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

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Executive Summary (1 minute read)

Insurance Australia Ltd t/as NRMA Insurance v Scott (NSWCA) - administrative law - motor accidents compensation - attendant care services - primary judge quashed medical certificates - appeal allowed (I B C G)

Learmont v Commissioner of Police (NSWCA) - administrative law - police officer assaulted in course of duty - claim for gratuity refused - appeal dismissed (I B C G)

Coles Group Property Developments Ltd v Milovan (aka Michael) Stankovic (NSWSC) - trespass - homeless man with medical conditions permanently restrained from entering or remaining on plaza - order to allow for transitional period to allow defendant to visit medical centre (I B C G)

Ryde Developments Pty Ltd v The Property Investors Alliance Pty Ltd (No. 2) (NSWSC) - notice to produce - client legal privilege - no implied waiver of privilege - notice to produce set aside (I B C G)

Prothonotary of the Supreme Court of New South Wales v Yau Hang Chan (No 20) (NSWSC) - contempt of Local Court by repeated refusal to enter witness box (I B C G)

Mert v Lawrence (Vic) Pty Ltd (VSC) - evidence - civil proceedings for damages for injury in course of employment - admission of liability under *Accident Compensation Act 1985* (Vic) had 'very little probative value' - admission of evidence refused (I B C G)

Klein v National Australia Bank Ltd (VSCA) - summary judgment - malicious prosecution - no error in granting summary judgment to respondent or refusing leave to issue subpoenas and notice to produce - leave to appeal refused (I B C G)

Summaries With Link (Five Minute Read)

Insurance Australia Ltd t/as NRMA Insurance v Scott [2016] NSWCA 138

Court of Appeal of New South Wales

Basten, Ward & Gleeson JJA

Administrative law - motor accidents compensation - respondent sought review of decisions by Motor Accidents Medical Assessment Service (MAS) referring purported medical dispute under s60 *Motor Accidents Compensation Act* (NSW) for separate assessment by three medical assessors - assessments were of matters whether attendant care services which had or were to be provided voluntarily to plaintiff were "reasonable and necessary in the circumstances" and whether provision services related to injury caused by motor accident - respondent contended MAS lacked jurisdiction to assess matters because voluntary provision of attendant care services covered by s141B was not treatment provided or to be provided within meaning of s58(1)(a) - alternatively plaintiff claimed MAS could not be satisfied there was a dispute about those matters on material before it - primary judge held MAS erred by entertaining and deciding matters by providing certificates because they were outside limits of MAS's function and powers - assuming assessment of s141B dispute available Court not satisfied genuine dispute existed at time insurer purported to refer matter to MAS - primary judge quashed certificates - held: primary judge erroneously construed "treatment" as confined to treatment to be professionally provided - existence of medical dispute was not jurisdictional fact in 'strict sense' which appellant contended for - appeal allowed.

[Insurance Australia Ltd](#) (I B C G)

Learmont v Commissioner of Police [2016] NSWCA 137

Court of Appeal of New South Wales

Beazley P, Ward JA & Sackville AJA

Administrative law - appellant former senior police constable assaulted by offender in course of duty - appellant applied to SAS Trustee Corporation for gratuity pursuant to s12D *Police Regulation (Superannuation) Act 1906* (NSW) for permanent impairment - Commissioner of Police determined 'back and left and right leg injury' not caused by being 'hurt on duty' - appellant sought to set aside Commissioner's decision - primary judge confirmed Commissioner's decision - appellant appealed - 'injury to which the claim relates' - held: trial judge's decision not 'so flawed as to be irrational' - decision 'did not lack an evident and intelligible justification' - appeal dismissed.

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

Coles Group Property Developments Ltd v Milovan (aka Michael) Stankovic [2016]

NSWSC 852

Supreme Court of New South Wales
Sackar J

Trespass - plaintiff sought to permanently restrain defendant from entering or remaining on land (plaza) or leaving any property on plaza - defendant was homeless man with medical conditions - whether defendant trespasser - hardship - whether defendant protected by Protocol for Homeless People in Public Places August 2015 - *Inclosed Lands Protection Act 1901* (NSW) - held: appropriate to grant permanent injunction restraining defendant from entering or remaining on plaza or leaving any property there - order to allow for 'transitional period' for defendant to use medical centre in plaza for 2 months but to during that time to make alternative arrangements.

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

Ryde Developments Pty Ltd v The Property Investors Alliance Pty Ltd (No. 2) [2016]

NSWSC 829

Supreme Court of New South Wales
Ball J

Notice to produce - privilege - plaintiff sought to set aside notice to produce served by first defendant which sought production of documents recording or evidencing provision of legal advice given to plaintiff concerning agreements subject of dispute and operation of *Property, Stock and Business Agents Act 2002* (NSW) - common ground documents subject of client legal privilege claim - whether plaintiff had impliedly waived privilege - held: not inconsistent for plaintiff to assert client legal privilege and to maintain its claims - no implied waiver of privilege - notice to produce set aside.

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

Prothonotary of the Supreme Court of New South Wales v Yau Hang Chan [2016]

NSWSC 855

Supreme Court of New South Wales
Schmidt J

Contempt - Prothonotary sought declaration defendant guilty of contempt of Local Court, consequential orders as to punishment and costs, on basis of defendant's refusal to enter witness box for examination - validity of examination order - mental illness - held: defence of mental illness not established - defendant guilty of contempt for repeated refusal to enter witness box.

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

Mert v Lawrence (Vic) Pty Ltd [2016] VSC 348

Supreme Court of Victoria
Bell J

Evidence - negligence - breach of statutory duty - civil proceedings seeking damages for injury



allegedly suffered in course of employment with defendant - defendant had accepted liability under *Accident Compensation Act 1985* (Vic) - fact of acceptance of liability derived from letter sent by CGU Workers Compensation (Vic) Ltd - whether acceptance of liability constituted an admission - status of admission - contextual considerations - held: acceptance of claim for impairment benefits had 'very little probative value as an admission on behalf of the defendant in present proceeding' - admission of evidence refused.

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

Klein v National Australia Bank Ltd [2016] VSCA 144

Court of Appeal of Victoria

Redlich, Santamaria & Kyrrou JJA

Summary judgment - malicious prosecution - procedural fairness - applicant sought to appeal against trial judge's decision to grant summary judgment to respondent in relation to applicant's action for malicious prosecution - applicant challenged trial judge's refusal to grant leave to issue subpoenas and serve notice to produce on respondent - whether 'actively instrumental' element of action for malicious prosecution could be established - held: no error in granting summary judgment to respondent or in decision concerning subpoenas and notice to produce - proposed appeal had no prospects of success - leave to appeal refused.

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

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