

Friday, 20 April 2018

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (1 minute read)

HM Inspector of Health and Safety (Appellant) v Chevron North Sea Limited (Respondent) (Scotland) (UKSC) - administrative law - health and safety - cancellation of prohibition notice by employment tribunal - tribunal entitled take into account expert evidence that had become available after prohibition notice issued - appeal dismissed

Matson v United States of America (FCAFC) - extradition - extradition request did not fail to comply with s19(2)(b) *Extradition Act 1988* (Cth) and para (3)(c) Article XI *Treaty on Extradition between Australia and the United States of America* - appeal dismissed - judicial review of Minister's decision to issue notice refused

Australian Prudential Regulation Authority v TMeffect Pty Ltd (FCA) - administrative law - statutory interpretation - Tribunal erred in setting aside appellant's refusal to consent to respondent's assumption or use of 'restricted word' "bank" - appeal allowed

Obeid v Lockley (NSWCA) - misfeasance in public office - execution of search warrant at premises - recording on video of contents of documents - tort of misfeasance in public office not established - appeal dismissed

South Western Sydney Local Health District v Gould (NSWCA) - medical negligence - appellant found liable in respect of treatment of respondent's injured thumb - 'irrationality' - defence under s50 *Civil Liability Act 2002* (NSW) - appeal allowed

FJ & SM Monaghan Pty Ltd v Slade (NSWCA) - guarantee - construction of guarantee in respect of supply of fuel to debtor - primary judge dismissed claim against guarantors - appeal

allowed

Lukac v The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (NSWSC) - associations and clubs - equity - removal of plaintiff from training programme - failure to consider plaintiff's argument - decision of Appeals Committee invalid

Plumpton Park Developments Pty Ltd v SAS Trustee Corporation (NSWSC) - land law - easements - benefit of easement not appurtenant to consolidated lot - summons dismissed

Bisognin v Hera Project Pty Ltd (VSCA) - contract - sale of land - purchaser granted injunction to prevent termination of contract and order for specific performance - vendors' appeal dismissed

Commonwealth Bank of Australia v Sally Anne Collopy also known as Sally Anne Lavater as Administrator of the Estate of Mark Damian Collopy (WASC) - banking - loans - guarantee - debt recovery action - defendant liable for amounts owing to bank on three loans

Summaries With Link (Five Minute Read)

HM Inspector of Health and Safety (Appellant) v Chevron North Sea Limited (Respondent) (Scotland) [2018] UKSC 7

United Kingdom Supreme Court

Lord Mance, Deputy President; Lord Sumption, Lord Reed, Lord Hodge, Lady Black
Administrative law - health and safety - prohibition notice - respondent operated installation - installation inspected by Inspector of Health and Safety and colleagues - inspectors found risk of personal injury by falling through 'stairways and stagings' due to corrosion rendering them unsafe - Inspector served prohibition notice on respondent under s22 *Health and Safety at Work etc Act 1974* - respondent appealed against prohibition notice to employment tribunal - employment tribunal found, on the basis of expert evidence which became available after notice issued that, at time notice served, there was no risk of 'serious personal injury' - employment tribunal cancelled notice - whether tribunal confined to material 'which was, or could reasonably have been, known' to inspector when notice was served - First Division of the Inner House of the Court of Session found in respondent's favour that tribunal could also take evidence in account expert evidence which had become available after notice served - held: appeal dismissed.

[HM Inspector of Health](#)

[From Benchmark Wednesday, 18 April 2018]

Matson v United States of America [2018] FCAFC 57

Full Court of the Federal Court of Australia

Dowsett, Wigney & Bromwich JJ

Extradition - proceedings concerned first respondent's request for applicant's extradition from Australia to United States in order to prosecute him for 'mail fraud, wire fraud, conspiracy to commit mail fraud and wire fraud, and conspiracy to commit money laundering' - issue on appeal was whether primary judge erroneously found that extradition request complied with requirements of s19(2)(b) *Extradition Act 1988* (Cth) (Extradition Act) and para (3)(c) Article XI *Treaty on Extradition between Australia and the United States of America* - whether affidavit contained reasonable grounds to believe applicant committed offences - delay - adequacy of explanation for delay - abuse of process - whether Minister erred by not conducting inquiries or not taking into account the delay - held: no error by primary judge established - appeal dismissed - judicial review of Minister's decision to give notice under s16 Extradition Act refused.

