

Friday, 13 October 2017

Weekly Civil Law Review

Selected from our Daily Bulletins covering Insurance, Banking,
Construction & Government

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

John Edward Thornton v State of New South Wales (NSWCA) - battery - assault - dismissal of claim against State arising from appellant's arrest - appeal dismissed (I B C G)

Northern Sydney Local Health District v Amaca Pty Ltd (under NSW administered winding up) (NSWCA) - damages - dust diseases - apportionment - joint tortfeasors - appellants liable to contribute sum to amount paid by first respondent to plaintiff - appeal dismissed (I B C G)

Qube Holdings Ltd v Residents Against Intermodal Development Moorebank Inc (NSWCA) - standing - voluntary associations - planning and environment - appeal against interlocutory decision that first respondent had standing to appeal - appeal dismissed (I B C G)

JP Property Services Pty Limited v Chief Commissioner of State Revenue (NSWSC) - taxation - payroll tax - contracts were not employment agency contracts - plaintiff not obliged to pay payroll tax on payments made to Subcontractors - assessments revoked (I B C G)

Al Azhari v 27 Scott Street Pty Ltd & Ors (VSC) - contract - preliminary question - parties did not intend to be bound by mediation terms contained in signed handwritten document - preliminary question answered 'no' (I B C G)

Brisbane Bears – Fitzroy Football Club Limited v Commissioner of State Revenue (QCA) - taxation - payroll tax - payments appellant made to players and coaches for use of images were

liable to payroll tax - appeal dismissed (I B C G)

Re Nichol; Nichol v Nichol & Anor (QSC) - wills and estate - succession - deceased intended unsent text message to operate as will - execution requirements dispensed with - probate granted in respondents' favour (B)

Wagner & Ors v Harbour Radio Pty Ltd & Ors (QSC) - defamation - defendants elected trial by jury in proceedings - application by plaintiff that trial be conducted without jury granted (I)

Google Inc v Duffy (SASCFC) - defamation - damages - appeal against judgment that Google defamed respondent by publishing information resulting from use of its search engine - appeal and cross-appeal dismissed (I B)

Summaries With Link (Five Minute Read)

John Edward Thornton v State of New South Wales [2017] NSWCA 248

Court of Appeal of New South Wales

Meagher & Gleeson JJA; Fagan J

Battery - assault - appellant and another arrested by police - appellant injured in arrest in which 'significant force' was used - appellant sued State for assault and battery - appellant also alleged his arrest was wrongful - primary judge dismissed claim - whether officers complied with s201 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) - whether excessive force used - ss230 & 231 LEPRA - competing accounts of witnesses - challenge to findings that officers 'identified themselves at the outset as police officers' - whether failure to provide adequate reasons - whether erroneous preference of evidence of police over appellant's evidence - held: grounds of appeal failed - appeal dismissed.

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

[From Benchmark Monday, 9 October 2017]

Northern Sydney Local Health District v Amaca Pty Ltd (under NSW administered winding up) [2017] NSWCA 251

Court of Appeal of New South Wales

McColl JA & Basten JA; Sackville AJA

Damages - dust diseases - apportionment - joint tortfeasors - plaintiff contracted mesothelioma by exposure to asbestos during employment - appellants appealed against decision in which primary judge found them liable to contribute sum to an amount paid by first respondent to plaintiff in respect of its liability to plaintiff - whether plaintiff would be overcompensated by appellants' contribution - defence of satisfaction - 'just and equitable' test - prohibition on double recovery - s5(1)(c) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - 207B *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: grounds of appeal failed - appeal dismissed.

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

[From Benchmark Wednesday, 11 October 2017]

Qube Holdings Ltd v Residents Against Intermodal Development Moorebank Inc [2017] NSWCA 250

Court of Appeal of New South Wales

Macfarlan JA; Meagher & Payne JJA

Standing - voluntary associations - planning and environment - applicant sought to appeal against interlocutory decision in which primary judge found that first respondent had standing to pursue appeal to Land and Environment Court against decision of Planning Assessment Commission - operation of *Associations Incorporation Act 2009* (NSW) (AI Act) - meaning of 'special resolution' - whether primary judge erred in finding first respondent's predecessor was an 'unincorporated body' - whether first respondent acquired right to appeal from 'predecessor unincorporated body' - *Environmental Planning and Assessment Act 1979* (NSW) - held: primary judge correct to find that first respondent's predecessor was an 'unincorporated body', whose right of appeal as to Planning Assessment Commission of New South Wales's decision passed to first respondent under Sch 2 AI Act - appeal dismissed.

