

Friday 13 December 2013

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

#### Important Announcement



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#### Executive Summary (1 minute read)

**Bayley & Associates Pty Ltd v DBR Australia Pty Ltd (FCA)** - contract - equity - equitable duty of confidence - copyright - breaches by former employee and company he instigated – judgment for applicant (I B)

**NSW Police Force v Registrar of the Workers Compensation Commission of NSW (NSWSC)** - judicial review - workers compensation - whole person impairment - medical assessment certificate quashed (I G)

**MyEnvironment v VicForests (VSCA)** - environmental law - injunction to restrain logging on basis of exclusion for possum habitat refused (C G)



**Mellino v Wnuk** (QSC) - succession - informal document - DVD was will of deceased (B)

**Hobbs Haulage P/L v Zupps Southside P/L** (QSC) - pleadings - contract of sale and supply - no concurrent wrongdoers - defence of proportionate liability struck out (I C)

**Habig v McCrae** (QSC) - negligence – motor accident involving van blocking part of highway - driver, employer and insurer liable - contributory negligence 50% (I)

**Leach v Ross** (QSC) - contract - equity - plaintiff entitled to half value of brothel business (I B)

## Summaries with links (5 minute read)

### **Bayley & Associates Pty Ltd v DBR Australia Pty Ltd [2013] FCA 1341**

Federal Court of Australia

Foster J

Contract - copyright - equity - applicant alleged senior employee and his company misused its confidential information and stole business opportunities - applicant alleged employee breached formal contract of employment and auspicing agreement, that employee and company infringed copyright in its documents, that employee owed fiduciary duties to it and breached equitable duty of confidence - ss31(1)(a)(i), 31(1)(a)(iv) & 115 *Copyright Act 1968* (Cth) - held: employee breached employment contract and common law duty of fidelity - employee breached fiduciary duties and equitable duty of confidence and company participated in breach - employee wrongfully exploited security clearance - employee breached auspicing agreement - employee and company breached copyright in documents - judgment for applicant.

[Bayley](#) (I B)

### **NSW Police Force v Registrar of the Workers Compensation Commission of NSW [2013] NSWSC 1792**

Supreme Court of New South Wales

Davies J

Judicial review - workers compensation - police officer medically discharged from force with post-traumatic stress disorder - officer appealed against medical assessment certificate which found he had 5% whole person impairment on basis it contained demonstrable error - Police Force appealed



from decision of Appeal Panel that police officer had 15% whole person impairment - Panel had made decision on basis of a further doctor's assessment - ss319, 321, 322, 324, 325, 326, 327, 328 & 329 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: Panel had obtained further medical assessment from doctor in order to see whether there was demonstrable error in previous doctor's assessment but Panel had no power to take that course - Panel should have rejected evidence in further doctor's report - Appeal Panel and police officer erred in approach to s328(2) of the Act - medical assessment certificate quashed.

[NSW Police Force](#) (I G)

## **MyEnvironment v VicForests [2013] VSCA 356**

Court of Appeal of Victoria

Warren CJ, Tate JA & Garde AJA

Environmental law - appellant sought injunction to restrain logging in parts of forest which were excluded habitat of endangered Leadbeater's Possum - dispute concerning proper construction of Zone 1A of Forest Management Plan - whether density of hollow-bearing trees as prescribed under Plan was limited to *old* hollow-bearing trees or extended to hollow-bearing trees regardless of age - held: appellant sought to construe relevant regulatory instruments as though they had a single purpose to conserve possum when in fact they had multiple purposes and were directed to achieving balance between maintenance of native fauna and ecologically sustainable long-term timber production capacity of forests - instruments were directed at excluding from logging *old* trees - Zone 1A habitat was defined in order to protect only preferred habitat of possum and not to sequester all suitable habitat - appeal dismissed.

