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LAWYERS

Benchmark

Friday, 13 September 2024

Weekly Civil Law Review

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

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Executive Summary (One Minute Read)

Attorney-General (Tas) v Casimaty (HCA) - statutory requirements in the *Public Works Committee Act 1914* (Tas) that certain public works be approved by the Parliamentary Standing Committee on Public Works may be enforced only by Parliament through its appropriation power, and do not create legal obligations enforceable by a court (I B C)

Morgan v McMillan Investment Holdings Pty Ltd (HCA) - mere availability of particular property for use by companies who carried on a joint business is not necessarily sufficient to make a pooling order in respect of those companies when they are in liquidation, as the property may be too remote from the carrying on of the joint business (I B C)

Greenwich v Latham (FCA) - NSW MP found liable in defamation for a tweet referring to the sexual practices of another MP (I)

Manhattan Homes Pty Limited v Burnett (NSWCA) - primary judge had erred by failing to find an injured worker was guilty of contributory negligence, and by awarding airfare costs as out of pocket expenses (I B C)

Nemes v South Eastern Sydney Local Health District (NSWSC) - plaintiffs in medical negligence case not permitted to tender expert evidence after the evidence had concluded, where the expert had not participated in a conclave or the concurrent evidence hearing (I)

Australian Securities Ltd v Victorian Managed Insurance Authority (VSC) - a financier of a failed construction project was not entitled to indemnity under insurance the builder had been required to effect for the protection of the landowner (I B C)

Transformer Development Group Pty Ltd v Tait Street Investments Pty Ltd (VSCA) - leave to appeal refused against a decision that a clause entitling a developer to terminate several off-the-plan contracts of sale was not a "sunset clause" and therefore void under the Sale of Land Act 1962 (Vic) (I B C)

Waldron v O'Callaghan (VSCA) - appeal dismissed against a finding that a patient had commenced medical negligence proceedings against her ex-husband doctor partly within the limitation period, and that an extension of time should be granted with respect to the other part (I B)

Greenall v Amaca Pty Ltd [No 2] (QCA) - widow and legal personal representative of a worker who had died of mesothelioma ordered to pay Amaca's costs where they had unsuccessfully appealed regarding the construction of s237 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (B C I)

Neville v Choice One Pty Ltd (WASCA) - arbitrator had erred in concluding that a worker had elected to retain his common law rights to sue in respect of a work injury (I B C)

Doma ACT Pty Ltd v LN Sydney Pty Ltd (ACTSC) - rectification of a company resolution granted where the wrong recipient of a distribution of income was named (B I)

HABEAS CANEM

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Summaries With Link (Five Minute Read)

Attorney-General (Tas) v Casimaty [2024] HCA 31
High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Administrative law - the Tasmanian Department of State Growth decided that a new interchange should be constructed near Hobart Airport - plans for the interchange were considered and approved by the Parliamentary Standing Committee on Public Works as required by ss15 and 16 of the *Public Works Committee Act 1914* (Tas) - the Department engaged Hazell Bros Group to construct the new interchange - Casimaty, a local landowner, sought an injunction restraining Hazel from undertaking the works - he contended that Hazel was engaged to construct the interchange in accordance with revised plans; and that these works were not the same as the works approved by the Committee and had not been considered by the Committee - on application by the Tasmanian Attorney-General, a judge of the Tasmanian Supreme Court dismissed the action as vexatious, as it would necessarily infringe parliamentary privilege - the Full Court (by majority) allowed Casimaty's appeal (see Benchmark 9 May 2023) - the Attorney-General was granted special leave to appeal to the High Court - held (by majority, Edelman J agreeing with the result for different reasons): the interchange was now complete, but no party suggested the proceedings were moot - s16(1) and (5) of the *Public Works Committee Act* respectively require that no public works not authorised by an Act be commenced unless the works have been referred to and reported on by the Committee, or if the Committee's report does not recommend the carrying of the works - whether a legislative requirement creates an obligation enforceable by a court is a question of statutory construction - the design of the *Public Works Committee Act* was not to displace political accountability of the Executive Government to the Parliament but to strengthen it - from beginning to end, the application of s16 to a public work is within the control of the Parliament - the necessary steps to meet the conditions precedent prescribed by s16(1) and (5) are undertaken exclusively by Members of the Parliament - the statutory consequence of non-compliance with a condition precedent prescribed by s16(1) or (5) was best seen to lie exclusively within the province of the mechanism of political accountability - compliance with s16(1) and (5) is to be enforced by the Parliament, and cannot be legally enforced by a Court - Parliament has capacity to enforce compliance by refusing to enact the necessary appropriation - appeal allowed.
Attorney-General (Tas) (I B C)
[From Benchmark Thursday, 12 September 2024]

