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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Actavis Pty Ltd v Orion Corporation (No 2) (FCAFC) - costs - patents - appeal successful in part - appellants to pay 80% of respondents' costs of appeal and 60% of appellants' costs at first instance (I B C G)

Bennett v Strauss (NSWCA) - contract - sale and purchase of interest in land - principal and agent - no error in finding no ratification of agreement - appeal dismissed (I B C G)

In the matter of Tanamerah Estates Pty Ltd (NSWSC) - corporations - application for winding up of company on basis of its insolvency granted (I B C G)

Apple and Pear Australia Ltd v Pink Lady America LLC (VSCA) - contract - trademark - erroneous construction of Option Deed in relation to trademarks which it encompassed - appeal allowed (I B C G)

Adnow Pty Ltd v Greenwells Wollert Pty Ltd (VSCA) - contract - option deed - dismissal of application for declaration that valuer failed to comply with option deed's provision and order valuation be set aside - appeal dismissed (I B C G)

Terravision Pty Ltd v Black Box Control Pty Ltd [No 4] (WASC) - contract - pleadings - rejoinder - defendant granted leave to file proposed rejoinder (B)

Albrecht v Insurance Australia Ltd (ACTCA) - insurance - statutory interpretation - s155(3) *Road Transport (Third-Party Insurance) Act 2008 (ACT)* did not apply where mandatory final offer accepted - no cap on assessment of the appellant's costs - appeal allowed (I B)

Summaries With Link (Five Minute Read)

Actavis Pty Ltd v Orion Corporation (No 2) [2016] FCAFC 159

Full Court of the Federal Court of Australia

Allsop CJ, Nicholas & Yates JJ

Costs - patents - Court concluded appeal succeeded in part - determination of costs on appeal and at first instance - parties agreed costs order in respect of appeal should be made in respondents' favour, discounted in reflection of respective successes on issues - held: in relation to costs of appeal Court accepted respondents' submission that, given their overall success and 'relatively limited nature' of issues on which appellants successful, appellants should pay 80% of their costs - in relation to costs at first instance, Court accepted respondents' submission that appellants should pay 60% of their costs in reflection of 'appropriate weighting and balance'.

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

Bennett v Strauss [2016] NSWCA 324

Court of Appeal of New South Wales

McColl JA; Sackville & Barrett

Contract - sale and purchase of interest in land - first respondent was registered proprietor as tenant in common of interest in land - appellant contended he entered contract to purchase the interest and that second respondent, who was first respondent's daughter, had contracted with him as first respondent's agent - if second respondent did not have authority when she made contract, appellant alternatively contended first respondent ratified agreement - primary judge found second respondent had not acted with first respondent's authority and there was no ratification of agreement - appellant challenged decision on ratification - *Contracts Review Act 1980 (NSW)* - s54A *Conveyancing Act 1919 (NSW)* - held: no error by primary judge established - appeal dismissed.

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

In the matter of Tanamerah Estates Pty Ltd [2016] NSWSC 1644

Supreme Court of New South Wales

Black J

Corporations - plaintiff sought winding up of defendant - presumption of insolvency - whether company insolvent in fact - whether to withhold winding up order on discretionary grounds - *Liability Act 2002 (NSW)* - *Corporate Law Reform Act 1992 (Cth)* - ss459C, 459F, 459G, 459R, 459S, 467, & Pt 5.4 *Corporations Act 2001 (Cth)* - s59 *Trustee Act 1925 (NSW)* - rr36.4, 36.15 *Uniform Civil Procedure Rules 2005 (NSW)* - held: formal requirements for winding up satisfied -

Court satisfied it should withhold winding up order on discretionary grounds.

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

Apple and Pear Australia Ltd v Pink Lady America LLC [2016] VSCA 280

Court of Appeal of Victoria

Tate, Ferguson & McLeish JJA

Contract - intellectual property - trademark - proceedings concerned ownership and control of PINK LADY trademarks in Chile - issue to be determined by construction of option deed between parties to determine which trademarks deed encompassed - applicant sought to appeal against primary judge's construction of deed - applicant contended deed encompassed 'only those defined trademarks listed in the schedule to the Option Deed' and did not extend to a later 'refreshed mark' - held: primary judge erred in construction of Option Deed - deed did not apply to PINK LADY trademarks beyond those identified in schedule - there was no variation of the deed in respect of trademarks within its scope - appeal allowed.

[Apple and Pear Australia](#) (I B C G)

Adnow Pty Ltd v Greenwells Wollert Pty Ltd [2016] VSCA 282

Court of Appeal of Victoria

Tate, Ferguson & Kaye JJA

Contract - applicant by deed granted respondent option to purchase property it owned - option's term extended by deeds between parties - respondent gave notice it might exercise option - valuer appointed under deed to determine property's value - valuer assessed current market value - trial judge dismissed applicant's application for declaration that valuer failed to comply with option deed's provisions and order valuation be set aside - whether option deed required valuer to consider and apply Precinct Structure Plan - whether trial judge erroneously failed to find valuer did not have regard to Valuation Guidelines, and failed to find valuer did not undertake 'valuation' under option deed - held: grounds of appeal failed - appeal dismissed.

