



Friday, 25 October 2019

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Western Union Business Solutions (Australia) Pty Ltd v Robinson** (FCAFC) - industrial law - respondent dismissed from employment - primary judge found for respondent on claim for breach of s351 *Fair Work Act 2009* (Cth) - appeal allowed - cross-appeal dismissed (B C I G)

**In the matter of Awesome Rubber Pty Ltd** (NSWSC) - costs - application under s1303 *Corporations Act 2001* (Cth) 'to compel immediate inspection' of defendant's books - records provided - defendant to pay plaintiff's costs - indemnity costs order refused (B)

**Gray bhnf Salasovicova v St Vincent's Health Australia t/as Mater Hospital Sydney** (NSWSC) - medical negligence - application for approval of settlement refused (I)

**Re Wattie; Wattie v Wattie** (VSC) - costs - wills and estates - plaintiff discontinued proceedings - plaintiff's solicitor and firm to pay 70% of defendants' costs (I B C G)

**Conroy v Romas** (VSC) - judicial review - accident compensation - applicant sought review of Panel's finding of 'current work capacity' - ground of review upheld (I G)

**Armstrong v McIntosh [No 2]** (WASC) - defamation - defendant sought permanent stay or dismissal of action - application allowed in part (I)

**D'Arcy v Caltex Australia Petroleum Pty Ltd** (ACTCA) - negligence - workplace accident -

worker injured in fire at premises - appeal against dismissal of claim against occupier - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Western Union Business Solutions (Australia) Pty Ltd v Robinson [2019] FCAFC 181**

Full Court of the Federal Court of Australia

Kerr, O'Callaghan & Thawley JJ

Industrial law - respondent was employed by appellant as "Client Executive" - respondent dismissed from employment - respondent contended appellant contravened s351 *Fair Work Act 2009* (Cth) (Fair Work Act) and 'engaged in unconscionable conduct, contravening ss20 or 21, Sch 2 *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act) - single judge found in respondent's favour on Fair Work Act claim - respondent did not succeed on Competition and Consumer Act claim - parties appealed and cross-appealed - whether primary judge erred in finding appellant contravened s351 Fair Work Act and/or in finding 'manifestation of' respondents 'claimed mental disability could not be severed from the disability itself' - whether primary judge erred in rejecting appellant's 'alternative argument' as to whether its concerns about appellant's capacity fell within s351(1) & s351(2)(b) Fair Work Act - held: appeal allowed - cross-appeal dismissed.

[Western Union](#) (B C I G)

### **In the matter of Awesome Rubber Pty Ltd [2019] NSWSC 1428**

Supreme Court of New South Wales

Rees J

Costs - corporations - plaintiff was 'former director' of defendant ('Awesome Rubber') and defendant in 'Equity proceedings' brought by Awesome Rubber - plaintiff, under s1303 *Corporations Act 2001* (Cth) (Corporations Act), sought 'to compel immediate inspection' of Awesome Rubber's books under s198F(2) Corporations Act - records provided - determination of costs - plaintiff sought indemnity costs order - Awesome Rubber sought that there be no order as to costs - whether defendant capitulated - whether defendant's conduct unreasonable - held: defendant to pay plaintiff's costs - indemnity costs order refused.

[View Decision](#) (B)

### **Gray bhnf Salasovicova v St Vincent's Health Australia t/as Mater Hospital Sydney [2019] NSWSC 1402**

Supreme Court of New South Wales

Harrison J

Application for approval of settlement - medical negligence - claim arising from infant plaintiff's diagnosis shortly after birth with 'dystonic quadriplegic cerebral palsy' - first defendant admitted breach of duty - second defendant 'put all matters in issue' - application for proposed settlements' approval - whether settlement in plaintiff's best interests - held: Court not satisfied

to approve settlement.

[View Decision](#) (I)

## **Re Wattie; Wattie v Wattie [2019] VSC 701**

Supreme Court of Victoria

McMillan J

Costs - wills and estates - plaintiff discontinued proceeding under r25.03 *Supreme Court (General Civil Procedure) Rules 2015* (NSW) Rules - defendants sought costs - whether contravention of 'overarching obligation' in *Civil Procedure Act 2010* (Vic) (CPA) whether claim misconceived and without 'proper basis' - s29(1) CPA - s23(1) *Supreme Court Act 1986* (Vic) - r63.23 Rules - held: plaintiff's solicitor and firm to pay 70% of defendants' costs.

