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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)

Redbro Investments Pty Ltd v Ceva Logistics (Australia) Pty Ltd (NSWCA) - negligence - workplace injury - equal apportionment of liability between employer and third party - appeal dismissed (I)

Registrar-General of NSW v Jea Holdings (Aust) Pty Ltd (NSWCA) - real property - Registrar-General not restrained from registering easement - appeal allowed (B C)

Pi v State of New South Wales (NSWSC) - pleadings - malicious prosecution - false imprisonment - wrongful arrest - statement of claim struck out - defamation action dismissed (I)

Mackay Sugar Ltd v Quadrio (QCA) - contract - concluded and binding supply contract under *Sugar Industry Act 1999* (Qld) - appeal allowed (I B)

AME Hospitals Pty Ltd v Dixon (WASCA) - contract - negligence - extension of time to bring action against doctor and company - appeals dismissed (I B)

Re Rudd; ex parte Prince (WASC) - Wills - informal alterations - Will and codicil admitted to probate in pre-altered state - one document not capable of being admitted (B)

Jadwan Pty Ltd v Rae & Partners (TASSC) - security for costs - trustee company ordered to pay security for costs of action (B)

Summaries with links (5 Minute Read)

Redbro Investments Pty Ltd v Ceva Logistics (Australia) Pty Ltd [2015] NSWCA 73

Court of Appeal of New South Wales

Basten & Leeming JJA; Simpson J

Negligence - workplace injury - truck driver employed by appellant - truck driver director of employer - employer owned prime mover driven by worker - respondent contracted with employer to haul trailers - worker claimed that, while loading trailer in Perth he fell and was injured - respondent was held liable to worker on basis worker's contributory negligence was one third - respondent sued employer for statutory contribution - primary judge apportioned liability equally between respondent and employer - employer submitted injury had not occurred in way respondent and worker contended - employer challenged primary judge's acceptance of worker as witness of truth - employer also contended corporate structure which permitted respondent to seek contribution after compromising worker's personal claim against it should result in nil or minimal contribution - primary judge rejected employer's submissions - submissions in substance repeated on appeal - commercial reality - s151Z *Workers Compensation Act 1987* (NSW) - held: no error shown in primary judge's reasoning - employer's appeal dismissed.

[Redbro](#) (I)

Registrar-General of NSW v Jea Holdings (Aust) Pty Ltd [2015] NSWCA 74

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Basten JA

Real property - first respondent registered proprietor of lot (lot 4) - second respondent registered proprietor of lot (lot 5) which abutted lot 4 - until 1964 lots formed part of land owned by shopping centre - land subdivided in 5 lots - in 1963 shopping centre transferred lot 5 to registered proprietor - memorandum of transfer contained covenant benefiting lot 5 and burdening lot 4 - covenant not recorded on certificate of title for lot 4 - Registrar-General served notice in 2012 on first respondent pursuant to s12A *Real Property Act 1900* (NSW) advising he was proposing to record covenant on folio identifier of Lot 4 - first respondent sought that Registrar-General be restrained from recording covenant - primary judge found first respondent held its interest as registered proprietor of lot 4 free of easement or restrictive covenant - held: subject matter of covenant capable of constituting a grant of an easement - validity of easement not affected by failure to record it on certificate of title of servient tenement - as easement omitted from title to servient tenement, exception to indefeasibility applied - appeal allowed.

[Registrar-General](#) (B C)

Pi v State of New South Wales [2015] NSWSC 324

Supreme Court of New South Wales

Harrison J

Pleadings - malicious prosecution - wrongful arrest - false imprisonment - defamation - NSW sought to strike out statement of claim - whether current statement of claim should be struck out

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in whole or in part - whether plaintiff should be entitled to replead his case - whether claim in defamation should be dismissed as an abuse of process - held: no version of plaintiff's statement of claim ever put in proper form - latest version was patently embarrassing and failed to formulate or plead a cause of action known to the law - NSW entitled to require plaintiff to formulate his various claims in proper manner - claims in defamation not maintainable - absolute privilege was complete answer to defamation claims - claims in defamation dismissed - statement of claim struck out with leave to file and serve amended statement of claim.

[Pi](#) (I)

Mackay Sugar Ltd v Quadrio [2015] QCA 41

Court of Appeal of Queensland

Carmody CJ; Fraser & Phillipides JJA

Contracts - statutory interpretation - trial judge declared respondent had not committed to concluded and binding contract with appellants in terms of "Tableland Collective Cane Supply and Processing Agreement" - declaration based on conclusion respondent had not complied with *Sugar Industry Act 1999* (Qld) - whether trial judge erred in holding respondent had not signed a *supply contract* as required by s31(5) - whether trial judge erred in holding a prerequisite for a binding contract that parties intended to be legally bound was satisfied - held: respondent manifested assent to entering contract by signing execution page - respondent signed written supply contract in accordance with s31 - appeal allowed.

[Mackay](#) (I B)

AME Hospitals Pty Ltd -v- Dixon [2015] WASCA 63

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Negligence - contract - limitations - Master granted respondent extension of time under s36 *Limitation Act 2005* (WA) to commence action against doctor and company for breach of contract or negligence in connection with respondent's birth - proper construction of s39 and its application to facts and circumstances - *injury - physical cause - aware - ought reasonably to have become aware - attributable to* - held: at time limitation period expired, respondent's father not aware of physical cause of respondent's encephalopathy or cerebral palsy and not aware either injury attributable to conduct of a person - Court's power to extend time enlivened - Master granted extension of time by order within 3 year period in s39(4) - Master had power to make order within proper exercise of discretion - appeals dismissed.

[AME](#) (I B)

Re Rudd; ex parte Prince [2015] WASC 107

Supreme Court of Western Australia

Registrar C Boyle

Wills - probate - informal alterations - executor sought to prove three testamentary writings of deceased - all documents altered since execution - executor sought admission of documents to probate in altered form - alterations to two of the documents not in compliance with s10 *Wills Act 1970* (WASC) so unable to be admitted except by jurisdiction conferred by s32 - held: Will



and codicil entitled to be admitted to probate as executed - informal alterations to each not capable of being admitted - third document not capable of being admitted.

[Rudd](#) (B)

Jadwan Pty Ltd v Rae & Partners [2015] TASSC 11

Supreme Court of Tasmania

Holt AsJ

Security for costs - defendants sought that company give security for costs of litigation - s1335(1) *Corporations Act 2001* (Cth) - requirements that corporation was plaintiff there was reason to believe corporation would be unable to pay costs if defendants successful - justice of the case - held: plaintiff was trustee company with no tangible assets other than those held beneficially for trust - Court satisfied there is reason to believe that plaintiff was without assets to satisfy its liability if t costs of action awarded against it - justice of case lay with orders being made for security for costs.

[Jadwan](#) (B)

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