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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)

Yap Son On v Ding Pei Zhen (SGCA) - contract - share allotment agreement - High Court judge found respondent entitled to damages for value of un-transferred shares - appeal allowed - appeal on counter-claim allowed in part (B)

JFC Builders Pte Ltd v Permasteelisa Pacific Holdings Ltd (SGHC) - security of payments - plaintiff failed to establish defendant's works were not 'construction work' - adjudicator's determination not set aside (I B C G)

Doka Formwork Pte Ltd v Grandbuild Construction Pte Ltd (SGHC) - contract - dispute arising from contracts for supply of formwork - plaintiff's claim allowed - defendant's counter-claim disallowed (I B C G)

Toll Pty Ltd v Harradine (NSWCA) - motor vehicle accident - damages - primary judge erred in finding worker's injuries were within s3A *Motor Accidents Compensation Act 1999* (NSW) - primary judge erred in assessing damages - appeal allowed (I B C G)

Hopper v Campbell (NSWCA) - contract - employment contract - corporations - appellant's employment terminated - proofs of debt rejected by liquidators - appellant not permitted to make case for 'more limited agreement' on appeal - appeal dismissed (I B C G)

AAI Limited v State Insurance Regulatory Authority of New South Wales (formerly the

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Motor Accidents Authority of New South Wales) (NSWCA) - traffic law - motor accidents compensation - medical assessor not required by *Motor Accidents Compensation Act 1999* (NSW) to determine whether claimant's injuries caused by a 'motor accident' - appeal dismissed (I G)

T&T Investments Australia Pty Limited v CGU Insurance Limited (No 2) (NSWCA) - costs - interest - successful appellant's application for interest on costs dismissed (I B C G)

Swiatek v Amaca Pty Ltd & Ors (VSC) - negligence - apportionment - contribution dispute - plaintiff contracted mesothelioma due to inhalation of asbestos fibres - determination of apportionment between defendants (I B C G)

Mitchell v Latrobe Regional Hospital (VSCA) - statutory interpretation - referral of question from County Court - threshold for 'significant injury' - plaintiff's claim for damages for non-economic loss not precluded by Certificate of Determination of Medical Panel (I G)

Barker v Commonwealth of Australia (QSC) - trespass - false imprisonment - negligence - assault and battery - plaintiff arrested on tarmac after drinking on flight - plaintiff's claims dismissed (I)

Summaries With Link (Five Minute Read)

Yap Son On v Ding Pei Zhen [2016] SGCA 68

Court of Appeal of Singapore

Sundaresh Menon CJ, Andrew Leong JA, Chan Keong SJ

Contract - parties collaborated to assist Chinese company to get listed on Frankfurt Stock Exchange - company listed - quantity of shares issued - portion of shares registered in names of companies appellant owned, and part of those shares were to be transferred to respondent pursuant to share allotment agreement - respondent contended she was entitled to more shares than she received - High Court judge found respondent entitled to damages for value of un-transferred shares, and allowed appellant's counterclaim for unpaid expenses but only in relation to certain factual disputes - construction of share allotment agreement - held: appeal on main claim allowed - appeal on counter-claim allowed in part.

[Yap Son On](#) (B)

JFC Builders Pte Ltd v Permasteelisa Pacific Holdings Ltd [2016] SGHC 247

High Court of Singapore

Lee Seiu Kin J

Security of payments - plaintiff sought to set aside adjudication determination under *Building and Construction Industry Security of Payment Act* (Cap 30B, 2006 Rev Ed) on basis

defendant's works were not 'construction work' under s3(1) of the Act - statutory interpretation - 'fittings that form, or are to form, part of the land' - 'fabrication' - 'prefabrication' - held: plaintiff failed to establish defendant's works were not 'construction work' - application dismissed.

[JFC Builders](#) (I B C G)

Doka Formwork Pte Ltd v Grandbuild Construction Pte Ltd [2016] SGHC 248

High Court of Singapore

Andrew Ang SJ

Contract - damages - delayed completion - dispute arising from contracts for the supply of formwork - plaintiff claimed for unpaid rental under contracts, unpaid price of supplied consumables and loss from damage to formwork - defendant counterclaimed for loss arising from formwork's late delivery and defects in formwork's design - contractual construction - held: plaintiff's claim allowed - defendant's counterclaim disallowed.

