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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)

**Cheng v Geussens (No 2)** (NSWCA) - costs - motor vehicle collision - offer of compromise not renewed in appeal proceedings - indemnity costs refused (I)

**Scott-Irving v New South Wales (No 2)** (NSWSC) - wrongful arrest - malicious prosecution - false imprisonment - proceedings dismissed (I)

**Nicholson v Hildove Pty Ltd** (VSCA) - damages - repudiation of contract for sale of business - no proof of loss - nominal damages - appeal dismissed (I B)

**Sgarretta v NAB** (VSCA) - possession - mortgage - bank granted possession- appeal dismissed (B)

**Re Coulson** (VSC) - wills - trusts - gifts to charitable institutions - identities of beneficiaries named in will - final orders (B)

**Framlingham Aboriginal Trust v McGuinness and Chatfield** (VSC) - trusts - possession - summary recovery of property by Trust refused - appeal dismissed (B)



**Palmer v Nationwide News Pty Ltd** (QSC) - pleadings - defamation - capability of words complained of to convey defamatory imputations (I C)

## Summaries with links (5 minute read)

### **Cheng v Geussens (No 2) [2014] NSWCA 254**

Court of Appeal of New South Wales

Basten, Barrett & Ward JJA

Costs - indemnity costs - pedestrian injured in collision with motor vehicle - Court allowed pedestrian's appeal against assessment of contributory negligence - Court ordered driver to pay costs of appeal - driver sought that pedestrian pay his costs of appeal and also of District Court proceedings - driver sought costs on indemnity basis from date of offer of compromise made prior to District Court proceedings - rr42.15, 20.30 & 20.26 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court's finding of contributory negligence less favourable than offer of compromise - not appropriate for Court to make costs orders of proceedings below when those proceedings not finally determined and primary judge yet to rule on any costs application - pedestrian should pay driver's costs of appeal but those costs be assessed on ordinary basis - Court not persuaded costs should be assessed on indemnity basis because offer of compromise not renewed in context of the appeal proceedings.

[Cheng](#) (I)

### **Scott-Irving v New South Wales (No 2) [2014] NSWSC 1040**

Supreme Court of New South Wales

Adamson J

False imprisonment - malicious prosecution - plaintiff arrested and charged with aggravated sexual assault - sued NSW for alleged wrongful arrest, false imprisonment, malicious prosecution and misfeasance in public office - NSW sought dismissal of proceedings under r29.9 *Uniform Civil Procedure Rules 2005* (NSW) - held: claim for wrongful arrest could not be supported on evidence - no establishment of tort of malicious prosecution or false imprisonment - plaintiff did not particularise claim for misfeasance in public office - even if he did, claim could not be supported - proceedings dismissed.

[Scott-Irving](#) (I)

### **Nicholson v Hildove Pty Ltd [2014] VSCA 158**

Court of Appeal of Victoria

Osborn, Whelan & Santamaria JJ

Damages - contractual damages - repudiation of contract for sale of hotel business - Court awarded nominal damages of \$100 to purchaser - purchaser failed to prove any loss arising from vendor's repudiation by contracting with a second purchaser - purchaser claimed that he had lost opportunity to sell the contract to the highest bidder and that the second purchaser had been



prepared to pay \$1 million - purchaser contended primary judge made factual errors in damages judgment - held: no error in finding that second purchaser would not have purchased hotel business without a lease to operate it - second purchaser would not have paid purchaser \$1 million for benefit of contract if he had known contract was enforceable - appeal dismissed.

[Nicholson](#) (I B)

## **Sgargetta v NAB [2014] VSCA 159**

Court of Appeal of Victoria

Whelan & Santamaria JJA

Possession - mortgage - bank made home loan to borrower - dispute arose in relation to payout figure - bank sought possession - parties entered deed of settlement - dispute arose whether borrower had complied with deed - County Court made order for possession - borrower sought to rely on fresh evidence on appeal - s83 *National Credit Code* - held: leave to rely on fresh evidence granted - dispute began because bank had made mistake of telling borrower that, on sale of security property, he would have to pay out less than correct payout figure - bank corrected mistake very shortly prior to due date for settlement of sale - the sale was pursuant to a contract borrower had made with his wife before either of the payout figures was provided - borrower reacted to correction of mistake by cancelling settlement and ceasing all payments on loan - borrower unable or unwilling to comply with settlement deed - bank entitled to judgment for possession and repayment of amount owing - appeal dismissed.

[Sgargetta](#) (B)

## **Re Coulson [2014] VSC 353**

Supreme Court of Victoria

McMillan J

Wills - trusts - gifts to charitable institutions - application by plaintiff State Trustees Limited for Court's advice concerning ambiguity in description of beneficiaries in clause of deceased's Will - whether intended beneficiaries had ceased to exist and if so whether purported gifts otherwise took effect - identity of intended beneficiaries - principles on lapse of a gift - *Wills Act 1958* (Vic) - *Cy-près* scheme - r54.02 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: after initial hearing of proceeding, Court requested State Trustees to provide further evidence concerning the two organisations named as beneficiaries in Will - on basis of evidence, Court satisfied identities of institutions established - final orders could be made in respect of gifts.

[Re Coulson](#) (B)

## **Framlingham Aboriginal Trust v McGuinness and Chatfield [2014] VSC 354**

Supreme Court of Victoria

Ginnane J

Summary recovery of land - Trust sought leave to appeal from decision of Associate Judge to refuse order for possession of domestic residential property located in Trust grant - defendants were in occupation of property and refused to leave - whether licence, consent or permission of



committee of management - ss16 & 23 *Aboriginal Lands Act 1970* (Vic) - O53 *Supreme Court (General Civil Procedure) Rules 2005* (NSW) - related oppression proceedings concerning committee of management - held: no error established in refusal to award summary judgment for possession - appeal dismissed.

[Framlingham Aboriginal Trust](#) (B)

## **Palmer v Nationwide News Pty Ltd [2014] QSC 174**

Supreme Court of Queensland

Boddice J

Pleadings - defamation - Clive Palmer claimed damages from publisher and authors for defamation arising from articles published in The Australian newspaper - defendants sought separate determination of capability of words complained of to convey certain pleaded defamatory imputations, or orders striking out those imputations - r171 *Uniform Civil Procedure Rules 1999* (Qld) - whether words reasonably capable of conveying imputation to ordinary reasonable reader - held: certain words incapable of conveying imputations in paragraphs of statement of claim - Court to hear parties on form of orders.

[Palmer](#) (I C)

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