[Matson](#)

[From Benchmark Tuesday, 17 April 2018]

Australian Prudential Regulation Authority v TMeffect Pty Ltd [2018] FCA 508

Federal Court of Australia

Perry J

Administrative law - statutory interpretation - appellant pursuant to s66 *Banking Act 1959* (Cth) (Banking Act) refused to consent to respondent's assumption or use of 'restricted word' "bank" in 'proposed company name' - Administrative Appeals Tribunal set aside appellant's decision - held: Tribunal misconstrued s66 Banking Act, erroneously failed to take into account, as 'mandatory relevant consideration', paragraphs of Guidelines, and erroneously ignored as irrelevant 'inherent riskiness of crowdfunding' - appeal allowed.

[Australian Prudential Regulation Authority](#)

[From Benchmark Wednesday, 18 April 2018]

Obeid v Lockley [2018] NSWCA 71

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Leeming JA

Misfeasance in public office - Independent Commission Against Corruption (ICAC) investigated decision of Minister for Primary Industries and Minister for Mineral Resources to grant coal exploration licence - ICAC found Minister, and first and second appellants engaged in corrupt conduct - ICAC made adverse findings on credibility against first second and third appellants - first and second respondents employed by ICAC - first and second respondents participated in search warrant's execution at premises occupied by company (Locaway) - Locaway associated with Obeid family - appellants contended respondents, in executing search warrant and recording contents of documents on video, committed tort of misfeasance in public office - appellants sought to set aside findings of corrupt conduct and adverse credibility and claimed damages for misfeasance in public office - primary judge dismissed proceedings - appellants appealed against dismissal of proceedings against first and second respondents for misfeasance in public office - held: primary judge incorrect to find respondents not 'public

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officers' for purposes of misfeasance in public office - appellants failed to establish misfeasance in public office against respondents - appeal dismissed.

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[From Benchmark Monday, 16 April 2018]

South Western Sydney Local Health District v Gould [2018] NSWCA 69

Court of Appeal of New South Wales

Basten, Meagher & Leeming JJA

Medical negligence - respondent injured thumb - appellant was found liable in negligence in respect of treatment of respondent's thumb, for failure 'to use an appropriate antibiotic regime' - thumb amputated - 'choice of antibiotics' which appellant administered to plaintiff - how plaintiff presented at hospital - whether 'widely accepted peer professional opinion' about administration of antibiotics - cause of amputation - whether amputation caused by infection - whether amputation caused by loss of blood - s5O *Civil Liability Act 2002* (NSW) - 'irrational' - 'unreasonable' - held:

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[From Benchmark Monday, 16 April 2018]

FJ & SM Monaghan Pty Ltd v Slade [2018] NSWCA 79

Court of Appeal of New South Wales

McColl, Meagher & Ward JJA

Guarantee - appellant (supplier) provided fuel to company debtor 'on running account' - first and second respondents 'personally guaranteed' "the debt with [the Supplier] for fuel supplied to [the Debtor]" - appellant claimed against guarantors - guarantors only liable if guarantee covered outstanding amount 'from time to time' - primary judge found guarantee covered outstanding balance on date of guarantee - primary judge dismissed appellant's claim - appellant challenged primary judge's dismissal of claim, contending guarantee covered debt including interest 'from time to time' - construction of guarantee - whether guaranteed debt included interest debtor owed to supplier - whether debt was amount outstanding on guarantee's date, 'or thereafter from time to time' - held: guarantee covered balance including interest from time to time - appeal allowed..

