


Friday, 20 March 2020

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)

The Queen v Guode (HCA) - criminal law - murder - attempted murder - sentencing - manifest excess - acceptance by Crown of guilty plea to infanticide charge was not relevant to assessment of sentences of murder and attempted murder charges - appeal allowed (I B C G)

KMC v Director of Public Prosecutions (SA) (HCA) - criminal law - persistent sexual exploitation of a child - sentencing - s9(1) *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017* (SA) not engaged - appellant 'not sentenced according to law' - appeal allowed (I B C G)

Frigger v Trenfield (No 3) (FCA) - pleadings - defamation - applicants sought to amend originating application in to add claim for 'non-economic damages for defamatory imputations' - application dismissed (B I)

Urban Alley Brewery Pty Ltd v La Sirene Pty Ltd (No 2) (FCA) - trade mark - costs - Court upheld application of La Sirene by cross-claim - declaration concerning invalidity of 'Urban Ale mark' refused - costs orders made (B C I G)

Megerditchian v Khatchadourian (No 2) (NSWSC) - costs - family provision - indemnity costs - offers of compromise - family provision order in plaintiff's favour - determination of costs (B)

Duffin v Mount Arthur Coal Pty Ltd (NSWSC) - negligence - plaintiff employee injured while

driving grader which struck "lamination" in road - employer liable (I)

Celsius Fire Services Pty Ltd v Magistrates' Court of Victoria (No 2) (VSC) - costs - subpoena - Court granted relief to plaintiff - second defendant sought indemnity certificate - indemnity certificate refused (I B C G)

Summaries With Link (Five Minute Read)

The Queen v Guode [2020] HCA 8

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Criminal law - respondent drove car into lake deliberately - respondent's four children were in car - respondent and one child survived - other children drowned - primary judge sentenced respondent to 22 years in prison for murder charges and 6 years for 'attempted murder' - respondent sentenced to total effective of 26 years 6 months' in prison with 20 year non-parole period - respondent contended sentence manifestly excessive - Court of Appeal of Supreme Court of Victoria allowed appeal, imposing total effective sentence of 18 years in prison with 14 year non-parole period - appellant contended Court of Appeal erroneously took into account, as relevant consideration, that Crown had accepted a guilty plea to infanticide charge - whether acceptance by Crown of guilty plea to infanticide charge was relevant to assessment of sentences for murder and attempted murder charges - held: appeal allowed.

[The Queen](#) (I B C G)

KMC v Director of Public Prosecutions (SA) [2020] HCA 6

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Criminal law - applicant charged with persistent sexual exploitation of a child - jury returned unanimous guilty verdict - jury discharged without being asked questions concerning verdict's basis - applicant sentenced to 10 years and 3 days in prison, with 5 year non-parole period - sentence back-dated to 19/7/17 - whether applicant 'sentenced according to law' - respondent sought to uphold sentence's validity on basis 'it was consistent with' s9(1) *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017* (SA) (Statutes Amendment (Attorney-General's Portfolio) (No 2) Act), which was passed after applicant sentenced - whether s9(1) *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act* engaged - s50(1) *Criminal Law Consolidation Act 1935* (SA) - *Chiro v The Queen* [2017] HCA 37 - held: s9(1) *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act* not engaged - applicant not sentenced according to law - appeal allowed.

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

Frigger v Trenfield (No 3) [2020] FCA 150

Federal Court of Australia

Jackson J

Defamation - bankruptcy - corporations - pleadings - applicants sought to amend originating application in to add claim for 'non-economic damages for defamatory imputations' allegedly published in letter sent by first respondent to Australian Financial Complaints Authority - s37M *Federal Court of Australia Act 1976 (Cth)* - *Insolvency Practice Rules (Bankruptcy) 2016 (Cth)* - whether amendment justified by 'areas of overlap' in proceedings - alternative possibly of commencement of separate proceedings - whether adding claim would cause delay to issues' resolution - held: application dismissed.

[Frigger](#) (B I)

Urban Alley Brewery Pty Ltd v La Sirene Pty Ltd (No 2) [2020] FCA 351

Federal Court of Australia

O'Bryan J

Trade mark - costs - Court upheld application of La Sirene by cross-claim for rectification of Register of Trade Marks by cancellation of Urban Alley's "URBAN ALE" trade mark (Urban Ale mark) - Court directed parties to file 'agreed form or orders' - La Sirene sought declaration concerning invalidity of Urban Ale mark - parties in dispute concerning costs orders - whether to make declaration - whether to discount costs award in La Sirene's favour 'on an issues basis' - whether to make indemnity costs order in favour of La Sirene - whether to order costs on lump sum basis - whether to refer assessment to Registrar - whether to stay costs orders - 'mixed success' of parties on determination of 'orders for relief' - whether to make costs orders concerning 'hearing on relief' - held: declaration refused - costs orders made.

[Urban Alley](#) (B C I G)

Megerditchian v Khatchadourian (No 2) [2020] NSWSC 112

Supreme Court of New South Wales

Parker J

Costs - family provision - Court provisionally concluded provision should be made in plaintiff's favour - parties agreed that provisional decision be carried into effect - determination of costs - plaintiff sought order for costs - defendant contended plaintiff not entitled to costs due to effect of r42.34 *Uniform Civil Procedure Rules 2005 (NSW) (Rules)* - defendant sought costs order in reliance on offers of compromise - whether family provision order was judgment for purposes of r42.34(1) (Rules) - whether plaintiff's rejection of offers unreasonable - whether to award costs against plaintiff - held: costs orders made.

[View Decision](#) (B)

Duffin v Mount Arthur Coal Pty Ltd [2020] NSWSC 229

Supreme Court of New South Wales

Harrison AsJ

Negligence - plaintiff claimed damages against defendant employment for injuries suffered in course of employment - plaintiff injured while driving grader which struck "lamination" in road - s3B(1)(f) *Civil Liability Act 2002 (NSW)* - *Workers Compensation Act 1987 (NSW)* - employer's

non-delegable duty of care - held: defendant breached duty of care to plaintiff by failing to implement 'reasonable means' to avoid risk of injury to plaintiff - causation established - no contributory negligence - damages assessed - judgment for plaintiff.

[View Decision](#) (I)

Celsius Fire Services Pty Ltd v Magistrates' Court of Victoria (No 2) [2020] VSC 120

Supreme Court of Victoria

Almond J

Costs - subpoena - Court granted relief to plaintiff concerning second defendant's application to set aside subpoena, quashing magistrate's decision and remitting matter - Court gave 'preliminary indication' that it intended to order that unsuccessful second defendant pay plaintiff's costs - second defendant sought indemnity certificate under s4(1) *Appeal Costs Act 1998* (Vic) - whether entitlement to indemnity certificate - whether magistrate's decision concerning subpoena was 'a decision of a court in a civil proceeding' - whether nature of 'underlying proceeding' was criminal or civil - held: underlying proceeding was a prosecution under *Occupational Health and Safety Act 2004* (Vic) - underlying proceeding was criminal, not civil - magistrate's decision concerning subpoena was not 'a decision of a court in a civil proceeding' - indemnity certificate refused.

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

CRIMINAL

Executive Summary

Summaries With Link

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