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Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Gold & Copper Resources Pty Ltd v The Hon Chris Hartcher, Minister for Resources & Energy, Special Minister (NSWCA) - administrative law - renewal of exploration licence not void - appeal dismissed (I B C G)

Secure Funding Pty Ltd v Stark;; Secure Funding Pty Ltd v Conway (NSWSC) - possession - appeals against setting aside of default judgments dismissed (B)

Meriton Apartments Pty Ltd v The Owners Strata Plan No. 72381 (NSWSC) - contract - repudiation of caretaker agreement - promoter's fiduciary duty of disclosure (I B C)

Casey v Transport Accident Commission (VSCA) - transport accident - jury verdict - appellant struck by unidentified vehicle - injuries not caused by negligence of driver - appeal dismissed (I G)

Thompson v MacDonald (VSC) - testator's family maintenance - trustees to pay balance of amount owing pursuant to family provision order (B)

Romeo v Wesley College (WASCA) - security for costs - refusal to set aside judgment for payment of school fees to College - security for costs granted (I)

Re The Bell Group Ltd (in liq); ex parte Woodings as liquidator of The Bell Group Ltd (In Liq) ACN 008 666 993 (WASC) - corporations - winding up - appointment of Committee of Inspection not invalid - declaration granted to liquidator (B)

Summaries with links (5 Minute Read)

Gold & Copper Resources Pty Ltd v The Hon Chris Hartcher, Minister for Resources & Energy, Special Minister [2015] NSWCA 57

Court of Appeal of New South Wales

Beazley P; Macfarlan & Gleeson JJA

Administrative law - company held exploration prospecting licence granted under *Mining Act 1992* (NSW) - company sought renewal of licence for two years - company sent new first page of application to Department outside time prescribed by Act - new first page specified term of requested renewal was five years - Minister renewed licence for five years - appellant challenged validity of renewal pursuant to s293(1)(q)(ii) - appellant sought declaration renewal of licence void and of no effect - appellant contended that in sending new first page company withdrew or abandoned initial application and made new application out of time, which could not enliven Minister's power to renew licence under s114 - held: application not *finally disposed of* when Minister renewed licence - application renewal could not be withdrawn except by lodging notice with Director-General in accordance with s130 - not open for appellants to raise question of company's intention to submit new application on appeal - appellant's argument that company submitted new application inconsistent with s16 - appeal dismissed.

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

Secure Funding Pty Ltd v Stark;; Secure Funding Pty Ltd v Conway [2015] NSWSC 223

Supreme Court of New South Wales

McCallum J

Default judgment - appeals against primary judge's decision to set aside default judgments for possession of properties in separate proceedings - defendants also sought leave to amend defence - whether arguable defence on grounds of unconscionable conduct - ss12CB, 12CC, 12GM *Australian Securities and Investments Commission Act 2001* (Cth) - s237 *Australian Consumer Law* - held: defences raised were reasonably arguable - no error in concluding default judgments should be set aside despite the procedural history - proposed amendments allowed - appeals dismissed.

[Secure](#) (B)

Meriton Apartments Pty Ltd v The Owners Strata Plan No. 72381 [2015] NSWSC 202

Supreme Court of New South Wales

Slattery J

Contract - plaintiff developer provided caretaker services to owners corporation of strata scheme under caretaker agreement made under *Strata Schemes Management Act 1996* (NSW) - plaintiff alleged owners corporation repudiated agreement by ineffectively attempting to terminate it- owners corporation alleged "serious, persistent and continuing" breaches of agreement by plaintiff and claimed to have validly terminated agreement - owners corporation

also cross-claimed plaintiff breached fiduciary duties as promoter to the owners corporation - held: owners corporation bound to agreement by its conduct in reliance on it, even though it had not formally executed agreement - plaintiff had not committed any breach to entitle owners corporation to terminate - owners corporation repudiated agreement - specific performance not possible without owners' corporations' cooperation - plaintiff limited to claim for damages - assessment of damages reserved for further consideration - plaintiff owed fiduciary duty as promoter to owners corporation - question whether plaintiff breach duty reserved for further consideration.

[Meriton](#) (I B C)

Casey v Transport Accident Commission [2015] VSCA 38

Court of Appeal of Victoria

Tate, Osborn & Kyrou JJA

Transport accident - appellant failed in claim for damages for injuries suffered when struck by unidentified vehicle while crossing road - jury returned verdict for respondent by finding no negligence by driver which caused injuries - appellant contended verdict against evidence or weight of evidence - whether jury's verdict reasonably open to it - onus - credit - held: jury entitled to take view they were not sufficiently persuaded of truth and reliability of appellant's evidence - jury correctly directed as to onus of proof - it was for jury to be satisfied by appellant's evidence that incident caused by negligence of driver of unidentified vehicle - appeal dismissed.

