

Benchmark

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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)

Sims v Chong (FCAFC) - legal practitioners - advocate's immunity - erroneous summary dismissal of claim - appeal allowed

Morris v Trodden (NSWSC) - professional negligence - solicitors' duties - limitations - proceedings not dismissed - leave to amend defective pleading

Mutch v BHP Billiton Ltd (VSC) - cross-vesting - claim for injuries arising from inhalation of asbestos dust - application for transfer of proceedings to South Australia refused

Bailey v Richardson (VSC) - Wills and estates - orders authorising making of statutory Will

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Summaries With Link (Five Minute Read)

Sims v Chong [2015] FCAFC 80

Full Court of the Federal Court of Australia

Mansfield, Siopis & Rares JJ

Summary dismissal - legal practitioners - advocate's immunity - appellant claimed against respondent concerning quality of professional legal services rendered in conduct of District Court proceedings and Supreme Court proceedings (WA claim) - WA claim ultimately struck out - primary judge summarily dismissed appellant's claim against respondent on bases claim was abuse of process and that in any event it was doomed to fail because respondent's conduct protected by advocate's immunity - whether erroneous to summarily dismiss claim under s31A *Federal Court of Australia Act 1976* because not all claims fell within immunity's shadow or because state of authorities did not justify exercise of power under s31A - whether Court satisfied appellant had no reasonable prospect of successfully prosecuting claim - held: Court disagreed with primary judge's conclusions that case as expressed was not reasonably arguable - appeal allowed.

[Sims](#)

Morris v Trodden [2015] NSWSC 705

Supreme Court of New South Wales

Hall J

Summary dismissal - legal practitioners - professional negligence - plaintiff claimed damages from defendant solicitor in relation to failure to register a transfer of title - solicitor sought dismissal of proceedings on basis limitation period had expired or order striking out statement of claim for embarrassing or defective pleading - s14(1) *Limitation Act 1969* - conceded defects in pleading - held: proceedings arguably involved wrongful action or breach of duty by defendant which might not only have caused unlawful loss but precluded plaintiff from bringing proceedings to recover the damage - whilst retainer commenced on or about 22 March 2007, it was at least arguable retainer continued up to and after 1 July 2010 and that there was continuing breach of duty by defendant beyond that date - defendant had not discharged onus of establishing basis for orders sought - plaintiff's case appropriately one for determination at trial - leave granted to plaintiff to amend defects in statement of claim - notice of motion dismissed.

[Morris](#)

Mutch v BHP Billiton Ltd [2015] VSC 253

Supreme Court of Victoria

Cavanough J

Cross-vesting - plaintiffs claimed against defendants in negligence for injuries arising from inhalation of asbestos dust in South Australia from 1969 to 1979 - first defendant pursuant to s5(2)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987* sought that proceeding be transferred to Supreme Court of South Australia with a view to it being further transferred to

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District Court of South Australia - location of witnesses and records - proper law to be applied - choice-of-law issues - facilitating speedy and efficient resolution of claim held: Court not satisfied South Australia was more appropriate forum for hearing and determination of proceeding - Court not satisfied it was in interests of justice to transfer proceeding to South Australia - it was in interests of justice that case should be heard and determined in this Court - application for transfer dismissed.

[Mutch](#)

Bailey v Richardson [2015] VSC 255

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiffs applied under s21 *Wills Act 1997* for orders authorising Will to be made on friend's behalf - plaintiff were sisters and joint administrators of friends' affairs - proposed will appointed plaintiffs as executrices of friends' Will and trustees of her estate - Will also provided for estate's residue to be paid to plaintiffs equally - ss21A, 21B, 22, 26 & 27 - O17 *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* - held: Court satisfied friend lacked testamentary capacity - Court could not be satisfied of what friends' intentions would be likely to be if she had testamentary capacity - Court satisfied on balance of probabilities that some reasonable people could think there was fairly good chance proposed Will reflected what friends' intentions might be, if she had testamentary capacity - it was reasonable in all the circumstances to make orders authorising making of proposed Will.

[Bailey](#)

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