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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)

The Age Company Ltd & Ors v Liu - constitutional law - discovery - implied freedom of communication on government and political matters - application for leave to appeal from order granting preliminary discovery - admissibility of evidence - reasonable enquiries - whether exercise of discretion constitutionally valid (I, B, C, G)

Pentelow v Bell Lawyers Pty Ltd trading as Bell Lawyers - legal practitioners - enforceability of barristers' costs agreements - whether parties entered into contract for provision of legal services (I, B, C)

In the matter of Idylic Solutions Pty Ltd - Australian Securities and Investments Commission v Hobbs - corporations - managed investment schemes - financial services - penalties - relief and consequential orders following findings of liability (I, B)

In the matter of Melinda Scott and Roach Graham Scott Pty Ltd - corporations - financial services - dishonest conduct - misappropriation of funds - declarations of improper conduct - disqualification order - order restraining defendants from carrying on financial services (I, B)



Taylor v Haileybury - accident compensation - workplace injury - employer's duty of care - contract - claim for damages arising from psychiatric injury caused by overwork in course of employment (I)

Skilltech Consulting Services Pty Ltd v Bold Vision Pty Ltd - security of payments legislation - claim for progress payments - adjudication determination - *certiorari* - statutory construction - sufficiency of specification of construction work (I, C)

Animal Tuckerbox Pty Ltd v Lloyd - workers' compensation - whether emotional reaction to unpleasant experience with earlier claim constituted a *reasonable cause* for worker's failure to make claim within time limit (I)

Summaries with links (5 minute read)

The Age Company Ltd & Ors v Liu [2013] NSWCA 26

Court of Appeal of New South Wales

Bathurst CJ; Beazley & McColl JJA

Constitutional law - discovery - evidence - defamation - respondent sued three *sources* for publishing in a newspaper material containing imputations of corrupt conduct by respondent and for authorising other newspapers to republish that material - applicants sought leave to appeal from order for preliminary discovery pursuant to r5.2(2)(a) *Uniform Civil Procedure Rules 2005* (NSW) - principles governing grant of leave: *Be Financial Pty Ltd as Trustee for Be Financial Operations Trust v DAS* [2012] NSWCA 164 - threshold requirements for orders under r5.2 of the Rules: *Roads & Traffic Authority of NSW v Australian National Car Parks Pty Ltd* [2007] NSWCA 114 - *whether*: misapplication of test in s87(1)(a) *Evidence Act 1995* (NSW); reasonable inquiries made by applicants for discovery - constitutional validity of r5.2 of the Rules - *whether*: r5.2 contrary to implied freedom of communication on government and political matters; r5.2 to be read down to be consistent with that implied freedom; necessary to limit discretion conferred on court - leave to appeal granted - appeal dismissed.

[The Age Company Ltd](#) (I, B, C, G)



Pentelow v Bell Lawyers Pty Ltd trading as Bell Lawyers [2013] NSWSC 111

Supreme Court of New South Wales

Schmidt J

Legal practitioners - costs agreements - statutory construction - appeal by barrister under s39(1) *Local Court Act 2007* (NSW) (LCA) from decision staying proceedings under *Legal Profession Act 2004* (NSW) (LPA) to recover fees and costs from lawyers pursuant to costs agreements - proper construction of LPA and parties' cost agreements - *whether*: parties entered contract for provision of legal services; barrister only entitled to pursue payment of costs by way of assessment process due to absence of contract; barrister's services provided under legally enforceable promise rather than on conventional non-contractual basis; issues raised questions of law that could be pursued under s39(1) LCA - appeal upheld.

[Pentelow](#) (I, B, C)

In the matter of Idylic Solutions Pty Ltd - Australian Securities and Investments Commission v Hobbs [2013] NSWSC 106

Supreme Court of New South Wales

Ward JA

Corporations - penalties - relief and consequential orders - ASIC successfully brought proceedings against various defendants for breaches of *Corporations Act 2001* (Cth) and *Australian Securities and Investments Act 2001* (Cth) relating to defendants' involvement in schemes through which investors' funds were pooled for investment into offshore wholesale market - identification of contraventions for purpose of imposition of civil penalties - declaratory relief - disqualification orders - pecuniary penalties - appointment of receivers.

[Idylic Solutions](#) (I, B)

In the matter of Melinda Scott and Roach Graham Scott Pty Ltd [2012] NSWSC 1643

Supreme Court of New South Wales

Black J

Corporations - financial services - dishonest conduct - declarations and orders - ASIC sought declarations of improper conduct by defendants in provision of financial services in contravention of *Corporations Act 2001* (Cth) - defendants admitted contraventions of ss1041(G) & 1311 of the Act - misappropriation of clients' funds for investment in financial products - declarations of improper conduct - factors relevant to a disqualification order: *Re HIH Insurance Ltd (in prov liq) and HIH Casualty and General Insurance Ltd (in prov liq)*; *Australian Securities and Investments Commission v*



Adler [2002] NSWSC 483 - disqualification of first defendant from managing corporations - orders restraining first and second defendants from carrying on financial services business.

[Melinda Scott](#) (I, B)

Taylor v Haileybury [2013] VSC 58

Supreme Court of Victoria

Beach J

Accident compensation - workplace injury - negligence - duty of care - contract - plaintiff was employed as teacher at one of defendant school's campuses - teacher claimed pain and suffering damages and pecuniary loss damages pursuant to s134AB *Accident Compensation Act 1985* (Vic) - claim pleaded in negligence and breach of contract - plaintiff contended his psychiatric injuries were caused by overwork - content of employer's duty of care in relation to a claim for work-related psychiatric injuries: *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44 - construction of contract between parties - whether any reason for defendant to suspect workload it required of teacher placed him at risk of psychiatric injury - *litigious hindsight: Hegarty v Queensland Ambulance Service* [2007] QCA 366 - claim dismissed.

[Taylor](#) (I)

Skilltech Consulting Services Pty Ltd v Bold Vision Pty Ltd [2013] TASSC 3

Supreme Court of Tasmania

Blow J

Security of payments legislation - plaintiff engaged by Southern Water to install water meters - plaintiff engaged first defendant to install the meters - disputes developed between plaintiff and first defendant as to progress payments - plaintiff sought orders in the nature of *certiorari* to quash, or declare void, an adjudication determination made under *Building and Construction Industry Security of Payment Act 2009* (Tas) requiring plaintiff to pay sum to first defendant - *whether: jurisdictional errors; failures to observe requirements of procedural fairness; errors of law on the face of the record - construction of the Act - whether sufficient specification of construction work to enable assessment of claim - action dismissed.*

[Skilltech](#) (I, C)



Animal Tuckerbox Pty Ltd v Lloyd [2013] TASSC 4

Supreme Court of Tasmania

Blow J

Workers' compensation - time limits - worker claimed compensation under *Workers Rehabilitation and Compensation Act 1988* (Tas) - appeal from decision of Workers Rehabilitation and Compensation Tribunal that worker's failure to make claim within time specified in s32(1)(b) of the Act was for a *reasonable cause* due to worker's emotional reaction to his unpleasant experience making earlier claim - whether impugned finding of a *reasonable cause* was open to Tribunal - appeal dismissed.

[Animal Tuckerbox](#) (I)

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