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## Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Wood v Capita Insurance Services Limited (UKSC)** - contract - sale and purchase agreement - contractual interpretation - no error in Court of Appeal's construction of indemnity clause - appeal dismissed (I B C G)

**Stealth Enterprises Pty Ltd t/as The Gentlemen's Club v Calliden Insurance Ltd (NSWCA)** - stay - application for stay of enforcement of orders pending application for special leave to appeal to High Court - stay granted (I B C G)

**West Tankers Pty Ltd v Scottish Pacific Business Finance Pty Ltd (NSWSC)** - costs - novel topic - no reason to depart from usual rule - plaintiff to pay successful defendant's costs (I B C G)

**Jasarevic v Nesovanovic (VSC)** - probate - intestacy - defendant was deceased's domestic partner at time of death - letters of administration to be revoked from plaintiff nephew of deceased and granted to defendant (B)

**Nicholson Street Pty Ltd & Ors v Letten & Anor (No 4) (VSC)** - pleadings - knowing assistance - accessorial liability - permission to amend pleadings refused - claim against second defendant dismissed (I B C G)

**Melbourne City Investments Pty Ltd v UGL Ltd (VSCA)** - bias - refusal by trial judge to recuse himself from hearing interlocutory application - appeal dismissed (I B C G)

**Watney v Kencian & Anor** (QCA) - defamation - jury's answers to question in proceedings were answers that no reasonable jury could reach - appeal allowed - new trial (I)

**BR & BM Investments Pty Ltd ACN 008 128 612 & Ors v Genesee & Wyoming Australia Pty Ltd ACN 079 444 296 & Anor** (SASC) - disclosure - negligence - erroneous refusal of applications for disclosure - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Wood v Capita Insurance Services Limited [2017] UKSC 24**

Supreme Court of the United Kingdom

Lord Neuberger, President; Lord Mance, Lord Clarke, Lord Sumption & Lord Hodge  
Contract - sale and purchase agreement - contractual interpretation - indemnity clause - company offered motor insurance for classic cars - appellant entered agreement with respondent for sale and purchase of issued share capital of company - after purchase, company's employees raised concerns in relation to company's sale processes, which had resulted in customers paying more than they were quoted - appellant and company informed Financial Services Authority (FSA) and agreed with FSA to compensate affected customers - appellant claimed against respondent under indemnity clause of agreement - respondent contended claim was outside clause's scope - whether Court of Appeal erred in finding indemnity under clause was confined to loss arising from claim or complaint - construction of clause - principles of interpretation of contract - textualism and contextualism - Court's task to 'ascertain the objective meaning of the language which the parties have chosen to express their agreement' - held: circumstances triggering indemnity were found 'principally in a careful examination of the language which the parties have used' - no error in Court of Appeal's interpretation of indemnity clause - appeal dismissed.

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

### **Stealth Enterprises Pty Ltd t/as The Gentlemen's Club v Calliden Insurance Ltd [2017] NSWCA 129**

Court of Appeal of New South Wales

Macfarlan JA

Stay - applicant sought stay of enforcement of orders pending determination of its application for special leave to appeal to High Court - s21(1)(b) *Insurance Contracts Act 1984* (Cth) - *Prostitution Act 1992* (ACT) - held: Court satisfied there was substantial risk that if applicant satisfied judgment, respondent would be unable to repay amount and interest if High Court set aside judgment - there were 'substantial prospects of success' on special leave and real risk that applicant would not be able to effect restitution in event of reversal of judgment - stay granted.

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

## **West Tankers Pty Ltd v Scottish Pacific Business Finance Pty Ltd [2017] NSWSC 711**

Supreme Court of New South Wales

Hammerschlag J

Costs - Court found defendant entitled to money standing in District Court - Court provisionally ordered plaintiff to pay defendant's costs - plaintiff sought that parties pay own costs on basis that issue raised by the proceedings was novel, and that its position was reasonable - defendant sought costs on basis of success in proceedings - Pt42 r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court not persuaded it should depart from usual rule - defendant had 'decisive win on a pure question of law' - plaintiff's argument was 'reasonable (but wrong) on a novel topic', which did not provide a reason to deprive defendant of costs - plaintiff to pay defendant's costs.

