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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)

Watson v Australian Community Pharmacy Authority - judicial review of decision of Australian Community Pharmacy Authority - application to re-open appeal (I, B, C, G)

Grave v Blazevic Holdings Pty Ltd - contract - deed of release - whether binding agreement to settle proceedings (B, C)

Origin Energy LPG Ltd v Bestcare Foods Ltd - application for stay of judgment - whether real and significant issues on liability - whether offers of security (I, B, C, G)

Zakaria v Dr Noyce - self-represented plaintiff - application to set aside judgment - whether judgment given or entered against good faith - whether judgment given irregularly (I, B, C, G)

Wolfe v Permanent Custodians Ltd - contract - doctrine of merger - agreement for stay of execution of possession following judgment - whether: unconscionable conduct; misleading and deceptive conduct; breach of implied terms; unjust terms; estoppel; waiver (B)



Thiess Pty Ltd v Warren Brothers Earthmoving Pty Ltd & Anor - security of payments legislation - judicial review - whether construction contracts - whether jurisdictional error (I, C, G)

Kepa v Lessbrook Pty Ltd (In Liquidation) - damages - dependancy claim - death in aircraft crash (I, B, C, G)

Williams v Smith - tort of injurious falsehood - application for summary dismissal and for strike out of statement of claim - elements, scope and applicability of the tort (I)

Summaries with links (5 minute read)

Watson v Australian Community Pharmacy Authority [2012] FCAFC 142

Full Court of the Federal Court of Australia

Lander, Jessup & Foster JJ

Administrative law - appellant sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) of decision of Australian Community Pharmacy Authority (**Authority**) to recommend application of second respondents under s90 *National Health Act 1953* (Cth) for approval to supply pharmaceutical benefits at proposed premises - appellant made application to re-open appeal to amend notice of appeal and to adduce evidence - whether evidence before Authority to support finding that second respondents had legal right to occupy premises as required by Sch2 Item201(a) *National Health (Australian Community Pharmaceutical Authority Rules) Determination 2006* (Cth) - principles relevant to application to re-open appeal: *Smith v NSW Bar Association* [1992] HCA 36 - whether evidence was of sufficient probative value to justify its reception.

[Watson](#) (I, B, C, G)

Grave v Blazevic Holdings Pty Ltd [2012] NSWCA 329

Court of Appeal of New South Wales

Campbell & Barrett JJA; Bergin CJ in Eq

Contract - appeal from finding that parties had reached a settlement agreement pursuant to deed of release (**deed**) drafted by appellant's solicitor - *whether*: there was a binding agreement to settle



proceedings; parties intended to enter binding agreement; trial judge erred in holding that conversations between legal representatives of appellant and respondent effected immediate binding settlement of pending proceedings; trial judge erred in holding that settlement not binding until each party had executed deed; agreement fell into first class referred to in *Masters v Cameron* (1954) 91 CLR 353 whereby parties intend to be immediately bound to performance of terms agreed but at the same time propose to have terms restated in a form which will be fuller or more precise but no different in effect.

[Grave](#) (B, C)

Origin Energy LPG Ltd v Bestcare Foods Ltd [2012] NSWCA 322

Court of Appeal of New South Wales

Allsop P

Stay of judgment - trial judge, having substantially adopted referee's report on quantum, awarded large sum to respondent for damages arising from destruction of factory by explosion and fire - applicant sought stay of judgment - respondent sought expedition of liability hearing - principle that applicant for stay must identify circumstances warranting departure from general rule that judgment below should be presumed correct and enforceable - respondent in administration - *whether*: real and significant issues on liability which may result in judgment being set aside; offers of security from respondent's creditors or members, or from administrator; appeal on liability had effectively been expedited.

[Origin Energy LPG](#) (I, B, C, G)

Zakaria v Dr Noyce [2012] NSWSC 981

Supreme Court of New South Wales

Davies J

Judgments - application to set aside judgment on basis it was invalid and of no effect on grounds of a denial of natural justice and for leave to continue dismissed proceedings - medical negligence claim by self-represented plaintiff against medical practitioner - proceedings dismissed due to plaintiff's failure to provide expert's report as required by r31.36 *Uniform Civil Procedure Rules* 2005 (NSW) (**Rules**) - court's power to set aside judgment or order: r36.15 of the Rules - *whether*: judgment given or entered against good faith: *Coles v Burke* (1987) 10 NSWLR 429; denial of procedural fairness leading to irregularity of judgment: *Cameron v Cole* (1944) 68 CLR 571, *Miltonbrook Pty Ltd v Westbury Holdings Kiama Pty Ltd* [2008] NSWCA 38; plaintiff had complied



with r31.36 of the Rules requiring an expert's report to support allegations of professional negligence; default had been cured: *National Parks and Wildlife Service v Pierson* [2002] NSWCA 273. [Zakaria](#) (I, B, C, G)

