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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon (HCA) - negligence - mentally ill man killed friend after discharge from hospital - health authority not liable for relatives' psychiatric injury

J & J Computing Services Pty Ltd v AKT Evolution Pty Ltd (NSWSC) - shareholders agreement - injunction restraining parties from selling shares to third party refused

Vinton v Sim (VSC) - judicial review - determination of medical panel made outside time limit resulting in loss of jurisdiction - determination set aside by consent

McCready v Bendigo Health (VSC) - medical negligence - proper venue - proceedings transferred from Melbourne to Bendigo for hearing

Summaries with links (5 minute read)

Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon [2014] HCA 44

High Court of Australia

French CJ; Hayne, Bell, Gageler & Keane JJ

Negligence - mentally ill man from Victoria involuntarily detained in hospital under *Mental Health Act 1990* (NSW) - after doctor reviewed medical history, spoke with mentally ill man, friend and mother in Victoria, it was agreed mentally ill man would be kept in hospital overnight and that friend would drive him back to mother's home in Victoria where he would receive continuing medical treatment - in course of journey, mentally ill man killed friend - relatives sued health authority in negligence for psychiatric injury - NSW District Court found there was no breach of duty of care and entered judgment for the health authority - Court of Appeal set aside decision - held: hospital and doctor did not owe alleged common law duty of care to friend's relatives - Mental Health Act prohibited detention, or continuation of detention, of mentally ill person unless medical superintendent of hospital formed opinion that no other less restrictive care was appropriate and reasonably available - performance of that statutory obligation would not be consistent with duty of care alleged by relatives of friend - appeals allowed.

[Hunter and New England Local Health District](#)

J & J Computing Services Pty Ltd v AKT Evolution Pty Ltd [2014] NSWSC 1597

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff held 3 of 100 issued shares in first defendant company - other 97 shares held by second, fourth and fifth defendants - plaintiff claimed it was entitled to six shares in company - plaintiff sought interlocutory relief to restrain fourth and fifth defendants from selling their shares in company to a third party - proper construction of shareholders agreement made between parties - held: fourth and fifth defendants had followed procedure contemplated by clause of shareholder's agreement - fourth and fifth defendants had given plaintiff a right of first refusal to purchase their shares in company - plaintiff had not taken up that right - fourth and fifth defendants free to sell their shares provided they complied with remaining requirements of agreement - injunctive relief refused.

[J](#)

Vinton v Sim [2014] VSC 568

Supreme Court of Victoria

Mukhtar AsJ

Judicial review - plaintiff child diagnosed with autism spectrum disorder in 2003 - plaintiff ingested lead by eating paint peelings on primary school building - plaintiff diagnosed with lead poisoning

and successfully completed chelation therapy in 2008 to reduce blood lead levels - medical panel made determination under s28LZG *Wrongs Act* that degree of whole person impairment did not satisfy threshold level - plaintiff sought to quash decision on basis of denial of natural justice - plaintiff contended findings critical to opinion were made without giving his parents opportunity to comment or provide information - plaintiff also claimed panel failed to comply with 30 day time limit under s28LZG(3) - held: panel's determination made outside time - effluxion of time limit resulted in panel losing its jurisdiction - Court made order by consent of all parties that determination of medical panel be set aside and remitted to a differently constituted panel for determination.

[Vinton](#)

McCready v Bendigo Health [2014] VSC 565

Supreme Court of Victoria

J Forrest J

Medical negligence - transfer of proceedings - proper venue - plaintiff instituted proceedings in Melbourne Registry of Supreme Court against defendant Bendigo Health relating to alleged negligent treatment at hospital - plaintiff lived in suburb north-east of Bendigo - hospital located in Bendigo. and was operated by defendant - Court gave plaintiff's lawyers opportunity to make submissions as to why proceeding should not be transferred from Melbourne Registry to Bendigo Registry for hearing in Bendigo - plaintiff's lawyers said that it was inconvenient and costly for themselves, counsel, and expert witnesses to prosecute case in Bendigo and asked that trial remain listed in Melbourne - defendant sought that trial be held in Bendigo - held: case should be tried at Bendigo court - claim arose in Bendigo and there would be significant inconvenience to plaintiff and defendant's medical witnesses if case remained in Melbourne - Court not satisfied that any real inconvenience or additional cost would be caused to the expert witnesses to be called by plaintiff.

[McCready](#)

Autumn

By John Clare

1

I love the fitfull gusts that shakes
The casement all the day
And from the mossy elm tree takes
The faded leaf away
Twirling it by the window-pane
With thousand others down the lane



2

I love to see the shaking twig
Dance till the shut of eve
The sparrow on the cottage rig
Whose chirp would make believe

That spring was just now flirting by
In summers lap with flowers to lie

3

I love to see the cottage smoke
Curl upwards through the naked trees
The pigeons nestled round the coat
On dull November days like these
The cock upon the dung-hill crowing
The mill sails on the heath agoing

4

The feather from the ravens breast
Falls on the stubble lea
The acorns near the old crows nest
Fall pattering down the tree
The grunting pigs that wait for all
Scramble and hurry where they fall

[John Clare](#)

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