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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Bindaree Beef Pty Ltd v Riley (NSWCA) - administrative law – termination of employment after workers compensation claim – reinstatement - error of law by Full Bench of Industrial Relations Commission was not jurisdictional error - appeal dismissed (I G)

Velik v Steingold (NSWCA) - contract for sale of land - no repudiation or breach of essential term by purchasers - appeal allowed (B)

Tanwar Enterprises Pty Ltd v Bradshaw (NSWSC) - negligence - motor vehicle accident - collision with taxi - vicarious liability - Magistrate erred in law - appeal allowed (I)



Transport Accident Commission v Florrime (VSCA) - transport accident - *serious injury* application - failure to give adequate reasons - appeal allowed (I G)

Fokas v Staff Australia Pty Ltd (VSCA) - accident compensation - work injury damages - worker's injury was a *serious injury* - appeal allowed (I)

Ibrahim v Davis (VSCA) – negligence – motor vehicle accident – jury's verdict not perverse – trial judge gave adequate directions on standard and duty of care – appeal dismissed (I)

Hamcor Pty Ltd v Marsh Pty Ltd (QCA) – insurance – remediation of polluted land – appeal from determination of separate issues - construction of policies – orders varied (I C)

Summaries with links (5 minute read)

Bindaree Beef Pty Ltd v Riley [2013] NSWCA 305

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Basten JA

Administrative law - first respondent worker employed at abattoir operated by applicant - worker experienced arthritic pain as result of work - worker had surgery and returned to pre-injury duties - worker made successful claim for permanent impairment compensation - worker's employment terminated - Industrial Relations Commission reinstated worker - Full Bench of Commission dismissed appeal against reinstatement - employer's onus to demonstrate reason for dismissal was not because of unfitness for employment as result of injury - test for rebuttal of presumption in s244(2) *Workers Compensation Act 1987* (NSW) - held (by majority, Basten JA dissenting): Full Bench erred in construction of s244(2) but it had considered its result if construction incorrect and would have reached same conclusion - no jurisdictional error and even if there was Court would not have granted relief - appeal dismissed.

[Bindaree Beef Pty Ltd](#) (I G)

Velik v Steingold [2013] NSWCA 303

Court of Appeal of New South Wales

McColl & Gleeson JJA; Sackville AJA

Contract for purchase of residential property - dispute arose as to whether small amount should be paid to stakeholder pending resolution of completing claims - respondent vendor insisted appellant purchasers bound to pay sum on completion as interest - purchasers contended they



were entitled to invoke arbitral mechanism in contract for resolution of claims - completion of contract did not take place - parties purported to terminate by reason of the other's default or repudiation - purchasers sought declaratory relief and return of deposit or order for repayment of deposit pursuant to s55(2A) *Conveyancing Act 1919* (NSW) - trial judge found in favour of vendors - held: notice to complete invalid - primary judge erred in concluding purchasers repudiated contract - purchasers had not evinced intention no longer to be bound by contract or to insist on performing it only in accordance with erroneous interpretation - no repudiation or breach of essential term by purchasers - appeal allowed

[Velik \(B\)](#)

Tanwar Enterprises Pty Ltd v Bradshaw [2013] NSWSC 1276

Supreme Court of New South Wales

Bellew J

Negligence - property damage - vicarious liability - bailment - appeal from decision of Magistrate – first defendant sued owner of taxi and taxi driver for cost of repairs to her motor vehicle damaged in accident with taxi – owner of taxi cross-claimed against its insurer - insurer conceded it was liable to pay cost of repairs to taxi- Magistrate entered judgment in favour of defendant on basis of vicarious liability of owner of taxi – however Magistrate also found in favour of insurer on cross-claim on basis owner of taxi was not vicariously liable - s22 *Civil Procedure Act 2005* (NSW) - *NSW Taxi Industry (Contract Drivers) Contract Determination Act 1984* (NSW) - held: inconsistent findings constituted failure to identify issue between parties amounting to error of law - Magistrate's erred by entering judgment for insurer when it had conceded liability - Magistrate erred in concluding relationship of bailor and bailee was incapable of giving rise to vicarious liability of bailor for bailee's tortious acts - appeal allowed - orders made.

[Tanwar Enterprises Pty Ltd \(I\)](#)

Transport Accident Commission v Florrimell [2013] VSCA 247

Court of Appeal of Victoria

Hansen & Tate JJA

Transport accident - respondent injured in motor vehicle collision - respondent lodged compensation claim with Transport Accident Commission - respondent had pre-existing shoulder injury - Commission sought leave to appeal against orders of County Court granting leave to respondent to commence common law proceedings due to having sustained *serious injury* within meaning of s93(17) *Transport Accident Act 1986* (Vic) - held: trial judge failed to give adequate reasons for finding respondent suffered shoulder injury in accident and that injury was causally



related to later symptoms, disabilities and surgery - trial judge also failed to give adequate reasons for rejecting opinion of medical expert in relation to issue of causation - trial judge erred in law – leave to appeal granted - appeal allowed.

[Transport Accident Commission](#) (I G)

Fokas v Staff Australia Pty Ltd [2013] VSCA 230

Court of Appeal of Victoria

Nettle JA; Hargrave & Dixon AJJA

Accident compensation - work injury damages - appellant labourer injured back in course of employment with respondent labour hire company - appeal from decision of County Court to refuse worker to bring common law proceedings pursuant to s134AB *Accident Compensation Act 1985* (Vic) - whether back injury had wholly resolved with insufficient consequent impairment, after discounting psychological or psychiatric consequences, to satisfy statutory test for *serious injury* – employer accepted liability for back injury - held: court satisfied worker discharged onus of showing pain and suffering consequences caused by back injury, which was a permanent serious impairment, satisfied statutory criterion - worker not obliged to disentangle consequences of psychiatrically responsive pain - appeal allowed - worker granted leave to bring proceedings for recovery of damages for pain and suffering.

[Fokas](#) (I)

Ibrahim v Davis [2013] VSCA 238

Court of Appeal of Victoria

Maxwell P, Bongiorno JA & Robson AJA

Negligence – motor vehicle accident – appellant injured as infant when stroller collided with semi-trailer – appellant sought damages for injuries which presented many years later – claim rejected with jury finding there was no negligence on driver’s part – appellant contended jury verdict was perverse and that jury was bound, on the evidence, to find driver’s negligence was a cause of appellant’s injuries – appellant also contended trial judge’s directions to jury with respect to question of standard and duty of care were inadequate – separate nature of duty of care and its breach – breach is question of fact - held: nothing irrational about jury’s verdict – trial judge correct to refuse to redirect jury on duty and standard of care – appeal dismissed.

[Ibrahim](#) (I)



Hamcor Pty Ltd v Marsh Pty Ltd [2013] QCA 262

Court of Appeal of Queensland

M McMurdo P, Muir JA & Atkinson J

Insurance – negligence – appellants owned land on which related company operated a plant - plant destroyed by fire - water contaminated with chemicals while fire being put out overflowed onto land - EPA issued notice and obtained court orders for remediation – appellants expended amount on remediation not covered by insurance - appellants claimed insurance brokers owed them a duty of care in obtaining appropriate policies of insurance and that brokers had breached duty – appeal from orders separately determining issues in proceedings pursuant to r483 *Uniform Civil Procedure Rules 1999* (Qld) – construction of insurance policies – *primary* policy – *excess* policy – *ISR* policy – exclusion of claims arising out of damage to insured’s own property – indemnity for costs incurred in *removal, storage and/or disposal of debris* - held: respondents substantially successful - appeal allowed to limited extent.

[Hamcor Pty Ltd](#) (I C)

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