

Friday, 10 July 2015

Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Allianz Australia Insurance Ltd v Haddad (NSWCA) - insurance - expiry of home insurance policy - denial of claim - insurer did not breach contract or engage in misleading or deceptive conduct - appeal allowed (I B)

Tanious v Australian Medical Council Ltd (NSWCA) - summary dismissal of proceedings against Australian Medical Council Ltd and Australian Health Practitioner Regulation Agency - leave to appeal refused (I)

Glen v Sullivan (NSWCA) - damages - motor vehicle accident - no error in assessment of damages - appeal dismissed (I)

Ferguson v Singler (No 2) (NSWSC) - judicial review - costs assessment - denial of procedural fairness - certificate of costs review panel set aside (I G)

EHL Burgess Properties Pty Ltd v Commissioner of State Revenue (VSC) - taxation - land tax assessment - 'primary production land exemption' - appeal successful (I B C G)

Baboolal v Fairfax Digital Australia and New Zealand Pty Ltd (QSC) - pleadings - defamation - certain imputations struck out with leave to amend (I)

Sidameneo (No.456) Pty Ltd v Plint (WASC) - interlocutory injunction - sale of medical

practice - breach of restraint of trade clause - injunction granted (I B)

Summaries With Link (Five Minute Read)

Allianz Australia Insurance Ltd v Haddad [2015] NSWCA 186

Court of Appeal of New South Wales

Beazley P; Meagher & Ward JJA

Insurance - Australian Consumer Law - respondent insured by appellant insurer under annual contracts of home insurance - 2008-2009 policy expired in July 2009 and not renewed - insurer did not send renewal notice to respondent and did not indicate it did not intend to renew policy - respondent believed policy extended or renewed - in September 2010 respondent made claim for damage to property that occurred in August 2010 - insurer denied claim on basis there was no current home insurance policy - primary judge found insurer breached 2008-2009 contract and engaged in misleading and deceptive conduct and gave judgment for respondent - ss20, 21, 22 *Competition and Consumer Act 2010* - held: no breach or repudiatory conduct by insurer - no misleading or deceptive conduct - insurer's conduct did not justify expectation policy would automatically be renewed - "statutory" policy arose as result of insurer's failure to comply with s58(2) *Insurance Contracts Act 1984* by not providing notice of expiry of 2008-2009 policy - statutory policy only continued until July 2010 - malicious damage subject of respondent's claim occurred after expiry of statutory policy - appeal allowed.

[Allianz](#) (I B)

Tanious v Australian Medical Council Ltd [2015] NSWCA 189

Court of Appeal of New South Wales

Beazley ACJ; Ward JA

Summary dismissal - applicant sought leave to appeal from summary dismissal of proceedings he brought against Australian Medical Council Ltd (AMC) and Australian Health Practitioner Regulation Agency (AHPRA) in relation to obtaining recognition of overseas medical qualifications and registration as medical practitioner - statutory scheme for national registration and accreditation of health practitioners - *Health Practitioner Regulation National Law* - held: no error in primary judge's reasons - no reasonable cause of action disclosed against respondents - not Court's function to review adequacy of 'academic system' conducted by AMC or adjudicate on accreditation procedures established by AHPRA - not for Court to determine applicant 'deserves' accreditation - basis for claim for financial compensation not made clear - appeal from summary dismissal doomed to fail - no error in award of indemnity costs - application for leave to appeal dismissed.

[Tanious](#) (I)

Glen v Sullivan [2015] NSWCA 191

Court of Appeal of New South Wales

Beazley P, Ward JA & Sackville AJA

Damages - motor vehicle accident - appellant claimed damages for injuries sustained when struck by vehicle driven by respondent - liability admitted - assessment of damages reflected primary judge's findings that although accident caused some physical and psychological injuries those injuries had resolved long before trial - credit - pre-accident health - medical evidence - onus of adducing evidence - s5D *Civil Liability Act 2002* - s131 *Motor Accidents Compensation Act 1999* - held: respondent discharged its onus of adducing evidence probative of fact that any causal relationship between accident and psychiatric disabilities had ceased well before trial - primary judge appreciated differing evidentiary burdens borne by parties - no error in primary judge's approach - appeal dismissed.

