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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)

Coren v Master Builders Association of NSW Pty Ltd (NSWCA) - defamation - dismissal of claim for want of prosecution - extension of time to seek leave to appeal refused (I)

Bird v Ford (NSWCA) - solicitors' duties - no negligence by solicitors in advice on prospects of success (I)

Canadian Solar (Australia) Pty Ltd v Young (NSWSC) - guarantee - consignment agreement - arguable case against guarantor - summary dismissal refused (B C)

Burke v Burke (NSWSC) - succession - estranged son undeserving of benefit of mother's estate - family provision order refused (B)

Genitsaris v Transport Accident Commission (VSC) - administrative law - transport accident - refusal to fund physical therapies - leave to appeal refused (I G)

Liesfield v SPI Electricity Pty Ltd (VSC) - Black Saturday bushfires - discovery - client legal privilege not established over certain documents (I B C G)



BHP Billiton Iron Ore Pty Ltd v Capon (WASC) - fatal accident at mine - BHP's breach not cause of employee's death - appeal allowed in part (I C)

Summaries with links (5 minute read)

Coren v Master Builders Association of NSW Pty Ltd [2014] NSWCA 244

Court of Appeal of New South Wales

Basten & Gleeson JJA

Defamation - applicant sought leave to appeal from order dismissing proceedings arising from two alleged defamations - proceedings struck out for want of prosecution - held: no explanation for failure to prosecute claim in timely manner - applicant failed to indicate responses to defendants' objections to amended claim - applicant had not put affidavit evidence before Court on which he might be cross-examined - no reason to suppose primary judge's findings on credibility were open to serious challenge - extension of time to seek leave to appeal dismissed - summons dismissed as incompetent.

[Coren \(I\)](#)

Bird v Ford [2014] NSWCA 242

Court of Appeal of New South Wales

Bathurst CJ; Barrett & Emmett JJA

Professional negligence - evidence - appellant's son expelled from school - appellant sued school and former principal - proceedings dismissed - appellant sued solicitor for alleged negligence in failing to sufficiently warn against pursuing litigation which caused psychiatric injury and economic loss to appellant - primary judge found no negligence on part of solicitor - appellant claimed primary judge erred in not holding solicitor failed to provide advice to appellant that she had no arguable cause of action and that proceedings were entirely misconceived and manifestly hopeless - held: no breach of retainer or negligence by solicitors in advice they gave to appellant on prospects of success - appeal dismissed.

[Bird \(I\)](#)

Canadian Solar (Australia) Pty Ltd v Young [2014] NSWSC 987

Supreme Court of New South Wales

Davies J

Guarantee - defendant was director of company subject to deed of company arrangement - plaintiff sued on director's guarantee for obligations under contract for supply of solar panels to company - plaintiff claimed it supplied stock in accordance with consignment agreement but that company had not paid invoices - director sought summary dismissal of claim - construction of guarantee - unsatisfactory document - held: Court rejected director's submission that he should not be held liable under guarantee because release referred to in clause was retrospective -



director failed to show plaintiff did not have reasonable cause of action against him - summary dismissal refused.

[Canadian Solar \(Australia\) Pty Ltd](#) (B C)

Burke v Burke [2014] NSWSC 1015

Supreme Court of New South Wales

Rein J

Succession - adult son of deceased sought family provision order under s59 *Succession Act 2006* (NSW) - deceased left nothing to son in will - son had not seen or spoken with mother since early 1990s - estrangement - credit - s60 - held: evidence made out deceased's view that son had decided he wanted nothing to do with her or rest of family - no rational cause identified other than desire to create new life without family - deceased entitled to regard son as person undeserving of any benefit from her estate - notwithstanding poor financial circumstances, and taking all matters favourable to son into account, no provision ought be made out of the estate for him - summons dismissed.

[Burke](#) (B)

Genitsaris v Transport Accident Commission [2014] VSC 347

Supreme Court of Victoria

Zammit AsJ

Administrative law - transport accident - appellant injured when run over by car while lying on grass outside club - appellant sought leave to appeal from decision of Victorian Civil & Administrative Tribunal affirming Commission's decision not to fund certain therapies on basis they would not contribute to appellant's recovery - appellant submitted VCAT's decision misrepresented evidence before it, omitted facts, made illogical findings, and was unfair and unjust - held: Tribunal did not fail to take into account s12(3) *Transport Accident Act 1986* (Vic) concerning Commission's duty to design and promote rehabilitation program - no error in relation to reliance on medical opinion - no error in finding that further physical therapy should not be provided to appellant - VCAT applied correct test as to whether it was necessary to provide claimed services to appellant - no real or significant arguments of any error identified - not in interests of justice to grant leave - leave to appeal refused.

[Genitsaris](#) (I G)

Liesfield v SPI Electricity Pty Ltd [2014] VSC 348

Supreme Court of Victoria

Derham AsJ

Black Saturday bushfires - discovery - SPI objected to production of certain documents on grounds of client legal privilege - plaintiff sought affidavit material in support of claimed privilege - SPI refused - plaintiff issued summons - dominant purpose test - ss45, 75, 118, 119 & 131A *Evidence Act 2008* (Vic) - held: certain documents were produced for multiple purposes and it was not possible to conclude predominant purpose - SPI did not establish technical analysis



documents were produced for dominant purpose of obtaining legal advice - privilege not established with respect to power point presentation or photographs - orders to be made.

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

BHP Billiton Iron Ore Pty Ltd v Capon [2014] WASC 267

Supreme Court of Western Australia

McKechnie J

Occupational health and safety - fatal accident - BHP operated locomotive overhaul workshop - BHP appealed from its conviction under s9 *Mines Safety and Inspection Act 1994* (WA) in relation to death of employee in accident involving scissor-lift - held: BHP had procedures in place to instruct and supervise employees but did not follow them - BHP did not enforce its own requirements for Job Hazard Analyses to be completed - BHP at least liable to conviction under s9A(3) - in order to sustain penalty under s9A(2), the prosecution required to link both contravention and cause of death by proof beyond reasonable doubt - operative cause of death was platform descending on employee - scissor lift descended because safety bar not in place - employee knew of hazard and step which would prevent hazard - not established beyond reasonable doubt that failure to supervise or instruct was cause of death - appeal allowed from conviction pursuant to s9A(2).

[BHP Billiton Iron Ore Pty Ltd](#) (I C)

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