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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)

Electricity Generation Corporation v Woodside Energy Ltd (HCA) - gas supply agreement - no failure by sellers to use *reasonable endeavours* to supply supplemental gas to purchaser at price stipulated in agreement (I B C G)

Bibby Financial Services Australia Pty Ltd v Sharma (NSWCA) - employment contract - termination of contract without cause - employer liable - appeal dismissed (I B)

Moss v Eagleston (NSWSC) - professional negligence - loss of opportunity - solicitor not under duty to plead additional causes of action in statement of claim (I)

Mushroom Composters v IS & DE Robertson Family Trust (NSWSC) - contract - straw supply agreement - implied terms - composters succeeded on limited part of claim - supplier succeeded on cross-claim (I B)



Dudic v Jakovljevic (NSWSC) - wills and estates - succession - intestacy - family provision claim by only child of deceased - lump sum order made (B)

Waddington v Dandenong Magistrates' Court (VSCA) - judicial review - appellant refused permission to be represented by person not admitted to practise - appeal dismissed (I G)

From the District Court of NSW

Mickle v Farley (NSWDC) - teacher defamed on social media entitled in damages (I B C G)

Summaries with links (5 minute read)

Electricity Generation Corporation v Woodside Energy Ltd; Woodside Energy Ltd v Electricity Generation Corporation [2014] HCA 7

High Court of Australia

French CJ; Hayne, Crennan, Kiefel & Gageler JJ

Contract - generator and supplier of electricity (Verve) purchased natural gas from sellers pursuant to gas supply agreement (agreement) - sellers obliged under agreement to use *reasonable endeavours* to make supplemental maximum daily quantity of gas (SMDQ) available to Verve in addition to gas they were ordinarily required to supply - explosion gas plant caused gas production to cease and temporary reduction in supply of gas to market - sellers refused to supply SMDQ to Verve for that period but offered to supply an equivalent quantity of gas at price higher than that applicable to SMDQ - Verve agreed to purchase gas from sellers at higher price - Verve contended sellers breached obligation to use *reasonable endeavours* to supply SMDQ - construction of agreement - held (by majority): *reasonable* standard of endeavours conditioned by sellers' responsibilities to Verve in respect of SMDQ as well as their express entitlement to take into account *relevant commercial, economic and operational matters* - contract did not oblige sellers to supply SMDQ to Verve when explosion caused business conditions which led to conflict between sellers' business interests and Verve's interest in obtaining SMDQ at price stipulated in agreement - sellers' construction of agreement accepted - appeal allowed.

[Electricity Generation Corporation](#) (I B C G)

**Bibby Financial Services Australia Pty Ltd v Sharma [2014] NSWCA 37**

Court of Appeal of New South Wales

Beazley P; Barrett & Gleeson JJA

Employment contract - respondent employed by appellant under executive service agreement - primary judge found employer terminated employee's contract without cause and was liable to pay employee six months salary in lieu of notice and special bonus - election - sexual harassment - s28A *Sex Discrimination Act 1984* (Cth) - s75A *Supreme Court Act 1970* (NSW) - construction of contract - held: primary judge did not err by finding employee's employment was terminated without cause on certain date pursuant to contract and that termination was not withdrawn - primary judge did not err in failing to find employee's employment not terminated at later date for serious misconduct - employer's failure to comply with clause of contract concerning provision of notice meant purported termination for serious misconduct was of no effect - assumed conduct did not amount to serious misconduct justifying dismissal - no failure by primary judge to consider employee's conduct as a whole - no failure by primary judge to address certain incidents - primary judge did not inappropriately have regard to *Briginshaw* standard and s140(2)(c) *Evidence Act 1995* (NSW) - appeal dismissed.

[Bibby Financial Services Australia](#) (I B)

Moss v Eagleston [2014] NSWSC 6

Supreme Court of New South Wales

McCallum J

Professional negligence - solicitors' duties - advocate's immunity - client approached law firm with view to bringing proceedings against newspaper publisher for breach of alleged agreement to pay him for information he provided to journalist - employed solicitor wrote letter of demand - client could not afford any further legal services - solicitor then privately agreed to draft statement of claim - solicitor drafted the claim pleading only in contract - client alleged solicitor negligently failed to include other causes of action in pleadings and claimed damages for loss of opportunity to bring those actions - held: court not persuaded solicitor was under a duty to do anything more than to draft pleading on strength of instructions recorded in his letter to client, which referred only to potential claim in contract - court not satisfied solicitor was under duty of care to give advice in respect of claim in defamation or to include defamation, unconscionable conduct or misleading or deceptive conduct in draft statement of claim - solicitor entitled to withdraw from case - client's claim dismissed.