Wolfe v Permanent Custodians Ltd [2012] VSC 275

Supreme Court of Victoria

Zammit AsJ

Contract - doctrine of merger - defendant obtained judgment against plaintiffs for default under loan agreement - agreement to stay execution of warrant of possession (**agreement**) containing onerous terms if further default - *whether*: exercise of defendant's rights was unconscionable conduct and misleading and deceptive conduct in breach of common law, *Fair Trading Act 1999* (Vic) and *Australian Securities and Investment Commission Act 2001* (Cth); plaintiff acted to detriment in reliance on representations of defendant; defendant estopped or otherwise prohibited from relying on default to evict plaintiff; agreement governed by the *Trade Practices Act 1958* (Cth) and *National Credit Code 2010*; terms of agreement unjust or contrary to good faith; defendant breached ss76 & 77 *Transfer of Land Act 1958* (Vic); estoppel; agreement failed for lack of consideration flowing to defendant; practical benefit could constitute consideration; breach of implied terms of agreement; defendants waived right to rely on judgment or elect to continue with mortgage.

[Wolfe](#) (B)

Thiess Pty Ltd v Warren Brothers Earthmoving Pty Ltd & Anor [2012] QCA 276

Court of Appeal of Queensland

Holmes & White JJA; Philippides J

Security of payments legislation - judicial review - first respondent made claims for progress payments under *Building and Construction Industry Payments Act 2004* (Qld) (**Act**) - appeal from decision that contracts were *construction contracts* within meaning of s9 Sch2 of the Act and that adjudicator consequently had jurisdiction to determine adjudication application - *whether*: subcontract and hire contracts were *construction contracts*: s10 & 11 of the Act; adjudication decisions concerning hire contracts void as being beyond jurisdiction - construction of contracts - operation of exclusion in s10(3) of the Act: *HM Hire Pty Ltd v National Plant and Equipment Pty Ltd & Anor* [2012] QSC 4 - whether jurisdictional error due to incorrect determination of extent and quantum of work comprising *construction work*.

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



Kepa v Lessbrook Pty Ltd (In Liquidation) [2012] QSC 311

Supreme Court of Queensland

Henry J

Damages - dependency claim - statutory interpretation - spouses of passengers killed in airplane crash claimed damages under the *Civil Aviation (Carriers' Liability) Act 1964 (Qld)* which applied part of the *Civil Aviation (Carriers' Liability) Act 1959 (Cth)* (**Cth Act**) for and on behalf of estate and dependants - *whether*: damages should be assessed using averages approach or factual approach; deceaseds would have completed educational courses and had prospects of consistent employment on completion; traditionally adopted persons were *family members*: s35(5) of the Cth Act; child of deceased passenger born after death of passenger a child of passenger for purposes of s35(3) of the Cth Act - extent to which hunting and gathering compensable as lost service, basis of award and whether loss extended to loss of parental education in traditional knowledge and skills - whether financial cap in s31 of the Cth Act inclusive of interest.

[Kepa](#) (I, B, C, G)

Williams v Smith [2012] WASC 371

Supreme Court of Western Australia

Le Miere J

Tort - injurious falsehood - application by defendant for summary dismissal or strike out - plaintiff claimed relief for injurious falsehood - parties self-represented - flexibility in application of case management principles when dealing with litigants in person: *Tobin v Dodd* [2004] WASC 288 - considerations relevant to application for extension of time to strike out statement of claim: *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27 - tort of injurious falsehood not a claim frequently considered by Australian courts - *whether*: claim so clearly untenable that it cannot possibly succeed: *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125; satisfaction of elements of claim for injurious falsehood: *Ratcliffe v Evans* [1892] 2 QB 524; *Palmer Bruyn & Parker v Parsons* [2001] HCA 69 - scope of tort of injurious falsehood - whether the tort applied to the actions - separate consideration of aspects of statement of claim - whether plaintiff should be given leave to plead.

[Williams](#) (I)

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