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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Tran v Vo (NSWCA) - negligence - occupier's liability - workers compensation - appellants' casual employee injured hand in juicer at appellants' premises while not rostered on - appellants liable - appeal dismissed (I B C G)

SW Investments NSW Pty Ltd v 16 Boondilla Pty Ltd (NSWSC) - consumer law - agreements for purchase of property void and set aside - first plaintiff to be compensated for loss - orders made (I B C G)

Kambouris v Kiatos (VSCA) - negligence - professional negligence - solicitors' duties - leave to appeal against judgment awarding nominal damages refused (I B C G)

Whitsunday Residents Against Dumping Ltd v Chief Executive, Department of Environment and Heritage Protection (QSC) - administrative law - approval of application for site specific Environmental Authority for activities - statutory order for review refused (I B C G)

Byrne v The Owners of Ceresa River Apartments Strata Plan 55597 (WASCA) - strata titles - lot proprietors restrained from utilising their lots for 'short-stay accommodation' - misconstruction of by-law of strata scheme - appeal allowed in part (I B C G)

Caltex Australia Petroleum Pty Ltd v Contaminated Sites Committee (WASC) - administrative law - contaminated sites - responsibility for remediation - applicant entitled to writ

of prohibition against respondent, to prevent it making decision pursuant to s36(2)(a)
Contaminated Sites Act 2003 (WA) (CS Act) (I B C G)

Korda v Aldi Foods Pty Ltd (ACTSC) - negligence - contributory negligence - plaintiff injured in incident at store's entry gates - breach of duty by failure to install warning sign - causation not established - cross-appeal allowed (I)

Summaries With Link (Five Minute Read)

Tran v Vo [2017] NSWCA 134

Court of Appeal of New South Wales

Macfarlan, Leeming & Payne JJA

Negligence - occupier's liability - workers compensation - respondent claimed damages for injury at appellants' premises when hand caught in juicing machine - respondent was appellant's casual employee but not rostered on for work on day of accident - primary judge gave verdict for respondent - whether respondent injured 'in the course of' her employment - whether respondent's injury was an injury 'arising out of' her employment - whether workers compensation payments gave rise to double compensation question - held: no error in primary judge's conclusions that injury did not occur in the course of respondent's employment and that the injury was not an injury arising out of respondent's employment - respondent had not been doubly compensated by payment of workers compensation - respondent liable to repay workers compensation payments - appeal dismissed.

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

SW Investments NSW Pty Ltd v 16 Boondilla Pty Ltd [2017] NSWSC 762

Supreme Court of New South Wales

Darke J

Consumer law - misleading or deceptive conduct - first plaintiff and second defendant were to jointly purchase land from first defendant - plaintiffs contended involvement in initial transaction procured by misleading or deceptive conduct in contravention of *Competition and Consumer Act 2010* (Cth) or unconscionable conduct in contravention of Australian Consumer Law - plaintiff sought amount paid to first defendant - plaintiffs also alleged first of two subsequent agreements was unenforceable for uncertainty or incompleteness and the second subsequent agreement unenforceable because it was procured by misleading or deceptive, or unconscionable conduct - plaintiffs also claimed against fourth defendant for amount it received from amount received by first defendant - held: Court satisfied agreements were void and should be set aside - first plaintiff to be compensated for loss - orders made.

[SW Investments](#) (I B C G)

Kambouris v Kiatos [2017] VSCA 133

Court of Appeal of Victoria

Maxwell P; Beach & McLeish JJA

Negligence - professional negligence - solicitors' duties - trial judge found respondent solicitor breached retainer and duty of care by incorrectly advising applicant, and referred assessment of damages to associate judge - associate judge found applicant entitled to nominal damages of \$100 - applicant sought to appeal on basis associate judge determined causation issues already decided in her favour by trial judge, or that she was prevented from pursuing part of case on causation - held: applicant's arguments devoid of merit - leave to appeal refused.

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

Whitsunday Residents Against Dumping Ltd v Chief Executive, Department of Environment and Heritage Protection [2017] QSC 121

Supreme Court of Queensland

Daubney J

Administrative law - second respondent made application under *Environmental Protection Act 1994* (Qld) for site specific Environmental Authority for activities in coal export terminal it proposed to develop - first respondent's delegate approved application - activities were 'bulk material handling and sewage treatment' - applicant sought review of decision - whether procedural requirements followed - whether authority to make decision - whether failure to take relevant consideration into account - held: grounds of review not made out - statutory order for review refused.

