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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)

JWR Productions Australia Pty Ltd v Duncan-Watt (No 3) (FCA) - costs - indemnity costs - defamation - two proceedings - applicants unsuccessful - determination of costs (I B C G)

Classic Bet (NSW) Pty Ltd & anor v KRM (Vic) Pty Ltd & ors; Kay v KRM (Vic) Pty Ltd (No 2) (NSWCA) - security for costs - corporations - two motions - respondents sought security for costs against appellants - applications granted - quantum determined - proceedings stayed until security provided (B)

Herbert v New South Wales Land and Housing Corporation (NSWCA) - residential tenancies - application to vacate hearing date - COVID-19 - notice of motion dismissed (B C I G)

Young v Woodcock (NSWSC) - transfer of proceedings - negligence - plaintiff sought transfer of proceedings from District Court to Supreme Court - transfer of proceedings granted (I B C G)

New South Wales Crime Commission v Tolley (NSWSC) - confiscation - restraining orders - *Criminal Assets Recovery Act 1990* (NSW) - ex parte application for orders - orders granted (I B C G)

Investors Exchange Limited v Australian Financial Complaints Authority Limited & Anor (No 2) (QSC) - contract - specific performance - calculation of interest - 'tiny difference' between interest calculated by parties arising from "leap day" - orders made (I B C G)

Hookey & Anor v Whitelaw & Ors (QSC) - contract - joint venture - lease - childcare centre's 'ownership and operation' - oral joint venture agreement not established by plaintiffs - registered lease lawfully terminated by second defendant - second plaintiff entitled to relief against forfeiture (I B C G)

Summaries With Link (Five Minute Read)

JWR Productions Australia Pty Ltd v Duncan-Watt (No 3) [2020] FCA 528

Federal Court of Australia

Thawley J

Costs - indemnity costs - defamation - applicants in two sets of proceedings unsuccessful - successful respondents sought different costs order - one respondent (Mr Duncan-Watt) sought indemnity costs order on basis of Notice of Offer to Compromise or Calderbank offer - other respondent (Mr Gooding) sought indemnity costs order on basis of s43 *Federal Court of Australia Act 1976* (Cth) and s40 *Defamation Act 2005* (NSW) or on basis of Calderbank offer - whether refusal of offers unreasonable - r25.14(2) *Federal Court Rules 2011* (Cth) - held: Mr Duncan-Watt granted indemnity costs order - Mr Gooding's costs to be paid on party/party basis.

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

Classic Bet (NSW) Pty Ltd & anor v KRM (Vic) Pty Ltd & ors; Kay v KRM (Vic) Pty Ltd (No 2) [2020] NSWCA 43

Court of Appeal of New South Wales

Payne JA

Security for costs - corporations - two motions - first and second respondents sought security for costs - third respondent sought security for costs - appellants were companies - it was accepted that Court should make order for security - issue concerned quantum - principles concerning security for costs under s1335 *Corporations Act 2001* (Cth) - *Treloar v McMillan* [2016] NSWCA 302 - whether appellants would not be able to pay respondents' costs if respondents successful - whether order for security's payment would 'work an injustice' - 'broad brush approach' - held: quantum determined - proceedings stayed until security provided - orders made.

[View Decision](#) (B)

Herbert v New South Wales Land and Housing Corporation [2020] NSWCA 74

Court of Appeal of New South Wales

Basten JA

Residential tenancies - application to vacate hearing date - COVID-19 - residential tenancies - respondent was applicant's landlord - respondent issued termination notice under s87 *Residential Tenancies Act 2010* (NSW) 'for non-payment of rental' - Civil and Administrative Tribunal ordered termination of applicant's residential tenancy agreement -

applicant appealed to Appeal Panel - appeal dismissed by Appeal Panel - applicant appealed against decision of Appeal Panel - Adamson J dismissed appeal - applicant sought leave to appeal from Adamson J's judgment - applicant sought that leave application's hearing be adjourned - applicant, by notice of motion, sought vacation of hearing date - applicant's 'primary complaint' concerned 'circumstances arising from' COVID-19 pandemic - other issues concerned 'request for subpoena' and 'notice of appearance' - whether 'moratorium' inconsistent with 'pursuit of evictions' under Residential Tenancies Act - whether s109 Constitution applicable - insertion of 'new Pt 13' of Residential Tenancies Act by *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW) - Pt 6A "Response to COVID-19 pandemic" in *Residential Tenancies Regulation 2019* (NSW) - "moratorium period" - whether applicant was "impacted tenant" - hardship - held: notice of motion dismissed.
[View Decision](#) (B C I G)

Young v Woodcock [2020] NSWSC 415

Supreme Court of New South Wales

Bellew J

Transfer of proceedings - negligence - plaintiff, under s140 *Civil Procedure Act 2005* (NSW), sought transfer of proceedings from District Court to Supreme Court - whether satisfactory explanation for delay in making of application - whether award of damages could exceed District Court's jurisdiction - relevance of proceedings' 'procedural history' - medical evidence - ss56 & 58 *Civil Procedure Act 2005* (NSW) - held: transfer of proceedings granted.