[Moss](#) (I)

**Mushroom Composters v IS & DE Robertson Family Trust [2014] NSWSC 164**

Supreme Court of New South Wales

McDougall J

Contract - offer and acceptance – post-contractual conduct and admissions - implied terms - plaintiff (composters) manufactured and sold mushroom compost - defendant (supplier) supplied straw to composters - parties accused each other of breaching contract between them - held: contract was in substance that for which supplier contended - composters and supplier made contract for supply of straw over four straw harvesting seasons - for second, third and fourth years of the four year agreement, price was \$143.60 per tonne subject to any renegotiation in event of a glut of straw on the market - even if there was express or implied term that supplier would only invoice composters for actual royalties paid by supplier to farmers, composters did not prove breach - composters repudiated contract by its conduct at and following meeting - term implied into contract obliging composters' to collect straw within reasonable time - composters succeeded on claim only in respect of cost of hauling freight - supplier succeeded in cross-claim - damages assessed.

[Mushroom Composters](#) (B)**Dudic v Jakovljevic [2014] NSWSC 169**

Supreme Court of New South Wales

Hallen J

Wills and estates - succession - intestacy - biological daughter sought family provision order out of father's estate pursuant to Ch 3 *Succession Act 2006* (NSW) - deceased died intestate - no will or other testamentary instrument located - defendant was deceased's widow and sole administrator of estate - credit - widow's legitimate claims to deceased's bounty - held: daughter was *eligible person* within meaning of s57(1)(c) of the Act - daughter's claim on estate not very strong - deceased did not make adequate provision for proper maintenance and advancement in life of daughter as result of operation of intestacy rules - lump sum order made.

[Dudic](#) (B)**Waddington v Dandenong Magistrates' Court [2014] VSCA 12**

Court of Appeal of Victoria

Nettle & Beach JJA; McMillan AJA

Judicial review - appearance - courts and judges - bias - appeal from Magistrate's refusal to allow appellant to be represented before Magistrates' Court by someone not admitted to practise - Associate Judge summarily dismissed claim – Supreme Court judge persuaded that Associate



Judge erred in dismissing claim but that Magistrate did not err in refusing to allow appellant to be represented by lay person - statutory construction - s100(6) *Magistrates' Court Act 1989* (Vic) (MCA) - s2.2.2 *Legal Profession Act 2004* (Vic) - *authorised by law* - held: no error in judge's findings - no bias on part of Magistrate - Magistrate's refusal to allow appellant to appear by lay agent did not deny appellant a right to a fair trial - exercise of Magistrate's discretion did not miscarry - no error in judge's disposition of any issues of public importance - appeal dismissed.

[Waddington](#) (I G)

From the District Court of NSW

Mickle v Farley [2013] NSWDC 295

District Court of New South Wales

Elkaim SC DCJ

Damages - defamation - plaintiff teacher sued former student of school in defamation arising out of comments posted on Twitter and Facebook - amended defence struck out and judgment entered for plaintiff - assessment of damages - held: effect of publications on plaintiff was devastating - plaintiff entitled to award of compensatory damages flowing from established defamatory publications - award of damages must signal to public that vindication of plaintiff's reputation had been attempted - plaintiff awarded \$85,000 compensatory damages - plaintiff entitled to aggravated damages because of defendant's conduct in sending an apology letter but later pleading defence of truth - plaintiff awarded \$20,000 aggravated damages - verdict for plaintiff for \$105,000.

[Mickle](#) (I B C G)

The Fall

By William Barnes

The length o' days ageän do shrink
 An' flowers be thin in meäd, among
 The eegrass a-sheenèn bright, along
 Brook upon brook, an' brink by brink.

Noo starlèns do rise in vlock on wing—
 Noo goocoo in nest-green leaves do sound—
 Noo swallows be now a-wheelèn round—



Dip after dip, an' swing by swing.

The wheat that did leätely rustle thick
Is now up in mows that still be new,
An' yollow bevore the sky o' blue —
Tip after tip, an' rick by rick.

While now I can walk a dusty mile
I'll teäke me a day, while days be clear,
To vind a vew friends that still be dear,
Feäce after feäce, an' smile by smile.

[William Barnes](#)

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