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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Compton v Ramsay Health Care Australia Pty Ltd (FCAFC) - bankruptcy - creditor's petition - erroneous conclusion that Court should not 'go behind' judgment an inquire into debt - appeal allowed (I B C G)

Trustees for the Roman Catholic Church for the Diocese of Bathurst v Hine (NSWCA) - estoppel - workers compensation - remittal of claim for permanent impairment - no issue estoppel in respect of Arbitrator's finding - appeal dismissed (I B C G)

IAG Ltd t/as NRMA Insurance v Adhami (NSWSC) - judicial review - assessment of damages by claims assessor - insufficient reasons - assessment set aside (I B C G)

Director General of Department of Transport v McKenzie (WASCA) - road traffic - primary judge erred in ordering appellant to issue extraordinary motor driver's licence to respondent - appeal allowed (I B C G)

Coal Hub Pty Ltd v NSL Consolidated Ltd [No 2] (WASC) - evidence - admissibility - objections to aspects of evidence of plaintiff's expert upheld (I B C G)

Wheatley v Wheatley (WASC) - succession - family provision - extension of time to bring claim refused (B)

Calvary Hospital Auxiliary Inc v D'Amico (ACTCA) - negligence - employee claimed damages against employer for injuries suffered at work - employer liable - small amendment made due to error in interest on past economic loss (I B C G)

Summaries With Link (Five Minute Read)

Compton v Ramsay Health Care Australia Pty Ltd [2016] FCAFC 106

Full Court of the Federal Court of Australia

Siopis, Katzmann & Moshinsky

Bankruptcy - creditor's petition - debtor sought leave to appeal against primary judge's decision not to 'go behind' judgment to inquire into debt - whether erroneous finding that discretion to 'go behind' judgment not enlivened - whether erroneous conclusion that even if discretion enlivened it should not be exercised in debtor's favour - s56(2)(a) *Bankruptcy Act 1924* (Cth) - ss43, 52 *Bankruptcy Act 1966* (Cth) - held: it was not the case that there was 'no reliable factual foundation to question whether there was in 'truth and reality' a debt owing' - there were substantial reasons in the circumstances for questioning whether there was, behind the judgment debt, in 'truth and reality' any debt owed - appeal allowed.

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

Trustees for the Roman Catholic Church for the Diocese of Bathurst v Hine [2016] NSWCA 213

Court of Appeal of New South Wales

Meagher, Leeming & Simpson JJA

Estoppel - workers compensation - respondent made claims for weekly compensation and medical expenses - consent finding made that respondent had "fully recovered" from psychological injury - respondent claimed lump sum compensation for same injury - appellant employer contended there was issue estoppel precluding respondent from maintaining there was dispute as to permanent impairment - Arbitrator of Workers Compensation Commission of New South Wales found for appellant - Deputy President allowed respondent's appeal and remitted claim on basis Arbitrator had no jurisdiction to make finding which in effect determined medical dispute as to permanent impairment - appellant appealed - *Accident Compensation Act 1985* (Vic) - s8(1) *Courts Suppression and Non-publication Orders Act 2010* (NSW) - Pt 3.4 *Motor Accidents Compensation Act 1999* (NSW) - ss4, 9, 9A, 33, 60, 65, 66 & 67 *Workers Compensation Act 1987* (NSW) - ss74, 105, 234, 254, 287, 288, 289, 289A, 293, 294, 319, 321, 322, 323, 325, 326, 327, 329, 350, 352, 353, 355 & 375 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - r15.9 *Workers Compensation Commission Rules 2011* - held: no error in Deputy President's conclusion that issue estoppel did not arise - it was not the case that the issue estoppel would have prevented 'medical dispute' - appeal dismissed.

[Trustees for the Roman Catholic Church](#) (I B C G)

IAG Ltd t/as NRMA Insurance v Adhami [2016] NSWSC 1117

Supreme Court of New South Wales

Harrison AsJ

Judicial review - motor accidents compensation - plaintiff sought judicial review of assessment of damages by claims assessor pursuant to s94 *Motor Accidents Compensation Act 1999* (NSW) - future economic loss - buffer - held: it was difficult for Court to determine whether assessor made assumptions in accordance with defendant's 'most likely future circumstances but for the injury' as required by s126(1) - reasons did not 'produce a reasonable degree of transparency' - reasons insufficient - failure to comply with s126 - assessment set aside.

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

Director General of Department of Transport v McKenzie [2016] WASCA 147

Court of Appeal of Western Australia

Buss P, Murphy JA & Beech J

Road traffic - appeal against District Court's decision to order appellant to issue extraordinary motor driver's licence to respondent - appellant contended primary judge misconstrued *Road Traffic (Authorisation to Drive) Act 2008* (WA) - ss27, s 30, & 32 - held: primary judge erred in finding application's refusal would deprive respondent of only practicable means to travel to and from work, and in finding s30(4) did not limit the discretion to impose s32(b) conditions - appeal allowed.

[Director General](#) (I B C G)

Coal Hub Pty Ltd v NSL Consolidated Ltd [No 2] [2016] WASC 257

Supreme Court of New South Wales

Beech J

Evidence - admissibility of evidence - plaintiff claimed damages for breach of contract against defendant - determination of objections to aspects of evidence plaintiff's expert - whether to dispense with general requirement that qualified person be called as witness - interests of justice - whether reasons sufficiently articulated to make report admissible - s79C *Evidence Act 1906* (WA) - held: certain objections upheld on basis that reasons insufficiently articulated and in relation to admissibility of ASX announcements - rulings made.

