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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)

**Millinium Capital Managers Ltd v Soma Group Ltd (No.3)** (NSWSC) - discovery - plaintiff sought disclosure of document - "exceptional circumstances" - Practice Note SC Eq 11 - notice of motion dismissed (I B C G)

**Savills (NSW) Pty Ltd v ATF CTH Pty Ltd** (NSWSC) - contract - consumer law - claim arising from 'alleged agency agreement' - judgment for defendant (B I)

**Shepherd v Nominal Defendant (No 2)** (QSC) - costs - Court gave judgment for defendant in proceedings - plaintiff had sued by litigation guardian - litigation guardian to pay defendant's costs (I B C G)

**Krysiak v Housing Authority** (WASCA) - springing order - unrepresented litigant - leave for son of appellant to represent appellant refused - extension of time for compliance with spring order refused (I B C G)

**Hookway v Hookway** (TASSC) - contract - wills and estates - corporations - Heads of Agreement was 'void, unenforceable, and of no effect' - judgment for plaintiff (B)

**The Wilderness Society v Wild Drake Pty Ltd** (TASSC) - environment and planning - development approval - proposed development complied with clause of Planning Scheme - appeal dismissed (I B C G)

**S and N v T (ACTCA)** - adoption - refusal to dispense with birth mother's consent for child's adoption - appeal allowed - matter remitted (I B C G)

## Summaries With Link (Five Minute Read)

### **Millinium Capital Managers Ltd v Soma Group Ltd (No.3) [2020] NSWSC 966**

Supreme Court of New South Wales

Stevenson J

Discovery - plaintiff contended it was induced by first and second defendants 'to subscribe for shares in first defendant and to take 'steps based on' allegedly misleading and deceptive representations - plaintiff sought disclosure of documents - whether "exceptional circumstances" which necessitated disclosure - Practice Note SC Eq 11 - held: notice of motion dismissed.

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

### **Savills (NSW) Pty Ltd v ATF CTH Pty Ltd [2020] NSWSC 956**

Supreme Court of New South Wales

Adamson J

Contract - consumer law - plaintiff claimed commission under 'alleged agency agreement' under which plaintiff retained by defendant to sell property - plaintiff alternatively claimed damages for defendant's alleged unconscionable conduct in encouraging plaintiff to do work on basis of assumption plaintiff was defendant's 'exclusive agent' for property's sale - defendant denied there was concluded written agreement with plaintiff - defendant alternatively contended that if there was 'concluded agreement; its terms did not entitle plaintiff to payment - defendant also contended it did not act unconscionably and that evidence which plaintiff adduced did not prove loss from the unconscionable conduct alleged - held: judgment for defendant.

[View Decision](#) (B I)

### **Shepherd v Nominal Defendant (No 2) [2020] QSC 228**

Supreme Court of Queensland

North J

Costs - Court gave judgment for defendant in proceedings - plaintiff had sued by litigation guardian - defendant sought that litigation guardian should pay defendant's costs - whether to make order sought by defendant - r681 *Uniform Civil Procedure Rules 1999* (Qld) - held: litigation guardian to pay defendant's costs on standard basis.

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

### **Krysiak v Housing Authority [2020] WASCA 119**

Court of Appeal of Western Australia

Murphy & Mitchell JJA

Springing order - unrepresented litigant - appellant sought extension of time for compliance with

springing order and leave for appellant's son to act as appellant's agent concerning appeal - 'substantive appeal' concerned District Court's dismissal of appeal against default judgment granted in respondent's favour for recovery of 'appellant's share of the cost of repairing a dividing fence' - whether proper basis to extend time for appellant's compliance with springing order - whether to grant 'unqualified person' leave to appear for appellant - held: leave for son of appellant to represent appellant refused - extension of time for compliance with spring order refused.

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

## **Hookway v Hookway [2020] TASSC 36**

Supreme Court of Tasmania

Blow CJ

Contract - wills and estates - corporations - parties signed "Heads of Agreement" which commenced with statement: "It is intended that these heads of agreement shall be binding and that the terms will be reflected in a more formal document to be executed prior to 14 December 2018." - no 'formal document' executed - parties accepted Heads of Agreement 'intended to constitute a binding and enforceable contract' but plaintiff contended no binding and enforceable contract was created - plaintiff sought declaration Heads of Agreement was "void, unenforceable or otherwise legally ineffective" - defendant contended there was a binding and enforceable contract - defendant counterclaimed for specific performance orders - held: Heads of Agreement was 'void, unenforceable, and of no effect' - judgment for plaintiff on counterclaim.

[Hookway](#) (B)

## **The Wilderness Society v Wild Drake Pty Ltd [2020] TASSC 34**

Supreme Court of Tasmania

Estcourt J

Environmental and planning - first respondent sought grant of permit from third respondent Council for development of 'accommodation facility' on land in 'Environmental Management Zone under the Central Highlands Interim Planning Scheme 2015' - .use characterised as "visitor accommodation - Council refused application - first respondent appealed to Tribunal under s61(4) *Land Use Planning and Approvals Act 1993* (Tas) - one clause of Planning Scheme was in issue - Tribunal found proposal complied with clause - appellant appealed - jurisdiction - whether error in decision of Tribunal - whether erroneous interpretation of clause - whether erroneous reliance on 'RAA decision to satisfy Clause' - held: appeal dismissed.

[The Wilderness Society](#) (I B C G)

## **S and N v T [2020] ACTCA 36**

Court of Appeal of the Australian Capital Territory

Elkaim J, Robinson AJ & Crowe AJ

Adoption - applicants challenged primary judge's refusal to application to dispense with birth mother's consent for child's adoption - 'standard of satisfaction' - whether in child's best interests to make adoption order in applicants' favour - necessity to take 's39D report' into account -

Court not in position to take s39D report into account - s39F(1)(c) *Adoption Act 1993* (ACT) - appeal allowed - matter remitted.

[S and N](#) (I B C G)

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

## About Ben Adhem

**By:** Leigh Hunt

Abou Ben Adhem (may his tribe increase!)

Awoke one night from a deep dream of peace,

And saw, within the moonlight in his room,

Making it rich, and like a lily in bloom,

An angel writing in a book of gold:—

Exceeding peace had made Ben Adhem bold,

And to the presence in the room he said,

"What writest thou?"—The vision raised its head,

And with a look made of all sweet accord,

Answered, "The names of those who love the Lord."

"And is mine one?" said Abou. "Nay, not so,"

Replied the angel. Abou spoke more low,

But cheerly still; and said, "I pray thee, then,

Write me as one that loves his fellow men."

The angel wrote, and vanished. The next night

It came again with a great wakening light,

And showed the names whom love of God had blest,

And lo! Ben Adhem's name led all the rest.

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