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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**May v Military Rehabilitation and Compensation Commission** (FCAFC) - administrative law - workers compensation - 'injury' - appeal allowed - matter remitted (I G)

**Chand v Commonwealth Bank of Australia** (NSWCA) - contract - bank failed to implement redemption request in relation to investments - investor was cause of prospective loss - appeal dismissed (B)

**Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq)** (NSWSC) - equitable compensation - transfer of shares at undervalue - Referee's report adopted - defendants to pay equitable compensation (I B)

**Health Administration Corporation v CJL Haulage Pty Ltd** (NSWSC) - motor vehicle accident - collision between ambulance and truck - ambulance driver negligent - appeal dismissed (I)

**Veer Build Pty Ltd v TCA Electrical and Communication Pty Ltd** (NSWSC) - security of payments - payment claim valid - adjudication determination not quashed - summons dismissed (C)

**Break Fast Investments v Rigby Cooke Lawyers** (VSC) - legal practitioners - application to restrain firm from acting in proceedings dismissed (I)

**Perpetual Ltd v Latham** (QSC) - service - claim for possession of land and for debt - order for substituted service by post granted (B)

## Summaries With Link (Five Minute Read)

### **May v Military Rehabilitation and Compensation Commission [2015] FCAFC 93**

Full Court of the Federal Court of Australia

Allsop CJ; Kenny, Besanko, Robertson & Mortimer JJ

Administrative law - workers compensation - appellant joined Royal Australian Air Force (RAAF) and shortly after suffered from symptoms or condition - Administrative Appeals Tribunal concluded appellant had not suffered an 'injury' for purposes of s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) and that respondent Military Rehabilitation and Compensation Commission was not liable to pay him compensation under the SRC Act - primary judge found appellant had not identified any legal error in the AAT's decision - appellant appealed from primary judge's decision and sought judicial review - held: appellant established error in primary judge's decision - certain questions of law identified by appellant should be answered favourably to appellant - appropriate for another Tribunal to consider whether appellant had suffered injury within meaning of s4 SRC Act and whether injury arose out of or in the course of his employment - appeal allowed.

[May](#) (I G)

### **Chand v Commonwealth Bank of Australia [2015] NSWCA 181**

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Ward JA

Contract - appellant claimed against bank for loss sustained following bank's failure to implement redemption request in relation to investments he made through bank's subsidiary - investments rated high risk and were highly geared - primary judge concluded appellant was not entitled to more than nominal damages for bank's admitted breach of contract because no actual loss suffered and prospective loss could have been entirely avoided by appellant - primary judge dismissed claim - causation - mitigation - held: primary judge correctly analysed bank's liability for actualisation of prospective loss - cause of prospective loss becoming real was appellant's deliberate, voluntary and informed decision not to issue further redemption request - appeal dismissed.

[Chand](#) (B)

### **Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) [2015] NSWSC 851**

Supreme Court of New South Wales

Bergin CJ in Eq

Equitable compensation - Referee's report - parties disagreed whether report of referee should be adopted - report concerned inquiry into existence and quantum of loss to company due to

transfer of shares at undervalue for purposes of making orders for equitable compensation - Referee determined that defendants were required to pay \$2,596,039 in equitable compensation - liquidator sought order that report be adopted pursuant to r20.24 *Uniform Civil Procedure Rules 2005* and sought orders including order for payment of compensation - held: Court not satisfied there was any requirement imposed on Referee by Court in respect of date for assessment of equitable compensation - contentions concerning market for shares failed - no error in valuation of property - complaints regarding Referee's analysis and conclusions in respect of evidence not made out - Referee's approach to loss to company not a reason to reject report - Court not satisfied Referee erred in exercise of discretion - report adopted - defendants to pay equitable compensation.

[Cassegrain](#) (I B)

## **Health Administration Corporation v CJL Haulage Pty Ltd [2015] NSWSC 858**

Supreme Court of New South Wales

Button J

Motor vehicle accident - collision between truck and ambulance - truck driver and ambulance driver each alleged the other was negligent - Magistrate found ambulance driver negligent and that truck driver not negligent - held: contention rejected that there was failure to determine pleaded issues of negligence and contributory negligence rejected - not incumbent upon Magistrate, having found siren was not on, to provide affirmative hypothesis as to how that came to be - parties had been content for Magistrate to decide establishment of negligence based on *Road Rules 2008* - contention rejected that to extent Magistrate made adverse evaluation of ambulance driver's driving, Magistrate should have put adverse proposition to ambulance driver for comment - no error in finding no evidence about details of emergency to which ambulance driver travelling - contention rejected that Magistrate erred in finding ambulance vehicle's siren was not activated shortly prior to the collision - appeal dismissed.

