

Friday, 10 April 2015

Weekly Law Review

Selected from our Daily Bulletins covering Insurance, Banking,
Construction & Government

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Andonovski v Park-Tec Engineering Pty Ltd and Barbeques Galore Pty Ltd; Andonovski v East Realisations Pty Ltd (No 6) (NSWSC) - negligence - two accidents - employer and occupier liable for work injury - companies liable for bus accident injury (I)

Assad v Eliana Construction & Developing Group Pty Ltd (NSWSC) - contract - joint venture - inadequate reasons for conclusion that there was no agreement as to terms of settlement agreement - rehearing (I B C)

Waterhouse v Independent Commission Against Corruption (No.3) (NSWSC) - judicial review - ICAC not obliged to investigate complaint - proceedings dismissed (I G)

Sands v State of South Australia (SASCFC) - defamation - action against State for defamation and breach of statutory duty dismissed - appeal dismissed (I)

Netline Pty Ltd v QAV Pty Ltd [No 2] (WASC) - contract - ineffectual termination of letting and services agreement - damages to be assessed (I B)

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Summaries with links (5 Minute Read)

Andonovski v Park-Tec Engineering Pty Ltd and Barbeques Galore Pty Ltd; Andonovski v East Realisations Pty Ltd (No 6) [2015] NSWSC 341

Supreme Court of New South Wales

Campbell J

Negligence - plaintiff claimed damages for injuries from two accidents - first accident was fall from unfenced platform at work - second accident in bus collision with truck in which plaintiff was passenger going home after medical appointment for first accident - in first action defendants were employer and company (Park-Tec) for whom work was being performed at its premises - in second actions defendants were two companies (bus accident defendants) - bus accident defendants admitted breach of duty but claimed plaintiff was not injured - held: Park-Tec as occupier of premises was negligent - employer conceded that if Park-Tec is liable it too was liable because of non-delegable duty of care to plaintiff - no contributory negligence - apportionment 70% to Park-Tec and 30% to employer - plaintiff suffered appreciable injury in bus accident sufficient to constitute tort of negligence - judgment for plaintiff.

[Andonovski \(I\)](#)

[From Benchmark 2 April 2015]

Assad v Eliana Construction & Developing Group Pty Ltd [2015] VSCA 53

Court of Appeal of Victoria

Redlich, Redlich & McLeish JJA

Contract - joint venture - fiduciary duties - trial judge declared joint venture existed between parties for purchase and development of property - appellant did not challenge declaration but sought to appeal from orders - appellant claimed trial judge erred by failing to give adequate reasons for rejecting claim that parties made settlement agreement, by failing to find parties made settlement agreement on certain terms, and by failing to make orders with respect to counterclaim - evidence concerning settlement agreement - held: ground of appeal based on inadequacy of reasons upheld - notice of contention alleging fiduciary duties owed by appellant to respondent dismissed - matter remitted for rehearing.

[Assad \(I B C\)](#)

[From Benchmark 7 April 2015]

Waterhouse v The Independent Commission Against Corruption (No.3) [2015] NSWSC 261

Supreme Court of New South Wales

Garling J

Judicial review - plaintiff sought orders compelling ICAC to undertake investigation and public inquiry into allegations of serious corrupt conduct made by plaintiff to ICAC in 2012 - plaintiff contended ICAC had duty to investigate under *Independent Commission Against Corruption Act 1988* (NSW) - statutory interpretation - ss10 & 20 - held: Court unable to accept Act imposed duty or obligation on ICAC to investigate any complaint made to it - Act did not oblige ICAC to

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investigate 2012 complaint - Court not satisfied plaintiff demonstrated conduct of ICAC in declining to investigate complaint was unreasonable - proceedings dismissed.

[Waterhouse](#) (I G)

[From Benchmark 8 April 2015]

Sands v State of South Australia [2015] SASCFC 36

Full Court of the Supreme Court of South Australia

Blue, Stanley & Nicholson JJ

Defamation - appellant sued State for defamation and breach of statutory duty arising from *Criminal Law (Forensic Procedures) Act 1998* (SA) - primary judge dismissed action - appellant contended primary judge erred in finding additional imputations not conveyed, defence of justification made out, and that State did not breach Act - held: primary judge correctly found appellant failed to demonstrate basis for striking out pleas of justification and qualified privilege or precluding State from relying upon them merely because of existence of material subject of public interest immunity - primary judge's conclusion correct that State proved its case of justification - primary judge correct to find imputations not made out and that State did not contravene Act - appeal dismissed.

[Sands](#) (I)

[From Benchmark 2 April 2015]

Netline Pty Ltd v QAV Pty Ltd [No 2] [2015] WASC 113

Supreme Court of Western Australia

Beech J

Contract - plaintiffs owned apartment in complex - defendant manager provided caretaking and letting services to Ascot Village - owners and manager were parties to agreement for provision of letting services by manager in respect of apartment - manager purported to terminate agreement - owners claimed notice of termination was ineffectual and sought specific performance - held: there was no implied term entitling manager to terminate agreement on reasonable notice - manager had no right to terminate agreement - specific performance not granted - damages to be assessed.

[Netline](#) (I B)

[From Benchmark 8 April 2015]

CRIMINAL

Executive Summary

Karam v The Queen (VSCA) - conspiracy to possess unlawfully imported border controlled drug in commercial quantity - leave to appeal against conviction and sentence refused

Bauer (a Pseudonym) v The Queen (VSCA) - criminal law - sexual offences -overloaded

indictment - cross-admissibility of evidence as tendency evidence -convictions on trial
indictment set aside - appeal against sentences allowed

Summaries with links

Karam v The Queen [2015] VSCA 50

Court of Appeal of Victoria

Weinberg, Priest & Beach JJA

Criminal law – applicant convicted of conspiring with co-accused to possess unlawfully imported border controlled drug in commercial quantity - applicant sentenced to 19 years imprisonment with non-parole period of 15 years - applicant sought leave to appeal against both his conviction and sentence - hearsay - whether certain evidence should have been excluded under s137 *Evidence Act 2008* (Vic) - elements of conspiracy – whether sentence manifestly excessive - held: grounds of appeal with respect to conviction failed - Court not persuaded any error made by trial judge in sentencing applicant - even if error shown, Court did not think any different sentence should be passed - applications refused.

[Karam](#)

Bauer (a Pseudonym) v The Queen [2015] VSCA 55

Court of Appeal of Victoria

Maxwell P, Weinberg & Priest JJA

Criminal law - applicant found guilty of sexual offences - applicant sought to appeal against conviction on first indictment (trial indictment) - applicant pleaded guilty to two charges of indecent assault contained in second indictment (plea indictment) - applicant sought leave to appeal against conviction in trial indictment - applicant sought leave to appeal against sentences - whether trial judge erred in refusing permanent stay of charges - whether certain evidence properly left as tendency evidence - cross-admissibility of evidence as tendency evidence - held: indictment overloaded by inclusion of many charges relating to five separate complainants resulting in unfairness - supposed tendency evidence amounted to no more than evidence of mere propensity, was without significant probative value, and should have been excluded - questions of cross-admissibility and severance to be decided by trial judge on retrial - convictions set aside on certain charges - leave to appeal against sentences imposed on plea indictment allowed - total effective sentence 8 months' imprisonment.

[Bauer](#)



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A Gift

by Leonora Speyer

I Woke: —

Night, lingering, poured upon the world
Of drowsy hill and wood and lake
Her moon-song,
And the breeze accompanied with hushed fingers
On the birches.

Gently the dawn held out to me
A golden handful of bird's-notes.

[LeonoraSpeyer](#)

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