

Friday, 27 February 2015

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

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Executive Summary (1 minute read)

CIVIL

Atkinson v Commissioner of Taxation (FCAFC) - taxation - statement of account incapable of conversion to a bill of exchange - appeal dismissed (B G)

Jewelsnloo Pty Ltd v Sengos (NSWSC) - contract - leave to reopen case to rely on new evidence refused (I B)

Naumovski v Ugrinovski (VSC) - costs - subpoenas issued in breach of overarching obligations in *Civil Procedure Act 2005* (Vic) - indemnity costs (I)

Tamareisis v CSR Ltd (VSC) - proceedings for damages for psychiatric reaction to father's death from mesothelioma - adjournment refused (I C)

Kyaw Nyunt (deceased) (SASC) – Wills – document of testamentary nature written in Burmese - letters of administration granted to widow of deceased (B)

The Corporation of the City of Adelaide v Circelli (SASC) - environment and planning - refusal to grant permanent stay of prosecution - leave to appeal refused (I C)

Terravision Pty Ltd v Black Box Control Pty Ltd [No 2] (WASC) - pleadings - licence agreement - impermissible aids to construction of agreement - paragraphs of defence struck out (I B)



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DPP v Torun (VSCA) – manslaughter by unlawful or dangerous act – guilty plea – sentence of imprisonment - 8 years with non-parole period of 5 years - not manifestly inadequate

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Summaries with links (5 Minute Read)

CIVIL

Atkinson v Commissioner of Taxation [2015] FCAFC 18

Full Court of the Federal Court of Australia

Foster, Yates & Gleeson JJ

Bills of exchange - Commissioner commenced debt recovery proceedings against first appellant - ATO sent first appellant statement of account in respect of income tax debt - ATO received purported bill of exchange from first appellant - purported bill comprised documents including statement of account to which alterations and additions were made - primary judge ordered proceedings be dealt with without oral hearing on basis they were frivolous or vexatious and dismissed appellants' claim against Commissioner - whether converted statement of account constituted bill of exchange - held: receipt of statement of account did not confer any authority upon first appellant to "fill up" statement of account so that it became completed bill of exchange, or to impose liability upon Commissioner to pay damages - statement of account did not answer description in s25 *Bills of Exchange Act 1909* (Cth) - no denial of procedural fairness - appeal dismissed

[Atkinson](#) (B G)

Jewelsnloo Pty Ltd v Sengos [2015] NSWSC 80

Supreme Court of New South Wales

Robb J

Interlocutory application - claim arising out of contract for sale of business between plaintiff and second and third defendants - plaintiff alleged it entered contract on faith of a false representation concerning income of business - plaintiff sought leave to re-open its case to rely on additional evidence - new evidence consisted substantially of business's trading records - held: to permit plaintiff to rely on new evidence would allow it to make fundamental change in basis of case - much of the preparation undertaken by defendants would be wasted - defendants would be subjected to significantly more cost, delay and anxiety - plaintiff would not be able to compensate defendants for financial consequences of being given leave to reopen - no explanation to justify giving leave - leave refused - notice of motion dismissed.

[Jewelsnloo Pty Ltd](#) (I B)

Naumovski v Ugrinovski [2015] VSC 49

Supreme Court of Victoria

Zammit J

Costs - plaintiffs issued subpoena to first defendant and non-party - first defendant and non-party objected - plaintiffs did not object to setting aside of subpoenas - first defendant and non-party sought indemnity costs - obligations to only take steps to resolve or determine dispute, to cooperate in conduct of civil proceeding, to narrow issues in dispute, and to ensure costs reasonable and appropriate - held: plaintiffs breached overarching obligations under ss19, 20,

23 & 24 *Civil Procedure Act 2010* (Vic) - plaintiffs' conduct had resulted in loss of time to Court and parties - breaches of overarching obligations sufficient to justify indemnity costs.

