

Friday, 20 December 2019

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

CNY17 v Minister for Immigration and Border Protection (HCA) - migration law - refusal to grant appellant a protection visa - Secretary provided Immigration Assessment Authority with material which was 'irrelevant and prejudicial' - reasonable apprehension of bias established - Authority's decision quashed

Boensch v Pascoe (HCA) - bankruptcy - real property - trusts and trustees - respondent did not act without "reasonable cause" 'in lodging and not withdrawing' caveat in respect of property - appeal dismissed

Chhabra v McPherson as Trustee for the McPherson Practice Trust (FCAFC) - copyright - artistic works - dismissal of copyright infringement claim - appeal dismissed

Carter v Australian Securities & Investments Commission (FCAFC) - corporations - service - statutory construction - respondent 'effected service' on appellant of 'Notice of disqualification from managing corporations' - appeal dismissed

Singleton v Comcare (FCA) - workers compensation - applicant's claim for compensation for "chronic pain syndrome" refused - appeal dismissed

BlueScope Steel Limited v Dongkuk Steel Mill Co., Ltd (No 2) (FCA) - patent - applicant contended respondent infringed 'various claims' of patents of which applicant was registered proprietor - no infringement by respondent - respondent succeeded in part on contention of invalidity in respect of claims - applicant's interlocutory application to amend patent dismissed

Martinez as trustee for Martinez HWL Practice Trust as representative of the partners trading as HWL Ebsworth Lawyers v Griffiths as trustee for the Griffiths HWL Practice Trust (NSWCA) - employment law - summary dismissal of respondent - claim for breach of contract upheld - appellant's challenge to assessment of damages allowed in part - judgment in respondent's favour reduced

Drama Unit Pty Ltd v Fearndale Holdings Pty Ltd (Administrator Appointed) & Anor (NSWCA) - leases and tenancies - primary judge declared lease between parties 'validly terminated' by respondent and awarded respondent judgments for unpaid rent and outgoings - appeal allowed in part

Director of Public Prosecutions (NSW) v Hamzy (NSWCA) - administrative law - criminal law - assault - District Court erred in ordering permanent stay of 'criminal proceedings' against respondent - orders set aside

Dance v Jemeas Pty Ltd (No 2) (QSC) - negligence - employer's duty of care - 'safe system of work' - plaintiff baker injured back in course of employment while - employer liable - judgment for plaintiff in sum of \$620,255.97

Civmec Electrical & Instrumental Pty Ltd v Southern Cross Electrical Engineering Limited & Ors (QSC) - security of payments - applicant sought declaration 'adjudication decision' was void or 'liable to be set aside' - application dismissed

Meyer v Solomon (WASC) - defamation - plaintiff sought extension of time to commence action against defendant - Court prepared to grant period of extension but period not long enough to redress action's 'underlying defectiveness' - application dismissed

Summaries With Link (Five Minute Read)

CNY17 v Minister for Immigration and Border Protection [2019] HCA 50

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Migration law - bias - first respondent's delegate refused to grant appellant a protection visa - appellant's application referred for review under Pt 7AA *Migration Act 1958* (Cth) (Migration Act) to Immigration Assessment Authority - Secretary of the Department (Secretary), in 'purported compliance with' s473CB(1)(c) Migration Act, gave Authority certain 'review material' which was 'irrelevant and prejudicial to' appellant - Immigration Assessment Authority affirmed delegate's decision - whether 'a hypothetical fair-minded lay observer with knowledge of the material objective facts might reasonably apprehend' Authority 'might not bring an impartial mind to the decision before it' due to information it was given by Secretary - held: reasonable apprehension

of bias established - appeal allowed - Immigration Assessment Authority's decision quashed - matter remitted.

[CNY17](#)

[From Benchmark Thursday, 19 December 2019]

Boensch v Pascoe [2019] HCA 49

High Court of Australia

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

Bankruptcy - real property - trusts and trustees - appellant was 'registered proprietor of an estate in fee simple' over land ('Rydellmere property') - Supreme Court of New South Wales found respondent did not act without "reasonable cause" under s74P(1) *Real Property Act 1900* (NSW) (Real Property Act) 'in lodging and not withdrawing a caveat against dealings over' Rydellmere property - Full Court of the Federal Court of Australia dismissed appeal - appeal raised question whether property which was 'held by a bankrupt on trust for another' vested in trustee in bankruptcy pursuant to s58 *Bankruptcy Act 1966* (Cth) - whether appellant had 'equitable interest' in Rydellmere property subsisting at time of appellant's bankruptcy arising from his 'right of indemnity as trustee' - whether equitable interest vested in respondent - whether equitable interest which vested in respondent was a 'caveatable interest' - whether respondent was 'entitled to be registered as proprietor' of Rydellmere property under s90 Real Property Act - whether respondent 'honestly believed on reasonable grounds' that property vested - held: appeal dismissed.

