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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)

Daly v Thiering (HCA) - motor accidents compensation - participant in Lifetime Care and Support Scheme not entitled to recover damages for provision of gratuitous attendant care services (I G)

Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd (HCA) - discovery - privilege - waiver - order granted for return of privileged documents inadvertently disclosed (I B C)

Manning Motel Pty Ltd v DH MB Pty Ltd (NSWSC) - contract - breach of collateral contract and landlord's repair covenant - damages (B)



Pascoe and Robinson as Trustees for Sale of Land v James (NSWSC) - real property - unmeritorious caveats - defendants jointly and severally liable for trustees' pecuniary loss (B)

Perpetual Ltd v Registrar of Titles (QSC) - pleadings - loans and mortgages - leave to amend outside limitation period (B)

Gallagher v McClintock (QSC) - equity - church member who distributed material to other members excluded from church premises - interlocutory injunction refused (I B G)

Thundelarra Ltd v Richmond [No 2] (WASC) - contract - mineral exploration company had defined JORC compliant resource - declarations and orders granted (B C)

Summaries with links (5 minute read)

Daly v Thiering [2013] HCA 45

High Court of Australia

Crennan, Kiefel, Bell, Gageler & Keane JJ

Motor accidents compensation - first respondent suffered catastrophic injuries and was participant in Scheme under *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) (LCS Act) - significant part of first respondent's domestic care provided for under Scheme undertaken gratuitously by his mother - first respondent sued appellant driver of motor vehicle allegedly at fault for damages and claimed value of services provided by mother - appellant denied liability for value of services in reliance on s130A of the *Motor Accidents Compensation Act 1999* (NSW) - statutory interpretation - ss6, 8, 23, 26, 28 LCS Act - held: s130A MACA precluded participants in Scheme from recovering damages for economic loss in respect of treatment and care needs provided for under Scheme, even though they were rendered gratuitously - appeal allowed.

[Daly](#) (I G)

Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd [2013] HCA 46

High Court of Australia

French CJ; Kiefel, Bell, Gageler & Keane JJ

Discovery - privilege - waiver - Supreme Court ordered parties to give verified, general discovery - documents subject to client legal privilege mistakenly listed as non-privileged in appellants' Lists of Documents - electronic copies of documents inadvertently disclosed to respondents' solicitors -



solicitors asserted clients not obliged to return documents and privilege waived by disclosure - appellants sought return of 13 documents - r21.2 *Uniform Civil Procedure Rules 2005* (NSW) - Pt6 *Civil Procedure Act 2005* (NSW) - Court of Appeal held respondent's solicitors did not have equitable obligation of confidence - held: issue of waiver should never have been raised - no evidence appellants acted inconsistently with maintaining privilege - no need to resort to court's equitable jurisdiction - Supreme Court should have promptly exercised powers to permit appellants to correct their solicitors' mistake and order return of documents to ensure *just, quick and cheap resolution of the real issues* in proceedings - Supreme Court - appeal allowed.

[Expense Reduction Analysts Group](#) (I B C)

Manning Motel Pty Ltd v DH MB Pty Ltd [2013] NSWSC 1582

Supreme Court of New South Wales

Lindsay J

Contract - collateral agreement - plaintiff lessee operated motel business on premises leased from first defendant - second defendant was owner of another motel - third defendant was sole director of first and second defendants - plaintiff contended that in consideration of its entry into lease, motel owner (by sole director) orally warranted it would purchase accommodation from plaintiff for overflow - requirements for finding of collateral contract - held: motel owner made contractual promise to plaintiff as inducement to it to enter into lease - plaintiff executed lease in reliance on promise - there was a contract between plaintiff and motel owner collateral to lease between plaintiff and lessor - plaintiff entitled to damages from motel owner for breach of collateral contract and damages from lessor for breach of landlord's repair covenant - claim against director in personal capacity dismissed.

[Manning Motel](#) (B)

Pascoe and Robinson as Trustees for Sale of Land v James [2013] NSWSC 1602

Supreme Court of New South Wales

Slattery J

Real property - plaintiffs are trustees for sale of land in bankruptcy - in first judgment judge found unmeritorious caveats had been lodged by defendants against land to disrupt plaintiff's capacity to sell land in orderly fashion - trustees applied under s74P *Real Property Act 1900* (NSW) for compensation for pecuniary loss sustained by lodgement of caveats - s74MA(2)(a) - delay - date from which trustees' loss should be calculated - held: trustees made out claim for pecuniary loss - defendants jointly and severally liable for whole of loss - defendants to pay costs of application on indemnity basis.



