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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)

Gulic v Boral Transport Ltd (NSWCA) - negligence - subcontractor's employee injured in course or work for first respondent principal - no breach of principal's duty to employee of subcontractor - appeal dismissed (I B C G)

Nominal Defendant v Adilzada (NSWCA) - negligence - motor accidents compensation - appeal against determination of separate questions - appeal allowed in respect of one question (I B C G)

Cairncross v Anderson t/as ERA Legal (No 2) (NSWSC) - pleadings - professional negligence - Court not satisfied advocate's immunity had effect plaintiff's claim doomed to failure - application to strike out statement of claim dismissed (I B C G)

Racing Victoria Ltd v Riley (VSCA) - associations and clubs - presence of prohibited substance in blood sample - no error in reliance on 'rounded up' reading - appeal allowed (I B C G)

Fraser v Melrose (QSC) - wills and estates - succession - deceased intended document to form alteration to will - application for determination granted (B)

Cancer Council of Western Australia v Attorney General (WA) (WASC) - wills and estates - approval of a scheme to vary a charitable trust under s15(a) *Charitable Trusts Act 1962* (WA)

(B)

Swinburne v Bose (WASC) - real property - arguable implied intention to grant caveatable interest to be drawn from loan agreements' terms - extension of caveat granted (I B C G)

Summaries With Link (Five Minute Read)

Gulic v Boral Transport Ltd [2016] NSWCA 269

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Garling J

Negligence - appellant employed as driver of prime mover driver owned by company of which appellant was director - appellant injured performing cartage work for first respondent - company had entered cartage agreement with first respondent - appellant sued first respondent for breach of duty of care, and sued company for breach of cartage agreement, indemnity under agreement and indemnity or contribution under *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - primary judge rejected appellant's claim - principal's duty of care to subcontractor's employee - *Civil Liability Act 2002* (NSW) - *Workers Compensation Act 1987* (NSW) - held: first respondent did not breach duty of care it owed to appellant - primary judge erred in findings on causation but no error in entering judgment for first respondent - appeal dismissed.

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

Nominal Defendant v Adilzada [2016] NSWCA 266

Court of Appeal of New South Wales

McColl, Meagher & Gleeson JJA

Negligence - motor accidents compensation - respondent brought proceedings in relation to injuries including serious brain injury - Nominal Defendant sought to appeal from determination of separate questions - first question concerned whether 'purposes for which the insurer may make a request that the claimant undergo a medical examination include to assess that person's eligibility for lifetime participation in the Lifetime Care and Support Scheme (Scheme) introduced by the Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)' - second question concerned whether, in certain circumstances, insurer could compel plaintiff to be assessed by doctor of its choosing - third question concerned documents which insurer could rely on in application regarding plaintiff to Lifetime Care and Support Scheme - s127(2)(a) *District Court Act 1973* (NSW) - ss3, 5, 6, 43A, 78, 80, 85, 86, 107, 130A & 141A *Motor Accidents Compensation Act 1999* (NSW) - *Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Act 2012* (NSW) - ss3, 5, 5A, 6, 7, 8, 9, 10, 11A, 11B, 11C, 48, 49, 54 & 58 *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) - r23.4 *Uniform Civil Procedure Rules 2005* (NSW) - s119 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: orders determining second question set aside - question answered - appeal allowed in the negative - appeal allowed.

[Nominal Defendant](#) (I B C G)

Cairncross v Anderson t/as ERA Legal (No 2) [2016] NSWSC 1326

Supreme Court of New South Wales

Button J

Pleadings - professional negligence - solicitors' duties - advocate's immunity - application to strike out plaintiff's statement of claim on basis of advocate's immunity from suit - s173 *Civil Procedure Act 2005* (NSW) - Pt 4A *Supreme Court Act 1986* (Vic) - held: Court not satisfied immunity had effect that plaintiff's claim was doomed to failure - motion to strike out statement of claim dismissed.

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

Racing Victoria Ltd v Riley [2016] VSCA 230

Court of Appeal of Victoria

Maxwell ACJ, Hansen & Osborn JJA

Associations and clubs - Racing Appeals and Discipline Board found respondent guilty of administering a prohibited substance to affect horse's performance on basis of laboratory reading which was 'rounded up' - Victorian Civil and Administrative Tribunal affirmed decision - primary judge set aside Tribunal's decision, finding in respondent's favour that Rules of Racing did not permit 'rounding up' - held: Rules of Racing intended that a determination whether prohibited substances present would be carried out 'in accordance with the scientific methods and procedures appropriate to that task' - Tribunal correct to conclude rounding was the 'means by which an accredited laboratory expresses its measurement of concentration to one decimal place' - appeal allowed.