[Adnow Pty Ltd](#) (I B C G)

Terravision Pty Ltd v Black Box Control Pty Ltd [No 4] [2016] WASC 378

Supreme Court of Western Australia

Le Miere J

Contract - rejoinder - pleadings - plaintiff sought relief arising from agreement with defendant concerning defendant's obligations to inform it as to transactions between defendant and its customers and to pay fees in respect of transactions - defendant sought leave to serve proposed rejoinder raising two defences - election in conduct of litigation - case management principles - Anshun estoppel - alleged defects in rejoinder - abuse of process - O 1 r4A, O 1 r4B & O 20 r6 *Rules of the Supreme Court 1971 (WA)* - held: Court granted defendant permission to file proposed rejoinder.

[Terravision](#) (B)

Albrecht v Insurance Australia Ltd [2016] ACTCA 58

Court of Appeal of the Australian Capital Territory

Murrell CJ; Burns & Perry JJ

Insurance - statutory interpretation - appellant accepted first respondent insurer's mandatory final offer for damages for injury as result of motor accident - offer accepted after appellant had instituted proceedings in the ACT Magistrates Court - final consent orders entered in ACT Magistrates Court - first respondent sought declaratory relief that s155(3) *Road Transport (Third-Party Insurance) Act 2008* (ACT) applied to assessment of costs in relation to consent judgment - appellant contended Master erred in holding s155(3) imposed a cap on costs recoverable by him - appellant also challenged order awarding first respondent costs of originating application - s155(3) did not apply where mandatory final offer accepted, regardless of whether accepted after litigation instituted and its terms embodied in consent orders - no cap on assessment of the appellant's costs - appeal allowed.

[Albrecht](#) (I B)

CRIMINAL

Executive Summary

Lehn v R (NSWCCA) - criminal law - aggravated dangerous driving - stealing motor vehicle - erroneous discount for utilitarian value of guilty plea affected sentencing discretion in general - lesser sentence warranted - appeal allowed

R v Wilson (QCA) - criminal law - supplying dangerous drug - disqualification of driver's licence not warranted - order set aside - appeal allowed

Summaries With Link

Lehn v R [2016] NSWCCA 255

Court of Criminal Appeal of New South Wales

Bathurst CJ; Beazley P; R A Hulme, Schmidt & Wilson JJ

Criminal law - applicant pleaded guilty to one charge of aggravated dangerous driving causing death and one charge of stealing motor vehicle contrary to s52A(2) *Crimes Act 1900* and s154F respectively - applicant sought appeal against effective head sentence of 11 years with non-parole period of 8 years - sentencing judge accepted plea of guilty entered at earliest opportunity but allowed 20% rather than 25% discount for plea's utilitarian benefit - consequence for sentencing discretion of Crown's acceptance that discount for utilitarian value of plea of 20% rather than 25% was erroneous giving rise to procedural unfairness - whether sentence manifestly excessive - held: error as to discount affected sentencing discretion generally, not only in respect of discrete component - Court re-exercised discretion to find by



majority that lesser sentence warranted - appeal allowed.

[Lehn](#)

R v Wilson [2016] QCA 301

Court of Appeal of Queensland

M McMurdo P, Morrison JA & Atkinson J

Criminal law - applicant pleaded guilty to three counts of supplying dangerous drug and sentenced to three years' imprisonment on each count - serious drug certificate issued and applicant disqualified from holding or obtaining driver's licence for four years - applicant sought to appeal against disqualification of driver's licence for four years on grounds it was manifestly excessive - whether exercise of discretion to order disqualification was warranted in the offence's circumstances - s187 *Penalties and Sentences Act 1992* (Qld) - held: Court of view that there should be no disqualification in respect of driver's licence - appeal allowed - order for disqualification of licence set aside.

[Wilson](#)

Benchmark

Theocritus: A Villanelle

By [Oscar Wilde](#)

O singer of Persephone!
In the dim meadows desolate
Dost thou remember Sicily?

Still through the ivy flits the bee
Where Amaryllis lies in state;
O Singer of Persephone!

Simaetha calls on Hecate
And hears the wild dogs at the gate;
Dost thou remember Sicily?

Still by the light and laughing sea
Poor Polypheme bemoans his fate;
O Singer of Persephone!

And still in boyish rivalry
Young Daphnis challenges his mate;
Dost thou remember Sicily?

Slim Lacon keeps a goat for thee,
For thee the jocund shepherds wait;
O Singer of Persephone!
Dost thou remember Sicily?

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