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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) (NSWSC) - negligence - plaintiff injured while delivering building materials to worksite - subcontractor liable - contributory negligence 15% (I B C)

Carangelo v State of New South Wales (NSWSC) - negligence - psychiatric injury suffered by police officer - State negligent - factual causation not established (I)

Goldsmith by her tutor the New South Wales Trustee and Guardian v Bisset (No 3) (NSWSC) - negligence - developmentally disabled child not wearing helmet struck by motor vehicle while riding pushbike into traffic lane - driver liable - no contributory negligence (I)

Insurance Australia trading as NRMA v Ural (NSWSC) - motor accidents compensation - erroneous refusal to issue certificate of exemption - decision quashed (I G)

Nom De Plume Nominees Pty Ltd v Fingal Developments Pty Ltd (VSCA) - stay - no good reason advanced for granting stay in pending appeal - application dismissed (I B)

Carbon Black Lab Pty Ltd v Launer (VSCA) - real property - caveat - no error in granting of application for removal of caveat - appeal dismissed (B)

Wilson v Coxon [No 2] (WASC) - pleadings - defamation - paragraph of re-amended defence struck out (I)

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Summaries With Link (Five Minute Read)

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) [2015] NSWSC 648

Supreme Court of New South Wales

Johnson J

Negligence - limitations - plaintiff injured in fall while delivering building materials to worksite - plaintiff sued head contractor at site (Kane), subcontractor contracted by Kane and employer with whom Hutchison contracted, for damages in negligence - held: plaintiff's claim not statute-barred - Hutchison breached duty of care to take reasonable care to ensure deliveries made at location and in manner that did not carry unreasonable risk of injury - breach caused plaintiff's injuries - Hutchison liable - liability not established against Kane or employer - plaintiff failed to take reasonable care for his own safety - contributory negligence assessed at 15% - damages assessed - parties to bring in short minutes of order.

[Fogg](#) (I B C)

Carangelo v State of New South Wales [2015] NSWSC 655

Supreme Court of New South Wales

Adamson J

Negligence - psychiatric injury - chronic adjustment disorder - plaintiff sued State for psychiatric injury due to breaches of duty by Commissioner of Police for which State was vicariously liable - plaintiff claimed Commissioner failed to take reasonable precautions against risks of psychiatric injury at two points in his service - Sch 1 cl 2, ss5B, 5D, 5E, 5R, 13, 16 & 42 *Civil Liability Act 2002* - held: State negligently failed to refer plaintiff to Police Medical Officer and a private psychiatrist - State negligently failed to forewarn plaintiff of impending Police Integrity Commission inquiry or to support him through inquiry and subsequent action under s 181D *Police Act 1990* - factual causation not established - judgment for State.

[Carangelo](#) (I)

Goldsmith by her tutor the New South Wales Trustee and Guardian v Bisset (No 3) [2015] NSWSC 634

Supreme Court of New South Wales

Campbell J

Negligence - plaintiff child with development disabilities and not wearing a helmet was riding bike out of parking lane and into traffic lane when she was struck by defendant's car - plaintiff suffered head and brain injuries - separate determination of issue of liability - whether plaintiff's injuries caused by defendant's negligence - whether plaintiff guilty of contributory negligence - s138 *Motor Accidents Compensation Act 1999* - ss5D & 5R *Civil Liability Act 2002* - held: risk was foreseeable - defendant failed to keep proper look-out - had defendant kept proper lookout accident could have been avoided - defendant's negligence was necessary condition of plaintiff's injury - no contributory negligence - judgment for plaintiff - damages to be assessed.

[Goldsmith](#) (I)

Insurance Australia trading as NRMA v Ural [2015] NSWSC 620

Supreme Court of New South Wales

Young AJA

Motor accidents compensation - plaintiff was insurer of party to motor vehicle accident - first defendant made claim pursuant to *Motor Accidents Compensation Act 1999* (NSW) - insurer failed to give notice whether it admitted or denied liability within time under s81 - insurer sought to have claim treated as exempt - Principal Claims Assessor declined to issue certificate on basis that after deemed denial insurer paid money on claimant's behalf that amounted to admission of liability - held: in *Smalley v Motor Accidents Authority of New South Wales* [2013] NSWCA 318 Court of Appeal found that, apart from s81(4), the deeming effect of s81 could not be displaced - further, Court of Appeal found that s81(4) was not an empowering section and did not purport to detract from deeming provision in s81 - anything that happened after denial in deemed s81 notice was irrelevant - no course open to Principal Claims Assessor but to issue certificate of exemption - decision quashed.

[Insurance](#) (I G)

Nom De Plume Nominees Pty Ltd v Fingal Developments Pty Ltd [2015] VSCA 129

Court of Appeal of Victoria

Mandie & Kyrou JJA

Stay - applicant sought stay of orders pending hearing and determination of proposed appeal - whether arguable grounds of appeal - justice - balance of convenience - held: there appeared to be arguable grounds of appeal - however Court not satisfied that if no stay granted there would be a real risk of appeal being rendered nugatory - successful plaintiff entitled to the fruits of its judgment - no good reason advanced for granting stay - application dismissed.

[NomDePlume](#) (I B)

Carbon Black Lab Pty Ltd v Launer [2015] VSCA 126

Court of Appeal of Victoria

Santamaria, Ferguson & McLeish JJA

Real property - caveat - contract - applicant sought to appeal from decision granting application under s90 *Transfer of Land Act 1958* (Vic) for removal of caveat - whether trial judge erred in finding contract for sale of land validly terminated following issuing of notice of default and rescission - whether trial judge erred in holding balance of convenience favoured removal of caveat - whether trial judge erred in approach under s90 - held: applicant failed to show primary judge erred either in finding no prima facie case for maintaining caveat or in finding balance of convenience favoured its removal - appeal dismissed.

[Carbon](#) (B)

Wilson v Coxon [No 2] [2015] WASC 197

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - complaint concerning publication and re-publication of matter, arising

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out of oral statement to journalist by defendant - plaintiff sought to strike out paragraph of defendant's re-amended defence - whether paragraph could be safely assessed as misconceived and inappropriate invocation of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 - held: defendant's paragraph plea in re-amended defence struck out as failing to disclose any reasonably arguable defence towards arguable mitigation of defendant's damages should she be found liable at trial - paragraph struck out.

[Wilson](#) (I)

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