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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)

Republic of Italy (Minister of Foreign Affairs and International Cooperation - Adelaide Consulate) v Benvenuto (FCAFC) - industrial law - foreign states immunities - Industrial Relations Court of South Australia had jurisdiction to determine employees' applications in respect of unpaid wages and superannuation contributions - appeal dismissed (I B C G)

Pi v Zhou (No 4) (NSWCA) - security for costs - judicial review - challenge to decision of single judge to order payment of security for costs - application for adjournment dismissed - notice of motion dismissed (I B C G)

Rail Corporation New South Wales v Donald; Staff Innovations Pty Ltd t/as Bamford Family Trust (NSWCA) - negligence - worker employed by labour hire company (Staff Innovations) which hired out worker's services to appellant (Rail Corp) - worker injured in course of employment - Rail Corp and Staff Innovations liable - appeal and cross-appeal dismissed (I B C G)

Gillian Fisher-Pollard by her tutor Miles Fisher-Pollard v Piers Fisher-Pollard (NSWSC) - equity - unconscionability - unconscionable conduct and undue influence established with respect to property transactions - transactions to be set aside - Court to hear submissions on declarations and orders (I B C G)

Gladys Hargraves v Susan Eveston (NSWSC) - contract - loan - agreement to defer

repayment of loan not established - defendant bound to immediately repay plaintiff for loaned amount - judgment for plaintiff (I B)

In the Matter of Innovateq Pty Ltd (VSC) - corporations - leave to commence proceedings in company's name refused - winding up application granted (I B C G)

Day v Woolworths Limited & Ors (QSC) - judgments and orders - second and third defendants granted injunction to restrain plaintiff from communicating with them except through their solicitors (I B C G)

Summaries With Link (Five Minute Read)

Republic of Italy (Minister of Foreign Affairs and International Cooperation - Adelaide Consulate) v Benvenuto [2018] FCAFC 64

Full Court of the Federal Court of Australia

Allsop CJ, Besanko & White JJ

Industrial law - foreign states immunities - appellant foreign State employed respondent in appellant's Adelaide consulate - each respondent sought payment of unpaid wages, long service leave entitlements and superannuation contributions - in respect of unpaid wages and superannuation contributions, respondents invoked jurisdiction of Industrial Relations Court of South Australia (IRCSA) under *Fair Work Act 2009* (Cth) - appellant disputed jurisdiction of IRCSA to determine applications in reliance on s12(4) *Foreign States Immunities Act 1985* (Cth) - whether appellant immune from Australian jurisdiction - whether employment contract contained "inconsistent provision" under s12(4)(a) - whether proceeding concerned "a right or obligation conferred or imposed by a law of Australia on a person as employer or employee" under s12(2)(a) - held: employment contracts did not contain "inconsistent provision" - appeals dismissed.

[Republic of Italy](#) (I B C G)

Pi v Zhou (No 4) [2018] NSWCA 87

Court of Appeal of New South Wales

Leeming JA; White JA & Barrett AJA

Security for costs - judicial review - appellant challenged decision of single judge to order that appellant provide security for respondent's costs in proceedings - common ground appellant did not provide security for costs - proceedings were dismissed - held: it was appropriate to treat motion as motion for extension of time for review of appeal's dismissal - s46 *Supreme Court Act 1970* (NSW) - r51.58 *Uniform Civil Procedure Rules 2005* (NSW) - held: application for adjournment dismissed - notice of motion dismissed.

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

Rail Corporation New South Wales v Donald; Staff Innovations Pty Ltd t/as Bamford

Family Trust [2018] NSWCA 82

Court of Appeal of New South of Wales

Beazley ACJ; McColl & Meagher JJA

Negligence - first respondent employed by second respondent labour hire company (Staff Innovations) - Staff Innovations hired out first respondent's services to appellant (Rail Corp) - first respondent sued Rail Corp and Staff Innovations for injuries in course of employment - primary judge found Rail Corp liable for first respondent's injury and awarded judgment for first respondent in sum of \$1,236,913.00 - judgement also entered judgment against Staff Innovations in sum of \$861,108.00 pursuant to s151A *Workers Compensation Act 1987* (NSW) - Railcorp appealed against finding of liability - Staff Innovations cross-appealed against finding of liability - Rail Corp and Staff Innovations challenged finding of no contributory negligence - *Civil Liability Act 2002* (NSW) - held: Court upheld challenges to certain inferential findings of primary judge - primary judge's judgment not displaced - appeal and cross-appeal dismissed.

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

Gillian Fisher-Pollard by her tutor Miles Fisher-Pollard v Piers Fisher-Pollard [2018] NSWSC 500

Supreme Court of New South Wales

Sackar J

Equity - unconscionability - plaintiff sought declarations plaintiff was beneficial owner of property, which defendant held on trust for plaintiff - alternatively plaintiff sought declaration it would be unconscionable for defendant to deny plaintiff's sole beneficial ownership of property - whether unconscionability and undue influence in property transactions between plaintiff and defendant - whether transactions ought to be set aside - whether special disadvantage - whether defendant aware of special disadvantage - held: unconscionable conduct by defendant established - undue influence established - transactions should be set aside - Court to hear submissions on declarations and orders.

