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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)

Coventry and others (Respondents) v Lawrence and another (Appellants) (UKSC) - recovery of costs in civil litigation - human rights - *Access to Justice Act 1999* (AJA) was compatible with European Convention on Human Rights

Insurance Australia Ltd v O'Shannessy (No 2) (NSWSC) - costs - motor accident compensation - rejection of Calderbank offer not unreasonable - indemnity costs refused

Dibbs v Emirates (NSWSC) - carriers' liability - passenger did not establish accident occurred during flight- Court did not accept passenger sustained injury - amended statement of claim dismissed

Kazal v Fairfax Media Publications Pty Ltd (NSWSC) - pleadings - defamation - objections to imputations - 'corruptly' - certain paragraphs allowed - other paragraphs struck out with leave to plead

Daniels v State of New South Wales (No 6) (NSWSC) - defamation - defence in s30(1)(c) *Defamation Act 2005* (NSW) - publication of reasons for conclusion reached regarding questions for the jury

Bowesco Pty Ltd v Westpoint Management Ltd (WASCA) - third party lent funds to complete development - no subrogation to rights of primary lender - appeal dismissed

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Summaries With Link (Five Minute Read)

Coventry and others (Respondents) v Lawrence and another (Appellants) [2015] UKSC 50

Supreme Court of the United Kingdom

Lord Neuberger, President; Lady Hale, Deputy President; Lord Mance, Lord Clarke, Lord Dyson, Lord Sumption & Lord Carnwath

Nuisance - costs - human rights - insurance - proceedings concerned claim in nuisance by appellants who were owners of bungalow against operators of nearby stadium - judgment addressed outstanding issue whether system for recovery of costs in civil litigation in England and Wales under *Access to Justice Act 1999* (AJA) was compatible with European Convention on Human Rights - lawyers had acted for appellants under conditional fee agreement (CFA) - appellants were successful at trial - trial judge ordered respondents to pay 60% of appellants' costs - because of CFA respondents liable to pay 60% of success fee to appellant's lawyers, and After the Event (ATE) insurance premium - respondents challenged liability to pay success fee and ATE premium on basis it would infringe rights under Convention - Article 6 - Article 1 of the first protocol - held (by majority): AJA regime was compatible with the European Convention on Human Rights.

[Coventry](#)

Insurance Australia Ltd v O'Shannessy (No 2) [2015] NSWSC 1328

Supreme Court of New South Wales

Beech-Jones J

Costs - plaintiff was insurer of vehicle which injured first defendant - Court dismissed plaintiff's application for judicial review of assessment under s94 *Motor Accidents Compensation Act 1999* (NSW) of damages payable to first defendant - first defendant sought indemnity costs on basis of Calderbank letter - plaintiff contended offer did not represent a "genuine" offer but was an "invitation to surrender" - held: Court satisfied offer was a genuine offer - offer involved avoidance of relatively small exposure to potential liability, and also foregoing of substantial grounds to challenge substantial judgment - first defendant did not discharge onus of persuasion it was unreasonable of plaintiff to reject offer - application dismissed.

[Insurance](#)

Dibbs v Emirates [2015] NSWSC 1332

Supreme Court of New South Wales

Wilson J

Carriers' liability - plaintiff was passenger on international flight operated by defendant - not disputed cup of hot tea was spilled onto plaintiff's leg - plaintiff claimed this caused her to jump up and twist sharply with consequence she injured back leaving her with ongoing disability - plaintiff sought damages from defendant - whether there was an "accident" to which "bodily injury" was attributable - if there was accident under Article 17(1) of the Montreal Convention, whether back injury was consequence of accident - held: threshold issue was whether evidence established there was an accident which caused bodily injury giving rise to defendant's liability -

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plaintiff failed to discharge evidentiary burden to establish that an accident occurred - Court did not accept plaintiff sustained injury or even aggravated already existing injury - amended statement of claim dismissed - verdict for defendant.

[Dibbs](#)

Kazal v Fairfax Media Publications Pty Ltd [2015] NSWSC 1336

Supreme Court of New South Wales

Adamson J

Pleadings - defamation - claim arising out of publications by defendants - plaintiff sought to amend statement of claim - defendants submitted word "corruptly" in pleaded imputation was inherently ambiguous and paragraph was accordingly bad in form - defendants also objected to other imputations - held: Court satisfied proposed further amendment was sufficient to cure objection and make plain what was being alleged by word "corruptly" - certain paragraphs allowed - other paragraphs struck out with leave to replead.

[Kazal](#)

Daniels v State of New South Wales (No 6) [2015] NSWSC 1074

Supreme Court of New South Wales

McCallum J

Defamation - action arising out of publication of report as to plaintiff's teaching prepared by principal - proceedings resolved by agreement - jury was discharged. - judgment addressed issue as to whether for purpose of statutory qualified privilege defence, element of defence stated in s30(1)(c) *Defamation Act 2005* (NSW) should be determined by jury - held: Court concluded that if there was dispute for purpose of defence under s30 as to third element of defence, namely whether defendants' conduct in publishing matter complained of was reasonable in circumstances, then that would be a question for the jury in accordance with s22(2).

[Daniels](#)

Bowesco Pty Ltd v Westpoint Management Ltd [2015] WASCA 184

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Mortgage - guarantee - Suncorp lent funds to Lanepoint to purchase and develop land - loan secured by mortgage and guaranteed by Bowesco - Westpoint lent additional funds to Lanepoint secured by second ranking charge - ASIC interim stop order prevented Westpoint from providing further funds - Bowesco lent Lanepoint \$550,000 to enable it to complete development - Suncorp appointed receivers to Lanepoint - development completed and units sold - Lanepoint's debt to Suncorp paid - surplus funds from sale of units paid to Westpoint - Bowesco claimed Westpoint held \$550,000 of excess funds on constructive trust for it because it was subrogated to Suncorp's rights, which required Suncorp to account to it from surplus funds - Bowesco alleged Westpoint had accepted surplus funds with knowledge of Bowesco's rights - trial judge held Bowesco paid \$550,000 to Lanepoint to enable it to pay off unsecured creditors - money was used for that purpose - payment did not reduce Lanepoint's debt to Suncorp - no basis on



which Bowesco could be subrogated to Suncorp's rights - Westpoint did not receive surplus funds with knowledge of failure by Suncorp to account in breach of fiduciary duty - trial judge dismissed claim - construction of guarantee - right to complete development - construction of Suncorp letter - subrogation - held: certain grounds of appeal upheld - Bowesco failed to identify any error capable of altering outcome - appeal dismissed.

[Bowesco](#)

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