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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Civil Selection

Executive Summary (1 minute read)

Lahood v Ernst & Young; In the Matter of Dave Lahood Pty Ltd (In Liq) (FCA) - bankruptcy - corporations - orders for inquiry into conduct of trustee and liquidators refused (B)

White v Johnston (NSWCA) - assault and battery - dentist's treatment was not assault on patient - matter remitted confined to alternative negligence claim (I)

Re RB, a protected estate family settlement (NSWSC) - approval of family settlement including statutory Will relating to protected person (B)

Wilkinson v C & M Leussink Pty Ltd (NSWSC) - workers compensation - judicial review - jurisdictional error - decisions of Medical Appeal Panel quashed (I G)

Admiralty Resources NL v Australis Mining Ltd (VSC) - security for costs ordered in relation to new aspect of counterclaim (I B C)

Carlyon v Town & Country Pubs No. 2 Pty Ltd T/A Queens Hotel Gladstone (No.2) (QSC) - costs - refusal of offer of settlement not imprudent - indemnity costs refused (I)

How v How (TASSC) - succession - family provision order in favour of deceased's son refused (B)

Criminal

R v Nguyen (SASCFC) - drug trafficking - unlawful search - evidence excluded - convictions set aside

Director of Public Prosecutions (Acting) v Pearce (TASCCA) - sentencing - grievous bodily harm - intellectual disability - suspended sentence not manifestly inadequate

Summaries with links (5 minute read)

Civil Selection

Lahood v Ernst & Young; In the Matter of Dave Lahood Pty Ltd (In Liq) [2015] FCA 89

Federal Court of the Australia

Foster J

Bankruptcy - corporations - bankrupt sought to litigate complaints against trustee in bankruptcy arising out of administration of bankruptcy and complaints against liquidators concerning administration of liquidation of corporation controlled by bankrupt - ss19, 130, 134 & 179 *Bankruptcy Act 1966* (Cth) - ss488, 536 & 1072C(4) *Corporations Act 2001* (Cth) - held: the two administrations had progressed to point where they should be finalised in near future - Court not satisfied evidence justified any order for inquiry in either matter - applications dismissed.

[Lahood](#) (B)

White v Johnston [2015] NSWCA 18

Court of Appeal of New South Wales

Barrett, Emmett & Leeming JJA

Assault and battery - respondent patient alleged appellant dentist's treatment constituted assault and was negligently performed - primary judge found dentist had committed assault and battery on patient - dentist contended evidence did not establish absence of therapeutic purpose in treatments she performed, that primary judge erred in relying on evidence admitted to demonstrate tendency to charge for services not performed, and in waiving notice requirement - appellant also contended exemplary damages were excessive - held: evidence did not establish absence of therapeutic purpose - awarding of damages in error - decision to admit evidence relating to malpractice overturned - matter remitted to District Court confined to alternative claim in negligence.

[White](#) (I)

Re RB, a protected estate family settlement [2015] NSWSC 70

Supreme Court of New South Wales

Lindsay J

Wills - succession - protected estate - application for approval of family settlement concerning estate of defendant - defendant was a *protected person* under s38 *NSW Trustee and Guardianship Act 2009* (NSW) - statutory Will - *family provision releases* - *lost capacity case* - exercise of protective jurisdiction - management and administration of property - held: orders made for approval of family settlement including statutory Will relating to protected person.

[Re RB, a protected estate family settlement](#) (B)

Wilkinson v C & M Leussink Pty Ltd [2015] NSWSC 69

Supreme Court of New South Wales

Harrison AsJ

Workers compensation - judicial review - plaintiff sought to quash decisions of Medical Appeal Panel to revoke medical assessment certificate and to refuse to reconsider its earlier decision - held: Appeal Panel did not exceed its jurisdiction - Appeal Panel did not misconstrue its jurisdiction under s328(2) *Workplace Injury Management and Workers Compensation Act 1998* (NSW) by conducting a de novo review - Appeal Panel considered impairment to plaintiff's right leg not due to work-related injury but rather to underlying arthritic condition - Appeal Panel made findings as to causation and in doing so purported to exercise statutory function it did not have - Panel failed to address s323 concerning assessment of permanent impairment amounted to error - jurisdictional error - plaintiff denied procedural fairness - decisions quashed.

