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

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Executive Summary (1 minute read)

Virtu Fast Ferries Ltd v The Ship "Cape Leveque" (FCAFC) - admiralty - vessel was not a 'ship' under *Admiralty Act 1988* (Cth) - writ 'in rem' against alleged surrogate ship dismissed

Minister for Resources and Energy v Gold and Copper Resources Pty Ltd (NSWCA) - administrative law - renewal of mining exploration licence - abuse of process - Minister not required to provide respondent with copy of decision and statement of reasons - appeal allowed

Civil & Allied Technical Construction Pty Ltd v A1 Quality Concrete Tanks Pty Ltd (VSCA) - contract - binding agreement for construction of tanks - appeal dismissed

D'Aquino (as trustee of the D'Aquino Endowment Trust) v Trovatiello (VSCA) - summary judgment - limitation of actions - open to applicants to plead claim in nuisance - appeal allowed

Fitzgerald v CBL Insurance Ltd (No. 2) (VSC) - costs - interest on judgment sum - success on most but not all issues - departure from general rule

Wolverson v Todman; Wolverson v Lisle & Hooper (QCA) - limitation of actions - medical negligence - refusal to extend limitation period in two proceedings - appeal allowed in respect of one proceeding

Baguley v Lifestyle Homes Mackay Pty Ltd (QCA) - damages - breach of contract for sale of property - loss of bargain - extension of time to appeal refused

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Summaries With Link (Five Minute Read)

Virtu Fast Ferries Ltd v The Ship "Cape Leveque" [2015] FCAFC 58

Full Court of the Federal Court of Australia

Allsop CJ, Mansfield & McKerracher JJ

Admiralty - appellant owned ship (Jean de la Vallette) built for it by second respondent constructor (Austal) - appellant filed writ 'in rem' against ship (Cape Leveque) under construction at Austal's shipyard - Cape Leveque was said to be surrogate for Jean de la Vallette - appellant's primary claim was general maritime claim under s4(3)(n) *Admiralty Act 1988* (Cth) (the Act) in respect of construction of Jean de la Vallette against Austal - appellant challenged conclusion of primary judge that at time of issue of writ Commonwealth owned Cape Leveque for purposes of s19(b) and Austal was not owner - appellant also challenged conclusion ship was a government ship for the purposes of s8(2) - whether Cape Leveque properly sued as surrogate ship - held: allegations concerned design and construction of a vessel, during which period vessel was not a 'ship' for purposes of definition of 'ship' in s3 or for purposes of s19 - appellant had no reasonable prospects of success of making out assertions relevant to s19 - conclusion sufficient to dispose of appeal - appeal dismissed.

[Virtu](#)

Minister for Resources and Energy v Gold and Copper Resources Pty Ltd [2015] NSWCA 113

Court of Appeal of New South Wales

Ward JA, Bergin CJ in Eq & Sackville AJA

Administrative law - first respondent challenged validity of Minister's decision to renew mining exploration licence - primary Judge struck out paragraphs in summons which contained only ground for challenging validity of renewal due to issue estoppel or *Anshun* estoppel arising out of previous proceedings - Minister appealed against primary judge's order that Minister provide first respondent with copy of 2014 renewal decision and statement of reasons for making decision pursuant to r59 *Uniform Civil Procedure Rules 2005* (NSW) - proper construction of rr13.4(1), 59.9(1) & 59.9 - held: not proper exercise of discretion to order decision-maker to provide statement of reasons where only ground for relief relied on was abuse of process and no application made or foreshadowed to amend summons - primary judge erred in declining to dismiss proceedings as they were abuse of process and first respondent did not make or foreshadow application to amend summons - appeal allowed.

[Minister](#)

Civil & Allied Technical Construction Pty Ltd v A1 Quality Concrete Tanks Pty Ltd [2015] VSCA 75

Court of Appeal of Victoria

Santamaria, Kyrou & Ferguson JJA

Contract - appellant was one of two head contractors for upgrade of waste water treatment plant - works entailed construction of two concrete clarifier tanks - works were to be subcontracted -

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appellant appealed against decision in which primary judge found there was binding subcontract between parties arising out of a counter-offer contained in email and subsequent conduct of parties - appellant contended there was no intention to enter into contractual relations - appellant also contended there was insufficient evidence to conclude that respondent, by its conduct, accepted counteroffer and that acceptance was communicated to appellant - held: no error in primary judge's conclusion that there was binding agreement for construction of the tanks - appeal dismissed.