[Naumovski](#) (I)

Tamareisis v CSR Ltd [2015] VSC 47

Supreme Court of Victoria

J Forrest J

Adjournment - plaintiff sued defendant for psychiatric reaction to death of father from mesothelioma - bulk of viva voce evidence to be taken in Greece - proceedings scheduled to commence 6/3/15 - defendant sought adjournment on basis of late provision of taxation records of plaintiff and defendant's inability to obtain medical records relating to treatment which may be held by medical practitioners in Greece - held: defendant's prospect of fair trial not compromised by proceeding on 6/3/15 and taking of evidence in Greece - application for adjournment refused.

[Tamareisis](#) (I C)

Kyaw Nyunt (deceased) [2015] SASC 14

Supreme Court of South Australia

Gray J

Wills – deceased left document of testamentary nature in Burmese language – widow of deceased sought grant of letters of administration – applicant submitted document did not appoint executor and that, if it were a Will, it would be wholly ineffective in disposing of deceased's Australian estate – held: document was not a Will under Pt 3 *Wills Act 1936* (SA) - grant of letters of administration of deceased's estate made to applicant - dispensation order under s67 *Administration and Probate Act 1919* (SA) made – interests of deceased's children in deceased's estate appropriately protected.

[Kyaw Nyunt](#) (B)

The Corporation of the City of Adelaide v Circelli [2015] SASC 21

Supreme Court of South Australia

Bampton J

Environment and planning - applicant charged with failure to comply with s45(5) *Environment Protection Act 1993* (SA) - prosecution commenced in summary jurisdiction of Environment, Resources and Development Court of South Australia - applicant sought to appeal against judge's refusal to order a permanent stay of proceedings - judge dismissed application on basis applicant had failed to show that prosecution was doomed to failure, or that continuation of it would bring administration of justice into disrepute - held: Court not satisfied there were special reasons justifying permission to appeal - application dismissed.

[The Corporation of the City of Adelaide](#) (I C)

Terravision Pty Ltd v Black Box Control Pty Ltd [No 2] [2015] WASC 66

Supreme Court of Western Australia

Le Miere J

Pleadings - dispute arising out of licence agreement entered by parties - plaintiff claimed defendant had not informed or notified it of transactions it was obliged to give notice of and had not paid plaintiff in respect of those transactions - plaintiff sought to strike out paragraphs of defendant's amended substituted defence - held: certain subparagraphs were not permissible aids to construction of agreement, thereby raised irrelevant issues or failed to state defendant's case with reasonable particularity - certain subparagraphs struck out.

[Terravision Pty Ltd](#) (I B)

CRIMINAL

DPP v Torun [2015] VSCA 15

Court of Appeal of Victoria

Ashley, Whelan & Beach JJ

Sentencing – respondent shot and killed girlfriend with gun that he had earlier loaded – did not recall gun was loaded due to drug-addled state - pleaded guilty to manslaughter by unlawful and dangerous act – imprisonment for 8 years with non-parole period of 5 years – judge indicated that, but for guilty plea, respondent would have been sentenced to term of imprisonment of 11 years with non-parole period of 8 years and 6 months – DPP contended sentence was manifestly inadequate – held: no appeal from judge's finding that respondent's behaviour did not involve any intended or foreseen violence or injury to victim – no intention to harm victim – sentence not outside range open to judge – no clear and egregious inadequacy in the circumstances – appeal dismissed.

[DPP](#)



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Where They Lived

By Thomas Hardy

Dishevelled leaves creep down
Upon that bank to-day,
Some green, some yellow, and some pale brown;
The wet bents bob and sway;
The once warm slippery turf is sodden
Where we laughingly sat or lay.

The summerhouse is gone,
Leaving a weedy space;
The bushes that veiled it once have grown
Gaunt trees that interlace,
Through whose lank limbs I see too clearly
The nakedness of the place.

And where were hills of blue,
Blind drifts of vapour blow,
And the names of former dwellers few,
If any, people know,
And instead of a voice that called, "Come in, Dears,"
Time calls, "Pass below!"

[Thomas Hardy](#)

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