[West Tankers Pty Ltd](#) (I B C G)

## **Jasarevic v Nesovanovic [2017] VSC 267**

Supreme Court of Victoria

Zammit J

Probate - intestacy - plaintiff was deceased's nephew - deceased died intestate - plaintiff sole beneficiary of estate - defendant claimed she was deceased's domestic partner at time of death - defendant sought revocation of letters of administration - s51(1) *Administration and Probate Act 1958* (Vic) - s35(2) *Relationships Act 2008* (Vic) - held: relationship between defendant and deceased satisfied requirement of s51(1) - defendant was sole beneficiary of deceased's estate - defendant had 'better right to apply for letters of administration' - there were sufficient grounds to revoke letters of administration and grant letters of administration to defendant, who had 'greatest interest' in deceased's estate.

[Jasarevic](#) (B)

## **Nicholson Street Pty Ltd & Ors v Letten & Anor (No 4) [2017] VSC 307**

Supreme Court of Victoria

Judd J

Pleadings - knowing assistance - summary judgment - plaintiffs sought leave to file further amended statement of claim to add new allegations accessorial liability under second limb of *Barnes v Addy* - requirements of pleading accessorial liability 'based on knowledge of an intentional and purposive fraud' - s63 *Civil Procedure Act 2010* (Vic) - held: Court found that plaintiffs' failure to plead additional facts was based in lack of evidence for allegations - in absence of those facts case against second defendant could not succeed - claim against second defendant dismissed.

[Nicholson Street](#) (I B C G)

## **Melbourne City Investments Pty Ltd v UGL Ltd [2017] VSCA 128**

Court of Appeal of Victoria

Warren CJ; Tate & Whelan JJA

# Benchmark

Bias - applicant sought leave to appeal against trial judge's refusal to recuse himself from hearing of interlocutory application - applicant contended trial judge's reasons were inadequate, that trial judge failed to apply correct test for apprehended bias; and that trial judge's conclusions on apprehended bias were unsound - held: recusal reasons were adequate - trial judge used expressions arguably revealing misapplication of *Ebner* test, however Court not persuaded that judge misapplied test - appeal dismissed.

[Melbourne City Investments](#) (I B C G)

## **Watney v Kencian & Anor [2017] QCA 116**

Court of Appeal of Queensland

Morrison & McMurdo JJA; Applegarth J

Defamation - applicant principal sued respondents for defamation arising from publication of letter - jury found that no meanings about applicant conveyed by publication were defamatory - applicant contended jury's answers to questions were perverse - respondents contended there was no substantial injustice requiring correction and that it was not appropriate to trespass on jury's function - respondents also contended Court should not order new trial as matter of discretion, and should stay proceedings - *Defamation Act 2005* (Qld) - *Civil Procedure Act 2005* (NSW) - held: Court found that jury's answers to Question 3: 'Has the plaintiff established that any imputation or meaning so conveyed would have been understood by the ordinary reasonable reader as defamatory of the plaintiff ...' were answers 'no reasonable jury, properly directed, could reach' - appeal allowed - new trial ordered.

[Watney](#) (I)

## **BR & BM Investments Pty Ltd ACN 008 128 612 & Ors v Genesee & Wyoming Australia Pty Ltd ACN 079 444 296 & Anor [2017] SASC 82**

Supreme Court of South Australia

Stanley J

Disclosure - negligence - plaintiffs brought four applications for orders for disclosure of documents in certain categories against four defendants under 6SCR 139 *Supreme Court Civil Rules 2006* (SA) - Master dismissed application against first to third defendants and adjourned application against fourth defendant - whether, where party had not given general disclosure under 6SCR 136, applicant for order under 6SCR 139 was required to prove existence of sought document - whether classes of documents which plaintiffs sought were relevant - whether operation 6SCR 139 to be conditioned by operation of 6SCR 136 - held: appeal allowed - first and third defendants to disclose categories of documents.

[BR & BM Investments](#) (I B C G)

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