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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)

Lardis v Lakis (NSWCA) - real property - transfer of interest in property - intent to defraud creditors - evidence - transfer was void - appeal dismissed (B C I G)

Young v Roads and Maritime Services (No 3) - judgments and orders - application for leave to appeal against dismissal of notice of motion - application dismissed (B C I G)

Dunphy v Russell (NSWSC) - trusts - real property - contribution by plaintiff to defendant's purchase of property - property sold by plaintiff to third party - plaintiff held one third of proceeds of property's sale on trust for defendant (B C I G)

Abignano Nominees Pty Ltd v Altius Pty Ltd (NSWSC) - pleadings - paragraphs of defence struck out with leave to replead - orders made (B C I G)

Major Carpets Pty Ltd v Marandos (VSCA) - accident compensation - minutes of consent order - calculation of work capacity and loss of earning capacity - credibility - appeal allowed (B C I G)

Webster v Leighton (TASSC) - building and construction - magistrate erred in finding notice issued by Director of Building Control was invalid (I B C G)

Northern Territory of Australia v Woodhill and Sons Pty Ltd (NTSC) - security of payments -

statutory interpretation - s34(3)(b) *Construction Contracts (Security of Payments) Act* (NT) - adjudicator precluded from determining two disputes (I B C G)

Summaries With Link (Five Minute Read)

Lardis v Lakis [2018] NSWCA 113

Court of Appeal of New South Wales

Macfarlan, Meagher & White JJA

Real property - appeal from decision in which primary judge found transfer from third respondent to appellant of interest in property was 'voidable alienation of property with intent to defraud creditors' under s37A(1) *Conveyancing Act 1919* (NSW) - primary judge, in further judgments, declared that transfer was void and made orders for re-conveyance of property - whether erroneous rejection of solicitor's evidence - whether erroneous conclusion there was no 'legally binding agreement' - whether erroneous finding of intent to defraud creditors - held: appellant's challenges to primary judge's decision failed - appeal dismissed.

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

Young v Roads and Maritime Services (No 3) [2018] NSWCA 106

Court of Appeal of New South Wales

Judgments and orders - applicant sought to appeal against dismissal of notice of motion - effect of dismissal was that applicant was refused 'default judgment and unliquidated damages' against first and second respondents, and was refused order setting aside default judgment obtained against her by first respondent for amount of rent under lease from first respondent - whether *House v The King* error - whether denial of procedural fairness - whether bias - whether erroneous finding of failure by plaintiff to advance arguable defence to first respondent's claim - held: leave to appeal refused.

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

Dunphy v Russell [2018] NSWSC 721

Supreme Court of New South Wales

Sackville AJA

Trusts - real property - dispute concerned contribution which plaintiff father made towards purchase of home by defendant daughter - plaintiff claimed contribution as made on agreed basis between parties that he would acquire in property one third beneficial interest - defendant contended contribution was a gift - defendant sold property to third party - plaintiff lodged caveat over property claiming equitable interest - whether plaintiff established alleged agreement - whether express trust in plaintiff's favour - held: parties intended to create trust - defendant's equitable interest not defeated by s23C(1) *Conveyancing Act 1919* (NSW) - plaintiff could not invoke 'doctrine of advancement' - declaration granted that defendant held one third share of proceeds of property's sale on trust for plaintiff.

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

Abignano Nominees Pty Ltd v Altius Pty Ltd [2018] NSWSC 732

Supreme Court of New South Wales

Button J

Pleadings - plaintiffs sought orders for the bringing of defendant's Amended Defence into 'good order' - in respect of formatting, plaintiffs contended that reader not permitted to see how Amended Defence was different from predecessor - plaintiffs also contended that more specificity was required in respect of parts of documents which defendant referred to, so there could be 'proper comprehension' of bases of resistance to claims - rr14.28 & 19.5 *Uniform Civil Procedure Rules 2005* (NSW) - held: certain paragraphs of defence struck out with leave to replead - orders made.

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

Major Carpets Pty Ltd v Marandos [2018] VSCA 133

Court of Appeal of Victoria

Beach JA

Accident compensation - plaintiff injured in course of employment with defendant - plaintiff sought, pursuant to s134AB(16)(b) *Accident Compensation Act 1985* (Vic) leave to claim damages in common law proceedings in reliance on 'serious injury' definition in s134AB(37) - primary judge granted plaintiff leave to bring proceedings for both pain and suffering damages and pecuniary loss damages - defendant sought to appeal against grant of leave to claim pecuniary loss damages - plaintiff accepted judge erred in relation to finding of work capacity in relevant employment areas was 20 hours a week, and that this satisfied requirements of 40% loss of earning capacity - parties had filed minutes of consent orders - held: Court satisfied that issues of work capacity and credibility required redetermination - appeal allowed - matter to be reheard by reconstituted Court.

