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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)

International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea (NSWCA) - contract - bond deed poll - consequences of valuation not being binding on parties - appeal allowed - cross-appeal and notice of contention dismissed

Roulstone v New South Wales Bar Association (NSWSC) - administrative law - statutory appeal from refusal to grant application for barrister's practising certificate - appeal allowed

Neradovsky v Burnett (NSWSC) - stay - stay of judgment pending appeal granted on terms - defendants to answer plaintiff's call for documents revealing limit of indemnity of insurance policy

Fittock v Legal Profession Conduct Commissioner (No 2) (SASCFC) - legal profession - conduct - finding of unprofessional conduct set aside - findings of unsatisfactory conduct substituted - practitioner reprimanded - appeal allowed

Summaries With Link (Five Minute Read)

International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea [2015] NSWCA 363

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Ward JJA

Contract - appellant (IPBC) issued Exchangeable Bonds to respondent (IPIC) - IPBC raised amount which it used to finance participation in gas project - terms and conditions of Bonds contained in Bond Deed Poll made by IPBC - Maturity Date of Bonds was 5 March 2014 - mature Bonds subject to mandatory exchange into ordinary shares in capital of company whose shares were listed on Australian Securities Exchange (ASX) - if, on Maturity Date, Principal Amount of Bonds being redeemed exceeded Current Market Value of all of the Shares, IPBC as Issuer was to pay to IPIC as Holder a Cash Settlement Amount equivalent to shortfall - conditions incorporated mechanism to determine Current Market Value of Shares - terms and conditions included procedure for parties to appoint Independent Valuer to assess market value and average of two valuations taken - IPBC issued an Alternative Valuation Notice (AVN) - parties each appointed an Independent Valuer - primary judge found AVN valid - valuation by Independent Valuer appointed by IPBC (RBC) was not binding - valuation by Independent Valuer appointed by IPIC binding - held: primary judge erred in findings as to consequence under Bond Deed of RBC valuation not being binding on parties due to manifest or proven error - appeal allowed - cross-appeal and notice of contention dismissed.

[International Petroleum](#)

Roulstone v New South Wales Bar Association [2015] NSWSC 1749

Supreme Court of New South Wales

Hall J

Administrative law - statutory appeal under s108 *Legal Profession Act 2004* (NSW) from deemed refusal by New South Wales Bar Association to grant application for barrister's practising certificate - onus on plaintiff to establish matters s48(3) including he was "fit and proper person" to hold practising certificate - held: evidence did not establish plaintiff gave deliberately false or misleading evidence to Association or Court or that plaintiff breached undertaking or order prohibiting plaintiff from communicating with former clients - Court satisfied plaintiff discharged onus of proof and was eligible to apply for grant when application made, and was and is fit and proper person to hold practising certificate. - appeal allowed.

[Roulstone](#)

Neradovsky v Burnett [2015] NSWSC 1765

Supreme Court of New South Wales

Adamson J

Stay - defendant sought stay of judgment in favour of plaintiff pending appeal - plaintiff made call for documents revealing limit of indemnity of insurance policy applicable from LawCover in respect of defendants - purpose of making call was so plaintiff could assess what risk she ran if

limit of indemnity was \$1.5 million - held: defendants required to produce documents in answer to call as they were potentially relevant to any application for stay of orders as to costs and disbursements - resolution of proceedings may be facilitated if plaintiff aware of limit of indemnity - in interests of justice to grant stay of judgment on condition that amount of judgment be paid into interest-bearing account - not in interests of justice to stay balance of orders relating to costs and disbursements - stay granted on terms.

[Neradovsky](#)

Fittock v Legal Profession Conduct Commissioner (No 2) [2015] SASCFC 167

Full Court of the Supreme Court of South Australia

Sulan, Blue & Nicholson JJ

Legal profession - conduct - Legal Practitioners Disciplinary Tribunal found practitioner guilty of unprofessional conduct in relation to personal injury matter for failure to take adequate action to protect client from psychologist's recovery for fees claim (count 1) - psychologist retained by firm on client's behalf - Tribunal imposed fine and ordered practitioner to pay legal costs of Commissioner - Tribunal did not make findings on counts that practitioner misused client's trust money and allowed his interests to conflict with client's (counts 2 and 3) - practitioner appealed - 'unprofessional conduct' - 'unsatisfactory conduct' - ss5, s 82(2), 82(6) & 82(6)(a) *Legal Practitioners Act 1981 (SA)* - Sch 2, s14(2) *Legal Practitioners (Miscellaneous) Amendment Act 2013 (SA)* - r9.1.1 *Rules of Professional Conduct and Practice* - r26 *Rules of Professional Conduct and Practice* - r12.1 *Solicitors' Conduct Rules* - held: Court set aside Tribunal's finding of unprofessional conduct in relation to count 1 - Court made findings of unsatisfactory conduct in relation to counts 1 and 2 - count 3 dismissed - practitioner reprimanded - appeal allowed.

[Fittock](#)



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Modern Love: XXII

BY GEORGE MEREDITH

What may the woman labour to confess?
There is about her mouth a nervous twitch.
'Tis something to be told, or hidden:—which?
I get a glimpse of hell in this mild guess.
She has desires of touch, as if to feel
That all the household things are things she knew.
She stops before the glass. What sight in view?
A face that seems the latest to reveal!
For she turns from it hastily, and tossed
Irresolute, steals shadow-like to where
I stand; and wavering pale before me there,
Her tears fall still as oak-leaves after frost.
She will not speak. I will not ask.
We are League-sundered by the silent gulf between.
Yon burly lovers on the village green,
Yours is a lower, and a happier star!

[GEORGE MEREDITH](#)

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