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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Allen v Chadwick (HCA) - negligence - injured passenger not prevented from wearing seatbelt by appellant's bad driving - contributorily negligence established - appeal allowed in part (I)

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate; Construction, Forestry, Mining and Energy Union v Director, Fair Work Building Industry Inspectorate (HCA) - civil penalties - adjournment of proceedings - Court not precluded from receiving and accepting civil penalty submission - appeals allowed (I B C)

Goodricke v Comcare (No 2) (FCA) - administrative law - workers compensation - cessation of aggravation of work-related injury with result payments would also cease - appeal dismissed (I G)

MacDougal v Mitchell (NSWCA) - damages - assault - applicant entitled to exemplary and aggravated damages but not to "cushion" for future economic loss - appeal allowed in part (I)

HelensburghProperty Management Pty Ltd v Brady (NSWSC) - contract - rectification - restraint of trade - breach of employment agreement - rectification to include post-employment restraint - matter listed for hearing on damages (I B)

Actrol Parts Pty Ltd v Coppi (No 1) (VSC) - pleadings - employment contract - confidentiality agreement - leave to amend pleadings refused (I B)

Actrol Parts Pty Ltd v Coppi (No 2) (VSC) - employment contract - confidentiality agreement - repudiation of contract of employment - breach of duty of fidelity and loyalty - further hearing to determine relief, if any, to be awarded (I B)

Summaries With Link (Five Minute Read)

Allen v Chadwick [2015] HCA 47

High Court of Australia

French CJ; Kiefel, Bell, Keane & Gordon JJ

Negligence - respondent injured when thrown from seat of a car being driven by appellant - appellant's blood alcohol level around 0.229 per cent - not in dispute appellant's negligent driving caused injuries - whether respondent contributorily negligent for choosing to travel in car and failing to engage her seatbelt - ss47(2)(b) & 49 *Civil Liability Act 1936 (SA)* - held: respondent in circumstances could not have been expected to avoid risk of driving with appellant - failure to wear seatbelt constituted contributory negligence - no reason to interfere with trial judge's finding that respondent was not prevented from fastening her seatbelt by respondent's bad driving - appeal allowed in part.

[Allen \(I\)](#)

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate; Construction, Forestry, Mining and Energy Union v Director, Fair Work Building Industry Inspectorate [2015] HCA 46

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Civil penalties - appeals from Full Court of the Federal Court's adjournment of civil penalty proceedings under *Building and Construction Industry Improvement Act 2005 (Cth)* in which parties sought imposition of agreed penalties - whether Full Court erred in adjourning proceedings on basis decision in *Barbaro v The Queen* [2014] HCA 2 applied to civil penalty proceeding - whether *Barbaro* precluded court from receiving submission as to pecuniary penalty to be imposed - held: *Barbaro* did not apply to civil penalty proceedings - Court not precluded from receiving and accepting agreed or other civil penalty submission - appeal allowed.

[Commonwealth of Australia](#) (I B C)

Goodricke v Comcare (No 2) [2015] FCA 1401

Federal Court of Australia

Collier J

Administrative law - workers compensation - constitutional law - appellant sought judicial review of Comcare's decisions proposing to cease payment of compensation pursuant to *Safety Rehabilitation and Compensation Act 1988 (Cth)* and determination of amount at which normal

weekly earnings should set - appellant also gave Notice of a Constitutional Matter under s78B *Judiciary Act 1903* (Cth) arising from withholding of payments while reconsideration of entitlements underway - primary judge dismissed application - whether aggravation of work-related injury had ceased - whether decision-maker could be satisfied appellant no longer suffering injury for which he should be compensated - ss5(1)(h) & 5(3) *Administrative Decisions (Judicial Review) Act 1977* (Cth) - held: .grounds of appeal failed - no error in primary judge's decision concerning application of s 51(xxxi) Constitution - there was material before respondent from which it could be satisfied appellant no longer suffered injury and was therefore no longer entitled to compensation - appeal dismissed.

[Goodricke](#) (I G)

MacDougal v Mitchell [2015] NSWCA 389

Court of Appeal of New South Wales

Meagher JA; Bergin CJ in Eq & Tobias AJA

Damages - assault - applicant sought to appeal against decision ordering judgment for applicant against respondents for \$80,500.45 - applicant contended award of damages inadequate by failure to award aggravated and/or exemplary damages, or "cushion" for future economic loss - s3B *Civil Liability Act 2002* (NSW) - *Suitors' Fund Act 1951* (NSW) - whether primary judge erred in failing to award aggravated and/or exemplary damages even though he had found respondents' assaults on applicant were "intentional acts to cause injury", "without lawful excuse nor in self-defence" - held: applicant succeeded with respect to claim for aggravated and exemplary damages, but failed in claim for cushion for future economic loss - appellant is entitled to judgment of \$110,500.

