



Friday, 30 August 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)

Deeming v Pesutto (FCA) - Court refused to allow an important witness in a defamation case to give evidence by AVL, where credit would be an important issue

Peros v Nationwide News Pty Ltd & Ors (No 3) (QSC) - defamation proceedings dismissed as the plaintiff could not show that an episode imputing that he had committed murder had caused him serious harm or was likely to do so

HABEAS CANEM

McGregor the puppy



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Summaries With Link (Five Minute Read)

Deeming v Pesutto [2024] FCA 951

Federal Court of Australia

O'Callaghan J

Defamation - Deeming was a member of the Victorian Legislative Council, and a former member of the Victorian Parliamentary Liberal Party - she alleged that Pesutto, the leader of that Party, published a media release and said things in media interviews that were defamatory of her - Pesutto proposed to call a Dr Bach as a witness - Bach had at the relevant time been Deputy Leader of the Liberal Party in the Legislative Council, but was now employed as Assistant Headmaster and Head of the Lower School at Brighton College, England - Deeming required that Bach attend for cross-examination - Pesutto sought an order under s47A(4)(a) of the *Federal Court of Australia Act 1976* (Cth) that Bach be permitted to give testimony by audio-visual link - held: there was a real and fundamental dispute involving issues of credit, credibility, and reliability between Deeming, on the one hand, and the five members of the leadership team, including Bach, on the other hand, in particular about what happened at a particular meeting - the Court was troubled by the prospect that the cross-examination of an important witness might be rendered less effective by the limitations of video link technology or the absence of the witness from the courtroom - the requirement to give evidence on oath or affirmation in the (generally) solemn atmosphere of a courtroom in the presence of a judge, and to answer questions in cross-examination in the presence also of cross-examining counsel, has important benefits - the Court accepted that Bach's absence for a further period of five days (further to a proposed trip to China) would likely cause some disruption to his pupils at the school and would inconvenience his wife and small children, but Bach must have known this when he swore his affidavit - the additional costs involved in having Bach attend in person, though not trifling, were, as senior counsel for Pesutto had said, "not sheep stations" in the context of a three-week trial, where both sides would be represented by senior and junior counsel and well-resourced solicitors who specialise in defamation law - application dismissed.

[Deeming](#)

[From Benchmark Friday, 30 August 2024]

Peros v Nationwide News Pty Ltd & Ors (No 3) [2024] QSC 192

Supreme Court of Queensland

Applegarth J

Defamation - the plaintiff was charged with murder of a particular person, but found not guilty by a jury - the Coroner then published findings, including that the deceased died due to injuries sustained in an incident involving violence with the plaintiff who used a bladed instrument - two of the defendants then published an investigative podcast into the death of the deceased - the plaintiff sued those defendants in respect of one episode of that podcast, and also sued the deceased's sister over an interview that was republished as part of that episode - the Court now determined, before trial, the issue of whether the publication had caused serious harm to the plaintiff - held: the rule in *Dingle's* case provides that, where many have published words to the

same or similar effect, it is not legitimate for a defendant to seek to reduce damages by proving the publications of the defendant or others, and inviting an inference that those other publications have injured the claimant's Reputation - however, the rule in *Dingle* does not prevent a defendant from proving that the plaintiff had a bad reputation but concerns the kind of evidence that is admissible to prove that fact when seeking to reduce damages - the rule in *Dingle* did not render inadmissible other publications that were relevant to the issue of causation of serious harm - the impugned episode had conveyed a grave defamation - the Coroner's finding was analogous to a judicial finding in a civil proceeding - the standing and authority of the first and second defendants gave the impugned episode a greater potential to seriously harm the plaintiff's reputation, compared to a less credible or authoritative source - given the nature of the podcast series that told a story over many episodes, listeners to the impugned episode were likely to have listened to earlier episodes of the podcast - the Court declined to find that any significant number of listeners to the impugned episode came to listen to it without having either been aware of the Coroner's finding, or without already having an adverse view of the plaintiff as a result of other publications, including the earlier episodes - listeners to the earlier episodes were likely to conclude that the Coroner's findings were right, and that the plaintiff had violently attacked the deceased with a bladed instrument - the Court was not persuaded that the impugned episode probably caused a significant change in the strength of listeners' beliefs about the plaintiff's responsibility for the death of the deceased - the plaintiff had not discharged his burden of showing that the episode had caused serious harm to his reputation, or that it was likely to - proceedings dismissed.

