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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)

**Strike Australia Pty Ltd v Data Base Corporate Pty Ltd** (NSWCA) - contract - leases and tenancies - valuation - dispute concerning valuer's 'rental determination' - valuation not undertaken in accordance with sublease's requirements - appeal dismissed (B I)

**Qui v Obeid** (NSWCA) - negligence - motor vehicle collision - vehicle driven by respondent collided with rear of vehicle driven by appellant - respondent not liable - appeal and cross-appeal dismissed (I)

**Nomchong v Vey-Cox** (NSWSC) - wills and estates - succession - proceedings concerning 'proper construction' of deceased's will - parties each had success - parties to bring in short minutes (B)

**Tsamis v Victoria (No 3)** (VSC) - defamation - 'pseudonym orders' - defendant sought pseudonym orders in respect of witnesses - pseudonym orders granted (I)

**Moala v Free Wesleyan Church of Tonga in Australia (Victoria) Inc** (VSC) - unincorporated association - membership - Fellowship - proceedings concerned whether children 'entitled to be regarded as foundation members of' Fellowship - age restriction of 18 years or older imposed (I B C G)

**Scott v Baring** (WASC) - defamation - default judgments - defendants sought to set default

judgments aside - application dismissed (I)

**Goodman v Public Trustee for the Northern Territory (NTSC)** - wills and estates - family provision - intestacy - plaintiff not entitled to claim further provision from deceased's estate - claim dismissed (B)

## Summaries With Link (Five Minute Read)

### **Strike Australia Pty Ltd v Data Base Corporate Pty Ltd [2019] NSWCA 205**

Court of Appeal of New South Wales

Bell P; Basten & Ward JJA

Contract - leases and tenancies - valuation - dispute concerning valuer's 'rental determination' - appellant was lessee and respondent lessor under sublease of premises - appellant gave notice of exercise of 'first option to renew' - valuer nominated for purposes of 'rent review' - valuation completed - respondent sought declaration valuation was not undertaken in accordance with sublease's requirements - 'key provision' was clause of sublease's first schedule, requiring valuer to "have regard to ... market rents ... for comparable premises in the vicinity of the Premises ..." - trial judge made declaration sought by respondent - appellant appealed - held: appeal dismissed.

[View Decision](#) (B I)

### **Qui v Obeid [2019] NSWCA 207**

Court of Appeal of New South Wales

Gleeson & Payne JJA; Simpson AJA

Negligence - motor vehicle collision - vehicle driven by respondent collided with rear of vehicle driven by appellant - appellant claimed damages for injuries under *Motor Accidents Compensation Act 1999* (NSW) - appellant contended collision and injuries were caused by respondent's negligence - primary judge gave judgment for respondent - appellant appealed - appellant contended primary judge erred concerning 'records of statements' by appellant and family members to 'medical personnel and police', erred in accepting respondent's evidence, erred in making finding "against the weight of the evidence", and erred in failure to 'give adequate consideration to the expert evidence' - respondent, by cross-appeal, contended primary judge had erroneously failed to find contributory negligence by appellant - respondent, by notice of contention, contended primary judge was correct to dismiss appellant's claim 'for reasons other than those he gave' - held: appeal and cross-appeal dismissed.

[View Decision](#) (I)

### **Nomchong v Vey-Cox [2019] NSWSC 1072**

Supreme Court of New South Wales

Henry J

Wills and estates - succession - proceedings concerning 'proper construction' of deceased's will

- plaintiff and first defendant were 'co-executors and co-trustees' - issues for determination concerned 'nature and scope' of Will's conditions applying to interest of first defendant in property - principles applicable to construction of wills - 'conditions issue' - 'repair and maintenance obligation issue' - 'payment obligations issue' - 'Clause 8 fund issue' - held: parties each had success - parties to bring in short minutes.

[View Decision](#) (B)

## **Tsamis v Victoria (No 3) [2019] VSC 507**

Supreme Court of Victoria

John Dixon J

Defamation - 'pseudonym orders' - plaintiff alleged defendant published 'defamatory imputations concerning her' in publications - defendant raised 'common law truth' defence and 'truth defence' under s25 *Defamation Act 2005* (Vic) - defendant sought pseudonym orders in respect of witnesses - application unopposed by plaintiff - s7(d) *Open Courts Act 2013* (Vic) - held: pseudonym orders granted.

[Tsamis](#) (I)

## **Moala v Free Wesleyan Church of Tonga in Australia (Victoria) Inc [2019] VSC 544**

Supreme Court of Victoria

Ginnane J

Unincorporated association - membership - Fellowship - proceedings concerned whether children were 'entitled to be regarded as foundation members of' Fellowship - issue arose concerning Fellowship immediately prior to defendant becoming an 'incorporated association' - defendant contended persons under 18 years were foundation members - defendant contended 'no minimum age requirement' in law or under Constitution of Fellowship (Constitution) - plaintiff sought imposition of 'age restriction of 18 years' on basis of Constitution's 'structure and terms' - consideration of Constitution - held: Court satisfied that for person to be 'founding member' of Fellowship 'immediately before' defendant's incorporation they 'must have been 18 years of age or older'.

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

## **Scott v Baring [2019] WASC 278**

Supreme Court of Western Australia

Master Sanderson

Default judgments - defamation - defendants sought to set 'two default judgments' aside - first judgment 'entered in default of appearance' - second judgment entered following Court's assessment of damages - O13 r3(2)(b) *Rules of the Supreme Court 1971* (WA) (Rules) - whether 'prima face defence on the merits' - whether 'failure to engage in litigation' - whether 'wilful default' - delay in bringing of application - held: Court not satisfied to set default judgments aside - application dismissed.

[Scott](#) (I)



## **Goodman v Public Trustee for the Northern Territory [2019] NTSC 63**

Supreme Court of the Northern Territory

Barr J

Wills and estates - succession - family provision - deceased died intestate - plaintiff claimed she was deceased's 'de facto partner or the former de facto partner' - plaintiff sought provision pursuant to s8 *Family Provision Act 1970* (NT) - whether plaintiff was deceased's de facto partner at time of death of deceased - whether plaintiff and deceased in 'de facto relationship' 'any time in the period 1971 to 1981' - *De Facto Relationships Act 1991* (NT) - held: plaintiff not entitled to claim further provision from deceased's estate - claim dismissed.

[Goodman](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## **The Night Is Still**

**By:** Edith Matilda Thomas

The night is still, the moon looks kind,  
The dew hangs jewels in the heath,  
An ivy climbs across thy blind,  
And throws a light and misty wreath.

The dew hangs jewels in the heath,  
Buds bloom for which the bee has pined;  
I haste along, I quicker breathe,  
The night is still, the moon looks kind.

Buds bloom for which the bee has pined,  
The primrose slips its jealous sheath,  
As up the flower-watched path I wind  
And come thy window-ledge beneath.

The primrose slips its jealous sheath,—  
Then open wide that churlish blind,  
And kiss me through the ivy wreath!  
The night is still, the moon looks kind.

[https://en.wikipedia.org/wiki/Edith\\_M.\\_Thomas](https://en.wikipedia.org/wiki/Edith_M._Thomas)

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