

Friday 27 July 2012

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Binetter v Deputy Commissioner of Taxation** - administrative law - costs - application for costs of interlocutory application - *Administrative Decisions (Judicial Review) Act 1977* (Cth) (B, G)

**Dean v Phung** - torts - trespass to the person - negligence - defence of consent - exemplary damages - *Civil Liability Act 2002* (NSW) (I)

**Progressive Pod Properties Pty Ltd v A & M Green Investments Pty Ltd** - restitution - unjust enrichment - claim for construction costs (I, B, C, G)

**Bezzina v Phi & Anor** - torts - personal injury - transport accident - application for leave to appeal from order dismissing serious injury application - *Transport Accident Act 1986* (Vic) (I)

**Evans v Von Stanke & Ors** - wills and estates - discovery - executors' obligations on discovery - *Inheritance (Family Provision) Act 1972* (SA) - *Supreme Court Rules 2006* (SA) - *Corporations Act 2001* (Cth) (B)



## Summaries with links (5 minute read)

### **Binetter v Deputy Commissioner of Taxation (No 4) [2012] FCA 776**

Federal Court of Australia

Robertson J

Administrative law - taxation - applicant's originating application for judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**Act**) dismissed with costs - applicant seeks orders for costs of successful interlocutory application - court's discretion to make order as to costs - whether interlocutory application related to matters distinct from substantive issues in proceedings - whether application was a discrete, separately identifiable aspect of the proceeding - whether respondent's conduct unreasonable with resultant costs to applicant - whether applicant should pay costs due to failure of original application - circumstances in which court will award costs in proceedings under the Act.

[Binetter](#) (B, G)

[Binetter](#)

### **Dean v Phung [2012] NSWCA 223**

Court of Appeal of New South Wales

Beazley, Basten & Macfarlan JJA

Torts - personal injury - appellant commenced proceedings against respondent dentist for negligence and trespass to the person - appellant sought damages including exemplary damages - defendant admitted liability for negligence but relied on defence of consent in relation to trespass to the person - held that *Civil Liability Act 2002* (NSW) (**Act**) applied to appellant's claim and that exemplary damages were therefore unavailable - appellant appealed - whether the Act applies to appellant's claim - whether defence of consent available to respondent - whether appellant entitled to exemplary damages.

[Dean](#)

[Dean](#)

### **Progressive Pod Properties Pty Ltd v A & M Green Investments Pty Ltd [2012] NSWCA 225**

Court of Appeal of New South Wales

Macfarlan & Barrett JJA; Young AJA

Restitution - unjust enrichment - parties obtained consents to develop properties on condition of construction of a roundabout - respondents constructed roundabout and claimed half the costs from the appellant - appellant refused to pay - respondents' unjust enrichment claim against plaintiffs in equity division succeeded on basis that appellant had impliedly requested respondents to construct roundabout for joint benefit at mutual cost - on appeal respondents



seeking leave to amend pleadings to assert that appellants had requested to construct the roundabout - whether evidence established that appellants requested respondents to construct roundabout and if so whether respondents relied on request - whether appellants derived benefit from respondents' construction of roundabout - whether respondents' application for leave to amend pleadings should be refused as the points it seeks to raise might have been defeated by further evidence being adduced.

[Progressive Pod Properties](#)

[A & M Green Investments](#)

## **Bezzina v Phi & Anor [2012] VSCA 161**

Court of Appeal of Victoria

Harper JA & Beach AJA

Torts - personal injury - applicant injured in transport accident when his vehicle struck by vehicle driven by first respondent - applicant sought leave pursuant to s93(4)(d) *Transport Accident Act* 1986 (Vic) (Act) to bring common law proceedings against first respondent - applicant relied upon definition of serious injury contained in the Act - county court dismissed application - applicant seeking leave to appeal - whether applicant's injury constitutes a serious injury within meaning of the Act - whether judge at first instance erred in assessing injuries - whether inadequacy of reasons for assessment - whether applicant has demonstrated any error or arguable error on part of judge at first instance.

[Bezzina](#)

[Bezzina](#)

## **Evans v Von Stanke & Ors [2012] SASC 122**

Supreme Court of South Australia

Withers J

Wills and estates - action for further provision under the *Inheritance (Family Provision) Act* 1972 (SA) - plaintiff alleges statement of assets and liabilities omitted to disclose deceased's share in company and ownership of real estate - plaintiff seeks further and better disclosure by executors in order to obtain valuation of shares - first and second defendants claim that executors could only provide documents they held as executors of estate - consideration of obligation to disclose documents set out in r136 *Supreme Court Rules* 2006 (SA) - whether documents sought in possession of defendants - whether defendants had power to obtain immediate possession of documents - whether defendants are in position to obtain documents pursuant to ss198F(1)(a) & 290 of the *Corporations Act* 2001 (Cth) - whether documents relevant as pleadings - whether application premature as plaintiff has not yet obtained extension of time to pursue action.

[Evans](#)



## Early Arrival Sydney by Vivian Smith

Red cockatoo crests caught on coral trees:  
my Sydney emblems. Dragging the land in view  
our ship hauls glass and concrete to its side  
as gulls fly up and snatch and scream and glide  
away on a sea smeared with a trace of blue.

The neons flicker and the skyline wakes.  
The orange suburbs float through miles of calm:  
a pastel-coloured terrace shades its slope.  
While five gulls fight for nothing on a rope,  
the breeze picks out a single listless palm.

The city's like a room far undersea  
with locked arcades where shadow-waves subside.  
Grey windows bend great cloud-shapes as they pass.  
Beyond these tiles, tunnels, iron, glass,  
the flat waters of green inlets ride  
where all the folded yachts are chained away.

But here the huge hotels still sway in space  
with the exactness of a foreign place.

Vivian Smith is a widely published Australian poet. His most recent book is *Here, There and Elsewhere* (Giramondo, Sydney, 2012)

<http://www.poetryfoundation.org/bio/vivian-smith>

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