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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

White v Benjamin (NSWCA) - damages - motor accidents compensation - appeal against assessment of damages allowed (I)

Black v Young (NSWCA) - damages - motor vehicle accident - appeal against assessment of damages dismissed (I)

Re Estate of the Late Assim; Application of Assim and Assim (NSWSC) - Wills and estates - urgent appointment of administrators with limitations on powers (B)

Graves v West (No 2) (NSWSC) - damages - assault during rugby union game - physical and psychological injury - damages assessed (I)

Minumbra Pty Ltd v AM Lancewood Investment Nominees Pty Ltd (NSWSC) - contract - subrogation - limited recovery guarantee - guarantor's claim failed (B)

In the Estate of Johnson (Deceased) (SASC) - Wills and estates - testamentary capacity - appropriate to admit copy of Will to probate (B)

Pyramid Constructions (WA) Pty Ltd v Form Doctors Pty Ltd (WASC) - costs - defendant ultimately conceded plaintiff's entitlement to relief - defendant to pay plaintiff's costs (B C)

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Summaries with links (5 Minute Read)

White v Benjamin [2015] NSWCA 75

Court of Appeal of New South Wales

Beazley ACJ; Basten & Meagher JJA

Damages - motor accidents compensation - appellant driver injured when her stationary vehicle hit from behind by vehicle driven by first respondent - appellant had undisputed continuing disability flowing from neck injury - primary judge awarded appellant damages for future economic loss resulting from loss of earning capacity but no damages for past economic loss, gratuitous domestic care or commercial services - appellant challenged assessment of damages - held: appeal against award of damages for loss of earning capacity rejected - trial judge erred in increasing deduction for vicissitudes to 25% - trial judge erred in dealing with claim for domestic assistance as covered by s15 *Civil Liability Act 2002* (NSW) - assessment of damages for domestic care for motor accidents to be conducted under s141B *Motor Accidents Compensation Act 1999* (NSW) - no reason to interfere with rejection of claim for gratuitous domestic services - amount allowed for future domestic assistance - appeal allowed in part.

[White](#) (I)

Black v Young [2015] NSWCA 71

Court of Appeal of New South Wales

Basten JA, Sackville AJA & Adamson J

Damages - motor vehicle accident - appellant injured in motor vehicle accident - liability admitted - primary judge awarded appellant damages for economic loss - appellant appealed against assessment of damages - held: no error shown in primary judges finding that back condition was not causally related to accident - no error in not awarding damages for diminution of earning capacity due to appellant's psychological condition - no error in award of buffer - sum awarded not outside range having regard to evidence - not inconsistent with s126 *Motor Accidents Compensation Act 1999* (NSW) Act to award buffer in appropriate cases - appeal dismissed.

[Black](#) (I)

Re Estate of the Late Assim; Application of Assim and Assim [2015] NSWSC 337

Supreme Court of New South Wales

Slattery J

Wills and estates - plaintiffs were daughters of deceased - deceased had died suddenly - daughters sought appointment as administrators of father's estate under s74 *Probate and Administration Act 1898* (NSW) - deceased was sole signatory on trust account of real estate business - no signatory to trust account of business to enable money to be paid out to clients - plaintiffs sought to appoint directors to company controlling business so company could appoint signatory - s201F *Corporations Act 2001* (Cth) - held: case for urgent appointment made out - appointment limited to objective of preserving value of real estate business from damage - daughters appointed administrators with limitation on powers to act pending grant of probate or

administration.

[Assim](#) (B)

Graves v West (No 2) [2015] NSWSC 306

Supreme Court of New South Wales

Button J

Damages - plaintiff injured in assault during rugby union game - defendant pleaded guilty to and was convicted of recklessly causing grievous bodily harm to plaintiff - defendant placed on good behaviour bond and subsequently left Australia - plaintiff sought damages arising from assault - summary judgment entered for plaintiff - assessment of damages - physical and psychiatric injury - held: appropriate for matter to proceed ex parte - claim to be determined in accordance with common law of damages, not *Civil Liability Act 2002* (NSW) - damages assessed.

[Graves](#) (I)

Minumbra Pty Ltd v AM Lancewood Investment Nominees Pty Ltd [2015] NSWSC 302

Supreme Court of New South Wales

Young AJA

Contract - guarantee - plaintiff was guarantor - defendant was principal creditor which loaned amount to borrower (entity whose liability was partially guaranteed) - dispute concerning whether surety was able to be subrogated to remedies of principal creditor even though money still owed to principal creditor - guarantor sought various declarations as to its rights under collection of deeds - whether surety had granted "part guarantee" or whether it was "limited recovery guarantee" - held: plain words of document showed drafter made clear distinction between subject matter of guarantee and cap on liability of guarantor - document was limited recovery guarantee - subrogation rights not available until lender's claim on borrower under deeds paid in full - guarantor's claim failed.

[Minumbra](#) (B)

In the Estate of Johnson (Deceased) [2015] SASC 51

Supreme Court of South Australia

Gray J

Wills and estates - testamentary capacity - trustee sought grant of letters of administration with copy of Will annexed - deceased died in 2012 - deceased made Will in 2004 - original Will could not be found - medical report expressed opinion deceased not of testamentary capacity when Will made - consideration of further material addressing question of capacity - held: in contentious probate proceedings which become undefended Court maintained oversight when considering Will's validity - Court satisfied deceased had testamentary capacity and that it was appropriate to admit copy of Will to probate.

[Johnson](#) (B)

Pyramid Constructions (WA) Pty Ltd v Form Doctors Pty Ltd [2015] WASC 94

Supreme Court of Western Australia

Martin CJ



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Costs - commercial arbitration - no adjudication on merits - plaintiff sought removal of arbitrator from arbitration upon which he had embarked - orders sought pursuant to s13 *Commercial Arbitration Act 2012* (WA) - ultimately arbitrator withdrew as consequence of defendant advising him it would not oppose orders - parties disagreed as to costs - held: relevant 'event' in this case was that party against whom relief sought eventually conceded moving party's entitlement to relief. - moving party substantially successful in achieving objectives of proceedings - costs to follow event - defendant to pay plaintiff's costs.

[Pyramid](#) (B C)

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