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Daily Composite 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)

Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd (HCA) - contract - collateral contract - estoppel - statement by landlord to tenants did not give rise to collateral contract obliging landlord to renew leases, or an estoppel - erroneous remittal of matter to Victorian Civil and Administrative Tribunal - appeal allowed (I B C G)

In the matter of Keystone Group (Receivers and Managers Appointed) (Administrators Appointed) (NSWSC) - corporations - orders granted for extension of period for convening second meeting of creditors in relation to companies (I B C G)

Kamasae v Commonwealth of Australia (No 2) (LPP Ruling) (VSC) - legal advice privilege - production of documents sought from Commonwealth - claim of privilege upheld (I B C G)

DIF III Global Co-Investment Fund, L.P. v BBLP LLC (VSC) - security for costs - erroneous rejection of plaintiffs' proposed form of security - appeal allowed (I B C G)

Bidvest Australia Ltd v Auzcorp Pty Ltd (WASCA) - stay - discovery - disputed documents not to be inspected prior to appeal's determination - stay granted (I B C G)

Rayney v Reynolds (WASC) - defamation - writ issued one day before expiry of limitation period and not served - short extension of validity of writ granted (I B C G)

Stevens v Alcazar-Stevens (ACTSC) - wills and estates - powers of attorney - standing - extension of time to make application for defendant to pay compensation to deceased's estate granted (B)

Summaries With Link (Five Minute Read)

Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd [2016] HCA 26

High Court of Australia

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

Contract - collateral contract - estoppel - Victorian Civil and Administrative Tribunal found appellant landlord made statement to respondents (tenants) in negotiations for leases, that they would be 'looked after at renewal time, giving rise to collateral contract obliging landlord to offer renewal of leases - Tribunal found that even if its conclusion wrong it would have accepted tenants' submission appellant was estopped from denying collateral contract - Tribunal ordered appellant to pay respondents damages for breach of collateral contract - primary judge of Supreme Court of Victoria and Court of Appeal found statement did not give rise to obligation under collateral contract - Court of Appeal remitted matter to Tribunal for further determination on issue of relief to be granted on basis that 'statement founded a promissory estoppel' - held: Court of Appeal correct to find no collateral contract but erred in remitting matter on estoppel issue, on which tenants could not succeed - appeal allowed.

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

In the matter of Keystone Group (Receivers and Managers Appointed) (Administrators Appointed) [2016] NSWSC 1011

Supreme Court of New South Wales

Barrett AJA

Corporations - first plaintiffs were administrators under Pt 5.3A *Corporations Act 2001* (Cth) of 42 companies making up 'Keystone Group' - period for convening second meeting of creditors in relation to each company due to expire on 26 July 2016 - first plaintiffs sought extension of convening period - held: Court persuaded additional time should be granted - additional time to be devoted to 'what appears to be a responsibly conceived timetable' in hope returns would be maximised through orderly sale - orders granted for extension of convening period.

[Keystone Group](#) (I B C G)

Kamasae v Commonwealth of Australia (No 2) (LPP Ruling) [2016] VSC 404

Supreme Court of Victoria

Macaulay J

Legal advice privilege - plaintiff on own behalf and on behalf of detainees detained on Manus Island sued Commonwealth for breaching duties to detainees - plaintiff sought production of documents discovered by Commonwealth - Commonwealth claimed legal advice privilege over documents - s118 *Evidence Act 2008* (Vic) - whether parts of documents in risk register and

submission to Minister, if disclosed, would disclose primary legal advice - whether emails in email chain, which were not privileged if seen alone, were privileged due to being forwarded with request for legal advice which was privileged - held: claims of privilege upheld in relation to redacted portions of documents comprising Submission to Minister and 'its various drafts, risk register and chain of emails.

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

DIF III Global Co-Investment Fund, L.P. v BBLP LLC [2016] VSC 401

Supreme Court of Victoria

Hargrave J

Security for costs - plaintiffs were foreign partnership and corporation with no assets in Victoria - plaintiffs agreed to give security for defendants' costs - no agreement on form of security - plaintiffs appealed against associate justice's rejection of their proposed form of security - associate judge had ordered provision of security by 'deposit into Court, or by way of [a] guarantee from an agreed Australian bank or other authorised deposit-taking institution' - held: associate judge erred in approach to issue of form of security, and erred in accepting some of defendants' objections - plaintiffs' proposed form of security would adequately protect defendants and provide fund or asset against which defendants could enforce costs order - appeal allowed.

