

Friday 3 October 2014

Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Young v Hones (NSWCA) - negligence - advocates' and witness immunity - no error in determination of separate questions before close of pleadings - appeal dismissed

Young v Hones (No 2) (NSWCA) - applications to amend statement of claim and adjournment refused - leave to appeal refused

Hamcor Pty Ltd v Queensland (QSC) - negligence - chemical factory fire - contamination of land by water applied by fire brigade mixed with chemicals - claims against fire brigade and insurance brokers failed

Summaries with links (5 minute read)

Young v Hones [2014] NSWCA 337

Court of Appeal of New South Wales

Bathurst CJ; Ward & Emmett JJA

Advocates' immunity - witness immunity - separate question - appellant sued former solicitors, barrister, engineer expert witness and engineering firm in negligence and also claimed solicitors engaged in misleading and deceptive conduct - primary judge dismissed proceedings after separate determination of question whether advocate's immunity or witness immunity was

complete defence to claims - parties had agreed to separate determination of questions - appellant claimed primary judge erred in determining separate questions before close of pleadings because she had not had opportunity to file reply - held: any allegation of *mala fides* by solicitors should have been raised in statement of claim not in reply - undesirable to determine separate questions before close of pleadings but no error in doing so where appellant made forensic decision to consent to that course - advocates' immunity and witness immunity were complete answers to claims raised against solicitors and engineers - appeal dismissed.

[Young](#)

Young v Hones (No 2) [2014] NSWCA 338

Court of Appeal of New South Wales

Bathurst CJ, Ward & Emmett JJA

Pleadings - adjournment - applicant sought leave to appeal from refusal of application to further amend statement of claim to allege breach of fiduciary duties by solicitors by acting in bad faith and refusal to adjourn matter to enable applicant to put on further evidence in support of amendment application - held: no error in discretionary decision to dismiss adjournment application - open to primary judge to find that allowing amendment to statement of claim would lead to prejudice - no error in decision to refuse leave to file amended pleading - leave to appeal refused.

[Young](#)

Hamcor Pty Ltd v Queensland [2014] QSC 224

Supreme Court of Queensland

Dalton J

Negligence - fire in plaintiffs' chemical factory - water used by fire brigade to douse fire became mixed with chemicals and soaked onto plaintiffs' land contaminating it - cost of remediation accepted to be more than \$9 million which was many times more than value of land - plaintiffs sued State in negligence for acts and omissions of fire brigade - plaintiffs' property insurers had paid plaintiffs full amount for which they were insured but refused to pay on policy in name of company which ran business of factory - plaintiffs sued insurance brokers who had arranged liability insurance for company for pure economic loss - held: State owed duty to plaintiffs to take reasonable care not to damage property when acting to combat fire and hazardous materials emergency on plaintiffs' land - fire brigade breached its duty to plaintiffs in applying large amounts of water to certain areas of the land - application of water fell within s129(1) *Fire and Rescue Service Act 1990* (Qld) Act with consequence fire brigade had immunity - brokers owed no duty of care to plaintiffs - plaintiffs' alternative claims against brokers under s912A(1)(a) *Corporations Act 2001* (Cth) and s12ED(1)(a) *Australian Securities and Investments Commission Act 2001* (Cth) also failed - judgment for defendants.

[Hamcor Pty Ltd](#)



Love and Friendship

Emily Bronte

Love is like the wild rose-briar,
Friendship like the holly-tree-
The holly is dark when the rose-briar blooms
But which will bloom most constantly?

The wild rose-briar is sweet in spring,
Its summer blossoms scent the air;
Yet wait till winter comes again
And who will call the wild-briar fair?

Then scorn the silly rose-wreath now
And deck thee with the holly's sheen,
That when December blights thy brow
He still may leave thy garland green.

[Emily Bronte](#)

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