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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)

Mango Boulevard Pty Ltd v Whitton (FCA) - bankruptcy - trustee of bankrupts' estates granted abridgment of time for provision of proposals for compositions and report to creditors (B)

International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea (NSWCA) - contract - bond deed poll - consequences of valuation not being binding on parties - appeal allowed - cross-appeal and notice of contention dismissed (I B C)

Bendigo and Adelaide Bank Ltd v O'Neill (NSWSC) - real property - possession - purported defence raised no arguable defence - defence struck out - plaintiff granted leave to move for default judgment (B)

Neradovsky v Burnett (NSWSC) - stay - stay of judgment pending appeal granted on terms - defendants to answer plaintiff's call for documents revealing limit of indemnity of insurance policy (I)

Roulstone v New South Wales Bar Association (NSWSC) - administrative law - statutory appeal from refusal to grant application for barrister's practising certificate - appeal allowed (I G)

Fittock v Legal Profession Conduct Commissioner (No 2) (SASCFC) - legal profession - conduct - finding of unprofessional conduct set aside - findings of unsatisfactory conduct substituted - practitioner reprimanded - appeal allowed (I G)

Thorne v The Public Trustee (TASSC) - succession - family provision - intestacy - daughter of deceased refused additional provision from deceased's estate (B)

Summaries With Link (Five Minute Read)

Mango Boulevard Pty Ltd v Whitton [2015] FCA 1295

Federal Court of Australia

Rangiah J

Bankruptcy - first respondent was trustee of second and third respondents' bankrupt estates - trustee sought abridgment of time under reg 4.18 *Bankruptcy Regulations 1996* (Cth) for provision of proposals for compositions and report to bankrupt estates' creditors - ss33(1)(c), 73, 74, 76B & 222 *Bankruptcy Act 1966* (Cth) - regs 4.18 & 16.01 *Bankruptcy Regulations 1996* (Cth) - delay in providing funds and income details to trustee - absence of explanation for failure to provide income details was significant - held: if time not abridged, creditors deprived of opportunity to consider bankrupts' proposals and bankrupts deprived of opportunity to have creditors consider their proposals - prejudice to creditors would be limited by giving them liberty to apply to set aside order abridging time - on balance appropriate to grant abridgment of time - orders made.

[Mango](#) (B)

International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea [2015] NSWCA 363

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Ward JJA

Contract - appellant (IPBC) issued Exchangeable Bonds to respondent (IPIC) - IPBC raised amount which it used to finance participation in gas project - terms and conditions of Bonds contained in Bond Deed Poll made by IPBC - Maturity Date of Bonds was 5 March 2014 - mature Bonds subject to mandatory exchange into ordinary shares in capital of company whose shares were listed on Australian Securities Exchange (ASX) - if, on Maturity Date, Principal Amount of Bonds being redeemed exceeded Current Market Value of all of the Shares, IPBC as Issuer was to pay to IPIC as Holder a Cash Settlement Amount equivalent to shortfall - conditions incorporated mechanism to determine Current Market Value of Shares - terms and conditions included procedure for parties to appoint Independent Valuer to assess market value and average of two valuations taken - IPBC issued an Alternative Valuation Notice (AVN) - parties each appointed an Independent Valuer - primary judge found AVN valid - valuation by Independent Valuer appointed by IPBC (RBC) was not binding - valuation by Independent Valuer appointed by IPIC binding - held: primary judge erred in findings as to consequence

under Bond Deed of RBC valuation not being binding on parties due to manifest or proven error - appeal allowed - cross-appeal and notice of contention dismissed.

[International Petroleum](#) (I B C)

Bendigo and Adelaide Bank Ltd v O'Neill [2015] NSWSC 1768

Supreme Court of New South Wales

Davies J

Real property - possession - loans and mortgages - plaintiff sought possession of land and judgment for monetary sum owing - first defendant filed defence but it was unsigned or sworn in accordance with rules - defence raised issue of failure to serve notices and issues in relation to payment of money due under loan agreement - held: Court satisfied there had been default under loan agreement and mortgage - no payments had been made to plaintiff after 9/12/14 - no arguable defence disclosed - defence struck out - plaintiff granted leave to move for default judgment.

[Bendigo](#) (B)

Neradovsky v Burnett [2015] NSWSC 1765

Supreme Court of New South Wales

Adamson J

Stay - defendant sought stay of judgment in favour of plaintiff pending appeal - plaintiff made call for documents revealing limit of indemnity of insurance policy applicable from LawCover in respect of defendants - purpose of making call was so plaintiff could assess what risk she ran if limit of indemnity was \$1.5 million - held: defendants required to produce documents in answer to call as they were potentially relevant to any application for stay of orders as to costs and disbursements - resolution of proceedings may be facilitated if plaintiff aware of limit of indemnity - in interests of justice to grant stay of judgment on condition that amount of judgment be paid into interest-bearing account - not in interests of justice to stay balance of orders relating to costs and disbursements - stay granted on terms.

[Neradovsky](#) (I)

Roulstone v New South Wales Bar Association [2015] NSWSC 1749

Supreme Court of New South Wales

Hall J

Administrative law - statutory appeal under s108 *Legal Profession Act 2004* (NSW) from deemed refusal by New South Wales Bar Association to grant application for barrister's practising certificate - onus on plaintiff to establish matters s48(3) including he was "fit and proper person" to hold practising certificate - held: evidence did not establish plaintiff gave deliberately false or misleading evidence to Association or Court or that plaintiff breached undertaking or order prohibiting plaintiff from communicating with former clients - Court satisfied plaintiff discharged onus of proof and was eligible to apply for grant when application made, and was and is fit and proper person to hold practising certificate. - appeal allowed.