Morgan v McMillan Investment Holdings Pty Ltd [2024] HCA 33
High Court of Australia
Gageler CJ, Edelman, Steward, Gleeson, & Beech-Jones JJ
Corporations law - two companies had operated a colour printing business, although they did not have any joint assets or liabilities - McMillan's company, MIH, was a secured creditor of both companies - one of the companies was in liquidation, and the other had been deregistered - the Federal Court at first instance ordered the reinstatement of the deregistered company,

appointed the same liquidator, and made a pooling order in respect of both companies under s579E(1) of the *Corporations Act 2001* (Cth) - a pooling order permits the assets and liabilities of a group of companies in liquidation to be pooled for the general benefit of the companies' unsecured creditors, and the effect includes that each company is taken to be jointly and severally liable for the debts of each other company and intercompany debts within the pooled group are extinguished - the Full Court of the Federal Court, by majority, allowed MIH's appeal against the pooling order - the liquidator was granted special leave to appeal to the High Court - held: s579E(1)(b) sets out four "gateways" enlivening the power of the Court to make a pooling order, which were intended to expand the availability of a pooling order beyond related companies to limited further circumstances that might be comparable to those of related companies, in the interests of creditors - paragraph (iv) of s579E(1)(b) was relevant here, which requires that one or more companies in the group owned "particular property" that was used, or was for the use of, any or all of the companies in the group in connection with a business, a scheme, or an undertaking, carried on jointly by the companies - the particular property the liquidator identified here was a chose in action arising from the disposal of the business, which the liquidator said was owed to both companies jointly or severally - the mere availability of particular property "for use" will not necessarily have a sufficient connection with the carrying on of a joint business - an example would be a bank account containing surplus proceeds of a sale of a joint business, that may be "particular property" that is available "for use" by the companies that sold the joint business, but which does not have a sufficient connection with the carrying on of that joint business, as it was connected with the disposal of the business, rather than the carrying on of the business - the same was true of the chose in action the liquidator had identified here - appeal dismissed.
Morgan (I B C)
[From Benchmark Thursday, 12 September 2024]

Greenwich v Latham [2024] FCA 1050
Federal Court of Australia
O'Callaghan J
Defamation - Greenwich and Latham were NSW MPs, Greenwich being an openly gay man who had been an advocate for the LGBTQIA+ community, and Latham at the relevant time being NSW Parliamentary leader of Pauline Hanson's One Nation Party - there was an exchange of antagonistic social media posts, culminating in a tweet by Latham concerning Greenwich's sexual practices - Latham also gave quotes to a newspaper - Greenwich sued, pleading that the tweet carried the imputation that he "engages in disgusting sexual activities", and that he "is not a fit and proper person to be a member of the NSW Parliament because he engages in disgusting sexual activities" - Greenwich also pleaded that the newspaper quotes carried the imputation that he "is a disgusting human being who goes into schools to groom children to become homosexual", and that he" is not a fit and proper person to be a member of the NSW Parliament because he goes into schools to groom children to become homosexual" - held: the first but not the second imputation from the tweet had been conveyed - this imputation was defamatory - publication of the tweet had caused, or was likely to cause, serious harm to

