



Monday, 22 December 2014

## Insurance

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (1 minute read)

**Bayon v Bayon** (NSWCA) - motor accidents compensation - passenger accidentally shot on hunting expedition - driver not at fault - insurance policy did not respond

**Howley v Principal Healthcare Finance Pty Ltd** (NSWCA) - workers compensation - refusal of extension of time to bring proceedings - appeal allowed

**Stankovic v Magee** (NSWCA) - solicitor's fees - arguable defence to claim - default judgment set aside

**Ausbal Pty Ltd v Grandsea Holdings Pty Ltd** (VSC) - real property - easements - proposed works would substantially interfere with easement rights - declaration

**Scott v State of Queensland** (QSC) - limitation of actions - slip and fall at hospital - extension of time to commence action refused

## Summaries with links (5 minute read)

### **Bayon v Bayon [2014] NSWCA 434**

Court of Appeal of New South Wales

Basten & Meagher JJA; Adamson J

Motor accidents compensation - appellant claimed damages for injuries sustained when he was accidentally shot in course of hunting expedition while he was passenger in front cabin of stationary utility - driver was insured under third party policy under *Motor Accidents Compensation Act 1999* (NSW) (the Act) as the owner and driver - claim run on basis insurer liable under policy - trial judge dismissed claim on basis injury not caused by any fault of driver to which the statutory policy responded - ss3B, 5B, 5C, 5D, 5E *Civil Liability Act 2002* (NSW) - held: appellant did not establish injury was caused by the fault of the driver within s3A(1) - statutory policy did not respond - appeal dismissed.

[Bayon](#)

### **Howley v Principal Healthcare Finance Pty Ltd [2014] NSWCA 447**

Court of Appeal of New South Wales

McColl, Meagher & Barrett JJA

Workers compensation - applicant sought leave to appeal from refusal of application for leave pursuant to s151D *Workers Compensation Act 1987* (NSW) to commence proceedings against employer more than three years after being injured in course of employment - justice of the case - adequacy of explanation - prejudice - s75 *Evidence Act 1995* (NSW) - reliance on solicitor's explanation for delay on basis of explanation and belief - held: applicant established primary judge's discretion miscarried - explanation of delay sufficient - extension of time would not result in significant prejudice to respondent - appeal allowed.

[Howley](#)

### **Stankovic v Magee [2014] NSWCA 439**

Court of Appeal of New South Wales

Basten, Macfarlan & Gleeson JJA

Default judgment - solicitor obtained default judgment for recovery of legal fees incurred in acting on appellant's behalf - appellant sought to set aside default judgment - held: evidence sufficient to identify arguable defence to claim for fees - evidence not manifestly untenable - contingency for payment had not been satisfied - agreement alleged by appellant was not in obvious conflict with costs agreement - no reason to regard proposed defence as otherwise than bona fide - appellant adduced sufficient evidence of arguable defence to claim which when coupled with accepted explanation for delay warranted default judgment being set aside.

[Stankovic](#)

**Ausbal Pty Ltd v Grandsea Holdings Pty Ltd [2014] VSC 625**

Supreme Court of Victoria

Ferguson JA

Real property - easements - estoppel - company owned medical clinic - company wanted to expand medical clinic and proposed to redevelop property - company obtained council planning permit and building permit for works - service station opposite clinic - service station and clinic separated by roadway which was on part of the land owned by clinic owner - owner of service station had easement rights in respect of roadway which it alleged would be infringed if proposed works completed - company accepted there was easement but claimed entitlement was limited to entry only - real substantial interference - estoppel - held: Court satisfied service station owner, operators, and those frequenting service station entitled to pass and repass by foot or vehicle by means of the carriageway - proposed works would substantially interfere with easement rights - service station not estopped from enforcing its rights - relief limited to declaration - Court not persuaded that, in absence of injunction, clinic owner would proceed with works - declaration.

[Ausbal Pty Ltd](#)**Scott v State of Queensland [2014] QSC 306**

Supreme Court of Queensland

A Wilson J

Limitation of actions - plaintiff alleged he was injured when he slipped and fell on an unsigned wet floor at hospital - plaintiff did not commence action for damages for injury before statutory limitation period of three years expired in 2011 - plaintiff claimed he was unaware of the extent of injury and that he had potentially actionable claim until he was provided with advice from neurosurgeon in 2013 - plaintiff sought extension of three year limitation period pursuant to s31 *Limitation of Actions Act 1974* (Qld) - held: plaintiff had continuing quite serious and recurring symptoms from time of his fall to degree that meant any reasonable person would have taken steps to prosecute action within limitation period - circumstances insufficient to attract discretion extended to those who failed to prosecute action in time without error or fault - application dismissed.

[Scott](#)



## **The Twelve Days of Christmas**

By Anonymous

The first day of Christmas,  
My true love sent to me  
A partridge in a pear tree.

The second day of Christmas,  
My true love sent to me  
Two turtle doves, and  
A partridge in a pear tree.

The third day of Christmas,  
My true love sent to me  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The fourth day of Christmas,  
My true love sent to me  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The fifth day of Christmas,  
My true love sent to me  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The sixth day of Christmas,  
My true love sent to me  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and



A partridge in a pear tree.

The seventh day of Christmas,  
My true love sent to me  
Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The eighth day of Christmas,  
My true love sent to me  
Eight maids a-milking,  
Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The ninth day of Christmas,  
My true love sent to me  
Nine drummers drumming,  
Eight maids a-milking,  
Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The tenth day of Christmas,  
My true love sent to me  
Ten pipers piping,  
Nine drummers drumming,  
Eight maids a-milking,



Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The eleventh day of Christmas  
My true love sent to me  
Eleven ladies dancing,  
Ten pipers piping,  
Nine drummers drumming,  
Eight maids a-milking,  
Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

The twelfth day of Christmas  
My true love sent to me  
Twelve fiddlers fiddling,  
Eleven ladies dancing,  
Ten pipers piping,  
Nine drummers drumming,  
Eight maids a-milking,  
Seven swans a-swimming,  
Six geese a-laying,  
Five gold rings,  
Four colly birds,  
Three French hens,  
Two turtle doves, and  
A partridge in a pear tree.

[The Twelve Days of Christmas](#)

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