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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)

White v Logen Pty Ltd as trustee for the Byrn Family Trust (NSWCA) - work injury damages - sufficiency of evidence - employer not negligent - appeal dismissed (I)

Harvey v Barton (No 2) (NSWSC) - conversion of property - burden of proof not satisfied - claim dismissed (I B C)

Hardie v The Herald and Weekly Times Pty Ltd (VSC) - pleadings - defamation - imputations not struck out - summons dismissed (I)

Alvear v Chetwynd Park Pty Ltd (VSC) - private international law - work injury damages - New South Wales procedural law did not preclude Court from making interlocutory directions (I)

Von Hartel v Macedon Ranges Shire Council (VSC) - planning and environment - third party rights - dismissal of proceeding as misconceived - vitiating error - appeal allowed (C G)

Morris v BHP Coal Pty Ltd (QSC) - limitation of actions - work injury damages - worker did not have material facts at critical date - extension of limitation period (I)



In the Will of Leonie Lyle Warren deceased (QSC) - wills - probate of photocopy will granted (B)

Summaries with links (5 minute read)

White v Logen Pty Ltd as trustee for the Byrn Family Trust [2014] NSWCA 159

Court of Appeal of New South Wales

Macfarlan & Ward JJA; Sackville AJA

Work injury damages - negligence - expert evidence - appellant injured while working as painter employed by respondent - primary judge found employer not negligent and dismissed proceedings - sufficiency of evidence - weight given to expert evidence - lack of express finding as to safety of system of work - held: primary judge did not err in concluding report of ergonomics and safety management consultant was of little assistance - primary judge's failure to resolve conflicting evidence about whether employees were instructed to obtain assistance to lift heavy objects was not critical to determination because primary judge found no evidence linking lifting to injury - absence of reference to appellant's prior complaints not determinative - primary judge erred in not dealing separately with allegation of breach of duty in relation to provision of safe system of work - however even if there was breach of duty as to system of work, appellant failed to establish that this was causative of his injury - factual basis for expert evidence is not established by recording instructions - appeal dismissed.

[White](#) (I)

Harvey v Barton (No 2) [2014] NSWSC 303

Supreme Court of New South Wales

Robb J

Conversion of property - plaintiff alleged that when she moved out of property she left personal items which defendant refused to return - claim related to items of personal property - burden of proof - held: plaintiff required to prove on balance of probabilities that defendant had converted property by retaining it and refusing to deliver it to the plaintiff and that property converted had a particular value - plaintiff had not satisfied burden of proof either in relation to conversion or value - conversion claim dismissed.

[Harvey](#) (I B C)

Hardie v The Herald and Weekly Times Pty Ltd [2014] VSC 232

Supreme Court of Victoria

Dixon J

Pleadings - defamation - proprietor of entertainment venue claimed damages for defamation arising from publications in newspaper and on its website, in community information session and on radio program - defendant sought to strike out all pleaded imputations on basis they were not defamatory and/or were not capable of being conveyed from alleged publications - test of defamatory matter - requirements of proper pleading - held: imputations that proprietor ran venue



attended by motorcycle gangs in which police gave secret tip-offs to members of gangs not struck out - Court did not accept defendants' contention that ordinary reasonable listener would understand there was no serious, real, or imputed allegation made in published articles that proprietor was owner of a brothel - imputations not struck out - summons dismissed.

[Hardie](#) (I)

Alvear v Chetwynd Park Pty Ltd [2014] VSC 214

Supreme Court of Victoria

Dixon J

Private international law - work injury damages - worker who lived in Victoria was employed by defendant in NSW - worker claimed damages in negligence from employer - employer claimed worker's injuries caused by his own negligence and relied on payments made under *Workers Compensation Act 1987 (NSW)* (WCA) as defence - proceedings were governed by procedural law of Victoria as *lex fori* - substantive law to be applied was law of NSW as *lex causae* - dispute concerned whether Court could make directions sought by worker which were applicable under Victorian law - employer contended procedures were precluded by s318 *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* (WIMA) because s318 was a substantive provision that disentitled worker from using any evidence that was not disclosed as part of pre-filing procedures required by that Act - characterisation of s315 WIMA - ss2A, 150A & 150E WCA - held: s318 was plainly procedural and could not be regarded as relating to enforceability of the tort - directions made.

[Alvear](#) (I)

Von Hartel v Macedon Ranges Shire Council [2014] VSC 215

Supreme Court of Victoria

Emerton J

Planning and environment - third party rights - applicants sought review of Council's decision to grant permit for development of supermarket under s82(1) *Planning and Environment Act 1997 (Vic)* (PEA) - applicants claimed building immediately to west of land should be characterised as an *education centre* for purposes of Planning Scheme so that third party rights were not excluded - applicants sought leave to appeal against Victorian Civil and Administrative Tribunal's summary dismissal of proceeding as misconceived pursuant to s75(1) *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* - Tribunal ruled land was exempt from notice and review provisions of PEA by reason of Planning Scheme and that building was not an *education centre* within meaning of Planning Scheme - held: Tribunal impermissibly read words into definition of *education centre* - error was vitiating error - had Tribunal not construed definition of *education centre* so narrowly it could have reached a different decision on question before it - appeal allowed.

[Von Hartel](#) (C G)

Morris v BHP Coal Pty Ltd [2014] QSC 96

Supreme Court of Queensland



McMeekin J

Limitation of actions - work injury damages - worker injured during course of employment sought order under s31 *Limitation of Actions Act 1974* (Qld) to extend limitation period to commence proceedings against employer - ss30 & 31(2)(a) - material facts - decisive character - delay - prejudice - held: in order to succeed on application to have limitation period extended applicant required to show *a material fact of a decisive character relating to right of action was not within [his] means of knowledge* until date after critical date - two material facts had necessary quality of decisiveness - without material facts worker could not recover a significant award of damages sufficient to justify incurring risks and expense of litigation - material facts were not within worker's means of knowledge prior to critical date - in relation to prejudice worker had discharged positive burden of no great severity - extension of limitation period allowed.

[Morris](#) (I)

In the Will of Leonie Lyle Warren deceased [2014] QSC 101

Supreme Court of Queensland

P Lyons J

Wills - probate - application for probate of document described as unsigned will - document appeared to be a computer print out in form of a will, with places for signing by testatrix and two witnesses (unsigned copy) - document dated 1 November 1999 - application brought on basis that a document in identical form had been executed by the deceased, and properly witnessed but was lost - application was then made for determination of application for probate without an oral hearing - further evidence was a document which appeared to be a photocopy of an executed and properly witnessed will of deceased also dated 1 November 1999 - contents of unsigned copy and photocopy will appeared identical - applicants sought probate of photocopy will and leave to amend their application for probate - rr375, 601(1)(c) & 598 *Uniform Civil Procedure Rules 1999* (Qld) - held: leave to amend granted - photocopy will made apparent that there was a will which deceased signed and which revoked all previous wills - absence of will had been accounted for - will was not revoked - photocopy demonstrated terms of will - probate of photocopy will granted.

[In the Will of Leonie Lyle Warren deceased](#) (B)

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