Greenwich's reputation - Latham's defence of honest opinion regarding the tweet failed because it concerned private sexual practices and did not concern a matter of public interest - further, Latham had not pleaded the defence properly, as he would have had to have pleaded that he knew, and it was true, that Greenwich engaged in the act described in the tweet - Latham's common law qualified privilege defence regarding the tweet also failed, as the tweet was not proportionate and commensurate to Greenwich's attack on him, and had been actuated by malice - the imputations pleaded in respect of the newspaper quotes had not been carried - as to damages, Greenwich suffered a loss of standing because he was exposed to ridicule and experienced a significant subjective hurt to feelings, aggravated by the foreseeable "maelstrom" that occurred following the tweet - the Court did not accept that Latham's counsel's written opening or the conduct of Latham's defence had increased his hurt and harm, and, on the contrary, noted that that Latham's counsel had conducted the hearing impeccably - the Court did accept that Latham's conduct after the tweet of making further tweets and conducting a radio interview "rubbed salt in the wound" caused by the primary tweet, and was sufficient to warrant a modest award of aggravated damages - damages for non-economic loss of $100,000 and aggravated damages of $40,000 awarded.
Greenwich (I)
[From Benchmark Friday, 13 September 2024]

Manhattan Homes Pty Limited v Burnett [2024] NSWCA 219
Court of Appeal of New South Wales
Leeming JA, Harrison CJ at CL, & Price AJA
Negligence - Burnett was seriously injured while working at a construction site where Manhattan Homes was building a double storied family home, when he fell from the upper floor to the ground floor below - he had not worked since that time - he commenced proceedings, seeking damages for his injuries, which he claims were the result of the negligence of both Manhattan, who had control of the worksite, and his employer, The Griswold's Outdoor Xmas Pty Ltd - Burnett was the principal and guiding mind of his employer - Manhattan and Griswold's filed cross-claims against each other seeking contribution or indemnity as joint tortfeasors - the primary judge gave judgment for Burnett for about $2.2million plus costs, gave judgment for Manhattan against Griswold's on its cross-claim for about $133,000 plus costs, and gave judgment for Griswold's against Manhattan on its cross-claim for about $1.3million, based on a finding that Manhattan and Griswold's were liable for Burnett's loss and damage respectively in the proportions 80:20 had Burnett had not contributed to his loss by reason of his own negligence (see Benchmark 29 November 2023) - Manhattan appealed and Burnett ross-appealed regarding the award for non-economic loss and domestic assistance - held: the primary judge erred in failing to find Burnett was guilty of contributory negligence - Burnett's contribution should be assessed at 20% - the primary judge had not erred in assessing the respective contributions of Manhattan and Griswold's - the Court did not accept that "the weight of evidence" commanded a conclusion that Burnett retained a residual earning capacity - a miscellaneous collocation of activities such as climbing a ladder, hitching a trailer or using a whipper snipper do not inevitably translate into an exploitable capacity to secure income

producing employment in an open labour market in competition with able bodied workers - the primary judge's calculation of damages for future domestic assistance specifically incorporated a discount of 15% for vicissitudes, and this was sufficient - the primary judge had erred by awarding the cost of airfares to Thailand as out of pocket expenses, based on an alleged need for travel to Thailand was associated with the benefit of its warmer climate - on the cross-appeal, the primary judge's award of non-economic loss had not failed to take account of the near catastrophic nature of Burnett's injuries and disabilities - the primary judge had not erred in finding that the domestic assistance which Burnett's wife provides him would be provided even if he had not been injured in the fall - appeal allowed in part, and cross-appeal dismissed.
View Decision (I B C)
[From Benchmark Friday, 13 September 2024]

