



Friday, 6 February 2015

Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Cassegrain v Gerard Cassegrain & Co Pty Ltd (HCA) - real property - Torrens system land - indefeasibility of title - fraud - agency - appeal allowed in part

Russo v Russo (NSWSC) - equity - joint venture between parties established - account in common form ordered

Carlyon v Town & Country Pubs No. 2 Pty Ltd T/A Queens Hotel Gladstone(QSC) - negligence - hotel patron injured in fall downstairs when removed from hotel - hotel owners not liable

Gallagher v Destiny Publishing Pty Ltd (WASC) - contempt of court by defendant in defamation action not established

A, DC v Prince Alfred College Incorporated (SASC) - negligence - claim against college for sexual abuse by housemaster - claim dismissed

Fisher v Tony Innaimo Transport Pty Ltd (ACTSC) - workers compensation - worker did not have single state or territory connection - matter remitted

Summaries with links (5 minute read)

Cassegrain v Gerard Cassegrain & Co Pty Ltd [2015] HCA 2

High Court of Australia

French CJ; Hayne, Bell, Gageler & Keane

Real property - Torrens system land - fraud - agency - respondent company transferred land to appellant wife and husband as joint tenants - husband was company's director - consideration to be satisfied by debiting husband's loan account with company - husband knew company did not owe money in loan account - debit not recorded in company's books until after transfer registered - husband subsequently transferred land to wife for nominal consideration - company sought to recover title from wife as sole registered proprietor - ss42(1), 100(1), 118(1) *Real Property Act 1900* (NSW) - appellant's title as joint proprietor with husband not defeasible on account of husband's fraud - husband not appellant's agent - registration as joint tenant did not mean that appellant's title defeasible - appellant not a bona fide purchaser for value of husband's interest in land - company could recover interest which appellant derived from husband, which was an interest as tenant in common as to half - appeal allowed in part.

[Cassegrain](#)

Russo v Russo [2015] NSWSC 17

Supreme Court of New South Wales

Slattery J

Equity - joint venture - plaintiffs made claim for account in common form in relation to alleged joint venture in land development - developers resisted claim on basis no relationship existed between them - alternatively defendants claimed that that if there were a joint venture they had already given an account to plaintiffs by provision of balance sheets and profit and loss statements - held: joint venture made between natural persons who were parties to proceedings, not their companies - Court did not uphold defendant's defences that accounts had already been provided, their limitation defence, or other discretionary arguments - defendants ordered to provide joint venture accounts to plaintiffs - account in common form ordered.

[Russo](#)

Carlyon v Town & Country Pubs No. 2 Pty Ltd T/A Queens Hotel Gladstone [2015] QSC 13

Supreme Court of Queensland

A Lyons J

Negligence - plaintiff injured as result of a fall down front steps of hotel as he was being evicted by security staff - plaintiff sued hotel owners on basis injuries were result of assaults and negligence of the security staff during eviction, and failure of defendants to provide a safe system of security - s 92(1)(a) *Evidence Act 1977* (Qld) - *Liability Regulation 2003* (Qld) (Reprint 1A) - ss165(1) 165(2) & 165(3) *Liquor Act 1992* (Qld) - held: Court not satisfied failures, which may or may not have

existed in hotel's security policies in relation to use of restraints, caused or contributed to fall - most likely cause of fall was plaintiff's resistance to being removed - claim dismissed.

[Carlyon](#)

Gallagher v Destiny Publishing Pty Ltd [2015] WASC 40

Supreme Court of Western Australia

K Martin J

Contempt - defamation action - plaintiffs sought committal of second defendant for contempt of court pursuant to O55 r4 *Rules of the Supreme Court 1971 (WA)* - two ex parte emails sent to Associate with alleged deliberate intent that they be read by judge and were contemptuous by interfering with the administration of justice - held: plaintiffs failed to establish beyond reasonable doubt the contempt offences - plaintiffs established some highly unsatisfactory conduct on second defendant's part.

[Gallagher](#)

A, DC v Prince Alfred College Incorporated [2015] SASC 12

Supreme Court of South Australia

Vanstone J

Negligence - limitations - plaintiff claimed that in 1962 housemaster sexually assaulted him at school and elsewhere "in the course of his employment" at college - plaintiff claimed college liable for injury, loss and damage, either because it owed him a non-delegable duty of care, or because it breached its duty of care in employing housemaster and failing to have adequate systems in place to protect him, or because it was vicariously liable for housemaster's criminal conduct - held: plaintiff failed to prove college was negligent - Court unable to make finding of negligence in absence of evidence from witnesses who had direct responsibility for boarders and knowledge of relevant circumstances and events - Court unable to find that what college did to address situation once discovered was other than in accordance with the prevailing standards of the time - it was not proved that the sexual abuse occurred within the course of housemaker's employment so as to make the college vicariously liable - Court would have declined to extend time to institute proceedings because of actual prejudice suffered by college from lapse of time since relevant events - claim dismissed.

[A, DC](#)

Fisher v Tony Innaimo Transport Pty Ltd [2015] ACTSC 1

Supreme Court of the Australian Capital Territory

Burns J

Workers compensation - Magistrate determined that appellant worker's territory or state of connection for purposes of worker's compensation was NSW - worker contended that the state or territory of connection was the ACT - workers compensation entitlements in NSW were less generous than in the ACT - held: Magistrate erred in determining that there was a single territory



or state, being NSW, where worker was usually based for purposes of employment - worker worked out of two depots, one in ACT, the other in NSW - neither could be said to be place where worker was usually based for the purposes of employment - matter remitted to further consider test under s36B *Workers Compensation Act 1951* (ACT).

[Fisher](#)

Willow Poem

by William Carlos Williams

It is a willow when summer is over,
a willow by the river
from which no leaf has fallen nor
bitten by the sun
turned orange or crimson.
The leaves cling and grow paler,
swing and grow paler
over the swirling waters of the river
as if loath to let go,
they are so cool, so drunk with
the swirl of the wind and of the river-
oblivious to winter,
the last to let go and fall
into the water and on the ground.

[William Carlos Williams](#)

[Click Here to access our Benchmark Search Engine](#)