

Friday, 19 October 2018

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Brisbane Container Terminals Pty Ltd v The Ship "Charles Darwin" (FCA) - discovery - scope of discovery - determination of four issues in respect of which parties in dispute - parties to bring in short minutes of order (I B C G)

Hoser v Sportsbet Pty Ltd (FCA) - trade mark - consumer law - determination of separate questions - amended originating application dismissed (I B C G)

Duck v Airservices Australia (FCA) - judgments and orders - representative proceedings - application for common fund order granted (I B C G)

Winter v Nemeth (NSWCA) - contract - respondent's oral promise to provide funds for appellant's purchase of house in return for appellant's assistance to respondent in Family Court proceedings was not a contract - appeal dismissed (I B C G W WI WB WC WG)

Re Mutch (VSC) - wills and estates - probate - succession - family provision - application for grant of letters of administration with will - application dismissed (B)

Macks v Viscariello (No 2) (SASCFC) - costs - jurisdiction - Full Court had power to decide issue of trial costs without primary judge having made costs order - Full Court not satisfied to remit trial costs issue to primary judge - costs orders made (I B C G)

Stuart v Hanna (WASCA) - pleadings - dismissal of application for leave to amend writ and re-amend statement of claim - leave to appeal refused - leave to adduce additional evidence refused - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Brisbane Container Terminals Pty Ltd v The Ship "Charles Darwin" [2018] FCA 1561

Federal Court of Australia

Perram J

Discovery - scope of discovery - parties in dispute concerning discovery - four issues - whether proposed keyword searches 'should be further limited' - whether affidavit should require deponent to identify only relevant employees' email accounts or also 'the electronic directories' - manner in which plaintiff should be entitled to examine electronic documents of employees 'with minimal or limited involvement' - whether proposed interrogatories oppressive - held: issues determined - parties to bring in short minutes of order.

[Brisbane Container Terminals](#) (I B C G)

Hoser v Sportsbet Pty Ltd [2018] FCA 1557

Federal Court of Australia

Robertson J

Trade mark - consumer law - determination of four separate questions - first question was whether television commercial was use by respondent "snake man" as trade mark - second question was whether television commercial represented 'to adult consumers in Australia' that man in advertisement was "the snakeman" - third question was whether television commercial represented to adult consumers in Australia there was 'a connection or association' between parties - fourth question was whether, if previous questions answered in the negative, amended originating application should be dismissed, wholly or partly - held: first three questions answered in the negative - amended originating application dismissed.

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

Duck v Airservices Australia [2018] FCA 1541

Federal Court of Australia

Bromwich J

Judgments and orders - representative proceedings - common fund order - applicant and member of class sought to recover difference between benefits they obtained under employment contracts with respondent, and their claimed entitlement to payment under enterprise agreements - applicant, by interlocutory application, sought common fund order - whether common fund order "appropriate or necessary to ensure that justice is done in the proceeding" - Pt IVA, ss23 & 33ZF *Federal Court of Australia Act 1976* (Cth) - r1.32 *Federal Court Rules 2011* (Cth) - held: Court satisfied to make common fund order.

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

Winter v Nemeth [2018] NSWCA 236

Court of Appeal of New South Wales
Meagher JA; Sackville & Emmett AJJA

Contract - appellant contended respondent promised provide funds for her purchase of house in return for appellant's assistance to respondent in Family Court proceedings - appellant contended there was written contract and oral contract with respondent - appellant did not challenge primary judge's finding there was no written agreement - appellant challenged primary judge's finding that, while there had been an oral promise, the oral promise did not constitute contract - whether appropriate to give reasons in short form - whether there was an enforceable contract - s45 *Supreme Court Act 1970* (NSW) - r51.55 *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in decision of primary judge - appeal dismissed.

[View Decision](#) ()

Re Mutch [2018] VSC 619

Supreme Court of Victoria
McMillan J

Wills and estates - probate - succession - family provision - plaintiff in capacity as deceased's nephew sought grant of letters of administration with will - plaintiff contended he had standing as 'potential applicant for provision from the estate' under Part IV *Administration and Probate Act 1958* (Vic) - whether plaintiff was a beneficiary of estate - whether plaintiff was a 'stranger in interest' - conduct of plaintiff - held: application dismissed.

[Re Mutch](#) (B)

Macks v Viscariello (No 2) [2018] SASCFC 106

Full Court of the Supreme Court of South Australia
Lovell J; Corboy AJ & Slattery AJ

Costs - jurisdiction - Court gave judgment in proceedings - primary judge had not yet delivered decision - applicant sought that Full Court decide trial costs and appeal costs - respondent sought remittal of trial costs question to primary judge - whether Full Court had power to order trial costs - whether Full Court had power only to modify trial judge's costs order - s40 *Supreme Court Act 1935* (SA) - rr263, 264 & 286 *Supreme Court (Civil) Rules 2006* (SA) - held: Full Court had power to decide issue of trial costs without primary judge having made costs order - Full Court not satisfied to remit trial costs issue to primary judge - costs orders made.

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

Stuart v Hanna [2018] WASCA 181

Supreme Court of Western Australia
Murphy & Mitchell JJA

Pleadings - primary judge dismissed appellant's interlocutory application for leave to amend writ and re-amend statement of claim - proposed amendments had sought to join two parties and raise new cause of action - appellant sought to appeal and to 'adduce additional evidence'



in appeal - s60(1)(f) *Supreme Court Act 1935* (WA) - whether primary judge's decision 'attended by sufficient doubt such as to justify the grant of leave to appeal' - whether grounds of appeal had merit - whether receiving additional evidence could show error by primary judge - held: leave to adduce additional evidence refused - leave to appeal refused - appeal dismissed. [Stuart](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Sonnet 53

By: William Shakespeare

What is your substance, whereof are you made,
That millions of strange shadows on you tend?
Since every one hath, every one, one shade,
And you but one, can every shadow lend.
Describe Adonis, and the counterfeit
Is poorly imitated after you;
On Helen's cheek all art of beauty set,
And you in Grecian tires are painted new:
Speak of the spring, and foison of the year,
The one doth shadow of your beauty show,
The other as your bounty doth appear;
And you in every blessed shape we know.
In all external grace you have some part,
But you like none, none you, for constant heart.

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

[Click Here to access our Benchmark Search Engine](#)