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

Toll Pty Ltd v Harradine [2016] NSWCA 374

Court of Appeal of New South Wales

Meagher JA, Sackville AJA & Schmidt J

Motor vehicle accident - damages - worker claimed damages for injuries sustained in course of employment with appellant - not in dispute appellant breached duty of care - dispute concerned whether worker established injuries which satisfied s3A *Motor Accidents Compensation Act 1999* (NSW) - whether primary judge erred in finding injuries within s3A(1) because they were result of and caused 'during...the driving of the vehicle' or, alternatively, 'during a dangerous situation caused by the driving of the vehicle' - whether primary judge erred in assessing past and future economic loss - *Workers Compensation Act 1987* (NSW) - *Workplace Injury Management and Workers Compensation Act 1996* (NSW) - held: primary judge erred in process of fact-finding - even if accident occurred during driving of fork-lift, not established that injuries were as result of driving of forklift - no evidence injuries were result of dangerous situation caused by driving vehicle - primary judge erred in calculation of damages - appeal allowed.

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

Hopper v Campbell [2016] NSWCA 371

Court of Appeal of New South Wales

Bathurst CJ; Meagher & Payne JJA

Contract - corporations - appellant's employment by company terminated by respondent liquidators - appellant lodged two proofs of debt concerning payments he claimed he was entitled to - liquidators rejected each proof's greater part - primary judge dismissed appeals - appellant appealed - appellant's contentions concerned 'limited agreement' under which he undertook proprietary trading as company's employee in return for salary and bonus - whether 'more limited contract case' could be raised for first time on appeal - held: primary judge did

not err in not addressing case for more limited agreement - appellant not permitted to make argument for first time on appeal - appeal dismissed.

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

AAI Limited v State Insurance Regulatory Authority of New South Wales (formerly the Motor Accidents Authority of New South Wales) [2016] NSWCA 368

Court of Appeal of New South Wales

McColl, Macfarlan & Simpson JJA

Traffic law - motor accidents compensation - third respondent lodged insurance claim with applicant for damages for injuries allegedly suffered during motor vehicle accident in which ex-partner driving vehicle - applicant was ex-partner's motor vehicle insurer - applicant, pursuant to s63 *Motor Accidents Compensation Act 1999* (NSW) (MAC Act), sought review of medical assessor's assessment that third respondent had whole person impairment of 14% - Proper Officer rejected review application - primary judge dismissed application for review - applicant sought to appeal - whether medical assessor required to determine whether claimant's injuries caused by 'motor accident' under s3 MAC Act - held: Court rejected applicant's contention that MAC Act required medical assessor to determine or characterise 'what elements of an incident involving a motor vehicle during which a person was injured constituted motor accident' within the meaning of s3' - appeal dismissed.

[AAI Limited](#) (I G)

T&T Investments Australia Pty Limited v CGU Insurance Limited (No 2) [2016] NSWCA 372

Court of Appeal of New South Wales

McColl, Basten & Meagher JJA

Costs - interest - appellant succeeded on appeal - respondent ordered to pay appellant's costs - appellant sought order pursuant to s101(4) *Civil Procedure Act 2005* (NSW) that respondent pay interest on its costs and disbursements - held: no application for order for interest made by notice of appeal or argument - application made after 'apparently final orders' filed including costs orders - appellant responsible for 'significant delay' - Court and other party should 'generally be able to act on the basis' resolution of costs issue should not be subject of novel claim for interest - Court slow to countenance a late motion which would give rise to disproportionate costs - application dismissed.

[T & T](#) (I B C G)

Swiatek v Amaca Pty Ltd & Ors [2016] VSC 808

Supreme Court of Victoria

Keogh J

Negligence - plaintiff claimed damages for injury due to inhalation of asbestos fibres - plaintiff sued first, second and third defendants in relation to fibres at and emanating from a factory - plaintiff sued fourth defendant concerning workplace exposure to inhalation of asbestos fibres - claim against defendants settled - contribution claim against fourth defendant settled - there was

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contribution dispute between first defendant (Amaca), and second and third defendants (Seltsem/CSR) - assessment of 'the relative importance of the acts of the remaining defendants in causing the damage suffered by the plaintiff' - 'causal potency' - held: apportionment determined.