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[From Benchmark Thursday, 19 April 2018]

Lukac v The Royal Australian and New Zealand College of Obstetricians and Gynaecologists [2018] NSWSC 436

Supreme Court of New South Wales

Davies J

Associations and clubs - equity - Progression Review Committee of the College determined plaintiff should be removed from the FRANZCOG training program - Appeals Committee of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (Appeals Committee) dismissed appeal - plaintiff contended denial of procedural fairness by Appeals

Committee - plaintiff sought declaration Appeals Committee's decision was void - jurisdiction - nature of relief where decision of private association - held: Appeals Committee failed to respond to plaintiff's argument - declaration to be made concerning decision's invalidity - mandatory injunction to be ordered requiring Appeals Committee to consider plaintiff's appeal according to law.

[View Decision](#)

[From Benchmark Tuesday, 17 April 2018]

Plumpton Park Developments Pty Ltd v SAS Trustee Corporation [2018] NSWSC 461

Supreme Court of New South Wales

Sackville AJA

Land law - easements - easement of carriageway created by deposited plan's registration - lot burdened by easement identified as 'Lot A' - lot benefited was identified as 'Lot B' - Lot B consolidated with 'Lot C' resulting in larger 'Lot D' - Lot D's proprietor contended that since Lot B no longer existed, easement's benefit 'must be appurtenant to each and every part of Lot D' - ss88, 88B & 195C *Conveyancing Act 1919* (NSW) - s181 *Property Law Act 1974* (Qld) - *Real Property Act 1900* (NSW) - held: easement's benefit appurtenant only to former Lot B - declaration refused - summons dismissed.

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[From Benchmark Friday, 20 April 2018]

Bisognin v Hera Project Pty Ltd [2018] VSCA 93

Court of Appeal of Victoria

Tate, Kyrou & Coghlan JJ

Contract - sale of land - registration of subdivision plan did not occur by date contract specified - appellant vendors sought termination of contract - respondent purchaser obtained injunction to prevent vendors ending contract, and specific performance order - appellant vendors sought to appeal - whether judge erred in relation to finding whether respondent was 'ready, willing and able to perform its contractual obligations - whether interests of justice required Court to impose condition that respondent pay security for costs into Court - whether erroneous construction of s9AD *Sale of Land Act 1962* (Vic) - whether erroneous exercise of discretion in ordering indemnity costs - held: appeal dismissed.

[Bisognin](#)

[From Benchmark Thursday, 19 April 2018]

Commonwealth Bank of Australia v Sally Anne Collopy also known as Sally Anne Lavater as Administrator of the Estate of Mark Damian Collopy [2018] WASC 77

Supreme Court of Western Australia

Kenneth Martin J

Banking - loans - guarantee - plaintiff bank commenced debt recovery action against defendant in respect of three loans (loan A, loan B and loan C) - defendant pursued as administrator of deceased estate of late husband - bank was pursuing estate for loan arrears - defendant also



pursued for 'personal indebtedness as a co-borrower' with late husband on loans A and B - in respect of loan C defendant pursued as personal guarantor of advances to late husband - defendant contended she didn't sign guarantee document and that she did not sign loan agreements in respect of loans A and B - held: Court satisfied defendant signed loan agreements for loans A and B. - defendant liable, both personally and as estate's administrator for amounts owing on loans A and B - defendant also signed guarantee - defendant liable on guarantee for loan C.

[Commonwealth Bank](#)

[From Benchmark Thursday, 19 April 2018]



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Still On Patrol

By: Lt Col Frederick Lambert

In their submarines they went,
Some never to return
In those dark years of war.
We called them Yanks.
Do not forget them,
We give out our thanks.
Roll calls for their battle losses
The tolling of the bells
Dong, dong, dong.
War claimed its sacrifices
Tributes paid, wreathes laid.
Messages from aching hearts
Of loved ones far from home.
Lives for freedom.
Submarines,
Still on patrol.

Lt Col Frederick Lambert
"Z Special Force"
Borneo, 1944/45

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