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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)

Pfizer Ireland Pharmaceuticals v Samsung Bioepis AU Pty Ltd (FCA) - discovery - applicant refused preliminary discovery in respect of claims for patent infringement (I B)

Bianca Hope Rinehart trading as trustee of the Hope Margaret Hancock Trust v n/a (NSWSC) - judicial advice - trusts and trustees - Bianca Rinehart justified in defending Federal Court proceedings brought against her by Hancock Prospecting Pty Ltd and in commencing proceedings against Gina Rinehart (I B C G)

Eliezer v The Owners - Strata Plan No 51682 & Ors (NSWSC) - joinder - pleadings - plaintiff refused leave to join husband as plaintiff in proceedings - plaintiff refused leave to file amended statement of claim (I B C G)

IW & CA Price Constructions Pty Ltd v Australian Building Insurance Services Pty Ltd & Ors (QSC) - contract - dispute arising from sale of building repair business by plaintiff to defendant - plaintiff owed amount under contract - defendant owed amounts for loss of profits and loss of goodwill (I B C G)

Bertani v Bertani (WASC) - injunction - funeral arrangements - deceased's mother refused injunction preventing deceased's burial until further order and declaration she had funeral arrangement and burial rights (B)

Scutti v City of Wanneroo (WASC) - planning and environment - refusal of development applications - no injurious affection of land - appeal dismissed (I B C G)

Brownell v Robinson (No 2) (TASSC) - costs - wills and estates - dismissal of action to revoke grant of probate - plaintiff to pay defendant's costs, except for costs of unsuccessful application to re-open case, which defendant was to pay (B)

Summaries With Link (Five Minute Read)

Pfizer Ireland Pharmaceuticals v Samsung Bioepis AU Pty Ltd [2017] FCA 285

Federal Court of Australia

Burley J

Discovery - applicant sought preliminary discovery in respect of claims for patent infringement arising from three patents - ss76 & 190 *Evidence Act 1995* (Cth) - s23 *Federal Court of Australia Act 1976* (Cth) - rr7.21 & 7.23 *Federal Court Rules 2011* (Cth) - held: Court not satisfied evidence established reasonable basis for applicant's 'belief' in patent infringement 'as opposed to mere suspicion' - r7.23(1)(a) not made out - applicant had made reasonable inquiries to decide whether to start proceeding pursuant to r7.23(1)(b) - applicant had not placed before Court evidence available to it relevant to sufficiency of information it possessed to enable it to decide whether to start proceeding - Court would have declined to grant preliminary discovery even if r7.23(1)(a) satisfied.

[Pfizer](#) (I B)

Bianca Hope Rinehart trading as trustee of the Hope Margaret Hancock Trust v n/a [2017] NSWSC 282

Supreme Court of New South Wales

Rein J

Judicial advice - Bianca Rinehart, trustee of Hope Margaret Hancock Trust, sought judicial advice pursuant to s63 *Trustee Act 1925* (NSW) or s92 *Trustees Act 1962* (WA) on whether she would be justified in defending Federal Court proceedings brought against her by Hancock Prospecting Pty Ltd (HPPL) and in bringing proceedings against Mrs Gina Rinehart (Gina) - HPPL owned and controlled by Gina and two directors (Mr Watroba and Mr Newby) - held: Court satisfied it was in interests of trust and beneficiaries that trustee pursue claims and defend Federal Court proceedings.

[Bianca Hope Rinehart](#) (I B C G)

Eliezer v The Owners - Strata Plan No 51682 & Ors [2017] NSWSC 278

Supreme Court of New South Wales

N Adams J

Joinder - pleadings - plaintiff commenced proceedings against 11 defendants claiming malicious prosecution, collateral abuse of process and fraud - plaintiff sought leave to join husband as

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second plaintiff under rr6.19(1) & 6.19(2) *Uniform Civil Procedure Rules 2005* (NSW) and leave to file amended statement of claim - held: plaintiff did not establish appropriate basis to join husband as plaintiff - proposed amended statement of claim did not adequately plead causes of action - leave to file amended statement of claim refused.

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

IW & CA Price Constructions Pty Ltd v Australian Building Insurance Services Pty Ltd & Ors [2017] QSC 3

Supreme Court of Queensland

A Lyons J

Contract - second defendant and third party director of plaintiff entered written contract for sale of business by plaintiff company to first defendant on a 'walk in walk out' basis - business specialised in insurance claims for building damage - CGU Insurance continued to direct payments to third party although work done by second defendant - plaintiff did not forward payments to second defendant - dispute arose between third party and second defendant concerning entitlement to payments - CGU stopped directing work to second defendant - CGU did not direct work to first defendant - first defendant did not pay balance purchase price - plaintiff claimed balance of purchase price and costs of telephone lease from first defendant and second defendant as guarantor - first defendant counterclaimed for breach of implied terms and sought to set off claim for damages for the breach - held: plaintiff owed amount under contract and interest on unpaid balance - first defendant owed amount for WIP under contract - amounts also owing for loss of profits and loss of goodwill - Court to hear parties on form of orders.

