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## Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**PNC Lifestyle Investments Pty Ltd v REW08 Projects Pty Ltd (No 2)** (NSWSC) - damages - contract - failure to complete contract for sale of land - plaintiff awarded damages for increased construction costs arising from delay (I B C G)

**Central Queensland Development Corporation Pty Ltd (formerly Bluechip Development Corporation Gladstone) Pty Ltd v BMT & Assoc Pty Ltd** (NSWSC) - security for costs - plaintiffs to give security for defendant's costs by provision to defendant of bank guarantee (I B C G)

**Mondous v Commissioner of State Revenue** (VSC) - administrative law - taxation - estoppel - abuse of process - trusts and trustees - objection to notice of stamp duty assessment upheld - appeal allowed (I B C G)

**Santos Ltd v Fluor Australia Pty Ltd** (QSC) - pleadings - contract - application to strike out certain paragraphs of statement of claim adjourned - balance of application dismissed (I B C G)

**Marmanidis v Germein & Anor** (SASC) - judgments and orders - default judgment not regularly obtained in proceedings - default judgment quashed (I B C G)

**The Public Trustee in and for the State of Western Australia - v - Watson** (WASC) - wills and estates - informal will - probate - deceased intended document to constitute last will -

document should be admitted to probate (B)

**Samuel William Martin as Executor of the Will of Stephen Alan Jones v Young (WASC)** - wills and estates - Court satisfied document should be accepted as deceased's informal will (B)

## Summaries With Link (Five Minute Read)

### **PNC Lifestyle Investments Pty Ltd v REW08 Projects Pty Ltd (No 2) [2017] NSWSC 993**

Supreme Court of New South Wales

Darke J

Contract - damages - equity - Court ordered defendant to specifically perform contract for sale of land which it entered as vendor with plaintiff as purchaser - by agreement, claim for damages deferred to subsequent hearing - plaintiff sought damages to compensate it for higher construction faced due to defendant's delayed completion - plaintiff also claimed that delay had caused loss of rental income - held: plaintiff awarded damages to compensate it for increased construction costs due to delay arising from defendant's failure to complete as required by contract - claim for damages otherwise dismissed.

[PNC \(I B C G\)](#)

### **Central Queensland Development Corporation Pty Ltd (formerly Bluechip Development Corporation Gladstone) Pty Ltd v BMT & Assoc Pty Ltd [2017] NSWSC 992**

Supreme Court of New South Wales

Harrison J

Security for costs - claim for damages arising from apartment building's construction - defendant sought security for costs of proceedings - defendant contended neither plaintiff would be able to pay its costs if defendant successfully defended plaintiffs' claims - r42.21 *Uniform Civil Procedure Rules 2005(NSW)* - s1335(1) *Corporations Act 2001 (Cth)* - held: defendant established that plaintiffs should pay security for costs but in reduced amount from that claimed by defendant - plaintiffs ordered to give security by bank guarantee.

[Central Queensland Development](#) (I B C G)

### **Mondous v Commissioner of State Revenue [2017] VSC 416**

Supreme Court of Victoria

Hargrave J

Administrative law - taxation - estoppel - abuse of process - trusts and trustees - Victorian Civil and Administrative Tribunal dismissed objections by trustee of discretionary trust to land tax assessments issued by Commissioner of State Revenue - leave to appeal refused - Commissioner levied stamp duty on a transfer of and from trustee to applicants - applicants' objection to stamp duty assessment disallowed - Tribunal confirmed stamp duty assessment on bases applicants were estopped by issue estoppel and that stamp duty objection was not sustainable - Exemption (10), Heading V, Sch 3 *Stamps Act 1958 (Vic)* - held: Tribunal erred in

finding applicants were privies of trustee - issue estoppel finding could not stand - contention based on abuse of process not made out by Commissioner - Tribunal erred in finding first transfer did not effect a transfer to applicants of equitable estate in land, in finding that second transfer gave effect to sale of land to applicants, and in failing to find second transfer was a conveyance of land to applicants as beneficiaries of bare trust arising out of first transfer - objection to notice of stamp duty assessment upheld - appeal allowed.

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

## **Santos Ltd v Fluor Australia Pty Ltd [2017] QSC 153**

Supreme Court of Queensland

Flanagan J

Pleadings - contract - defendant sought to strike out paragraphs of statement of claim pursuant to r171 *Uniform Civil Procedure Rules 1999* (Qld) - whether failure to disclose a reasonable cause of action - whether paragraphs sufficiently informed defendant of case to be met - whether paragraphs would 'impose an unreasonable and unfair burden' on defendant which would 'prejudice, embarrass or delay a fair trial' - 'hub delay claims' - 'gathering lines delay claim' - 'defective materials claim' - 'CDJV acceleration claim' - 'disruption claims' - 'subcontract amendment claims' - held: application to strike out certain paragraphs adjourned - balance of application dismissed.