[Boensch](#)

[From Benchmark Thursday, 19 December 2019]

Chhabra v McPherson as Trustee for the McPherson Practice Trust [2019] FCAFC 228

Full Court of the Federal Court of Australia

Greenwood, Charlesworth & Burley JJ

Copyright - respondents were law firm partners - appellants claimed respondents used 'logos and the Kaden Boriss name' under 'bare licence revocable at will' - appellants claimed they revoked licence and that respondents had, by subsequent use of the logos and the Kaden Boriss name, infringed 'copyright subsisting in the artistic works' - appellants also contended respondent had 'engaged in passing off and contravened the Australian Consumer Law' - primary judge dismissed appellants' originating application - appellants challenged primary judge's rejection of their claim of infringement of copyright - whether first appellant was copyright's 'sole owner' - whether first appellant as 'co-owner' of copyright could revoke licence independently - whether licence revocable at will - whether licence was revoked - *Copyright Act 1968* (Cth) - *Copyright (International Protection) Regulations 1969* (Cth) - held: appeal dismissed.

[Chhabra](#)

[From Benchmark Tuesday, 17 December 2019]

Carter v Australian Securities & Investments Commission [2019] FCAFC 229

Full Court of the Federal Court of Australia

Greenwood, Kerr & Burley JJ

Corporations - service - primary judge found respondent 'effected service of a Notice of disqualification from managing corporations' on appellant 'in accordance with' s206F *Corporations Act 2001* (Cth) (Corporations Act) - appellant appealed, contending primary judge erred in finding respondent had effected service - statutory construction - "ASIC must serve a notice on the person advising them of the disqualification" - s206F(3) Corporations Act - whether primary judge erred in finding respondent had 'personally served' appellant - held: appeal dismissed.

[Carter](#)

[From Benchmark Wednesday, 18 December 2019]

Singleton v Comcare [2019] FCA 2104

Federal Court of Australia

Abraham J

Workers compensation - applicant injured shoulder - liability accepted by respondent - respondent paid compensation - applicant made further claim on basis of "chronic pain syndrome" - respondent refused application - Administrative Appeals Tribunal found respondent not liable to pay applicant compensation on basis applicant's injury was not an 'injury' within s24 *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) - whether Tribunal erroneously rejected claim that chronic pain syndrome was injury within s24 SRC Act - whether applicant had 'advanced an alternative argument' which Tribunal erroneously concluded 'it lacked jurisdiction to consider' - held: appeal dismissed.

[Singleton](#)

[From Benchmark Thursday, 19 December 2019]

BlueScope Steel Limited v Dongkuk Steel Mill Co., Ltd (No 2) [2019] FCA 2117

Federal Court of Australia

Beach J

Patent - applicant contended respondent infringed 'various claims' of '257 Patent' and '258 Patent' (Patents) - applicant was Patents' registered proprietor - applicant contended respondent, without applicant's 'licence or authority', 'imported and authorised other persons to offer for sale, sell and supply in Australia' a product which infringed Patents - respondent denied infringement - respondent contended applicant 'made unjustified threats' concerning 'alleged infringing conduct' - respondent also sought revocation of Patents in relation to various claims on basis the claims were invalid - applicant, by interlocutory application, also sought to amend 257 Patent ('amendment application') - whether claims failed 'to disclose the best method' - *Patents Act 1990* (Cth) - held: applicant's claims of infringement failed - 'asserted claims' of 257 Patent' and some asserted claims of 258 Patent invalid - amendment application refused.

[BlueScope Steel](#)

[From Benchmark Friday, 20 December 2019]

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Martinez as trustee for Martinez HWL Practice Trust as representative of the partners trading as HWL Ebsworth Lawyers v Griffiths as trustee for the Griffiths HWL Practice Trust [2019] NSWCA 310

Court of Appeal of New South Wales

Bell ACJ, Meagher JA & Barrett AJA

Employment law - contract - appellant, on behalf of law firm's 'equity partners', 'purported to dismiss' respondent from employment with law firm 'with immediate effect' - respondent claimed breach of contract - primary judge upheld claim - damages assessed at \$450,000 - appellant challenged finding that conduct of respondent did not entitle law firm summarily to terminate respondent's employment - appellant also challenged damages' assessment, especially concerning \$305,375 awarded for 'lost opportunity to seek other employment' while respondent was working for law during notice period - 'whether lack of candour' concerning 'printing of practice precedents' justifying summary dismissal - whether erroneous finding concerning 'when and how lawful notice of termination would be given' - whether erroneous award of damages for 'alleged loss of' "benefit of incumbency" - whether "benefit of incumbency" was, in case's circumstances, 'a commercial advantage or other contractual benefit' - held: appeal allowed in part in respect of challenge to damages' assessment - judgment in respondent's favour reduced.

