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Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Caffitaly System S.P.A. v One Collective Group Pty Ltd (No 2) (FCAFC) - costs - patent - appellant's appeal successful concerning one issue namely 'inventive step' - appeal otherwise dismissed - inventive step issues was 'of no or only limited significance to' respondents - appellant to pay respondents' costs (I B C G)

Kassam & Ors v Hazzard & Ors (NSWSC) - notice to produce - COVID-19 - *Public Health Act 2010* (NSW) - plaintiff issued notice to produce to Commonwealth - Commonwealth, by notice of motion, sought to set notice to produce aside - application granted (I B C G)

Break Fast Investments v Rigby Cooke (costs) (VSC) - costs - Court gave judgment for first defendant - first defendant sought indemnity costs order in reliance on Calderbank offer - indemnity costs order refused - plaintiff to pay first respondent's costs on standard basis (I B C G)

Callow v Peterson (WASCA) - limitations - proceedings commenced under *Fatal Accidents Act 1959* (WA) (Fatal Accidents Act) - statutory construction - appeal concerning 'interaction of' Fatal Accidents Act and *Limitation Act 2005* (WA) - appeal allowed (B I)

Ryan v Bunnings Group Limited; Ryan v Eastlake Football Club Limited; Ryan v Bhagria; Ryan v O'Halloran; Ryan v Cain (ACTCA) - subpoena - applicant principal of legal firm sought to set aside subpoena issued by former client - application granted (I B C G)

Summaries With Link (Five Minute Read)

Caffitaly System S.P.A. v One Collective Group Pty Ltd (No 2) [2021] FCAFC 164

Full Court of the Federal Court of Australia

Yates, Moshinsky & Burley JJ

Costs - patent - appellant appealed against findings of primary judge 'on infringement and claim validity' - appellant succeeded concerning one issue on appeal, namely 'inventive step' - appeal otherwise dismissed - determination of costs - *Sandvik Intellectual Property AB v Quarry Mining & Construction Equipment Pty Ltd (No 2)* [2017] FCAFC 158 - *Fuchs Lubricants (Australasia) Pty Ltd v Quaker Chemical (Australasia) Pty Ltd (No 2)* [2021] FCAFC 114 - inventive step issue 'of no or only limited significance to' respondents - finding of no patent infringement by respondents had been upheld - held: appellant to pay respondents' costs.

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

Kassam & Ors v Hazzard & Ors [2021] NSWSC 1195

Supreme Court of New South Wales

Beech-Jones CJ at CL

Notice to produce - COVID-19 - proceedings concerning challenges to validity of 'directions and orders' under *Public Health Act 2010* (NSW) - plaintiff issued notice to produce to fourth defendant ('Commonwealth') - fourth defendant, by notice of motion, sought to set notice to produce aside - one paragraph of notice to produce in issue - legitimate forensic purpose - 'forensic relevance' - breadth - held: paragraph of notice to produce set aside.

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

Break Fast Investments v Rigby Cooke (costs) [2021] VSC 603

Supreme Court of Victoria

Macaulay J

Costs - Court gave judgment for first defendant - first defendant sought indemnity costs order in reliance on Calderbank offer - extent of compromise of offer - plaintiff's prospects of success at time of offer - 'walk away offer' - whether 'demand to capitulate' - whether 'genuine compromise' - whether unreasonable rejection of offer - *Hazeldene's Chicken Farm Proprietary Limited v Victorian WorkCover Authority (No 2)* (2005) 13 VR 435 - *Commissioner of State Revenue v Challenger Listed Investments Ltd (No 2)* [2011] VSCA 398 - held: indemnity costs order refused - plaintiff to pay first respondent's costs on standard basis.

[Break Fast Investments](#) (I B C G)

Callow v Peterson [2021] WASCA 167

Court of Appeal of Western Australia

Quinlan CJ; Mitchell JA & Hill J

Statutory construction - *Limitation Act 2005* (WA) (Limitation Act) - *Fatal Accidents Act 1959* (WA) (Fatal Accidents Act) - appellant's mother killed when struck by motor vehicle driven by respondent - proceedings commenced by appellant under Fatal Accidents Act for own benefit

and benefit of others, namely deceased's de facto husband and six other children of deceased - appeal concerning 'interaction of' Fatal Accidents Act and Limitation Act - 'ultimate question' was: 'Where a plaintiff, in relation to whom the limitation period for commencing an action under the Fatal Accidents Act has not expired, commences an action under that Act on behalf of the relatives of the deceased, does that action enure for the benefit of those relatives of the deceased in relation to whom the limitation period for them to bring the action in their own name has expired?' - held: Court answered question in affirmative - appeal allowed.

[Callow](#) (B I)

Ryan v Bunnings Group Limited; Ryan v Eastlake Football Club Limited; Ryan v Bhagria; Ryan v O'Halloran; Ryan v Cain [2021] ACTCA 24

Court of Appeal of the Australian Capital Territory

Murrell CJ

Subpoena - applicant principal of legal firm sought to set aside subpoena issued by former client on ground it was "excessive and oppressive" - subpoena's breadth - whether sought documents relevance to appeal - held: subpoena set aside.

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

Song: "Blow, blow, thou winter wind"

By: William Shakespeare

Blow, blow, thou winter wind,
Thou art not so unkind
As man's ingratitude;
Thy tooth is not so keen,
Because thou art not seen,
Although thy breath be rude.

*Heigh-ho! sing, heigh-ho! unto the green holly:
Most friendship is feigning, most loving mere folly:
Then, heigh-ho, the holly!
This life is most jolly.*

Freeze, freeze, thou bitter sky,
That dost not bite so nigh
As benefits forgot:
Though thou the waters warp,
Thy sting is not so sharp
As friend remembered not.

Heigh-ho! sing, heigh-ho! unto the green holly...

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With thanks to John Mortimer's Rumpole of the Bailey for quoting from this poem in The Second Rumpole Omnibus:
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https://en.wikipedia.org/wiki/William_Shakespeare

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