



Friday, 20 December 2024

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (One Minute Read)

Allen v Yarra Valley Railway Incorporated (VSC) - interlocutory injunction restraining from restoring and reconstructing a historic railway line outside normal business hours, on the basis of alleged nuisance, refused

Forrest v City of Bussleton (WASC) - Magistrate erred in convicting property developer for carrying out development otherwise than in accordance with a condition under a local planning scheme



HABEAS CANEM

Merry Christmas from McGregor

Benchmark

Summaries With Link (Five Minute Read)

Allen v Yarra Valley Railway Incorporated [2024] VSC 796

Supreme Court of Victoria

Quigley J

Nuisance - the plaintiffs lived on a large rural property in a green wedge zone - YVR was a not for profit incorporated association who leased a rail corridor adjacent to the plaintiffs' property, and who was restoring and reconstructing a historic railway line in that corridor - the plaintiffs contended YVR's work caused a nuisance, in that that works were carried out before and after hours, and on weekends - the plaintiffs said their mental and physical health was being affected, as was that of their children, their horses, and their other animals - the plaintiffs sought an interlocutory injunction restraining YVR from doing work outside normal business hours - held: the tort of private nuisance occurs where a person interferes with another person's use or enjoyment of their land in a way that is both substantial and unreasonable - one type of interference that can constitute nuisance is unduly interfering with the comfortable and convenient enjoyment of land - public benefit may be relevant to the reasonableness of the interference, but does not operate as a defence - the strength of the plaintiff's nuisance claim was marginal, although it was possibly arguable - however, damages would potentially be an adequate remedy after trial - the plaintiffs had proffered no undertaking as to damages and no explanation for not having done so - the balance of convenience favoured refusing the injunction - interlocutory injunction refused.

[Allen](#)

[From Benchmark Friday, 20 December 2024]

Forrest v City of Bussleton [2024] WASC 478

Supreme Court of Western Australia

Musikanth J

Planning law - the appellant property developer was convicted of having carried out development otherwise than in accordance with a condition imposed under a local planning scheme contrary to s218(c) of the *Planning and Development Act 2005 (WA)* - the appellant sought leave to appeal against conviction - held: leave must not be granted on a ground of appeal unless the court is satisfied the ground has a reasonable prospect of succeeding - 'development' encompasses both 'use' of land for particular purposes and development in the sense of the physical alteration of land such as the construction of works - on its proper construction, the relevant planning condition was that the appellant not cause or permit excavation below a level of 1.25 Australian Height Datum (AHD) at any part of the site, based on the ordinary meaning of 'excavation' and other textual considerations - the Magistrate had therefore misdirected herself as to the appropriate legal test and erred in finding that the appellant carried on development merely by being in 'control' of the site, and by failing to find, instead, that it was necessary to determine what, if anything, the appellant had in fact 'done' - the Court considered that the prosecution failed to prove, beyond reasonable doubt, that the appellant caused or permitted excavation below a level of 1.25 AHD at the site - leave to appeal



granted and appeal allowed.

[Forrest](#)

[From Benchmark Thursday, 19 December 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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