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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)

McCallum v Reynolds (No 2) (NSWSC) - interrogatories - negligence - leave to file and serve interrogatories on plaintiff refused (I)

Bodycorp Repairers Pty Ltd v Oakley Thompson & Co Pty Ltd (VSCA) - contempt - law firm not in contempt of Court's orders - leave to appeal refused (I B)

Bodycorp Repairers Pty Ltd v Oakley Thompson & Co Pty Ltd (No 2) (VSCA) - equity - contract - law firm had equitable right over costs order - leave to appeal refused (I B)

Strazdins v ANZ Banking Group Ltd (SASC) - security for costs - appellant ordered to pay security for costs - no error in exercise of Master's discretion - appeal dismissed (B)

Trevorrow v Council of the City of the Gold Coast (SASC) - planning and environment - third party sought development permit with consent of registered proprietor of land - declaratory relief refused concerning liability of proprietor of lot to pay charge to Council raised on approval of development permit (I B C G)

Carr v Larussa Custodian Services Australia Pty Ltd (WASC) - contempt - declaration granted that first and third defendants were guilty of contempt of court for disobeying Master's orders to produce documents for inspection (B)

Cutting v Public Trustee For The Northern Territory (NTSC) - joinder - wills and estates - joinder of beneficiaries to plaintiff's application for approval of compromise of entitlement refused (B)

Summaries With Link (Five Minute Read)

McCallum v Reynolds (No 2) [2017] NSWSC 108

Supreme Court of New South Wales

Harrison AsJ

Interrogatories - negligence - plaintiff sued defendants, claiming she was injured when she fell from railing of balcony of rental property owned by first and second defendants - first and second defendants sought leave pursuant to r22.1 *Uniform Civil Procedure Rules 2005* (NSW) to file and serve interrogatories on plaintiff and that plaintiff provide verified answers within 14 days of service - it was defendants' second application seeking interrogatories - Campbell J dismissed first motion - interrogatories sought in relation to whether plaintiff intoxicated at time of accident - special reasons - necessity - onus - ss48 & 50 *Civil Liability Act 2002* (NSW) - held: motion dismissed.

[McCallum](#) (I)

Bodycorp Repairers Pty Ltd v Oakley Thompson & Co Pty Ltd [2017] VSCA 22

Court of Appeal of Victoria

Warren CJ; Tate & McLeish JJA

Contempt - trial judge held firm of lawyers did not breach undertaking to Elliott J concerning payment into Court and thus not in contempt of Elliott J's orders - applicant sought to appeal against decision and also to adduce further evidence - natural justice - bias - adequacy of judge's reasons - whether failure to properly construe undertaking - whether judge erred in taking into account firm's subjective intentions - whether judge should have allowed principal of firm to be cross-examined - whether erroneous acceptance of affidavit - held: leave to appeal refused.

[Bodycorp](#) (I B)

Bodycorp Repairers Pty Ltd v Oakley Thompson & Co Pty Ltd (No 2) [2017] VSCA 23

Court of Appeal of Victoria

Warren CJ; Tate & McLeish JJA

Equity - contract - applicant sued franchisee for breach of franchise agreement and inducing other franchisees to breach agreements with it - franchisee retained law firm - trial judge dismissed applicant's claim against franchisee and others and ordered applicant to pay costs of franchisee and others - trial judge found law firm had equitable right over the costs order - applicant sought to appeal - allegation franchise proceeding 'vitiating by fraud' - alleged non-compliance with costs disclosure - bias - adequacy of reasons - deed of charge - whether capping of costs and disbursements - held: grounds of appeal had no prospects of success -

leave to appeal refused.

[Bodycorp](#) (I B)

Strazdins v ANZ Banking Group Ltd [2017] SASC 3

Supreme Court of South Australia

Hinton J

Security for costs - corporations - proceedings concerning administration of company - first and second plaintiffs (Strazdins and Cooper) sought costs fees and expenses incurred as administrators from ANZ Banking Group - Master ordered first and second plaintiffs to provide security for costs - Cooper subsequently disjoined - Strazdins appealed against order for provision of security for costs - Strazdins contended that presence of litigation funding agreement insufficient basis to order security for costs - whether sufficient evidence that Strazdins could not meet adverse costs order - r194 *Supreme Court Civil Rules 2006 (SA)* - held: no error in exercise of Master's discretion established - appeal dismissed.

[Strazdins](#) (B)

Trevorrow v Council of the City of the Gold Coast [2017] QSC 12

Supreme Court of Queensland

Jackson J

Planning and environment - application for declaratory relief - third party sought development permit with consent of registered proprietor of land - issue was whether registered proprietor of land liable to respondent for infrastructure charge raised on approval of development permit - whether respondent 'had power to raise infrastructure charge against proprietor' - transition between *Sustainable Planning Act 2009 (Qld)* and *Integrated Planning Act 1997 (Qld)* - statutory interpretation - whether s639(1) Sustainable Planning Act 2009 (Qld) extended to owner who was not applicant for development permit - held: Court did not uphold applicant's construction of s639(1) - application dismissed.

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

Carr v Larussa Custodian Services Australia Pty Ltd [2017] WASC 42

Supreme Court of Western Australia

Chaney J

Contempt - plaintiff sought orders for committal for contempt against first defendant and directors (second and third defendants) arising from first defendant's failure to produce documents - following Court's coercive order, first defendant had produced documents for inspection - plaintiff did not seek further coercive order or that first defendant be punished - plaintiff sought declaration that first and third defendants were guilty of contempt for disobeying Master's orders - held: declaration granted that first and third defendants were guilty of contempt of court for disobeying Master's orders to produce documents for inspection.

