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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)

Relative Mirait Services Pty Ltd v Midcoast Under Road Boring Pty Ltd (NSWSC) - security of payments - leave to appeal Local Court decision refused (I, C)

Anthony Simon Bell v Rittal Pty Limited (NSWSC) – proceedings discontinued – costs of cross-claim – costs order stayed (I)

Gordon Leslie Rowell as trustee of the Estate of Burnett Leslie Carlisle (deceased) and others v Michael Declan Heffernan and others (NSWSC) – compromise of proceedings - person under legal incapacity - settlements of claims against solicitor approved (I, B)

Grace v Grace (No 4) (NSWSC) – costs – apportionment – plaintiff failed on two issues but succeeded on the whole – costs apportioned by court not costs assessor (I, B)

Saddington v Kotzman (VSC) – judicial review – jurisdictional error - decision of medical panel set aside - matter remitted (I, G)



Matthews v SPI Electricity (Ruling No 18) (VSC) - evidence - relevance - opinion evidence - expert evidence of electrician admissible (I, B, C, G)

Robbins v Skouboudis & Suncorp Metway Insurance Limited (QSC) - negligence – motor accident - plaintiff intoxicated – contributory negligence - damages reduced by 50% (I)

Summaries with links (5 minute read)

Relative Mirait Services Pty Ltd v Midcoast Under Road Boring Pty Ltd

[2013] NSWSC 107

Supreme Court of New South Wales

Latham J

Security of payments - construction contract - plaintiff sought leave pursuant to s40(1) *Local Court Act 2007* (NSW) to appeal Local Court decision in which plaintiff was ordered to pay defendant an amount for boring works - implied terms in contract- whether defendant ready, willing and able to perform contract - unjust enrichment - quantum meruit - held: no merit in grounds of appeal – magistrate applied correct test in implying terms - no denial of procedural fairness - no questions of mixed law and fact raised on appeal - leave to appeal refused.

[Relative Mirait Services](#) (I, C)

Anthony Simon Bell v Rittal Pty Limited [2013] NSWSC 398

Supreme Court of New South Wales

Hidden J

Stay - costs - plaintiff injured when switchboard fell on him while moving it - plaintiff sued defendants initially believing they were manufacturers of switchboard- which later turned out not to be the case - manufacturers cross-claimed against occupier - plaintiff discontinued proceedings against manufacturers and sued occupier in separate proceedings - plaintiff sought stay of order requiring him to pay occupier's costs of cross-claim until completion of concurrent proceedings against occupier - court satisfied plaintiff entitled to stay - justice served by deferring payment of costs.

[Bell](#) (I)



Gordon Leslie Rowell as trustee of the Estate of Burnett Leslie Carlisle (deceased) and others v Michael Declan Heffernan and others [2013] NSWSC 404

Supreme Court of New South Wales

Sackar J

Settlement - person under legal incapacity - parties sought court approval of settlements of claims against solicitor for professional negligence, breach of trust, breach of fiduciary duties, and breach of statutory duties - solicitor was under legal incapacity within meaning of s76 *Civil Procedure Act 2005* (NSW) - held: settlements recorded in deeds were beneficial to solicitor's interests - settlements approved.

[Rowell as trustee of the Estate of Calisle](#) (I, B)

Grace v Grace (No 4) [2013] NSWSC 385

Supreme Court of New South Wales

Brereton J

Costs – apportionment - plaintiff succeeded in proceedings as a whole – relevance of plaintiff's failure on two issues – held: issues not entirely distinguished and severable – defendants substantially responsible for increasing costs of litigation but not for whole of costs incurred – court, not costs assessor, should apportion costs – first and second defendants to pay 62.5% of plaintiff's costs including costs of cross claim, as assessed.

[Grace](#) (I, B)

Saddington v Kotzman [2013] VSC 196

Supreme Court of Victoria

Kyrou J

Administrative law – judicial review – damages – non-economic loss - plaintiff struck foot on rock ledge at RSL premises and toe became infected – infection spread, resulting in amputation of three toes and part of foot – plaintiff sought review of determination of medical panel that his degree of impairment did not satisfy threshold in s28LB *Wrongs Act 1958* (Vic) - meaning of *Other metatarsals* in AMA's *Guides to the Evaluation of Permanent Impairment (Fourth Edition)* – held: medical panel made jurisdictional error in interpretation of item – determination set aside – matter remitted to medical panel for redetermination.

[Saddington](#) (I, G)

**Matthews v SPI Electricity (Ruling No 18) [2013] VSC 185**

Supreme Court of Victoria

J Forrest J

Evidence - admissibility of expert evidence of electrician in relation to fractured conductors - opinion evidence - relevance: s55(1) *Evidence Act 2008* (Vic) - held: evidence had potential to affect facts in issue concerning matters central or highly relevant to existence of duty and allegation of breach of duty against SPI in relation to valley conductors - evidence was not opinion but evidence of observation - evidence admissible.

[Matthews](#) (I, B, C, G)**Robbins v Skouboudis & Suncorp Metway Insurance Limited [2013] QSC 101**

Supreme Court of Queensland

Martin J

Negligence - contributory negligence - damages - motor vehicle accident - intoxicated plaintiff was passenger on motorcycle ridden by intoxicated first defendant - first defendant lost control of motorbike - plaintiff thrown from bike and injured - liability of first defendant not in issue - second defendant insurer alleged contributory negligence on part of plaintiff under *Civil Liability Act 2000* (Qld) – allegation based on plaintiff's intoxication and plaintiff's knowledge of first defendant's intoxication - held: judgment for plaintiff - damages reduced by 50% for contributory negligence pursuant to s49(2) of the Act.

[Robbins](#) (I)



The Argument of his Book

By Robert Herrick

I sing of brooks, of blossoms, birds, and bowers,
Of April, May, of June, and July flowers.
I sing of May-poles, hock-carts, wassails, wakes,
Of bridegrooms, brides, and of their bridal-cakes.
I write of youth, of love, and have access
By these to sing of cleanly wantonness.
I sing of dews, of rains, and piece by piece
Of balm, of oil, of spice, and ambergris.
I sing of Time's trans-shifting; and I write
How roses first came red, and lilies white.
I write of groves, of twilights, and I sing
The court of Mab, and of the fairy king.
I write of Hell; I sing (and ever shall)
Of Heaven, and hope to have it after all.

[Robert Herrick](#)

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