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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)

**Gallagher Bassett Services NSW Pty Ltd v Murdock** (NSWCA) - work injury damages - leave to bring proceedings against employer out of time – no prejudice - appeal dismissed (I)

**Simon v Condran** (NSWCA) - dog owner bitten by neighbour's dog on neighbour's land - presence on neighbour's land unlawful - no statutory liability (I)

**In the matter of Courtesy Real Estate (NSW) Pty Ltd** (NSWSC) - corporations - oppression - order requiring reappointment of director refused (B)

**Amaca Pty Limited v Morrison** (NSW) - cross-vesting - proceedings commenced in Dust Diseases Tribunal of NSW transferred to Supreme Court of Queensland (I)



**Barrett v State of Tasmania** (TASSC) - workers compensation - permanent impairment to be assessed using most recent guidelines (I G)

**Meredith v Commonwealth of Australia (NO 2)** (ACTSC) - negligent misstatement - employee negligently misinformed by officers about eligibility to join superannuation scheme - Commonwealth vicariously liable (I G)

**Acer Forester Pty Ltd v Complete Crane Hire** (NTCA) - negligence - collapse of crane onto premises - damages increased for loss of productive time during interruption to business (I B C)

## Summaries with links (5 minute read)

### **Gallagher Bassett Services NSW Pty Ltd v Murdock** [2013] NSWCA 386

Court of Appeal of New South Wales

Barrett, Gleeson & Leeming JJA

Work injury damages - limitation of actions - worker injured in fall from scaffolding commenced proceedings almost eight years after injury against two defendants but not his employer - worker granted extension of time to sue third party tortfeasors - agent of employer's workers compensation insurer appealed from order granting leave under s151D *Workers Compensation Act* 1987 (NSW) for worker to commence proceedings against employer - employer deregistered - ss601AD(1) & 601AG *Corporations Act* 2001 (Cth), s5 *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) - ss14(1)(d), 18A, 26, 60C *Limitation Act* 1969 (NSW) - ss4, 9(1), 33, 151A, 151D, 151G, 151Z, 155, & 159 *Workers Compensation Act* - prejudice - rights to contribution and indemnity - held: court satisfied that there was no prejudice to employer's insurer because no viable and realistic avenue of recovery would be rendered unavailable to employer by displacement of s151D(2) time bar - primary judge's discretion did not miscarry - sound basis for the grant of leave under s151D(2).

[Gallagher Bassett Services NSW](#) (I)

### **Simon v Condran** [2013] NSWCA 388

Court of Appeal of New South Wales

Macfarlan & Leeming JJA; Sackville AJA

Personal injury - trespass - statutory liability for injury caused by dog - parties were neighbours who both owned dogs - appellant's dog strayed under respondent's house - appellant followed dog and was bitten by respondent's dog - appellant sued respondent under s25 *Companion*



*Animals Act 1998* (Act) and in negligence - appeal confined to liability created by s25 - *lawfully* - defence of necessity to conduct amounting to trespass to land - held: respondent only liable under s25 if appellant's presence on respondent's land lawful - presence not lawful because occasion for appellant to seek to rescue dog arose because of her negligence in letting dog wander unrestrained in unfenced backyard without watching dog - also because appellant breached s12A when she failed to take reasonable precautions to prevent dog from escaping - appeal dismissed.

[Simon](#) (I)

## **In the matter of Courtesy Real Estate (NSW) Pty Ltd [2013] NSWSC 1666**

Supreme Court of New South Wales

Black J

Corporations - oppression - plaintiff and several of company's other shareholders and directors were parties to shareholders agreement - shareholders and directors passed resolution removing plaintiff as director - plaintiff sought interlocutory relief including that defendants take all steps necessary to reappoint him - ss198F, 232-233, 247A, 250A & 1322 *Corporations Act 2001* (Cth) - held: there was a seriously arguable case that removal of director contravened clauses of agreement - breach of agreement did not necessarily establish oppression case for purposes of ss232-233 of the Act - wider range of considerations would be relevant - balance of convenience did not favour grant of interlocutory order requiring that director be reappointed - application for reappointment dismissed.

