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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)

Kennedy (Appellant) v Cordia (Services) LLP (Respondent) (Scotland) (UKSC) - negligence - home-carer injured when she slipped on snow-covered icy foot path outside client's house - employer's failure to provide footwear attachments was breach of *Personal Protective Equipment at Work Regulations 1992* and negligence at common law - appeal allowed (I B C)

Bartlett v Australia & New Zealand Banking Group Ltd (NSWCA) - contract - employment contract - wrongful dismissal - bank not entitled to terminate appellant's contract for alleged serious misconduct - appeal allowed (I B)

Makarov v Attorney General of New South Wales (NSWCA) - administrative law - judicial review - dismissal of application for inquiry into convictions - application for judicial review dismissed (I G)

Pavlovic v Universal Music Australia Pty Ltd (No 2) (NSWCA) - costs - remitter - appeal allowed against determination of separate questions - costs to be payable forthwith - remaining issues to be heard by differently constituted Court (I B)

McGreevy v Cannon Hill Services Pty Ltd (QSC) - negligence - meat boner injured during course of employment at meat processing plant - employer liable (I)

Palmer Petroleum Pty Ltd v BGP Geexplorer Pte. Ltd (QSC) - corporations - statutory demand - no genuine dispute or other reason to set aside statutory demand established - application dismissed (B C)

Pedler v Trustee for the Salvation Army (South Australia) Property Trust (SASC) - Wills and estates - probate - testamentary capacity - Will not executed with formalities of *Wills Act 1936* (SA) admitted to probate (B)

Summaries With Link (Five Minute Read)

Kennedy (Appellant) v Cordia (Services) LLP (Respondent) (Scotland) [2016] UKSC 6

Supreme Court of the United Kingdom

Lady Hale, Deputy President; Lord Wilson, Lord Reed, Lord Toulson & Lord Hodge

Negligence - appellant employed by respondent as home carer - appellant injured wrist when she slipped on sloping public footpath covered in snow overlying ice outside client's house - appellant was wearing flat boots with ridged soles when she slipped and fell - employer's duty of care - risk assessments - precautions - causation - admissibility of expert evidence on health and safety practice - held: employer's failure to provide footwear attachments to appellant constituted both a breach of *Personal Protective Equipment at Work Regulations 1992* and negligence at common law - appeal allowed.

[Kennedy](#) (I B C)

Bartlett v Australia & New Zealand Banking Group Ltd [2016] NSWCA 30

Court of Appeal of New South Wales

Macfarlan, Meagher & Simpson JJA

Contract - employment contract - wrongful dismissal - bank purported to terminate appellant's employment without notice on basis of serious misconduct - appellant sued bank for damages for breach of contract alleging he was not guilty of serious misconduct and that bank was not entitled to terminate his employment without notice - primary judge found appellant sent doctored email to journalist and that bank was entitled to terminate contract without notice on that basis - s140 Evidence Act 1995 (NSW) - s100 Supreme Court Act 1970 (NSW) - onus - held: bank failed to discharge onus to prove alleged misconduct - bank required to act reasonably - bank failed to act reasonably due to its deficiencies in investigating alleged misconduct - bank not entitled to summarily terminate appellant's employment - appellant entitled to damages for wrongful dismissal in sum of \$110,000 with interest.

[Bartlett](#) (I B)

Makarov v Attorney General of New South Wales [2016] NSWCA 35

Court of Appeal of New South Wales

McColl, Meagher & Simpson JJA

Administrative law - judicial review - applicant convicted sexual offences - applicant sought under Pt 7, Div 3 *Crimes (Appeal and Review) Act 2001* (NSW) (CARA) inquiry into convictions - applicant sought judicial review of primary judge's decision to dismiss application on basis "no sense of unease or disquiet arises in respect of the applicant's conviction" - ss78 & 79 CARA -

s69 *Supreme Court Act 1970* (NSW) - held: no error in application of appropriate test - no error of law in primary judge's decision - application dismissed.

[Makarov](#) (I G)

Pavlovic v Universal Music Australia Pty Ltd (No 2) [2016] NSWCA 31

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Meagher JA

Costs - remitter - contract - joint venture - Court allowed an appeal against Sacker J's determination of separate questions in proceedings - appellants sought that costs of appeal and at first instance be payable forthwith and that matter be remitted to judge other than Sacker J - r42.7 *Uniform Civil Procedure Rules 2005* (NSW) - "strong findings about the credibility of a party" - held: costs to be payable forthwith - appropriate to remit matter for determination by differently constituted Court.

[Pavlovic](#) (I B)

McGreevy v Cannon Hill Services Pty Ltd [2016] QSC 29

Supreme Court of Queensland

Boddice J

Negligence - plaintiff meat boner alleged he was injured at work at meat processing facility operated by defendant - defendant accepted incident occurred but denied negligence and that plaintiff suffered long term injury - ss305B, 305C, 305H & 306F *Workers' Compensation and Rehabilitation Act 2003* (Qld) - sch 9, item 93 *Workers' Compensation and Rehabilitation Regulation 2014* (Qld) - system of work - production line processes - held: plaintiff established incident arose due to defendant's failure to properly implement system of work and that injury was caused by breach of duty - no contributory negligence - damages assessed - judgment for plaintiff.

[McGreevy](#) (I)

Palmer Petroleum Pty Ltd v BGP Geexplorer Pte. Ltd [2016] QSC 33

Supreme Court of Queensland

Boddice J

Corporations - statutory demand - applicant sought to set aside respondent's statutory demand pursuant to s459G *Corporations Act 2001* (Cth) - whether genuine dispute or "some other reason" to set aside demand - ss459H & 459J - held: genuine dispute about existence or amount of debt not established - applicant's failure to comply with demand was due to financial inability to do so - no other reason to set aside demand - application dismissed.

[Palmer](#) (B C)

Pedler v Trustee for the Salvation Army (South Australia) Property Trust [2016] SASC 33

Supreme Court of South Australia

Gray J

Wills and estates - succession - informal Will - testamentary capacity - executor sought



admission to probate of informal Will pursuant to s12(2) *Wills Act 1936* (SA) which deceased had instructed solicitors to prepare - Will was unexecuted but deceased had signed an acknowledgment at the base of a disclosure document in relation to appointment of executor - held: deceased had testamentary capacity at time he instructed solicitor to make new Will - when deceased signed acknowledgment he intended draft Will to be his Will - Will expressed deceased's testamentary intentions - Will admitted to probate.

[Pedler](#) (B)

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