

Friday, 19 October 2018

## Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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### Executive Summary (1 minute read)

**UBS AG v Tyne** (HCA) - judgments and orders - stay - abuse of process - trusts and trustees - no error in decision to stay proceedings as abuse of the Federal Court's processes - appeal allowed

**Linfox Australia Pty Ltd v O'Loughlin** (FCAFC) - workers compensation - Administrative Appeals Tribunal affirmed appellant's revocation of grant of workers compensation to worker - no error in primary judge's decision to set aside Tribunal's decision - s6 *Safety, Rehabilitation and Compensation Act 1988* (Cth) was not engaged - appeal dismissed

**Robinson v State of New South Wales** (NSWCA) - false imprisonment - wrongful arrest - appellant arrested by Leading Constable - no formed intention to charge appellant at time of arrest - arrest unlawful - appeal allowed

**Zavodny v Couper & QBE** (QSC) - discovery - surveillance reports were within exception in s48(2) *Motor Accident Insurance Act 1994* (Qld) to legal professional privilege - surveillance reports should be disclosed - application for production of surveillance reports granted

### Summaries With Link (Five Minute Read)

#### **UBS AG v Tyne [2018] HCA 45**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

# Benchmark

Judgments and orders - stay - abuse of process - trusts and trustees - respondent in capacity as trustee of trust and wife commenced Federal Court proceedings against appellant seeking 'damages and equitable compensation' arising from 'advice and representations' which respondent made to respondent and "through him" to "Tyne Related Entities" including trust's former trustee and company (Telesto) - former trustee, Telesto and respondent had previously brought proceedings in Supreme Court of New South Wales (SCNSW proceedings) arising from same facts and making 'essentially the same claims' as in present proceedings - respondent and former trustee discontinued claims in the SCNSW proceedings - SCNSW proceedings stayed on basis Telesto was seeking to re-litigate causes of action determined in High Court of Singapore proceedings - appellant sought to stay present proceedings as abuse of Federal Court's process - primary judge permanently stayed proceedings, finding claims 'could, and should' have been brought in SCNSW proceedings and that there was no adequate explanation why they were not - Full Court of Federal Court found it was not open to primary judge to find proceedings abuse of process - appellant granted special leave to appeal - held: no error in primary judge's decision to stay proceedings as abuse of the Federal Court's processes - appeal allowed.

[UBS](#)

[From Benchmark Thursday, 18 October 2018]

## **Linfox Australia Pty Ltd v O'Loughlin [2018] FCAFC 173**

Full Court of the Federal Court of Australia

Kenny, Moshinsky & Bromwich JJ

Workers compensation - respondent injured in 'physical altercation' with mechanic at service station while delivering petrol for appellant's petrol supplier customer - Administrative Appeals Tribunal affirmed appellant's decision to revoke grant of workers compensation to respondent - appellant had revoked workers compensation grant on basis it had not been liable for injury - Tribunal considered whether respondent's injury occurred in course of employment - Tribunal found respondent's injury occurred because he 'voluntarily and unreasonably submitted to an abnormal risk of injury' and that, due to application of s6(3)(a) *Safety, Rehabilitation and Compensation Act 1988* (Cth), respondent's injury 'could not be treated as having arisen in the course of his employment' - primary judge set Tribunal's decision aside, finding it erred in applying s6(3) of the Act - appellant appealed - whether primary judge erred in finding s6 of the Act was not engaged - held: no error in decision of primary judge - appeal dismissed.

[Linfox](#)

[From Benchmark Thursday, 18 October 2018]

## **Robinson v State of New South Wales [2018] NSWCA 231**

Court of Appeal of New South Wales

McCull & Basten JJA; Emmett AJA

False imprisonment - wrongful arrest - primary judge dismissed appellant's claim against respondent for wrongful arrest and false imprisonment - primary judge found appellant's arrest by Leading Constable without warrant and police's subsequent detention of appellant was



lawful - appellant appealed against primary judge's rejection of his submission that his arrest was unlawful because Leading Constable Smith had not formed intention to charge appellant with offence - construction of s99 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) - whether arrest was for purpose of commencing 'criminal process' - whether arrest lawful in absence of intention to charge appellant at time of arrest - held: appellant's arrest was unlawful - appeal allowed.

[View Decision](#)

[From Benchmark Wednesday, 17 October 2018]

## **Zavodny v Couper & QBE [2018] QSC 238**

Supreme Court of Queensland

Henry J

Discovery - applicant in 'personal injuries case arising from a traffic collision' sought, pursuant to r223 *Uniform Civil Procedure Rules 1999* (Qld), production of "all reports, photographs and video footage including the documents contained in or associated with the surveillance reports listed in part 2" of list of documents served by respondent (surveillance reports) - applicant did not challenge claimed privilege over documents, but contended they must be disclosed pursuant to s48(2) *Motor Accident Insurance Act 1994* (Qld) - whether surveillance reports were "investigative reports, medical reports and reports relevant to the claimant's rehabilitation" under s48(2) - held: Court satisfied surveillance reports were within exception in s48(2) to legal professional privilege - surveillance reports should be disclosed - application granted.

[Zavodny](#)

[From Benchmark Thursday, 18 October 2018]



# Benchmark

## **Sonnet 53**

**By:** William Shakespeare

What is your substance, whereof are you made,  
That millions of strange shadows on you tend?  
Since every one hath, every one, one shade,  
And you but one, can every shadow lend.  
Describe Adonis, and the counterfeit  
Is poorly imitated after you;  
On Helen's cheek all art of beauty set,  
And you in Grecian tires are painted new:  
Speak of the spring, and foison of the year,  
The one doth shadow of your beauty show,  
The other as your bounty doth appear;  
And you in every blessed shape we know.  
In all external grace you have some part,  
But you like none, none you, for constant heart.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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