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

Mitchell v Latrobe Regional Hospital [2016] VSCA 342

Court of Appeal of Victoria

Osborn & Beach JJA; J Forrest AJA

Statutory construction - significant injury threshold - psychiatric impairment - referral from County Court of question concerning application of significant injury provisions in pt VBA *Wrongs Act 1958* (Vic) (the Act) - question was whether certificate of determination issued by medical panel prior to 2015 amendment of the Act, which relaxed threshold for significant injury, barred a claim for non-economic loss in proceeding to be heard after amendment - certificate of determination had found claimant did not meet threshold - held: Court concluded that claim for non-economic loss was not precluded due to Medical Panel's certificate - question answered in the negative.

[Mitchell](#) (I G)

Barker v Commonwealth of Australia [2016] QSC 310

Supreme Court of Queensland

Jackson J

Trespass - false imprisonment - negligence - plaintiff had been drinking on airplane flight - plaintiff claimed damages for false imprisonment, assault, battery and negligence arising from his arrest on tarmac after flight - plaintiff claimed request he remain on tarmac until arrest constituted false imprisonment, that force used during arrest unnecessary or unreasonable, or that personal injury to leg and ankle was caused by negligence - held: no 'serious case' of false imprisonment on the facts - claim based on s355 *Criminal Code* (Qld) conferred no private cause of action for damages - negligence claim misconceived - Court unable to conclude force used to carry out arrest was 'unreasonable or unnecessary' - plaintiff's claim dismissed.

[Barker](#) (I)

CRIMINAL

Executive Summary

R v Bucic (NSWCCA) - criminal law - drug offence - trial judge erred in interpretation of s24 *Drug Misuse and Trafficking Act 1985* (NSW) - appeal allowed - acquittal quashed - new trial

Spanjol v The Queen (VSCA) - criminal law - negligent driving causing serious injury - appeal against sentence on ground passenger failed to take care for own safety - appeal dismissed

Summaries With Link

R v Bucic [2016] NSWCCA 297

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Harrison & Campbell JJ

Criminal law - drug offence - respondent arraigned on indictment charging that he 'did knowingly take part in the manufacture of a prohibited drug' contrary to s24(1) *Drug Misuse and Trafficking Act 1985* (NSW) - Director of Public Prosecutions appealed against verdict of acquittal directed by trial judge - appeal concerned meaning of 'manufactures... a prohibited drug' within s24 - 'process of extracting or refining the prohibited drug' - 'manufacture' - held: trial judge erred in construction of s24 - appeal allowed - acquittal quashed - new trial.

[Bucic](#)

Spanjol v The Queen [2016] VSCA 317

Court of Appeal of Victoria

Maxwell P; Redlich & McLeish JJA

Criminal law - negligent driving causing serious injury - applicant driver pleaded guilty to charge of negligently causing serious injury to passenger in car - applicant sentenced to three years in prison - applicant sought leave to appeal against sentence, contending passenger contributed to own injuries by 'failing to take sufficient care for her own safety' in choosing to travel as a passenger despite knowing applicant drunk; and in not wearing her seatbelt - held: passenger's knowledge of applicant's intoxication incapable of reducing his sole responsibility for negligent driving - evidence did not establish passenger's failure to wear seatbelt was contributing cause - even if omission to wear seatbelt causative, applicant was legally obliged to ensure passenger's seatbelt done up - appeal dismissed.

[Spanjol](#)



The Twelve Days of Christmas

By [Anonymous](#)

The first day of Christmas,
My true love sent to me
A partridge in a pear tree.

The second day of Christmas,
My true love sent to me
Two turtle doves, and
A partridge in a pear tree.

The third day of Christmas,
My true love sent to me
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The fourth day of Christmas,
My true love sent to me
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The fifth day of Christmas,
My true love sent to me
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The sixth day of Christmas,
My true love sent to me
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.



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The seventh day of Christmas,
My true love sent to me
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The eighth day of Christmas,
My true love sent to me
Eight maids a-milking,
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The ninth day of Christmas,
My true love sent to me
Nine drummers drumming,
Eight maids a-milking,
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The tenth day of Christmas,
My true love sent to me
Ten pipers piping,
Nine drummers drumming,
Eight maids a-milking,
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,



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Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The eleventh day of Christmas
My true love sent to me
Eleven ladies dancing,
Ten pipers piping,
Nine drummers drumming,
Eight maids a-milking,
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

The twelfth day of Christmas
My true love sent to me
Twelve fiddlers fiddling,
Eleven ladies dancing,
Ten pipers piping,
Nine drummers drumming,
Eight maids a-milking,
Seven swans a-swimming,
Six geese a-laying,
Five gold rings,
Four colly birds,
Three French hens,
Two turtle doves, and
A partridge in a pear tree.

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