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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)

Amaca Pty Limited v Latz; Latz v Amaca Pty Limited (HCA) - negligence - superannuation - personal injury - assessment of damages - sum to be allowed on account of superannuation pension but not on account of age pension - Amaca's appeal allowed in part - Mr Latz's appeal dismissed (B C I G)

Castle v United States (FCA) - extradition - Court had jurisdiction over applicant - applicant not immune from extradition process - claim dismissed (I B C G)

Midland Metals Overseas v Australian Cablemakers Association (NSWSC) - trade and commerce - misleading or deceptive conduct - declaratory relief and injunction refused - proceedings dismissed (B C I G)

Re M's Codicil (NSWSC) - wills and estates - succession - person lacking testamentary capacity - orders granted for court-authorized codicil (B)

Re Estate Jerrard, deceased (NSWSC) - wills and estates - succession - intestacy - competing claims of parents in respect of deceased son's estate - mother sought whole estate - Court made distribution order in mother's favour, reducing but not excluding father's entitlement (B)

Coonwarra Pty Ltd v Cornonero Pty Ltd & Ors (VSC) - security for costs - third defendant granted order that plaintiff pay security for costs of proceedings (I B C G)

Re Niclasen (VSC) - wills and estates - succession - executor's application for executor's commission granted (B)

Summaries With Link (Five Minute Read)

Amaca Pty Limited v Latz; Latz v Amaca Pty Limited [2018] HCA 22

High Court of Australia

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

Negligence - superannuation - Mr Latz was aged 71 - Mr Latz had retired and was receiving superannuation pension under Pt 5 *Superannuation Act 1988* (SA) and age pension under Pt 2.2 *Social Security Act 1991* (Cth) - Mr Latz was diagnosed, in October 2016, with terminal malignant mesothelioma - Mr Latz sued Amaca, which was manufacturer of 'asbestos fencing' he had cut - Amaca did not dispute liability - Mr Latz contended that, if not for Amaca's negligence, he would have continued to receive pensions for 'the remainder of his pre-illness life expectancy', which was of 'around 16 years' - Full Court of the Supreme Court of South Australia found that Mr Latz was entitled to damages for both pensions, but reduced damages to take into account 'reversionary pension' payable to Mr Latz's partner under s38(1)(a) *Superannuation Act* - Amaca and Mr Latz appealed - Amaca appealed against finding that Mr Latz was entitled to damages for pensions - Mr Latz appealed against finding as to reversionary pension - whether Mr Latz was entitled to damages from Amaca for loss of both pensions - if Mr Latz entitled to damages, whether assessment of damages should take into account the reversionary pension - principles applicable to assessing damages for 'negligently caused personal injuries' - held: Mr Latz was entitled to damages in calculation of which a sum was to be allowed on account of the superannuation pension, but not on account of the age pension - Amaca's appeal allowed in part - Mr Latz's appeal dismissed.

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

Castle v United States [2018] FCA 931

Federal Court of Australia

Mortimer J

Extradition - self-represented litigant - jurisdiction - applicant arrested pursuant to warrant under s12 *Extradition Act 1988* (Cth) (*Extradition Act*) and was subject to request for extradition from United States - applicant objected to Court's authority to deal with United States' extradition request - applicant claimed immunity from *Extradition Act's* processes - held: applicant failed to prove Court did not have jurisdiction over him or that he was immune from extradition process - applicant's claim dismissed.

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

Midland Metals Overseas v Australian Cablemakers Association [2018] NSWSC 938

Supreme Court of New South Wales

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McDougall J

Trade and commerce - misleading or deceptive conduct - first defendant sent 'letter in identical terms' to Ministers - second defendant was Chairman of first defendant - second defendant signed letter - letter asserted that an electrical cable which plaintiff supplied in Australia was unsafe and did not meet Australian and New Zealand Standard - common ground that some of letter's representations were incorrect - plaintiff contended that defendants engaged in misleading or deceptive conduct in trade or commerce, or conduct in trade or commerce which was likely to mislead or deceive - plaintiff contended defendants' conduct breached s18 *Australian Consumer Law* - plaintiff sought declaratory relief and injunction - held: Court not satisfied that conduct was misleading or deceptive, or like to mislead or deceive - proceedings dismissed.

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

Re M's Codicil [2018] NSWSC 936

Supreme Court of New South Wales

Lindsay J

Wills and estates - succession - 'statutory will' - applicant sought, pursuant to ss18-26 *Succession Act 2006* (NSW), that a 'statutory will' (court-authorized codicil) be made on behalf of her 93 year old, widowed mother, who lacked testamentary capacity (third respondent) - uncertainty - held: Court satisfied in respect of topics in s22 *Succession Act* - court-authorized codicil calculated to give effect to testamentary intentions expressed in third respondent's will - orders made for court-authorized codicil.