[Racing Victoria](#) (I B C G)

Fraser v Melrose [2016] QSC 213

Supreme Court of Queensland

P Lyons J

Wills and estates - succession - application for determination pursuant to s18 *Succession Act 1981* (Qld) that document date 9/12/15 formed alteration of deceased's will dated 3/11/00 - whether document embodied deceased's testamentary intentions - whether document was intended to operate as testamentary instrument - held: strong evidence of testamentary capacity when note was executed by deceased - Court satisfied that deceased intended document to form alteration to will - application granted.

[Fraser](#) (B)

Cancer Council of Western Australia v Attorney General (WA) [2016] WASC 297

Supreme Court of Western Australia

Banks-Smith J

Wills and estates - plaintiff sought approval of a scheme to vary a charitable trust under s15(a) *Charitable Trusts Act 1962* (WA) - defendant exercised Crown's duty as 'parens patriae to

protect property the subject of a charitable trust' and supported application - consideration of s7 - s7(3)(a)'s role and application - held: 7(3)(a) did not prevent approval of scheme in accordance with s7(1) - there was initial failure of gift but general charitable intention distilled - gift would be saved by cy-près principles so gift would not lapse or fail - scheme should be approved

[Cancer Council](#) (B)

Swinburne v Bose [2016] WASC 299

Supreme Court of Western Australia

Banks-Smith J

Real property - caveat - plaintiff sought pursuant to s138C *Transfer of Land Act 1893* (WA) (TLA) extension of caveat over first defendant's property - issue was whether provision in loan agreements between plaintiff and first defendant, which provided for lodgement of caveat on default, granted a caveatable interest - held: Court persuaded there was arguable case of implied intention to grant equitable charge to be drawn from agreement' terms - caveat 'may have substance' under s138C - balance of convenience favoured extension of caveat - caveat extended.

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

CRIMINAL

Executive Summary

Campbell v The State of Western Australia (WASCA) - criminal law - murder - joint criminal enterprise - appellant refused separate trial from co-accused - appeal dismissed

SGH v The State of Western Australia (WASCA) - criminal law - sexual offences - consciousness of guilt - miscarriage of justice - appeal allowed - new trial

Summaries With Link

Campbell v The State of Western Australia [2016] WASCA 156

Court of Appeal of Western Australia

McLure P; Buss JA & Corboy J

Criminal law - murder - joint criminal enterprise - appellant and co-accused charged on indictment they murdered deceased contrary to s279 *Criminal Code* (WA) - appellant and co-accused pleading not guilty - joint trial listed - appellant sought separate trial from co-accused pursuant to s133(4) *Criminal Procedure Act 2004* (WA) - primary judge dismissed application - s7(a) *Criminal Code* (WA) - held: severance not required to ensure fair trial - primary judge



correct to dismiss application for separate trial - trial judge had power to revisit question of a separate trial on appellant's application if unfairness to appellant emerged - appeal dismissed.

[Campbell](#)

SGH v The State of Western Australia [2016] WASCA 161

Court of Appeal of Western Australia

Buss P; Mazza & Mitchell JJA

Criminal law - jury found appellant guilty of two counts of sexually penetrating 9 year old daughter of former partner - appellant complained principally that prosecutor implied to the jury that appellant 'impliedly admitted possessing guilty knowledge of the offence' when evidence could not support that conclusion - appellant contended trial judge erroneously failed to give 'curative direction correcting the prosecutor's erroneous submission' - ss30(4), s 39, s 40 *Criminal Appeals Act 2004* (WA) - s320(2) *Criminal Code* (WA) - held: appellant's contentions made out in substance - Court not persuaded there was no substantial miscarriage of justice - appeal allowed - new trial.

[SGH](#)

Benchmark

Lines Written in Early Spring

By [William Wordsworth](#)

I heard a thousand blended notes,
While in a grove I sate reclined,
In that sweet mood when pleasant thoughts
Bring sad thoughts to the mind.

To her fair works did Nature link
The human soul that through me ran;
And much it grieved my heart to think
What man has made of man.

Through primrose tufts, in that green bower,
The periwinkle trailed its wreaths;
And 'tis my faith that every flower
Enjoys the air it breathes.

The birds around me hopped and played,
Their thoughts I cannot measure:—
But the least motion which they made
It seemed a thrill of pleasure.

The budding twigs spread out their fan,
To catch the breezy air;
And I must think, do all I can,
That there was pleasure there.

If this belief from heaven be sent,
If such be Nature's holy plan,
Have I not reason to lament
What man has made of man?

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