

Monday, 13 March 2017

Daily Civil Law Review 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.

Executive Summary (1 minute read)

Pel-Air Aviation Pty Ltd v Casey (NSWCA) - damages - negligence - international law - respondent injured in plane crash - respondent's PTSD was not a 'bodily injury' for purpose of Art 17 Montreal Convention - appeal and cross-appeal allowed (I B C G)

Ivaneza v Dalsil Constructions Pty Ltd (NSWSC) - administrative law - judicial review - medical assessment certificate - whole person impairment - no inadequacy of reasons - summons dismissed (I G)

Minus v Harbour Radio Pty Ltd (NSWSC) - pleadings - defamation - form of pleadings - precision - slang terms - whether imputations differed in substance - leave to file amended pleadings including imputations refused (I)

Boulay Pty Ltd v The Trust Company Ltd (NSWSC) - contract - leases and tenancies - commercial lease - lessor's rent review notice valid - proceedings dismissed (B)

DEK Rendering v Gaffy & Ors (VSC) - judicial review - accident compensation - Medical Panel's decision concerning first defendant's work capacity set aside - matter remitted (I G)

Piper Alderman v Smoel (VSCA) - solicitors' costs - tax invoices were itemised bills, not 'lump sum bills' - appeal dismissed (B)

Dog at the Bridge Pty Ltd v Bridge Bar Investments Pty Ltd (VSCA) - judgments and orders

- summary judgment - pleadings - leave to appeal against dismissal of various applications refused (I B)

Summaries With Link (Five Minute Read)

Pel-Air Aviation Pty Ltd v Casey [2017] NSWCA 32

Court of Appeal of New South Wales

Macfarlan, Ward & Gleeson JJA

Damages - negligence - international law - company sent respondent nurse and doctor from Sydney to help transport seriously ill patient and husband from Samoa to Melbourne - plane operated by Pel-Air Aviation Pty Ltd (Pel-Air) - plane crashed during leg of flight - doctor and nurse seriously injured - doctor and nurse sought to recover damages from Pel-Air - appellant contended primary judge erred in concluding that respondent's PTSD constituted a 'bodily injury' for purposes of Art 17 Montreal Convention - respondent cross-appealed against primary judge's decision limiting recovery of estimated costs of funds management - whether primary judge erred in award of damages - whether evidence justified award for costs of funds management - ss9B & 9E *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - held: evidence justified conclusion respondent's brain was malfunctioning due to biochemical change, however such changes were not 'bodily injuries' - appeal allowed - cross-appeal allowed.

[Pel-Air](#) (I B C G)

Ivaneza v Dalsil Constructions Pty Ltd [2017] NSWSC 218

Supreme Court of New South Wales

Button J

Administrative law - plaintiff sought judicial review of medical assessment certificate on basis doctor assessing plaintiff's whole person impairment had failed to provide adequate reasons - ss319, 321, 327 & 376 *Workplace Injury Management Act 1998* (NSW) - held: no inadequacy of reasons - no error of law demonstrated - reasons given for findings 'quite legally adequate' - summons dismissed.

[Ivaneza](#) (I G)

Minus v Harbour Radio Pty Ltd [2017] NSWSC 191

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - action arising from series of broadcasts on radio - defendants objected to form of proposed amended statement of claim - precision of imputations - imputations using slang terms - 'bastardry and mongrel behaviour' - 'vandals' - 'Putin-like' - 'the mongrel mob' - whether two imputations differed in substance - 'colluded in' - 'was complicit with' - *Mining Act 1992* (NSW) - r14.30(3) *Uniform Civil Procedure Rules 2005* (NSW) - held: leave to file amended pleadings including imputations refused.

[Minus](#) (I)

Boulay Pty Ltd v The Trust Company Ltd [2017] NSWSC 222

Supreme Court of New South Wales
Stevenson J

Contract - leases and tenancies - commercial lease - lessee sought declaration rent review notice was not valid - lessee contended 'any notice of assessment of the annual market rent to apply from the 1 February 2016 rent review date was required to be served (up to three months) prior to 1 February 2016' - construction of lease - 'next review date' - held: Court concluded that notice was valid - proceedings dismissed.

[Boulay](#) (B)

DEK Rendering v Gaffy & Ors [2017] VSC 53

Supreme Court of Victoria
J Forrest J

Judicial review - accident compensation - first defendant employed by plaintiff - plaintiff sought judicial review of Medical Panel's decision concerning first defendant's work capacity - panel found first defendant's work capacity limited to two days per week and that this would continue indefinitely - 'continue indefinitely to be incapable of undertaking further additional employment or work' in s94CD(4)(b) *Accident Compensation Act 1985* (Vic) - whether Panel asked itself wrong question - held: Panel misdirected itself as to s94CD(4)(b), which required consideration of 'further or additional employment or work' without limitation to work being performed by worker when authority required to make decision - Panel's decision quashed - matter remitted.

[DEK](#) (I G)

Piper Alderman v Smoel [2017] VSCA 42

Court of Appeal of Victoria
Beach & Ferguson JJA; Cameron AJA

Solicitors' costs - applicant delivered 23 tax invoices to its clients, who were trustees of superannuation fund - invoices were delivered before appointment of respondents (new trustees) - respondents filed summons for taxation seeking review of costs claimed by applicant - applicant claimed bills were 'lump sum bills' under *Legal Profession Act 2004* (Vic) - primary judge held invoices were itemised bills with result applicant bound by amount charged in tax invoices - applicant sought to appeal - held: no error in primary judge's finding that invoices were itemised bills - appeal dismissed.

[Piper](#) (B)

Dog at the Bridge Pty Ltd v Bridge Bar Investments Pty Ltd [2017] VSCA 45

Court of Appeal of Victoria
Whelan & Beach JJA

Judgments and orders - first defendant applied for summary judgment, dismissal of claim against it for non-compliance with Almond J's order, for striking out of allegations against in second further amended statement of claim, and order for provision of further and better



particulars - primary judge struck out certain paragraphs of second further amended statement of claim - applications otherwise dismissed - first defendant sought to appeal against dismissal of applications and against costs order - held: proposed appeal concerning summary judgment, dismissal, or striking out did not have real prospect of success - leave to appeal refused.

[Dog at the Bridge](#) (I B)

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