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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Cooper (Trustee) v GT Capital Partners Pty Ltd, in the matter of Tonner (FCA) - bankruptcy - trustee of bankrupt's estate granted leave to disclaim litigation funding agreement (B)

Col Crawford Pty Ltd v Nissan Motor Co (Australia) Pty Ltd (NSWSC) - evidence - client legal privilege - documents with exception of one document, were privileged - no waiver of privilege - claim upheld (I B C G)

In the matter of Jimmy's Recipe Pty Limited (NSWSC) - contempt - third defendant and fourth defendant committed civil contempt by breach of undertaking - third defendant and fourth defendant to pay plaintiff's costs of motion on indemnity basis (B C I G)

Re SC (VSC) - non-custodial supervision order (NSCO) - SC subject to NSCO - SC sought revocation of NSCO - revocation refused - NSCO confirmed (I B C G)

Cornwall v Jenkins as Trustee for the iSpin Family Trust (ACTCA) - negligence - appellant injured while participating in "aerial sling" 'fitness class' - respondent liable - appeal allowed (I B C G)

IC Formwork Services Pty Ltd v Moir (ACTCA) - workers compensation - respondent injured in NSW - applicable law - "Territory or State of connection" - extension of time to seek leave to appeal granted - leave to appeal granted (I B C G)

Northern Territory of Australia v Dover Investments Pty Ltd & Ors (NTSC) - stay - alternative dispute resolution - Development Agreement - Payment of Works Deed - defendants sought stay of proceedings so that independent expert could resolve disputes - stay refused (I B C G)

Summaries With Link (Five Minute Read)

Cooper (Trustee) v GT Capital Partners Pty Ltd, in the matter of Tonner [2019] FCA 2174

Federal Court of Australia

Besanko J

Bankruptcy - applicant was trustee of bankrupt's bankrupt estate - respondent was litigation funding provider - bankrupt and others executed 'Litigation Funding Agreement' (funding agreement) prior to bankruptcy - applicant, under s133(1A) *Bankruptcy Act 1966* (Cth) (Bankruptcy Act), 'purported to disclaim' funding agreement - trustee served notice under reg 6.10 *Bankruptcy Regulations 1996* (Cth) - applicant sought declaration he had disclaimed funding agreement - whether contract was 'unprofitable contract' under s133(5A) Bankruptcy Act - whether, if contract not unprofitable contract, to grant trustee leave to disclaim contract - held: trustee granted leave to disclaim funding agreement.

[Cooper](#) (B)

Col Crawford Pty Ltd v Nissan Motor Co (Australia) Pty Ltd [2020] NSWSC 87

Supreme Court of New South Wales

Stevenson J

Evidence - privilege - plaintiff operated motor vehicle dealership under agreement with defendant - parties in dispute concerning circumstances in which dealership 'came to an end' - company (Deloitte) provided 'accounting advice' to plaintiff - defendant issued subpoena for production of documents to Deloitte - plaintiff contended documents in packet subject to client legal privilege - whether documents privileged - whether waiver of privilege - whether copying of documents to accountant at Deloitte entailed documents no longer privileged - held: documents with exception of one document, were privileged - no waiver of privilege - claim upheld.

[View Decision](#) (I B C G)

In the matter of Jimmy's Recipe Pty Limited [2020] NSWSC 93

Supreme Court of New South Wales

Rees J

Contempt - plaintiff sought that third defendant and fourth defendant 'be found guilty of and punished for contempt of court' for breach of undertaking to ensure first defendant 'would bank each day's cash takings' - third defendant and fourth defendant accepted undertaking breached but contended breach 'innocent, merely technical and explicable' - parties agreed on amount of 'unbanked cash' over period - whether actions of third defendant and fourth

defendant constituted contempt - whether to impose penalty - held: third defendant and fourth defendant had committed civil contempt - third defendant and fourth defendant to pay plaintiff's costs of motion on indemnity basis.

[View Decision](#) (B C I G)

Re SC [2020] VSC 58

Supreme Court of Victoria

Bell J

Non-custodial supervision order - proceedings concerned review of non-custodial supervision order (NCSO) - SC was subject to order - SC sought that order be revoked - ss33(1) & 33(1)(d) *Crimes (Mental Impairment Unfitness to be Tried) Act 1997* (Vic) - Secretary to the Department of Health and Human Services and SC's 'treating team' submitted NCSO 'should be revoked' - Attorney-General opposed revocation but supported NCSO's confirmation - held: Court confirmed NCSO.

[Re SC](#) (I B C G)

Cornwall v Jenkins as Trustee for the iSpin Family Trust [2020] ACTCA 2

Court of Appeal of the Australian Capital Territory

Burns & Loukas-Karlsson JJ; Crowe AJ

Negligence - appellant injured while participating in "aerial sling" 'fitness class' - respondent ran fitness class and occupied premises - appellant sued respondent in negligence - primary judge gave judgment for respondent, finding evidence did not reveal breach of duty by respondent - appellant appealed - appellant 'in essence' submitted primary judge erred in finding no breach of care by respondent by failure to require appellant to use 'crash mat', and erred in alternative finding that any breach had not caused appellant's injuries - respondent conceded appellant's contention that primary judge had erred in 'assuming past economic loss' - held: breach of duty established - factual causation established - damages reduced by one third for contributory negligence - judgment for appellant in sum of \$372,297.34.

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

IC Formwork Services Pty Ltd v Moir [2020] ACTCA 4

Court of Appeal of the Australian Capital Territory

Murrell CJ

Workers compensation - claim arising from injury suffered which respondent suffered in course of employment by applicant - injury occurred at work site in Bawley Point NSW - respondent claimed that, for purposes of 182D *Workers Compensation Act 1951* (ACT) (*Workers Compensation Act*), ACT law was to apply - applicant claimed New South Wales law applied - primary judge found "the Territory or State of connection" was ACT on principal basis it was 'Territory or State' "where the respondent usually worked in the employment" within meaning of s36B(3)(a) *Workers Compensation Act* - applicant sought extension of time to seek leave to appeal - whether decision was final or interlocutory - explanation for lateness of filing - merits of proposed appeal - whether arguable grounds of appeal - held: extension of time and leave to



appeal granted.

[IC Formwork](#) (I B C G)

Northern Territory of Australia v Dover Investments Pty Ltd & Ors [2020] NTSC 3

Supreme Court of the Northern Territory

Coulehan AJ

Stay - alternative dispute resolution - plaintiff claimed declaration against first defendant that plaintiff had validly terminated Development Agreement - plaintiff claimed amount against second defendant and third defendant under Payment of Works Deed - defendants by summons sought stay of proceeding in reliance on dispute resolution clauses in Development Agreement and Payment of Works Deed - clauses provided for independent expert's appointment in event of dispute - stay sought so that independent expert could resolve disputes - held: stay refused.

[Northern Territory](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Bright is the Ring of Words

By: Robert Louis Stevenson

Bright is the ring of words
When the right man rings them,
Fair the fall of songs
When the singer sings them.
Still they are carolled and said –
On wings they are carried –
After the singer is dead
And the maker is buried.

Low as the singer lies
In the field of heather,
Songs of his fashion bring
The swains together.
And when the west is red
With the sunset embers,
The lover lingers and sings
And the maid remembers.

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

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