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

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### Executive Summary (1 minute read)

**Ramsay Health Care Australia Pty Ltd v Compton** (FCA) - bankruptcy - sequestration order - application for adjournment of final hearing refused (B)

**Hart v Commissioner of Taxation (No 3)** (FCA) - legal professional privilege - waiver - taxation - privilege in two opinions of counsel lost (I B C G)

**Bayside Council v V Corp Constructions Pty Ltd** (NSWCA) - contract - negligence - damages - claims for recovery of loss arising from first respondent's failure to procure repositioning underground of aboveground cabling - developer and accredited certifier exonerated - appeal dismissed (I B C G)

**Davis v Kent** (NSWCA) - motor accidents compensation - referral of injuries for further medical assessment - incorrect understanding of time frame for assessment to be undertaken - appeal allowed (I B C G)

**CSR Limited v Adecco (Australia) Pty Limited** (NSWCA) - contract - labour supply contract - implied contract - truck driver employed by respondent injured during course of employment at appellant's plant - respondent liable to indemnify appellant for liability arising from personal injury claim brought by truck driver - appeal allowed (I B C G)

**New South Wales Crime Commission v Elskaf** (NSWSC) - proceeds of crime - application for unexplained wealth order and assets forfeiture order - parties to bring in short minutes (I B C G)

**Jenny Lee Boase as Trustee for The Boase Family Trust v Brook [No 3]** (WASC) - joinder - leave to join insurers as second defendants in proceedings refused (I B C G)

## Summaries With Link (Five Minute Read)

### **Ramsay Health Care Australia Pty Ltd v Compton [2017] FCA 612**

Federal Court of Australia

Flick J

Bankruptcy - sequestration order - respondent sought to adjourn final hearing in proceedings on basis of change in respondent's legal representation, failure on former solicitor's part to make relevant materials available to new solicitors, respondent's ill-health, need to hold conferences, prepare evidence, and prepare response to a 'reconciliation' - judicial management - held: conclusion 'ultimately reached' was that respondent had more than adequate time to prepare case, and more than adequate time and opportunity to prepare evidence - adjournment refused.

[Ramsay Health Care](#) (B)

### **Hart v Commissioner of Taxation (No 3) [2017] FCA 571**

Federal Court of Australia

Bromwich J

Legal professional privilege - waiver - taxation - whether legal professional privilege should be upheld in respect of two opinions of counsel produced to Court in response to subpoena issued to applicant at Commissioner's request - *Mann v Carnell* [1999] HCA 66 - *Bennett v Chief Executive Officer of the Australian Customs Service* [2004] FCAFC 237 - whether reference to opinions in 'pleadings, evidence and submissions' constituting sufficient reliance such that it would be unfair to maintain privilege - held: Court satisfied in all circumstances that 'compelling case' for waiver made out due to 'instances of reliance' - Commissioner entitled to access the opinions.

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

### **Bayside Council v V Corp Constructions Pty Ltd [2017] NSWCA 120**

Court of Appeal of New South Wales

Basten, Macfarlan & Ward JJA

Contract - negligence - damages - appellant Council contended first respondent developer failed to procure repositioning underground of aboveground cabling in accordance with deed - appellant sought to recover its loss - first respondent contended it could not procure outcome because network operator did not approve activity - primary judge rejected Council's claim - Council also sued second defendant who issued occupation concerning development under *Environmental Planning and Assessment Act 1979* (NSW) in negligence on basis condition 33 development consent was not complied with - primary judge also rejected this claim - s65 *Electricity Supply Act 1995* (NSW) - ss96, 149A-149 Environmental Planning and Assessment

# Benchmark

Act - held: no error in primary judge's exoneration of developer and accredited certifier - appeal dismissed.

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

## **Davis v Kent [2017] NSWCA 122**

Court of Appeal of New South Wales

Beazley ACJ; Meagher & Leeming JJA

Motor accidents compensation - Court referred appellant's injuries arising from motor vehicle accident for further medical assessment in accordance with Pt 3.4 *Motor Accidents Compensation Act 1999* (NSW) - appellant sought to appeal - held: primary judge made referral order on basis of incorrect understanding of time it would take for undertaking of further medical assessment - no evidence to support time frame primary judge given by parties' legal representatives - time frame 'wrong by more than 100 per cent' - respondent did not contest that error was sufficient basis to vitiate discretion - leave to appeal granted and appeal allowed - matter remitted.

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

## **CSR Limited v Adecco (Australia) Pty Limited [2017] NSWCA 121**

Court of Appeal of New South Wales

McColl, Macfarlan & Simpson JJA

Contract - labour supply contract - implied contract - primary judge found respondent not liable to indemnify appellants for liability arising from personal injury claim brought by truck driver who respondent employed - truck driver had been injured due to driving defective truck in course of employment at appellant's concrete plant - primary judge found that indemnity provision which appellant sought to enforce was not part of agreement between it and respondent for supply of labour during relevant period - appellant had contended that primary judge should have found, after agreement's expiry, there was implied contract for supply of labour hire, on same terms, including indemnity term, of previous agreement - primary judge found that even if there was an implied term it did not apply - held: primary judge erroneously failed to infer from parties conduct that expired agreement continued on same terms and conditions including indemnity clause - during period of time of accrual of cause of action truck driver was 'Temporary Staff' working 'in an Assignment for CSR' under indemnity clause - appellant's liability to truck driver fell within indemnity provision - respondent liable to indemnify appellant - appeal allowed.

[CSR Limited](#) (I B C G)

## **New South Wales Crime Commission v Elskaf [2017] NSWSC 681**

Supreme Court of New South Wales

Harrison J

Proceeds of crime - New South Wales Crime Commission sought unexplained wealth order under s28A *Criminal Assets Recovery Act 1990* (NSW) and assets forfeiture order under s22(1A)(a) - held: there were reasonable grounds to suspect defendant engaged in serious crime related activity or activities pursuant to s28A(2) - more probable than not that defendant's



suspected, which formed basis for application for assets forfeiture order, was engaged in not more than 6 years before application made - defendant had not served evidence in response to Commissioner's case - no basis in public interest to refuse order - parties to bring in short minutes to give effect to Court's conclusions.

[New South Wales Crime Commission](#) (I B C G)

**Jenny Lee Boase as Trustee for The Boase Family Trust v Brook [No 3] [2017] WASC 149**

Supreme Court of Western Australia

Chaney J

Joinder - plaintiff sought leave pursuant to O18 r6 *Rules of the Supreme Court 1971 (WA)* (RSC) to join insurers as second defendants in proceedings - purposes of joinder was to litigate issue whether aggregation clause in policy of insurance excluded liability of insurers to indemnify defendant - r27 *Supreme Court Rules 1987 (SA)* - held: insurers had 'no potential direct liability' to plaintiff - plaintiff did not establish dispute between defendant and insurers - application for joinder dismissed.

[Jenny Lee Boase](#) (I B C G)

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