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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

National Archives of Australia v Fernandes (FCAFC) - archives - exempt records - security - erroneous approach to examination of documents - appeal allowed (I G)

ACES Sogutlu Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (NSWCA) - mortgage - possession - no breach in bank's exercise of power of sale - appellant to explain presence of extra material in appeal books (B)

Halime v Singapore Airlines Ltd (NSWSC) - carriers' liability - action commenced 22 years after event - claim extinguished by Warsaw Convention (I B)

Pedavoli v Fairfax Media Publications Pty Ltd (NSWSC) - defamation - claim against newspaper - offer to make amends - damages (I)

Baker v Mutton (VSCA) - injurious falsehood - inadequate pleadings - access to documents - strike-out application put over (I)

Queensland Building and Construction Commission v Arthurs (QCA) - administrative law - reinstatement of building licence - leave to appeal refused (C G)

Australian Regional Wholesalers Pty Ltd v Gardiner (WASC) - guarantee - goods purchased on credit - wholesaler entitled to amount owing under guarantees (B)

Summaries with links (5 minute read)

National Archives of Australia v Fernandes [2014] FCAFC 158

Full Court of the Federal Court of Australia

Allsop CJ; Flick & Wigney JJ

Administrative law - appeal from decision of AAT concerning documents held by National Archives of Australia concerning events in 1970s and later after Indonesia's incorporation of East Timor - academic sought access to documents relevant to research - AAT concluded most documents exempt under s33(1)(a) *Archives Act 1983* (Cth) - AAT also found, after examining documents line-by-line and word-by-word, that parts of documents not exempt - held: AAT erred in approach of examining document line-by-line to assess whether each line and document was exempt under s33(1)(a) - consent of parties to approach did not mean decision should not be set aside - AAT's decision, to the extent that it varied the decision of Archives in relation to public access to the *first line* of handwritten text at Part 21 Folio 130 and first paragraph of Part 21 Folio 133, should be set aside - appeal allowed.

[National Archives of Australia](#) (I G)

ACES Sogutlu Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia [2014] NSWCA 402

Court of Appeal of New South Wales

Beazley P; Macfarlan & Leeming JJA

Mortgage - possession - bank lent money to ACES for purposes of buying property - bank obtained registered mortgage by ACES as trustee family trust over property and guarantee by company as trustee for unit trust supported by registered mortgage over commercial property held by it on trust - bank appointed agents to sell properties following ACES' default - bank successfully sued ACES and guarantors for shortfall after sales - liquidator appointed to ACES and company - bank filed notice of discontinuance purportedly on behalf of companies - appellants denied notice effective - held: company guaranteed obligations of ACES - property held by company as trustee was properly the subject of exercise of power of sale - to be effective, a notice of discontinuance filed in appellate proceedings must be accompanied by notice from each party whose consent was required to the effect that that party consented to discontinuance - no breach of duty in exercise of power of sale - extraneous material inserted into appeal books - appellant to be given opportunity to explain presence of material - appeal dismissed.

[ACES Sogutlu Holdings Pty Ltd \(in liq\)](#) (B)

Halime v Singapore Airlines Ltd [2014] NSWSC 1681

Supreme Court of New South Wales

Adams J

Carriers' liability - limitations - plaintiff claimed he suffered psychological injury as result of engine exploding on flight in 1992 - plaintiff's action against airline arose from *Civil Aviation (Carriers' Liability) Act 1959* (Cth) which provided that Warsaw Convention was part of Australian law - liability of carrier under Convention - held: action could not succeed because of Art 29(1) of the Convention which provided that right to damages was extinguished if action not brought within two years reckoned to date of the arrival and destination, or from date on which aircraft ought to have arrived, or from date on which carriage stopped - carriage stopped at very latest on 29/5/92 - action for damages extinguished on 28/5/94 - statement of claim dismissed.

[Halime](#) (I B)

Pedavoli v Fairfax Media Publications Pty Ltd [2014] NSWSC 1674

Supreme Court of New South Wales

McCallum J

Defamation - newspaper published article incorrectly identifying plaintiff as female teacher who resigned from school amidst allegations of unlawful sexual misconduct - only defence relied upon by defendants was statutory defence created by s18 *Defamation Act 2005* (NSW) of failure to accept an offer to make amends - ss13, 15, 18, 20, 34 & 35 - held: offer to amend did not satisfy mandatory requirements of Act - defamation greatly damaged plaintiff's impeccable reputation and caused immense hurt - plaintiff entitled to large award of damages, including aggravated damages, and to have Court declare falsity of that which had been imputed to her by newspaper - judgment for plaintiff in sum of \$350,000.

[Pedavoli](#) (I)

Baker v Mutton [2014] VSCA 302

Court of Appeal of Victoria

Nettle JA & Sloss AJA

Pleadings - injurious falsehood - appeal from orders granting leave to respondent to file further amended statement of claim - requirement that impugned statements be pleaded precisely - difficulty of respondent not having access to documents - interests of justice - held: certain paragraph did not allege precise words complained of - paragraph offended principle applicable to pleadings of libel and slander in general, and also pleading of injurious falsehood - certain paragraphs unclear, contradictory and/or embarrassing - paragraph impermissibly mixed allegations of loss and damage relating to different statements and then alleged generalised conclusion - further hearing of application put over to give respondent opportunity to issue subpoenas so respondent's counsel would have subpoenaed documents before them as they attempted to put pleading into order.

[Baker](#) (I)

Queensland Building and Construction Commission v Arthurs [2014] QCA 307

Court of Appeal of Queensland

Holmes & Fraser JJA; McMeekin J

Administrative law - liquidator appointed to company - respondent was 50% shareholder in company and registered builder - respondent held licence under Pt 3 *Queensland Building Construction and Commission Act 1991* (Qld) - appointment of liquidator triggered *excluded individual* provisions of s56AC - Queensland Building and Construction Commission determined respondent was an *excluded individual for the relevant company event* being appointment of the liquidator to the company - effect of finding that respondent was "excluded individual" was automatic cancellation of builder's license - QBCC's decision confirmed by QCAT but overturned by Appeal Tribunal - QBCC sought to appeal - *influential person* - s56AC(c)(ii) - held: Appeal Tribunal considered correct question - no error of law by Appeal Tribunal established - leave to appeal refused.

[Queensland Building and Construction Commission](#) (C G)

Australian Regional Wholesalers Pty Ltd v Gardiner [2014] WASC 439

Supreme Court of Western Australia

Chaney J

Guarantee - plaintiff carried on business of wholesale of goods - company purchased goods on credit from plaintiff - defendants were directors of company - defendants executed 'guarantee and indemnity' in favour of plaintiff - company applied for credit with plaintiff by signing 'application for credit account' - plaintiff claimed directors were liable to pay sum under guarantees and legal fees - held: guarantees were components of single guarantee transaction - guarantees were enforceable - guarantees were not subject to any limitation by reference to credit application or otherwise - plaintiff's conduct did not have effect of discharging guarantors - plaintiff entitled to judgment in sum claimed.

[Australian Regional Wholesalers Pty Ltd](#) (B)

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