



Friday, 22 February 2019

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)

Minister for Industrial Relations for the State of Victoria v Esso Australia Pty Ltd (FCAFC) - industrial law - application for judicial review of Full Bench of the Fair Work Commission's decision to revoke Watson VP's order pursuant to s424 *Fair Work Act 2009* (Cth) - application dismissed (I B C G)

Milam v University of Melbourne (FCA) - industrial law - applicant sought urgent interlocutory relief including relief to restrain respondent from suspending applicant - interlocutory relief to be granted (I B C G)

Xenith IP Group Limited, in the matter of Xenith IP Group Limited (FCA) - corporations - application for approval of shareholders' meeting granted (I B C G)

Harrod v MetLife Insurance Limited (NSWSC) - insurance - total and permanent disablement - second defendant sought medical examination of plaintiff by psychologist - Court satisfied plaintiff 'must attend' examination (B I)

Udaipur Lake Pty Ltd & Anor v Michael Sklovsky Pty Ltd & Ors (VSC) - corporations - oppression - 'terms of settlement' - valuation not made in accordance with contract - valuation invalid and set aside - order made for redetermination of 'fair value' (I B C G)

Pacific Wireless Pty Ltd v Breeze Logistics Australia Pty Ltd (VSC) - administrative law -

contract - erroneous finding that 'Termination Payment' was a penalty - erroneous finding of failure by plaintiff to prove 'lost profits claim' - appeal allowed (I B C G)

SH v Chief Executive Officer of Department of Communities (WASCA) - administrative law - confirmation of 'care planning decision' - leave to appeal refused (G)

Summaries With Link (Five Minute Read)

Minister for Industrial Relations for the State of Victoria v Esso Australia Pty Ltd [2019] FCAFC 26

Full Court of the Federal Court of Australia

White, Lee & Wheelahan JJ

Industrial law - applicant sought judicial review of Full Bench of the Fair Work Commission's decision under s603 *Fair Work Act 2009* (Cth) (Fair Work Act) to revoke Watson VP's order pursuant to s424 Fair Work Act (s424 Order) for termination of 'protected industrial action' concerning two enterprise agreements' negotiation - whether 'failure to consider or apply a material consideration' - whether misapprehension as to effect of s266 Fair Work Act - whether s603 Fair Work Act could be deployed to correct error which Full Bench perceived in s424 order - whether denial of procedural fairness - whether decision legally unreasonable - held: Minister's grounds not established - application dismissed.

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

Milam v University of Melbourne [2019] FCA 171

Federal Court of Australia

Anastassiou J

Industrial law - applicant's claim arose from respondent's 'preliminary investigation' concerning behaviour of applicant - respondent alleged applicant's behaviour constituted 'misconduct or serious misconduct' under 'Enterprise Agreement' - applicant sought interlocutory injunction to restrain respondent 'from giving effect to, or taking any further step in furtherance of' inquiry's findings, including suspension of applicant - held: Court satisfied that applicant had established a 'serious question or serious questions to be tried' - balance of convenience favoured granting of interlocutory relief - interlocutory relief to be granted.

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

Xenith IP Group Limited, in the matter of Xenith IP Group Limited [2019] FCA 173

Federal Court of Australia

Yates J

Corporations - scheme of arrangement - plaintiff, pursuant to s411(1) *Corporations Act 2001* (Cth), sought orders requiring plaintiff to convene meeting plaintiff's members, other than QANTM Intellectual Property Limited ('QANTM') any 'Associate' of QANTM or any 'related bodies corporate' of QANTM, in order to consider, and agree to if thought fit, a scheme of

arrangement between plaintiff and members ('Scheme Shareholders') - scheme's effect would be that Scheme Shareholders would cease to be plaintiff's shareholders and would become QANTM's shareholders - whether scheme was 'compromise or arrangement' - whether 'formal requirements' satisfied - whether Court would be likely to approve scheme on 'unopposed application' - whether utility in approving meeting - held: meeting approved - orders granted as sought.

[Xenith](#) (I B C G CG) (I B C G)

Harrod v MetLife Insurance Limited [2019] NSWSC 28

Supreme Court of New South Wales

Slattery J

Insurance - total and permanent disablement - plaintiff former police officer claimed she qualified as 'totally and permanently disabled' under insurance policies issued by second defendant to first defendant for police officers' benefit - second defendant sought that plaintiff 'be medically examined by a psychologist' - plaintiff opposed medical examination - held: Court satisfied that plaintiff 'must attend' examination - directions made.

[View Decision](#) (B I)

Udaipur Lake Pty Ltd & Anor v Michael Sklovsky Pty Ltd & Ors [2019] VSC 23

Supreme Court of Victoria

Kennedy J

Corporations - oppression - proceedings concerned validity of 'valuation prepared pursuant to terms of settlement' - whether valuation vitiated by error - determination of remedy - 'range of values' - 'fair value' - 'error of objective fact' - construction of contract - held: valuation not given in accordance with contract - valuation invalid and set aside - order made for redetermination of fair value of first applicant's interest in first respondent - orders made.

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

Pacific Wireless Pty Ltd v Breeze Logistics Australia Pty Ltd [2019] VSC 64

Supreme Court of Victoria

Lyons J

Administrative law - contract - plaintiff entered agreement to provide defendant with services (Service Agreement) - plaintiff terminated Service Agreement following 'fundamental breach' by defendant - plaintiff claimed 'Termination Payment' under Service Agreement - defendant contended plaintiff did not prove 'lost profit claim' and that Termination Payment was 'unenforceable penalty' - Victorian Civil & Administrative Tribunal found plaintiff did not prove lost profit claim and Termination Payment was penalty - Tribunal found plaintiff entitled to 'fair and reasonable' damages - plaintiff sought to appeal - held: Tribunal erroneously found Termination Payment was penalty and in finding failure by plaintiff to prove lost profits claim - appeal allowed.

[Pacific Wireless](#) (I B C G)

SH v Chief Executive Officer of Department of Communities [2019] WASCA 31

Court of Appeal of Western Australia

Quinlan CJ; Mitchell & Pritchard JJA

Administrative law - appellant sought review of respondent's confirmation of 'care planning decision' - State Administrative Tribunal dismissed appellant's application 'for want of jurisdiction' - appellant sought to appeal - whether want of jurisdiction - procedural fairness - bias - child's best interests - held: Tribunal erroneously found it did not have jurisdiction to deal with application - no merit in other appeal grounds - Tribunal's dismissal of application was 'not attended by sufficient doubt' to justify leave to appeal - no 'substantial injustice' to appellant by refusal of leave to appeal - leave to appeal refused.

[SH](#) (G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Book 6, Epigram 17: In Sextum.

By: Thomas Bastard

Sextus upon a spleen, did rashly swear,
That no new fashion he would ever wear.
He was forsworn, for see what did ensue,
He wore the old, till the old was the new.

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

The Reverend Thomas Bastard (1565/1566 – April 19, 1618) was an English clergyman famed for his published English language epigrams.. Life. Born in Blandford Forum, Dorset, England, Bastard is best known for seven books of 285 epigrams entitled *Chrestoleros* published in 1598.. He initially attended Winchester College. Subsequently he began studying at New College, Oxford on 27 August 1586.

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