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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)

ATS Castle Constructions Pty Limited v Sahab Holdings Pty Ltd (HCA) – real property - easement removed, not *omitted*, from Register - title to land not subject to easement (I, B, C, G)

Young v Cooke (NSWCA) - leave to appeal orders striking out cause of action for false imprisonment refused - costs to be paid forthwith (I)

Tetra Pak Manufacturing v Challenger Life Nominees (NSWSC) - contracts for sale and lease of contaminated land - costs arising from contamination - indemnity clause (I, B, C, G)

Dymocks v Capral (NSWSC) - negligence - contract - duty of care - pure economic loss - sheeting supplier and architect liable for corrosion to roof (I, C)

Commonwealth Bank of Australia v Susan Hannaford Pty Ltd (NSWSC) – corporations - defendant company reinstated - company to be wound up upon reinstatement (B)



Schonell v Laspina, Trabucco & Co Pty Ltd (QSC) – Negligence - employee injured when ladder gave way - employer not liable (I)

Weaver v Endeavour Foundation (QSC) - Negligence - causation - foreseeability of risk of injury to employee - employer liable (I)

Summaries with links (5 minute read)

ATS Castle Constructions Pty Limited v Sahab Holdings Pty Ltd [2013] HCA 11

High Court of Australia

Hayne, Crennan, Kiefel, Bell & Gageler JJ

Real property - Torrens system - *Real Property Act 1900* (NSW) - determinative issue was whether appellant's title to land was subject to easement which Registrar-General had intentionally removed from Register - answer turned on construction of s42(1)(a1) of the Act containing exception to indefeasibility - exception was *in the case of the omission* of an easement validly created under the Act - held: no *omission* of easement - appellant's land not subject to easement - appeal allowed.

[ATS Castle Constructions](#) (I, B, C, G)

Young v Cooke [2013] NSWCA 79

Court of Appeal of New South Wales

Meagher & Emmett JJA

False imprisonment - costs - application for leave to appeal from orders striking out cause of action for false imprisonment - held: no error in primary judge's refusal to allow applicant to replead claim of false imprisonment - no error of principle in exercise of discretion to direct that defendants had leave to assess costs and have them paid forthwith - leave to appeal refused.

[Young](#) (I)

Tetra Pak Manufacturing v Challenger Life Nominees [2013] NSWSC 349

Supreme Court of New South Wales

McDougall J

Contract - evidence - plaintiff sold land to defendant - defendant leased land back to plaintiff - at time of sale, land contaminated with plaintiff's manufacturing residues - known extent of contamination disclosed in sale contract - contract and lease provided for costs of dealing with contamination - government authorities required action - issue was which party was responsible

for costs of contamination - three separate questions: proper construction of indemnity clause in contract; nature and extent of contamination; timing of contamination - held: indemnity limited to costs of contamination existing, or attributable to activities occurring, prior to completion of sale - property presently contaminated - plaintiff had not proved contaminants attributable to activities occurring prior to completion.

[Tetra Pak Manufacturing](#) (I, B, C, G)

Dymocks v Capral [2013] NSWSC 343

Supreme Court of New South Wales

McDougall J

Negligence - pure economic loss - contract – corrosion of roof sheeting - plaintiff sued supplier of aluminium sheets claiming breach of warranty - and sued architect in negligence - construction of deed - existence of common law duty of care in absence of retainer with architect - evidence - credit - held: architect breached duty of care in design and specification of roof fixing system - supplier liable under its warranty to pay costs of replacing all roofing - architect liable to same extent as supplier - judgment for plaintiff.

[Dymocks](#) (I, C)

Commonwealth Bank of Australia v Susan Hannaford Pty Ltd [2013] NSWSC 342

Supreme Court of New South Wales

Davies J

Corporations - reinstatement - winding up - plaintiff brought proceedings against deregistered company and others seeking possession of land and debt under loan agreement - plaintiff applied to have first defendant reinstated - ASIC did not oppose reinstatement provided director was notified, and that company would be immediately wound up on reinstatement, unless director resumed role and lodged necessary documents and payments - held: court not satisfied director had given undertaking to do tasks required by ASIC - company to be reinstated pursuant to s601AH(2) *Corporations Act 2001* (Cth) - upon reinstatement company to be wound up pursuant to s461(1)(k) of the Act and liquidators appointed.

[Commonwealth Bank of Australia](#) (B)

**Schonell v Laspina, Trabucco & Co Pty Ltd [2013] QSC 90**

Supreme Court of Queensland

Martin J

Negligence - duty of care – plaintiff, employed by defendant, claimed he suffered injury when ladder gave way - plaintiff contended ladder had defective brace, that there should have been regular inspections, that labourer employed by defendant failed to properly inspect ladder, and that, if tipping of ladder was cause of accident, then conventional ladder should have been used - held: plaintiff had not demonstrated any action or lack of action by defendant which caused or contributed to injury, or that defendant was otherwise negligent - injury exaggerated - claim dismissed.

[Schonell](#) (I, C)**Weaver v Endeavour Foundation [2013] QSC 93**

Supreme Court of Queensland

McMeekin J

Negligence - duty of care - non-delegable duties - causation - damages – employer, provider of employment for persons with intellectual disabilities, engaged persons to train certain employees in assault response who would then become trainers themselves - trained employee claimed damages from employer for injuries sustained while demonstrating manoeuvre - held: risk of injury to plaintiff not so low as to be safely ignored by reasonable employer - employer exposed plaintiff to unnecessary risk of injury by instructing her to use quick pace - liability established - judgment for plaintiff.

[Weaver](#) (I)**Fragment 9: The Netherlands**

By Samuel Taylor Coleridge

Water and windmills, greenness, Islets green;—
Willows whose Trunks beside the shadows stood
Of their own higher half, and willowy swamp:—
Farmhouses that at anchor seem'd—in the inland sky
The fog-transfixing Spires—
Water, wide water, greenness and green banks,
And water seen—

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