[Civil](#)

D'Aquino (as trustee of the D'Aquino Endowment Trust) v Trovatiello [2015] VSCA 78

Court of Appeal of Victoria

Warren CJ; Ashley & McLeish JJA

Summary judgment - nuisance - limitation of actions - dispute concerning concrete slab cast on land which encroached over boundary of adjoining land - owners of adjoining land observed damage to factory situated on land close to common boundary - owners claimed damages against defendants for trespass, nuisance and negligence - County Court summarily dismissed proceeding on ground applicants had no real prospects of success by reason of *Limitation of Actions Act 1958* - no reasonable prospect - s63 *Civil Procedure Act 2010* - held: respondents did not discharge onus to establish applicants had no real prospect of success of making out cause of action in nuisance - legally open to applicants to plead claim in nuisance and seek to recover damages - appeal allowed

[D'Aquino](#)

Fitzgerald v CBL Insurance Ltd (No. 2) [2015] VSC 176

Supreme Court of Victoria

Sloss J

Costs - plaintiffs as trustees for former employees of company (Huon) claimed against defendant company (CBL) for indemnity under insurance policy issued by CBL in favour of 'Transferring Employees' of three businesses - Court concluded trustees proved fact of damage to which policy responded - parties agreed on judgment sum payable - trustees sought interest on judgment sum from date of issue of proceedings to date of judgment calculated in accordance with s57 *Insurance Contracts Act 1984* (Cth), that they pay defendant's costs thrown away of application to amend statement of claim, and that otherwise defendant pay their costs on standard basis - whether plaintiffs' conduct in proceeding caused unnecessary delay and expense - date from which it was unreasonable for insurer to have withheld payment on claim - trustees' success on most but not all pleading issues - held: on and from 11/10/13 it was 'unreasonable' within meaning of s57 for CBL to withhold payment of agreed sum payable under policy - plaintiff entitled to interest under s57 - entitlement should be recognised by judgment - parties to re-calculate interest component applicable to judgment sum due by using 11/10/13 as start date - in special circumstances of case appropriate to depart from usual rule - amount of costs trustees entitled to recover from CBL reduced.

[Fitzgerald](#)

Wolverson v Todman; Wolverson v Lisle & Hooper [2015] QCA 74

Court of Appeal of Queensland

Holmes & Gotterson JJA; McMeekin J

Limitation of actions - medical negligence - Court dismissed two applications for extension of limitation period under s31(2) *Limitation of Actions Act 1974* in separate personal injury proceedings with same applicant/appellant - each proceeding commenced after limitation period applicable for it had expired - causal link - means of knowledge - compliance with consent orders - prejudice - held: learned primary judge erred in concluding applicant failed establish right of action at level required by test in *Wood v Glaxo Australia Pty Ltd* [1994] 2 Qd R 431 - one proceeding could not succeed due to failure on means of knowledge issue - in other proceeding, leave to appeal granted and appeal allowed.

[Wolverson](#)

Baguley v Lifestyle Homes Mackay Pty Ltd [2015] QCA 75

Court of Appeal of Queensland

M McMurdo P, Gotterson JA & Douglas J

Damages - applicants sold property to respondent under written contract - respondent failed to settle on contractual date for settlement - applicants sought extension of time and leave to appeal against loss of bargain component of damages and primary judge's adoption of value of property at date of breach as relevant value for quantification of loss - adequacy of explanation for delay - merits of proposed appeal - application of general rule from *Johnson v Perez* in calculation of damages - s118(3) *District Court of Queensland Act 1967* (Qld) - held: challenge to finding that there was no National Rental Affordability Scheme approval for property failed - contention that issue whether or not NRAS approval attached to property did not properly arise for determination in litigation failed - no error in adoption of date for assessment of damages - application for extension of time refused.

[Baguley](#)

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