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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)

Schutz DSL (Australia) Pty Ltd v VIP Plastic Packaging Pty Ltd - application to obtain access to documents sealed by court in a confidential exhibit - *trap purchase* - prejudice (I, B, C, G)

CSL Australia Pty Ltd v Minister for Infrastructure and Transport (No 3) - administrative law - judicial review - temporary shipping licences - procedural fairness - discretion to withhold relief - futility (I, B, C, G)

Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority (No 2) - pleadings - amendment - application for summary judgment - negligence - duty of care - exercise of statutory powers and functions (I, G)

Quinn v Bryant - equity - promissory estoppel - compensation - expectations basis - whether compensation should be accelerated (B)

Samootin v Shea - abuse of process - lack of standing to seek relief - inherent power of the Court to make order of the type made in *Teoh v Hunters Hill Council (No 4)* (I, B, C, G)



Werden v Legal Services Board - crimes compensation - solicitors - limitation of actions - judge's duty to unrepresented litigant - natural justice - issue estoppel (I, G)

Land v Dhaliwal & Anor - negligence - motor accident - personal injury - assessment of damages - past and future economic loss - evidence of accountant considered (I)

Anthony v Maxam Australia Pty Ltd - costs - jurisdiction of Magistrates Court (Tas) to assess costs upon filing of discontinuance - *certiorari* - supervisory jurisdiction (I, B, C, G)

Summaries with links (5 minute read)

Schutz DSL (Australia) Pty Ltd v VIP Plastic Packaging Pty Ltd (No 17) [2012] FCA 1278

Federal Court of Australia

McKerracher J

Confidentiality - interlocutory application by respondents/cross-claimants for orders regarding a document sealed as a confidential exhibit - *whether*: respondent entitled to access in order to prepare its case; document disclosed evidence of *trap purchase*: *Bryant v Keith Harris & Co Ltd* (1980) FCA 148 - confidentiality regime - balance between necessary disclosure required by litigation and legitimate concern of trade rival to retain secrecy of commercially sensitive information: *Cadbury Pty Ltd v Amcor Ltd (No 2)* (2009) FCA 663, *Schutz DSL (Australia) Pty Ltd v VIP Plastic Packaging Pty Ltd (No 7)* (2010) FCA 1107 - possible use of the evidence: *Nick Scali Ltd v Super A-Mart Pty Ltd* (2010) FCA 1130 - prejudice.

[Schutz DSL \(Australia\)](#) (I, B, C, G)

**CSL Australia Pty Ltd v Minister for Infrastructure and Transport (No 3) [2012] FCA 1261**

Federal Court of Australia

Robertson J

Administrative law - judicial review - application under s39B *Judiciary Act* 1903 (Cth) and the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) for review of decision by delegate made under s53 and read with s34 *Coastal Trading (Revitalising Australian Shipping) Act* 2012 (Cth) (**Act**) to issue varied temporary shipping licence to second respondent - *whether*: delegate took into account irrelevant considerations; failure to take into account mandatory relevant consideration or relevant considerations: ss34(3)(b) & 34(2)(f) of the Act; denial of procedural fairness; illogical or irrational decision; grounds of appeal impermissible on judicial review - whether court should exercise discretion to withhold relief.

[CSL Australia](#) (I, B, C, G)**Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority (No 2) [2012] FCA 1297**

Federal Court of Australia

McKerracher J

Pleadings - application for summary dismissal of amended pleading under s31A *Federal Court of Australia Act* 1976 (Cth) (**FCAA**) - sixteenth attempt by applicant to formulate claim - principles relevant to court's exercise of power under s31A of the FCAA: *Spencer v The Commonwealth of Australia* (2010) HCA 28 - negligence - duty of care - applicants alleged respondent owed them a common law duty to take reasonable care in its exercise of statutory powers and functions - applicants claimed respondent by its acts and/or omissions breached the *Civil Aviation Act* 1988 (Cth) (**CAA**) causing them loss and damage - *whether*: duty of care existed; scope or content of duty was a proper question to be determined on summary dismissal application: *Commonwealth of Australia v Griffiths* (2007) NSWCA 370; respondent owed applicants a duty of care at common law: *Sullivan v Moody* (2001) 207 CLR 562, *W v Home Office* (1997) Imm AR 302; obligation to make *formal* inquiries as distinct from inquiries which were made as to safety of type of air operation; reasonable prospects of success; there had been enough opportunities to attempt to formulate claim.