Nemes v South Eastern Sydney Local Health District [2024] NSWSC 1143
Supreme Court of New South Wales
Harrison CJ at CL
Medical negligence - the plaintiffs commenced medical negligence proceedings arising from problems that arose during a birth - the plaintiffs engaged an expert in paediatric neurology who provided on report - the expert provided one report, and then his wife became ill and the plaintiffs' solicitors ceased using him, and following the death of his wife, the expert retired from writing medico-legal opinions - after the evidence in the trial concluded, which had included intensive sessions of concurrent evidence from three groups of medical specialists who had all participated in conclaves and prepared joint reports, the plaintiffs sought to tender the expert's report - the expert was not included as a participant in the conclave of paediatric neurologists and did not attend as a witness during the paediatric neurological concurrent evidence hearing - held: the explanation for not employing the expert in the conclave of paediatric neurologists or the concurrent evidence session was not entirely satisfactory - the expert had not completely discontinued his medical practice - there was no explanation why he could not have participated - the report had been prepared some time ago and it stone was tentative and inquisitive - the report had left open the possibility that the expert may change his views with the benefit of additional information - the exploration of such opinions is the very stuff of concurrent evidence - the defendant has been denied the opportunity to test his opinions in cross-examination or to have his expertise compared with others of a similar specialty - this had created a prejudice that could not be ameliorated - application to tender the report refused.
View Decision (I)
[From Benchmark Friday, 13 September 2024]

Australian Securities Ltd v Victorian Managed Insurance Authority [2024] VSC 542
Supreme Court of Victoria
Watson J
Domestic building insurance - a builder contracted with a landowner to build three townhouses - in the contract, the builder expressly gave the owner the warranties in s8 of the *Domestic Building Contracts Act 1995* (Vic) - the builder, the owner, and the owner's financier then

entered into a tripartite deed under which the builder gave the financier the same warranties that it had given to the owner, and which required the builder to effect the same insurance in the name of the financier as it had to in the name of the owner - the builder did not effect insurance in the name of the financier - the owner defaulted under the loan facility - the works done by the builder were defective and incomplete and were ultimately completed by another builder - the financier successfully sued the builder, but the builder went into liquidation - the insurer denied the financier's claim under the insurance policies - the financier commenced proceedings against the insurer, contending that it was entitled to indemnity pursuant to the *Domestic Building Insurance Ministerial Order* dated 23 May 2003 - the Victorian Civil and Administrative Tribunal held that the financier was not entitled to indemnity - the financier sought leave to appeal to the Supreme Court - held: s135 of the *Building Act 1993* (Vic) provides that the Minister may, by order, impose various requirements on builders regarding insurance - the tripartite deed did not effect any assignment of warranties from the owner to the financier, but rather was a document in which the builder gave the financier warranties that were the same as those it had previously given the owner - the warranties given to the financier were fresh obligations - having regard to the legislative basis for the Ministerial Order, properly construed, the relevant clause only extended to those persons who may become entitled to the benefit of the s8 warranties under s9 of the *Domestic Building Contracts Act* - the financier was not such a person - leave to appeal granted but appeal dismissed.
Australian Securities Ltd (I B C)
[From Benchmark Thursday, 12 September 2024]

Transformer Development Group Pty Ltd v Tait Street Investments Pty Ltd [2024] VSCA 195
Court of Appeal of Victoria
Ferguson CJ, Lyons, & Osborn JJA
Contracts - a developer rescinded contracts for the sale of off-the-plan lots to the applicant, relying on a provision in the contracts which permitted it to rescind if by a specified date it did not obtain approval on terms satisfactory to it from the relevant authority enabling construction of services to the land - the applicant claimed this provision was void under the *Sale of Land Act 1962* (Vic), which regulates so - called 'sunset clauses' with respect to contracts for the sale of parts of unsubdivided land - the primary judge held that the clause was not a sunset clause within the meaning of the relevant provisions of the Act - the applicant sought leave to appeal - held: it could be accepted in a general sense that the statutory purpose of the relevant provisions was the protection of purchasers under off-the-plan contracts - however, that general purpose was effected by regulating a particular class of contractual provisions entitling the vendor to rescind such a contract, namely 'sunset clauses' - the general purpose was not effected by some more general concept of regulating or altering contractual rights entitling the vendor to rescind which do not fall within that particular class of sunset clauses - the primary judge had held here that the clause did not meet the statutory definition of a sunset clause - the principle the applicant relied upon from *Caltex Oil (Australia) Pty Ltd v Best* [1990] HCA 53; 170 CLR 516 (that inconsistency between contract and statute is not confined to literal conflicts or

