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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)

Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd (FCAFC) - corporations - 'market manipulation provisions' - separate question - Chapter 2 Criminal Code did not apply to proceedings brought for contravention of civil provisions (I B C G)

Page v Page (NSWCA) - succession - family provision - plaintiff refused provision from deceased brother's estate - plaintiff was not an 'eligible person' - appeal dismissed (I B)

In the matter of South Head & District Synagogue (Sydney) (Administrators appointed) (NSWSC) - contract - corporations - equity - injunction - administrators' termination of Rabbi's employment was wrongful dismissal - contract remained on foot - administrators restrained from giving effect to decision (I B C G)

Fuji Xerox Australia Pty Ltd v Xtream Pty Ltd (VSC) - contract - deed of settlement and release - plaintiff entitled to sum and orders that defendants provide properly executed mortgages (I B C G)

Snodgrass v Estate of McLaren (QSC) - wills and estates - succession - summary dismissal of application for further provision from deceased's estate refused (B)

Love v North Goonyella Coal Mines Pty Ltd (QSC) - judgments and orders - two applications

- third party's proceeding to be heard separately - paragraph of statement of claim struck out - orders for discovery of documents - leave to replead (I B C G)

Christos v Curtin University of Technology (WASCA) - negligence - psychiatric injury - employer's grievance and dispute resolution policies - foreseeability - causation - employer not liable - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd [2017] FCAFC 100

Full Court of the Federal Court of Australia

Allsop CJ; Middleton & Bromwich JJ

Corporations - Australian Securities and Investments Commission alleged contraventions of 'market manipulation provisions' of *Corporations Act 2001* (Cth) against defendants - ASIC sought determination of separate question: 'In proceedings brought for the imposition of a civil penalty for a contravention of s 1041A or s 1041B of the Corporations Act 2001 (Cth) is Chapter 2 of the Criminal Code being the Schedule to the Criminal Code Act 1995 (Cth) engaged, subject to any contrary indication in the Corporations Act 2001 as to any specific provision thereof?' - held: Chapter 2 Criminal Code did not apply to proceedings brought for contravention of civil provision including civil penalty provision - separate question answered in the negative.

[Australian Securities and Investments Commission](#) (I B C G)

Page v Page [2017] NSWCA 141

Court of Appeal of New South Wales

Basten & Leeming JJA; Sackville AJA

Succession family provision - primary judge dismissed claim by appellant who sought family provision order from deceased brother's estate - deceased had died by suicide aged 58 - appellant contended deceased had sexually abused him as a child - appellant contended primary judge erred in failing to find he was partially dependent on deceased when he was member of member of same household as deceased, and in failing to find factors on which appellant relied warranted application - whether appellant was 'eligible person' - whether sexual abuse allegations could be factor warranting application - ss6 & 9 *Family Provision Act 1982* (NSW) - Pt 3.2, Pt 3.3, ss57(1), 59, 60, 61, 63 & 64 *Succession Act 2006* (NSW) - held: no error in primary judge's conclusion that appellant was not an 'eligible person' - appeal dismissed.

[Page](#) (I B)

In the matter of South Head & District Synagogue (Sydney) (Administrators appointed) [2017] NSWSC 823

Supreme Court of New South Wales

Brereton J

Contract - corporations - equity - injunction - plaintiffs were administrators of company (South Head & District Synagogue) - defendant was Chief Rabbi of synagogue - terms of engagement between Rabbi and company set out in contract which provided that 'relationship between the Rabbi and the congregation shall be defined in accordance with Halacha', and that 'irreconcilable disputes between Rabbi and congregation shall be decided according to Halacha' - administrators decided company had insufficient funds to pay defendant under contract during administration period, and terminated defendant's employment on grounds of redundancy - defendant contended contract remained on foot and that his life tenure as Rabbi of Synagogue (Hazakah) could only be terminated by judgment of a Din Torah - held: defendant's contract included Hazakah - company not entitled to terminate Rabbi's employment in absence of finding of a Din Torah - termination was wrongful dismissal - contract remained on foot - administrators restrained from giving effect to decision - orders made.

[In the matter of South Head and District Synagogue](#) (I B C G)

Fuji Xerox Australia Pty Ltd v Xtrem Pty Ltd [2017] VSC 333

Supreme Court of Victoria

Kennedy J

Contract - plaintiff sought judgment pursuant to Deed of Settlement and Release in sum of \$1,910,851.19, and orders that second and third defendants 'provide properly executed mortgages' - construction of deed - whether appropriate to enter judgment for sum and orders for provision of mortgages - whether clauses of deed constituted penalty - whether appropriate to 'summarily enforce the compromise through the existing proceeding' - 'Roberts jurisdiction' - *Roberts v Gippsland Agricultural and Earthmoving Contracting Co Pty Limited* [1956] VLR 555 - held: clauses did not give rise to penalty - plaintiff entitled to relief sought - Court to hear parties on precise form of order.

[Fuji Xerox](#) (I B C G)

Snodgrass v Estate of McLaren [2017] QSC 132

Supreme Court of Queensland

McMeekin J

Wills and estates - succession - applicant pursuant to Pt IV *Succession Act 1981* (Qld) sought further provision from estate of former de facto partner - executor of deceased's estate sought summary dismissal of originating application - s40(1) *Succession Act* - 'dependant' - whether applicant substantially supported by deceased person at time of death - held: Court not satisfied case so hopeless as to warrant summary dismissal - application for strike out of proceeding dismissed.