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

[From Benchmark Thursday, 12 October 2017]

JP Property Services Pty Limited v Chief Commissioner of State Revenue [2017] NSWSC 1391

Supreme Court of New South Wales

Kunc J

Taxation - payroll tax - plaintiff provided services to clients including to supermarkets operated by company (Franklins) - plaintiff used own employees or third parties (Subcontractors) to provide the services - defendant conducted audit of plaintiff - defendant formed view that contracts between plaintiff and Subcontractors were employment agency contracts (EACs) such that JP was obliged to pay payroll tax on payments it made to the Subcontractors- plaintiff sought review of defendant's decision - whether any or all of three different types of contract were EACs: the consecutive contracts between plaintiff and Franklins; the contracts between plaintiff and clients other than Franklins; the contracts between plaintiff and Subcontractors - s37(1) *Payroll Tax Act 2007* (NSW) - whether Subcontractors' services were 'for a client' of employment agent - held: Court not satisfied any of the three types of contracts were EACs - assessments revoked - judgment for plaintiff.

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

[From Benchmark Friday, 13 October 2017]

Al Azhari v 27 Scott Street Pty Ltd & Ors [2017] VSC 600

Supreme Court of Victoria

Almond J

Contract - preliminary question - parties in proceedings attended mediation together with their

legal advisers - at mediation's conclusion handwritten document (mediation terms) was signed by parties' legal practitioners - preliminary question was whether parties intended to be bound by signing mediation terms or to be bound only when formal terms executed - *Masters v Cameron* [1954] HCA 72 held: Court concluded mediation terms were not enforceable - parties' objective intention was not to be bound 'unless and until a formal contract was executed' - answer to preliminary question was 'no'.

[Al Azhari](#) (I B C G)

[From Benchmark Monday, 9 October 2017]

Brisbane Bears – Fitzroy Football Club Limited v Commissioner of State Revenue [2017] QCA 223

Court of Appeal of Queensland

Sofronoff P; Philippides JA & Atkinson J

Taxation - appellant was member of Australian Football League (AFL) - appellant's team subject to payroll tax under *Payroll Tax Act 1971* (Qld) on wages of players and coaches - appellant appealed against primary judge's dismissal of its application for review of respondent's disallowance of objections against reassessment of payroll tax - whether erroneous finding that payments appellant made to players and coaches for use of images were liable to payroll tax under ss9 & 10 - whether the payments made pursuant to agreements were 'wages for the purposes of the Act' - held: Court concluded payments were 'wages' as defined by the Act, and 'taxable wages' - payments liable to payroll tax - appeal dismissed.

[Brisbane Bears](#) (I B C G)

[From Benchmark Tuesday, 10 October 2017]

Re Nichol; Nichol v Nichol & Anor [2017] QSC 220

Supreme Court of Queensland

Brown J

Wills and estates - succession - two applications - two competing applications - application for grant of letters of administration on intestacy - application that unsent text message on deceased's mobile phone be treated as will and execution requirements dispensed with - whether s18 *Succession Act 1981* (Qld) satisfied - testamentary capacity - held: Court concluded deceased intended unsent text message to operate as will - execution requirements dispensed with - will admitted to probate in respondents' favour.

[Re Nichol](#) (B)

[From Benchmark Tuesday, 10 October 2017]

Wagner & Ors v Harbour Radio Pty Ltd & Ors [2017] QSC 222

Supreme Court of Queensland

Applegarth J

Defamation - plaintiff sued defendants in defamation in respect of 32 publications - defendants elected trial by jury - defendants denied publications identified plaintiff with two exceptions and pleaded a 'raft of defences' - plaintiff sought that trial be conducted without a jury - whether

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action's features justified discretion to displace defendants' election - interests of justice - held: 'multiplicity and complexity of the issues' which jury would need to address and enormous task confronting jury outweighed features of case favouring jury, and defendants' "right" to elect trial by jury - application granted.

