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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)

McKenzie v Wood (NSWCA) - damages - motor vehicle accident - no appellable error in assessment of damages by primary judge

Morris v Redland City Council (QSC) - negligence - plaintiff injured in fall from cliff onto beach at night while trying to locate stairs - Council not liable

Gerrard v Wang (WASC) - contract for sale of land - termination of contract for repudiation by purchaser - purchaser liable to pay damages to vendors for breach of contract

Moon v Whitehead (ACTCA) - negligence - trespass to the person - respondent did not consent to sexual intercourse - appeal on liability failed - award of aggravated damages set aside

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Summaries With Link (Five Minute Read)

McKenzie v Wood [2015] NSWCA 142

Court of Appeal of New South Wales

Ward & Leeming JJA; Sackville AJA

Damages - negligence - respondent passenger injured in motor vehicle accident on work-related journey - appellant was driver of other vehicle - liability admitted - appeal from aspects of assessment of damages in relation to hip replacement, non-economic loss and allowance for vicissitudes - held: no appellable error in primary judge's conclusion that appellant had failed to prove on balance of probabilities respondent would have incurred expenses of hip replacement in due course in any event - no appellable error in relation to economic loss or use of figure of 15% for vicissitudes - appeal allowed in respect of two grounds of appeal resolved by agreement - appeal otherwise dismissed.

[McKenzie](#)

Morris v Redland City Council [2015] QSC 135

Supreme Court of Queensland

Martin J

Negligence - plaintiff who had consumed alcohol injured in fall from cliff onto beach at Point Lookout on North Stradbroke Island at night while trying to locate stairs to beach - plaintiff sued council in negligence - plaintiff elected not to lead evidence against second defendant trustee of trust - plaintiff claimed track/path leading off from boardwalk had caused belief that path led to beach - ss13 15 & 47 *Civil Liability Act 2003* - Council admitted duty to take reasonable care to avoid foreseeable risk of harm to plaintiff while he was at Point Lookout - held: Council did not cause or allow grassy path to exist - there was no path through headland to cliff - risk that someone might fall from top of cliff was not reasonably foreseeable - claim against Council dismissed - parties agreed on judgment for second defendant trustee of trust - plaintiff's claim against trustee of trust had such remote prospect of success that action should not have been brought or continued - plaintiff to pay trustee of trust's costs on indemnity basis.

[Morris](#)

Gerrard v Wang [2015] WASC 173

Supreme Court of New South Wales

Contract for sale of land - damages - repudiation - plaintiffs were vendors who claimed damages for defendant's failure to complete contract for purchase of their land - because of defendant's failure to perform contractual obligation plaintiffs had terminated contract and sold land for price less than price defendant bound to pay - held: plaintiffs' claim established existence and validity of contract, breach of contract by failure to pay the purchase price, and termination of the contract for failure to perform - defendant liable to plaintiffs for breach of contract - judgment for vendors.

[Gerrard](#)



Moon v Whitehead [2015] ACTCA 17

Court of Appeal of the Australian Capital Territory

Murrell CJ; Penfold & Burns JJ

Negligence - trespass to the person - sexual assault - appellant appealed against decision in which Master awarded damages to respondent for injury caused by non-consensual sexual intercourse imposed on her by appellant - whether respondent had consented to engaging in the sexual conduct - held: there was ample evidence upon which Master entitled to find appellant had not satisfied onus of proving respondent had consented to sexual intercourse - impossible to say Master's finding was against evidence or weight of evidence - Master erred by failing to afford procedural fairness to appellant in relation to award of aggravated damages - award of aggravated damages set aside - judgment varied.

[Moon](#)

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