



Friday, 20 May 2016

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)

Stone v Stone (NSWSC) - succession - family provision order and notional estate order granted in favour of deceased's daughter by second marriage (B)

In the matter of Pages Sales Pty Ltd (NSWSC) - corporations - winding up - statutory demand - arguable off-setting claim in respect of services provided - statutory demand varied (I B C G)

Complete Equipment Solutions Pty Ltd v Tesab Engineering Limited (A Company Registered in the United Kingdom, Company No. NI026214) (VSC) - corporations - statutory demand - application not served on defendant - proceeding dismissed (I B C)

Alphater Consulting v Rozman (VSCA) - contract - repudiation - wrongful termination of engagement of expert did not amount to repudiation of agreement - appeal allowed (I B C G)

Cavanagh v Dilena (SASC) - negligence - statutory duties - unrepresented litigant - dismissal of claim against police officer - appeal dismissed (I B C G)

Russell v Tuong (ACTSC) - damages - negligence - motor vehicle collisions - whiplash injury - damages assessed at \$577,723.00 (I)

Summaries With Link (Five Minute Read)

Stone v Stone [2016] NSWSC 605

Supreme Court of New South Wales

Brereton J

Succession - family provision - plaintiff was daughter of deceased's second marriage - plaintiff sought family provision from deceased's Will and order designating notional estate - ss58, 59, 60, 61, 79, 87 & 90 (NSW) *Succession Act 2006* (NSW) - primary obligation to widow - s16 *Family Provision Act 1982* (NSW) - held: extension of time granted - deceased had "evaded obligation to make proper provision" for plaintiff during childhood - deceased should have remedied past omissions by providing for plaintiff in Will - special circumstances established - family provision order and designating order granted.

[Stone](#) (B)

In the matter of Pages Sales Pty Ltd [2016] NSWSC 616

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiff sought to set aside statutory demand served by defendant - plaintiff claimed there was genuine dispute in relation to debt and claimed that it had an off-setting claim - ss459H(1)(a) & 459H(1)(b) *Corporations Act 2001* (NSW) - held: Court not satisfied of existence of genuine dispute - no serious question established concerning offsetting claim in reliance on amount which plaintiff claimed was due to another entity - arguable off-setting claim established in respect of "relatively small amount" for services provided from certain date - statutory demand varied.

[Pages Sales](#) (I B C G)

Complete Equipment Solutions Pty Ltd v Tesab Engineering Limited (A Company Registered in the United Kingdom, Company No. NI026214) [2016] VSC 253

Supreme Court of Victoria

Randall AsJ

Corporations - statutory demand - plaintiff sought pursuant to s459G *Corporations Act 2001* (Cth) to set aside statutory demand - sole issue whether s459G application and affidavit served within time or served at all - held: application not served on defendant - application not served according to *Service and Execution of Process Act 1992* (Cth) - applicant not served at address specified in statutory demand - service on solicitors not sufficient service - concept of informal service not applicable - proceeding dismissed.

[Complete Equipment Solutions](#) (I B C)

Alphater Consulting v Rozman [2016] VSCA 111

Court of Appeal of Victoria

Santamaria, Beach & McLeish JJA

Contract - repudiation - valuation of business - trial judge found applicant not entitled to terminate engagement of independent expert for determination of unresolved issues in relation to valuation and that applicant had repudiated dispute resolution agreement by terminating

expert's engagement - whether applicant entitled to unilaterally terminate agreement - whether termination amounted to repudiation - whether applicant had "honest misapprehension" concerning obligation and duties - held: applicant wrongfully terminated expert's engagement but it did not amount to repudiation - leave to appeal granted - appeal allowed.

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

Cavanagh v Dilena [2016] SASC 68

Supreme Court of South Australia

Kelly J

Negligence - statutory duties - unrepresented litigant - primary judge dismissed claim for damages against first respondent police officer arising from handcuffing in course of arrest and search of property - causation - whether appellant afforded opportunity to present case - reg 16(a) *Police Regulations 1999* (SA) - s40 *Magistrates Court Act 1991* (SA) - held: appellant given opportunity to present case - Magistrate provided assistance consistent with judicial officers' obligation to unrepresented litigants - Magistrate's findings open - no error in Magistrate's approach identified to justify Court's intervention - appeal dismissed.

