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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Pratt Holdings Proprietary Ltd v Commissioner of Taxation (FCAFC) – income tax – disallowance of deduction for loss transferred by company within group – appeal dismissed (B, G)

Millis v Valpak (Aust) Pty Ltd (NSWCA) – work injury damages – no error in findings on liability or damages for future economic loss – appeal and cross-appeal dismissed (I)

Watson v Meyer (NSWCA) - negligence - error in process of fact-finding and miscarriage of justice - matter remitted for retrial on all issues (I)



Buckley v Timbury (NSWSC) - real property - actionable interference to easement made out in part but rejected in part - injunction granted (B, C)

Sali v ABC (VSC) - defamation - summary judgment refused - imputations struck out - leave to replead (I)

State of Tasmania v Croft (No 2) (TASSC) - costs - compulsory acquisition of land - respondent to pay part of State's costs of application for assessment of compensation (B, G)

Singles v Mander Forklift Pty Ltd (No 2) (ACTSC) - work injury damages – proceedings dismissed in 2007 reinstated to active cases list (I)

Summaries with links (5 minute read)

Pratt Holdings Proprietary Ltd v Commissioner of Taxation [2013] FCAFC 82

Full Court of the Federal Court of Australia

Dowsett, Edmonds & Griffiths JJ

Income tax – deductions - Commissioner disallowed deduction pursuant to s170-20 *Income Tax Assessment Act 1997* (Cth) for loss transferred by company in same wholly owned group – basis was that any agreement pursuant to s170-50 of the Act by which company transferred tax loss was ineffectual because company did not have a tax loss for year of income – statutory construction - held: no balancing adjustment deduction for company arising from its disposal of exploration tenements giving rise to tax loss in year of income transferable to appellant – appeal dismissed.

[Pratt Holdings Proprietary Ltd](#) (B, G)

Millis v Valpak (Aust) Pty Ltd [2013] NSWCA 249

Court of Appeal of New South Wales

Beazley P, Meagher & Gleeson JJA

Work injury damages – appellant injured back while picking up boxes in course of employment – trial judge found employer liable in negligence and awarded damages – appellant appealed against award of damages for future economic loss – employer cross-appealed against decision on liability and finding of no contributory negligence – evidence – ergonomic evidence - medical evidence – short form reasons pursuant to s45(4) *Supreme Court Act 1970* (NSW) - held: trial judge's conclusions open on the evidence – no demonstration that assessment of damages wrong –



appeal and cross-appeal failed and did not raise any question of general principle – appeal and cross-appeal dismissed.

[Millis](#) (I)

Watson v Meyer [2013] NSWCA 243

Court of Appeal of New South Wales

Macfarlan, Ward & Gleeson JJA

Negligence - appeal from dismissal of claim arising from horse-riding accident - duty of care - causation - contributory negligence - requirements for remitter under r51.53 *Uniform Civil Procedure Rules 2005* (NSW) - limits of re-trial - s56 *Civil Procedure Act 2005* (NSW) – whether defences under *Civil Liability Act 2002* (NSW) can be relied on when not pleaded - held: inconsistency in trial judge’s findings meant there was error in process of fact-finding and miscarriage of justice in sense considered in *Mifsud v Campbell* (1991) 21 NSWLR 725 - determination of inconsistent factual findings likely to involve credit findings which might impact on other issues in proceedings - appeal allowed - matter remitted for re-trial on all issues.

[Watson](#) (I)

Buckley v Timbury [2013] NSWSC 1009

Supreme Court of New South Wales

Slattery J

Real property - Torrens title - easements - plaintiff was registered proprietor of dominant tenement of right of carriageway which traversed defendants’ servient land and gave access to public road - plaintiff alleged defendants obstructed his easement – defendants denied some conduct and contended conduct was not actionable at law - principles applicable to gates across easements, blocking of drains, and rocks on grassy verge - held: plaintiff succeeded on complaint concerning blocking of drains - injunction granted to restrain first defendant from placing rocks in or near subsoil drains under roadway on easement or in position where they were likely to wash into drains during times of rain - summons otherwise dismissed.

[Buckley](#) (B, C)

**Sali v ABC [2013] VSC 388**

Supreme Court of Victoria

Beach J

Summary judgment - defamation - pleadings - plaintiff claimed damages for defamation in respect of broadcast of television show - defendants sought summary judgment against plaintiff or orders that plaintiff's imputations be struck out - test for summary judgment in s63 *Civil Procedure Act 2010* (Vic) - held: imputations struck out - court not satisfied plaintiff's prospects of success fanciful - case not without real prospects of success - summary judgment refused - plaintiff given leave to re-plead imputations.

[Sali \(I\)](#)**State of Tasmania v Croft (No 2) [2013] TASSC 41**

Supreme Court of Tasmania

Blow CJ

Costs - real property - compensation for compulsory acquisition of land - State sought order that respondent pay its costs of application for assessment of compensation under *Land Acquisition Act 1993* (Tas) - disparity between sum offered by State and amount of compensation awarded - respondent's conduct in relation to discovery and stay applications - held: respondent should be ordered to pay part of the State's costs - case concerned small entitlement to compensation - unjust for respondent to pay amount of costs that would leave him with no compensation at all - respondent to pay \$1000 of State's costs.

[State of Tasmania \(B, G\)](#)



Singles v Mander Forklift Pty Ltd (No 2) [2013] ACTSC 150

Supreme Court of the Australian Capital Territory

Nield AJ

Work injury damages – appellant injured in 1997 in course of employment when thrown from pallet truck - appellant filed statement of claim in 2000, claiming damages from respondent for failure to service truck in accordance with contract with appellant’s employer - proceedings stood over several times before being stood over generally by consent in 2004 with liberty to restore proceedings to active cases list - no steps taken by either party - claim dismissed under r75 *Court Procedure Rules 2006 (ACT)* in 2007 - appellant sought leave to appeal from dismissal of application to reinstate proceedings pursuant to r76 of the Rules - periods of time between steps - delay - prejudice - fair trial - held: trial judge’s exercise of discretion miscarried - in interests of justice to reinstate appellant’s claim - leave to appeal granted - appeal allowed.

[Singles \(I\)](#)

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