[MacDougal](#) (I)

HelensburghProperty Management Pty Ltd v Brady [2015] NSWSC 1861

Supreme Court of New South Wales

Bergin CJ in Eq

Contract - rectification - restraint of trade - plaintiff provided property management services - first defendant employed by plaintiff as property manager until September 2015- second defendant company established by defendant in competition with plaintiff - plaintiff sought declaratory relief regarding confidential information obligations and restraint of trade covenant pursuant to employment agreement - plaintiff also sought to restrain second defendant from using confidential information provided to it by first defendant - *Restraints of Trade Act 1976* (NSW) - held: agreement to be rectified to include post-employment restraint - plaintiff established defendant breached employment agreement - matter listed for hearing on damages.

[Helensburgh](#) (I B)

Actrol Parts Pty Ltd v Coppi (No 1) [2015] VSC 670

Supreme Court of Victoria

Bell J

Pleadings - employment contract - confidentiality agreement - plaintiff sought to file further amended statement of claim in proceedings - defendant opposed most amendments - ss7, 8 &

24. *Civil Procedure Act 2010 (Vic)* - held: application to amend pleadings refused - application to amend made at very late stage - explanation for lateness unsatisfactory - amendment would impose added, unfair stress and financial strain on defendant - plaintiff only claiming nominal damages in proceedings - application dismissed.

[Actrol \(I B\)](#)

Actrol Parts Pty Ltd v Coppi (No 2) [2015] VSC 694

Supreme Court of Victoria

Bell J

Employment contract - confidentiality agreement - plaintiff alleged defendant breached employment agreement and separate confidentiality agreement - plaintiff claimed damages against defendant - determination whether plaintiff established any causes of action - directions in relation to interpretation and application of ss28 and 29 *Civil Procedure Act 2010 (Vic)* - held: plaintiff entitled to direct defendant to take leave with pay during period of resignation notice - defendant established plaintiff repudiated contract of employment by directing him to return motor vehicle and telephone available under contract during that period - plaintiff established defendant breached his duty of loyalty and fidelity as an employee on one day because he took employment with company without communicating acceptance of repudiation until second day of employment - further hearing required to determine relief, if any, to be granted to plaintiff.

[Actrol \(I B\)](#)

CRIMINAL

Executive Summary

DPP v O'Neill (VSCA) - criminal law - convictions of murder and arson - sentences not manifestly inadequate - no error established on part of sentencing judge - appeal dismissed

R v Baden-Clay (QCA) - criminal law - conviction of murder of wife - jury could not have been satisfied beyond reasonable doubt that element of intent to kill or do grievous bodily harm proved - appeal allowed - verdict of manslaughter substituted

Summaries With Link

DPP v O'Neill [2015] VSCA 325

Court of Appeal of Victoria

Warren CJ; Redlich & Kaye JJA

Criminal law - respondent convicted of one count of murder and one count of arson - DPP contended sentences for murder and arson manifestly inadequate and therefore total effective

sentence of 18 years imprisonment manifestly inadequate - DPP also contended sentencing judge erred in finding that setting fire to apartment was not an aggravating feature of murder, in categorising offence of murder as falling at 'lower end' of scale and in fixing 'lower than usual' non-parole period - held: manifest inadequacy not established - grounds of appeal alleging specific error not appropriate grounds for Crown appeal as they alleged only errors in particular case - no error demonstrated in decision of sentencing judge - appeal dismissed.

[DPP](#)

R v Baden-Clay [2015] QCA 265

Court of Appeal of Queensland

Holmes CJ; Fraser & Gotterson JJA

Criminal law - appellant convicted of murder of wife - appellant appealed against conviction on ground verdict unreasonable and grounds concerning summing up of trial judge - whether open to jury to conclude that when appellant caused wife's death he intended to do so, or to cause grievous bodily harm - held: post-offence conduct evidence was neutral on issue of intent - there remained reasonable hypothesis consistent with innocence of murder - jury could not have been satisfied beyond reasonable doubt element of intent to kill or do grievous bodily harm proved while there was another reasonable possibility available on evidence - appeal against conviction allowed - verdict of guilty of murder set aside - verdict of manslaughter substituted.

[Baden-Clay](#)



Benchmark

The Mower to the Glow-Worms

BY ANDREW MARVELL

Ye living lamps, by whose dear light
The nightingale does sit so late,
And studying all the summer night,
Her matchless songs does meditate;

Ye country comets, that portend
No war nor prince's funeral,
Shining unto no higher end
Than to presage the grass's fall;

Ye glow-worms, whose officious flame
To wand'ring mowers shows the way,
That in the night have lost their aim,
And after foolish fires do stray;

Your courteous lights in vain you waste,
Since Juliana here is come,
For she my mind hath so displac'd
That I shall never find my home.

[ANDREW MARVELL](#)

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