[Wilkinson](#) (I G)

Admiralty Resources NL v Australis Mining Ltd [2015] VSC 33

Supreme Court of Victoria

Elliott J

Security for costs - plaintiff sought security for costs from defendants in response to their counterclaims - s1335(1) *Corporations Act 2001* (Cth) - r62.02(1) *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - delay - relevance of defendant's amendment to counterclaim to add new claim for nearly US\$13 million - held: defendants had no assets in Australia and were incorporated overseas - Court's discretion enlivened - no material delay in application for security for costs in relation to new claim - security ordered in relation to new aspect of case alone.

[Admiralty Resources NL](#) (I B C)

Carlyon v Town & Country Pubs No. 2 Pty Ltd T/A Queens Hotel Gladstone (No.2) [2015] QSC 25

Supreme Court of Queensland

A Lyons J

Costs - Court delivered judgment for defendant - defendant sought indemnity costs on basis of plaintiff's imprudent refusal of offer to settle - rr360 & 361 *Uniform Civil Procedure Rules 1999*

(Qld) - held: Court not satisfied plaintiff's refusal of offer to settle was imprudent in the circumstances - not a case where there were no reasonable prospects of success - no special or unusual features to justify order for indemnity costs - plaintiff to pay defendant's costs on the standard basis.

[Carlyon](#) (I)

How v How [2015] TASSC 4

Supreme Court of Tasmania

Pearce J

Succession - applicant applied under *Testator Family Maintenance Act 1912* (Tas) for provision from estate of late father - personal and financial circumstances of applicant - applicant's relationship with father - other claims on estate - testator's reasons - s3(1) - held: Court not satisfied applicant had been left without adequate provision for his proper maintenance and support - application dismissed.

[How](#) (B)

Criminal Selection

R v Nguyen [2015] SASCF 7

Court of Criminal Appeal of South Australia

Peek, Blue & Bampton JJ

Evidence - appellant charged with two counts of drug trafficking - appellant sought exclusion of evidence obtained by police officers stopping her vehicle and searching her handbag - claimed search was unlawful - primary judge ruled police officers had requisite reasonable suspicion - s52 *Controlled Substances Act 1984* (SA) - further, primary judge would have exercised discretion not to exclude evidence in any event - appellant convicted - appellant contended primary judge erred in concluding police officers had requisite reasonable suspicion and in exercise of discretion - held: detective did not form requisite suspicion to justify search - search unlawful - no evidence to show detective's mistaken understanding of breadth of powers conferred by Act was peculiar or isolated - evidence of search excluded in exercise of discretion - prosecution case wholly dependent on evidence of search - appeal allowed - convictions set aside.

[R](#)

Director of Public Prosecutions (Acting) v Pearce [2015] TASC 1

Court of Criminal Appeal of Tasmania

Blow CJ; Porter & Pearce JJ

Sentencing - respondent with intellectual disability pleaded guilty to one count of causing grievous bodily harm - primary judge sentenced respondent to imprisonment for 12 months - primary judge made order wholly suspending sentence of imprisonment for two years subject to special conditions - appellant contended sentence manifestly inadequate and seriousness of crime

demanded sentence involving term of actual imprisonment or more tangible form of punishment - personal deterrence and denunciation - held: Court not persuaded primary judge erred in sentencing approach - given absence of prior convictions for violence, respondent's age, intellectual disability, and chance of rehabilitation, it was proper to allow for exercise of mercy - appeal dismissed.

[Director of Public Prosecutions](#)

A narrow fellow in the grass

By Emily Dickinson

A narrow fellow in the grass
Occasionally rides;
You may have met him-did you not
His notice sudden is,
The grass divides as with a comb,
A spotted shaft is seen,
And then it closes at your feet,
And opens further on.

He likes a boggy acre,
A floor too cool for corn,
But when a boy and barefoot,
I more than once at noon
Have passed, I thought, a whip lash,
Unbraiding in the sun,
When stooping to secure it,
It wrinkled and was gone.

Several of nature's people
I know, and they know me;
I feel for them a transport
Of cordiality.
But never met this fellow,
Attended or alone,
Without a tighter breathing,
And zero at the bone.

[Emily Dickinson](#)

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