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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)

Hird v Chief Executive Officer of the Australian Sports Anti-Doping Authority (FCAFC) - judicial review - challenge to notices issued under National Anti-Doping Scheme failed - appeal dismissed (I B G)

Kuzet v The Registrar of the Workers Compensation Commission (NSWSC) - workers compensation - assessment of permanent impairment - abnormal illness behaviour - appeal dismissed (I G)

Winters v Bishop (QSC) - damages- pedestrian struck by motor vehicle - brain injury causing personality change - damages assessed at \$1,335,870.26 (I)

In the Estate of Wilden (deceased) (SASC) - wills - testamentary instruments - DVD and typed document - probate granted (B)

Vantage Systems Pty Ltd v Priolo Corporation Pty Ltd (WASCA) - binding agreement for lease of office premises and licence of car bays - appeal dismissed (I B)

Shea v News Ltd (WASC) - pleadings - defamation - alternative imputations - leave to amend Defence refused (I)

Tipene v The Owners Strata Plan 9485 (WASC) - strata titles - State Administrative Tribunal had no jurisdiction to determine application under s103F *Strata Titles Act 1985* (WA) - appeal dismissed (I C G)

Summaries with links (5 minute read)

Hird v Chief Executive Officer of the Australian Sports Anti-Doping Authority [2015] FCAFC

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Kenny, Besanko & White JJ

Judicial review - appellant was senior coach of football club licensed by AFL to enter team in competition - CEO of Australian Sports Anti-Doping Authority (ASADA) made decision to issue notices under cl4.07A National Anti-Doping Scheme (NAD Scheme) to current and former players for football club as part of investigation in cooperation with AFL into supplements program implemented by club - primary judge dismissed applications for judicial review - held: investigation conducted by ASADA in cooperation with AFL was authorised by the *Australian Sports Anti-Doping Authority Act 2006* (Cth), Regulations made under that Act, and NAD Scheme - manner in which ASADA conducted investigatory interviews was within contemplation of legislative scheme - no improper purpose - no unlawful disclosure of NAD Scheme personal information by ASADA to the AFL - CEO did not facilitate abrogation of interviewees' common law rights to privileges against self-incrimination or exposure to penalty - no practical unfairness to appellant or players - appellant failed to establish that information on which CEO based decision to issue notices under cl4.07A was unlawfully obtained - challenge to notices failed - appeal dismissed.

[Hird](#) (I B G)

Kuzet v The Registrar of the Workers Compensation Commission [2015] NSWSC 4

McCallum J

Workers compensation - plaintiff injured during course of employment - plaintiff sought to appeal against approved medical specialist's assessment of 5% permanent impairment - plaintiff contended finding of abnormal illness behaviour precluded conclusion injuries were permanent and stabilised - plaintiff contended that, unless injuries permanent and stabilised, there was no power to make assessment of permanent impairment - s65 *Workers Compensation Act 1987* (NSW) - ss121(4) & 327 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - r59.10(2) *Uniform Civil Procedure Rules 2005* (NSW) - held: question whether abnormal illness behaviour was required to be considered in assessing permanent impairment was within realm of assessor's clinical judgment - whether degree of permanent impairment was fully ascertainable was matter of clinical judgment not legal analysis - no error of law or jurisdictional error - proceedings dismissed.

[Kuzet](#) (I G)

Winters v Bishop [2014] QSC 312

Supreme Court of Queensland

Philippides J

Damages - negligence - pedestrian suffered head and elbow injury when struck by motor vehicle while walking across pedestrian crossing - liability admitted - dispute concerning extent of psychiatric injury and quantum of damages - ss11, 59, 60(3) & 61 *Civil Liability Act 2003* (Qld) - held: Court satisfied plaintiff suffered from personality change due to brain injury from accident - plaintiff suffered severe symptoms and impacts from brain injury - judgment for plaintiff in sum of \$1,335,870.26.

[Winters](#) (I)**In the Estate of Wilden (deceased) [2015] SASC 9**

Supreme Court of South Australia

Gray J

Wills - probate - applicant sought orders that DVD containing video recording of deceased and typed unwitnessed document signed by deceased be admitted to probate under s12(2) *Wills Act 1936* (SA) - held: Court satisfied both items were documents that expressed deceased's testamentary intentions and that deceased intended documents to together constitute his Will - appropriate to admit documents to probate under s12(2) - applicant appointed as executor according to the tenor of the documents.

[In the Estate of Wilden](#) (B)**Vantage Systems Pty Ltd v Priolo Corporation Pty Ltd [2015] WASCA 21**

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Contract - respondent claimed breach of agreement to lease office premises against appellant - trial judge found in favour of appellant and awarded damages - appellant alleged trial judge erred in finding that, by appellant accepting revised proposal, parties intended to enter binding agreement, and that there was sufficient meeting of minds for binding agreement - appellant also alleged trial judge erred in allowing respondent to amend pleadings to plead rectification of revised proposal after each party had closed its case - appellant also alleged trial judge erred in allowing claim for rectification - held: on objective assessment, with regard to relevant facts and circumstances in commercial context, parties did bind themselves to new lease of premises and licence in respect of car bays on terms set out in revised proposal - subsequent negotiations, dealings and communications did not destroy earlier concluded and binding agreement - other grounds of appeal also failed - appeal dismissed.

[Vantage Systems Pty Ltd](#) (I B)**Shea v News Ltd [2015] WASC 1**

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - action arising out of publication of photograph and articles on newspaper websites - defendants sought to amend defence - adequacy of *Polly Peck/Lucas-Box* alternative imputations sought to be raised and justified - held: nothing in particulars said or suggested that a pleaded belief or suspicion held by 'police' was based upon any identifiable reasonable grounds - alternative justification pleas made no attempt to prove underlying objectively reasonable facts as grounds for beliefs or suspicions by police or grounds for an investigation - pleas misconceived - leave to amend refused.

[Shea](#) (I)

Tipene v The Owners Strata Plan 9485 [2015] WASC 30

Supreme Court of Western Australia

Corboy J

Strata titles - parties owned townhouses which formed two buildings - registered proprietors of nine lots under strata plan formed strata company - appellants were registered proprietors of lots in building B - appellants sought approval from strata company to demolish building B and contract new townhouses - respondents were registered proprietor of lots in Building A - respondents objected to application - State Administrative Tribunal dismissed application for order under s103F *Strata Titles Act 1985* (WA) that approval for purpose of s7(2) STA be deemed to have been given by strata company - SAT claimed it did not have jurisdiction to make order as redevelopment proposal required building B to be demolished -held: SAT did not have jurisdiction over application because of effect that demolition of a building that formed boundaries or part of the boundaries of a lot would have on proprietary interests of lot owners who comprised affected strata scheme - appeal dismissed.

[Tipene](#) (I C G)

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