

Benchmark

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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)

Sampco Pty Ltd v Wurth (NSWCA) - damages - negligence - erroneous calculation of damages - appeal allowed (I)

Mayo v W & K Holdings (NSW) Pty Ltd (in liq) (No 2) (NSWCA) - contract - rectification of leases - erroneous finding of common intention - appeal allowed in part (I B)

Pollock v Hicks (NSWCA) - trade practices - accessory liability - procedural fairness - finding of accessory liability set aside - appeal allowed (I B C)

Solarus Projects Pty Ltd v Vero Insurance (No 9) (NSWSC) - costs - defendant to pay successful plaintiff's costs of and incidental to determination of separate questions on ordinary basis (I B C)

Ryder v Sundance Bakehouse (NSWSC) - judicial review - workers compensation - jurisdictional error by Appeal Panel - medical assessment certificate set aside (I G)

Bodycorp Repairers Pty Ltd v AAMI Ltd (VSCA) - costs - unreasonable rejection of Calderbank offer - indemnity costs (I)

Ilievski v Zhou (VSC) - negligence - transport accident - pedestrian stuck while running across road - no breach of duty by driver - proceeding dismissed (I)



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Summaries With Link (Five Minute Read)

Sampco Pty Ltd v Wurth [2015] NSWCA 117

Court of Appeal of New South Wales

Basten & Meagher JJA; Adamson J

Damages - negligence - respondent injured foot when she caught it in unguarded drainway in carpark of hotel owned or occupied by appellant - some months after injury plaintiff complained of pain in knee - plaintiff sued hotel owners - trial judge found for respondent and awarded damages - appellant challenged finding that meniscal tear of knee resulted from accident - ss5D, 13, 15, 16 *Civil Liability Act 2002* - held: trial judge erred in finding knee injury resulted from accident - assessment of non-economic loss reduced - no evidence respondent should not persist in duties - finding of diminution in respondent's earning capacity resulting in future financial loss unsustainable- trial judge erred in calculating hours of domestic assistance required by respondent - finding that husband "unlikely" to continue to provide domestic assistance to respondent not supported by evidence - no award for assistance at commercial rate should be made - appeal allowed.

[Sampco \(I\)](#)

Mayo v W & K Holdings (NSW) Pty Ltd (in liq) [2015] NSWCA 119

Court of Appeal of New South Wales

Meagher & Gleeson JJA; Sackville AJA

Contract - rectification - respondent leased machinery and commercial equipment from appellant for use in its business under commercial leases and related security documentation - respondents sought to have leases rectified - primary judge found in favour of respondents - appellant appealed - held: no error in primary judge's factual findings - primary judge did not err in finding parties intended leases to achieve particular effect and that leases had not achieved effect - primary judge erred in finding parties had common intention bank fees were not to be charged in the leases - appeal allowed in part.

[Mayo \(I B\)](#)

Pollock v Hicks [2015] NSWCA 122

Court of Appeal of New South Wales

Macfarlan, Emmett & Gleeson JJ

Trade practices - self-represented litigant - company engaged respondent to undertake earthmoving work - appellant and husband were shareholders and directors of company - respondent sued company, appellant and husband claiming liquidated sum for work done at direction of husband - respondent filed amended statement of claim seeking damages for misleading representations by husband in contravention of *Australian Consumer Law* and *Fair Trading Act 1987* - respondent alleged appellant "involved" in contraventions and was liable for his loss - primary judge found in respondent's favour and ordered appellant to pay damages to respondent - appellant appealed - appellant contended primary judge erred in finding she was "involved" in husband's conduct and that she was denied procedural fairness - duty of Court of

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unrepresented litigants - held: primary judge applied incorrect test for accessorial liability - no basis for finding appellant was intentional participant in husband's unconscionable conduct or any false or misleading conduct by him - finding of accessorial liability set aside - procedural fairness required that primary judge ascertain whether appellant asking for adjournment by her responses in relation to amended pleading - appeal allowed.

[Pollock \(I B C\)](#)

Solarus Projects Pty Ltd v Vero Insurance (No 9) [2015] NSWSC 503

Supreme Court of New South Wales

Campbell J

Costs - Court decided questions for separate determination in plaintiff's favour by ruling it was an "insured" within meaning of extended definition of insured in Schedule to Project Contract Works Insurance Policy issued by defendant - plaintiff submitted that defendant pay its costs of and incidental to separate hearing - defendant argued costs of and incidental to separate hearing should be reserved to intent that costs of each party stand as costs in principal proceedings under r42.7 *Uniform Civil Procedure Rules 2005* - held: Court persuaded that determination of separate question was no mere interlocutory ruling relating to practice and procedure - determination of separate question almost always decided issue parties perceived to have significance - Court not persuaded to depart from general rule - defendant to pay plaintiff's costs of and incidental to determination of separate questions on ordinary basis.

[Solarus \(I B C\)](#)

Ryder v Sundance Bakehouse [2015] NSWSC 526

Supreme Court of New South Wales

Campbell J

Judicial review - workers compensation - plaintiff injured back in work injury - plaintiff sought to quash Medical Assessment Certificate and decision of Appeal Panel concerning assessment of degree of permanent impairment - s323 *Workplace Injury Management and Works Compensation Act 1998* - held: Panel asked itself wrong question - Panel did not ask required question whether any proportion of impairment assessed was due to pre-existing abnormality 'that in all likelihood' Panel considered pre-dated injury - no evidence that portion of permanent impairment was due to pre-existing abnormality found by the Panel - jurisdictional error established - medical certificate set aside - matter remitted.

[Ryder \(I G\)](#)

Bodycorp Repairers Pty Ltd v AAMI Ltd [2015] VSCA 85

Court of Appeal of Victoria

Warren CJ, Beach JA & Ginnane AJA

Indemnity costs - Court dismissed appellant's appeal - respondents sought order for indemnity costs on basis of appellant's rejection of Calderbank offer - held: period of 14 days within which to consider offer was more than adequate - no basis for concluding appellant could not properly assess its prospects of success at time offer made and during period in which it was open - extent of compromise offered was significant - appellant's prospects of success on appeal were

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weak - rejection of offer of compromise unreasonable - indemnity costs ordered.

Bodycorp (I)

Ilievski v Zhou [2015] VSC 158

Supreme Court of Victoria

J Forrest J

Negligence - transport accident - plaintiff struck by vehicle driven by defendant while running across street - credit - contributory negligence - held: plaintiff failed to make out case of negligence by defendant - defendant's vehicle reasonably travelling at about 50 kph - when defendant attempted to cross road at run defendant endeavoured to brake - no breach of duty by driver - sole cause of accident was plaintiff's conduct in making foolhardy attempt to cross road - claim dismissed.

Ilievski (I)

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