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

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### Executive Summary (1 minute read)

**Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel (SCC)** - trusts - liens - interaction between statutory remedies of construction liens and statutory trusts in provincial legislation - trust and lien provisions existed separately and could be concurrently pursued - appeal dismissed

**Oppelt v Head: Health, Department of Health Provincial Administration: Western Cape (CCT185/14)** (ZACC) - medical negligence - failure to transfer injured applicant to hospital - violation of right to emergency medical treatment - respondent negligent - appeal upheld

**TriCare (Hastings) Ltd v Allen** (NSWCA) - competency of appeal - appeal misconceived and incompetent because brought against reasons, not "judgment or order" - appeal dismissed

**Pi v Zhou** (NSWSC) - assault - interference with quiet enjoyment - eviction - conversion - failure to establish claims - judgment for defendants

**Kadac Proprietary Ltd v Complete Health Products Pty Ltd** (VSC) - cross-vesting - oppression - interests of justice - proceedings transferred to Supreme Court of Queensland

**Flegg v Hallett** (QSC) - costs - defamation - unreasonable failure to accept settlement offers - defendant to pay plaintiff's costs on indemnity basis

# Benchmark

## Summaries With Link (Five Minute Read)

### **Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel, 2015 SCC 43**

Supreme Court of Canada

McLachlin C.J. and Rothstein, Cromwell, Moldaver, Wagner, Gascon & Côté JJ

Trusts - liens - appellant was general contractor - respondent was subcontractor for construction project - respondent filed builder's lien against property on which work being done - appellant filed lien bond in amount of respondent's claim and sought declaration it had satisfied its trust obligations - respondent sought payment of its past-due invoices upon appellant receiving funds from owner - Court of Appeal overturned decision of motion judge that security in form of lien bond extinguished appellant's trust obligations pursuant to *Manitoba Builders' Liens Act* - Court of Appeal concluded subcontractors had two rights to sue for breach of contract beyond common law right: right to statutory trust and right to file lien - interaction of statutory remedies of construction liens and statutory trusts in provincial legislation - held: trust and lien provisions independent and could be pursued concurrently under s66 - lien bond secured contractor's or subcontractor's lien claim and did not extinguish obligations under statutory trust - filing of lien bond did not affect existence and application of trust remedy - appeal dismissed.

[Stuart Olson Dominion](#)

### **Oppelt v Head: Health, Department of Health Provincial Administration: Western Cape (CCT185/14) [2015] ZACC 33**

Constitutional Court of South Africa

Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jappie AJ, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J and Theron AJ

Medical negligence - applicant sustained spinal cord injury during rugby match- applicant treated at three hospitals under respondent's control - applicants injuries rendered him quadraplegic - applicant claimed hospital personnel negligent by failing to promptly treat spinal cord injuries or to treat him within four hours of injury - High Court found delays unreasonable and therefore applicant was refused emergency medical treatment - Supreme Court reversed High Court decision - held (by majority): a reasonable doctor in respondent's employment would have transferred applicant directly to the hospital in which he would have probably received the appropriate treatment within four hours of his injuries - applicant's quadraplegia could probably have been avoided if appropriate treatment given to him promptly - respondent's failure to promptly refer applicant to the hospital was negligent and violated applicant's right to emergency medical treatment - appeal upheld.

[Oppelt](#)

### **TriCare (Hastings) Ltd v Allen [2015] NSWCA 344**

Court of Appeal of New South Wales

Ward & Simpson JJA; Tobias AJA

Competency of appeal - NSW Civil and Administrative Tribunal (NCAT) terminated residential site agreements concerning respondent's relocatable dwellings under s113 *Residential Parks*

*Act 1998 (NSW) (the Act)* and granted appellant vacant possession of land on which dwellings located - NCAT awarded respondents compensation pursuant to s128 - respondents sought judicial review of NCAT's findings - appellant sought to challenge primary judge's obiter observations concerning construction of s130A regarding valuation of dwellings - appellant also sought variation of primary judge's remittal order in light of its construction of s130A - s101(1)(a) *Supreme Court Act 1970 (NSW)* - held: appeal misconceived and incompetent because it was brought against reasons not "judgment or order" - appeal dismissed as incompetent.

[TriCare](#)

## **Pi v Zhou [2015] NSWSC 1644**

Supreme Court of New South Wales

Adamson J

Assault - first defendant and second defendant wife owned property with house and flat on it - plaintiff rented flat - altercation between plaintiff and first defendant in yard of property - injuries sustained by both - plaintiff claimed damages for breach of contract against first defendant arising from interference with quiet enjoyment of flat and forced eviction from property, damages against defendants for assault and damages against first defendant for conversion of washing machine - s140 *Evidence Act 1995 (NSW)* - s51 *Consumer Trader and Tenancy Act 2001 (NSW)* - held: plaintiff did not establish liability against defendants for assault, prove claim of breach of covenant of quiet enjoyment and alleged forced eviction, or that any act or omission alleged against defendants had any bearing on whether plaintiff could engage in any occupation - plaintiff failed to establish factual elements of conversion claim - judgment for defendants.

[Pi](#)

## **Kadac Proprietary Limited v Complete Health Products Pty Ltd [2015] VSC 613**

Supreme Court of Victoria

Sifris J

Cross-vesting - oppression - proceeding commenced by plaintiff shareholder concerning conduct of first defendant's company's affairs - defendants sought to transfer proceedings to Supreme Court of Queensland pursuant to s1337H(2) *Corporations Act 2010 (Cth)* - ss1337H & 1337L *Corporations Act 2001 (Cth)* - s5(2)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987 (Vic)* - whether in interests of justice to transfer proceedings - conduct of defendants - location of events and conduct - location of principal place of business - held: it was in interests of justice to transfer proceedings - application granted.

[Kadac](#)

## **Flegg v Hallett [2015] QSC 315**

Supreme Court of Queensland

P Lyons J

Cost - defamation - Court determined defendant defamed plaintiff - plaintiff sought indemnity costs on basis of defendant's unreasonable failure to accept its two settlement offers - ss13, 14, 15 & 40 *Defamation Act 2005 (Qld)* - settlement proposed on bases including that defendant

# Benchmark



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publish apology - nature of apology - non-disparagement clause - held: defendant's failure to agree to settlement offers was unreasonable - defendant to pay plaintiff's costs on indemnity basis.

[Flegg](#)

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