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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Minister of Defence and Military Veterans v Thomas (CCT168/14) (ZACC) - negligence - 'employer' - fundamental right to bodily integrity and security of person underlying workplace damages claim - appeal dismissed

Horticulture Innovation Australia Ltd v Westley (NSWSC) - equity - remedies - no entitlement to trace misappropriated funds into funds in Court - equitable compensation

Caves Beachside Cuisine Pty Ltd v Boydah Pty Ltd (NSWSC) - contract - no agreement to negotiate a lease in good faith or at all - compensation for confidential information wrongly obtained - claim otherwise dismissed

Macquarie Bank Limited v Juno Holdings S.a.r.l. (NSWSC) - private international law - enforcement of foreign judgment - entitlement to interest - plaintiff entitled to judgment with simple interest

Marsh v Baxter (WASCA) - negligence - nuisance - claim arising from escape of genetically modified (GM) canola from farm onto neighbouring certified organic farm dismissed

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Summaries With Link (Five Minute Read)

Minister of Defence and Military Veterans v Thomas (CCT168/14) [2015] ZACC 26

Constitutional Court of South Africa

Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ & Tshiqi AJ.

Negligence - respondent doctor employed by provincial government injured while on secondment to military hospital under control of applicant Minister - *Compensation for Occupational Injuries and Diseases Act 130* governed compensation doctor may claim arising from injuries - compensation in two guises: for prescribed benefits payable irrespective of any negligence by employer, and for damages that were caused by third party at workplace (workplace damages) - workplace damages claim was ordinary delictual claim - doctor lodged claim against provincial government under Compensation Act for occupational injury benefits - no dispute doctor entitled to benefits - doctor also instituted delictual damages claim against Minister or company responsible for providing hygiene services at hospital - Minister lodged special plea resisting workplace damages claim - Minister argued doctor precluded from claiming under section s35(1) - essential question was who was doctor's employer - whether employer was State as single employer or its individual components i.e. provincial government - 'employer' - held: Court upheld Supreme Court of Appeal's interpretation - Supreme Court of Appeal did not regard "the State" or Government as doctor's employer but rather head of particular provincial government department as reflected in employment contract - doctor's fundamental right to bodily integrity and security of her person which underlay her common law claim for workplace damages was at stake - Minister's interpretation more restrictive of doctor's rights and would prevent her from bring further delictual claim - appeal dismissed.

[Minister](#))

Horticulture Innovation Australia Ltd v Westley [2015] NSWSC 1292

Supreme Court of New South Wales

Stevenson J

Equity - remedies - defendant was former employee of plaintiff and its predecessor - Court found defendant used position to cause employer to make payments to entities without authority - most payments associated with theatre production - Court made freezing order against defendant - theatre paid funds into Court - cast and crew (interested parties) not paid - whether plaintiff entitled to trace into funds in Court an amount equal to funds misappropriated by defendant - held: plaintiff failed to establish entitlement to trace funds and thus has failed to establish funds were held by defendant on trust for it - prima facie party entitled to funds in Court was defendant - plaintiff and interested parties were unsecured creditors of defendant - however plaintiff entitled to equitable compensation and judgment against defendant equal to amount of misappropriation

[Horticulture](#)

Caves Beachside Cuisine Pty Ltd v Boydah Pty Ltd [2015] NSWSC 1273

Supreme Court of New South Wales

Kunc J

Contract - lease - equity - intellectual property - defendants developed hotel adjacent to beach - defendant asked owner of plaintiff if he would be interested to run hotel's catering operations - owner said he would - owner became involved in design of hotel's catering and diverted staff and resources from other catering undertakings in anticipation of operating hotel - when hotel opened company provided catering - defendant terminated arrangement under which plaintiff operated at hotel - dispute arose because parties did not reach agreement on final terms governing relationship - plaintiff put case in contract, equitable estoppel and misleading and deceptive conduct - defendants contended plaintiff knew agreement might not be reached but took commercial risk which had eventuated through no fault of defendants - there was also dispute about value of confidential information of plaintiff obtained by defendants - held: agreement was not an agreement to negotiate a lease in good faith or at all. - no equitable estoppel in favour of plaintiff - no unconscionable conduct by defendants in abandoning negotiations - defendants did not engage in misleading and deceptive conduct - defendants not unjustly enriched and not otherwise liable in restitution - judgment for plaintiff for \$15,000 in compensation for confidential information wrongfully obtained by defendant - claim otherwise dismissed.

[Caves](#)

Macquarie Bank Limited v Juno Holdings S.a.r.l. [2015] NSWSC 1260

Supreme Court of New South Wales

McDougall J

Private international law - plaintiff sought to enforce judgment (primary judgment) against defendant in Court of First Instance of the Netherlands Antilles and orders for costs - common ground *Foreign Judgments Act 1991* (Cth) did not apply - plaintiff sought judgment on the basis primary judgment created a "debt" for a "sum certain in money"- whether primary judgment was for a sum certain in money - dispute turned on plaintiff's claim to interest as awarded by Court of First Instance - two cumulative entitlements to interest given to plaintiff under judgment - plaintiff contended it was entitled to interest on a compound basis - defendant contended plaintiff not entitled to interest on compound basis - defendant contended there could be no judgment debt for a sum certain in money unless and until contentions resolved - held: parties' rights and obligations were to be found exclusively in primary judgment on proper construction - plaintiff entitled to judgment with simple interest only.

[Macquarie](#)

Marsh v Baxter [2015] WASCA 169

Court of Appeal of Western Australia

McLure P; Newnes & Murphy JJA

Negligence - nuisance - pure economic loss - appellants appealed against dismissal of claim against respondent arising from escape of genetically modified (GM) canola from respondent's farm onto appellants' neighbouring certified organic farm - not in dispute GM plant material that landed on appellants' farm posed no risk of any genetic trait transfer to crop or produce on



appellants' land held - (by majority): held: appellants did not establish duty of care owed in circumstances - trial judge did not err in concluding no unreasonable interference with appellants' use and enjoyment of their farm land as result of incursion of GM canola swathes from respondent's farm land - in relation to causation, neither party contended that s5C *Civil Liability Act 2002 (WA)* applied to claim in nuisance - appeal dismissed.

[Marsh](#)

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