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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)

CAS 2015/A/4059 World Anti-Doping Agency v Thomas Bellchambers *et. al.*, Australian Football League, Australian Sports Anti-Doping Authority (CAS) - arbitration - players violated and were at fault significantly in violating cl 11.2 2010 Anti-Doping Code - World Anti-Doping Authority's appeal upheld

Newport v Australian Postal Corporation (FCAFC) - workers compensation - permanent impairment - no error in refusal of compensation - appeal dismissed

Comcare v Power (FCA) - workers compensation - erroneous finding that pain from compensable injury contributed to significant degree to development of adjustment disorder - appeal allowed in part - matter remitted

Sahade v Bischoff (NSWCA) - assault - malicious prosecution - trespass - damages - altercation between neighbours - appeal dismissed - leave to file amended cross-summons refused - cross-summons for leave to cross-appeal dismissed

Fraser v Health Care Complaints Commission (NSWCA) - health practitioners - cancellation of nurse's registration for professional misconduct and unsatisfactory professional conduct - appeal dismissed

Lee v Woolworths Ltd (NSWSC) - negligence - truck driver subcontracted to third defendant injured while attempting to restack failed load - third defendant not liable

Metropolitan Fire and Emergency Services Board v Yarra City Council (VSC) -

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environment and planning - negligence - entitlement to compensation - separate question -
Court could order defendant to compensate plaintiff

Summaries With Link (Five Minute Read)

CAS 2015/A/4059 World Anti-Doping Agency v Thomas Bellchambers et. al., Australian Football League, Australian Sports Anti-Doping Authority

Court of Arbitration For Sport

President: The Hon. Michael J. Beloff, QC

Arbitrators: Mr Romano Subiotto QC, The Hon. James Spigelman AC QC

Arbitration - Australia Sports Anti-Doping Authority brought charges of breach of Anti-Doping Code against AFL players - Australian Football League Anti-Doping Tribunal dismissed charges - World Anti-Doping Agency appealed - whether players used prohibited substance in breach of cl 11.2 2010 Anti-Doping Code - whether players could show lack of significant fault or negligence - whether players signed consent forms to receive prohibited substance and received injections they failed to disclose on doping control forms - held: players violated and were at fault significantly in violating cl 11.2 2010 Anti-Doping Code - appeal upheld.

[WADA](#)

Newport v Australian Postal Corporation [2015] FCAFC 194

Full Court of the Federal Court of Australia

Allsop CJ, Besanko & Flick JJ

Administrative law - workers compensation - permanent impairment - former employee of respondent claimed compensation pursuant to *Safety, Rehabilitation and Compensation Act 1988* (Cth) - employee assessed as having: 5% permanent impairment to right shoulder; and 6% permanent impairment to left shoulder - compensation denied on basis neither impairment exceeded minimum threshold of 10% - whether the two assessments could be combined to meet 10% threshold - held: Tribunal did not err in refusing compensation for either injury where either impairment less than 10% - assessor separately assessed "impairment" resulting from "injuries" in accordance with Table 9.11 of the Guide to the Assessment of Permanent Impairment - s24(7) precluded combination of separately assessed "impairments" resulting from separate "injuries" - appeal dismissed.

[Newport](#)

Comcare v Power [2015] FCA 1502

Federal Court of Australia

Katzmann J

Administrative law - Comcare accepted liability to pay respondent Commonwealth employee compensation for back injury sustained in course of employment - Comcare subsequently determined injury's effects had ceased - respondent later diagnosed with adjustment disorder and claimed compensation - Comcare denied liability - Administrative Appeals Tribunal concluded respondent exaggerated symptoms and evidence "not entirely reliable" - however AAT found substantially in respondent's favour - held: AAT misconstrued "to a significant degree" in s5B *Safety, Rehabilitation and Compensation Act 1988* (Cth) - AAT erred in finding respondent's pain from compensable injury, contributed to significant degree to development of

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adjustment disorder - appeal allowed in part - matter remitted to AAT.