[View Decision](#)

[From Benchmark Thursday, 19 December 2019]

Drama Unit Pty Ltd v Fearndale Holdings Pty Ltd (Administrator Appointed) & Anor [2019] NSWCA 312

Court of Appeal of New South Wales

Meagher & Brereton JJA; Emmett AJA

Leases and tenancies - primary judge declared that lease between parties was 'validly terminated' by respondent - primary judge found in respondent's favour for amount of unpaid rent and outgoings - appellant appealed - whether respondent entitled to unpaid rent and outgoing where respondent had 'refused to give' appellant 'possession of the leased premises' - whether appellant breached lease by failure 'to hold, and provide to' respondent copies of authorisation and licence - whether 'breach notices' did not satisfy s129 *Conveyancing Act 1919* (NSW) due to failure to specify "reasonable time" for remedying of 'any relevant breach' by appellant - principles concerning 'suspension of rent by denial of possession' - 'obligation to obtain and maintain' 'consents and approvals' - *Mining Act 1992* (NSW) - *Protection of the Environment Operations Act 1997* (NSW) held: appeal allowed in part.

[View Decision](#)

[From Benchmark Thursday, 19 December 2019]

Director of Public Prosecutions (NSW) v Hamzy [2019] NSWCA 314

Court of Appeal of New South Wales

Gleeson, Payne & Brereton JJA

Administrative law - respondent convicted and sentenced in Local Court 'for assaulting a law

enforcement officer while in the execution of the officer's duties' - Director of Public Prosecutions (NSW) sought judicial review concerning District Court orders which allowed respondent's appeal against 'conviction and sentence' and 'permanently stayed' the 'criminal proceedings' against respondent - whether District Court's order for permanent stay of criminal proceedings 'affected by jurisdictional error' - whether misapprehension of 'nature and scope of the jurisdiction to stay proceedings for an abuse of process' - whether misconstruction of provision concerning 'double jeopardy' in s63 *Crimes (Administration of Sentences) Act 1999* (NSW) - held: District Court erred in ordering permanent stay of criminal proceedings against respondent - orders set aside.

[View Decision](#)

[From Benchmark Friday, 20 December 2019]

Dance v Jemeas Pty Ltd (No 2) [2019] QSC 303

Supreme Court of Queensland

Crow J

Negligence - employer's duty of care - plaintiff baker injured back in course of employment while 'lifting a bowl with quad-mixture' - plaintiff sued defendant employer in negligence - 'safe system of work' - 'factual causation' - whether scope of defendant's liability extended to plaintiff's injury - whether contributory negligence - quantum - credit - whether 'false and misleading conduct' by plaintiff - ss305B, 305F, 305H, 306J, 306N, 306O & 306P *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: defendant negligent - no contributory negligence - plaintiff 'honest and credible' - judgment for plaintiff in sum of \$620,255.97.

[Dance](#)

[From Benchmark Monday, 16 December 2019]

Civmec Electrical & Instrumental Pty Ltd v Southern Cross Electrical Engineering Limited & Ors [2019] QSC 300

Supreme Court of Queensland

Mullins J

Security of payments - first respondent made 'adjudication decision' under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) - applicant sought declaration that adjudication decision was void or 'liable to be set aside' due to adjudicator's refusal to consider applicant's submissions in 'adjudication response' - adjudicator found adjudication response had gone "well beyond" reasons given in payment schedule - held: jurisdictional error not established - application dismissed.

[Civmec](#)

[From Benchmark Monday, 16 December 2019]

Meyer v Solomon [2019] WASC 458

Supreme Court of Western Australia

Kenneth Martin J

Defamation - plaintiff claimed he was defamed by email which defendant sent - plaintiff sought



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extension of time under s40 *Limitation Act 2005* (WA) to bring proceedings against defendant - proceedings had already been commenced by plaintiff without leave, by plaintiff's filing of writ - defendant opposed plaintiff's application - whether Court had power to grant extension of time and, if so, whether and 'for how long' to grant extension - whether 'not reasonable' for plaintiff to have commenced proceedings 'within one year threshold' - whether plaintiff's inaction by failure to seek 'leave to commence' under s40(2) *Limitation Act* beyond certain date was satisfactorily explained or excusable - whether delay in service of writ on defendant explained - held: Court satisfied to grant extension of time for certain period - however period not long enough to redress action's 'underlying defectiveness' - application dismissed.

[Meyer](#)

[From Benchmark Thursday, 19 December 2019]



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Out there

By: Rev David Conolly

So big, that sea
out there.

So big.

Stopped in your tracks,
silence claims you.

What is it, child of Mary?

Could it be that, in your
sunny spirit of
adventure,
you sense
the sudden passing
of a shadow?

But the dream
of a world
of peace,
healed by love,
could remain

just that
a dream.

Unless
you step,
bravely
and surely,
to where
we're waiting.

Out there.

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