

Friday, 16 April 2021

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

DVO16 v Minister for Immigration and Border Protection; BNB17 v Minister for Immigration and Border Protection (HCA) - migration law - two appeals - refusal of protection visas - 'translation errors' in interviews with delegates - jurisdictional error on part of Authority not established - appeals dismissed

Namoa v The Queen (HCA) - criminal law - statutory interpretation - 'conspiring to do acts in preparation for a terrorist act' in contravention of ss11.5(1) and 101.6(1) *Criminal Code* (Cth) (Code) - appeal dismissed

Dring v Telstra Corporation Ltd (FCAFC) - compensation - administrative law - proceedings arising from employee's slip and fall at hotel - refusal of compensation claim against employer - appeal dismissed

Epic Games, Inc v Apple Inc (Stay Application) (FCA) - stay - private international law - consumer law - competition - application for permanent stay of proceedings - temporary stay granted

Woodhouse v Fitzgerald (NSWCA) - negligence - nuisance - proceedings arising from fire - primary judge found respondents liable for fire at appellant's property - appeal dismissed - cross-appeal allowed

Metri v Nestlé Australia Ltd (NSWSC) - negligence - plaintiff injured in forklift accident - judgment for plaintiff against first defendant employer

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Doyle's Farm Produce Pty Ltd as trustee for Claredale Family Trust v Murray Darling Basin Authority (NSWSC) - pleadings - negligence - plaintiffs sought strike out of paragraphs of defence which relied on provisions of Pt 5 *Civil Liability Act 2002* (NSW) - paragraphs struck out

Zengin v Insurance Commission of Western Australia (VSCA) - insurance - applicant sought to appeal against determination of preliminary questions - appeal dismissed

Summaries With Link (Five Minute Read)

DVO16 v Minister for Immigration and Border Protection; BNB17 v Minister for Immigration and Border Protection [2021] HCA 12

High Court of Australia

Kiefel CJ; Gageler, Gordon, Edelman & Steward JJ

Migration law - DVO16 and BNB17 each sought a protection visa - DVO16 and BNB17 each interviewed by delegate of Minister - in each case delegate was refused application and Authority affirmed delegate's decision - DVO16 and BNB17 each made unsuccessful judicial review applications in Federal Court of Australia - Greenwood, Flick & Stewart JJ of Full Court of the Federal Court of Australia dismissed DVO16's appeal - Anderson J of Federal Court of Australia, exercising power of Full Court, dismissed BNB17's appeal - whether Authority's decision erroneous on basis of 'errors in interpretation' in interview with delegates - whether Authority erred in conducting review under r Pt 7AA *Migration Act 1958* (Cth) - whether denial of procedural fairness - whether denial of opportunity to put 'material aspect' of case to delegate - whether 'translation errors' in interview resulted in erroneous decision by Authority - whether Authority lacked jurisdiction - held: appeals dismissed.

[DVO16](#)

[From Benchmark Thursday, 15 April 2021]

Namoa v The Queen [2021] HCA 13

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon, Edelman, Steward & Gleeson JJ

Criminal law - statutory interpretation - appellant found guilty of 'conspiring to do acts in preparation for a terrorist act' in contravention of ss11.5(1) and 101.6(1) *Criminal Code* (Cth) (Code) - appellant contended there was 'common law rule that spouses alone cannot conspire' - appellant contended this common law rule affected 'meaning of "conspires" and "conspiracy" in' s11.5 Code - whether s11.5 Code applied to appellant - whether s11.5(1) Code affected by alleged common law rule - whether 'husband and wife' were each a "person" and could 'be guilty of conspiring with each other' within meaning of s11.5 Code - held: appeal dismissed.

[Namoa](#)

[From Benchmark Thursday, 15 April 2021]

Dring v Telstra Corporation Ltd [2021] FCAFC 50

Full Court of the Federal Court of Australia

Flick, Rangiah & Wigney JJ

Compensation - administrative law - appellant employed by respondent - appellant suffered slip and fall outside 'bathroom near' reception area of hotel which she was staying at - appellant attending workshop which respondent organised - appellant had been booked by respondent into hotel - appellant sought compensation under *Safety, Rehabilitation and Compensation Act 1988* (Cth) (Safety, Rehabilitation and Compensation Act) claiming injury "arising out of, or in the course of" appellant's employment - respondent rejected claim - Administrative Appeals Tribunal affirmed respondent's decision - Federal Court of Australia dismissed appeal - appellant appealed - whether proper construction and application of s14 Safety, Rehabilitation and Compensation Act - held: appeal dismissed.