[MyEnvironment](#) (C G)

## **Mellino v Wnuk [2013] QSC 336**

Supreme Court of Queensland

Dalton J

Succession - informal document - application under s18 *Succession Act 1981* (Qld) to have a DVD declared to be will of deceased - held: court satisfied DVD was a document and that document embodied or was meant to embody testamentary intentions of deceased - court satisfied substance of recording on DVD demonstrated DVD itself without any more formality on part of deceased would operate on his death as his will - declaration made.

[Mellino](#) (B)

**Hobbs Haulage P/L v Zupps Southside P/L [2013] QSC 319**

Supreme Court of Queensland

Jackson J

Pleadings - contract - negligence - plaintiff acquired modified truck from defendant under contract of sale or supply - purchaser alleged breaches of conditions as to fitness for purpose or merchantable quality implied by ss17(a) & 17(c) *Sales of Goods Acts 1896* (Qld) - purchaser sought order under r171 *Uniform Civil Procedure Rules 1999* (Qld) striking out paragraphs of defence which raised proportionate liability - s28(1), 30 & 31 *Civil Liability Act 2003* (Qld) - ss71(1), 71(2) & 74(1) *Trade Practices Act 1974* (Cth) - held: vendor and subcontractor engaged to carry out modification work were not *concurrent wrongdoers* because their acts or omissions did not cause loss or damage independently of each other - paragraphs of defence struck out.

[Hobbs Haulage](#) (I C)**Habig v McCrae [2013] QSC 335**

Supreme Court of Queensland

Henry J

Negligence - motor vehicle collision - broken-down van was blocking part of highway - passenger of van injured when collided with van - driver of truck was transporting goods for employer who owned truck - passenger claimed damages in negligence from driver, employer and compulsory third party insurer - ss9, 11, 12, 13, 14, 23 & 24 *Civil Liability Act 2003* (Qld) - *Motor Accident Insurance Act 1994* (Qld) - held: driver of truck did not keep proper lookout - collision and harm to passenger would not have occurred had driver kept proper lookout and adjusted manner and speed of driving - driver's breach of duty a necessary condition of injury - passenger discharged onus of proving driver's liability for harm - liability of employer and insurer flowed automatically from driver's liability - defence of voluntary assumption of risk not proved - contributory negligence assessed at 50% - judgment for passenger.

[Habig](#) (I)**Leach v Ross [2013] QSC 333**

Supreme Court of Queensland

Dalton J

Contract - equity - Prostitution Licensing Authority (PLA) refused to grant licence to plaintiff to open brothel - plaintiff claimed he was entitled to half value of a brothel licensed and run by defendants and account of profits - s81 *Prostitution Act 1999* (Qld) - credit - construction of agreements between parties - held: words of agreement between plaintiff and defendant were



literally true, that from a certain date, parties owned brothel business in equal shares - agreement acknowledged that plaintiff was unable to obtain licence - no agreement to go back to previous agreement that plaintiff have no interest in brothel and defendant pay plaintiff amount - defendant's undertaking to PLA that plaintiff would not play role in operation of brothel was not a breach of any fiduciary duty which defendant owed the plaintiff - defendant breached obligations to pay plaintiff an amount equal to half the value of the brothel business - judgment for plaintiff.

[Leach](#) (I B)

## **An Ocean Musing**

By Henrietta Cordelia Ray

Far, far out lie the white sails all at rest;  
Like spectral arms they seem to touch and cling  
Unto the wide horizon. Not a wing  
Of truant bird glides down the purpling west;  
No breeze dares to intrude, e'en on a quest  
To fan a lover's brow; the waves to sing  
Have quite forgotten till the deep shall fling  
A bow across its vibrant chords. Then, lest  
One moment of the sea's repose we lose,  
Nor furnish Fancy with a thousand themes  
Of unimagined sweetness, let us gaze  
On this serenity, for as we muse,  
Lo! all is restless motion: life's best dreams  
Give changing moods to even halcyon days.

[Henrietta Cordelia Ray](#)

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