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

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Executive Summary (One Minute Read)

Georganas v Georganas (SASCA) - Court refused to stay orders removing an executor pending appeal (I B)

MSA 4x4 Accessories Pty Ltd v Clearview Towing Mirrors Pty Ltd (FCA) - a patent for storing or holding items in vehicles typically used by off-road enthusiasts and tradesmen was valid but infringement not established (I B)

GR v Department of Communities and Justice (NSWSC) - self represented mother in litigation regarding her child against government agencies and the father could not claim client legal privilege over her communications with the father (I B)

Wang v Yu (No 2) (NSWSC) - self-represented party granted leave to appear by AVL should not have tried to do so while driving a car (I B)

Wilks v Psychology Board of Australia (VSC) - Psychology Board's decision to put an investigation on hold was legally unreasonable, as it exposed the psychologist under investigation to financial and professional harm with no benefit to the professional disciplinary process (I B)

Star Aged Living Limited v Lee (QCA) - trial judge had erred when extending a limitation period by finding that a material fact of a decisive character was not within the means of knowledge of an injured worker before a particular date (I B C)

Babstock Pty Ltd & Anor v Laurel Star Pty Ltd & Anor (No 5) (QCA) - primary judge had erred in finding the buyer of a real estate business and rent roll had had relied on misrepresentations, and in declaring the rent roll contract void *ab initio* under the *Australian Consumer Law* (I B C)

Nugawela v Medical Board of Australia (WA Branch) (No 2) (WASC) - appeal failed against a finding of professional misconduct against a doctor (I B)

Summaries With Link (Five Minute Read)

Georganas v Georganas [2024] SASCA 1

Court of Appeal of South Australia

Doyle JA

Probate - a Master made orders revoking a grant of probate to the applicant as executor of the estate of her mother, passing over her as executor, and granting letters of administration to an independent solicitor - the applicant had failed to take any steps to administer the estate since her mother's death in 2019 and the grant of probate in 2021 - the Master found the applicant had refused to administer the estate, and refused to accept the binding and enforceable nature of orders made enforcing a settlement deed - the applicant displayed ongoing and intractable hostility towards her brother - the applicant sought a stay of the orders - held: it was more accurate to describe the orders sought as an injunction restraining further steps in the administration of the estate pending appeal, rather than a stay of the orders made - analogous principles would nonetheless apply - the applicant had failed to identify any arguable ground of appeal, or to demonstrate that the proposed appeal was a bona fide appeal with at least some prospect of success - application dismissed.

[Georganas](#) (I B)

MSA 4x4 Accessories Pty Ltd v Clearview Towing Mirrors Pty Ltd [2024] FCA 24

Federal Court of Australia

Downes J

Patents - the applicants sued for infringement of a patent for storing or holding items in vehicles typically used by off-road enthusiasts and tradesmen - the respondent denied infringement, and claimed the patent was invalid, unjustified threats, and misleading or deceptive conduct - held: the proper construction of a patent specification is a matter of law, and should be purposive, not purely literal - the Court construed "pivotaly connected", "offset lever", and "connected to" - on these constructions, there was no infringement - the patent was valid, as it did not lack novelty or an inventive step, and the relevant claim was fairly based on the matter described in the specification, given the Court's construction of "connected to" - the applicants had not discharged their onus of showing their threats of legal proceedings were justified - if a threat is established, it is prima facie unjustifiable unless the person making the threat establishes

justification - an announcement to customers and prospective customers that the applicants had commenced the proceedings had conveyed the representation that the respondent's product was copied from the applicants' product - the second applicant had thereby contravened s18 of the *Australian Consumer Law* by engaging in misleading or deceptive conduct in trade or commerce, and the first applicant was knowingly involved in that contravention - damages to be assessed.

[MSA 4x4 Accessories Pty Ltd](#) (I B)

GR v Department of Communities and Justice [2021] NSWSC 721

Supreme Court of New South Wales

Ward CJ in Eq

Client legal privilege - a mother commenced proceedings against the Secretary of the Department of Communities and Justice, the Minister for Families, Communities and Disability Services, the child's father, and the child, under s91 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) - Queensland Police produced under a subpoena issued at the request of the government defendants that sought a copy of an application for a protection order applied for by Queensland Police on behalf of the father against the mother, and associated documents - the mother objected pursuant to s120(1) of the *Evidence Act 1995* (NSW) to the release of the documents, on the basis that they disclosed confidential communications between herself, as an unrepresented party, and the father - held: the material did not satisfy the test for legal professional privilege at common law nor for client legal privilege under s120(1) - it was not a confidential communication made or brought into existence for the dominant purpose of providing or obtaining legal advice or for use in pending or contemplated litigation - access should be granted to the government defendants - the mother's concern that the government defendants would improperly use the material was addressed by the implied undertaking in *Harman v Secretary of State for the Home Department* - judgment given in 2021 but publication restrictions removed in 2024.

[View Decision](#) (I B)

Wang v Yu (No 2) [2024] NSWSC 4

Supreme Court of New South Wales

Meek J

Court procedure - disputes arose in an investment partnership involving Wang and Yu - Yu claimed he had executed a deed of settlement under duress - the Court found the deed was void, that alleged affirmations were void as the duress was still operative, and that Yu was entitled to repayment of about \$200,000 (see Benchmark 9 October 2023) - the Court held a further hearing to consider final orders and costs - Wang was granted leave to appear by AVL, and tried to do so while driving a car - held: the usual court etiquette, protocols, procedures, and restrictions apply to virtual hearings - an AVL appearance should observe the appropriate decorum and solemnity of the occasion as if the person were physically present - anyone appearing by AVL should not do so in a manner or environment in which they might be distracted or unable to give their undivided attention properly and safely to the proceedings -

final orders and costs orders made.

