

MARCH 2025

Decisions of the District Court of New South Wales

LAWBOOK CO.'s
DISTRICT COURT
LAW REPORTS
(NSW)

2019-2024

EDITOR

DR RJ DESIATNIK

CONSULTING EDITOR

A M BLACKMORE SC, B LEG, LL.M

Acting Judge of the District Court of NSW

REPORTER

DR RJ DESIATNIK

The mode of citation of this part will be:
42 DCLR(NSW)

TABLE OF CASES REPORTED

Part 3 — Pages 223-341

Able Business Pty Ltd; Delt Constructions Pty Ltd v	149
ACN 627 087 030 Pty Ltd as trustee for the YBL Trust (t/as Yates Beaggi Lawyers) v Price	175
ACN 627 087 030 Pty Ltd as trustee for the YBL Trust (t/as Yates Beaggi Lawyers) v Theodore	175
Advantage Taxation & Accounting Solutions: Your Business Growth & Tax Experts Pty Ltd; Aung v	195
Advantage Taxation & Accounting Solutions: Your Business Growth & Tax Experts Pty Ltd; Nyi Nyi Medical Pty Ltd v	195
Ates and Ates; Med2 Pty Ltd v	292
Aung v Advantage Taxation & Accounting Solutions: Your Business Growth & Tax Experts Pty Ltd	195
Beno Excavations Pty Ltd (t/as Benex Pipeline); Harlech Enterprises Pty Ltd v	155
Bigatton (No 2); R v	233
Bigatton (No 3); R v	242
Bigatton (No 4); R v	256
Bird v Redman	67
Boensch v City of Parramatta Council	223
Chopra v NSW Health Service – South Western Sydney Local Health District (No 2)	99
Delt Constructions Pty Ltd v Able Business Pty Ltd	149
Diaspora Holdings Pty Ltd v The Owners Strata Plan No 68608	118
Elassaad (No 2); R v	168
Ghanem v State of New South Wales	314
Harlech Enterprises Pty Ltd v Beno Excavations Pty Ltd (t/as Benex Pipeline)	155
Hino Group Pty Ltd v Singh	184
Horan v Schieb	46
Innerwest Property Partners Pty Ltd; Tram v	279

(Cases in **bold** reported in this part)



© 2025 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 1832-3235

TABLE OF CASES REPORTED

JH (No 2); R v	57
Kennedy Civil Contracting Pty Ltd (Subject to a Deed of Company Arrangement) v Total Construction Pty Ltd (No 2)	109
Kennedy Civil Contracting Pty Ltd (subject to a Deed of Company Arrangement) v Total Construction Pty Ltd	11
King, The; McGee v	92
Kucukakyuz; R v	1
Mamou (t/as De Novo Conveyancing) (No 2); Patterson v	78
McGee v The King	92
Med2 Pty Ltd v Ates and Ates	292
NB; R v	218
New South Wales, State of; Ghanem v	314
NSW Demo & Exca Services Pty Ltd (No 2); Weng v	144
NSW Demo & Exca Services Pty Ltd; Weng v	135
NSW Health Service – South Western Sydney Local Health District (No 2); Chopra v	99
Nyi Nyi Medical Pty Ltd v Advantage Taxation & Accounting Solutions: Your Business Growth & Tax Experts Pty Ltd	195
Owners Strata Plan No 68608, The; Diaspora Holdings Pty Ltd v	118
Parramatta Council, City of; Boensch v	223
Patterson v Mamou (t/as De Novo Conveyancing) (No 2)	78
Price; ACN 627 087 030 Pty Ltd as trustee for the YBL Trust (t/as Yates Beaggi Lawyers) v	175
R v Bigatton (No 2)	233
R v Bigatton (No 3)	242
R v Bigatton (No 4)	256
R v Elassaad (No 2)	168
R v JH (No 2)	57
R v Kucukakyuz	1
R v NB	218
R v Saafi	308
R v Thornton	83
R v Xrizantemo	212
Redman; Bird v	67
Saafi; R v	308
Schieb; Horan v	46
Schieb; Sommerville v	46
Singh; Hino Group Pty Ltd v	184
Sommerville v Schieb	46
Theodore; ACN 627 087 030 Pty Ltd as trustee for the YBL Trust (t/as Yates Beaggi Lawyers) v	175
Thornton; R v	83
Total Construction Pty Ltd (No 2); Kennedy Civil Contracting Pty Ltd (Subject to a Deed of Company Arrangement) v	109
Total Construction Pty Ltd; Kennedy Civil Contracting Pty Ltd (subject to a Deed of Company Arrangement) v	11
Tram v Innerwest Property Partners Pty Ltd	279

(Cases in **bold** reported in this part)

TABLE OF CASES REPORTED

Weng v NSW Demo & Exca Services Pty Ltd (No 2)	144
Weng v NSW Demo & Exca Services Pty Ltd	135
Xrizontemo; R v	212

(Cases in **bold** reported in this part)

INDEX

Part 3 — Pages 223-341

COSTS

- Security for costs — Application for such order brought against company —
Company's failure to produce financial records — Relevant inferences from
such failure — Scope of such order where company amended basis of its claim
despite lateness of application.
Med2 Pty Ltd v Ates and Ates 292

