

Benchmark

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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)

Sanchez-Sidiropoulos v Canavan (NSWSC) - negligence - student injured in fall during game of tag - school not liable - claims dismissed

Greer v Pickering (NSWSC) - professional negligence - claim against solicitor arising from preparation of contract for purchase of property and residential agreement - negligence not established - claim dismissed

King v Allianz Australia Insurance Ltd (QCA) - costs - appellant successful on respondent's appeal for review of costs assessment - appellant refused indemnity costs

Spencer v Burton (QCA) - costs - respondent to pay successful appellant's costs of and incidental to appeal

Anwar v Mondello Farms Pty Ltd (SASCFC) - worker working for respondent under labour hire agreement - worker injured hand and later developed schizophrenia - respondent liable for loss arising from schizophrenia as well as hand injury - appeal allowed

Pramoko v Grande Enterprises Ltd (WASCA) - trade practices - contract - misleading and deceptive conduct - reasonable grounds for making representation not established - appeal dismissed

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Summaries With Link (Five Minute Read)

Sanchez-Sidiropoulos v Canavan [2015] NSWSC 1139

Supreme Court of New South Wales

Schmidt J

Negligence - plaintiff attended defendant's school - plaintiff hurt hand and hip while playing game of tag during PE class when she collided with another child - plaintiff sued school in negligence - *Civil Liability Act 2002 (NSW)* - *Limitation Act 1969 (NSW)* held: plaintiff failed to establish her fall was result of school's negligence - school achieved required balance between obligation to encourage students' participation and taking reasonable care for their safety - plaintiff did not establish condition she now suffered from was caused by fall - claims dismissed - judgment for defendant.

[Sanchez](#)

Greer v Pickering [2015] NSWSC 1131

Supreme Court of New South Wales

Adamson J

Professional negligence - solicitors' duties - plaintiff claimed damages against second defendant solicitor for breach of retainer and negligence arising from preparation of contract for purchase of property, and residential tenancy agreement in respect of property - plaintiff claimed damages for legal costs, repair costs and loss of rental income - refusal of tenant to vacate - operation of methylamphetamine laboratory on property - alleged failure to include express term - Pt 1, Pt 4, ss 5A, 5B, 5C, 5D, 5E, 5R, 5S, 34 & 35 *Civil Liability Act 2002 (NSW)* - ss66W, 74, 84, 118 &129 *Conveyancing Act 1919 (NSW)* - Pt 4, s2A *Landlord and Tenant Act 1899 (NSW)* - *Criminal Assets Recovery Act 1990 (NSW)* - s8 *Residential Tenancy Act 2010 (NSW)* - held: plaintiff failed to establish breach of contract or duty of care - plaintiff failed to establish factual causation or scope of liability within meaning of s5D Civil Liability Act - even if Court had found solicitor breached contract or was negligent in failing to include clause in contract for sale, Court would not have awarded claimed damages because if she had asserted her rights expeditiously she would not have suffered losses claimed - judgment for solicitor.

[Greer](#)

King v Allianz Australia Insurance Ltd [2015] QCA 146

Court of Appeal of Queensland

Philippides JA, Mullins & Burns JJ

Costs - appellant succeeded on appeal against primary judge's decision on respondent's application for review of a costs assessment - appellant sought costs on indemnity basis due to respondent's conduct - appellant also contended that unless indemnity costs awarded his success would be diminished in financial outcome - held: appellant's general assertion about manner in which respondent dealt with appellant's claim for damages and respondent's general assertion about quantum of appellant's costs in relation to quantum of appellant's damages not of direct relevance to costs of appeal - appeal was ordinary litigation where costs

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should follow the event - circumstances overall did not favour awarding costs of appeal on indemnity basis - no order made as to costs.

[King](#)

Spencer v Burton [2015] QCA 145

Court of Appeal of Queensland

Holmes & Gotterson JJA; A Lyons J

Costs - Court allowed appellant's appeal - appellant submitted that as successful party they were entitled to costs on standard basis under rr681 & 766(1)(d) *Uniform Civil Procedure Rules* 1999 (Qld) - appellant sought that respondent pay costs of and incidental to appeal - respondent did not oppose to pay appellant's costs of appeal and notice of contention but argued that order be limited to amount of indemnity prescribed in s14(1) *Appeal Costs Fund Regulation 2010* (Qld) - held: Court satisfied usual rule in awarding costs to successful party in litigation should apply - respondent should pay appellant's costs of appeal on standard basis - respondent did not establish sufficient basis for limiting respondent's obligation to pay costs to amount of indemnity - orders made.

[Spencer](#)

Anwar v Mondello Farms Pty Ltd [2015] SASCFC 109

Full Court of the Supreme Court of South Australia

Kourakis CJ, Gray & Stanley JJ

Work injury damages - appellant sued for hand injury suffered during work as process line stacker in potato packing plant operated by respondent - appellant working at respondent's plant pursuant to labour-hire agreement - trial judge found injury to be painful but minor - trial judge found that following injury appellant developed stress and anxiety - appellant diagnosed with schizophrenia - trial judge found causal relationship between hand injury and schizophrenia - trial judge found respondent liable in negligence and breach of statutory duty for hand injury but that respondent did not owe duty to take care not to cause appellant mental harm pursuant to s33 *Civil Liability Act 1936* (SA) - trial judge found appellant entitled to damages only for injury to hand - held: trial judge's findings on causation not interfered with - respondent did owe duty to appellant to take care not to cause him mental harm - respondent liable for losses arising from schizophrenia - reduction in damages for future loss by 30% was manifestly inadequate - appeal allowed - damages increased.

[Anwar](#)

Pramoko v Grande Enterprises Ltd [2015] WASCA 157

Court of Appeal of Western Australia

Martin CJ, Newnes JA & Beech J

Trade practices - contract - appellant appealed from decision in which he was found to have engaged in misleading and deceptive conduct - appellant challenged trial judge's conclusion that he failed to establish that he had reasonable grounds for making representation at the time it was made - representation had been found to be implied from provision in a contract executed by parties - *Corporations Act 2001* (Cth) - s9 *Fair Trading Act 1987* (WA) - *Supreme Court Act*

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1935 (WA) - held: appellant failed to establish reasonable grounds for making representation - appeal dismissed.

[Pramoko](#)

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