

Friday 3 October 2014

## Weekly Insurance Law Review

### Our Selection from this week's Daily Bulletins

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#### Executive Summary (1 minute read)

**NSW v Talovic** (NSWCA) - false imprisonment - trespass - mental health - statutory construction - *mentally disturbed* - appeal allowed

#### Summaries with links (5 minute read)

##### **NSW v Talovic [2014] NSWCA 333**

Court of Appeal of New South Wales

Basten & Emmett JJA; Tobias AJA

False imprisonment - trespass - mental health - respondent apprehended by police officers who arranged removal from home to mental health facility - respondent successfully sued NSW for damages for wrongful arrest, false imprisonment and trespass - NSW sought leave to appeal - scope of s22 *Mental Health Act 2007* (NSW) - *mentally disturbed* - held: trial judge misconstrued chapeau to s22 requiring an objective test that respondent appeared to be mentally disturbed or mentally ill, when he should have applied a subjective test - s22 was available to police officers who took respondent to facility - no basis for order for exemplary damages - no error in finding police's search of rooms constituted trespass - appeal allowed - judgment for respondent set aside - respondent entitled to award of \$5,000 compensatory damages for trespass - respondent not entitled to award of exemplary damages - retrial of claim for compensatory damages for false imprisonment - matter remitted.

[NSW](#)

[From Benchmark 29 September 2014]



## Love and Friendship

Emily Brontë

Love is like the wild rose-briar,  
Friendship like the holly-tree-  
The holly is dark when the rose-briar blooms  
But which will bloom most constantly?

The wild rose-briar is sweet in spring,  
Its summer blossoms scent the air;  
Yet wait till winter comes again  
And who will call the wild-briar fair?

Then scorn the silly rose-wreath now  
And deck thee with the holly's sheen,  
That when December blights thy brow  
He still may leave thy garland green.

[Emily Brontë](#)

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