[View Decision](#) (I B C G)

New South Wales Crime Commission v Tolley [2020] NSWSC 431

Supreme Court of New South Wales

Cavanagh J

Confiscation - restraining orders - plaintiff applied ex parte for restraining orders under s10A *Criminal Assets Recovery Act 1990* (NSW) (Criminal Assets Recovery Act) 'in relation to any interests in property' of defendant - plaintiff also sought orders under s12 Criminal Assets Recovery Act - whether 'proper basis' for making of application ex parte - held: orders granted.

[View Decision](#) (I B C G)

Investors Exchange Limited v Australian Financial Complaints Authority Limited & Anor (No 2) [2020] QSC 83

Supreme Court of Queensland

Applegarth J

Contract - specific performance - calculation of interest - Court found contract between parties should be 'specifically enforced' and that applicant should pay second respondent amount and interest - Court invited parties to make submissions concerning order's form - dispute concerned calculation of interest - second respondent supported first respondent's submissions - applicant calculated 'a slightly different amount for interest' from that calculated by first respondent - difference was \$1.08 - difference arose from "leap day" - 'tiny difference' - held: orders made.

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

Hookey & Anor v Whitelaw & Ors [2020] QSC 63

Supreme Court of Queensland

Flanagan J

Contract - joint venture - lease - proceedings concerned determination of parties' 'respective rights' concerning childcare centre's 'ownership and operation' - plaintiffs contended rights governed by 'oral joint venture agreement' between first plaintiff and first defendant - defendants contended rights should be determined by a registered lease - whether first plaintiff and first defendant entered oral joint venture agreement and if so, whether agreement breached so as to entitle plaintiffs to relief - whether defendants estopped 'from acting other than in accordance with' oral joint venture agreement's terms - whether defendants 'otherwise estopped from enforcing compliance' with lease except with first plaintiff's consent - whether second defendant in fiduciary relationship with second plaintiff and if so whether fiduciary duty breached, entitling plaintiffs to equitable compensation - if rights governed by registered lease, whether lease 'lawfully terminated' - whether second plaintiff entitled to relief against forfeiture - held: oral joint venture agreement not established - registered lease lawfully terminated by second defendant - second plaintiff entitled to relief against forfeiture.

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

CRIMINAL

Executive Summary

Summaries With Link

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For the Fallen

By Laurence Binyon

With proud thanksgiving, a mother for her children,
England mourns for her dead across the sea.
Flesh of her flesh they were, spirit of her spirit,
Fallen in the cause of the free.

Solemn the drums thrill; Death august and royal
Sings sorrow up into immortal spheres,
There is music in the midst of desolation
And a glory that shines upon our tears.

They went with songs to the battle, they were young,
Straight of limb, true of eye, steady and aglow.
They were staunch to the end against odds uncounted;
They fell with their faces to the foe.

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

They mingle not with their laughing comrades again;
They sit no more at familiar tables of home;
They have no lot in our labour of the day-time;
They sleep beyond England's foam.

But where our desires are and our hopes profound,
Felt as a well-spring that is hidden from sight,
To the innermost heart of their own land they are known
As the stars are known to the Night;

As the stars that shall be bright when we are dust,
Moving in marches upon the heavenly plain;
As the stars that are starry in the time of our darkness,
To the end, to the end, they remain.

https://en.wikipedia.org/wiki/Laurence_Binyon

In Flanders' Field

By Lieutenant Colonel John McCrae, MD

In Flanders' Fields the poppies blow

Benchmark

Between the headstones, row on row,
That mark our place, and in the sky
The larks, still bravely singing, fly
Scarce heard amid the guns below.
We are the Dead.
Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie
In Flanders' fields.
Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders' fields.

https://en.wikipedia.org/wiki/John_McCrae

We Shall Keep the Faith

By Moina Michael

Oh! You who sleep in Flanders' Fields
Sleep sweet - to rise anew;
We caught the torch you threw,
And holding high we kept
The faith with those who died.
We cherish, too, the Poppy red
That grows on fields where valour led.
It seems to signal to the skies
That blood of heroes never dies.
But lends a lustre to the red
On the flower that blooms above the dead
In Flanders' fields.
And now the torch and Poppy red
Wear in honour of our dead.
Fear not that ye have died for naught:
We've learned the lesson that ye taught
In Flanders' fields.

https://en.wikipedia.org/wiki/Moina_Michael

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