collisions between the contractual provisions and the statutory provisions) therefore did not assist it - the extrinsic materials relating to the relevant provisions supported the plain meaning articulated by the trial judge - leave to appeal refused.
Transformer Development Group Pty Ltd (I B C)
[From Benchmark Wednesday, 11 September 2024]

Waldron v O'Callaghan [2024] VSCA 196
Court of Appeal of Victoria
Ferguson CJ, Macaulay HA, & Tsalamandris AJA
Medical negligence - a doctor and nurse were married to each other - after they divorced, the wife commenced proceedings against the doctor in the County Court, alleging he was negligent in his treatment and management of her from 2005 until 2012, when she suffered a stroke - the doctor denied negligence, and also pleaded that the claim was statute barred under s27D of the *Limitation of Actions Act 1958* (Vic), which provides for a limitation period of the shorter of (a) 3 years from the date on which the cause of action is discoverable by the plaintiff; or (b) 12 years from the date of the act or omission alleged to have resulted in relevant personal injury - the primary judge determined that part of the proceeding had been issued within the relevant limitation period, and granted the wife an extension of time for those aspects of the claim that would otherwise have been statute barred - the doctor sought leave to appeal - held: whether the knowledge of 'fault' in s27F(1)(b) required the wife to know the key factors necessary to establish legal liability for the doctor, or just that his acts or omissions carried a degree of culpability or blameworthiness for her stroke, the primary judge had been correct to find that the date of discoverability occurred within three years of the proceeding being issued - the primary judge had been correct to find that, when the wife contacted solicitors, she had had no actual knowledge, but rather a grievance, suspicion, and belief that her husband was in some way responsible - the primary judge had correctly found that the wife was not in a position to take reasonable steps to establish fault on the part of the doctor for a period of time - as to the discretionary decision to grant an extension of time, the doctor had shown no *House v The King* error - leave to appeal granted with respect to the grounds regarding whether the application of the limitation period (but not the ground regarding the decision to grant an extension of time), but appeal dismissed.
Waldron (I B)
[From Benchmark Thursday, 12 September 2024]

Greenall v Amaca Pty Ltd [No 2] [2024] QCA 169
Court of Appeal of Queensland
Morrison JA, Fraser AJA, & Kelly J
Costs in workers compensation cases - in 1972, a deceased was employed by Amaca as a roof fixer - in 2021, he was diagnosed with mesothelioma, and was paid compensation by WorkCover - he commenced a claim for personal injuries against Amaca, and died in 2022, and his legal personal representative and his widow filed an amended claim - Amaca brought a third-party claim alleging that WorkCover was liable to indemnify Amaca against the claims - Amaca

and WorkCover applied to strike out parts of the amended statement of claim - the Court held that s237 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) abolished the right of the legal personal representative to bring a wrongful death claim for the benefit of the widow in relation to domestic services lost by the widow as a result of the deceased's death - the Court of Appeal dismissed an appeal - the Court of Appeal now considered costs - the appellant's contended that the Court should depart from the usual rule that costs follow the event because (1) they brought their appeal *bona fide*, (2) the issue as to the effect of s237 had not been determined previously, and (3) a previous decision that had been of importance in the appeal had dealt with a different issue and there had been legislative amendments in response to that decision were also considered in this appeal - held: the circumstances identified by the appellants were not unusual, and did not of themselves support a departure from the usual rule - the argument that Amaca had benefitted from the appeal, not merely by defeating the appellants' wrongful death claim, but also by obtaining a favourable intermediate appellate court determination of a previously undetermined question of law, was also unpersuasive - the fact that Amaca incurred legal costs in supporting the primary judge's correct decision strongly favours the usual order as to costs - while the Court expressed sympathy for the position of the widow of the deceased worker whose illness and death were admittedly caused by Amaca's negligence, the circumstances, considered individually and together, did not justify a departure in the appellants' appeal from the usual order - the appellants to pay Amaca's costs of the appeal.
Greenall (B C I)
[From Benchmark Thursday, 12 September 2024]

