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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)

Dunkerley v Comcare (FCA) - administrative law - no entitlement to compensation for medical treatment or incapacity - appeal dismissed (I G)

Poletti v Jones (NSWCA) - succession - family provision orders - variation of provision orders in intervener's favour - appeal largely dismissed but first instance orders varied (B)

Nadarajapillai v Naderasa (NSWCA) - loan agreement - requirement of 90 days' notice to debtor satisfied - lender entitled to repayment - borrower's appeal dismissed (B)

Laris v Lin (NSWSC) - easements - insufficient documentation before Court - claim dismissed - cross-claim adjourned part-heard (B)

Horne v James (NSWSC) - contract - Heads of Agreement was not binding agreement for sale of property - summons dismissed (B)

Jeffrey and Curnow v Giles; Giles v Jeffrey and Curnow (VSCA) - damages - defamation - damages so low as to be inappropriate - appeal allowed (I)

Carna Group Pty Ltd v The Griffin Coal Mining Company Pty Ltd (WASC) - contract - termination - defendant obliged to pay redundancy payments to employees - declaration (B C)

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Summaries With Link (Five Minute Read)

Dunkerley v Comcare [2015] FCA 392

Federal Court of Australia

Perram J

Administrative law - Comcare decided applicant not entitled to compensation for medical treatment expenses or incapacity for work under *Safety, Rehabilitation and Compensation Act 1988* - Administrative Appeals Tribunal refused application for review - Comcare and AAT concluded injury had resolved by certain date was also supplanted by non-compensable injury suffered on subsequent date - ss5A(2), 54 & 57 *Safety, Rehabilitation and Compensation Act 1988* - held: no error law in AAT's treatment of evidence - Comcare and AAT not bound by medical certificates accompanying claim form - Comcare had not behaved inappropriately - in any event a breach of model litigant requirements had no consequences in civil litigation - appeal dismissed.

[Dunkerley](#) (I G)

Poletti v Jones [2015] NSWCA 107

Court of Appeal of New South Wales

Basten, Emmett & Leeming JJA

Succession - family provision - testator by Will left 85% of estate to his appellant son and 15% to youngest son (third respondent) - appellant also appointed executor - other children (respondents and another son) deliberately excluded for intervening in family proceedings in support of mother and maintaining no contact with the testator - respondents sought provision pursuant to s59 *Succession Act 2006* (NSW) - trial judge ordered provision should be made for each of the respondents - appellant sought to set aside provision in favour of respondents - third respondent intervened on basis effect of trial judge's orders was to deprive him of significant part of benefit conferred on him by Will - held: trial judge did not err in not applying two-step approach under s59 or in making provision for respondents - no error in factual findings - respondents and third respondent should receive same share of father's estate - variation of provision orders in intervener's favour - appeal largely dismissed but first instance orders varied.

[Poletti](#) (B)

Nadarajapillai v Naderasa [2015] NSWCA 109

Court of Appeal of New South Wales

McCull, Macfarlan & Emmett JJA

Contract - loan agreement - borrower appealed from decision in which primary judge found lender was entitled to rely on loan agreement with borrower - primary judge found that 90 days' notice required by agreement had been given to borrower and that as borrower had not repaid money lender was entitled to verdict - procedural fairness - necessary findings of fact - adequacy of reasons - rr6.12(6) and 6.12(7) *Uniform Civil Procedure Rules 2005* - held: no substance in amended grounds of appeal, all of which were unarguable - appeal dismissed.

[Nadarajapillai \(B\)](#)

Laris v Lin [2015] NSWSC 473

Supreme Court of New South Wales

Slattery J

Easements - plaintiff sought to prevent defendant from obstructing plaintiff's use of lot thereby inhibiting him from taking advantage of easements appurtenant to lot - defendant cross-claimed for extinguishment of easements under s89 *Conveyancing Act 1919* - held: Court not confident it had complete documentation for easements - matter further complicated by plaintiff's bankruptcy - plaintiff's claim dismissed - cross-claim adjourned part heard.

[Laris \(B\)](#)

Horne v James [2015] NSWSC 465

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff and defendants executed document called "Heads of Agreement" in respect of farming property owned by defendants - whether on its proper construction Heads of Agreement was a binding and enforceable agreement for sale of property by defendants to plaintiff - held: although Heads of Agreement bound defendants to allow plaintiff access to first property to sow his canola crop, it did not constitute binding agreement for sale by defendants to plaintiff - summons dismissed.

[Horne \(B\)](#)

Jeffrey and Curnow v Giles; Giles v Jeffrey and Curnow [2015] VSCA 70

Court of Appeal of Victoria

Warren CJ, Tate JA & Ginnane AJA

Damages - defamation - costs - appellants defamed by statements made by respondent - appellants appealed against award of damages as manifestly inadequate - respondent seeks leave to appeal against order she pay appellants' costs of proceeding on basis she was not given opportunity to refer judge to offer of compromise she made - held: damages were so low as to be inappropriate - no error in refusal to award aggravated damages however behaviour relied upon in support of claim for aggravated damages should be taken into account in award of compensatory damages - question of interest to be further argued and determined in pending application under s29 *Civil Procedure Act 2010* - appeal allowed - respondent refused leave to appeal.

[Jeffrey \(I\)](#)

Carna Group Pty Ltd v The Griffin Coal Mining Company Pty Ltd [2015] WASC 142

Supreme Court of Western Australia

Le Miere J

Contract - defendant owner of coal mine engaged plaintiff to provide mining services - contract terminated - plaintiff contended defendant was liable to pay redundancy payments directly to employees who were employed by defendant prior to their transfer to plaintiff on

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commencement date of agreement - defendant contended its liability was to reimburse plaintiff for payments - construction of contract - held: defendant liable to pay redundancy payments due to employees directly to each employee - no appropriate to make order for specific performance.

[Carna](#) (B C)

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