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Daily Construction

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Executive Summary (1 minute read)

Epsilon Insurance Broking Services Pty Ltd v Liberty Managing Agency Limited (FCA) - insurance - 'contribution between insurers' - jurisdiction - Court satisfied it had jurisdiction to hear matter

Voller v Nationwide News Pty Ltd; Voller v Fairfax Media Publications Pty Ltd; Voller v Australian News Channel Pty Ltd (NSWSC) - defamation - separate question - 'publication element' - 'Facebook comments by third-party users' - defendants were publishers - separate question answered in the affirmative

State of Queensland v Maryrorough Solar Pty Ltd (QCA) - administrative law - s73A *Electrical Safety Regulation 2013* (Qld) invalid - appeal dismissed

Australian Securities and Investments Commission v Macks (No 3) (SASC) - pleadings - corporations - plaintiff's application to amend originating process refused - 'points of claim' struck out

Summaries With Link (Five Minute Read)

Epsilon Insurance Broking Services Pty Ltd v Liberty Managing Agency Limited [2019] FCA 990
Federal Court of Australia
Allsop CJ

Insurance - 'contribution between insurers' - jurisdiction - company (Ditchfield) contracted with Council for works at 'waste management centre' (centre) - Ditchfield obtained 'combined business liability insurance policy' with applicant ('Epsilon policy') and 'management liability insurance policy' with respondents ('DUAL policy') - 'diesel spill' occurred at centre - Ditchfield conducted 'mitigation works' - NSW Environmental Protection Agency (EPA) commenced prosecution against Ditchfield for damage - applicant 'extended cover' to mitigation works but refused to extend cover to prosecution by EPA - respondent extended cover to 'defence costs' arising from prosecution by EPA - applicant sought 'declaratory relief' that Ditchfield 'entitled to be indemnified' by respondents 'for losses and expenses' which mitigation works had incurred and also sought '50% contribution' from respondents for losses and expenses which applicant had already indemnified - proceedings concerned whether Court had jurisdiction to hear matter - whether jurisdiction under s39B(1A)(c) *Judiciary Act 1903* (Cth) - *Rana v Google Inc* [2017] FCAFC 156 - held: Court satisfied it had jurisdiction to hear matter.
Epsilon

Voller v Nationwide News Pty Ltd; Voller v Fairfax Media Publications Pty Ltd; Voller v Australian News Channel Pty Ltd [2019] NSWSC 766
Supreme Court of New South Wales
Rothman J
Defamation - separate question - parties agreed on question for determination: “Whether the plaintiff has established the publication element of the cause of action of defamation against the defendant in respect of each of the Facebook comments by third-party users that are alleged to be defamatory?” - whether material on ’public Facebook page’ defamatory - whether defences - “innocent dissemination" - s32 *Defamation Act 2005* (NSW) - whether defendant ’media company’ in each proceeding was a publisher - held: each defendant was a ’first or primary publisher in relation to the general readership of the Facebook page it operates’ - innocent dissemination defence did not arise - separate question answered in the affirmative.
View Decision

State of Queensland v Maryrorough Solar Pty Ltd [2019] QCA 129
Court of Appeal of Queensland
Fraser & McMurdo JJA; Boddice J
Administrative law - *Electrical Safety (Solar Farms) Amendment Regulation 2019* (Qld) (Amendment Regulation) inserted s73A into *Electrical Safety Regulation 2013* (Qld) (Regulation) - primary judge found s73A Regulation invalid - appellant appealed - whether s73A was within Governor in Council's 'power to make regulations' under ss210(1) & 210(2) *Electrical Safety Act 2002* (Qld) - statutory construction - held: appeal dismissed.
State of Queensland

Australian Securities and Investments Commission v Macks (No 3) [2019] SASC 104
Supreme Court of South Australia
Doyle J

Pleadings - corporations - plaintiff, under s536 *Corporations Act 2001* (Cth) (Corporations Act), sought inquiry into defendant's conduct as companies' liquidator - plaintiff, under r54(4)(a) *Supreme Court Rules 2006* (SA), sought to amend originating process - plaintiff conceded it was seeking to 'revisit' a 'forensic decision' it made previously on basis of Court's rejection of plaintiff's contention that inquiry 'should be conducted on 'show cause' basis' - plaintiff seeking to 'expand the inquiry' to allege certain breaches of ss181 & 182 Corporations Act - held: application to amend originating process refused - Court also struck out certain 'points of claim'. Australian Securities and Investments Commission

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