal - grounds had no prospect of success - appeal dismissed.
[Croft](#) (I B C G)

Cristovao v Tan and Tan Lawyers Pty Ltd [2017] WASCA 94

Court of Appeal of Western Australia

Murphy & Mitchell JJA

Costs - solicitors' duties - appellant appealed against primary judge's dismissal of his appeal from order of Magistrate's Court that he pay respondent's legal costs - costs order made in proceedings in which appellant and unsuccessfully alleged negligence by respondent in representing him - appellant contended costs should not have been ordered due to respondent's failure to comply with *O9A Rules of the Supreme Court 1971 (WA)* - appellant sought orders for statement of special case on questions of law 'as a preliminary to the Appellant's filing his Appellant's Case' - *s54 Supreme Court Act 1935 (WA)* - held: no warrant for Court to determine questions of law before filing of Appellant's Case - short extension of time granted to file Appellant's Case.

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

CRIMINAL

Executive Summary

Pickering v The Queen (HCA) - criminal law - appellant acquitted of murder but convicted of manslaughter - protection of s31(1)(c) of the Criminal Code (Q) was available to appellant in relation to manslaughter charge - appeal against conviction allowed

R v Quist (SASCFC) - criminal law - arson - failure to direct jury adequately on alleged lies of appellant - appeal allowed - conviction set aside - retrial

Summaries With Link

Pickering v The Queen [2017] HCA 17

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Criminal law - manslaughter - appellant tried for murder of deceased - Crown alleged appellant



stabbed deceased - appellant acquitted of murder but convicted of manslaughter - appellant's appeal against conviction manslaughter dismissed - whether there had been miscarriage of justice due to trial judge's failure 'to leave to the jury the possible application of s31(1)(c) of the Criminal Code (Q)' - 'resist actual and unlawful violence threatened to the person' - statutory construction - held: s31(2) of the Code applied to an act if accused charged in relation to that act with offence in s31(2) and sought to invoke s31(1) to deny criminal responsibility - s31(1) unavailable to deny criminal responsibility on charge of offences described in s31(2) - protection of s31(1)(c) was available to appellant concerning manslaughter offence being alternative to offence charged on indictment - appeal allowed.

[Pickering](#)

R v Quist [2017] SASCFC 37

Full Court of the Supreme Court of South Australia

Peek, Blue & Lovell JJ

Criminal law - appellant convicted of offence of arson - case against appellant relied on accumulated circumstances together excluding 'reasonable hypothesis consistent with innocence' - appellant appealed against conviction - held: ground of appeal upheld that judge erroneously failed to direct jury adequately in relation to alleged lies of appellant - appeal allowed - conviction set aside - retrial.

[R v Quist](#)



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The Arrow and the Song

By [Henry Wadsworth Longfellow](#)

I shot an arrow into the air,
It fell to earth, I knew not where;
For, so swiftly it flew, the sight
Could not follow it in its flight.

I breathed a song into the air,
It fell to earth, I knew not where;
For who has sight so keen and strong,
That it can follow the flight of song?

Long, long afterward, in an oak
I found the arrow, still unbroke;
And the song, from beginning to end,
I found again in the heart of a friend.

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