[Wagner \(I\)](#)

[From Benchmark Wednesday, 11 October 2017]

Google Inc v Duffy [2017] SASCFC 130

Full Court of the Supreme Court of South Australia

Kourakis CJ; Peek & Hinton JJ

Defamation - appellant operator of search engine appealed against primary judge's decision that it defamed respondent by publishing to substantial number of people information resulting from use of its engine to search for respondent's name - search results were extracts from webpages which referred to respondent as a 'psychic stalker' - primary judge awarded respondent \$115,000.00 but made no award for loss of earning capacity - appellant cross-appealed against award for damages - whether erroneous finding that appellant was secondary publisher - whether fact that defamatory imputations capable of conveying defamatory meaning - whether primary judge correct in delineation of 'the platform of facts' from which to draw inference of publication - whether primary judge correct to find certain publications established - whether truth of imputation that respondent stalked psychics was justified - held: appeal and cross-appeal dismissed.

[Google Inc \(I B\)](#)

[From Benchmark Wednesday, 11 October 2017]

CRIMINAL

Executive Summary

Cameron v R (NSWCCA) - criminal law - appeal against sentences for murder and being knowingly concerned in the cultivation of a large commercial quantity of cannabis - appeal dismissed

Dobson v Tasmania (TASCCA) - criminal law - murder - appellant pleaded guilty to murder - appellant sentenced to imprisonment for the term of his natural life with 15 year non-parole period - appeal against sentence dismissed

Summaries With Link

[Cameron v R \[2017\] NSWCCA 229](#)

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Court of Criminal Appeal of New South Wales

Basten JA; Button & Hamill JJ

Criminal law - applicant sought leave to appeal against two sentences: sentence for murder, and sentence for 'being knowingly concerned in the cultivation of a large commercial quantity of cannabis'- sentence for murder was 24 years in prison with non-parole period of 18 years - sentence for being knowingly concerned in the cultivation of a large commercial quantity of cannabis was 10 years in prison with non-parole period of 7 years and 6 months - whether failure to give sufficient weight to assistance to authorities - whether sentence manifestly excessive - whether primary judge adhered to principle of parity - *Crimes (Sentencing Procedure) Act 1999* (NSW) - Article 26 *International Covenant on Civil and Political Rights* - held: grounds of appeal failed - appeal dismissed.

[View Decision](#)

Dobson v Tasmania [2017] TASCCA 19

Court of Criminal Appeal of Tasmania

Tennent, Wood & Pearce JJ

Criminal law - appellant pleaded guilty to murder and sentenced to imprisonment for term of his natural life with 15 year non-parole period - appellant appealed against his sentence - whether sentence manifestly excessive - whether error arising from categorisation of crime as 'in the worst category of murder' - whether sentencing judge offended the principles in *Veen v The Queen (No 2)* [1988] HCA 14 - whether erroneous treatment of appellant's prior criminal history - whether case 'outside the category that is so grave as to warrant the maximum sentence' - protection of the community - principle of proportionality - s157(1)(c) *Criminal Code* (Tas) - whether sentencing judge erred by not imposing finite sentence - held: no error by sentencing judge demonstrated - appeal dismissed.

[Dobson](#)



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Shakespeare

BY HENRY WADSWORTH LONGFELLOW

A vision as of crowded city streets,
With human life in endless overflow;
Thunder of thoroughfares; trumpets that blow
To battle; clamor, in obscure retreats, Of sailors landed
from their anchored fleets;
Tolling of bells in turrets, and below
Voices of children, and bright flowers that throw
O'er garden-walls their intermingled sweets!
This vision comes to me when I unfold
The volume of the Poet paramount,
Whom all the Muses loved, not one alone; — Into his
hands they put the lyre of gold,
And, crowned with sacred laurel at their fount,
Placed him as Musagetes on their throne.

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

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