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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Preston v AIA Australia Ltd (NSWSC) - insurance - entitlement to disability income benefits under insurance policy - construction of policy - plaintiff not totally disabled - no entitlement to relief - proceedings dismissed (I)

Bird v Ford (NSWSC) - professional negligence - claim against solicitor for failure to warn against pursuing litigation against school and principal for expulsion of son - no breach of duty by solicitor - judgment for defendants (I)

Chebli v Insurance Australia Ltd t/as NRMA Insurance Ltd (NSWSC) - motor vehicle insurance - claim in respect of stolen car - appeal from Local Court decision - plaintiff had not demonstrated car was stolen in alleged circumstances - evidence - credit - appeal and summons dismissed (I)

Parry v Navaroo Constructions Pty Ltd (NSWSC) - real property - sale of land - appeal from decision that special condition clause prevailed over clause of standard form contract due to inconsistency - clauses not inconsistent - appeal allowed (B, C)



Rowson v McClure and VCAT (VSC) - administrative law - leases and tenancies - plaintiff sought leave to appeal VCAT's decision concerning landlord's application for possession of land - notice to vacate not invalid despite formal non-compliance - interests of justice - leave to appeal refused (B, G)

Knott Investments Pty Ltd & Ors v Fulcher & Ors (QCA) - trade practices - consumer protection - damages - mitigation - causation - fire in Winnebago air-conditioning unit destroyed business's shed and plant - appeal from judgment in favour of business - appeal allowed only to extent of variation of orders in respect of damages for economic loss (I, B, C)

Pavicic v Webb (ACTSC) - motor vehicle accident - damages - defendant did not establish plaintiff failed to mitigate loss arising from injuries sustained in motor vehicle accident - assessment of damages - judgment for plaintiff (I)

Summaries with links (5 minute read)

Preston v AIA Australia Ltd [2013] NSWSC 282

Supreme Court of New South Wales

Lindsay J

Insurance - accident and sickness policy - self-represented litigant - plaintiff claimed indemnity under policy – declined by defendant - *disability income* benefits to plaintiff under insurance policy - central issue was whether physical injury suffered by plaintiff could be said to have resulted in total disablement *solely and directly and independently of a pre-existing condition or any other cause* within meaning of *Accidental Injury* as defined in the policy - construction of policy - evidence - held: plaintiff not *totally disabled* within meaning of policy - plaintiff established no entitlement to relief - proceedings dismissed.

[Preston](#) (I)

Bird v Ford [2013] NSWSC 264

Supreme Court of New South Wales

Schmidt J

Tort - professional negligence - evidence - plaintiff's son expelled from school - plaintiff brought proceedings against school and former principal - proceedings dismissed - plaintiff sued solicitor



in for alleged negligence in failing to sufficiently warn plaintiff against pursuing litigation which caused psychiatric injury and economic loss to plaintiff - central issue was whether solicitor breached duty of care to plaintiff - solicitor's duty of care: *Donnellan v Woodland* [2012] NSWCA 433 - held: no negligence on part of solicitor - judgment for defendants.

[Bird](#) (I)

Chebli v Insurance Australia Ltd t/as NRMA Insurance Ltd

[2013] NSWSC 261

Supreme Court of New South Wales

Harrison AsJ

Motor vehicle insurance - expert evidence - credit - dispute arising from defendant's refusal of plaintiff's claim in respect of stolen car - appeal pursuant to s39 *Local Court Act 2007* (NSW) from Local Court - decision plaintiff unable to demonstrate her car was stolen in alleged circumstances - plaintiff sought extension of time to appeal - whether magistrate erred by failing to consider relevant evidence given by defendant's expert forensic locksmith in relation to method by which car may have been taken from property - held: extension of time granted - no error of law in decision of magistrate - appeal and summons dismissed.

[Chebli](#) (I)

Parry v Navaroo Constructions Pty Ltd [2013] NSWSC 249

Supreme Court of New South Wales

Harrison AsJ

Real property - contract - appeal pursuant to s39 *Local Court Act 2007* (NSW) from Local Court decision that special condition in contract for sale of land prevailed over clause in standard form contract concerning purchaser's right of rescission - construction of contract - held: magistrate erred in finding clauses were irreconcilable and that the special condition clause prevailed - no inconsistency between the clauses - no operation of principle that special conditions prevailed over standard clauses where there was inconsistency - appeal upheld - decision of magistrate set aside.

[Parry](#) (B, C)

Rowson v McClure and VCAT [2013] VSC 140

Supreme Court of Victoria

Derham AsJ



Administrative law - leases and tenancies - application pursuant to s148(1)(b) *Victorian Civil and Administrative Tribunal Act 1998* (Vic) for leave to appeal decision of VCAT in respect of landlord's application for possession of premises - whether notice to vacate premises was not in form prescribed under reg9(1) *Residential Tenancies Regulations 2008* (Vic) and therefore did not comply with s319(a) *Residential Tenancies Act 1997* (Vic) - whether legislature intended validity of notice to be preserved despite formal non-compliance - construction of s319 - held: no *prima facie* case that notice to vacate was not valid - leave to appeal refused.

[Rowson](#) (B, G)

Knott Investments Pty Ltd & Ors v Fulcher & Ors [2013] QCA 067

Court of Appeal of Queensland

Holmes & Muir JJA; Atkinson J

Trade and commerce - consumer protection - damages - causation - mitigation - second respondent company conducted tomato farm business - first respondent controlled second respondent - first appellant was manufacturer of Winnebago owned by second respondent - second appellant was dealer who sold Winnebago to second respondent - third appellant was importer of Winnebago's air-conditioning unit - fire in air-conditioning unit spread and destroyed packing shed and plant - appellants appealed judgment favour of second respondent and costs orders - whether loss of profits after sale of farm land caused by fire - related question whether second respondent failed to mitigate loss by not recommencing business - held: appeal allowed only to extent of variation of orders for amount payable in respect of economic loss.

[Knott Investments](#) (I, B, C)

Pavicic v Webb [2013] ACTSC 41

Supreme Court of the Australian Capital Territory

Burns J

Damages - negligence - mitigation of loss - plaintiff injured in motor vehicle accident - defendant admitted liability but disputed extent of injuries suffered by plaintiff - defendant also alleged plaintiff had failed to act reasonably or mitigate loss - evidence - credit - held: plaintiff was suffering pain disorder or somatoform disorder and depression as a result of injuries sustained in accident - defendant failed to establish failure on part of plaintiff to mitigate loss - assessment of damages - judgment for plaintiff.

[Pavicic](#) (I)



Autumn

By Amy Lowell

All day I have watched the purple vine leaves
Fall into the water.
And now in the moonlight they still fall,
But each leaf is fringed with silver.

[Amy Lowell](#)

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