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

Russell v Tuong [2016] ACTSC 93

Supreme Court of the Australian Capital Territory

Mossop AsJ

Damages - negligence - claim arising from two motor vehicle accidents in which defendants ran into back of plaintiff's vehicle - liability admitted - assessment of damages - both defendants insured by same insurer - s45 *Civil Law (Wrongs) Act 2002* (ACT) - *Civil Procedures Rules 2006* (ACT) - whiplash injury - expert medical evidence - causation - held: damages assessed at \$577,723.00.

[Russell](#) (I)

CRIMINAL

Executive Summary

Thi Quyen Le v The Queen (VSCA) - criminal law - importation of border controlled drug - no substantial risk of injustice arising from absence of *Azzopardi* direction - leave to appeal refused

Parker (a Pseudonym) v The Queen (VSCA) - criminal law - murder - proposed reliance on defence of duress - determination of questions of law concerning accused's belief specified in s9AG(2) *Crimes Act 1958* (Vic)

Summaries With Link

Thi Quyen Le v The Queen [2016] VSCA 100

Court of Appeal of Victoria

Black J

Criminal law - importation of border controlled drug - applicant found guilty of one charge of importing commercial quantity of heroin - applicant appealed concerning trial judge's failure to give *Azzopardi* direction in relation to accused's failure to give evidence - accused's counsel, in response to trial judge's question whether *Azzopardi* direction was requested, had intimated he did not require direction - ss11.5(1), 307.(1) & 11.5(7A) *Criminal Code 1995* (Cth) - *Jury Directions Act 2013* (Vic) requirements of offence's fault element - held: fault element did not include intention as to quantity of drug to be imported - there was "apparent forensic advantage to be gained" if *Azzopardi* direction not given- no risk of substantial miscarriage of justice arising from absence of direction - leave to appeal refused.

[Thi Quyen Le](#)

Parker (a Pseudonym) v The Queen [2016] VSCA 101

Court of Appeal of Victoria

Redlich, Osborn & Priest JJA

Criminal law - accused charged with murder - accused proposed to rely on defence of duress - defence of duress codified in s9AG *Crimes Act 1958* (Vic) - determination of two questions of law pursuant to ss302 & 305 *Criminal Procedure Act 2009* (Vic) concerning accused's belief specified in s9AG(2) *Crimes Act 1958* (Vic) - first question concerned point of view from which Court should consider whether accused had 'reasonable' belief as to matters in s9AG(2)(a) to (c) - second question was whether, in considering matters s9AG(2) (a) to (c), Court should consider "circumstances as the accused perceived them to be" or other circumstances - held: in relation to the first question, Court was to consider whether accused had 'reasonable' belief "by reference to a reasonable person possessing the personal characteristics of the accused that might have affected the accused's appreciation of the circumstances" - in relation to the second question, Court should have reference to "circumstances as a reasonable person, possessing the personal characteristics of the accused, would have perceived them to be".

[Parker](#)



Benchmark

The Sun's Shame (Sonnets XCII and XCIII)

by Dante Gabriel Rossetti

I

Beholding youth and hope in mockery caught
From life; and mocking pulses that remain
When the soul's death of bodily death is fain;
Honour unknown, and honour known unsought;
And penury's sedulous self-torturing thought
On gold, whose master therewith buys his bane;
And longed-for woman longing all in vain
For lonely man with love's desire distraught;
And wealth, and strength, and power, and pleasantness,
Given unto bodies of whose souls men say,
None poor and weak, slavish and foul, as they:—
Beholding these things, I behold no less
The blushing morn and blushing eve confess
The shame that loads the intolerable day.

II

As some true chief of men, bowed down with stress
Of life's disastrous eld, on blossoming youth
May gaze, and murmur with self-pity and ruth,—
"Might I thy fruitless treasure but possess,
Such blessing of mine all coming years should bless;"—
Then sends one sigh forth to the unknown goal,
And bitterly feels breathe against his soul
The hour swift-winged of nearer nothingness:—
Even so the World's grey Soul to the green World
Perchance one hour must cry: "Woe's me, for whom
Inveteracy of ill portends the doom,—
Whose heart's old fire in shadow of shame is furl'd:
While thou even as of yore art journeying,
All soulless now, yet merry with the Spring!"

[Dante Gabriel Rossetti](#)

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