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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)

Kedem v Johnson Lawyers Legal Practice Pty Ltd (FCAFC) - limitation of actions - Court had no power to extend limitation period - appellant not under disability - appeal dismissed (I)

Theobald, in the matter of Finplas Pty Ltd (FCA) - corporations - liquidators acting honestly in sale of trust assets without power - liquidators excused and indemnified (I B)

Edwards v Endeavour Energy; Precision Helicopters Pty Ltd v Endeavour Energy; Endeavour Energy v Precision Helicopters Pty Ltd (No. 4) (NSWSC) - negligence - contract - apportionment - multiple claims arising from helicopter crash (I)

Camellia Properties Pty Ltd v Wesfarmers General Insurance Ltd (NSWSC) - insurance - home and contents policy - fire at premises - no breach of utmost good faith - reasonable cost of restoration of house to *as was* state (I B C)



Pourzand -v- Telstra Corporation Ltd (WASCA) - leases and tenancies - lessee's employee had authority to consent to lessor's major works at leased premises - appeal allowed (I B)

Vincent -v- Close (WASC) - wills and estates - testamentary capacity - deceased's 1969 will was valid will - probate granted (B)

Thom v Carle (ACTSC) - work injury damages - carpenter injured when straightening from kneeling or bending position - unsafe system of work - employer liable (I)

Summaries with links (5 minute read)

Kedem v Johnson Lawyers Legal Practice Pty Ltd [2014] FCAFC 3

Full Court of the Federal Court of Australia

North, Barker & Katzmann JJ

Limitation of actions - appellant claimed solicitors failed to act on his instructions in proceedings brought against him in Supreme Court of South Australia - appellant sought extension of time to bring action - primary judge determined claims statute-barred and no extension of time should be granted - held: primary judge not wrong to find s48(3)(b)(ii) *Limitation Act 1936* (SA) not engaged to permit extension of time - appellant not under legal disability pursuant to s45 of the Act - primary judge correct to hold appellant did not satisfy requirements of s48(3)(b) of the Act - Court had no power to extend limitation period and discretion was not enlivened - application to adduce further evidence refused - appeal dismissed.

[Kedem](#) (I)

Theobald, in the matter of Finplas Pty Ltd [2014] FCA 31

Federal Court of Australia

Siopis J

Corporations - corporate trustee carried on business from premises owned by company - company leased premises to corporate trustee - premises subject to mortgage in favour of bank - company and corporate trustee owned plant and equipment at premises - company incurred liability to ATO - court made winding up order in respect of company - bank appointed agents to effect sale of premises and required corporate trustee to vacate premises - corporate trustee wound up for unpaid rent to company - liquidators of corporate trustee sold trust assets without power - s1318 *Corporations Act 2001* (Cth) - ss75 & 89 *Trustees Act 1962* (WA) - held: liquidators did not



demonstrate objective basis for reasonable apprehension that claim arising from sale of plant and equipment might be brought against him - liquidators acted honestly and were excused for any breaches, failures or omissions relating to sale of plant and equipment - liquidators entitled to be indemnified out of trust assets in respect of any liabilities incurred corporate trustee.

[Theobald, in the matter of Finplas](#) (I B)

Edwards v Endeavour Energy; Precision Helicopters Pty Ltd v Endeavour Energy; Endeavour Energy v Precision Helicopters Pty Limited (No. 4)

[2013] NSWSC 1899

Johnson J

Negligence - contract - apportionment - helicopter owned/operated by company (Precision) crashed while inspecting powerlines pursuant to contract with another company (Endeavour) when skid of helicopter caught wire owned by Telstra - observer in helicopter and employed by Endeavour injured and helicopter damaged - observer was not wearing helmet - observer and family sought damages for personal injury and nervous shock and other parties sought orders for contribution or indemnity - s5 *Civil Liability Act 2002* (NSW) - held: employee not a *passenger* on helicopter thus *Civil Aviation (Carriers' Liability) Act 1967* (NSW) had no application to limit damages recoverable - employee's children established liability against Endeavour and Precision but not against Telstra - Endeavour established claim for indemnity against Precision of 10% under s151Z(1)(d) *Workers Compensation Act 1987* (NSW) (WC Act) but failed in claim for indemnity against Telstra and in claim against Precision for indemnity under contract - Precision succeeded in claim for damages for breach of contract with respect to damage to helicopter hull and loss of its use and in claim for breach of contract for Precision's liability to Endeavour under s151Z WC Act and for Precision's liability to the employee's family, including children - Precision failed in claim against Telstra for indemnity or contribution with respect to claims by members of employee's family.

