



Friday, 1 February 2019

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

The Republic of Nauru v WET040 (HCA) - migration law - administrative law - refusal of application for recognition as refugee or as person Republic of Nauru owed complementary protection to - no failure by Tribunal to provide adequate reasons - appeal allowed (I B C G)

H Lundbeck A/S v Sandoz Pty Ltd (No 2) (FCA) - damages - patent - determination of outstanding issue concerning discount to assessment of damages (I B C G)

Watt v State of New South Wales (NSWSC) - negligence - plaintiff inmate attacked while on remand by other prisoner while in 'Pod' in remand centre - State liable - judgment for plaintiff (B C I G)

Sargeant v FSS Trustee Corporation (NSWSC) - insurance - total and permanent disablement - separate questions - delay - no breach by insurer of obligations by not deciding on claim under policies by certain dates (B C I G)

Michos v Eastbrooke Medical Centre Pty Ltd (Ruling No 2) (VSC) - judgments and orders - application for 'protective costs order' refused (I B C G)

Osborne Park Commercial Pty Ltd v Miloradovic (WASCA) - negligence - customer of appellant was loading goods into his vehicle - customer crushed between his vehicle and respondent's trailer when respondent reversed his truck and trailer into customer's vehicle -

appellant breached duty of care to customer - causation established - appellant liable for 25% of judgment sum - appeal dismissed (I B C G)

Seymour v Jaeger (WASCA) - judgments and orders - discovery - joinder - substituted service - costs - 'show cause' - appellant's application dismissed - springing order made (I B C G)

Summaries With Link (Five Minute Read)

The Republic of Nauru v WET040 [No 2] [2018] HCA 60

High Court of Australia

Gageler, Nettle & Edelman JJ

Migration law - administrative law - Secretary of the Department of Justice and Border Control (Secretary), pursuant to s6(1) *Refugees Convention Act 2012* (Nr) (Refugees Act), rejected respondent's application for recognition as refugee under Refugees Act or person who was 'owed complementary protection' by Republic of Nauru under Refugees Act - Refugee Status Review Tribunal affirmed Secretary's decision - Supreme Court of Nauru allowed appeal - whether Tribunal failed to give adequate reasons - s34(4) of the Refugees Act - s430(1) *Migration Act 1958* (Cth) - whether Tribunal failed to identify bases for finding implausibility in respect of 'factual allegations' by respondent - "basic inconsistencies" - "probative material" - "independent country information" - held: no failure by Tribunal to provide adequate reasons - appeal allowed.

[The Republic of Nauru](#) (I B C G)

H Lundbeck A/S v Sandoz Pty Ltd (No 2) [2019] FCA 46

Federal Court of Australia

Jagot J

Damages - patent - determination of outstanding issue concerning discount to assessment of damages - discount for 'substitutable products' - 'hypothetical lost profits' - held: Court concluded that a 'one-off' discount quantified at 30% was appropriate - parties to file orders in reflection of reasons.

[H Lunkbeck](#) (I B C G)

Watt v State of New South Wales [2018] NSWSC 1926

Supreme Court of New South Wales

Garling J

Negligence - plaintiff inmate attacked while on remand by other prisoner in 'common area of Pod 12' (Pod) in remand centre - plaintiff sued defendant for damages - defendant admitted duty of care but denied breach of duty - defendant also relied on s54 *Civil Liability Act 2002* (NSW) as 'complete defence' to claim - held: defendant was unreasonable to place other prisoner in Pod where 'there was no plan to address' other inmates' safety and 'Pod officers' not given details about other prisoner's 'background and history' - it was unreasonable of Pod

Officers not to observe the 'pillowcase containing a weighted item' - causation established - no contributory negligence - judgment for plaintiff - sum of judgment to be calculated.

[View Decision](#)>(I B C G W WI WB WC WG) (B C I G)

Sargeant v FSS Trustee Corporation [2018] NSWSC 1997

Supreme Court of New South Wales

Parker J

Insurance - total and permanent disablement - separate questions - plaintiff was former police officer discharged on 'medical grounds' - proceedings concerned plaintiff's claim for 'total and permanent disability benefits' under life insurance policies- determination of separate questions - whether second defendant insurer breached obligations by failing to make decision on plaintiff's claim before 3 September 2015 - whether, alternatively, insurer breached obligations in failure to make decision on plaintiff's claim before 3 September 2016 - duty of 'good faith and fair dealing' - delay - held: Court not satisfied of any breach by second defendant - unnecessary to answer further separate questions - proceedings dismissed.

[View Decision](#) (B C I G)

Michos v Eastbrooke Medical Centre Pty Ltd (Ruling No 2) [2019] VSC 13

Supreme Court of Victoria

Ierodionou AsJ

Judgments and orders - proceedings concerned appeal against Victorian Civil and Administrative Tribunal decision - plaintiff sought 'protective costs order' to cap his potential liability for costs to \$5000 - factors in s65C(2A) *Civil Procedure Act 2010* (Vic) - whether making protective costs order would further 'overarching purpose' in s7 of the Act - held: Court not satisfied to make protective costs order.

[Michos](#) (I B C G)

Osborne Park Commercial Pty Ltd v Miloradovic [2019] WASCA 17

Court of Appeal of Western Australia

Murphy, Mitchell & Beech JJA

Negligence - customer of appellant purchased goods and went to collect the goods from appellant's warehouse - customer parked car - warehouse staff helped load goods - respondent reversed truck and trailer - customer crushed between respondent's trailer and customer's car - customer sued respondent - respondent consented to judgment against him - respondent claimed contribution from appellant under s7 *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) - appellant contended it owed no duty to customer and, even if it did owe duty, it did not breach it - appellant also contended 'sole cause' of respondent's injuries was respondent's 'negligent and reckless' conduct - primary judge found appellant owed duty and breached duty to customer, and that causation was established - primary judge found appellant liable for 25% of judgment - appellant appealed against findings on duty and causation - held: appeal dismissed.

[Osborne](#) (I B C G)



Seymour v Jaeger [2019] WASCA 19

Court of Appeal of Western Australia

Murphy & Beech JJA

Judgments and orders - discovery - appeal arising from dismissal of application for documents' production - appellant by application sought joinder, as respondents to the appeal in proceedings, of respondent's son, and two lawyers 'who had acted for the respondent' - appellant also sought production of documents by respondent, respondent's son, and the two lawyers - appellant also sought 'substituted service by email' and costs - whether appellant could 'show cause' why Court should not dismiss appeal due to failure to file appellant's case - held: appellant's application dismissed - springing order made for 'filing of an appellant's case.

[Seymour](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



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Kabale und Liebe

By: Sandys Wason

Many a mad magenta minute

Lights the lavender of Life;

Keren-happuch at her spinet,

Psalms the scarlet song of strife.’

Keren-happuch is my wife.

Spinet carving olive stanzas,

Orange fricassées of sound,

Nicotine extravaganzas,

Like a cheese at evening found,

Sitting primrose on the ground.

Spinet, cast thy chiaroscuro

O’er the omelette of the past;

Drawn from thy enamelled bureau,

Bind thy night-shirt to the mast,

Derelict but not outcast.

With a harsh pea-green “Remember”

From the horoscope of Ruth

Frame the language of December

With the silver-guilt of Truth,

Consecrated to thy youth.

[Sandys Wason](#)

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