[DIF III](#) (I B C G)

Bidvest Australia Ltd v Auzcorp Pty Ltd [2016] WASCA 129

Court of Appeal of Western Australia

Murphy JA

Stay - discovery - appellants sought stay of Master's orders to provide documents for respondent's inspection - pt5 r26 *Supreme Court (Court of Appeal) Rules 2005 (WA)* - O26 r16 *Rules of the Supreme Court 1971 (WA)* - held: appeal would be 'rendered nugatory' if stay refused - appeal was reasonably arguable and had reasonable prospects of success - appellants' proposed 'interim confidentiality regime' reasonable - order granted that documents were not to be inspected prior to appeal's determination.

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

Rayney v Reynolds [2016] WASC 219

Supreme Court of Western Australia

Chaney J

Defamation - application for extension of validity of a writ involving claim of defamation issued one day prior to expiry of limitation period under s15 *Limitation Act 2005 (WA)*- writ not served but attempts made to serve it - s14(2) *Defamation Act 2005 (WA)* - O7 r1 *Rules of the Supreme Court 1971 (WA)* - held: plaintiff had endeavoured to serve writ within time - defendant had avoided service - Court persuaded on balance of competing factors to grant short extension of validity of writ.

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

Stevens v Alcazar-Stevens [2016] ACTSC 170

Supreme Court of the Australia Capital Territory
Mossop AsJ

Wills and estates - powers of attorney - standing - plaintiff sought extension of time under s50(5) *Powers of Attorney Act 2006* (ACT) to make application for defendant to pay compensation to deceased's estate - defendant contended plaintiff lacked standing to apply because he was not executor and did not represent estate - whether plaintiff had standing to bring application - statutory interpretation - held: plaintiff not precluded by s50's terms from making application - extension of time appropriate - extension of time granted.

[Stevens](#) (B)

CRIMINAL

Executive Summary

Graham v The Queen (HCA) - Criminal law - self-defence (ss271(1), 271(2), 272 *Criminal Code 1899* (Qld)) - appellant convicted of attempted murder and unlawful wounding with intent to maim (ss306(a), 317(b)&(e) *Criminal Code 1899* (Qld)) - appellant met a member of rival motorcycle gang at a shopping centre - appellant armed with pistol, rival member armed with flick knife - confrontation - weapons drawn and appellant shoots rival member and innocent bystander - issue at trial was whether appellant acted in self-defence, but in the prosecutor's closing address the confrontation was described as "consensual" - appellant was convicted and sentenced to 12 years 3 months for attempted murder and 7 years for unlawful wounding (with additional 1 year 6 months for unlawful possession of a weapon), all sentences to be served concurrently - conviction appeal to Court of Appeal dismissed - leave to appeal sentences refused - special leave granted - before the High Court the appellant argued that the prosecutor's description of the confrontation as "consensual" required additional directions from the trial judge - no error identified - whether the confrontation was consensual was not a real issue at trial - appeal dismissed

Tsavalas v Police (SASC) - Criminal law - withdrawal of plea - self represented accused - offence of illegal use of a motor vehicle - accused with limited literacy skills attending court unrepresented - accused failing to realise seriousness of the offence or that he might be eligible for legal aid - where the charges and facts were relatively simple and of narrow compass - where appellant originally pleaded not guilty and then changed his plea after discussion with the magistrate and was convicted - 5 appeal grounds - whether the plea was entered as the result of improper pressure by the magistrate - whether the magistrate failed to advise the accused appropriately of the possible consequences of proceeding unrepresented - in the circumstances there was a miscarriage of justice - plea entered where appellant lacked full appreciation of the seriousness and consequence of doing so - conviction set aside - matter remitted for further