[Casey](#) (I G)

Thompson v MacDonald [2015] VSC 93

Supreme Court of Victoria

McMillan J

Testator's family maintenance - plaintiff sought payment of balance of amount owing pursuant to orders made as result of family provision claim - trustees submitted they had properly administered Will and estate of deceased and there were no moneys owing to the plaintiff - plaintiff contended estate expenses seemed excessive and that award was made to her out of 'net estate' - s97(4)(a) *Administration and Probate Act 1958* (Vic) - held: effect of orders was that provision for plaintiff should not be taken into account by trustees in determining apportionment of liabilities of estate and plaintiff's claim should be paid in full - balance of amount owing to plaintiff to be paid by trustees.

[Thompson](#) (B)

Romeo v Wesley College [2015] WASCA 52

Court of Appeal of Western Australia

Newnes JA

Security for costs - self-represented litigant - College brought proceedings against appellants claiming outstanding school fees - appellants contended failure of consideration as College had failed prevented bullying of their child - appellants counterclaimed for school fees paid - appellants failed to appear at hearing - judgment entered for College - appellants appealed from

refusal to set aside judgment - r44(1) *Supreme Court (Court of Appeal) Rules 2005 (WA)* - held: Court satisfied appellants unlikely to be able to satisfy costs order if appeal unsuccessful - no unreasonable delay in College's application - College had unsatisfied judgment in its favour and had already incurred significant costs - appellants to pay security for costs.

[Romeo \(I\)](#)

Re The Bell Group Ltd (in liq); ex parte Woodings as liquidator of The Bell Group Ltd (In Liq) ACN 008 666 993 [2015] WASC 88

Supreme Court of Western Australia

Pritchard J

Corporations - winding up - liquidator of company sought order pursuant to s1322(4) *Corporations Act 2001 (Cth)* (the Act) declaring that appointment of Committee of Inspection for company which occurred at general meeting of creditors was not invalid and that Committee's acts, decisions and resolutions were not invalid by contravention of s548 - liquidator also sought direction he was justified in proceeding on that basis - statutory construction - held: there was contravention of s548 because no meeting of contributories held in relation to establishment of Committee, however Court satisfied declaration should be made that appointment not invalid and that acts, decisions and resolutions of Committee not invalid due to contravention - Court also persuaded direction should be made pursuant to s479(3) that liquidator justified and acting properly in proceeding on basis appointment not invalid.

[Bell \(B\)](#)

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CRIMINAL

Executive Summary

CMB v Attorney General for New South Wales (HCA) - criminal law - Court of Criminal Appeal erred in increasing sentence on prosecution appeal - appeal allowed

Summaries with links

CMB v Attorney General for New South Wales [2015] HCA 9

High Court of Australia

French CJ; Kiefer, Bell, Gageler & Keane JJ

Criminal law - sentencing - appellant charged with sexual offences against daughter - appellant referred to treatment program pursuant to regulation made under *Pre-Trial Diversion of Offenders Act 1985* (NSW) - appellant encouraged to make additional disclosures and admitted further sexual offences against daughter of which she had no memory - appellant charged and sentenced in relation to further offences - sentence deferred upon appellant entering good behaviour bonds - Court of Criminal Appeal (CCA) allowed Attorney-General's appeal against adequacy of sentences and re-sentenced appellant to five years and six months' imprisonment - onus - leniency that may be extended for guilty plea resulting from voluntary disclosure of otherwise unknown guilt - s5D *Criminal Appeal Act 1912* (NSW) - s23 *Crimes (Sentencing Procedure) Act 1999* (NSW) - held: before Court of Criminal Appeal could allow appeal, prosecution needed to demonstrate both appellable error and negate any reason why residual discretion not to interfere should be exercised - CCA failed to consider whether it was open to District Court to determine non-custodial sentences were not unreasonably disproportionate to nature and circumstances of offences - appeal allowed.

[CMB](#)



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From: A Dream of the Unknown

by P. B. Shelley

I DREAM'D that as I wander'd by the way
Bare winter suddenly was changed to spring,
And gentle odours led my steps astray,
Mix'd with a sound of waters murmuring
Along a shelving bank of turf, which lay
Under a copse, and hardly dared to fling
Its green arms round the bosom of the stream,
But kiss'd it and then fled, as thou mightest in dream.

There grew pied wind-flowers and violets,
Daisies, those pearl'd Arcturi of the earth,
The constellated flower that never sets;
Faint oxlips; tender bluebells, at whose birth
The sod scarce heaved; and that tall flower that wets—
Like a child, half in tenderness and mirth—
Its mother's face with heaven-collected tears,
When the low wind, its playmate's voice, it hears.

And in the warm hedge grew lush eglantine,
Green cow-bind and the moonlight-colour'd may,
And cherry-blossoms, and white cups, whose wine
Was the bright dew yet drain'd not by the day;
And wild roses, and ivy serpentine
With its dark buds and leaves, wandering astray;
And flowers azure, black, and streak'd with gold,
Fairer than any waken'd eyes behold.

[P. B. Shelley](#)

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