Neville v Choice One Pty Ltd [2024] WASCA 104
Court of Appeal of Western Australia
Buss P, Mitchell, & Vandogen JJA
Workers compensation - the appellant suffered a lower back and right hip injury in a work accident - he received compensation by way of weekly payments and payments of statutory expenses - the appellant purportedly elected to retain the right to seek damages in respect of the injury, and later commenced proceedings seeking damages in the District Court - these proceedings were dismissed by consent without the appellant receiving any award of damages or settlement payment - the appellant then sought compensation under the *Workers' Compensation and Injury Management Act 1981* (WA) for medical expenses - an arbitrator dismissed this claim on the basis of s93P(2)(c), which provided that, if a worker elected to retain the right to seek damages, no other compensation was payable in respect of the injury for expenses incurred after the election registration day - the primary judge in the District Court dismissed an appeal from the arbitrator's decision - the appellant appealed to the Court of Appeal - held: s93L(2)(b) relevantly provided that a worker could only elect under s93K(4) to retain the right to seek damages if: (1) the worker's WPI was at least 15%; and (2) the Director had, at the written request of the worker, recorded that assessment in accordance with the regulations - the material before the arbitrator demonstrated that the Director had not recorded an assessment at the time the appellant made the purported election - the arbitrator's implicit

conclusion that the appellant had elected under s93K to retain the right to seek damages, at a time when s93L of the Act precluded the appellant from doing so, involved an error of law - the primary judge had erred in law in failing to uphold the appeal from the arbitrator's decision - appeal allowed.
Neville (I B C)
[From Benchmark Monday, 9 September 2024]

Doma ACT Pty Ltd v LN Sydney Pty Ltd [2024] ACTSC 270
Supreme Court of the Australian Capital Territory
McWilliam J
Rectification - Doma ACT was a corporate trustee for the Doma Finance Trust, and was part of the Doma Group of over 120 entities - the directors of Doma Act passed a resolution that effected a distribution of ordinary income in the sum of $10million to another company in the Doma Group - however the company named in the resolution was the wrong company within the Group - Doma ACT sought equitable relief for mistake, in the form of rectification - the distribution had in fact been made to the correct company - held: there was an absence of a sufficient contradictor, as the company that had been named in the resolution and the company that should have been named were both defendants, but had filed submitting appearances - the Court decided against appointing an *amicus curiae*, as all those whose interests may be adversely affected had been notified, including the Commissioner of Taxation, who did not seek to be heard or joined as a party - where a person who is interested in the outcome of trust proceedings has been given notice of those proceedings and a reasonable opportunity to intervene in them, that person may be bound by the outcome - the Court was also satisfied that all relevant arguments had been presented, including the presentation of evidence potentially adverse to Doma ACT's case - the availability of rectification depends on disconformity between the form or effect of the document executed and the intention of the parties or party who executed it - in Australia, the Court considers the actual intention of the maker of the document, sometimes referred to as the subjective intention - a party's "intention" has been described as "that which is subjectively foreseen and intended to be effected by the document" or "[t]hat which subjectively the parties sought to achieve and thought they achieved by the execution of the document" - where a document uses words different from those which the maker or makers intended, rectification is available - here, the intention of the makers is not reflected in the Resolution, in a clearly identifiable way - Doma ACT having established the basis for rectification and that the resolution was capable of rectification, there was no discretionary reason why rectification should be withheld - rectification granted.
Doma ACT Pty Ltd (B I)
[From Benchmark Monday, 9 September 2024]

