

Friday, 26 February 2021

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)

Palmer v Western Australia (HCA) - constitutional law - s92 Constitution - COVID-19 - 'special case' - *Emergency Management Act 2005* (WA) - *Quarantine (Closing the Border) Directions* (WA) - constitutional invalidity not established - plaintiffs to pay costs (I B C G)

Endresz v Commonwealth of Australia (FCAFC) - bankruptcy - sequestration orders granted with respect to appellant's estate - appeal dismissed (B)

In the matter of Eticore SD Pty Ltd (NSWSC) - corporations - plaintiff sought orders fixing date for registration of plaintiff's security interest - orders granted (B)

F45 Training Pty Ltd v Body Fit Training Company Pty Ltd (NSWSC) - cross-vesting - second and third defendants sought transfer of proceedings to New South Wales Registry of the Federal Court of Australia - notice of motion dismissed (I B C G)

Mott v Hill (WASC) - wills and estates - probate - plaintiff sought orders pronouncing 'force and validity' of late mother's Will and further orders - application granted (B)

Summaries With Link (Five Minute Read)

Palmer v Western Australia [2021] HCA 5

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon & Edelman JJ

Constitutional law - COVID-19 - Minister declared state of emergency under s56 *Emergency Management Act 2005* (WA) ('Emergency Management Act') - state of emergency applied to Western Australia - Police Commissioner issued *Quarantine (Closing the Border) Directions* (WA) - plaintiffs sought declaration "either the authorising Act and/or the Directions are invalid, either wholly or in part ... by reason of s 92 of the Constitution" - determination of 'questions stated' for Full Court's opinion: "(a) Are the Quarantine (Closing the Border) Directions (WA) and/or the authorising Emergency Management Act 2005 (WA) invalid (in whole or in part, and if in part, to what extent) because they impermissibly infringe s 92 of the Constitution?"; "(b) Who should pay the costs of the special case?" - construction of ss56 & 67 Emergency Management Act - whether compliance with 'constitutional limit' in s92 Constitution - "trade, commerce, and intercourse among the States ... shall be absolutely free" - held: invalidity not established with respect to Emergency Management Act - 'exercise of power' to make directions did not raise constitutional question - plaintiffs to pay costs.

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

Endresz v Commonwealth of Australia [2021] FCAFC 18

Full Court of the Federal Court of Australia

Griffiths, Thawley & O'Bryan JJ

Bankruptcy - respondent sought sequestration of appellant's estate - respondent relied on judgment debt in creditor's petition - application granted - appellant appealed against 'sequestration orders' - applicant contended that "in truth and reality" debt not owed to creditor - 'equitable jurisdiction' - *Auckland Harbour Board v The King* [1924] AC 318 - s43 *Bankruptcy Act 1966* (Cth) - *Barnes v Addy* [1874] UKLawRpCh 20 - held: appeal dismissed.

[Endresz](#) (B)

In the matter of Eticore SD Pty Ltd [2021] NSWSC 110

Supreme Court of New South Wales

Black J

Corporations - plaintiff (Eticore), under s588FM *Corporations Act 2001* (Cth) (Corporations Act), sought orders fixing date for registration of plaintiff's security interest on Personal Property Securities Register - security interest granted to plaintiff over defendant's collateral - s588FL(2)(b)(iv) Corporations Act - whether 'accident or inadvertence' had caused delay - held: orders granted.

[View Decision](#) (B)

F45 Training Pty Ltd v Body Fit Training Company Pty Ltd [2020] NSWSC 1879

Supreme Court of New South Wales

Emmett AJA

Cross-vesting - patent - trade mark - second and third defendants, under s5(1) *Jurisdiction of*



Courts (Cross-vesting) Act 1987 (NSW) or s5(1) *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth), sought transfer of proceedings to New South Wales Registry of the Federal Court of Australia - 'more appropriate forum' - held: notice of motion dismissed.

[F45 Training](#) (I B C G)

Mott v Hill [2021] WASC 43

Supreme Court of Western Australia

Kenneth Martin J

Wills and estates - probate - plaintiff sought orders pronouncing 'force and validity' of late mother's Will and further orders - whether will in accordance with s8 *Wills Act 1970* (WA) - 'presumption of testamentary capacity' - weight of evidence of testamentary capacity - *Timbury v Coffee* [1941] HCA 22 - held: application granted.

[Mott](#) (B)

Summaries With Link

By: Anonymous

Learning
And then knowing
Then closing down
In routine
And certainty
With loss of vision
Clouded by ignorance
And comfort

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