[In the matter of Courtesy Real Estate \(NSW\)](#) (B)

## **Amaca Pty Limited v Morrison [2013] NSWSC 1706**

Supreme Court of New South Wales

Harrison J

Cross-vesting - elderly sufferer of mesothelioma commenced proceedings in Dust Diseases Tribunal of New South Wales - plaintiff was resident in NSW - defendant sought that proceedings be removed to Supreme Court pursuant to s8 *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) and transferred to Supreme Court of Queensland pursuant to s5(2) of the Act - claim arose out of events which occurred exclusively in Queensland - claimant resided in Queensland - interests of justice - s5(2)(b)(iii) of the Act - costs and expenses - medical condition and life expectancy of claimant - delay - regulatory regime and procedures of DDT - held: no real prospect claimant would not survive removal of proceedings to Queensland - court not satisfied substantial justice could not be done to claimant in Queensland - little doubt Queensland was otherwise appropriate forum - orders made.

[Amaca](#) (I)



**Barrett v State of Tasmania [2013] TASSC 69**

Supreme Court of Tasmania

Blow CJ

Workers compensation - years after date of injury, worker claimed lump sum payment pursuant to s71 *Workers Rehabilitation and Compensation Act 1988* (Tas) - worker contended level of impairment should be assessed using most recent guidelines issued by WorkCover Tasmania Board - employer contended assessment should use guidelines in force on day of injury - Workers Rehabilitation and Compensation Tribunal stated case in relation to issue as to which guidelines were applicable - ss71(1)(b), 72(1)(a) & 164C of the Act - held: assessment to be undertaken by reference to date of assessment of whole person impairment - most recent guidelines applicable.

[Barrett](#) (I G)**Meredith v Commonwealth of Australia (NO 2) [2013] ACTSC 221**

Supreme Court of the Australian Capital Territory

Refshauge J

Negligence - employee of Commonwealth agency commenced work as temporary employee - employee alleged he was advised he was not eligible to join Commonwealth superannuation scheme - advice was incorrect - employee sued Commonwealth for negligent misrepresentation, breach of statutory duty and negligence - s4(5) *Superannuation Act 1922* (ACT) - s11(1) *Superannuation Act 1976* (ACT) - held: employee was negligently and culpably misinformed about eligibility for entry to scheme and this caused him to refrain from joining scheme thereby suffering loss - Commonwealth liable to employee as vicariously liable for negligent misstatements made to him by Commonwealth officers and on which he relied to detriment - no cause of action in negligence against Commonwealth other than claim for negligent misstatement - no statutory duties of kind pleaded owed to employee - no contributory negligence - damages assessed.

[Meredith](#) (I G)**Acer Forester Pty Ltd v Complete Crane Hire [2013] NTCA 11**

Court of Appeal of the Northern Territory

Riley CJ; Southwood &amp; Blokland JJ

Negligence - damages for interruption to business - crane collapsed onto premises occupied by a firm of engineers - liability admitted by defendants - damages assessed - engineers appealed against assessment of damages for loss arising out of interruption to business as a consequence of damage to building - delay to project - onus of proof - held: trial judge did not err in conclusion

that collapse of crane caused approximately eight days' loss of productive time to business - evidence did not show disruption caused loss of revenue over period of four months as claimed or any period beyond eight days - company entitled to damages for loss of productive time during that period - appeal allowed to extent of increasing award by amount for loss of productive time.

[Acer Forester](#) (I B C)

## **Mutability ["We are as clouds that veil the midnight moon"]**

By Percy Bysshe Shelley

### I.

We are as clouds that veil the midnight moon;  
How restlessly they speed and gleam and quiver,  
Streaking the darkness radiantly! yet soon  
Night closes round, and they are lost for ever: —

### II.

Or like forgotten lyres whose dissonant strings  
Give various response to each varying blast,  
To whose frail frame no second motion brings  
One mood or modulation like the last.

### III.

We rest—a dream has power to poison sleep;  
We rise—one wandering thought pollutes the day;  
We feel, conceive or reason, laugh or weep,  
Embrace fond woe, or cast our cares away: —

### IV.

It is the same!—For, be it joy or sorrow,  
The path of its departure still is free;  
Man's yesterday may ne'er be like his morrow;  
Nought may endure but Mutability.

[Percy Bysshe Shelley](#)

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