CRIMINAL LAW

- Bail — Police bail — Whether grant of bail possible where grantee not under arrest
— Bail Act 2013 (NSW), ss 7, 8, 9, 10, 11, 14, 17, 43.
Ghanem and Another v State of New South Wales 314
- Particular offences — Offence under s 911B(1) of Corporations Act 2001 (Cth) —
Whether course of conduct could be alleged to be in breach of provision —
Geographic and temporal gap between alleged provisions of financial advice —
Relevance — Description of principal who carried on financial services business
in terms of non-legal entity or property — Whether called for — Need for full
particulars of instances of alleged breaches of s 911B(1) of Act and type of
advice given — Whether “rule against duplicity” breached — Relevant
principles — Corporations Act 2001 (Cth), ss 766A, 766B, 911B.
R v Bigatton (No 3) 242
- Particular offences — Operating unregistered managed investment scheme —
Operation involved alleged conducting of Ponzi scheme — Whether that alone
negated existence of managed investment scheme — Proof of such scheme —
Relevant factors — Scheme involved “pooling” of contributions — Proof of
pooling where no direct evidence — Whether inference of pooling still possible
— Corporations Act 2001 (Cth), s 9.
R v Bigatton (No 4) 256
- Practice and procedure — Application to quash indictment — Whether court had
power to hear and determine such application — Criminal Procedure Act 1986
(NSW), s 17.
R v Bigatton (No 3) 242
- Practice and procedure — Pleas — Accused's plea of guilty to charge after
commencement of jury trial — Recording of plea by judge's associate —
Withdrawal of charge from jury's consideration — Whether finding of guilty of
charge by Court — Application then made by accused to withdraw plea —
Whether Court had jurisdiction to entertain application — Criminal Procedure
Act 1986 (NSW), ss 133, 157.
R v Saafi 308

CROWN

- Criminal cases — Crown's obligation of fairness — Relevant principles.
R v Bigatton (No 4) 256

INDEX

DAMAGES

- Tort — Assessment of general damages for false imprisonment — Relevant principles — Aggravated damages — When justified — Relevant factors — Exemplary damages — Purpose.

Ghanem and Another v State of New South Wales 314

DEEDS

- Enforceability — Error in recitation by parties to sale of property — Whether deed thereby contrary to public policy — Deed apparently executed to assist in avoidance of payment of ad valorem duty on sale of property — Whether declaring deed void disproportionate result intended by legislature — Whether non-payment of duty essential to parties' bargain.

Tram v Innerwest Property Partners Pty Ltd and Another 279

ESTOPPEL

- Issue estoppel — Anshun estoppel — Application — Requirement that parties in two sets of proceedings be same entities or their privies — Whether company's director or shareholder could be its privy — Concept of abuse of process — Application of concept — Relevant principles.

Med2 Pty Ltd v Ates and Ates 292

EVIDENCE

- Admissibility — Hearsay — Exceptions — Circumstances when accused bore burden of proof that Crown's evidence was hearsay and exceptions did not apply.

R v Bigatton (No 4) 256

- Admissibility — Opinion evidence — Expert evidence — What constitutes — Expert's experience of certain conduct — Whether evidence of such experience admissible as expert evidence.

Tram v Innerwest Property Partners Pty Ltd and Another 279

- Admissions — Evidence of — Failure to deny claim for moneys owed under a Deed.

Tram v Innerwest Property Partners Pty Ltd and Another 279

POLICE

- Powers and duties — Arrest without warrant — Exercise of power — Statutory conditions — Factors vitiating decision to exercise power — Time at which conditions to be met — Arrest of two persons at same time — Whether statutory conditions have to be separately met for each person arrested — Factors relevant for arrest — Whether overlap between factors — Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), s 99.

Ghanem and Another v State of New South Wales 314

INDEX

PRACTICE

- Cross-claims — Whether non-party could bring cross-claim — Uniform Civil Procedure Rules 2005 (NSW), r 9.1.
Med2 Pty Ltd v Ates and Ates 292
- Preliminary rulings by court — Application for — Whether satisfactory procedure — Court's implied power to stay proceedings — Exercise of power — Relevant principles.
R v Bigatton (No 4) 256
- Subpoenas — Application to set aside — Relevant test — Competing tests — Whether difference illusory — Issue for trial was whether scheme accused alleged to have managed was Ponzi scheme and whether it could also be managed investment scheme — Whether appropriate to resolve issue in interlocutory proceedings — Prospect of accused's contention being correct — Then legitimate forensic purpose to issue subpoenas — Claim that much of material subpoenaed was protected by legal professional privilege and public interest immunity — Whether such claimed protection relevant to application to set aside subpoenas — Elements of Ponzi scheme.
R v Bigatton (No 2) 233

STATUTES

- Construction — Penal statutes — Use of “and” in definition of key element of offence — Ordinarily interpreted as conjunctive — Whether vehicles parked on roadway when no “no stopping” sign erected contravened road rule prohibiting parking when such sign erected later — Intrinsic unfairness of retrospective interpretation of penal provision — Road Rules 2014 (NSW), r 167.
Boensch v City of Parramatta Council 223

WORDS AND PHRASES

- “Another person” — Corporations Act 2001 (Cth), s 911B(1).
R v Bigatton (No 3) 242
- “Finding” — Criminal Procedure Act 1986 (NSW), s 157.
R v Saafi 308
- “Stop and allow the driver's vehicle to stay” — Road Rules 2014 (NSW), Dictionary, definition of “park”.
Boensch v City of Parramatta Council 223