

Friday, 12 June 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)

Drew v State of NSW (NSWCA) - negligence - cleaner injured in fall at school in course of work - employer and State not liable (I)

Freestone Auto Sales Pty Ltd v Musulin (NSWCA) - summons - motor vehicle - amended summons to District Court dismissed (I G)

Srbnovski v Americold Logistics Ltd (VSCA) - negligence - jury verdict - credit - appeal against jury's assessment of pain and suffering damages dismissed (I)

Slaveska v State of Victoria (VSCA) - limitation of actions - summary judgment - abuse of process - appeal allowed in part (I)

Chief Executive, Department of Transport and Main Roads v Cidneo Pty Ltd (QCA) - real property - compulsory acquisition of land - post resumption-agreement - assessment of compensation payable - appeal allowed (I C)

Associated Forest Holdings Pty Ltd v Gordian Runoff Ltd (TASFC) - insurance - workers compensation - reinsurer not obliged to make payments under reinsurance policy - appeal dismissed (I)

Corica v Smith [No 2] (WASCA) - judgments and orders - refusal to set aside property (seizure)

and sale) order - application dismissed (B)

Summaries With Link (Five Minute Read)

Drew v State of NSW [2015] NSWCA 159

Court of Appeal of New South Wales

McColl, Ward & Leeming JJA

Negligence - cleaner employed by second respondent fell and injured herself at work at school - cleaner sued State as occupier of school and on basis it was vicariously liable for tortious conduct of school staff, and sued employer for workplace injury - primary judge dismissed both claims finding no breach of duty and that causation not established in claim against State - ss5B-5E *Civil Liability Act 2002* - held: no breach of procedural fairness - no deficiency of reasons or appellable error through failure to refer to evidence - no error in dismissal of claim against employer and State - appeal dismissed.

[Drew](#) (I)

Freestone Auto Sales Pty Ltd v Musulin [2015] NSWCA 160

Court of Appeal of New South Wales

McColl & Ward JJA; Simpson J

Summons - motor vehicle - applicant sought relief in relation to District Court decision in first respondent's appeal pursuant to s67(1) *Consumer, Trader and Tenancy Tribunal Act 2001* from decision of Consumer, Trader and Tenancy Tribunal in applicants favour - applicant sought order that first respondent's appeal to District Court be dismissed - first respondent conceded decision affected by error and should be quashed but sought order that proceedings be remitted to District Court for further hearing of appeal - whether proceedings ought to be remitted - costs - held: appeal to District Court would necessarily be dismissed - appropriate course for Court was to order amended summons to District Court be dismissed - respondent to pay applicant's costs.

[Freestone](#) (I G)

Srbinovski v Americold Logistics Ltd [2015] VSCA 139

Court of Appeal of Victoria

Warren CJ; Tate JA & Digby AJA

Negligence - jury verdict - appellant commenced action for pain and suffering damages as result of injury sustained while working for respondent - appellant alleged injuries caused by respondent's negligence - jury returned verdict in appellant's favour for \$50,000 - judgment entered for appellant for \$50,000 for pain and suffering and loss of enjoyment of life - trial judge pursuant to s 134AB *Accident Compensation Act 1985* varied orders, reducing damages for pain and suffering to nil and ordered judgment for respondent - appellant contended jury's assessment of pain and suffering damages manifestly inadequate - held: appellant failed to show, taking evidence most favourable to respondent, that no reasonable jury could have

Benchmark

assessed general damages at \$50,000 - sufficient medical evidence to undermine severity of injury - open to respondent to attack appellant's credit - errors or stated inaccuracies in respondent's closing address adequately remedied both by withdrawal and a direction by trial judge - appeal dismissed.

[Srbnovski](#) (I)

Slaveska v State of Victoria [2015] VSCA 140

Court of Appeal of Victoria

Warren CJ, Tate & Ginnane AJA

Limitation of actions - summary judgment - appellant's husband sued State and police officers arising out of 13 alleged incidents - claims of assault and battery, false imprisonment, malicious prosecution, defamation, trespass, conversion, detinue and negligence - all claims dismissed except trespass - appellant filed notice of appeal on behalf of husband - appeal dismissed for want of prosecution - wife commenced own proceeding against State and police officers - respondents sought summary dismissal or striking out of many claims - associate judge refused extension of time to prosecute claims and granted summary judgment in respect of claims regarding incidents on basis that they were not brought within time - appellant appealed - held: appeal grounds rejected except insofar as Court found appellant brought certain claims partly within time - Court dismissed surviving claims which arose from incidents subject of husband's proceeding as abuse of process - appeal allowed in part.