[Roulstone](#) (I G)

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Fittock v Legal Profession Conduct Commissioner (No 2) [2015] SASCF 167

Full Court of the Supreme Court of South Australia

Sulan, Blue & Nicholson JJ

Legal profession - conduct - Legal Practitioners Disciplinary Tribunal found practitioner guilty of unprofessional conduct in relation to personal injury matter for failure to take adequate action to protect client from psychologist's recovery for fees claim (count 1) - psychologist retained by firm on client's behalf - Tribunal imposed fine and ordered practitioner to pay legal costs of Commissioner - Tribunal did not make findings on counts that practitioner misused client's trust money and allowed his interests to conflict with client's (counts 2 and 3) - practitioner appealed - 'unprofessional conduct' - 'unsatisfactory conduct' - ss5, s 82(2), 82(6) & 82(6)(a) *Legal Practitioners Act 1981 (SA)* - Sch 2, s14(2) *Legal Practitioners (Miscellaneous) Amendment Act 2013 (SA)* - r9.1.1 *Rules of Professional Conduct and Practice* - r26 *Rules of Professional Conduct and Practice* - r12.1 *Solicitors' Conduct Rules* - held: Court set aside Tribunal's finding of unprofessional conduct in relation to count 1 - Court made findings of unsatisfactory conduct in relation to counts 1 and 2 - count 3 dismissed - practitioner reprimanded - appeal allowed.

[Fittock](#) (I G)

Thorne v The Public Trustee [2015] TASSC 56

Supreme Court of Tasmania

Holt AsJ

Succession - family provision - applicant was one of three daughters of deceased - deceased had made Will in 1979 leaving entire estate to applicant - Will not admitted to probate as revoked by operation of *Wills Act 1992 (Tas)* by dissolution of marriage - three daughters were to receive one third of estate each under intestacy rules - applicant sought further provision out of deceased's estate pursuant to s3(1) *Testators Family Maintenance Act 1912 (Tas)* - "left without adequate provision for (her) proper maintenance and support thereafter" - held: Court not persuaded applicant's entitlement to one-third share of estate was inadequate for proper maintenance and support - applicant failed to satisfy jurisdictional requirement with consequence there was no authority under Act to interfere with distributions which would result from intestacy - it had been deceased's intention to leave everything to applicant but Court had no authority under Act to write or re-write Will based on deceased's intentions - application dismissed.

[Thorne](#) (B)

CRIMINAL

Executive Summary

Aravena v R (NSWCCA) - criminal law - recklessly inflicting actual bodily harm with intent to have sexual intercourse - appeal dismissed in relation to admission of tendency evidence - leave to appeal refused in relation to miscarriage of justice

El-Hilli v R; Melville v R (NSWCCA) - criminal law - obtaining financial advantage through deception - coincidence evidence - appeals against convictions dismissed - leave granted to one applicant to appeal against sentence - appeal dismissed

Summaries With Link

Aravena v R [2015] NSWCCA 288

Court of Criminal Appeal of New South Wales

Beazley P; Hall & Wilson JJ

Criminal law - tendency evidence - appellant charged with recklessly inflicting actual bodily harm with intent to have sexual intercourse pursuant to s61K(a) *Crimes Act 1900* (NSW), alternatively with indecent assault and assault occasioning actual bodily harm - Crown adduced tendency evidence pursuant to s97 *Evidence Act 1995* (NSW) of incident in 2006 in respect of which appellant had pleaded guilty to indecent assault - jury found appellant guilty of s61K(a) offence - sentence of 5 years imposed with non-parole period of 3 years and 9 months - appellant sought to appeal on basis trial judge erred in admitting tendency evidence and failed to put defence case to jury occasioning miscarriage of justice - held: no error admission of evidence under s101 Evidence Act - probative value of evidence very high as critical issues for jury's determination were nature of assault and question of appellant's intention - appeal dismissed - trial judge adequately put appellant's case to jury and instructed it on relevant law - appellant did not establish possibility real injustice occurred - leave to appeal refused.

[Aravena](#)

El-Hilli v R; Melville v R [2015] NSWCCA 289

Court of Criminal Appeal of New South Wales

Basten JA; Hall & Wilson JJ

Criminal law - self-represented applicants convicted on two counts of obtaining financial advantage through deception under s178BA(1) *Crimes Act 1900* (NSW) - trial conducted before judge without jury - one applicant (Melville) sentenced to effective term of two years three months imprisonment with non-parole period of one year three months - one applicant (El-Hilli) sentenced to effective term of five years with a non-parole period of four years two months - applicants sought to appeal against convictions and sentences - held: leave to appeal granted to appeal against convictions concerning admission and reliance on coincidence evidence - trial judge did not rely on coincidence reasoning with El-Hilli's previous convictions - no prejudice to applicants from fact that ruling on admission of evidence made only in judgment disposing of case - no error in trial judge's approach to sentence in relation to El-Hilli - El-Hilli refused leave to appeal against sentence - Melville granted leave to appeal against sentence but dismissed appeal with effect from date of release on parole.

[El-Hilli](#)



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Modern Love: XXII

BY GEORGE MEREDITH

What may the woman labour to confess?
There is about her mouth a nervous twitch.
'Tis something to be told, or hidden:—which?
I get a glimpse of hell in this mild guess.
She has desires of touch, as if to feel
That all the household things are things she knew.
She stops before the glass. What sight in view?
A face that seems the latest to reveal!
For she turns from it hastily, and tossed
Irresolute, steals shadow-like to where
I stand; and wavering pale before me there,
Her tears fall still as oak-leaves after frost.
She will not speak. I will not ask.
We are League-sundered by the silent gulf between.
Yon burly lovers on the village green,
Yours is a lower, and a happier star!

[GEORGE MEREDITH](#)

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