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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)

Smith v Ulan Coal Mines Limited (NSWSC) - evidence - pleadings - determination of plaintiff's application to rely on mines inspector's 'amended evidentiary statement/expert report' and 'Further Amended Statement Of Claim' (B C I G)

Findex Group Ltd v iiNet Ltd (NSWSC) - undertakings - *Harman* undertaking - plaintiffs sought leave to use documents obtained in search orders' execution 'in present proceedings' 'in other proceedings' - fourth defendant sought orders concerning documents' return - orders made (B I)

SGR Pastoral Pty Ltd v Christensen (No 2) (QSC) - costs - corporations - Court set aside respondents' statutory demand - respondents to pay applicant's costs (I B C G)

In the matter of The D MacDonald Steele Memorial Prize (SASC) - wills and estates - trusts and trustees - 'arrangements' creating 'Prize' and its 'ongoing award' constituted trust - Public Trustee was trustee of trust - advice given (B)

Carina James v North Star Pastoral Pty Ltd (NTSC) - damages - trespass - assessment of damages for 'admitted trespass' - general and aggravated damages awarded - exemplary damages refused (I)



Summaries With Link (Five Minute Read)

Smith v Ulan Coal Mines Limited [2019] NSWSC 1263

Supreme Court of New South Wales

Campbell J

Evidence - pleadings - first defendant operated mine - plaintiff claimed against first defendant in respect of injury to hand which plaintiff suffered at mine - plaintiff employed by labour hire company - employer lent plaintiff's services to first defendant - plaintiff's claim against first defendant based on principles in *Mason P in TNT Pty Ltd v Christie* (2001) 65 NSWLR 1 - plaintiff, by notice of motion, sought to rely on mines inspector's 'amended evidentiary statement/expert report' (amended statement) and 'Further Amended Statement Of Claim' - whether compliance with rr31.23 & 31.28 *Uniform Civil Procedure Rules 2005* (Cth) (Rules) - whether 'exceptional circumstances' warranting permission to rely on amended statement - r31.28(4) Rules - held: permission granted to proceed on basis of Further Amended Statement of Claim in respect of certain paragraphs - permission to rely on amended statement granted with exception of certain paragraphs.

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

Findex Group Ltd v iiNet Ltd [2019] NSWSC 1198

Supreme Court of New South Wales

Ward CJ in Eq

Undertakings - *Harman* undertaking - documents obtained in search orders' execution 'in present proceedings' - plaintiffs, by notices of motion, sought leave to use the documents 'in other proceedings' - fourth defendant sought orders concerning documents' return - whether to grant 'Harman release' in respect of documents - whether "special circumstances" - *Liberty Funding Pty Ltd v Phoenix Capital Ltd* [2005] FCAFC 3 - whether to impose regime for documents' 'return/destruction' sought by fourth defendant - held: orders made.

[View Decision](#) (B I)

SGR Pastoral Pty Ltd v Christensen (No 2) [2019] QSC 239

Supreme Court of Queensland

Bowskill J

Costs - corporations - Court set aside respondents' statutory demand under s459H *Corporations Act 2001* (Cth) (Corporations Act) - applicant sought that respondents pay costs - respondents sought no costs order or that costs be reserved - r681 *Uniform Civil Procedure Rules 1999* (Qld) (Rules) - whether inconsistency between s459N Corporations Act & r681 Rules - reasonableness - held: respondents to pay applicant's costs.

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

In the matter of The D MacDonald Steele Memorial Prize [2019] SASC 164

Supreme Court of South Australia

Hinton J

Wills and estates - trusts and trustees - Public Trustee sought Court's 'advice and direction' concerning whether 'arrangements creating the D.Macdonald Steele Memorial Prize and providing for its ongoing award' (arrangements) constituted a trust - arrangements contained in letter of Mr Steele dated 14 September 1964 (letter) - ss90 & 91 *Trustee Act 1936* (SA) - ss69 & 70 *Administration and Probate Act 1919* (SA) - held: Court satisfied that letter created charitable trust of which Public Trustee was trustee - advice given.

[In the matter of the D](#) (B)

Carina James v North Star Pastoral Pty Ltd [2019] NTSC 72

Supreme Court of the Northern Territory

Barr J

Damages - trespass - plaintiff sought 'damages, aggravated damages and exemplary damages' for defendant's 'admitted trespass' - general damages sought for proprietary right's vindication not for damage to land - whether defendant committed 'intentional trespass' - whether plaintiff devalued 'proprietary right' by conduct - whether trespass continued after defendant 'became aware' of it - distress to plaintiff - held: general damages and aggravated damages awarded - Court declined to award exemplary damages.

[Carina](#) (I)

CRIMINAL

Executive Summary

Summaries With Link



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The Brook

By: Lord Alfred Tennyson

I come from haunts of coot and hern,
I make a sudden sally
And sparkle out among the fern,
To bicker down a valley.

By thirty hills I hurry down,
Or slip between the ridges,
By twenty thorpes, a little town,
And half a hundred bridges.

Till last by Philip's farm I flow
To join the brimming river,
For men may come and men may go,
But I go on for ever.

I chatter over stony ways,
In little sharps and trebles,
I bubble into eddying bays,
I babble on the pebbles.

With many a curve my banks I fret
By many a field and fallow,
And many a fairy foreland set
With willow-weed and mallow.

I chatter, chatter, as I flow
To join the brimming river,
For men may come and men may go,
But I go on for ever.

I wind about, and in and out,
With here a blossom sailing,
And here and there a lusty trout,
And here and there a grayling,

And here and there a foamy flake
Upon me, as I travel
With many a silvery waterbreak



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Above the golden gravel,

And draw them all along, and flow
To join the brimming river
For men may come and men may go,
But I go on for ever.

I steal by lawns and grassy plots,
I slide by hazel covers;
I move the sweet forget-me-nots
That grow for happy lovers.

I slip, I slide, I gloom, I glance,
Among my skimming swallows;
I make the netted sunbeam dance
Against my sandy shallows.

I murmur under moon and stars
In brambly wildernesses;
I linger by my shingly bars;
I loiter round my cresses;

And out again I curve and flow
To join the brimming river,
For men may come and men may go,
But I go on for ever.

https://en.wikipedia.org/wiki/Alfred,_Lord_Tennyson

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