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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)

Palmer v State of Western Australia (No 3) (FCA) - withdrawal of intervention - part of High Court proceedings remitted to Federal Court of Australia - Commonwealth did not require 'leave to withdraw or discontinue' intervention - rehearing refused (B C I G)

NPP Australia Limited v Ripple Labs, Inc (FCA) - trade mark - consumer law - service - applicant sought orders for 'short service of originating process and affidavits', service out of jurisdiction, and substituted service orders on respondent - orders granted (B C I G)

Kukulka v Google LLC (FCA) - preliminary discovery - service - defamation - leave to serve 'originating application and accompanying documents' on respondent granted - email service conditional on respondent's 'acknowledgment of receipt' (B C I G)

Molony v Sydney Local Health District (NSWSC) - approval of settlement - medical negligence - settlement was in best interests of infant plaintiff - settlement approved (I B C G)

Dodd v Dodd (NSWSC) - pleadings - possession - plaintiff sole beneficiary of estate of deceased sought land's possession - defendant's defence struck out - plaintiff granted leave 'to move for default judgment' and 'issue writ of possession' (B)

Vansetten v The State of South Australia (SASC) - judicial review - summary dismissal - refusal to transfer prisoner to 'Adelaide Pre-Release Centre' - action summarily dismissed (I B C)

G)

Windbox Pty Ltd v Daguragu Aboriginal Land Trust & Ors (No 4) (NTSC) - costs - plaintiff unsuccessful 'against all of the defendants' - indemnity costs order refused (I B C G)

Summaries With Link (Five Minute Read)

Palmer v State of Western Australia (No 3) [2020] FCA 1220

Federal Court of Australia

Rangiah J

Withdrawal of intervention - applicants commenced proceedings in High Court of Australia (High Court proceedings) - Attorney-General of the Commonwealth of Australia (Commonwealth) intervened - part of High Court proceedings remitted by High Court to Federal Court of Australia - Commonwealth notified High Court and Federal Court of withdrawal of its intervention - respondents contended Commonwealth required 'leave to withdraw' - respondents also contended 'leave should only be granted on particular terms' - prejudice - whether to order 'further rehearing of the evidence' - held: Commonwealth did not require 'leave to withdraw or discontinue' - rehearing refused.

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

NPP Australia Limited v Ripple Labs, Inc [2020] FCA 1237

Federal Court of Australia

Burley J

Trade mark - consumer law - service - applicant sought orders for 'short service of originating process and affidavits', service out of jurisdiction, and substituted service orders on respondent - s120 *Trade Marks Act 1995* (Cth) - s18 Australian Consumer Law - rr1.39, 10.24, 10.42 & 10.43(2) *Federal Court Rules 2011* (Cth) - held: orders granted.

[NPP Australia](#) (B C I G)

Kukulka v Google LLC [2020] FCA 1229

Federal Court of Australia

Anastassiou J

Preliminary discovery - service - defamation - prospective applicant sought to serve 'originating application and accompanying documents' on respondent in United States of America and orders for preliminary discovery against respondent - Pt 10 *Federal Court Rules 2011* (Cth) (Rules) - whether appropriate to make 'substituted service order' under r10.24 Rules - COVID-19 - whether 'prima facie case for preliminary discovery' under r7.22 Rules - held: leave to serve originating application and accompanying documents granted under rr10.42, 10.43 & 10.44 Rules - email service 'conditional on, and will not be effective until' respondent's 'acknowledgment of receipt'.

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

Molony v Sydney Local Health District [2020] NSWSC 1050

Supreme Court of New South Wales

Harrison J

Approval of settlement - medical negligence - infant plaintiff, by tutor, contended that her 'injuries and disabilities' resulted from defendant's failure 'to ensure that she was delivered in a timely way, and earlier than she was' - parties agreed on settlement of proceedings - whether to approve settlement - best interests of plaintiff - held: Court satisfied that settlement was in plaintiff's best interests - settlement approved.

