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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Zappia v Commissioner of Taxation (FCA) - taxation - failure to include in income tax returns amount deposited in bank account and interest - default assessments issued - taxpayer's appeal dismissed (I B C G)

Peter Sleiman Investments Pty Ltd as trustee for the Sleiman Family Trust v Deputy Commissioner of Taxation (NSWCA) - corporations - equity - property - company wound up in insolvency - declarations under s37A *Conveyancing Act 1919* (NSW) refused - appeal allowed in part - cross-appeal dismissed (I B C G)

Deputy Commissioner of Taxation v Hanselmann (NSWCA) - taxation - dismissal of application to set aside consent orders - application to appeal against orders of District Court judge dismissed as incompetent (B G)

Vardas v Coshott & Ors (No 2) (NSWSC) - costs - defendants to pay successful plaintiff costs on an indemnity basis - specified gross sum costs order made (I B C G)

Lynwood v Coffs Harbour and District Local Aboriginal Land Council (NSWSC) - administrative law - statutory interpretation - Tribunal's termination of social housing tenancy agreements set aside for failure to comply with *Residential Tenancies Act 2010* (NSW) (I B C G)

Edward Clark Allon v RMIT University (VSC) - discovery - negligence - application for further

discovery allowed in part (I B C G)

Bodycorp Repairers Pty Ltd v GDG Legal Pty Ltd & Anor (VSC) - security for costs - negligence - contract - solicitors' duties - security for costs of proceeding against solicitors granted (I B C G)

Summaries With Link (Five Minute Read)

Zappia v Commissioner of Taxation [2017] FCA 390

Federal Court of Australia

Perram J

Income tax - applicant did not include sum received into bank account in her name, or interest on sum, as income in her income tax returns - Commissioner considered amount was on revenue account and issued default assessments to her - Commissioner rejected applicant's objection that amount was not income - whether applicant could prove amount was not assessable income - Part IVC, s14ZZO(b)(i) *Taxation Administration Act 1953* (Cth) - held: Court not satisfied that amount was part of an equity investment in company, or that applicant held funds advanced to her on trust for the company - appeal dismissed.

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

Peter Sleiman Investments Pty Ltd as trustee for the Sleiman Family Trust v Deputy Commissioner of Taxation [2017] NSWCA 81

Court of Appeal of New South Wales

Beazley P, Leeming JA & Emmett AJA

Corporations - equity - property - appeal and cross appeal arising from restructure of trust estate's property - as result of resettlement, Peter Sleiman Investments (PSI) held interest in properties as trustee of nine property unit trusts - restructure occurred after Commissioner issued tax assessments to trustee - Commissioner had obtained judgment for amounts owing on assessments - Commissioner sought that transactions which PSI engaged in be avoided under s37A *Conveyancing Act 1919* (NSW) due to being alienations of property with intent to defraud - Commissioner also sought PSI be wound up in insolvency on basis of non-satisfaction of judgment in Commissioner's favour - PSI cross claimed for declarations it held properties on trust, removal as trustee with appointment of new trustee, and discharge of freezing order - primary judge ordered PSI to be wound up in insolvency but dismissed claim under s 37A *Conveyancing Act* - primary judge dismissed cross-claim - held: PSI's appeal allowed in part - Commissioner's cross-appeal dismissed.

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

Deputy Commissioner of Taxation v Hanselmann [2017] NSWCA 80

Court of Appeal of New South Wales

Payne JA

Taxation - bankruptcy - respondent signed consent orders in District Court of New South Wales concerning taxation liabilities - Judge Maiden dismissed respondent's application to set aside consent orders - sequestration order made against respondent's estate by registrar - respondent sought to appeal against Judge Maiden's orders - Deputy Commissioner contended that respondent as undischarged bankrupt did not have standing to seek for leave to appeal - Deputy Commissioner sought that summons for leave to appeal be dismissed as incompetent - r51.41 *Uniform Civil Procedure Rules 2005* (NSW) - held: respondent did not have standing - application dismissed due to lack of competency.

