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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)

United Petroleum Pty Ltd v Bousaleh (NSWSC) - leases and tenancies - plaintiff exercised option to renew in accordance with lease - plaintiff entitled to specific performance of agreement for new lease - plaintiff not entitled to damages (B I)

Fang Gu & Anor v An Jong Hong & Anor (NSWSC) - contract - specific performance - parties did not intend to enter into 'legally binding agreement' - first defendant had authority from second defendant to enter contract - defence of non est factum rejected (B I)

Attorney-General v James Aaron Ramirez (No 2) (NSWSC) - mental health - application for 'interim extension order' to extend defendant's status as forensic patient - application granted (B C I G)

Pickett v Parks Victoria & Ors (VSC) - judicial review - decision by Medical Panel that plaintiff's whole person impairment did not meet 'significant injury' threshold - grounds of review not made out - proceeding dismissed (I B C G)

Fuji Xerox Australia Pty Limited v Thoi (VSC) - contract - mortgage - deed of assignment - plaintiff seeking declarations and orders concerning its claims' priority over land - determination of preliminary questions (I B)

Doughty-Cowell (Victoria Police) v Kyriazis (VSCA) - administrative law - self-represented

litigant - no denial of procedural fairness or bias on part of primary judge - appeal allowed (I B C G)

Auffray v Government Employees Superannuation Board (GESB) (WASC) - summary judgment - plaintiff was member of defendant who claimed he ceased to be worker due to permanent incapacitation - claim for payment of benefit not 'bound to fail' - plaintiff's position 'arguable' - summary judgment refused (I B C G)

Summaries With Link (Five Minute Read)

United Petroleum Pty Ltd v Bousaleh [2018] NSWSC 1324

Supreme Court of New South Wales

Darke J

Leases and tenancies - plaintiff leased service station as lessee under lease with defendants as lessor - plaintiff contended that it had validly exercised option to renew under lease, and that there was a 'valid and enforceable agreement for lease' - plaintiff sought specific performance in respect of new lease's execution, declaration that Notice of Termination was invalid, and damages for breach of agreement for lease - no appearance by defendants - r29.7 *Uniform Civil Procedure Rules 2005* (NSW) - onus - held: plaintiff exercised option to renew in accordance with lease - plaintiff entitled to new lease and orders for specific performance - plaintiff did not discharge onus to establish loss - plaintiff not entitled to damages.

[View Decision](#) (B I)

Fang Gu & Anor v An Jong Hong & Anor [2018] NSWSC 1330

Supreme Court of New South Wales

Sackar J

Contract - first plaintiff and second plaintiff sought order that first defendant and second defendant specifically perform agreement's terms on receipt of bank cheque - 'the "four" categories of agreement' - *Masters v Cameron* (1954) 91 CLR 353 - 'objective contractual construction' - extrinsic evidence's admissibility - non est factum - authority - held: Court not satisfied parties intended to enter into 'legally binding agreement' - first defendant had authority from second defendant to enter a contract - defence of non est factum rejected.

[View Decision](#) (B I)

Attorney-General v James Aaron Ramirez (No 2) [2018] NSWSC 1305

Supreme Court of New South Wales

Lonergan J

Mental health - application for order extending defendant's status as forensic patient - Sch 1 *Mental Health (Forensic Provisions) Act 1990* (NSW) - whether defendant should be subject to 'interim extension order' - consideration of psychiatrists' opinions - whether defendant posed risk of 'serious harm to others' if he ceased to be forensic patient - held: Court satisfied to

grant interim extension order in respect of defendant.

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

Pickett v Parks Victoria & Ors [2018] VSC 473

Supreme Court of Victoria

Keogh J

Judicial review - plaintiff contended she injured ankle in slip and fall on 'wet boardwalk' in national park - plaintiff sought to recover damages from first defendant and second defendant - under Pt VBA *Wrongs Act 1958* (Vic) plaintiff not entitled to recover non-economic loss damages unless she had suffered 'significant injury' - Medical Panel found plaintiff's whole person impairment did not satisfy significant injury threshold - whether failure by Panel to exercise statutory function - whether Panel failed to take relevant consideration into account - whether Panel misapplied AMA Guides to the Evaluation of Permanent Impairment (4th edition) - held: plaintiff failed to make out grounds of review - proceeding dismissed.

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

Fuji Xerox Australia Pty Limited v Thoi [2018] VSC 483

Supreme Court of Victoria

Riordan J

Contract - mortgage - loan agreement - deed of assignment - preliminary questions - plaintiff sought declarations and orders concerning its claims' priority over land - proper construction of Deed of Assignment - whether plaintiff entitled to recover interest pending settlement cheque's clearance - whether reference to Debt operated, at date of Deed's execution, as reference to 'the amount to be actually received by NAB as consideration for its assignment of the Assigned Property as defined in the Deed' - whether, on Deed's execution, the 'amount owing' secured by Mortgage at date of Deed's execution was 'the amount to be actually received by NAB as consideration for its assignment of the Assigned Property as defined in the Deed' - s46 *Transfer of Land Act 1958* (Vic) - held: preliminary questions answered.

[Fuji](#) (I B)

Doughty-Cowell (Victoria Police) v Kyriazis [2018] VSCA 216

Court of Appeal of Victoria

Maxwell P; Beach & Niall JJA

Administrative law - self-represented litigant - procedural fairness - bias - first respondent appealed against 'convictions on two minor traffic offences' - first respondent's conduct was 'provocative and confrontational' - judge found charges proved and convicted first respondent, and discharged him - first respondent sought judicial review, contending he was denied procedural fairness - primary judge concluded judge had not afforded 'fair hearing' to first respondent and was 'guilty of ostensible bias' - whether erroneous finding of denial of procedural fairness - whether erroneous finding of ostensible bias - held: grounds of appeal upheld - appeal allowed.

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



Auffray v Government Employees Superannuation Board (GESB) [2018] WASC 263

Supreme Court of Western Australia

Master Sanderson

Summary judgment - plaintiff was member of defendant - plaintiff claimed he ceased to be worker due to becoming 'permanently incapacitated' - defendant refused to pay benefit - plaintiff sought declaration he was entitled to be paid the benefit - defendant sought summary judgment - defendant's status - whether defendant was 'trustee' of superannuation fund - whether defendant held any property such that it could be ordered to pay plaintiff benefit - held: Court not satisfied that plaintiff's claim was 'bound to fail' - Court satisfied plaintiff's position 'arguable' - summary judgment refused - application dismissed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Haymaking

By: John Clare

'Tis haytime and the red-complexioned sun
Was scarcely up ere blackbirds had begun
Along the meadow hedges here and there
To sing loud songs to the sweet-smelling air
Where breath of flowers and grass and happy cow
Fling o'er one's senses streams of fragrance now
while in some pleasant nook the swain and maid
Lean o'er their rakes and loiter in the shade
Or bend a minute o'er the bridge and throw
Crumbs in their leisure to the fish below
—Hark at that happy shout—and song between
'Tis pleasure's birthday in her meadow scene.
What joy seems half so rich from pleasure won
As the loud laugh of maidens in the sun?

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

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