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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)

Cupac v Cannone (NSWCA) - motor accidents compensation - assessment of damages for past and future economic loss - appeal dismissed (I)

Hughes v Alcantara (NSWSC) - costs - economic loss - plaintiff to pay medical practitioners costs of and incidental to certain appearances (I)

Rawlings v Rawlings (VSC) - negligence - worker employed by parents - parents did not owe duty of care to avoid inflicting psychiatric injury on worker - claim dismissed (I)

Ballandis v Swebbs (QCA) - workers compensation - appeal against assessment of damages dismissed (I)

Dubyna v Seggan (SASC) - Wills and estates - lost Will - defendants under disability - terms of settlement approved and made a rule of Court (B)

In the Estate of Sorrell (deceased) (SASC) - Wills and estates - declaration of effective gift of real property refused - letters of administration with copy of Will annexed granted (B)

Merrick Tyler Pty Ltd v Commissioner of Main Roads (WASCA) - compulsory acquisition of land - meaning of 'adjoining land' under *Land Administration Act 1997* (WA) - appeal dismissed (I B C)

Summaries With Link (Five Minute Read)

Cupac v Cannone [2015] NSWCA 114

Court of Appeal of New South Wales

Macfarlan & Meagher JJA; Sackville AJA

Damages - motor accidents compensation - appellant injured in motor vehicle accident - respondent admitted negligence but did not admit negligence caused injuries - primary judge assessed damages and entered judgment for appellant - common ground appellant not entitled to compensation for non-economic loss - appellant appealed against award of damages for past and future economic loss - conflicting medical opinions - residual earning capacity - held: no inadequacy of reasons for decision - primary judge not obliged to consider state of labour market for someone with appellant's level of training and skills, given appellant adduced no evidence on such matters - no appellable error by failure to expressly refer to inflation rate - appeal dismissed.

[Cupac](#) (I)

Hughes v Alcantara [2015] NSWSC 508

Supreme Court of New South Wales

Harrison J

Costs - plaintiff with history of mental health problems claimed damages from medical practitioner - plaintiff alleged drug prescribed by medical practitioner was contraindicated for patients who had suffered from mental problems and that as a result of taking drug he suffered a mental breakdown and severe mental problems - statement of particulars did not provide accountant's report or documentation on which plaintiff intended to rely to establish pre-injury income - medical practitioner sought costs of appearances and costs thrown away concerning proof of economic loss and delay caused by plaintiff investigating and obtaining evidence - held: plaintiff to pay defendant's costs of and incidental to certain appearances

[Hughes](#) (I)

Rawlings v Rawlings [2015] VSC 171

Supreme Court of Victoria

Dixon J

Negligence - workplace injury - employer's duty of care - plaintiff carpenter suffering from major depressive disorder was employed by his parents (the defendants) in building business - plaintiff claimed that mother directed him to undertake work for which he was not trained or experienced and that the significant stress of undertaking the work caused his psychiatric injury - plaintiff sought leave pursuant to s135A(4)(b) *Accident Compensation Act 1985* to bring common law claim for damages against employer - County Court judge found for plaintiff - employer appealed against rejection of defence that worker's application statute barred - Court of Appeal dismissed appeal - unusual nature of employment relationship overlaid with familial relationship - no perceived risk of psychiatric injury - employer under insolvency - employment stress intertwined with familial stress - nature of employment - held: defendants did not owe plaintiff

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duty to use reasonable care to avoid inflicting psychiatric injury on him - claim dismissed.

[Rawlings \(I\)](#)

Ballandis v Swebbs [2015] QCA 76

Court of Appeal of Queensland
Fraser, Gotterson & Morrison JJA

Workers compensation - appellant employed to perform work at various locations - appellant injured while travelling home from work as passenger in utility owned by employer and driven by first respondent co-worker - appellant sued first respondent and third party insurer of utility for damages - liability not in issue - primary judge held that because claim came under s35 *Workers' Compensation and Rehabilitation Act 2003* (Qld) (WCRA), *Civil Liability Act 2003* (Qld) applied to assessment of damages - primary judge assessed damages on that basis awarding \$9,800 for general damages and nothing for a gratuitous care claim - appellant sought to challenge findings - application of s35 WCRA - appropriate assessment of damages if CLA did not apply - whether appellant on journey home from place of employment - whether employment significant contributing factor in appellant's being injured - held: s35 WRCA applied - CLA applied to assessment of damages - appeal dismissed.

[Ballandis \(I\)](#)

Dubyna v Seggan [2015] SASC 67

Supreme Court of South Australia
Stanley J

Wills and estates - approval of terms of settlement - plaintiffs were children of deceased and wife - plaintiff sought order that Court pronounce against purported Will of deceased, order that a grant of letters of administration be made to Public Trustee in respect of estate of deceased on basis he died intestate, orders in relation to costs and approval of terms of settlement for benefit of defendants under disability, and that terms of settlement be made a rule of court - Will had been lost - first defendant had alleged Will was a fraud, or obtained under duress, and that deceased lacked testamentary capacity - under terms of settlement plaintiffs no longer sought to propound admission of copy of Will to probate - ss9 & 5(3) *Public Trustee Act 1995* - rr205, 227, & 257 *Supreme Court Civil Rules 2006* - whether compromise was reasonable and whether for benefit of persons under disability - held: proposed compromise was reasonable and it was in interest of defendants under disability that Will not be admitted to probate - terms of settlement approved and made a rule of court.

[Dubyna \(B\)](#)

In the Estate of Sorrell [2015] SASC 68

Supreme Court of South Australia
Gray J

Wills and estates - gifts inter vivos - deceased executed Will which appointed applicant executor and trustee - applicant sought declaration there had been effective gift of real property, or grant of letters of administration with Will annexed - applicant and sister were residuary beneficiaries - deceased informed applicant she wished to transfer properties to him on trust for him and sister

- deceased executed transfer documents and provided applicant with certificates of title - deceased then destroyed Will - properties mortgaged to bank - applicant failed to register transfers - bank foreclosed on mortgage and sold one property leaving surplus funds paid to ASIC - applicant sought registration of transfer of other property and payment of surplus funds - applicant sought that the funds and property be held on trust for him and sister - held: applicant failed to establish deceased intended to effect immediate gift of properties to applicant at time of executing transfer documents - destruction of Will amounted to conditional revocation - deceased mistakenly believed she obviated need for formal Will - letters of administration with copy of Will annexed granted.

[Sorrell](#) (B)

Merrick Tyler Pty Ltd v Commissioner of Main Roads [2015] WASCA 82

Court of Appeal of Western Australia

Newnes & Murphy JJA; Beech J

Compulsory acquisition of land - statutory interpretation - appellant owned two parcels of land - respondent compulsorily acquired part of land (Eastern land) - appellant claimed compensation for reduction in value of other part of land (Western land) - appellant appealed against trial judge's determination Western land was not 'adjoining land' to Eastern land for the purposes of s241 *Land Administration Act 1997* (WA) - appellant contended trial judge erred in construing 'adjoining' as referring only to land contiguous with land taken under pt 9 - held: words 'adjoining land' in s 241 read in context of Act did not permit broader construction advanced by appellant - appeal dismissed.

[Merrick](#) (I B C)

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