[View Decision](#) (B)

Re Estate Jerrard, deceased [2018] NSWSC 781

Supreme Court of New South Wales

Lindsay J

Wills and estates - succession - intestacy - distribution on intestacy - competing claims - plaintiff was mother of deceased who died intestate - plaintiff claimed, against defendant father of deceased, entitlement to whole of deceased's estate - parents were both from 'within the deceased's Indigenous community' - if claim succeeded it would displace defendant's entitlement to half of deceased's estate under general intestacy rules in *Succession Act 2006* (NSW) - 'traditional customary lore' - 'in all the circumstances, just and equitable' - held: Court of view that deceased, had he been required to make will, would have favoured plaintiff but not to extent of defendant's exclusion - Court made distribution order in plaintiff's favour, reducing but not displacing share to be distributed to father under general intestacy rules

[View Decision](#) (B)

Coonwarra Pty Ltd v Coronero Pty Ltd & Ors [2018] VSC 333

Supreme Court of Victoria

Derham AsJ

Security for costs - third defendant sought that plaintiff give security for costs of defending

proceeding - whether plaintiff had sufficient assets in Victoria to pay costs order - impecuniosity - O62 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* - s1335(1) *Corporations Act 2001 (Cth)* - held: plaintiff had insufficient assets in Victoria to pay costs order - not possible to conclude defendant caused or contributed to plaintiff's impecuniosity, or may have caused or contributed to it - plaintiff to pay security for costs of proceedings.

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

Re Niclasen [2018] VSC 287

Supreme Court of Victoria

Judicial Registrar Englefield

Wills and estates - executor's commission - plaintiff executor sought order for executor's commission under s65 *Administration and Probate Act 1958 (Vic)* - deceased's nephews contended that, because executor was given gift of deceased's car under will, she was not entitled to commission - no allegations of breach of duty as executor - whether to grant commission - amount of commission - 'fair and reasonable' - held: Court satisfied that plaintiff should be granted commission in sum of \$30,255.76.

[Niclasen](#) (B)

CRIMINAL

Executive Summary

Elhassan v R (NSWCCA) - criminal law - supplying not less than commercial quantity of prohibited drug - judge erred in assessing offence's objective seriousness - properly conceded error - lesser sentence warranted - appellant resentenced

NN v The State of Western Australia (WASCA) - criminal law - sexual offences - appellant convicted of sexual offences against sisters under sixteen - appeal against conviction and sentence dismissed

Summaries With Link

Elhassan v R [2018] NSWCCA 118

Court of Criminal Appeal of New South Wales

Simpson AJA; Fullerton & McCallum JJ

Criminal law - applicant found guilty of supplying not less than commercial quantity of prohibited drug - applicant received total sentence of 9 years 6 months - applicant sought to appeal against sentence - applicant contended judge erred when assessing offence's objective seriousness by taking into account that applicant had been on parole at the time of offence -

Benchmark

Crown conceded the asserted error - 'proper approach' to applicant's resentencing - principles in *Kentwell v The Queen* (2014) 252 CLR 601 - objective, subjective and special circumstances - recent decisions - s25(2) *Drug Misuse and Trafficking Act 1985* (NSW) - *Crimes (Sentencing Procedure) Act 1999* (NSW) - held: Court satisfied a lesser sentence was warranted - appeal allowed - appellant resentenced.

[View Decision](#)

NN v The State of Western Australia [2018] WASCA 92

Court of Appeal of Western Australia

Martin CJ, Mitchell JA & Pritchard J

Criminal law - sexual offences - appellant convicted of sexual offences against sisters under sixteen - appellant was under 18 when he committed certain offences - appellant sentenced to 5 years in prison - appellant appealed - in respect of conviction, appellant contended there was 'error of law/miscarriage of justice' in trial judge's decision to allow State to 'split its case and adduce evidence in rebuttal' after case's closure - in respect of sentence, appellant contended there was 'express error' in trial judge's application of *Young Offenders Act 1994* (WA) to appellant's sentencing on certain grounds, and that sentence infringed totality principle's first limb - held: grounds of appeal failed - appeal dismissed.

[NN](#)

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Sonnet 1

By: William Shakespeare

From fairest creatures we desire increase,
That thereby beauty's rose might never die,
But as the ripener should by time decease,
His tender heir might bear his memory:
But thou contracted to thine own bright eyes,
Feed'st thy light's flame with self-substantial fuel,
Making a famine where abundance lies,
Thy self thy foe, to thy sweet self too cruel:
Thou that art now the world's fresh ornament,
And only herald to the gaudy spring,
Within thine own bud buriest thy content,
And, tender churl, mak'st waste in niggarding:
Pity the world, or else this glutton be,
To eat the world's due, by the grave and thee.

<https://en.wikipedia.org/wiki/Shakespeare>

William Shakespeare - Wikipedia

en.wikipedia.org

Early life. William Shakespeare was the son of John Shakespeare, an alderman and a successful glover (glove-maker) originally from Snitterfield, and Mary Arden, the daughter of an affluent landowning farmer.

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