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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)

Kuterba v Sirtex Medical Limited (FCA) - representative proceedings - judgments and orders - interlocutory applications by parties seeking different 'opt out' and 'class member registration' orders - orders made (I B C G)

L. N. E. Cunneen & Co Pty Ltd v Blackburn (NSWCA) - contract - provision of 'accounting and business advisory services' to respondents - rejection of claim to 10% share in capital growth of respondents' businesses - appeal dismissed (B C I G)

Marina Blue Pty Limited v Gear (No 2) (NSWSC) - summary disposal - claim for possession of property occupied by defendant - defence struck out - no prospect of success on adverse possession claim or cross-claim to de-register plaintiff - judgment for plaintiff (B C I G)

Re Ad Astra Institute Pty Ltd (VSC) - corporations - application to set aside statutory demand on basis of genuine dispute and off-setting claim - proceeding dismissed (I B C G)

Hunt and Numurkah District Health Service v Holcombe (VSCA) - limitations - medical negligence - primary judge upheld appeal against Associate Justice's refusal to extend limitation period - appeal dismissed (I B C G)

Prior & Basedow as Joint & Several Administrators OF ACN 125 531 428 P/L (Administrators Apptd) ACN 125 531 428 & Ors (SASC) - corporations - two plaintiffs

appointed as administrators of two companies - expression of concern by Deputy Commissioner of Taxation as to lack to independence - application for directions and orders - administrators justified to continue in administrations (I B C G)

Boral Resources (SA) Ltd v Civil Mining Solutions Pty Ltd (SASC) - pleadings - Magistrate refused to grant permission for plaintiff to amend statement of claim to plead an 'alternative case' - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Kuterba v Sirtex Medical Limited [2018] FCA 1467

Federal Court of Australia

Murphy J

Representative proceedings - judgments and orders - applicants brought 'shareholder class action' against respondent - applicants and respondent, by interlocutory applications, competed for different orders in respect of 'opt out' and 'class member registration' - central issue was determination of which class member registration orders should be made - s33ZF(1) *Federal Court of Australia Act 1976* (Cth) - held: orders made.

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

L. N. E. Cunneen & Co Pty Ltd v Blackburn [2018] NSWCA 211

Court of Appeal of New South Wales

Beazley P; Meagher & White JJA

Contract - Mr Cunneen provided 'accounting and business advisory services' to respondents through appellant - appellant claimed that under agreement which was 'partly written, partly oral and partly implied' appellant was to be remunerated by 10% share in profits of respondents' 'businesses and investments' and 10% share in capital growth - appellant contended entitlement to 10% share in profits should continue until 10% capital growth amount was paid, notwithstanding termination of retainer - appellant challenged primary judge's rejection of claim to 10% share in businesses' capital growth, contending on appeal that it was entitled to that share calculated at termination date - respondents cross-appealed against order they pay appellant's costs of cross-claim - held: appeal and cross-appeal dismissed.

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

Marina Blue Pty Limited v Gear (No 2) [2018] NSWSC 1442

Supreme Court of New South Wales

Harrison AsJ

Summary disposal - possession - adverse possession - pleadings - plaintiff alleged it was registered proprietor of property, and that defendant was, without its authority, in possession and occupation of property - plaintiff sought to strike out defence pursuant to rr13.1 or 14.15(3) *Uniform Civil Procedure Rules 2005* (NSW), judgment for possession and leave to issue writ of

possession - held: Court satisfied to strike out defence - defendant could not succeed in seeking adverse possession or on proposed cross claim seeking plaintiff's deregistration under s601AH *Corporations Act 2001* (Cth) - leave to replead refused - plaintiff entitled to summary possession or property.

[View Decision](#)

(B C I G)

Re Ad Astra Institute Pty Ltd [2018] VSC 563

Supreme Court of Victoria

Randall AsJ

Corporations - statutory demand - plaintiff sought to set aside statutory demand - plaintiff contended '21 day Affidavit' raised both genuine dispute and off-setting claim - 'real issue' was whether plaintiff had off-setting claim - ss459G & 459H *Corporations Act 2001* (Cth) - held: there was no material before primary judge to assist in determination of any off-setting claim - not possible for Court to determine whether statutory demand should be set aside or altered - proceeding dismissed.

[Re Ad Astra](#) (I B C G)

Hunt and Numurkah District Health Service v Holcombe [2018] VSCA 248

Court of Appeal of Victoria

Beach, Kaye & Niall JJA

Limitations - medical negligence - respondent sued applicants in respect of surgery which first applicant performed on respondent's leg on 1 March 2001 - respondent issued generally endorsed writ in December 2016 - Associate Justice refused respondent's application under s27K *Limitation of Actions Act 1958* (Vic) to extend limitation period - trial judge upheld respondent's appeal - applicants sought to appeal - explanation for delay - whether 'just and reasonable' to extend limitation period in the circumstances - held: no error in primary judge's decision to uphold respondent's appeal on basis Associate Justice's decision was 'unreasonable or plainly unjust' - appeal dismissed.

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

Prior & Basedow as Joint & Several Administrators OF ACN 125 531 428 P/L (Administrators Apptd) ACN 125 531 428 & Ors [2018] SASC 148

Supreme Court of South Australia

Master Dart

Corporations - two plaintiffs appointed administrators of two companies - plaintiffs sought directions and orders pursuant to s90-15 Insolvency Practice Schedule (Corporations) - application arose due to Deputy Commissioner of Taxation's expression of concern that administrators 'may lack the independence, or at least the perception of a lack of independence' to act as companies' administrators - held: Court satisfied it was appropriate for



administrators to continue to act in administrations.

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

Boral Resources (SA) Ltd v Civil Mining Solutions Pty Ltd [2018] SASC 151

Supreme Court of South Australia

Doyle J

Pleadings - plaintiff claimed it provided materials to defendant pursuant to credit application and guarantee for which it had not been paid - plaintiff claimed sum from first defendant customer, or second and third defendant guarantors - Magistrate refused to grant permission for plaintiff to amend statement of claim to plead an 'alternative case' - plaintiff appealed - held: Court satisfied that plaintiff's proposed amendments adequately identified issues raised by alternative case and adequately provided defendants with 'fair notice' - there was no 'impermissible inconsistency or ambiguity' in hypothesis which underpinned alternative case - interests of justice 'strongly' favoured plaintiff being permitted to amend statement of claim - appeal allowed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

XVIII

By: Emily Dickinson

TWO butterflies went out at noon

And waltzed above a stream,

Then stepped straight through the firmament

And rested on a beam;

And then together bore away

Upon a shining sea,—

Though never yet, in any port,

Their coming mentioned be.

If spoken by the distant bird,

If met in ether sea

By frigate or by merchantman,

Report was not to me.

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

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