[IW & CA Price](#) (I B C G)

Bertani v Bertani [2017] WASC 78

Supreme Court of Western Australia

Banks-Smith J

Injunction - funeral arrangements - deceased died in February 2017 - deceased domiciled in South Australia - South Australian Coroner had released body to Ceduna Funerals - plaintiff was deceased's mother who resided in Western Australia - defendant was deceased's adult daughter who resided in South Australia and was instructing Ceduna Funerals concerning burial - plaintiff sought injunction to prohibit defendant from burying deceased until further order and declaration she had burial and funeral arrangement rights - held: plaintiff did not establish serious question to be tried - prospect of plaintiff obtaining letters of administration in Western Australia not high - no evidence of property of deceased in Western Australia - no evidence of extent of deceased's connection with Western Australia - application of usual approach that person with 'highest right to take out administration' would have right to arrange burial led to defendant having that right - application dismissed.

[Bertani](#) (B)

Scutti v City of Wanneroo [2017] WASC 70

Supreme Court of Western Australia

Le Miere J

Environment and planning - appellants owned lots zoned as 'urban development' under planning scheme DPS2 - following adoption of structure plan ASP6, which encompassed lots, first appellant sought development approval to construct shed on lot - one reason for application's refusal was that approval would prejudice site's future planned use contrary to ASP6 - appellants sought development approval to construct housing on combined land - one reason for application's refusal was that proposal was inconsistent with and contrary to ASP6 because it compromised provision of public open space - appellant sought compensation from respondent for injurious affection of land - Tribunal determined appellants' land not injuriously affected - s174(1)(a) *Planning and Development Act 2005* (WA) - held: no error by Tribunal - appeal dismissed.

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

Brownell v Robinson (No 2) [2017] TASSC 12

Supreme Court of Tasmania

Brett J

Costs - wills and estates - succession - Court in proceedings was satisfied defendant was deceased's spouse and was entitled to whole intestate estate - Court dismissed plaintiff's action to revoke grant of administration - plaintiff sought that parties' costs be paid from estate or no order as to costs - defendant sought that plaintiff pay costs - held: plaintiff to pay defendant's costs of action except costs of unsuccessful application to re-open defendant's case, which defendant was to pay.

[Brownell](#) (B)

CRIMINAL

Executive Summary

AL v Regina (NSWCCA) - criminal law - applicant convicted of three offences of sexual intercourse with person under 10 years - appeal against conviction dismissed

Lane v R (NSWCCA) - criminal law - appellant found not guilty of murder - jury gave alternative verdict of manslaughter - appeal against conviction dismissed

Summaries With Link

AL v Regina [2017] NSWCCA 34

Court of Criminal Appeal of New South Wales

Leeming JA; Schmidt & Wilson JJ

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Criminal law - sexual offences - applicant charged with three offences contrary to s66A *Crimes Act 1900* (NSW) of having sexual intercourse with person under 10 years - applicant found guilty on all offences - applicant sought to appeal against his convictions - applicant contended trial judge failed to warn jury appropriately concerning assessment of complainant's evidence - applicant contended trial judge failed to adequately direct jury to evidence of accused as witness and failed adequately to direct jury on question of doli incapax - applicant also contended verdicts were unreasonable or could not be supported by evidence - s165 *Evidence Act 1995* (NSW) - held: leave to appeal refused in relation to doli incapax and failure to direct jury concerning accused's evidence as witness - no failure to appropriately warn jury as to unreliability of complainant's evidence - verdicts not unreasonable - verdicts supported by evidence - appeal dismissed.

[AL](#)

Lane v R [2017] NSWCCA 46

Court of Criminal Appeal of New South Wales

Meagher JA; Davies & Fagan JJA

Criminal law - appellant charged with murder - jury found appellant not guilty of murder but gave alternative verdict of manslaughter - appellant appealed against conviction - appellant contended trial judge erred by failing to direct the jury to be unanimous in deliberations of factual basis on which they might make manslaughter conviction, that Crown misled jury by description of offence as 'king hit' offence and 'one punch' offence with reference to evidence excluded by trial judge, that verdict affected by improper conduct by jury member or members, and that trial judge misdirected jury on self-defence - held: 'no substantial miscarriage of justice *actually* occurred' due to absence of specific unanimity direction - no reasonable basis to apprehend jury or a juror 'did not discharge their task impartially' - ground of appeal alleging trial judge misdirected jury on self-defence failed - appeal dismissed.

[Lane](#)



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Are They Shadows

By [Samuel Daniel](#)

Are they shadows that we see?
And can shadows pleasure give?
Pleasures only shadows be
Cast by bodies we conceive
And are made the things we deem
In those figures which they seem.

But these pleasures vanish fast
Which by shadows are expressed;
Pleasures are not, if they last;
In their passing is their best.
Glory is most bright and gay
In a flash, and so away.

Feed apace then, greedy eyes,
On the wonder you behold;
Take it sudden as it flies,
Though you take it not to hold.
When your eyes have done their part,
Thought must length it in the heart.

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