



Friday, 30 November 2018

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)

Pacific Shoji Pty Ltd v Xia (NSWCA) - contract - employment - appeal against judgment in respondent's favour in claims for commission repayment of loan - appellant succeeded in challenge to repayment of loan - not established payment was a loan - appeal allowed in part (B C I G)

Un v Chow (NSWCA) - defamation - appeal against judgments in plaintiffs' favour - leave to tender fresh evidence refused - no error established - appeal dismissed (I)

Epov v Epov (NSWSC) - costs - family provision - defendant did not have excuse for failing to comply with orders of Hallen J - defendant to 'personally pay' plaintiff's costs of proceedings she brought to enforce judgment (B C I G)

ITMA by Tu and Yew (VSC) - real property - application for modification of restrictive covenant to enable dwelling houses' construction - application granted (I B C G)

Craker v Craker & Ors (No 2) (SASC) - wills and estates - application for rectification of will - rectification granted in respect of certain clauses (B)

Summaries With Link (Five Minute Read)

Pacific Shoji Pty Ltd v Xia [2018] NSWCA 290

Court of Appeal of New South Wales

McCull & Leeming JJA; Sackville AJA

Contract - employment - appellant appealed against part of judgment in respondent's favour - respondent former employee had sued appellant in respect of 'contractual entitlements' including claims for commission and repayment of loan - appellant challenged finding respondent entitled to repayment of loan to appellant and finding respondent entitled to commission - appellant also challenged rejection of its cross-claim - held: appellant succeeded in challenge to appellant's entitlement to repayment of loan - claim that payment was a loan was not established - appeal allowed in part.

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

Un v Chow [2018] NSWCA 287

Court of Appeal of New South Wales

Basten & Leeming JJA; Barrett AJA

Defamation - appellant appealed against judgments in plaintiffs' favour - action had arisen from 'written material' which appellant allegedly published by distribution to persons in foyer of building - primary judge found 'all but one' imputations conveyed by document and rejected defences of qualified privilege - appellant maintained that 'what was said in the pamphlet was true' - appellant also challenged factual findings of primary judge - appellant sought to tender fresh evidence - held: appellant had not relied on truth at trial - certain appeal grounds were scandalous - leave to tender fresh evidence refused - no error established - appeal dismissed.

[View Decision](#) (I)

Epov v Epov [2018] NSWSC 1819

Supreme Court of New South Wales

Kunc J

Costs - family provision - proceedings concerned enforcement of orders of Hallen J - under 'Principal Judgment' plaintiff was found entitled to receive legacy from part of proceeds of property's sale - defendant refused to pay plaintiff the legacy to which she was entitled - plaintiff commenced present proceedings to enforce orders - defendant conceded payment of funds should be made to plaintiff's solicitor - defendant explained that delay in payment was due to concerns about plaintiff's capacity and 'how the funds would be 'personally pay' her costs of proceedings on indemnity basis - held: defendant did not have excuse for failing to comply with orders of Hallen J's orders - plaintiff's application granted.

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

ITMA by Tu and Yew [2018] VSC 738

Supreme Court of Victoria

Mukhtar AsJ

Real property - restrictive covenant - plaintiffs, pursuant to s84(1)(c) *Property Law Act 1958* (Vic), sought modification of restrictive covenant to enable dwelling houses' construction -

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application proceeded unopposed - whether modification would be 'substantial injury to those having the benefit' - onus - 'direct' impact - 'indirect' impact - whether substantial injury due to creation of precedent for others - 'floodgates argument' - held: Court satisfied to grant application.

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

Craker v Craker & Ors (No 2) [2018] SASC 174

Supreme Court of South Australia

Stanley J

Wills and estates - application for will's rectification under s25AA *Wills Act 1936* (SA) - testator executed last will prepared by solicitor - plaintiff widow sought rectification of certain clauses of will - plaintiff contended that solicitor had confused the testator's instructions concerning proprietary interests' disposition and had 'failed to condition' gifts on 'plaintiff not surviving him' - whether clauses of will properly reflected testamentary intentions of testator - held: rectification permitted in respect of certain clauses.

[Craker](#) (B)

CRIMINAL

Executive Summary

Summaries With Link



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Autumn

By: Alexander Posey

In the dreamy silence
Of the afternoon, a
Cloth of gold is woven
Over wood and prairie;
And the jaybird, newly
Fallen from the heaven,
Scatters cordial greetings,
And the air is filled with
Scarlet leaves, that, dropping,
Rise again, as ever,
With a useless sigh for
Rest—and it is Autumn.

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

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