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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commonwealth of Australia v Vero Insurance Ltd - insurance fund - application for declaration of indemnity (I, B, C)

Kable v State of New South Wales - administrative law - constitutional law - tort - judicial power - false imprisonment - malicious prosecution - abuse of process - vicarious liability (I, G)

Indigo Mist Pty Ltd v Palmer - tort - personal injury - appeal of decision on liability (I, C)

Allianz Insurance Ltd v Cervantes - administrative law - motor vehicle accident - appeal for judicial review of decision of claims assessor (I)

Insurance Australia Ltd t/as NRMA Insurance v Adam Zizovski bnf Selim Zizovski - practice and procedure - summons seeking leave to appeal interlocutory judgment (I)

Fleming & Anor v Bobb & Ors - practice and procedure - trusts - application for declaration in respect of consent orders (B)



Summaries with links (5 minute read)

Commonwealth of Australia v Vero Insurance Ltd [2012] FCA 826

Federal Court of Australia

Yates J

Insurance - self-managed insurance fund established under *Financial Management and Accountability Orders (Amendment) 1998* (Cth) - fund members include agencies of Commonwealth - Commonwealth seeking declaration of indemnity for remediation and damage caused by fuel spill - extent of coverage of insurance policy - meaning of property as used in policy - whether land on which fuel spilled Commonwealth's real property: *Australian Antarctic Territory Acceptance Act 1933* (Cth) - whether proceedings action-barred by s14 *Limitations Act 1969* (NSW).

[Commonwealth of Australia](#) (I, B, C)

Kable v State of New South Wales [2012] NSWCA 243

Court of Appeal of New South Wales

Allsop P; Basten, Campbell & Meagher JJA; McClellan CJ at CL

Administrative law - constitutional law - intentional torts - order made in Supreme Court proceedings involving exercise of federal judicial power - whether order of superior court incompatible with exercise of judicial power valid until set aside: *Multicultural Affairs v Bhardwaj* [2002] HCA 11 - whether order judicial or non-judicial - plaintiff detained pursuant to order - deprivation of liberty - whether malicious prosecution - whether abuse of process - protection in liability for officer enforcing non-judicial order in good faith - vicarious liability of State for tortious conduct: *Kable v Director of Public Prosecutions* (NSW) [1996] HCA 24, s8 *Law Reform (Vicarious Liability) Act 1983* (NSW).

[Kable](#) (I, G)

Indigo Mist Pty Ltd v Palmer [2012] NSWCA 239

Court of Appeal of New South Wales

Beazley, Macfarlan & Hoeben JJA

Tort - personal injury - plaintiff slipped on internal stairs in hotel - occupiers and architect appealing decision on liability - proceedings governed by *Civil Liability Act 2002* (NSW) - foreseeability of risk - breach of duty - causation - objective test for contributory negligence: *Joslyn v Berryman & Anor* [2003] HCA 34 - apportionment of liability: *Podrebersek v Australian Iron & Steel Pty Ltd* [1985] HCA 34.

[Indigo Mist](#) (I, C)



Allianz Insurance Ltd v Cervantes [2012] NSWCA 244

Court of Appeal of New South Wales

McColl, Basten & Macfarlan JJA

Administrative law - appellant admitted liability for motor vehicle accident claim - judicial review of decision of claims assessor - whether assessor failed to take into account relevant considerations: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40 - whether buffer for economic loss consistent with s126 of the *Motor Accidents Compensation Act 1999* (NSW).

[Allianz Insurance](#) (I)

Insurance Australia Ltd t/as NRMA Insurance v Adam Zizovski bnf Selim Zizovski [2012] NSWCA 246

Court of Appeal of New South Wales

Beazley & Basten JJA

Appeal from interlocutory decision - summons seeking leave to appeal - motor vehicle accident - trial judge refused to dismiss proceedings against insurer - requirement of leave to appeal interlocutory judgment: s127(2) *District Court Act 1973* (NSW) - whether factual basis to determine if trial judge erred in failing to determine a separate question pursuant to r28.2 *Uniform Civil Procedure Rules* (2005) NSW where separate question not formulated.

[Insurance Australia](#) (I)

Fleming & Anor v Bobb & Ors [2012] NSWSC 826

Supreme Court of New South Wales

White J

Trusts - application for declaration in respect of consent orders - whether plaintiffs beneficial owners of money paid into court - money held on trust for off-shore investment by plaintiffs through defendants - whether fund held for plaintiffs - parties intended to establish new trust - whether order for payment to be conditional on objection by Commissioner of Taxation - voluntary disclosure statement by plaintiffs to Australian Taxation Office.

[Fleming](#) (B)

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