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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)

Young v Hones (NSWCA) - negligence - advocates' and witness immunity - no error in determination of separate questions before close of pleadings - appeal dismissed (I C)

Young v Hones (No 2) (NSWCA) - applications to amend statement of claim and adjournment refused - leave to appeal refused (I C)

Jackson Lalic Lawyers Pty Ltd v Attwells (NSWCA) - negligence - erroneous refusal to answer separate question - solicitors' advice protected by advocates' immunity - appeal allowed (I B)

El Masri v Woolworths Ltd (NSWSC) - judicial review - no error in medical appeal panel's confirmation of assessment of worker's permanent impairment (I G)

Sainuddin v Whitehead Summons Pty Ltd (VSC) - security for costs ordered against appellant not ordinarily resident in Australia (I)

Hamcor Pty Ltd v Queensland (QSC) - negligence - chemical factory fire - contamination of land by water applied by fire brigade mixed with chemicals - claims against fire brigade and insurance brokers failed (I B C)

D Enterprises (Qld) Pty Ltd v Staedtler (Pacific) Pty Ltd (QSC) - corporations - winding up - statutory demand not set aside (B)

Summaries with links (5 minute read)

Young v Hones [2014] NSWCA 337

Court of Appeal of New South Wales
Bathurst CJ; Ward & Emmett JJA

Advocates' immunity - witness immunity - separate question - appellant sued former solicitors, barrister, engineer expert witness and engineering firm in negligence and also claimed solicitors engaged in misleading and deceptive conduct - primary judge dismissed proceedings after separate determination of question whether advocate's immunity or witness immunity was complete defence to claims - parties had agreed to separate determination of questions - appellant claimed primary judge erred in determining separate questions before close of pleadings because she had not had opportunity to file reply - held: any allegation of *mala fides* by solicitors should have been raised in statement of claim not in reply - undesirable to determine separate questions before close of pleadings but no error in doing so where appellant made forensic decision to consent to that course - advocates' immunity and witness immunity were complete answers to claims raised against solicitors and engineers - appeal dismissed.

[Young](#) (I C)

Young v Hones (No 2) [2014] NSWCA 338

Court of Appeal of New South Wales
Bathurst CJ, Ward & Emmett JJA

Pleadings - adjournment - applicant sought leave to appeal from refusal of application to further amend statement of claim to allege breach of fiduciary duties by solicitors by acting in bad faith and refusal to adjourn matter to enable applicant to put on further evidence in support of amendment application - held: no error in discretionary decision to dismiss adjournment application - open to primary judge to find that allowing amendment to statement of claim would lead to prejudice - no error in decision to refuse leave to file amended pleading - leave to appeal refused.

[Young](#) (I C)

Jackson Lalic Lawyers Pty Ltd v Attwells [2014] NSWCA 335

Court of Appeal of New South Wales
Bathurst CJ; Meagher & Ward JJA

Negligence - solicitors' duties - advocates' immunity - separate question - respondents claimed law firm gave negligent advice when representing them in guarantee proceedings - advice led to settlement of proceedings by consent - law firm appealed against primary judge's decision to decline to answer separate question whether advocates' immunity from suit was complete answer to negligence claim - held: primary judge erred in declining to answer separate question - reasons given for refusal to answer question were irrelevant - in circumstances where alleged breach was



clearly defined and agreed upon it was appropriate to answer separate question - advice fell within scope of advocates' immunity as it led to guarantee proceedings being settled and was therefore intimately connected with those proceedings - negligence proceedings would involve re-agitation of issues in guarantee proceedings and would offend principle of finality - appeal allowed - judgment for law firm in negligence proceedings.