[Major Carpets](#) (B C I G)

Webster v Leighton [2018] TASSC 22

Supreme Court of Tasmania

Brett J

Building and construction - respondent charged with failure to comply with building order issued by applicant Director of Building Control - conceded applicant 'had cause' to issue order, that respondent was 'accredited building practitioner' at time of work, and had not complied - respondent contended compliance with order not possible, because he ceased to be accredited building practitioner before order issued, such that it would not be lawful for him to carrying out work under order - magistrate found order not valid - applicant sought review - whether order was valid - statutory interpretation - 'remedial purpose' - held: magistrate erred in finding order was invalid.

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

Northern Territory of Australia v Woodhill and Sons Pty Ltd [2018] NTSC 30

Supreme Court of the Northern Territory
Grant CJ

Security of payments - proceedings concerned two questions in respect of adjudicator appointed to adjudicate two payment disputes - first question was whether s34(3)(b) *Construction Contracts (Security of Payments) Act* (NT) precluded from adjudicating either dispute where one party had not consent to adjudication - second question was whether, if was so precluded, the adjudicator could 'withdraw from, decline or otherwise disavow one appointment' and proceed to adjudicate the other dispute - held: first question answered in the affirmative - adjudicator precluded from adjudicating both disputes - second question answered in the negative.

[Northern Territory of Australia](#) (I B C G)

CRIMINAL

Executive Summary

R v Jenkin (No 2) (NSWSC) - criminal law - subpoena - murder - accused directed subpoena to Commissioner of Police seeking production of 'criminal histories' of witnesses - documents to be produced - access granted

R v Ahmadi; R v Hosseini; R v A, N; R v M, A (SASCFC) - criminal law - 'criminal trespass' - violence offences - possession of firearm without licence - conduct of prosecutor - judge's directions - appeals against convictions dismissed

Summaries With Link

[R v Jenkin \(No 2\) \[2018\] NSWSC 697](#)

Supreme Court of New South Wales
Hamill J

Criminal law - subpoena - murder - dispute concerned subpoena which was directed by accused to Commissioner of Police - subpoena sought production of certain prosecution witnesses' 'criminal histories' - whether fishing expedition - whether legitimate forensic purpose - whether 'on the cards' that sought documents would 'materially assist' accused's defence - whether to accept Commissioner's submissions concerning access to documents - 'witness's right to privacy' - 'duty of disclosure' - held: Court concluded that records should be produced - access granted.

[View Decision](#)

[R v Ahmadi; R v Hosseini; R v A, N; R v M, A \[2018\] SASCFC 39](#)



Full Court of the Supreme Court of South Australia

Vanstone, Stanley & Parker JJ

Criminal law - appellants convicted for 'serious criminal trespass and offences of violence' - one appellant also convicted of possessing firearm without licence - appellants appealed against convictions - appellants challenged prosecutor's conduct and trial judge's directions - three appellants contended verdicts 'unsafe and unsatisfactory' - admissibility of evidence of prior incidents - whether direction in respect of alibi evidence necessary - whether miscarriage of justice arising from prosecutor's conduct in respect of suggesting matters 'without basis' to witnesses, and/or in submissions to jury in final address - held: there was some fault in prosecutor's conduct but no miscarriage of justice - no error in judge's directions - open to jury to convict appellants - appeals dismissed.

[Ahmadi](#)

Benchmark

Poetry

By: Claude McKay

Sometimes I tremble like a storm-swept flower,
And seek to hide my tortured soul from thee,
Bowing my head in deep humility
Before the silent thunder of thy power.
Sometimes I flee before thy blazing light,
As from the specter of pursuing death;
Intimidated lest thy mighty breath,
Windways, will sweep me into utter night.
For oh, I fear they will be swallowed up—
The loves which are to me of vital worth,
My passion and my pleasure in the earth—
And lost forever in thy magic cup!
I fear, I fear my truly human heart
Will perish on the altar-stone of art!

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

Claude McKay - Wikipedia

en.wikipedia.org

Festus Claudius "Claude" McKay (September 15, 1889 – May 22, 1948) was a Jamaican writer and poet, who was a seminal figure in the Harlem Renaissance. He wrote four novels: Home to Harlem (1928), a best-seller that won the Harmon Gold Award for Literature, Banjo (1929), Banana Bottom (1933), and in 1941 a manuscript called Amiable With Big ...

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