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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)

Zhang v Popovic (NSWSC) - negligence - insurance - plaintiff injured when metal ramp attached to trailer fell on him - determination of action against parties connected with trailer and insurers joined as defendants (I B C)

Williams v Ausnet Electricity Services Pty Ltd (Ruling No 2) (VSC) - evidence - forensic disadvantage - orders made for inspection of gum tree which plaintiff alleged fell on power line causing bush fire (I B C G)

Gippsreal Ltd v Kenny (VSCA) - leave to appeal - delay in making application due to lawyers' genuine mistake and court's delay - extension of time to seek leave to appeal granted (I B)

Jonathan v Mangera (QCA) - limitations - motor vehicle collision - refusal of leave to commence proceedings - leave to appeal refused - permission to adduce further evidence refused (I B)

Stokes v House With No Steps (QSC) - negligence - carer injured when attacked by client at work - employer negligent but causation not established - claim dismissed (I)

Harding v Quirk (QSC) - equity - document did not represent part of ballot paper - application to restrain distribution of document refused (I B G)

In the matter of an application pursuant to Part 2 (sections 21 to 28) of the Succession Act 1981 (Qld) for the authorisation of the making of a Will on behalf of MPL (QSC) - Wills and estates - authorisation granted for making of proposed Will on behalf of testator who lacked

testamentary capacity (B)

Summaries With Link (Five Minute Read)

Zhang v Popovic [2016] NSWSC 407

Supreme Court of New South Wales

Adamson J

Negligence - insurance - plaintiff injured when metal ramp attached to trailer behind truck fell on top of him - plaintiff sued parties connected with trailer - plaintiff joined compulsory third party insurer of trailer, and insurer of first four defendants, as fifth and sixth defendants - first defendant was truck driver, second defendant was registered owner of trailer - third defendant was driver's employer and used truck and trailer in freight business - fourth defendant was company associated with driver - ss5B, 5C, 5D Civil Liability Act 2002 (NSW) - ss11 & 46 *Insurance Contracts Act 1984* (Cth) - ss3, 3A, 10 & 16 *Motor Accidents Compensation Act 1999* (NSW) - Sch 1, cl 38 *Motor Accidents Compensation Amendment Act 2010* (NSW) - s4A *Motor Accidents (Compensation) Act 1979* (NT) - ss4, 5 & 23(1) *Motor Accident Insurance Act 1994* (Qld) - s74 *Trade Practices Act 1974* (Cth) - held: plaintiff granted judgment against first, second and sixth defendants - seventh defendant granted judgment on plaintiff's claim, second and fourth cross-claims - first and second defendants granted judgment on first cross-claim.

[Zhang](#) (I B C)

Williams v Ausnet Electricity Services Pty Ltd (Ruling No 2) [2016] VSC 145

Supreme Court of Victoria

T Forrest J

Evidence - plaintiff alleged stem of a sugar gum tree fell onto powerline causing bushfire subject of proceedings - another stem of tree failed in March 2016 - VicRoads advised tree required urgent removal - plaintiff sought that court view tree's remains - ss53(1), 53(3) *Evidence Act 2008* (Vic) - forensic disadvantage to fourth defendant who had not engaged arborist or filed defence - held: Court ordered view to be conducted of tree's remaining portion - forensic disadvantage to fourth defendant attenuated by Court not entertaining submissions or statements from any party at view - tree to be preserved by VicRoads to enable examination by fourth defendant's arborist and for public safety.

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

Gippsreal Ltd v Kenny [2016] VSCA 65

Court of Appeal of Victoria

Kyrou JA

Leave to appeal - extension of time - applicant sought extension of time to seek leave to appeal against paragraphs of order by Vickery J - unclear whether both paragraphs of order required extension of time - Court's discretion to extend time - length of delay and reasons for delay - held: applicant did not seek leave to appeal due to lawyer's genuine mistake and court's delays

due to vacation - unfair to deprive applicant of opportunity for determination of application on merits - assuming extension of time required for both paragraphs, Court satisfied an extension of time should be granted.

[Gippsreal](#) (I B)

Jonathan v Mangera [2016] QCA 86

Court of Appeal of Queensland

Morrison JA; Boddice & Burns JJ

Limitations - motor vehicle collision - applicant injured in motor vehicle collision - applicant gave Notice of Accident Claim Form under *Motor Accident Insurance Act 1994* (Qld) - second respondent admitted liability in 2012 - solicitor advised second respondent he was unable to contact applicant - primary judge dismissed application for leave to commence proceedings within 60 days after three events which could not occur before expiry of limitation period - applicant sought leave to appeal - whether good reason for granting leave - whether conscientious effort to comply with Motor Accident Insurance Act - whether applicant chose to leave jurisdiction without leaving instructions - whether risk of significant prejudice to RACQ if leave given - applicant also sought to adduce further evidence - held: leave to adduce further evidence and leave to appeal refused.

[Jonathon](#) (I B W WI WB (I B)

Stokes v House With No Steps [2016] QSC 79

Supreme Court of Queensland

Jackson J

Negligence - causation - plaintiff employed by defendant to care for disabled client at facility - plaintiff injured at work when client attacked her - plaintiff claimed damages for breach of defendant's admitted duty of care - ss15-17, 19, 20, 23, 28 *Disability Services Act 2006* (Qld) - ss 305B-305E, 306F(2), 306H(2), 306N-306P, 306L(2) *Workers' Compensation and Rehabilitation Act 2003* (Qld) - ss 112D, schs 8-11 *Workers' Compensation and Rehabilitation Regulation 2003* (Qld) - held defendant was negligent but plaintiff failed to establish breach of duty caused plaintiff's loss - claim dismissed.

[Stokes](#) (I)

Harding v Quirk [2016] QSC 72

Supreme Court of Queensland

Byrne SJA

Equity - application for injunction to restrain distribution of handbill or pamphlet - application made pursuant to div 7 pt 9 *Local Government Electoral Act 2011* (Qld) on basis document was unauthorised how-to-vote card - held: Court regarded document as reminiscent of ballot paper but similarity not sufficient to warrant inference that hand-bill was intended to represent part of ballot paper - application dismissed.

[Harding](#) (I B G)



In the matter of an application pursuant to Part 2 (sections 21 to 28) of the Succession Act 1981 (Qld) for the authorisation of the making of a Will on behalf of MPL [2016] QSC

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Supreme Court of Queensland

Flanagan J

Wills and estates - succession - statutory Will - MPL injured in motor vehicle accident in 2012 - personal injuries claim resulted in award of damages - approximately \$7.3 million held for MPL by Court appointed administrators - MPL executed Will in 2016 - mother of MPL sought leave to apply for authorisation that Will be made for MPL - proposed Will identical to 2016 Will except for execution clause - whether MPL lacked testamentary capacity - ss21, 22, 23 & 24

Succession Act 1978 (Qld) - held: MPL lacked testamentary capacity - Court satisfied it should grant leave pursuant to s22 and order made pursuant to s21 authorising Will to be made in terms of proposed Will.

[MPL](#) (B)

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