[Coal Hub](#) (I B C G)

Wheatley v Wheatley [2016] WASC 248

Supreme Court of Western Australia

Master Sanderson

Succession - family provision - plaintiff sought extension of time of almost seven years to bring proceedings under *Family Provision Act 1972* (WA) - interests of justice - length of delay - strength of claim - onus - held: plaintiff's claim was arguable - length of delay and inadequate explanation weighed against grant of extension of time - plaintiff did not discharge onus to deprive defendant of time limit's protection - on weighing all matters Court not satisfied extension of time should be granted - application dismissed.

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[Wheatley](#) (B)

Calvary Hospital Auxiliary Inc v D'Amico [2016] ACTCA 39

Court of Appeal of the Australian Capital Territory

Refshauge, Penfold & Katzmann JJ

Negligence - appellant conducted a kiosk and a cafe at hospital - respondent employed by appellant claimed damages for injuries allegedly suffered as result of employment - Master ordered appellant to pay respondent damages and costs - appellant appealed - duty of care - criteria in s43(2) *Civil Law (Wrongs) Act 2002* (ACT) - adequacy of explanation in relation to damages - assessment of interest for past economic loss - vicissitudes - gratuitous assistance - ss42, 43, 43(2) *Civil Law Wrongs Act* - ss37 & 87(1) *Occupational Health and Safety Act 1989* (ACT) - ss37E, 37N & 37O *Supreme Court Act 1933* (ACT) - s184(4) *Workers Compensation Act 1951* (ACT) - r6906 *Court Procedures Rules 2006* (ACT) - held: small amendment made due to error in interest on past economic loss - no other grounds of appeal succeeded.

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

CRIMINAL

Executive Summary

Murray v The Queen (EWCA) - criminal law - lies - conviction appeal - appellant convicted of 3 counts of sexual assault - assaults alleged to have occurred in a loading dock - appellant denied he had asked the complainant to accompany him on a cigarette break - whether the trial judge was required to give a "lies direction" - no direction was required - appeal dismissed

R v Quinn (No1) (NSWSC) - criminal law - compellability of parent as prosecution witness - murder - accused rendered a quadriplegic by his actions immediately after the murder - s18 *Evidence Act 1995* (NSW) - possible adverse consequence to relationship between mother and accused considered - mother not compelled to give evidence

Summaries With Link

Murray v the Queen [2016] EWCA Crim 1051

England and Wales Court of Appeal (Criminal)

Leveson P, Singh & Holgate JJ

Criminal law - lies - conviction appeal - appellant convicted of rape (s1 *Sexual Offences Act 1956*), assault by penetration and sexual assault (ss2 & 3 *Sexual Offences Act 2003*) - complainant was alleged to have been assaulted when she accompanied the appellant on a cigarette break - appellant denied asking complainant to join him and denied the assaults

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occurred - appellant convicted and sentenced to 6 years - leave to appeal being granted, the appellant argued that the trial judge had failed to give the jury the appropriate direction on lies - held: *R v Lucas* ((1981) 73 Cr. App. R. 159) sets out four conditions for a lie told in or out of court to constitute corroboration - those conditions are (i) the lie must be deliberate; (ii) it must relate to a material issue; (iii) the motive to lie must be a realisation of guilt and a fear of the truth; (iv) the statement must be clearly shown to be a lie - condition three forms the basis for the *Lucas* direction with respect to lies - a *Lucas* direction is founded in the ultimate jury question, why the lie was told by the defendant - a *Lucas* direction is not required in every case and is unnecessary where there is no risk that the jury may improperly reason that a defendant's lie necessarily demonstrates guilt - here, what was critical was whether the jury were sure of the complainant's evidence in light of the appellant's emphatic denial that he had seen the complainant, so that the standard directions as to the burden and standard of proof sufficed - the failure to direct the jury that the defendant may have lied about asking the complainant to accompany him did not render the verdict unsafe - appeal dismissed [Editor's note: see *Edwards v R* (1993) 178 CLR 193 ("Edwards Direction"); *Zoneff v R* 200 CLR 234]].
[Murray](#)

R v Quinn (No 1) [2016] NSWSC 1101

New South Wales Supreme Court

Beech-Jones J

Criminal law - compellability of parent as prosecution witness - murder - accused rendered a quadriplegic by his actions immediately after the murder - plea of not guilty - judge alone trial - prosecution required accused's mother to give evidence, but conceded that other witnesses could cover her evidence - mother objected to giving evidence for the prosecution and was represented by counsel on a *voir dire* - s18 *Evidence Act 1995* (NSW) - held: the criteria set out in s18(7) considered - the nature of the relationship between the accused and the witness, mother and son, is of particular significance as the accused has quadriplegia and that relationship is likely to be of central importance to them for the remainder of their lives - there is a likelihood that harm would (or might) be caused to that relationship if the mother is required to give evidence for the prosecution (s18(6)(a)) - those adverse consequences outweigh the desirability of compelling her to testify.

[Quinn](#)



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Sonnet 15: When I consider everything that grows

By [William Shakespeare](#)

When I consider everything that grows
Holds in perfection but a little moment,
That this huge stage presenteth nought but shows
Whereon the stars in secret influence comment;
When I perceive that men as plants increase,
Cheered and check'd even by the selfsame sky,
Vaunt in their youthful sap, at height decrease,
And wear their brave state out of memory;
Then the conceit of this inconstant stay
Sets you most rich in youth before my sight,
Where wasteful Time debateth with Decay
To change your day of youth to sullied night;
And all in war with Time for love of you,
As he takes from you, I engraft you new.

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