[Edwards](#) (I)

Camellia Properties Pty Ltd v Wesfarmers General Insurance Ltd [2013] NSWSC 1975

Supreme Court of New South Wales

Sackar J

Insurance - environment and planning - estoppel - claim for indemnity by several plaintiffs from insurer under home and contents contract of insurance (policy) in respect of premises owned by two plaintiffs as joint tenants - building and contents substantially damaged by fire - insurer accepted policy responded to plaintiffs' claim - parties disputed quantum - house now rebuilt but



with alterations and additions as compared to pre-fire state - owners alleged insurer breached duty of utmost good faith imposed by s13 *Insurance Contracts Act 1984* (Cth) by engaging in conduct inconsistent with estoppels said to arise from representations made by insurer's agent - insurer claimed plaintiffs breached obligations of utmost good faith by obtaining development consent for purpose of restoring house to *as was* condition when not necessary - held: court rejected variation and/or estoppel claims and claims of breach of duty of utmost good faith - reasonable cost of reinstatement of house to its *as was* state assessed by reference to evidence - court rejected claim for damages for distress and inconvenience and insurer's allegation of plaintiffs' failure to mitigate - adjustment to be made to take into account amounts already paid by insurer to plaintiffs.

[Camelia Properties](#) (I B C)

Pourzand -v- Telstra Corporation Ltd [2014] WASCA 14

Court of Appeal of Western Australia

McLure P; Pullin & Murphy JJA

Leases and tenancies - lessors appealed from judgment dismissing claim against lessee for breaches of lease of part of office building - trial judge held lessee validly terminated lease because lessors had, by undertaking works in and to leased premises, renounced lease and breached covenant of quiet enjoyment - lessors claimed trial judge erred in failing to find lessee's property manager by its employee approved, consented to, or authorised lessors' entry into premises for purpose of undertaking works and that employee acted with lessee's ostensible authority with consequence there was no renunciation or breach of covenant - lessee claimed issue of ostensible authority could not be raised for first time on appeal - held (by majority): court satisfied issue of employee's agency and ostensible authority to consent to major works was litigated at trial - evidence established that lessors relied on lessee's representation that employee had authority to consent to them undertaking major works on leased premises and that reliance was reasonable - appeal allowed.

[Pourzand](#) (I B)

Vincent -v- Close [2014] WASC 5

Supreme Court of Western Australia

McKechnie J

Wills and estates - testamentary capacity - testamentary instruments - plaintiff son of deceased sought probate of 1969 will - held: 2005 document purporting to be will not valid because at least from 2004 deceased did not have testamentary - gift of land was not a testamentary instrument as

deceased did not have testamentary capacity - 2005 document purporting to be gift of land was not a valid disposition of property - in absence of evidence to contrary court could presume deceased had testamentary capacity to make 1969 will - 1969 will valid - declaration made - probate granted.

[Vincent](#) (B)

Thom v Carle [2014] ACTSC 4

Supreme Court of the Australian Capital Territory

Master Harper

Work injury damages - carpenter employed by subcontractor injured back when he straightened from bending or kneeling position - employee sued employer for damages - employer denied negligence and pleaded contributory negligence - held: court satisfied employee's injury caused by unsafe system of work adopted by employer and therefore injury resulted from breach by employer of duty of care owed to him - defence of contributory negligence not made out - damages assessed - judgment for employee.

[Thom](#) (I)



Deep mists of longing blur the land

By Christopher Brennan

Deep mists of longing blur the land
as in your late October eve:
almost I think your hand might leave
its old caress upon my hand —
for sure this floating world of dream
hath touch'd that far reality
of memory's heaven; nor would I deem
the chance a strange one, if to thee
my feet should stray ere fall the night,
or, reaching to that lucent shore,
these eyes should wake on tenderer light
to greet the spring and thee once more.

[Christopher Brennan](#)

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