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

Dodd v Dodd [2020] NSWSC 1094

Supreme Court of New South Wales

Davies J

Pleadings - possession - wills and estates - succession - deceased was registered proprietor of land - plaintiff sole beneficiary of estate of deceased sought land's possession - son of deceased was in occupation of property - defendant filed 'document described as a defence' - whether claim under *Succession Act 2006* (NSW) amounted to defence to possession claim - held: defendant's defence struck out - plaintiff granted leave 'to move for default judgment' and 'issue writ of possession'.

[View Decision](#) (B)

Vansetten v The State of South Australia [2020] SASC 158

Supreme Court of South Australia

Doyle J

Judicial review - summary dismissal - delegate of Chief Executive of the Department of Correctional Services refused applicant prisoner's request to be transferred to 'Adelaide Pre-Release Centre' - applicant sought judicial review - respondent sought summary dismissal of applicant's claim on basis review grounds lacked merit and 'unavailability of the relief sought' - whether 'misapprehension of obligations' under s23 *Correctional Services Act 1982* (SA) - whether 'failure to afford procedural fairness' - whether failure to take relevant considerations into account - whether reasonable basis for relief sought - held: action summarily dismissed under r256.5 *Uniform Civil Rules 2020* (SA).

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

Windbox Pty Ltd v Daguragu Aboriginal Land Trust & Ors (No 4) [2020] NTSC 52

Supreme Court of the Northern Territory

Hiley J

Costs - plaintiff unsuccessful 'against all of the defendants' - 'third, fourth and fifth defendants' sought costs on indemnity basis - whether to award costs on indemnity basis - *Laminex Group Pty Ltd v Catford (Costs)* [2019] NTSC 3 - "sitting on its rights" - non-compliance with Practice Direction 6 of 2009 - 'commencing and continuing hopeless claims' - 'allegations of fraud and



misconduct' - 'particular misconduct causing loss of time to the Court and or the parties' - held:
indemnity costs order refused.

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

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

The Bridge

By: Henry Wadsworth Longfellow

I STOOD on the bridge at midnight,
As the clocks were striking the hour,
And the moon rose o'er the city,
Behind the dark church-tower.

I saw her bright reflection 5
In the waters under me,
Like a golden goblet falling
And sinking into the sea.

And far in the hazy distance
Of that lovely night in June, 10
The blaze of the flaming furnace
Gleamed redder than the moon.

Among the long, black rafters
The wavering shadows lay,
And the current that came from the ocean 15
Seemed to lift and bear them away;

As, sweeping and eddying through them,
 Rose the belated tide,
 And, streaming into the moonlight,
 The seaweed floated wide. 20

And like those waters rushing
Among the wooden piers,
A flood of thoughts came o'er me
That filled my eyes with tears.

How often, oh how often, 25
In the days that had gone by,
I had stood on that bridge at midnight
And gazed on that wave and sky!

How often, oh how often,
I had wished that the ebbing tide 30
Would bear me away on its bosom
O'er the ocean wild and wide!



For my heart was hot and restless,
And my life was full of care,
And the burden laid upon me 35
Seemed greater than I could bear.

But now it has fallen from me,
It is buried in the sea;
And only the sorrow of others 40
Throws its shadow over me.

Yet whenever I cross the river
On its bridge with wooden piers,
Like the odor of brine from the ocean
Comes the thought of other years.

And I think how many thousands 45
Of care-encumbered men,
Each bearing his burden of sorrow,
Have crossed the bridge since then.

I see the long procession
Still passing to and fro, 50
The young heart hot and restless,
And the old subdued and slow!

And forever and forever,
As long as the river flows,
As long as the heart has passions, 55
As long as life has woes;

The moon and its broken reflection
And its shadows shall appear,
As the symbol of love in heaven,
And its wavering image here.

https://en.wikipedia.org/wiki/Henry_Wadsworth_Longfellow

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