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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)

McNeil v Narrabri Shire Council (NSWCA) - local government - trespass - appeal dismissed against judgment upholding council's order for remediation of property (I, C, G)

RSA (Moorvale Station) Pty Ltd v VDM CCE Pty Ltd (NSWSC) - discovery - *exceptional circumstances* - order for disclosure of documents (I, C)

Mills v GM Amalgamated Investments (Dulwich Hill) Pty Ltd & Anor (NSWSC) - easements - owner of servient tenement entitled to damages from owner of dominant tenement for defective replacement of drainage pipes (I, B, C)

Slack v Rogan & Anor; Palffy v Rogan & Anor (NSWSC) - wills and estates - succession - informal will - revocation and grant of probate - legacy (B)

Wright Prospecting Pty Ltd v Hamersley Iron Pty Ltd (NSWSC) - contract - iron ore mined in disputed areas - *Rio Tinto* defendant liable to pay royalty to plaintiffs (B, C)



Rossi v Westbrook & Anor (QCA) - damages - negligence - motor vehicle accident - injuries not sufficiently serious to require domestic assistance and affect earning capacity (I)

Rodger v Johnson (QSC) - damages - negligence - motor vehicle accident - disputed heads of damage (I)

Summaries with links (5 minute read)

McNeil v Narrabri Shire Council [2013] NSWCA 112

Court of Appeal of New South Wales

Barrett & Emmett JJA; Preston CJ of LEC

Local government - trespass - appeal concerning appellant's liability to council for costs of remediation work on property and council's liability for trespass to property - issues turned on validity of council order under s124 *Local Council Act 1993* (NSW) - appellant contended order invalid because it did not require anything to be done, council had no power to order demolition and order was based on erroneous premise that friable asbestos present on property - held: appellant did not establish any grounds of appeal - appeal dismissed.

[McNeil](#) (I, C, G)

RSA (Moorvale Station) Pty Ltd v VDM CCE Pty Ltd [2013] NSWSC 534

Supreme Court of New South Wales

Stevenson J

Evidence - discovery of documents - judgment under Queensland security of payments legislation stayed pending litigation on contract - plaintiff sought disclosure of documents by defendants - parties had not yet served all evidence - whether exceptional circumstances existed necessitating disclosure of documents: *Practice Note SC Eq 11* - imminent hearing date - orders made for service of reply evidence from expert - held: expert's genuine belief that documents were necessary for him to complete report was sufficient to establish relevance of documents and necessity for disclosure - current circumstances *exceptional* for purpose of Practice Note - documents to be disclosed.

[RSA \(Moorvale Station\)](#) (I, C)

**Mills v GM Amalgamated Investments (Dulwich Hill) Pty Ltd & Anor****[2013] NSWSC 519**

Supreme Court of New South Wales

Nicholas J

Real property - easement to drain water over a strip of servient tenement along common boundary - plaintiff proprietor of servient tenement - defendants proprietors of dominant tenement - plaintiff claimed damages for loss caused by defective replacement of drainage pipes within easement - evidence - proper construction of terms of easement - held: plaintiff entitled to seek relief for breach of obligations concerning disturbance to and restoration of surface of servient tenement - held: verdict and judgment for plaintiff.

[Mills](#) (I, B, C)**Slack v Rogan & Anor; Palffy v Rogan & Anor [2013] NSWSC 522**

Supreme Court of New South Wales

White J

Wills and estates - succession - informal will - family provision - two proceedings - in first proceeding plaintiff sought revocation of grant of probate on basis will revoked by subsequent informal document not executed in accordance with s6 *Succession Act 2006* (NSW) - in second proceeding plaintiff sought order for provision under s59 of the Act - in first proceedings, grant of probate to defendants revoked - grant of probate in solemn form to plaintiff - in second proceedings, order made for provision of legacy to plaintiff.

[Slack](#) (B)**Wright Prospecting Pty Ltd v Hamersley Iron Pty Ltd [2013] NSWSC 536**

Supreme Court of New South Wales

Hammerschlag J

Contract - plaintiffs sued two *Rio Tinto* defendants for royalties payable under written agreement made in 1970 concerning iron ore mined in two disputed areas - construction of agreement - held: one defendant obliged to pay plaintiffs royalty under agreement - claim against other defendant dismissed.

[Wright Prospecting](#) (B, C)

**Rossi v Westbrook & Anor [2013] QCA 102**

Court of Appeal of Queensland

Fraser & Gotterson JJA; Fryberg J

Damages - negligence - motor vehicle accident - appellant suffered spinal injury - appeal from decision that appellant's symptoms not serious enough to require domestic assistance or to affect earning capacity - extent of disability - medical evidence - held: appellant did not demonstrate any appellable error by trial judge - correct application of principles in *Jones v Dunkel* (1959) 101 CLR 298 to issues of earning capacity and care and assistance - appeal dismissed.

[Rossi](#) (I)**Rodger v Johnson [2013] QSC 117**

Supreme Court of Queensland

Jackson J

Damages - negligence - motor vehicle accident - quantum - assessment of damages on disputed heads of damage - medical evidence - multiple injuries - prospect of improvement - methodology for assessment of future economic loss - threshold for past gratuitous care: s59(1)(c) *Civil Liability Act 2003* (Qld) - medication and treatment expenses.

[Rodger](#) (I)

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