[Power](#)

Sahade v Bischoff [2015] NSWCA18

Court of Appeal of New South Wales

Basten & Gleeson JJA; Beech Jones J

Assault - malicious prosecution - trespass - damages - proceedings concerning altercation between appellants and first respondent at property - first respondent and second respondent occupied separate residences at property - appellants charged with assault and assault occasioning actual bodily harm in company - charges dismissed - appellants claimed damages for malicious prosecution - first appellant claimed damages for assaults and batteries from first respondent - respondents cross-claimed for trespass - primary judge dismissed claims - in second judgment primary judge found he was wrong to find that actual damage required to be proven in claim for trespass before damages could be awarded - primary judge awarded \$500 damages against first appellant for trespass - Pt 2, ss3B, 52 & 53 *Civil Liability Act 2002* (NSW) - s98(1) *Civil Procedure Act 2005* (NSW) - ss59, 61, 418, 419 *Crimes Act 1900* (NSW) - *Crimes Amendment (Self-defence) Act 2001* (NSW) - *Home Invasion (Occupants Protection) Act 1998* (NSW) - s101(2) *Supreme Court Act 1970* (NSW) - rr42.1& 51.36(2) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error established by primary judge - appeal dismissed - leave to file amended cross-summons refused - cross-summons for leave to cross-appeal dismissed.

[Sahade](#)

Fraser v Health Care Complaints Commission [2015] NSWCA 421

Court of Appeal of New South Wales

Basten, Ward & Leeming JJA

Health practitioners - appellant registered general nurse and midwife - appellant sought to overturn Occupational Division of the Civil and Administrative Tribunal's cancellation of registration for professional misconduct in relation to administration of experimental cancer treatment - conduct of proceedings as a whole - specific aspects of treatment of four patients - whether penalty was "unjust" - whether appellant recklessly indifferent to whether supervising practitioner registered as medical practitioner - "reckless indifference" - Sch 5, Pt 6, cl 29 *Civil and Administrative Tribunal Act 2013* (NSW) - s34A *Health Care Complaints Act 1993* (NSW) - ss139B, 139E *Health Practitioner Regulation National Law* (NSW) - held: challenges to Tribunal's decision failed - appeal dismissed.

[Fraser](#)

Lee v Woolworths Ltd [2015] NSWSC 1789

Supreme Court of New South Wales

Harrison J

Negligence - industrial law - plaintiff truck driver sub-contracted to third defendant company to haul loads - plaintiff drove semi-trailer from Windsor to Sydney - during journey part of load in truck collapsed - plaintiff injured while attempting to restack failed load - whether third defendant responsible - s5B *Civil Liability Act 2002* (NSW) - held: third defendant did not owe duty of care

to plaintiff - third defendant did not exercise control over plaintiff - control reposed in employer - it was not the case that a reasonable person in third defendant's position would have taken precautions to prevent injury to plaintiff - unnecessary to consider defence in s151Z (2) (c) *Workers Compensation Act 1987* (NSW) - proceedings dismissed.

[Lee](#)

Metropolitan Fire and Emergency Services Board v Yarra City Council [2015] VSC 773

Supreme Court of Victoria

Riordan J

Environment and planning - negligence - plaintiff acquired site from State - plaintiff claimed compensation and damages against first defendant arising from remediation of contamination on site - preliminary issue of plaintiff's entitlement to compensation and damages - whether defendant liable for breaches of alleged duties of care and provisions of *Environment Protection Act 1970* (Vic) - whether bluestone pit found on site was storage tank previously used by City for storing coal tar - liability pursuant to s62A(2) - disclosure duty - demolition duty - non-pollution duty - planning duty - statutory duty in s45(1) - causation - held: s62A(2) provided occupier who incurred costs complying with clean up notice could claim compensation from certain persons - defendant was person described in ss62A(1)(b) & (c) - Court could order defendant to compensate plaintiff - plaintiff did not establish any other causes of action.

[Metropolitan](#)



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The Ivy Green

By Charles Dickens

Oh, a dainty plant is the Ivy green,
That creepeth o'er ruins old!
Of right choice food are his meals, I ween,
In his cell so lone and cold.
The wall must be crumbled, the stone decayed,
To pleasure his dainty whim:
And the mouldering dust that years have made
Is a merry meal for him.
Creeping where no life is seen,
A rare old plant is the Ivy green.

Fast he stealeth on, though he wears no wings,
And a staunch old heart has he.
How closely he twineth, how tight he clings,
To his friend the huge Oak Tree!
And sliely he traileth along the ground,
And his leaves he gently waves,
As he joyously hugs and crawleth round
The rich mould of dead men's graves.
Creeping where grim death has been,
A rare old plant is the Ivy green.

Whole ages have fled and their works decayed,
And nations have scattered been;
But the stout old Ivy shall never fade,
From its hale and hearty green.
The brave old plant, in its lonely days,
Shall fatten upon the past:
For the stateliest building man can raise,
Is the Ivy's food at last.
Creeping on, where time has been,
A rare old plant is the Ivy green.

[Dickens](#)

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