[Jackson Lalic Lawyers Pty Ltd](#) (I B)

El Masri v Woolworths Ltd [2014] NSWSC 1344

Supreme Court of New South Wales

Campbell J

Judicial review - workers compensation - worker employed by Woolworths as storeman and packer - worker sought compensation under s66 *Workers Compensation Act 1987* (NSW) for permanent impairment resulting from injury suffered at work - worker sought to quash decision of medical appeal panel confirming assessment of permanent impairment which fell short of threshold for purposes of claim for work injury damages - ss4, 9A, 66 & 151H *Workers Compensation Act 1987* (NSW) - ss319 & 320 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: no failure by medical panel to take into account doctor's evidence as to relationship between work and the deterioration of worker's condition - panel discharged its obligations in relation to provision of reasons - no constructive denial of jurisdiction - proceedings dismissed.

[El Masri](#) (I G)

Sainuddin v Whitehead Summons Pty Ltd [2014] VSC 489

Supreme Court of Victoria

Lansdowne AsJ

Security for costs - appellant retained solicitors to act for her - solicitors sought amount from appellant for provision of services - appellant appealed from order that she pay amount to solicitors - solicitors sought security for costs - security for costs in appeal from Magistrate's Court - held: appellant was ordinarily resident outside Australia - appellant had no assets or source of income in Australia against which solicitors could seek to enforce a judgment for costs if ultimately the appellant was unsuccessful on the appeal - appeal not bound to fail - would not be straightforward - security for costs ordered.

[Sainuddin](#) (I)

Hamcor Pty Ltd v Queensland [2014] QSC 224

Supreme Court of Queensland

Dalton J

Negligence - fire in plaintiffs' chemical factory - water used by fire brigade to douse fire became mixed with chemicals and soaked onto plaintiffs' land contaminating it - cost of remediation accepted to be more than \$9 million which was many times more than value of land - plaintiffs

sued State in negligence for acts and omissions of fire brigade - plaintiffs' property insurers had paid plaintiffs full amount for which they were insured but refused to pay on policy in name of company which ran business of factory - plaintiffs sued insurance brokers who had arranged liability insurance for company for pure economic loss - held: State owed duty to plaintiffs to take reasonable care not to damage property when acting to combat fire and hazardous materials emergency on plaintiffs' land - fire brigade breached its duty to plaintiffs in applying large amounts of water to certain areas of the land - application of water fell within s129(1) *Fire and Rescue Service Act 1990* (Qld) Act with consequence fire brigade had immunity - brokers owed no duty of care to plaintiffs - plaintiffs' alternative claims against brokers under s912A(1)(a) *Corporations Act 2001* (Cth) and s12ED(1)(a) *Australian Securities and Investments Commission Act 2001* (Cth) also failed - judgment for defendants.

[Hamcor Pty Ltd](#) (I B C)

D Enterprises (Qld) Pty Ltd v Staedtler (Pacific) Pty Ltd [2014] QSC 237

Supreme Court of Queensland

McMeekin J

Corporations - winding up - statutory demand - respondent supplied stationary to applicant - respondent issued statutory demand pursuant to s459E *Corporations Act 2001* (Cth) for amount outstanding for goods supplied - applicant sought to set aside demand - applicant contended respondent induced contract by misleading representations and that there was a genuine dispute about the debt owed - held: applicant failed to discharge onus of demonstrating that there was a genuine dispute, or that it had an offsetting claim for an amount that would reduce the debt to less than the statutory minimum of \$2,000 - defect in affidavit material accompanying the statutory demand did not invalidate it - demand not set aside - further submissions to be made on appropriate orders.

[D Enterprises \(Qld\) Pty Ltd](#) (B)

Love and Friendship

Emily Bronte

Love is like the wild rose-briar,
 Friendship like the holly-tree-
 The holly is dark when the rose-briar blooms
 But which will bloom most constantly?

The wild rose-briar is sweet in spring,
 Its summer blossoms scent the air;



Yet wait till winter comes again
And who will call the wild-briar fair?

Then scorn the silly rose-wreath now
And deck thee with the holly's sheen,
That when December blights thy brow
He still may leave thy garland green.

[Emily Bronte](#)

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