



Wednesday, 22 July 2015

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Ibrahim v Medical Board of Australia** (NSWCA) - administrative law - refusal of registration to fill area of need as general practitioner - appeal dismissed (I)

**“B” v Reineker** (NSWSC) - trespass to the person - sexual assault by teacher against student - trespass established - judgment for student in sum of \$1,228,000 (I)

**Bradley v Insurance Australia Ltd t/as NRMA Insurance** (NSWSC) - judicial review - motor accidents compensation - causation - no error of law by Review Panel - summons dismissed (I G)

**Wynne v Davey** (QSC) - negligence - collision between motorcycle and campervan - driver of campervan negligent - motorcyclist contributorily negligent - liability apportioned at 85% for driver and 15% for motorcyclist (I)

**In the Matter of Jesse Colin Corner** (SASC) - Wills and estates - making of Will by mother of severely disabled proposed testator authorised (B)

**Austin v Verini** (WASC) - insurance policy - balcony collapse - exclusion clause - insurer liable to indemnify owner builder for injuries suffered by plaintiffs (I B C)

**Blenkinsop v Blenkinsop Nominees Pty Ltd as Trustee of the Blenkinsop Family Trust** (WASC) - summary judgment - trusts and trustees - limitation issue requiring determination - summary judgment refused (B)

## Summaries With Link (Five Minute Read)

### **Ibrahim v Medical Board of Australia [2015] NSWCA 207**

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Simpson J

Administrative law - appellant was international medical graduate from Egypt who was not eligible for general registration as medical practitioner under s52 *Health Practitioner Regulation National Law* (NSW) (National Law) - New South Wales Board of the Medical Board of Australia (Board) refused appellant's application for limited registration under s67 National Law to fill area of need as general practitioner - NSW Civil and Administrative Tribunal (NCAT) dismissed appeal - whether NCAT erred in interpretation and construction of definition of "practice" for purpose of Recency of Practice Standard - whether NCAT erred in finding appellant's did not qualify as clinical experience which might meet Recency of Practice Standard - held: no error of law by NCAT in respect of interpretation and definition of "practice" - NCAT's finding that appellant's activities did not qualify as clinical experience was finding of fact from which appellant could not appeal without leave - no leave sought or obtained - appeal dismissed.

[Ibrahim](#) (I)

### **"B" v Reineker [2015] NSWSC 949**

Supreme Court of New South Wales

Adamson J

Trespass to the person - "B" commenced proceedings for damages for trespass against defendant and for negligence against school - defendant was employed by school and "B"'s teacher - claim against school resolved by agreement - principal allegation was that "B" was sexually assaulted by defendant between 2001 and 2008 - defendant pleaded guilty to offences of aggravated indecent assault and unlawful sexual intercourse - at time of hearing defendant still in custody serving sentence - held: plaintiff established cause of action in trespass against defendant - plaintiff was below age of consent for large proportion of assaults - in circumstances it would be unreal to regard plaintiff as able to form judgment whether to consent merely because she had reached biological marker - judgment for plaintiff against defendant in sum of \$1,228,000.

["B"](#) (I)

### **Bradley v Insurance Australia Ltd t/as NRMA Insurance [2015] NSWSC 950**

Supreme Court of New South Wales

Adamson J

Judicial review - motor accidents compensation - plaintiff sought judicial review of certificate and statement of reasons of Review Panel appointed under *Motor Accidents Compensation Act 1999* (NSW) - plaintiff challenged Review Panel's finding that plaintiff's injuries not caused by motor vehicle accident - plaintiff challenged certificate and reasons of Review Panel on basis it

impermissibly delegated function of examining plaintiff to two members - held: contention failed that Review Panel failed to carry out its statutory obligation when it made negative causation finding - Act and Guidelines permitted Review Panel to determine that re-examination to be conducted by two of its three constituent assessors - Court not persuaded challenges to assessment made out - making of assessment open to Review Panel - no error of law established - summons dismissed.

[Bradley](#) (I G)

## **Wynne v Davey [2015] QSC 200**

Supreme Court of Queensland

Burns J

Negligence - plaintiff motorcyclist claimed damages for injuries and loss arising out of collision with campervan - first defendant was driver of campervan - quantum of damages agreed - only issue was liability - s23 *Civil Liability Act 2003* (Qld) - regs 37, 38 & 132 *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Qld) - held: first defendant negligent to substantial degree - U-turn first defendant attempted which ended in collision flouted road rules and was dangerous manoeuvre - first defendant knew a motorcycle was travelling towards his position but turned without looking - plaintiff negligent to lesser degree - plaintiff knew existence of campervan and approached its position too fast to evade collision if vehicle pulled out onto roadway - by travelling at speed he did, plaintiff guilty of contributory negligence - liability apportioned at 85% for driver, and 15% for plaintiff - judgment for plaintiff

[Wynne](#) (I)

## **In the Matter of Jesse Colin Corner [2015] SASC 100**

Supreme Court of South Australia

Bampton J

Wills and estates - mother of proposed testator who was severely physically and intellectually disabled sought order pursuant to s7 *Wills Act 1936* (SA) authorising making of Will - held: proposed testator lacked testamentary capacity - terms of Will proposed by proposed testator's litigation guardian reflected likely intentions of proposed testator - reasonable to authorise making of Will.

[Corner](#) (B)

## **Austin v Verini [2015] WASC 258**

Supreme Court of Western Australia

Allanson J

Insurance contract - exclusion clause - personal legal liability cover - preliminary question - balcony collapsed at house while owners holding party - plaintiffs standing on balcony when it collapsed and suffered injury - house built by defendant - plaintiffs sued defendant - defendant issued third party notice against insurer claiming indemnity against plaintiffs' claims under policy - insurer contended exclusion clause applied - exclusion clause stated insurer did not insure against liability for personal injury caused by or arising out of breach of insured's duty as owner or occupier of building which was not insured by insurer at time of occurrence that caused injury

- parties agreed insurer did not insurer defendant against loss or damage to house or contents at time of balcony collapse - whether third party liable to indemnify defendant - whether liability of defendant for breach of duty was breach as owner - whether ownership integral to duty of care - construction of policy - ss4 & 4A(1)(c) *Builders' Registration Act 1939 (WA)* - held: both parties accepted defendant had duty of care to plaintiffs and breached that duty - Court satisfied duty was not a duty 'as the owner' - insurer liable to indemnify defendant - defendant entitled to orders sought in third party statement of claim.

[Austin](#) (I B C)

## **Blenkinsop v Blenkinsop Nominees Pty Ltd as Trustee of the Blenkinsop Family Trust [2015] WASC 254**

Supreme Court of Western Australia

Allanson J

Summary judgment - plaintiff brought claim against companies which were trustees of two family trust - plaintiff was beneficiary of trusts and director of trustee companies - plaintiff brought claim as creditor of trusts - plaintiff claimed companies were indebted to her - plaintiff sought summary judgment on part of claim - defendants asserted plaintiff faced with a significant hurdle because her claim brought outside limitation period in s38 *Limitation Act 1935 (WA)* (1935 Act) - held: plaintiff mistakenly relied on s59 *Limitation Act 2005 (WA)* in response to limitation point - plaintiff might still maintain her action if debt acknowledged for the purposes of s44 of 1935 Act but there were complicating issues - in circumstances where issue not squarely addressed by plaintiff required determination, summary judgment should not be given.

[Blenkinsop](#) (B)

[Click Here to access our Benchmark Search Engine](#)