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

## **Conroy v Romas [2019] VSC 695**

Supreme Court of Victoria

Ginnane J

Judicial review - accident compensation - Medical Panel found plaintiff was injured in course of employment but that plaintiff had 'current work capacity from' certain date - plaintiff sought judicial review - plaintiff contended failure by Panel to consider plaintiff's 'lack of education and occupational skills and her residual pain from her soft tissue injury' - plaintiff also contended Panel gave 'inadequate reasons' - whether failure to take 'relevant considerations' into account - whether 'irrelevant consideration' taken into account - whether reasons adequate - *Accident Compensation Act 1985* (Vic) - *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - held: Panel failed to consider 'effect of the plaintiff's lack of computer skills' - jurisdictional error established - ground of review upheld.

[Conroy](#) (I G)

## **Armstrong v McIntosh [No 2] [2019] WASC 379**

Supreme Court of Western Australia

Le Miere J

Defamation - summary dismissal - stay - plaintiff complained concerning text messages which defendant sent to defendant's friend - plaintiff also contended defendant defamed plaintiff in 'oral statement' to 'parish priest' of plaintiff - defendant sought permanent stay or dismissal of action, contending it was abuse of process and that imputations did not 'surmount the necessary threshold of seriousness' - *Defamation Act 2005* (WA) - O16 r1 & O20 r19(1) *Rules of the Supreme Court 1971* (WA) - held: claim concerning 'alleged publication' to parish priest dismissed - application otherwise dismissed.

[Armstrong](#) (I)

## **D'Arcy v Caltex Australia Petroleum Pty Ltd [2019] ACTCA 27**

Court of Appeal of the Australian Capital Territory

Murrell CJ, Mossop and Charlesworth JJ



Negligence - workplace accident - occupier's liability - appellant worker injured in fire which occurred in 'underground petrol tank' (tank) while appellant and other workers were conducting 'tank relining work' - appellant sued employer ('Fuel-Sys) and respondent occupier of premises - respondent subleased premises from company (Evangelista) which held Crown lease of property - Evangelista 'contracted with Fuel-Sys' for the tank relining work - primary judge found in appellant's favour against Fuel-Sys but gave judgment for respondent - primary judge ordered that appellant pay respondent's costs - appellant appealed - whether respondent owed duty of care to appellant - nature and scope of respondent's duty of care to appellant - whether breach of duty of care - whether breach of statutory duty - effect on respondent's liability of regulations under *Work Health and Safety Act 2011* (ACT) and *Dangerous Substances Act 2004* (ACT) - held: appeal dismissed.

[D'Arcy](#) (I B C G)

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

From: **The Book of Thel**

By: William Blake

## THEL'S MOTTO

Does the Eagle know what is in the pit?  
Or wilt thou go ask the Mole:  
Can Wisdom be put in a silver rod?  
Or Love in a golden bowl?

I

The daughters of Mne Seraphim led round their sunny flocks.

All but the youngest; she in paleness sought the secret air.  
To fade away like morning beauty from her mortal day:  
Down by the river of Adona her soft voice is heard:  
And thus her gentle lamentation falls like morning dew.

O life of this our spring! why fades the lotus of the water?  
Why fade these children of the spring? born but to smile & fall.

Ah! Thel is like a watry bow. and like a parting cloud.  
Like a reflection in a glass. like shadows in the water.  
Like dreams of infants. like a smile upon an infants face,  
Like the doves voice, like transient day, like music in the air;  
Ah! gentle may I lay me down, and gentle rest my head,  
And gentle sleep the sleep of death. and gentle hear the voice  
Of him that walketh in the garden in the evening time.

The Lilly of the valley breathing in the humble grass  
Answer'd the lovely maid and said: I am a watry weed,  
And I am very small, and love to dwell in lowly vales;  
So weak, the gilded butterfly scarce perches on my head.  
Yet I am visited from heaven and he that smiles on all.  
Walks in the valley. and each morn over me spreads his hand  
Saying, rejoice thou humble grass, thou new-born lilly flower,  
Thou gentle maid of silent valleys. and of modest brooks;  
For thou shalt be clothed in light, and fed with morning manna:  
Till summers heat melts thee beside the fountains and the



# Benchmark

springs

To flourish in eternal vales: then why should Thel complain,

Why should the mistress of the vales of Har, utter a sigh.

She ceas'd & smild in tears, then sat down in her silver  
shrine.

[https://en.wikipedia.org/wiki/William\\_Blake](https://en.wikipedia.org/wiki/William_Blake)

[Click Here to access our Benchmark Search Engine](#)