[Salveska](#) (I)

Chief Executive, Department of Transport and Main Roads v Cidneo Pty Ltd [2015] QCA 96

Court of Appeal of Queensland

Carmody CJ, Fraser JA & Dalton J

Real property - compulsory acquisition of land - applicant resumed part of respondent's land - application for leave to appeal from decision of Land Appeal Court concerning amount of compensation payable - whether amount of contribution to be taken into account in assessment under s20 *Acquisition of Land Act 1967* should be fixed as estimate of amount of required contribution which parties to hypothetical sale would have anticipated as at date of resumption or by reference to much smaller amount of contribution actually required under agreement made after resumption - held: only one ground of appeal in notice of appeal raised appellable question - Land Court should have considered post-resumption agreement regarding amount of transport infrastructure contribution in calculating quantum of compensation payable to respondent - appeal allowed.

[ChiefExecutive](#) (I C)

Associated Forest Holdings Pty Ltd v Gordian Runoff Ltd [2015] TASFC 6

Full Court of the Supreme Court of Tasmania

Blow CJ; Porter & Wood JJ

Insurance - limitation of actions - worker injured in accident while working as tree feller - employer (AFH) was self-insurer pursuant to exemption under *Workers Compensation Act 1927*

(Tas) - AFH and company of which it was a subsidiary (North) entered reinsurance agreement which purportedly provided that once employer reached threshold of \$1 million in respect of loss to which policy related, it could look to the reinsurer for liability in excess of amount - appellants brought an action against reinsurer contending threshold of \$1,000,000 passed and claiming damages for breach of contract on basis reinsurer refused to pay money that were due to them pursuant to policy by way of indemnity in respect of sums paid to worker and for his benefit - action failed - held: grounds of appeal failed - North had no claim against reinsurer under the policy - worker not a party to the policy - policy made no provision for any payments to be made to worker but provided only for the reimbursement of sums paid by others - no appellants entitled to recover any sums from - reinsurer - learned trial judge correct to give judgment for reinsurer though she erred in reasoning - appeal dismissed.

[Associated](#) (I)

Corica v Smith [No 2] [2015] WASCA 117

Court of Appeal of Western Australia

Newnes & Murphy JJA

Judgements and orders - appellants' appeal arising out of dispute with neighbours over a fence dismissed - appellants ordered to pay respondents' taxed costs - appellants sought review of decision refusing suspend costs judgment or to set aside seizure and sale order made to enforce costs judgment - s15 *Civil Judgments Enforcement Act 2004 (WA)* - 'special circumstances' - held: appellants failed to establish any grounds for suspension of enforcement of costs judgment or setting aside of property order - application dismissed.

[Corica](#) (B)

CRIMINAL

Executive Summary

Knowles (a pseudonym) v The Queen (VSCA) - criminal law - child sexual offences - evidence - leave to appeal refused

Haidari v R (NSWCCA) - criminal law - conviction for offence of riot - appeal dismissed

Summaries With Link

Knowles (a pseudonym) v The Queen [2015] VSCA 141

Court of Appeal of Victoria

Ashley, Redlich & Priest JJA

Criminal law - evidence - appellant found guilty of three charges involving child sexual offences -

judge imposed a total effective sentence of seven years' imprisonment fixed non-parole period of five years' imprisonment - appellant sought leave to appeal against conviction - appellant contended a substantial miscarriage of justice caused because part of complainant's evidence that related to count 1 was procured by leading questions and not addressed by directions to jury - appellant also contended verdict of the jury unsafe and unsatisfactory having regard to complainant's evidence and that substantial miscarriage of justice occurred because of failure of applicant's counsel to adduce evidence of applicant's partner in trial of applicant - held: not reasonably arguable that primary judges failure to give particular warning was productive of a substantial miscarriage of justice - no merit in contention that verdict of jury was unsafe and unsatisfactory having regard to complainant's evidence - no failure by Crown to interview or call J as a witness - Court not persuaded choice of counsel not to call J rendered trial unfair or was productive of a miscarriage of justice - leave to appeal refused.