[Glen](#) (I)

Ferguson v Singler (No 2) [2015] NSWSC 891

Supreme Court of New South Wales

Button J

Judicial review - costs assessment - plaintiff sought to quash certificate issued by costs review panel - plaintiff contended panel's reasons so inadequate as to constitute jurisdictional error and that panel failed to afford procedural fairness - Pt 3.2 *Legal Profession Act 2004* - held: no error in approach adopted by panel to question of reasons - plaintiff denied procedural fairness in that relevant documents of which he was unaware were before panel - there was also procedural fairness characterised as practical injustice in that plaintiff unaware of documents before the body that was to determine long-standing dispute about very substantial sum of money - if plaintiff had not suffered from lack of awareness he could have made submissions that could have led to a different result - certificate of costs review panel set aside.

[Ferguson](#) (I G)

EHL Burgess Properties Pty Ltd v Commissioner of State Revenue [2015] VSC 295

Supreme Court of Victoria

Croft J

Taxation - land tax - appeal under s106 *Taxation Administration Act 1997* (Vic) against assessment to land tax made by Commissioner under *Land Tax Act 2005* (Vic) (LTA) - whether any land identified in assessment entitled to a 'primary production land' exemption from land tax pursuant to s65 LTA - principal effect of ss64 & 65 LTA to grant exemption from land tax where land used primarily for primary production and was outside 'greater Melbourne' area - no dispute land used for primary production - whether land lay outside 'greater Melbourne' - statutory construction - held: based on language in LTA Act and *Melbourne and Metropolitan Board of Works Act 1958* (Vic) 'greater Melbourne' did not include any municipal districts in Cities or Shires in Third Schedule of MMBW Act except City of Melbourne - only land owned by appellant within 'greater Melbourne' was Whittlesea City Council land - appeal successful to extent pursued.

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

Baboolal v Fairfax Digital Australia and New Zealand Pty Ltd [2015] QSC 196

Supreme Court of Queensland

Benchmark

Flanagan J

Pleadings - defamation - plaintiff was specialist physician - first defendant was publisher of website publication Brisbane Times - second and third defendants were journalists employed by first defendant - plaintiff claimed damages for defamation arising out of publication of four matters - first defendant sought to strike out a number of pleaded imputations pursuant to r171(2) *Uniform Civil Procedure Rules 1999* - held: certain imputations should be pleaded as alternatives - certain imputations not capable of arising - paragraphs struck out with leave to amend.

[Baboolal](#) (I)

Sidameneo Pty Ltd v Plint [2015] WASC 243

Supreme Court of Western Australia

Beech J

Interlocutory injunction - restraint of trade - contract - defendant sold medical practice to first plaintiff - sale agreement included clause restraining defendant from practicing medicine within specified geographical area for specified period - defendant took up practice in breach of clause - plaintiffs sought interlocutory injunction restraining defendant from acting in breach of clause pending trial - held: Court satisfied first plaintiff demonstrated prima facie case that restraint imposed by clause was reasonable and enforceable - balance of convenience favoured grant of injunction - interlocutory injunction granted.

[Sidameneo](#) (I B)

CRIMINAL

Executive Summary

Wallam v The State of Western Australia (WASCA) - criminal law - stealing motor vehicle - aggravated assault with intent to rob - aggravated armed robbery - breach of conditional suspended imprisonment order - appeal against sentence allowed

Summaries With Link

Wallam v The State of Western Australia [2015] WASCA 132

Court of Appeal of Western Australia

Martin CJ, Mazza JA & Hall J

Criminal law - appellant sentenced to total effective sentence of 6 years and 6 months' imprisonment for conviction for three offences and breach of conditional suspended imprisonment order - offences were stealing a motor vehicle, aggravated assault with intent to rob and aggravated armed robbery - appellant sought to appeal against sentence - appellant

Benchmark

contended primary judge erred in imposing total effective sentence that infringed first limb of principle of totality having regard to overall criminality and circumstances - appellant also contended sentence imposed for aggravated armed robbery was manifestly excessive in circumstances and that primary judge erred by failing to take into account appellant's cooperation with law enforcement authorities - held: primary judge erred by giving no discount at all for cooperation - primary judge erred in discount for pleading guilty - appeal allowed - appellant resentenced.

[Wallam](#)



Benchmark

From: Auguries of Innocence

By William Blake

To see a World in a Grain of Sand
And a Heaven in a Wild Flower
Hold Infinity in the palm of your hand
And Eternity in an hour

[William Blake](#)

[Click Here to access our Benchmark Search Engine](#)