[Health](#) (I)

## **Veer Build Pty Ltd v TCA Electrical and Communication Pty Ltd [2015] NSWSC 864**

Supreme Court of New South Wales

Darke J

Security of payments - first defendant agreed to carry out construction work for plaintiff - first defendant served payment claim upon plaintiff pursuant to *Building and Construction Industry Security of Payment Act 1999* (NSW) - plaintiff sought to quash adjudication determination in first defendant's favour - plaintiff contended payment claim made contrary to prohibition contained in s13 against serving more than one payment claim in respect of each reference date under construction contract - plaintiff also complained it was denied procedural fairness - held: challenges to validity of payment claim and process of adjudication not made out - no basis to quash adjudication determination - summons dismissed.

[Veer](#) (C)

## **Break Fast Investments v Rigby Cooke Lawyers [2015] VSC 305**

Supreme Court of Victoria



# Benchmark

Bell J

Legal practitioners - third defendant sought order restraining solicitors' firm from acting for plaintiff in proceeding - third defendant contended firm should be restrained because it previously acted for and gave advice to it in relation to relevant matters - whether material risk of misuse of confidential information obtained by firm from third defendant - whether continuing to act would involve a breach of firm's continuing duty of loyalty to third defendant - whether administration of justice required firm to cease acting - held: third failed to establish Court should exercise jurisdiction to restrain party from being represented in legal proceeding by lawyer of choice - application dismissed.

[BreakFast](#) (I)

## **Perpetual Ltd v Latham [2015] QSC 190**

Supreme Court of Queensland

Jackson J

Service - substituted service - claim for possession of land and for debt - application under Ch 13, Pt 6 *Uniform Civil Procedure Rules 1999* for order for substituted service - applicant's agent had attempted to serve originating process personally on first defendant at her residence on six separate occasions - held: it was impracticable to serve documents in way required under r105 - more probable than not that if documents served by post they would come to first defendant's attention - appropriate that requirements for personal service be dispensed with - in lieu of personal service, sealed copies of claim and statement of claim together with a sealed copy of order to be served on first defendant by post pursuant to r116 - service to be deemed to be effected four days after the documents served by posting them.

[Perpetual](#) (B)

## CRIMINAL

### Executive Summary

**Gardener v R** (NSWCCA) - criminal law - robbery whilst armed with offensive weapon - carried in conveyance - appeal against sentence dismissed

### Summaries With Link

#### **Gardener v R [2015] NSWCCA 170**

Court of Criminal Appeal of New South Wales

Price, R A Hulme & Davies JJ

Criminal law - applicant sentenced for offences against ss97(1) & 154A(1)(b) *Crimes Act 1900* of robbery whilst armed with offensive weapon and allowing himself to be carried in car he knew



was taken without owner's consent - applicant sentenced to imprisonment for 7 years with non-parole period of 3 years 6 months, and concurrent term of 1 year 6 months with no non-parole period - applicant sought leave to appeal on grounds concerning mental health, drug addiction and rehabilitation issues - leave granted at hearing of application to add ground asserting that sentence was manifestly excessive - held: Court satisfied primary judge properly carried out task in assessing difficult and conflicting issues arising from serious offence and extensive criminal record on the one hand, and unfortunate, deprived and dysfunctional background together with mental health and substance abuse problems on the other - sentence not manifestly excessive - no error in refusing to defer sentence - appeal dismissed.

[Gardener](#)



# Benchmark

## from Beachy Head

By Charlotte Smith

On thy stupendous summit, rock sublime!  
That o'er the channel reared, half way at sea  
The mariner at early morning hails,  
I would recline; while Fancy should go forth,  
And represent the strange and awful hour  
Of vast concussion; when the Omnipotent  
Stretched forth his arm, and rent the solid hills,  
Bidding the impetuous main flood rush between  
The rifted shores, and from the continent  
Eternally divided this green isle.  
Imperial lord of the high southern coast!  
From thy projecting head-land I would mark  
Far in the east the shades of night disperse,  
Melting and thinned, as from the dark blue wave  
Emerging, brilliant rays of arrowy light  
Dart from the horizon; when the glorious sun  
Just lifts above it his resplendent orb.  
Advances now, with feathery silver touched,  
The rippling tide of flood; glisten the sands,  
While, inmates of the chalky clefts that scar  
Thy sides precipitous, with shrill harsh cry,  
Their white wings glancing in the level beam,  
The terns, and gulls, and tarrocks, seek their food,  
And thy rough hollows echo to the voice  
Of the gray choughs, and ever restless daws,  
With clamor, not unlike the chiding hounds,  
While the lone shepherd, and his baying dog,  
Drive to thy turfy crest his bleating flock.

The high meridian of the day is past,  
And Ocean now, reflecting the calm Heaven,  
Is of cerulean hue; and murmurs low  
The tide of ebb, upon the level sands.  
The sloop, her angular canvas shifting still,  
Catches the light and variable airs  
That but a little crisp the summer sea,  
Dimpling its tranquil surface.

[Charlotte Smith](#)



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