[Deputy Commissioner of Taxation](#) (B G)

Vardas v Coshott & Ors (No 2) [2017] NSWSC 425

Supreme Court of New South Wales

Slattery J

Costs - indemnity costs - in first judgment, Court found plaintiff succeeded in application to restrain defendants from taking further steps on costs assessment and ordered defendants to 'jointly and severally indemnify the plaintiff for all costs and expenses incurred by the plaintiff as a result of the costs assessment' - plaintiff sought that defendants pay gross sum by way of indemnity costs - held: Court satisfied in the circumstances that defendants should pay costs on an indemnity basis - specified gross sum costs order made.

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

Lynwood v Coffs Harbour and District Local Aboriginal Land Council [2017] NSWSC 424

Supreme Court of New South Wales

Adamson J

Administrative law - statutory interpretation - plaintiffs submitted that Appeal Panel should have set Tribunal's termination orders in respect of social housing tenancy agreements aside for failure to comply with *Residential Tenancies Act 2010* (NSW) - defendant contended termination order was in accordance with s85 of under which Tribunal was obliged to make termination order if tenant did not vacate premises after service of a 90-day notice - held: Tribunal was bound to, but did not, have regard to matters in s154E - Tribunal failed to have regard to mandatory relevant considerations - Tribunal's orders set aside.

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

Edward Clark Allon v RMIT University [2017] VSC 203

Supreme Court of Victoria

Judicial Registrar Clayton

Discovery - negligence - plaintiff sought further discovery pursuant to O29 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - whether pleading's particulars warranted discovery - contract of employment - spreadsheet - objections to redaction - whether redaction in discovered document justified - documents' relevance - ss7 & 55 *Civil Procedure Act 2010* (Vic) - held: application granted in part.

[Edward Clark Allon](#) (I B C G)

Bodycorp Repairers Pty Ltd v GDG Legal Pty Ltd & Anor [2017] VSC 200

Supreme Court of Victoria

Matthews JR

Security for costs - negligence - contract - solicitors' duties - defendants sought security for costs of proceeding brought against them by plaintiff and that proceedings be stayed if security for costs not provided - prospects of success - stultification - r62.02 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* - s1335(1) *Corporations Act 2001 (Cth)* - held: Court satisfied that plaintiff should provide security to defendants - amount to be paid into Court.

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

CRIMINAL

Executive Summary

DL v R (NSWCCL) - criminal law - murder - 'blood pattern analysis evidence' - admissibility of evidence - procedural fairness - leave to appeal against conviction granted on certain grounds - appeal dismissed

DL v R (No 2) (NSWCCL) - criminal law - murder - appeal against sentence - conceded Muldrock error but no lesser sentence warranted - appeal dismissed

Summaries With Link

DL v R [2017] NSWCCA 57

Court of Criminal Appeal of New South Wales

Leeming JA; Rothman & Wilson JJ

Criminal law - appellant convicted of murder and sentenced to 22 years in prison - appellant appealed against conviction and sentence - determination of appeal against conviction - most grounds of appeal related to 'blood pattern analysis evidence' adduced from Detective at trial - Detective accepted there were deficiencies in some aspects of his evidence - Crown denied there was procedural unfairness or that Detective's evidence was inadmissible - length of elapsed time - operation of r4 *Criminal Appeal Rules* - proviso - ss15A, 15B & 15F *Children (Criminal Proceedings) Act 1987 (NSW)* - s6 *Criminal Appeal Act 1912 (NSW)* - held: leave to appeal granted on certain grounds - appeal dismissed.

[DL](#)

DL v R (No 2) [2017] NSWCCA 58

Court of Criminal Appeal of New South Wales



Leeming JA; Rothman & Wilson JJ

Criminal law - appellant convicted of murder and sentenced to 22 years in prison - appellant appealed against conviction and sentence - determination of appeal against sentence - applicant contended primary judge erred in applying standard non-parole period legislation in light of *Muldrock v The Queen* [2011] HCA 39 and that sentence manifestly excessive - held: Muldrock error conceded, but no lesser sentence warranted - appeal dismissed.

[DL](#)

Benchmark

Who Has Seen the Wind?

By [Christina Rossetti](#)

Who has seen the wind?

Neither I nor you:

But when the leaves hang trembling,

The wind is passing through.

Who has seen the wind?

Neither you nor I:

But when the trees bow down their heads,

The wind is passing by.

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