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

## **Marmanidis v Germein & Anor [2017] SASC 103**

Supreme Court of South Australia

Hinton J

Judgment and orders - default judgment - claim by defendant against plaintiff for amount in respect of damage to car incurred when defendant's car collided with plaintiff's car - plaintiff contended that default judgment was not regularly obtained in proceeding and that refusal of application to set it aside was erroneous - plaintiff also contended she was not afforded procedural fairness by Magistrate due to fact that material she put before Magistrate was not considered - held: default judgment was irregularly obtained - order quashing default judgment granted.

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

## **The Public Trustee in and for the State of Western Australia - v - Watson [2017] WASC 205**

Supreme Court of Western Australia

Allanson J

Wills and estate - informal will - probate - Public Trustee sought order that document left by deceased had 'force and effect in solemn form of law' as deceased's last will, or declaration that document constituted deceased's last will and order for grant of probate to Public Trustee - whether document properly executed as a will - if not properly executed, whether deceased intended document to constitute her will - ss8, 32, 33, 38 *Wills Act 1932* (WA) - held: deceased

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intended document to constitute last will - Court granted declaration pursuant to s32 Wills Act and made order to issue grant of probate.

[The Public Trustee](#) (B)

## **Samuel William Martin as Executor of the Will of Stephen Alan Jones v Young [2017] WASC 202**

Supreme Court of Western Australia

Kenneth Martin J

Wills and estates - informal document - plaintiff was half-brother of deceased - plaintiff sought declaration that 'four page stapled document that was found in an envelope' in deceased's filing cabinet be accepted as deceased's informal will under pt X *Wills Act 1970* (WA) - whether there was a document - whether document purported to embody deceased's testamentary wishes - whether Court satisfied that deceased intended document should operate as his or her will - held: Court satisfied document should be accepted as deceased's informal will - Court to hear from parties as to appropriate orders.

[Samuel William Martin](#) (B)

## CRIMINAL

### Executive Summary

**The Queen v Mossman** (NTCCA) - criminal law - employee of Minister found guilty of counts in respect of corruptly receiving benefits - wholly suspended sentence of 12 months in prison - manifest inadequacy - parity principle - principle of equal justice - appeal dismissed

**R v Elfar; R v Golding; R v Sander** (QCA) - criminal law - drug offences - three appellants convicted of importing cocaine in Australia - challenge to verdicts failed - appeals dismissed

### Summaries With Link

#### **The Queen v Mossman [2017] NTCCA 6**

Court of Criminal Appeal of the Northern Territory

Criminal law - respondent employee of Minister found guilty of two counts of offences contrary to s236 *Criminal Code* (NT) which carried maximum sentence of imprisonment for three years - counts were in respect of corruptly receiving benefits - respondent sentenced to suspended aggregate sentence of 12 months in prison - Crown contended sentence was manifestly inadequate, and that trial judge misapplied the 'parity principle' or 'principle of equal justice' - duties of Ministerial officers - gifts and benefits - whether wholly suspended sentence justified - whether 'unjustifiable disparity' between sentences imposed on respondent and co-offender for



'the same or like offending' - ss236 & 414(1A) *Criminal Code* (NT) - held: appeal dismissed.

[The Queen](#)

**R v Elfar; R v Golding; R v Sander [2017] QCA 149**

Court of Appeal of Queensland

Gotterson, Morrison & McMurdo JJA

Criminal law - appellants each convicted of importation into Australia of cocaine, in contravention of ss11.2A(1) & (2) and s307.1(1) *Criminal Code* (Cth) - appellants challenged verdicts on basis evidence unlawfully obtained, evidence erroneously admitted, failure by prosecution to make proper disclosure, and contention that indictment should have been permanently stayed because appellants were 'compulsorily but unlawfully examined about the relevant events' - grounds of appeal identical between two appellants - one appellant separately represented and relied on additional grounds of challenge to conviction - s51(xxix) Constitution (Cth) - ss3T & 3U *Crimes Act 1914* (Cth) - ss183UA, 184A, 185, 203B & 203D *Customs Act 1901* (Cth) - held: grounds of appeal not accepted - appeals dismissed.

[R](#)



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**To Margaret W-----**

**By [Charles Lamb](#)**

Margaret, in happy hour  
Christen'd from that humble flower  
Which we a daisy call!  
May thy pretty name-sake be  
In all things a type of thee,  
And image thee in all.

Like it you show a modest face,  
An unpretending native grace;—  
The tulip, and the pink,  
The china and the damask rose,  
And every flaunting flower that blows,  
In the comparing shrink.

Of lowly fields you think no scorn;  
Yet gayest gardens would adorn,  
And grace, wherever set.  
Home-seated in your lonely bower,  
Or wedded—a transplanted flower—  
I bless you, Margaret!

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