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

Gladys Hargraves v Susan Eveston [2018] NSWSC 505

Supreme Court of New South Wales

Hamill J

Contract - loan - loan agreement - plaintiff sued defendant daughter for money she lent her - defendant agreed she had to pay plaintiff back but contended plaintiff agreed to defer repayment date - central to dispute was whether a conversation had occurred and, if it had occurred, its 'precise contents and legal effect' - whether terms of deeds formalising loan agreement varied - credit - held: Court satisfied that 'no binding variation was made' - defendant to repay loan immediately - judgment for plaintiff.

[View Decision](#) (I B)

In the Matter of Innovateq Pty Ltd [2018] VSC 124

Supreme Court of Victoria

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Kennedy J

Corporations - two applications - plaintiff sought leave pursuant to s237 *Corporations Act 2001* (Cth) (Act) to commence proceedings in company's name against former employee and companies associated with former employee (leave application) - plaintiff sought that company be wound up (winding up application) - held: in respect of leave application, Court not satisfied applicant acting in good faith, or that it was in company's best interests grant plaintiff leave - leave application refused - Court satisfied that company should be wound up on just and equitable ground and also on basis of 'suspension of business' - parties to provide form of order.

[In the Matter of Innovateq](#) (I B C G)

Day v Woolworths Limited & Ors [2018] QSC 82

Supreme Court of Queensland

Douglas J

Judgments and orders - interlocutory injunction - plaintiff sought damages against second and third defendants for injuries allegedly suffered at premises which first defendant (Woolworths Limited) operated - second and third defendants sought to restrain plaintiff from 'contacting or communicating with their insurer Zurich Australia Insurance Limited' and 'associated Zurich companies' concerning proceedings except through solicitors for second and third defendants - defendants contended that communications by plaintiff and on her behalf were 'made in an attempt to menace, intimidate and harass Zurich and to influence it in relation to the conduct of this litigation' - r33 *Australian Solicitors Conduct Rules 2012* - s9 *Defamation Act 2005* (Qld) - held: injunction granted.

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

CRIMINAL

Executive Summary

Refaieh v R (NSWCCA) - criminal law - drug offences - 'arithmetic error' concerning backdating of sentence - appeal allowed 'to the extent of one day'

Schanker v The Queen (VSCA) - criminal law - drug offences - admissibility of evidence - hearsay - appeals against conviction and sentence dismissed

Summaries With Link

Refaieh v R [2018] NSWCCA 72

Court of Criminal Appeal of New South Wales

Hoeben CJ; Johnson & N Adams JJ

Criminal law - sentencing - applicant pleaded guilty to count of 'knowingly taking part in the supply of a large commercial quantity of a prohibited drug' - applicant, pursuant to s5(1)(c) *Criminal Appeal Act 1912* (NSW) sought to appeal against sentence - applicant contended sentencing judge did not take into account time he was in custody under s47(3) *Crimes (Sentencing Procedure) Act 1999* (NSW), and that discretion to fix sentence's commencement date miscarried - whether sentencing erroneously failed to back-date sentence to take pre-sentence custody served on remand concerning 'unrelated offence' - held: Crown accepted, and Court agreed, that sentencing judge had made 'arithmetic error' that 267 days, not 268 days, were to be backdated - appeal allowed 'to the extent of one day'.

[View Decision](#)

Schanker v The Queen [2018] VSCA 94

Court of Appeal of Victoria

Tate & McLeish JJA; Kidd AJA

Criminal law - drug offences - applicant convicted of 'attempting to possess a commercial quantity of an unlawful imported border-controlled drug' (Indictment 1) - applicant subsequently pleaded guilty to charge of 'trafficking in a commercial quantity of a border controlled drug' (Indictment 2) - applicant sentenced to total effective sentence of 18 years in prison with 14 year non-parole period - applicant sought to appeal against conviction for Indictment 1 and against sentence for both Indictment 1 and Indictment 2 - admissibility of hearsay evidence - 'res gestae' doctrine - alleged incompetence of trial counsel - whether conversations admissible as 'original transactional evidence' - whether erroneous admission of evidence of 'controlled operation' - whether erroneous sentencing on basis of 'importation' - whether erroneous finding applicant was a 'principal of attempted possession' - held: leave to appeal granted - appeal against conviction dismissed - appeal against sentence dismissed.

[Schanker](#)



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Still On Patrol

By: Lt Col Frederick Lambert

In their submarines they went,
Some never to return
In those dark years of war.
We called them Yanks.
Do not forget them,
We give out our thanks.
Roll calls for their battle losses
The tolling of the bells
Dong, dong, dong.
War claimed its sacrifices
Tributes paid, wreathes laid.
Messages from aching hearts
Of loved ones far from home.
Lives for freedom.
Submarines,
Still on patrol.

Lt Col Frederick Lambert
"Z Special Force"
Borneo, 1944/45

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