[Carr](#) (B)

Cutting v Public Trustee For The Northern Territory [2017] NTSC 6

Supreme Court of the Northern Territory
Master Luppino

Joinder - in substantive proceedings plaintiff sought extension of time to make application under *Family Provision Act* (NT) and order under s8 approving compromise of plaintiff's entitlement - applicants were beneficiaries who sought to be joined as parties - r9.06 *Supreme Court Rules* (NT) - general rule that beneficiaries should not be parties notwithstanding obvious interest - application based on alleged deficiencies in former executors' conduct in relation to assessment and compromise of plaintiff's claim - whether joinder justified by executors' removal and substitution of Public Trustee - held: there was no evidence to support applicants' contentions concerning executors' conduct - Court not satisfied Public Trustee could not uphold Will and represent estate - application dismissed.

[Cutting](#) (B)

CRIMINAL

Executive Summary

TO v R (NSWCCA) - criminal law - sexual offences - error in sentencing established - appellant resentenced - appeal against conviction dismissed

R v Peake (SASC) - criminal law - manslaughter by omission - daughter mentally incompetent to commit offence - daughter assumed no legal duty to mother who died of dehydration - objective elements of manslaughter not made out - accused acquitted

Summaries With Link

TO v R [2017] NSWCCA 12

Court of Criminal Appeal of New South Wales
Price, Button & Fagan JJ

Criminal law - sexual offences against person under 10 years - appellant found guilty of offences contrary to ss66A(2) & 66B *Crimes Act 1900* (NSW) - three offences - appellant sentenced to 16 years in prison with non-parole period of 12 years for count 1, and concurrent fixed terms of 8 years for counts 2 and 3 - maximum penalty for offence contrary to s66A(2) was life in prison with standard non-parole period of 15 years - maximum penalty for offence contrary to s66B was 25 years with no standard non-parole period - appellant appealed against conviction and sentence - whether judge's refusal to discharge jury due to consequence of aspects of Crown Prosecutor's address to it was miscarriage of justice - whether failure by trial counsel to seek direction pursuant to s165B *Evidence Act 1995* (NSW) was miscarriage of justice - 'forensic disadvantage direction' - whether verdicts unreasonable and unsupported by



evidence - whether erroneous application of Pt 4, Div 1A *Crimes (Sentencing Procedure) Act 1999* (NSW) - whether sentences manifestly excessive - whether Court should view 'complainant's two interviews and appellant's ERISP' - held: appeal against conviction dismissed - appeal against sentence allowed - error established in relation to sentencing - judge did not comply with decision in *R v Muldrock* (2011) 244 CLR 120 - appellant re-sentenced.

[TO](#)

R v Peake [2017] SASC 10

Supreme Court of South Australia

Vanstone J

Criminal law - manslaughter - trial by judge alone pursuant s7 *Juries Act 1927* (SA) - accused charged with manslaughter of mother - mother fell outside home and was unable to stand up - accused found mother near back door and helped her crawl to kitchen floor - mother rejected daughter's offer to telephone an ambulance - mother remained floor-bound - accused gave mother no food or water, claiming she feared her mother would choke if given food or water - accused sought no help - mother died of dehydration - charge could be described as 'manslaughter by omission' - held: accused mentally incompetent to commit offence - accused did not assume 'a legally recognised duty to her mother' to ground liability - objective elements of manslaughter not made out - accused acquitted.

[Peake](#)

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Youth and Age

By [Samuel Taylor Coleridge](#)

Verse, a breeze mid blossoms straying,
Where Hope clung feeding, like a bee—
Both were mine! Life went a-maying
With Nature, Hope, and Poesy,
When I was young!

When I was young?—Ah, woful When!
Ah! for the change 'twixt Now and Then!
This breathing house not built with hands,
This body that does me grievous wrong,
O'er aery cliffs and glittering sands,
How lightly then it flashed along:—
Like those trim skiffs, unknown of yore,
On winding lakes and rivers wide,
That ask no aid of sail or oar,
That fear no spite of wind or tide!
Nought cared this body for wind or weather
When Youth and I lived in't together.

Flowers are lovely; Love is flower-like;
Friendship is a sheltering tree;
O! the joys, that came down shower-like,
Of Friendship, Love, and Liberty,
Ere I was old!
Ere I was old? Ah woful Ere,
Which tells me, Youth's no longer here!
O Youth! for years so many and sweet,
'Tis known, that Thou and I were one,
I'll think it but a fond conceit—
It cannot be that Thou art gone!

Thy vesper-bell hath not yet toll'd:—
And thou wert aye a masker bold!
What strange disguise hast now put on,
To make believe, that thou are gone?
I see these locks in silvery slips,
This drooping gait, this altered size:
But Spring-tide blossoms on thy lips,
And tears take sunshine from thine eyes!
Life is but thought: so think I will



Benchmark

That Youth and I are house-mates still.

Dew-drops are the gems of morning,
But the tears of mournful eve!

Where no hope is, life's a warning
That only serves to make us grieve,
When we are old:

That only serves to make us grieve
With oft and tedious taking-leave,
Like some poor nigh-related guest,
That may not rudely be dismiss;
Yet hath outstay'd his welcome while,
And tells the jest without the smile.

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