[Dring](#)

[From Benchmark Wednesday, 14 April 2021]

Epic Games, Inc v Apple Inc (Stay Application) [2021] FCA 338

Federal Court of Australia

Perram J

Stay - private international law - consumer law - competition - Apple Inc ('Apple') and Apple Pty Limited sought that 'competition case' which Epic Games, Inc ('Epic') and Epic Games International S.à r.l. brought against them be permanently stayed - stay sought on basis Epic had 'contractually agreed with Apple' that Northern District of California would hear any disputes - whether Epic could and should sue Apple in Court in Northern District - whether Epic could continue case in Federal Court of Australia if 'procedural reasons prevented proceedings being brought in Northern District - *Akai Pty Ltd v People's Insurance Co Ltd* [1996] HCA 39; (1996) 188 CLR 418 - s21 Australian Consumer Law - held: temporary stay granted.

[Epic Games](#)

[From Benchmark Tuesday, 13 April 2021]

Woodhouse v Fitzgerald [2021] NSWCA 54

Court of Appeal of New South Wales

Basten, Meagher & Payne JJA

Negligence - nuisance - appellant contended fire at his property had started on 'adjoining property' owned by respondents - respondents had arranged for RFS to conduct burn on their property - appellant contended fire at his property was due to respondents' negligence 'during and after' the 'controlled burn' - appellant sued respondents in nuisance and negligence - primary judge found in appellant's favour - appellant appealed against apportionment of liability between respondents and RFS and damages' reduction for contributory negligence - respondents cross-appealed against finding of non-delegable duty of care and findings that they and RFS had breached duties of care - respondents also challenged assessment of appellant's loss - held: appeal dismissed - cross-appeal allowed.

[Woodhouse](#)

[From Benchmark Wednesday, 14 April 2021]

Metri v Nestlé Australia Ltd [2021] NSWSC 343

Supreme Court of New South Wales

Adamson J

Negligence - plaintiff injured in forklift accident - plaintiff sued first defendant employer and second defendant 'manufacturer and repairer of the forklift' - first defendant cross-claimed against second defendant - contributory negligence - limitations - ss3B, 5B, 5C, 5D & 5R *Civil Liability Act 2002* (NSW) - ss50C & 50D *Limitation Act 1969* (NSW) - damages - *Motor Accidents Compensation Act 1999* (NSW) - held: judgment for plaintiff against first defendant - judgement for second defendant against plaintiff - judgment for second defendant on cross-claim.

[Metri](#)

[From Benchmark Monday, 12 April 2021]

Doyle's Farm Produce Pty Ltd as trustee for Claredale Family Trust v Murray Darling Basin Authority [2021] NSWSC 369

Supreme Court of New South Wales

Adamson J

Pleadings - negligence - plaintiffs, by noticed of motion, sought strike out of paragraphs of defence which relied on provisions of Pt 5 *Civil Liability Act 2002* (NSW) (*Civil Liability Act*) - whether defendants entitled to benefit of provisions - whether matter should be determined at trial - construction of s41 *Civil Liability Act* - whether Murray Darling Basin Authority (Authority), Authority's delegates and Commonwealth fell within s41 *Civil Liability Act* - whether 'no reasonable defence disclosed' - r14.28(1)(a) *Uniform Civil Procedure Rules 2005* (NSW) - constitutional law - *Water Act 2007* (Cth) - held: paragraphs of statement of claim struck out.

[Doyle's](#)

[From Benchmark Friday, 16 April 2021]

Zengin v Insurance Commission of Western Australia [2021] VSCA 80

Court of Appeal of Victoria

Kaye, Emerton & Osborn JJA

Insurance - applicant injured in course of employment when disembarking bus - applicant contended bus driver caused incident and injury - applicant sought to appeal against determination of preliminary questions - whether erroneous conclusion applicant did not establish vehicle's identity 'could not be ascertained' - whether s29A *Motor Vehicle (Third Party Insurance) Act 1943* (WA) (Act) applied to claim - whether 'discretionary conclusion' that if 29A Act applied, it would be inappropriate to excuse applicant from non-compliance with proviso in s 7(3)(b) Act - held: leave to appeal granted - appeal dismissed.

[Zengin](#)

[From Benchmark Monday, 12 April 2021]

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Up in the Hills From "Autumn Leaves"

By: Helen Louise Birch

THE EARTH smells old and warm and mellow, and all things lie at peace.

I too serenely lie here under the white-oak tree, and know the splendid flight of hours all blue and gay, sun-drenched and still.

The dogs chase rabbits through the hazel-brush;
I hear now close at hand their eager cries, now swift receding into the distance, leaving a-trail behind them in the clear sweet air shrill bursts of joy.

There's something almost drowsy in that waning clamor;

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It brings the stillness nearer and a sense of being bodily at one with the old warm earth,

Blessedly at one with the fragrant laughing sun-baked earth,

At one with its sly delightful wicked old laughter.

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