[Peros](#)

[From Benchmark Friday, 30 August 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd (UKSC) - Manchester Ship Canal company was not barred from bringing a common law damages claim for trespass and nuisance against a public utilities company that discharged raw, untreated and foul sewage into the canal from outfalls lawfully maintained by the sewerage authority

Summaries With Link (Five Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd [2024] UKSC 22

Supreme Court of the United Kingdom

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Rose, Lord Richards

In a declaratory ruling, the Supreme Court was asked to decide whether the Manchester Ship Canal Company could bring a claim against the statutory sewerage authority for discharges of foul sewage into the canal. The defendant, United Utilities, was the statutory sewerage authority for North West England and owned about 100 outfalls from which treated sewage was discharged into the canal. However, sometimes untreated sewage was discharged into the canal as well. No allegation was made that the discharge of untreated sewage was caused by negligence. However, it could have been avoided through improved infrastructure. The High Court, upheld by the Court of Appeal, found that a canal owner could not bring a claim based on nuisance or trespass against a sewerage operator unless the discharge was the result of negligence or deliberate wrongdoing. The Supreme Court unanimously allowed the Canal Company's appeal. Sewerage is regulated by the *Water Industry Act 1991* and the Supreme Court held that nothing in the legislation permitted or authorised a sewerage authority to discharge foul water through outfalls. Inasmuch as the statute did not authorise the activity, common law remedies were available. The Court rejected the defence that the only way to avoid fouling the canal would be to construct sewerage infrastructure and that was a matter for Parliament. The Court found that there was nothing in the legislation indicating that Parliament intended to extinguish common law rights of action. While an injunction against further discharge presented questions relating to the process of regulatory approval for capital expenditures by the sewerage authority, that did not mean that common law-based awards for damages for invasion of property rights were precluded.

[Manchester Ship Canal Co](#)



Poem for Friday

i carry your heart with me

by e.e. cummings (1894-1962)

i carry your heart with me (i carry it in
my heart) i am never without it (anywhere
i go you go, my dear; and whatever is done
by only me is your doing, my darling)

i fear

no fate (for you are my fate, my sweet) i want
no world (for beautiful you are my world, my true)
and it's you are whatever a moon has always meant
and whatever a sun will always sing is you

here is the deepest secret nobody knows
(here is the root of the root and the bud of the bud
and the sky of the sky of a tree called life; which grows
higher than soul can hope or mind can hide)
and this is the wonder that's keeping the stars apart

i carry your heart (i carry it in my heart)

Edward Estlin Cummings (e.e. cummings), an American poet, essayist and playwright was born on 14 October 1894 in Cambridge Massachusetts. His parents encouraged his creativity, and included in their circle of friends artists, philosophers and writers. Cummings's father was a professor at Harvard, and later a minister of the Unitarian church. Cummings wrote poetry from the age of 8. Cummings was an ambulance driver during the first world war. He was interned in a camp in Normandy in the first world war, for having expressed anti-war sentiments. During his life he wrote about 2900 poems. He returned to Paris many times throughout his life. It has been written of Cummings that "No one else has ever made avant-garde, experimental poems so attractive to the general and the special reader," and "Cummings is a daringly original poet, with more vitality and more sheer, uncompromising talent than any other living American writer."

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian parents. He trained at the Royal Central School of Speech and Drama in London. In the



UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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