[View Decision](#) (I B)

Wilks v Psychology Board of Australia [2024] VSC 2

Supreme Court of Victoria

Harris J

Administrative law - Wilks, a registered psychologist and CEO of Powerlifting Australia, was accused in a newspaper of sexual harassment and a sexual relationship involving a power imbalance, regarding his involvement with the Melbourne University Weightlifting and Powerlifting Club - the Psychology Board of Australia commenced an investigation, which it placed on hold pending resolution of defamation proceedings Wilks had brought against a complainant - Wilks sought judicial review of the decision to place the investigation on hold - held: the Board had power to place the investigation on hold under s32 of the *Health Practitioner Regulation National Law*, which grants the Board the powers necessary to exercise its functions, and s35(1)(g), which makes it a function of the Board to oversee the receipt, assessment, and investigation of notifications about psychologists - the Board had not failed to take mandatory relevant considerations into account - however, the decision was legal unreasonable given that keeping the investigation on hold would expose Wilks to serious adverse financial and professional impact - there was no evident and intelligible justification for putting the investigation on hold rather than deciding to take no further action, in circumstances where, if the new evidence the investigator anticipated following the determination of the defamation proceedings materialised, the Board could initiate a further investigation - Wilks was entitled to an order for certiorari - the parties should be heard on any further orders.

[Wilks](#) (I B)

Star Aged Living Limited v Lee [2024] QCA 1

Court of Appeal of Queensland

Bowskill CJ, Bond, & Flanagan JJA

Limitation periods - a worker said she was injured at work due to her employer's negligence in 2015 - she did not consult a lawyer until 2019, after the three-year limitation period had expired - she sought an extension under s31 of the *Limitation of Actions Act 1974* (Qld) to bring a claim under s275 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) - the primary judge granted the extension - the employer appealed - held: a necessary prerequisite to the exercise of the discretion under s31 was that a material fact of a decisive character was not within the means of knowledge of the worker before a particular date (s31(2)(a)) - the primary judge had erred in finding this prerequisite was met - the worker had had within her means of knowledge a "critical mass of information" which was sufficient to justify bringing the action before the relevant date - although it was not strictly necessary to consider the further grounds of appeal, the employer had not shown that the primary judge had erred in assessing prejudice to the employer, or had erred in the *House v The King* sense in exercising the discretion under s31 - appeal allowed.

[Star Aged Living Limited](#) (I B C)

Babstock Pty Ltd & Anor v Laurel Star Pty Ltd & Anor (No 5) [2024] QCA 3

Court of Appeal of Queensland

Mullins P, Bond, & Dalton JJA

Misleading or deceptive conduct - the buyer of a real estate business (for \$5,000) and rent roll (for \$820,000) sued the seller, alleging misleading or deceptive conduct - the seller counterclaimed, alleging the buyer had not been entitled to terminate the contracts - the primary judge found the buyer had validly terminated the contract for sale of the business under a clause entitling it to do so even without breach, and had validly terminated the contract for sale of the rent roll due to anticipatory breach by the seller - the Court of Appeal set aside the finding regarding the rent roll contract and remitted the issues regarding that contract to the primary judge - the primary judge then set aside both contracts *ab initio* and gave judgment against the seller in the amount of the deposit, and gave judgment for the buyer on the counterclaim - the seller appealed - held: the primary judge had erred in determining that the buyer relied upon the misrepresentations in entering into the rent roll contract - the primary judge had erred in finding that the misrepresentations caused the buyer loss because they caused the buyer to become bound to the terms of the rent roll contract - the primary judge had erred in law in declaring the rent roll contract void *ab initio* pursuant to s237 of the *Australian Consumer Law* when it could not be shown that the buyer had suffered, or was likely to suffer, loss or damage as a result of misleading and deceptive conduct - appeal allowed, and judgment for the seller under the counterclaim.

[Babstock Pty Ltd & Anor](#) (I B C)

Nawala v Medical Board of Australia (WA Branch) (No 2) [2024] WASC 15

Supreme Court of Western Australia

Lemonis J

Professional discipline - following an agreement reached at mediation, the WA State Administrative Tribunal found a doctor had engaged in professional misconduct and imposed conditions on his registration - the doctor had become bankrupt, and had had to vacate his premises - the misconduct consisted of failures to appropriately store, manage, and transfer clinical records; appropriately store and dispose of medication; respond to requests for information; and notify the Australian Health Practitioner Regulation Agency of a change of principal place of practice and contact address - the doctor sought leave to appeal on a question of law under s105(3)(b) of the *State Administrative Tribunal Act 2004* (WA) - held: the Tribunal had not denied the doctor procedural fairness - the doctor had not shown that his legal representation was incompetent, and the Court was not taken to any authority that incompetent legal representation provides a basis to set aside orders made by an administrative body, or as to whether this would be on a question of law - the agreement made at mediation was not unconscionable - there was no evidence that the orders had the legal effect of depriving the doctor of his capacity to pursue his vocation as a medical practitioner - there was no inconsistency between the *Bankruptcy Act 1966* (Cth) (specifically the vesting of property that occurs under that Act) and the requirements to retain patient records and appropriately store



medication under the *Health Practitioner Regulation National Law (WA) Act 2010* (WA) - leave to appeal granted in respect of the procedural fairness ground only, but appeal dismissed.

[Nawala](#) (I B)

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