Executive Summary and (One Minute Read)

Pasquinelli v San Marino (EUHR1S) - European Court of Human Rights (ECHR) rejected the claims of health care workers in San Marino who refused Covid-19 vaccinations and were offered re-assignment or suspension without pay if re-assignment were declined

Summaries With Link (Five Minute Read)

Pasquinelli v San Marino, Case 24622/23
European Court of Human Rights
Jelic P, Poláčková, Hüseynov, Paczolay, Felici, Wennerström, & Sabato JJ
Health care workers in San Marino who declined Covid-19 vaccinations were either re-assigned or offered alternative work. Employees who refused were suspended without pay. The health care workers maintained that these actions amounted to a violation of Article 8 of the European Convention of Human Rights (ECHR) which guarantees rights to private and family life. Article 8 of the ECHR states that 'everyone has the right to respect for his private and family life, his home and his correspondence'. The ECHR found that Article 8 did apply to the situation because the choice to get vaccinated was linked to a person's individual autonomy and freedom of choice in their private life. The Court concluded that the actions of San Marino amounted to an interference with private life. However, Part 2 of Article 8 provides that there shall be no public interference with Article 8 rights except as 'is necessary in a democratic society in the interests of ...the protection of public health or morals, or for the protection of the rights and freedoms of others'. The ECHR found that the steps taken by San Marino were to protect public health and that Article 2 of the ECHR obligates member states to safeguard the lives of those within the jurisdiction. The ECHR concluded that the restrictive measures adopted by San Marino were proportional and pursued the legitimate aims of the protection of public health and the protection of rights and freedoms of others. In adopting legislation intended to strike a balance between competing interests such as the rights of individual and the need to protect the health of others, states are given discretion to adopt the means they believe are best suited to achieving the aim of reconciling those interests.
Pasquinelli

Poem for Friday

Naming of Parts (1942)

By Henry Reed (1914-1986)

Today we have naming of parts. Yesterday,
We had daily cleaning. And tomorrow morning,
We shall have what to do after firing. But to-day,
Today we have naming of parts. Japonica
Glistens like coral in all of the neighbouring gardens,
And today we have naming of parts.

This is the lower sling swivel. And this
Is the upper sling swivel, whose use you will see,
When you are given your slings. And this is the piling swivel,
Which in your case you have not got. The branches
Hold in the gardens their silent, eloquent gestures,
Which in our case we have not got.

This is the safety-catch, which is always released
With an easy flick of the thumb. And please do not let me
See anyone using his finger. You can do it quite easy
If you have any strength in your thumb. The blossoms
Are fragile and motionless, never letting anyone see
Any of them using their finger.

And this you can see is the bolt. The purpose of this
Is to open the breech, as you see. We can slide it
Rapidly backwards and forwards: we call this
Easing the spring. And rapidly backwards and forwards
The early bees are assaulting and fumbling the flowers:
They call it easing the Spring.

They call it easing the Spring: it is perfectly easy
If you have any strength in your thumb: like the bolt,
And the breech, and the cocking-piece, and the point of balance,
Which in our case we have not got; and the almond-blossom
Silent in all of the gardens and the bees going backwards and forwards,
For today we have naming of parts.

Henry Reed, poet and journalist, was born in Birmingham, UK, on 22 February 1914. His

father was a master bricklayer. He graduated with a BA and MA from the University of Birmingham. He worked in naval intelligence during the second world war. From 1944 he contributed plays and poetry to the BBC. A Map of Verona was the only volume of poetry published during his life. The journalist and critic Adam Phillips wrote: “Reed has a plain eloquence for what goes wrong and for what then holds absurdity at bay” and “Reed wants to show us, without melodrama, how disoriented we are by what language lets us do, what language lets us notice.”

Henry Reed reads his poem “Judging Distances” from Lessons of the War
https://www.youtube.com/watch?v=iBoH_TKfLhA

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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