



Friday, 3 May 2024

## Weekly Defamation Law

### A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Defamation Law

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#### Executive Summary (One Minute Read)

**Edwards v Nine Network Australia Pty Limited (No 5)** (FCA) - barrister succeeded in defamation claim in respect of program that accused her of stealing a supposedly famous cavoodle

## HABEAS CANEM

### Panting pooches



## Summaries With Link (Five Minute Read)

### **Edwards v Nine Network Australia Pty Limited (No 5) [2024] FCA 422**

Federal Court of Australia

Wigney J

Defamation - the A Current Affair program broadcast a story concerning a dispute about the ownership and custody of a supposedly famous cavoodle dog named Oscar - a website and various social media platforms associated with Nine Network published a similar story - Edwards, a barrister, sued, alleging imputations that she was a thief who stole Oscar; had stolen Oscar for her own financial benefit; had deliberately delayed a court case about Oscar; had exploited Oscar for her own financial benefit; had adopted delay tactics so as to prolong her unlawful possession of Oscar; and had failed to fulfil her obligation to appear in court in relation to her AVO application - the defendants denied that the broadcasts and articles carried the alleged defamatory imputations, denied that some or all of the imputations were defamatory, and raised a defence of justification pursuant to s25 of the *Defamation Act 2005* (NSW) and the common law and a defence of contextual truth under s26 of the *Defamation Act* - held: the applicant bears the onus of proving, on the balance of probabilities, that the alleged defamatory meanings or imputations were conveyed by the publication in question, which is a question of fact - almost all of the pleaded imputations had been conveyed - the test of whether an imputation is whether the published matter is likely to lead an ordinary reasonable person to think less of the applicant - all of the imputations that were carried were defamatory - to establish that an imputation is substantially true, the publisher must prove that every material part of the imputation is true, otherwise the defence fails - the defendants had not discharged their burden of proving that Edwards stole Oscar - they had failed to prove Edwards did not have a claim of right in good faith - the justification defence therefore failed - the contextual truth defence also failed - the contextual imputations were not substantially true and, in any event, would not have "swamped" the defamatory imputations in the requisite sense - the publishers were therefore liable to Edwards in defamation - once a publication is found to be defamatory, damage is presumed - there are three purposes to be served by damages awarded for defamation: consolation for the personal distress and hurt caused to the applicant by the publication, reparation for the harm done to the applicant's personal and (if relevant) business reputation, and vindication of the applicant's reputation - the level of damages should reflect the fact that the law should place a high value upon reputation and in particular upon the reputation of those whose work and life depend upon their honesty, integrity and judgment, which includes barristers - aggravated damages may be awarded where there is a lack of bona fides in the respondent's conduct, or where the conduct is improper or unjustifiable - damages of \$150,000 awarded.

[Edwards](#)

[From Benchmark Friday, 3 May 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**R v Secretary of State for the Home Department (UKSC)** - Failed asylum seeker who committed criminal acts within the UK and who thwarted his deportation was lawfully refused government benefits and was not denied his rights under the *European Convention on Human Rights*

### Summaries With Link (Five Minute Read)

#### **R v Secretary of State for the Home Department [2024] UKSC 13**

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, and Lady Simler

AM was a national of Belarus. He arrived in the UK in 1998 and claimed asylum. In 2000, he was denied asylum status and removed to Belarus. He was denied entry to Belarus and returned to the UK because he provided Belarus officials with false information that caused the officials to believe that he was not a citizen. Upon his return to the UK, he committed various criminal offences and was classified as a foreign criminal by British authorities. The Government desired to extradite AM to Belarus, but he resisted these attempts. Further, the British authorities refused to grant AM Leave to Remain, which would entitle him to full government benefits. Instead, AM is in 'limbo' status under which (1) he may not seek employment in the UK, (2) he is not entitled to National Health Service benefits, excepting emergency care, (3) he may not open a bank account, (4) he may not enter into a tenancy agreement, and (5) he receives very limited social welfare benefits, at the same level of failed asylum seekers awaiting deportation. Instead, he received a payment card for food, clothing, and toiletries at a subsistence level and government accommodation. As AM may not return to Belarus, he claimed that the British Government's action of placing him in a legal 'limbo' amounted to a denial of his rights under Article 8 of the *European Convention of Human Rights*, and that the Government had to grant him Leave to Remain status that would enable him to obtain full public benefits. Article 8 provides that 'everyone has the right to respect for his private and family life' and that 'there shall be no interference by a public authority in the exercise of this right except as in accordance with law and is necessary in a democratic society in the interests of national security, public safety' - administrative tribunals and then the Court of Appeal agreed with AM, and ordered the Home Secretary to grant AM Leave to Remain status. On review, in a unanimous decision, the Supreme Court reversed the Court of Appeal and held that the Home Secretary did not violate AM's Article 8 rights by placing him in 'limbo' status. The Supreme Court found that AM's attempts to thwart his deportation were highly material factors in evaluating whether the Home Secretary's actions were proportional. The Court added that the



public interest in maintaining effective immigration controls and containing welfare expenditures were relevant considerations. There was also a public interest in maintaining British employment opportunities for those lawfully in the UK. The Court said that, given AM's serious criminal offences, his deportation was in the public interest, and his efforts to undermine that through fraudulent activity were also valid considerations. While AM was entitled to Article 8 protections, the Supreme Court concluded that his extended limbo status was a proportionate means of achieving the lawful aims of the British Government.

[R v Secretary of State for the Home Department](#)



## Poem for Friday

### Song of Hope

**By:** Thomas Hardy (1840-1928)

O sweet To-morrow! –  
After to-day  
There will away  
This sense of sorrow.  
Then let us borrow  
Hope, for a gleaming  
Soon will be streaming,  
Dimmed by no gray –  
No gray!

While the winds wing us  
Sighs from The Gone,  
Nearer to dawn  
Minute-beats bring us;  
When there will sing us  
Larks of a glory  
Waiting our story  
Further anon –  
Anon!

**Thomas Hardy**, (2 June 1840 - 11 January 1928), author and poet, was born in Dorset, England. His father was a stonemason, and his mother who was well read, educated Thomas to the age of 8, at which time Thomas commenced as a student at Mr Last's Academy for Young Gentlemen. On leaving school at the age of 16, due to his family's lack of finances to fund a university education, Thomas became an apprentice architect. Much of his work involved the restoration of churches. In 1862 he enrolled at King's College, London. He is best known for his novels, including *Far from the Madding Crowd*, (1874) and *Tess of the d'Urbervilles*, (1891). He was appointed a Member of the Order of Merit in 1910 and was nominated for the Nobel Prize in Literature in that year. He received a total of 25 nominations for the Nobel Prize for literature during his life. Thomas Hardy died of pleurisy on 11 January 1928. He had wanted his body to be buried with his first wife Emma's remains at Stinsford. She had died in 1912 and much of his poetry was inspired by his feelings of grief following her death. His Executor Sir Sydney Carlyle Cockerell compromised by having Thomas Hardy's heart buried with the remains of his first wife Emma, and his ashes interred at Poets' Corner, Westminster Abbey. At the time of his death his estate was worth 95,418 pounds, the equivalent of over 6 million pounds



today. One of the largest literary societies in the world is the Thomas Hardy Society, based on Dorchester, <https://www.hardysociety.org/>.

**Song of Hope** by Thomas Hardy, read by Dylan Pearse, Music by Irish Folk Group, Kern <https://www.youtube.com/watch?v=Q1qp8sWTi6M>

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