

Tuesday 16 September 2014

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Steiner v Strang and Tang** (NSWSC) - equity - succession - executors entitled to set off loan owing to deceased's estate against beneficiary's entitlements (B)

**Insurance Australia Ltd T/as NRMA Insurance v Parisi** (NSWSC) - motor accidents compensation - no error in refusal to refer for further medical assessment (I G)

**Powney v Kerang and District Health** (VSCA) - medical negligence - jury's role properly confined to determination of factual causation - appeal dismissed (I)

**Fato v Regione Calabria Pty Ltd** (VSC) - loan agreement - challenge to order to repay loan failed - error in calculation of interest - matter remitted (B)

**Hartnett & Hartnett v Taylor** (VSC) - testator's family maintenance - estranged daughters of deceased entitled to provision from estate (B)

**Yarrowonga Earthmoving & Garden Supplies Pty Ltd v Clem Court Pty Ltd** (VSC) - interlocutory injunction - corporations - invalidly appointed receiver removed (B C)

**Lords v Von Thomann [No 2]** (VSC) - contract - sale of land - breach of contract by buyers - resale by sellers for lesser purchase price - damages (B)

## Summaries with links (5 minute read)

### **Steiner v Strang and Tang [2014] NSWSC 1250**

Supreme Court of New South Wales

Sackar J

Equity - succession - son of deceased brought proceedings under *Succession Act 2006* (NSW) - executors sought orders and declarations as to whether son was indebted to deceased's estate at time of her death - construction of acknowledgment of loan - held: son had agreed to be bound by terms in acknowledgment of loan - acknowledgment of loan was an admission or admissible post-contractual conduct - amount was not intended to be a gift - amount was a loan and therefore a debt owed to deceased's estate - rule in *Cherry v Boulton* applied such that executors could set off debt owed against son's residuary entitlement and pecuniary legacy - orders made.

[Steiner](#) (B)

### **Insurance Australia Ltd T/as NRMA Insurance v Parisi [2014] NSWSC 1248**

Supreme Court of New South Wales

Campbell J

Judicial review - motor accidents compensation - insurer challenged decision of proper officer of Motor Accidents Authority to refuse to refer question of degree of permanent impairment for further medical assessment under s62 *Motor Accidents Compensation Act 1999* (NSW) - held: proper officer did not fail to consider significance of additional contemporaneous clinical material - proper officer had no obligation to inform insurer she would not consider primary clinical records because she considered them - proper officer considered and evaluated material put forward as additional relevant information - proceedings dismissed.

[Insurance Australia Ltd T/as NRMA Insurance](#) (I G)

### **Powney v Kerang and District Health [2014] VSCA 221**

Court of Appeal of Victoria

Osborn & Beach JJA; Forrest AJA

Negligence - causation - appellant sued District Health in relation to treatment received at hospital - appellant claimed he was given injection with unsterile needle resulting in infection - appellant claimed hospital staff failed to respond to complaints of pain said to be the consequence of infection - trial judge ruled jury was confined to determining factual causation under s51(1) *Wrongs Act 1958* (Vic) of the Act and not causation under s51(2) - jury found for District Health - appellant appealed - application of *evidentiary gap provision* in s51(2) - held: trial judge correct in refusing to

permit jury to consider requirements of s51(2) - appropriate to direct jury to determine only the issue of factual causation - appeal dismissed.

[Powney](#) (I)

## **Fato v Regione Calabria Pty Ltd [2014] VSC 435**

Supreme Court of Victoria

Kyrou JA

Contract - loan agreement - Regione sued Fato in Magistrates' Court for recovery of loan - Magistrate decided parties entered into loan agreement and that Fato breached it by failing to pay amount due - Magistrate ordered Fato pay amount to Regione - Fato claimed order was not open on the evidence, was vitiated by erroneous legal findings and that Magistrate's constant intervention during hearing denied Fato natural justice and caused trial to miscarry - s109 *Magistrates' Court Act 1989* (Vic) - held: Magistrate's factual and legal findings on ultimate issues in dispute were open to him - although there was merit in Fato's complaints about Magistrate's behaviour, Fato was not denied natural justice in context of trial as a whole and trial did not miscarry - however it was common ground that the order contained an error in relation to amount of interest payable - appeal allowed - order set aside - proceeding remitted to Magistrates' Court.

[Fato](#) (B)

## **Hartnett & Hartnett v Taylor [2014] VSC 427**

Supreme Court of Victoria

Sifris J

Testator's family maintenance - plaintiff daughters of deceased sought further provision from deceased's Will pursuant to Pt IV *Administration and Probate Act 1958* (Vic) - Will excluded daughters as beneficiaries - ss91(4)(a)-(d) - estrangement - held: deceased owed obligation to plaintiffs as her children who she knew to be in difficult financial circumstances - gifts which deceased had given plaintiffs were not insubstantial but they could not be characterised as bearing on any provision made for them out of estate - Court not satisfied plaintiffs were responsible for estrangement - no disentitling conduct - plaintiffs entitled to support and maintenance from estate - daughters should have been left one-third each of net estate aside from vehicle already transferred to non-party beneficiary.

[Hartnett](#) (B)

## **Yarrowonga Earthmoving & Garden Supplies Pty Ltd v Clem Court Pty Ltd [2014] VSC 439**

Supreme Court of Victoria

Warren CJ

Corporations - interlocutory injunction - first plaintiff earthmoving company operated from property until appointment by defendants of receiver - second plaintiff was earthmoving company's sole shareholder and director - first defendant was company controlled by second defendant who was also shareholder/director's accountant and financial advisor - plaintiffs sought removal of receiver

together with interlocutory injunction and possession of property - s418A *Corporations Act 2001* (Cth) - held: appointment of receiver invalid because he was not a registered liquidator - plaintiffs had arguable case in proceedings - defendants restrained from exercising security or enforcing debt against plaintiffs and ordered to deliver up possession of property pending outcome of proceeding.

[Yarrowonga Earthmoving & Garden Supplies Pty Ltd](#) (B C)

## **Lords v Von Thomann [No 2] [2014] WASC 320**

Supreme Court of Western Australia

Beech J

Contract - sellers and buyers entered into contract for sale of land - buyers failed to pay deposit - sellers served buyers with notice of termination - sellers put property back on market and sold it almost 2.5 years later - sellers claimed as damages difference between price under contract and price ultimately obtained - buyers claimed that, before they entered contract, the sellers' selling agents made negligent misrepresentations in relation to the property, so that buyers were entitled to damages or to rescind - buyers also claimed it was agreed between buyers and sellers' agents that parties would not proceed with contract - held: Court not satisfied sellers' agents made alleged representations or agreed parties would not proceed - sellers' claim for breach of contract succeeded - damages assessed by reference to difference between contract price and ultimate resale price.

[Lords](#) (B)

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