[Repacholi Aviation](#) (I, G)

Quinn v Bryant [2012] NSWCA 377

Court of Appeal of New South Wales

Allsop P; Barrett JA & Sackville AJA

Equity - promissory estoppel - compensation - dispute between appellant grandmother and respondent granddaughter in relation to interest in property of which appellant was registered proprietor - primary judge made orders in favour of respondent - appeal in relation to amount of compensation payable by appellant - *whether*: primary judge paid insufficient attention to nature of representations on which respondent relied; failure to take into account that orders entitled respondent to payment of compensation when property sold rather than when appellant died; failure to make allowance for *acceleration* of respondent's entitlement; award of primary judge reflected application of correct principles; award of compensation was likely to exceed \$100,000 thus obviating the need for appellant to obtain leave to appeal: s101(2)(r) *Supreme Court Act* 1970 (NSW) - assessment of compensation in equity by reference to respondent's disappointed expectations: *Delaforce v Simpson-Cook* (2010) NSWCA 84.

[Quinn](#) (B)

Samootin v Shea [2012] NSWCA 378

Court of Appeal of New South Wales

JC Campbell JA

Standing - abuse of process - multiple applications for relief in relation to lost interest in property formerly owned by applicant and her husband - *whether*: applicant had standing when court had previously determined the same issue; applications were an abuse of process; applicant's persistence in bringing such claims made it appropriate for court to make an order of the type made in *Teoh v Hunters Hill Council (No 4)* (2011) NSWCA 324 - court's inherent power to act on its own motion to prevent abuse of process.

[Samootin](#) (I, B, C, G)

Werden v Legal Services Board [2012] VSCA 278

Court of Appeal of Victoria

Redlich & Tate JJA

Crimes compensation - solicitors - unrepresented litigant - appeal arising from proceedings brought by Legal Services Board (**Board**) against former solicitor who stole money from clients to finance gambling habit - *whether*: Board made application for compensation *as soon as practicable* under s86 *Sentencing Act* 1991 (Vic) (**Act**); breach of natural justice due to failure of trial judge to provide adequate guidance to unrepresented litigant; Board was statute-barred from bringing proceeding under s217(4) *Legal Practice Act* 1996 (Vic): ss5(1)(a) & 21(1)(a) *Limitation of Actions Act* 1958 (Vic); breach of undertaking by Board that it would not adduce certain evidence - history and purpose of s86 of the Act - construction of *as soon as practicable*: s86(5)(a) of the Act - issue estoppel - judge's duty to unrepresented litigant: *MacPherson v The Queen* (1981) HCA 46 *Minogue v Human Rights and Equal Opportunity Commission* (1999) FCA 85.

[Werden](#) (I, G)

Land v Dhaliwal & Anor [2012] QSC 360

Supreme Court of Queensland

Daubney J

Negligence - motor accident - personal injury - collision between plaintiff cyclist and taxi - defendants admitted liability for incident and abandoned claim of contributory negligence at trial - assessment of damages pursuant to the *Civil Liability Act* 2003 (Qld) (**Act**) - general damages: s51 of the Act - procedure to be followed for multiple injuries: *Allwood v Wilson* (2011) QSC 180 - past and future economic loss: *Luntz, Assessment of Damages for Personal Injury and Death* (4th edition) - evidence of forensic accountant in relation to economic loss - gratuitous care: s59 of the Act - out of pocket expenses.

[Land](#) (I)



Anthony v Maxam Australia Pty Ltd [2012] TASFC 5

Full Court of the Supreme Court of Tasmania

Evans, Tennent & Porter JJ

Costs - assessment of costs - discontinuance of action - jurisdiction of Magistrates Court - order in nature of *certiorari* - supervisory jurisdiction - *whether*: following filing and service of written notice to discontinue action pursuant to r32 *Magistrates Court (Civil Division) Rules* 1998 (Tas) (**Rules**) Magistrates court had jurisdiction to make order regarding the basis or scale of assessment of costs; filing of a notice of discontinuance ended a proceeding: *Conybeare v Lewis* (1879 - 1880) 13 Ch D 469, *Logan and Anor v Camm & Whitson* (2008) QSC 255; *costs of the action* payable pursuant to r32(2) of the Rules; erroneous failure by primary judge to refuse order in nature of *certiorari* quashing erroneous entry of order for costs; conduct of District Registrar was beyond power; impugned order needed to be quashed - discretion of court with supervisory jurisdiction to intervene where absence or excess of power patently obvious: *R v Ross-Jones; Ex parte Green* (1984) HCA 82.

[Anthony](#) (I, B, C, G)

On the Grasshopper and Cricket

By John Keats

The Poetry of earth is never dead:
 When all the birds are faint with the hot sun,
 And hide in cooling trees, a voice will run
 From hedge to hedge about the new-mown mead;
 That is the Grasshopper's—he takes the lead
 In summer luxury,—he has never done
 With his delights; for when tired out with fun
 He rests at ease beneath some pleasant weed.
 The poetry of earth is ceasing never:
 On a lone winter evening, when the frost
 Has wrought a silence, from the stove there shrills
 The Cricket's song, in warmth increasing ever,
 And seems to one in drowsiness half lost,
 The Grasshopper's among some grassy hills.

<http://www.poetryfoundation.org/bio/john-keats>

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