consideration

Summaries With Link

Graham v The Queen [2016] HCA 27

High Court of Australia

French CJ, Kiefel, Bell, Nettle & Gordon JJ

Criminal law - self-defence (ss271(1), 271(2), 272 *Criminal Code 1899* (Qld)(the Code)) - appellant convicted of attempted murder and unlawful wounding with intent to maim (ss306(a), 317(b)&(e) *Criminal Code 1899* (Qld)) - appellant met a member of a rival motorcycle gang at a shopping centre- appellant armed with pistol, rival member armed with flick knife - confrontation - weapons drawn and appellant shoots rival member and innocent bystander - issue at trial was whether appellant acted in self-defence to the rival gang members actions in producing his flick knife, but in the prosecutor's closing address the confrontation was described as "consensual" - appellant was convicted and sentenced to 12 years 3 months for attempted murder and 7 years for unlawful wounding, all sentences to be served concurrently - conviction appeal to Court of Appeal dismissed - leave to appeal sentences refused - special leave granted - before the High Court the appellant argued that the prosecutor's description of the confrontation as "consensual" required additional directions from the trial judge - held: to rely upon self-defence under ss271 and 272 of the Code the appellant had to have been assaulted - the trial judge did not direct the jury that they could find that self-defence was defeated because the rival member produced his weapon as part of a "consensual" confrontation - appellant's counsel did not ask for directions on the issue - it was not clear how any reasonable jury could treat the production of the knife as consensual - consent, on the evidence, was not a real issue in the trial-no error identified - appeal dismissed. [Editor's note: Nettle J dissented, arguing that the manner in which the jury were directed might have wrongly led the jury to conclude that self-defence could be excluded because the production of the knife was part of a "consensual confrontation"].

[Graham](#)

Tsavalas v Police [2016] SASC 103

South Australian Supreme Court

Doyle J

Criminal law - withdrawal of plea - self represented accused - offence of illegal use of a motor vehicle - accused with limited literacy skills attending court unrepresented - accused failing to realise seriousness of the offence, or that he might be eligible for legal aid - where the charges and facts were relatively simple and of narrow compass - where appellant originally pleaded not guilty and then changed his plea to guilty after discussion with the magistrate and was convicted - 5 appeal grounds - whether the plea was entered as the result of improper pressure by the magistrate - whether the magistrate failed to advise the accused appropriately of the possible consequences of proceeding unrepresented - held: a Court has power to permit an accused to

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withdraw a plea of guilty prior to conviction, or on appeal - where the issue is raised on appeal, the test is whether the plea was entered in circumstances involving a miscarriage of justice (*Meissner v The Queen* (1995) 184 CLR 132) - the observations of Wells J in *Cooling v Steele* (2 SASR 249) concerning the failure of a magistrate to indicate to an accused person the potential consequences of changing a plea to one of guilty, referred to - later authorities and the need to consider the circumstances of each case noted - here the appellant was unrepresented and indicated he was pleading not guilty - he was unaware that there would be a mandatory licence disqualification - it would have been appropriate for the magistrate to have informed him of the possible consequences of pleading guilty and to give him the opportunity to reflect upon his decision to change his plea - the magistrate spoke bluntly to the appellant with the imprimatur of his judicial office and that exchange resulted in the plea of guilty - there is a risk that that plea was entered as the result of the appellant feeling pressured and not entered as the result of an informed choice, or of a consciousness of guilt - to allow the plea to stand would occasion a miscarriage of justice - appeal allowed, matter remitted for further consideration.

[Tsavalas](#)



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Moon in the Morning

By [Mary Eleanor Roberts](#)

WHAT dost thou, so ghostly white
In the halls of day?—
Facing the triumphant light,
Reveler astray?

When thy silver court was kept,
Thou and thine were free,
And the sun, while dotards slept,
Did not spy on thee.

Scent of jasmine, voices low,
Dost thou seek them yet—
Lovers of the long ago
Thou canst not forget?

Day's gay banners all unfurled
Flaunt from sea to sea:
All the work of all the world
Calls the sun and me.

Nay, thou shalt not bid me stand!
Nay, I will not yield!
Strong to-day in my right hand
Is the brand I wield.

Then aroint thee, shadow fly!
Wherefore haunt me so—
Hanging mournful in the sky,
Pale and loath to go?

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