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

Byrne v The Owners of Ceresa River Apartments Strata Plan 55597 [2017] WASCA 104

Court of Appeal of Western Australia

Murphy & Mitchell JJA; Beech J

Strata titles - appellant, together with wife, was registered proprietor of strata lot - respondent was strata company for development - strata company claimed against appellant and other lot proprietors alleging they used lots for 'short-stay accommodation' contrary to by-law of strata scheme - Tribunal found in strata company's favour - appellant and others restrained from using lots for 'short-stay accommodation' - primary judge dismissed appeal - construction of by-laws - held: primary judge erred in upholding Tribunal's decision that by-law operated to restrain alienation of lot contrary to s42(3) *Strata Titles Act 1985* (WA) - appeal allowed in part.

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

Caltex Australia Petroleum Pty Ltd v Contaminated Sites Committee [2017] WASC 155

Supreme Court of Western Australia

Chaney J

Administrative law - contaminated sites - the applicant sought writ of prohibition against respondent, to prevent it making decision pursuant to s36(2)(a) *Contaminated Sites Act 2003* (WA) (CS Act) concerning responsibility for remediation of land - whether respondent's power to make was confined to sites which are classified as 'contaminated - remediation required', or extended to decisions concerning responsibility for remediation of land with other classifications

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- held: respondent's capacity to determine responsibility depended on site's classification as 'contaminated - remediation required' - no application or decision made at time site was classified 'contaminated - remediation required' - applicant entitled to writ of prohibition.

[Caltex Australia Petroleum](#) (I B C G)

Korda v Aldi Foods Pty Ltd [2017] ACTSC 96

Supreme Court of the Australian Capital Territory

Robinson AJ

Negligence - contributory negligence - plaintiff injured in incident at customer entry gates to store - plaintiff sued defendant as occupier - plaintiff obtained judgment which was reduced by 50% for contributory negligence - plaintiff appealed against finding of contributory negligence - defendant cross-appealed against finding of liability - ss102 & 168 *Civil Law (Wrongs) Act 2002* (ACT) - held: no error in finding that defendant breached duty for failing to install warning sign - not possible on evidence to infer that failure to install sign caused injury - cross-appeal allowed.

[Korda](#) (I)

CRIMINAL

Executive Summary

R v Krezic (QCA) - criminal law - murder - no error in refusal of separate trial, or admission of evidence of acts and conversation between appellant and covert operatives - jury's verdict not unreasonable - appeal dismissed

R v Huston (QCA) - criminal law - murder - failure to properly direct jury on common purpose question resulting in miscarriage of justice - appeal allowed - conviction set aside - appellant to be retried

Summaries With Link

R v Krezic [2017] QCA 122

Court of Appeal of Queensland

Gotterson & McMurdo JJA; Boddice J

Criminal law - murder - admissibility of evidence - jury found appellant and another guilty of murder - both sentenced to life imprisonment - appellant contended pre-trial judge erred in ruling as admissible evidence of conversations and acts between appellant and 'covert operatives' - appellant contended pre-trial judge also erred in refusing separate trial from co-accused, and that jury's verdict was unreasonable - whether pre-trial judge erred in admitting evidence 'when conversations and acts occurred in breach of the appellant's right to silence and in breach of

relevant legislative provisions' - ss396, 405 & 406 *Police Powers and Responsibilities Act 2000* (Qld) - held: no error in refusal of application for a separate trial or exercise of discretion not to exclude evidence of covert operatives - jury's verdict not unreasonable - appeal dismissed.

[Krezic](#)

R v Huston [2017] QCA 121

Court of Appeal of Queensland

Gotterson & McMurdo JJA; Boddice J

Criminal law - murder - appellant and another were found guilty of murder - appellant contended there was miscarriage of justice arising from trial judge's directions about prosecution's reliance upon s8 *Criminal Code* (Qld) - whether jury misdirected by trial judge's use of word 'likely' instead of 'probable' - whether directions did not make clear to jury 'what evidence was relevant to the common purpose question' - held: trial judge failed to direct jury properly on common purpose question - miscarriage of justice arose because it was 'reasonably possible' that trial judge's failure to direct jury properly on common purpose question 'may have affected verdict' - appeal allowed - conviction set aside - appellant to be retried.

[Huston](#)



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“Dank fens of cedar; hemlock-branches gray”

By [Frederick Goddard Tuckerman](#)

from *Sonnets, First Series*

VI

Dank fens of cedar; hemlock-branches gray
With trees and trail of mosses, wringing-wet;
Beds of the black pitchpine in dead leaves set
Whose wasted red has wasted to white away;
Remnants of rain and droppings of decay, —
Why hold ye so my heart, nor dimly let
Through your deep leaves the light of yesterday,
The faded glimmer of a sunshine set?
Is it that in your darkness, shut from strife,
The bread of tears becomes the bread of life?
Far from the roar of day, beneath your boughs
Fresh griefs beat tranquilly, and loves and vows
Grow green in your gray shadows, dearer far
Even than all lovely lights and roses are?

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