

Benchmark

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Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

McIntyre v Fish (VSC) - judicial review - adequate reasons for opinion of medical panel - judicial review refused

Wong v Maroubra Automotive Refinishers Pty Ltd; Ayres v Maroubra Automotive Refinishers Pty Ltd (No 2) (NSWSC) - detinue - repairer not entitled to withhold possession of cars until payment of towing and storage fees - damages

122 Pitt Street Pty Ltd ACN 104 825 961 v Universal 1919 Pty Ltd (NSWSC) - landlord and tenant - independent valuer complied with lease - parties bound by valuation

Idameneo (No 123) Pty Ltd v Suszko (SASC) - pleadings - dismissal of application to amend defence and plead set-off and counterclaim - fresh evidence not admitted - recall of order refused

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Summaries with links (5 Minute Read)

McIntyre v Fish [2015] VSC 82

Supreme Court of Victoria

Zammit J

Judicial review - plaintiff sought review of opinion of medical panel concerning injury suffered during course of her employment - medical panel found plaintiff suffering from condition not relevant to claimed injury and that plaintiff had no ability to return to preinjury employment - plaintiff sought to quash opinion on basis of inadequate reasons - ss65 & 68 *Accident Compensation Act 1985* (Vic) - held: reasons adequately demonstrated Panel's path of reasoning - Panel not required to embark on explanation of which medical opinions it agreed or disagreed with - judicial review refused.

[McIntyre](#)

Wong v Maroubra Automotive Refinishers Pty Ltd; Ayres v Maroubra Automotive Refinishers Pty Ltd (No 2) [2015] NSWSC 222

Supreme Court of New South Wales

McCallum J

Detinue - two separate proceedings concerning a repairer's entitlement to withhold possession of cars until payment by owner or NRMA of towing and storage fees - each plaintiff was owner of a car insured by NRMA - each car damaged in accident - in each case tow truck driver nominated the premises of particular repairer as a destination to which car could be towed - owners consented to course and did not request repairer to make repairs - plaintiffs contended repairer wrongly refused to deliver up possession of the cars upon demand and was liable in detinue - repairer sought payment of disputed towing and storage fees from each plaintiff or NRMA - s53 *Fair Trading Act 1987* (NSW) - s62 *Tow Truck Industry Act 1998* (NSW) - held: no contract of bailment for reward or work and labour came into existence - defendant's reliance on Motor Vehicle Insurance and Repair Industry Code of Conduct misconceived - defence to claim in detinue failed - cross-claim dismissed - amounts paid into Court released to plaintiff.

[Wong](#)

122 Pitt Street Pty Ltd ACN 104 825 961 v Universal 1919 Pty Ltd [2015] NSWSC 234

Supreme Court of New South Wales

Kunc J

Landlord and tenant - plaintiff lessor leased part of building to defendant lessee - lease was term of 10 years with option for further 10 years - lessee exercised option - lease provided for market review of base rent upon exercise of option to renew - lessor proposed new base rent - lessee engaged rent dispute mechanism under lease resulting in appointment of independent valuer - valuer determined market rent approximately \$500,000 less than figure proposed by lessor - if valuer complied with lease by disregarding value of fitout parties accepted they were bound by determination - held: valuer complied with lease - valuation binding on parties - summons and cross-summons dismissed

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[122Pitt](#)

Idameneo (No 123) Pty Ltd v Suszko [2015] SASC 39

Supreme Court of South Australia

Stanley J

Pleadings - defendant sought recall of order dismissing application to amend defence and to plead set-off and counterclaim in reliance on "fresh" evidence - Court's power to recall order previously made - test for reception of fresh evidence - held: Court did not consider evidence would probably have had important influence on outcome of application - fresh evidence not admitted - application to recall order refused.

[Idameneo](#)

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