[Snodgrass](#) (B)

Love v North Goonyella Coal Mines Pty Ltd [2017] QSC 131

Supreme Court of Queensland

McMeekin J

Judgments and orders - two applications - plaintiff sought to dispense with third party's signature on Request for Trial and sought trial date - third party sought to strike our defendant's amended statement of claim against it and also sought disclosure of documents - rr154, 157, 158, 159, 161 & 171 *Uniform Civil Procedure Rules 1999* (Qld) - held: plaintiff and defendant had executed Request for Trial - third party proceedings not ready for trial - Court satisfied third party's proceeding could proceed separately - paragraph of statement of claim struck out - defendant to provide further and better particulars - defendant to make disclosure of certain documents - defendant granted leave to replead.

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

Christos v Curtin Univeristy of Technology [2017] WASCA 110

Court of Appeal Western Australia

Murphy, Mitchell & Beech JJA

Negligence - psychiatric injury - grievance and dispute resolution policies - appellant sued respondent former employer for psychiatric injury he claimed was caused by respondent's negligence, breach of contract and breach of statutory duty - appellant alleged respondent failed to assess and resolve his grievance complaints, and that he was 'bullied harassed and victimised' by respondent and various staff - primary judge dismissed claim - appellant appealed in relation to failure to resolve and assess grievances - whether erroneous application of test as to whether injury 'likely' - foreseeability - 'reasonable response to the foreseeable risk' - 'causation' - held: appellant established that reasonable person in respondent's position would have foreseen risk that its conduct in dealing with grievances could cause or aggravate a 'psychiatric injury' - appellant failed to establish that a reasonable person would have sought to resolve grievances to avoid risk - appellant also failed to establish that failure to seek to resolve grievances in accordance with policy involved breach of duty, or that the failure 'materially contributed' to his psychiatric injury - appeal dismissed.

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

CRIMINAL

Executive Summary

Hughes v The Queen (HCA) - criminal law - evidence - tendency evidence - sexual offences against female complainants under 16 - no error in admission of tendency evidence - appeal dismissed

McPhillamy v R (NSWCCA) - criminal law - evidence - tendency evidence - acts of indecency or sexual intercourse committed on young teenage boy - no error in admission of tendency evidence - appeal dismissed

Summaries With Link

Hughes v The Queen [2017] HCA 20

High Court of Australia

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

Criminal law - evidence - tendency evidence - accused was charged with sexual offences against five female complainants under 16 - prosecution was permitted to adduce certain evidence of each complainant as tendency evidence in relation to each count pursuant to s97 *Evidence Act 1995* (NSW) - identified tendencies in respect of appellant were 'having a sexual interest in female children under 16 years of age' and using 'social and familial relationships ... to obtain access to female children under 16 years of age so that he could engage in sexual activities with them' - appellant found guilty on 10 of 11 counts, giving no verdict on the remaining count - whether tendency evidence had 'significant probative value' in relation to fact in issue - whether erroneous rejection of statement in *Velkoski v The Queen* (2014) 45 VR 680 - held: no error in admission of tendency evidence - tendency evidence had 'significant probative value in relation to proof of each count' - appeal dismissed.

[Hughes](#)

McPhillamy v R [2017] NSWCCA 130

Court of Criminal Appeal of New South Wales

Meagher JA; Harrison & RA Hulme JJ

Criminal law - evidence - tendency evidence - appellant was acolyte who supervised altar servers - appellant convicted of acts of indecency or sexual intercourse committed on complainant in 1995 and 1996 while he was altar boy - Crown at trial relied on evidence of two witnesses' concerning sexual assaults which appellant committed on them 10 years earlier whilst appellant was an assistant house master at college - evidence relied on as tendency evidence of appellant's sexual interest in young teenage boys - trial judge admitted evidence as tendency evidence without giving reasons - whether admission of the evidence as tendency evidence caused miscarriage of justice - s6(1) *Criminal Appeal Act 1912* (NSW) - probative value of evidence - held: primary judge did not err in admitting evidence - there was 'overriding similarity between the charged conduct and the earlier incidents' from which differences in precise circumstances did not detract - time which had elapsed between charged acts and earlier acts 'did not fatally imperil the strength of the inference relied on' - appeal dismissed.

[McPhillamy](#)



Benchmark

The Owl

By [Edward Thomas](#)

Downhill I came, hungry, and yet not starved;
Cold, yet had heat within me that was proof
Against the North wind; tired, yet so that rest
Had seemed the sweetest thing under a roof.

Then at the inn I had food, fire, and rest,
Knowing how hungry, cold, and tired was I.
All of the night was quite barred out except
An owl's cry, a most melancholy cry

Shaken out long and clear upon the hill,
No merry note, nor cause of merriment,
But one telling me plain what I escaped
And others could not, that night, as in I went.

And salted was my food, and my repose,
Salted and sobered, too, by the bird's voice
Speaking for all who lay under the stars,
Soldiers and poor, unable to rejoice.

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