[Pascoe and Robinson as Trustees for Sale of Land](#) (B)

Perpetual Ltd v Registrar of Titles [2013] QSC 296

Supreme Court of Queensland

Boddice J

Pleadings - loans and mortgages - limitation - negligence - plaintiff sought leave to file amended statements of claim to include causes of action for damages for pure economic loss and breach of warranty - defendant opposed application on basis new causes of action were sought to be brought outside limitation period - vulnerability - prejudice - held: proposed causes of action stemmed from previously alleged breaches of referrer agreement and previously alleged reliance by plaintiff upon defendant having satisfied terms of referrer agreement - new causes of action arose out of substantially same facts as causes of action for which relief had already been claimed - appropriate to grant leave pursuant to r 376(4) *Uniform Civil Procedure Rules 1999* (Qld) - no real prejudice to defendant.

[Perpetual](#) (B)

Gallagher v McClintock [2013] QSC 292

Supreme Court of Queensland

McMeekin J

Equity - injunction - applicant was member of church congregation - respondents were pastor and members of board of church - applicant distributed material to members of congregation voicing concerns about direction of church - pastor and board wrote to applicant denying him permission to enter church without permission - applicant argued dismissal was against his right to freedom of speech and sought interlocutory injunction - pastor and board contended applicant became trespasser upon revocation of licence and that application was misconceived, frivolous and vexatious - held: applicant had not pointed to any right of his infringed by pastor and board - no serious question to be tried - application for interlocutory relief refused - applicant allowed seven days to file and serve material demonstrating need for continuation of proceedings

[Gallagher](#) (I B G)

Thundelarra Ltd v Richmond [No 2] [2013] WASC 392

Supreme Court of Western Australia

Edelman J

Contract - plaintiff was a mineral exploration company which entered contract with defendants - proceedings involving short questions of legal construction accompanied by substantial expert



evidence - primary construction issue was meaning of *define a JORC compliant resource* in clauses of contract - Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (JORC Code) - issue for experts was whether plaintiff had defined a JORC compliant resource - precontractual negotiations - held: proper construction of *define a JORC compliant resource* required a determination of a Mineral Resource in accordance with JORC Code and which was adopted by plaintiff - requirement was satisfied by determination contained in report and adoption of that determination by plaintiff in Australian Securities Exchange release - declarations and orders made.

[Thundelarra](#) (B C)

**Autumn at Taos**

By D. H. Lawrence

Over the rounded sides of the Rockies, the aspens of autumn,
The aspens of autumn,
Like yellow hair of a tigress brindled with pines.

Down on my hearth-rug of desert, sage of the mesa,
An ash-grey pelt
Of wolf all hairy and level, a wolf's wild pelt.

Trot-trot to the mottled foot-hills, cedar-mottled and pinion;
Did you ever see an otter?
Silvery-sided, fish-fanged, fierce-faced, whiskered, mottled.

When I trot my little pony through the aspen-trees of the canyon,
Behold me trotting at ease betwixt the slopes of the golden
Great and glistening-feathered legs of the hawk of Horus;
The golden hawk of Horus
Astride above me.

But under the pines
I go slowly
As under the hairy belly of a great black bear.

Glad to emerge and look back
On the yellow, pointed aspen-trees laid one on another like feathers,
Feather over feather on the breast of the great and golden
Hawk as I say of Horus.

Pleased to be out in the sage and the pine fish-dotted foothills,
Past the otter's whiskers,
On to the fur of the wolf-pelt that strews the plain.

And then to look back to the rounded sides of the squatting Rockies.



Tigress brindled with aspen,
Jaguar-splashed, puma-yellow, leopard-livid slopes of America.

Make big eyes, little pony,
At all these skins of wild beasts;
They won't hurt you.

Fangs and claws and talons and beaks and hawk-eyes
Are nerveless just now.
So be easy.

[D.H. Lawrence](#)

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