[Knowles](#)

Haidari v R [2015] NSWCCA 126

Court of Criminal Appeal of New South Wales

Gleeson JA; Johnson & Hall JJ

Criminal law - appellant sought extension of time to appeal against conviction for offence of riot under s93B *Crimes Act 1900* - appellant contended admission of evidence of officer identifying appellant from aspects of footage of events within Villawood Detention Centre gave rise to miscarriage of justice - appellant also contended verdict was unreasonable - held: no miscarriage of justice in relation to evidence - Court satisfied it was open to jury to be satisfied beyond reasonable doubt that appellant guilty of offence of which he was convicted - not demonstrated that a jury must, as distinct from might, have entertained a doubt about appellant's guilt - appeal dismissed.

[Haidari](#)



Benchmark

Doreen

by C.J. Dennis

"I WISH'T yeh meant it, Bill." Oh, 'ow me 'eart
Went out to 'er that ev'nin' on the beach.
I knoo she weren't no ordinary tart,
My little peach!
I tell yeh, square an' all, me 'eart stood still
To 'ear 'er say, "I wish't yeh meant it, Bill."

To 'ear 'er voice! Its gentle sorter tone,
Like soft dream-music of some Dago band.
An' me all out; an' 'oldin' in me own
'Er little 'and.
An' 'ow she blushed! O, strike! it was divine
The way she raised 'er shinin' eyes to mine.

'Er eyes! Soft in the moon; such boshter eyes!
An' when they sight a bloke...O, spare me days!
'E goes all loose inside; such glamour lies
In 'er sweet gaze.
It makes 'im all ashamed uv wot 'e's been
To look inter the eyes of my Doreen.

The wet sands glistened, an' the gleamin' moon
Shone yellor on the sea, all streakin' down.
A band was playin' some soft, dreamy choon;
An' up the town
We 'eard the distant tram-cars whir an' clash.
An' there I told 'er 'ow I'd done me dash.

"I wish't yeh meant it." 'Struth! And did I, fair?
A bloke 'ud be a dawg to kid a skirt
Like 'er. An' me well knowin' she was square.
It 'ud be dirt!
'E'd be no man to point wiv 'er, an' kid.
I meant it honest; an' she knoo I did.

She knoo. I've done me block in on 'er, straight.
A cove 'as got to think some time in life
An' get some decent tart, ere it's too late,
To be 'is wife.
But, Gawd! 'Oo would 'a' thort it could 'a' been



Benchmark

My luck to strike the likes of 'er?...Doreen!

Aw, I can stand their chuckin' off, I can.
It's 'ard; an' I'd delight to take 'em on.
The dawgs! But it gets that way wiv a man
When 'e's fair gone.
She'll sight no stoush; an' so I 'ave to take
Their mag, an' do a duck fer 'er sweet sake.

Fer 'er sweet sake I've gone and chucked it clean:
The pubs an' schools an' all that leery game.
Fer when a bloke 'as come to know Doreen,
It ain't the same.
There's 'igher things, she sez, for blokes to do.
An' I am 'arf believin' that it's true.

Yes, 'igher things—that wus the way she spoke;
An' when she looked at me I sorter felt
That bosker feelin' that comes o'er a bloke,
An' makes 'im melt;
Makes 'im all 'ot to maul 'er, an' to shove
'Is arms about 'er...Bli'me? but it's love!

That's wot it is. An' when a man 'as grown
Like that 'e gets a sorter yearn inside
To be a little 'ero on 'is own;
An' see the pride
Glow in the eyes of 'er 'e calls 'is queen;
An' 'ear 'er say 'e is a shine champeen.

"I wish't yeh meant it," I can 'ear 'er yet,
My bit o' fluff! The moon was shinin' bright,
Turnin' the waves all yellor where it set—
A bonzer night!
The sparklin' sea all sorter gold an' green;
An' on the pier the band—O, 'Eil!...Doreen!

[C. J. Dennis](#)

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