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Executive Summary (1 minute read)

Sidhu v Van Dyke (HCA) - equity - proprietary estoppel - detrimental reliance on representations to transfer property - equitable compensation - appeal dismissed (B)

ADCO Constructions Pty Ltd v Goudappel (HCA) - workers compensation - valid transitional regulation extinguished worker's entitlement to permanent impairment compensation (I)

Johnston v Stock (NSWCA) - negligence - intoxicated pedestrian injured in collision with motor vehicle - driver not negligent - appeal allowed (I)

Maxwell-Smith v S & E Hall Pty Ltd (NSWCA) – solicitors’ duties to former client - collateral abuse of process - claims against solicitor and building company dismissed (I B C)

Hobbes v NSW Trustee & Guardian (NSWSC) - equity - gifts - donatio mortis causa - requirement of delivery - valid gifts of bank accounts but not of land (B)

Polon v Dorian (NSWSC) - professional negligence - bridging finance scheme - proportionate liability - investor's claim against solicitor and firm upheld (I B)

Levy v Watt (VSCA) - limitation of actions - conversion - fraudulent concealment - commencement of limitation period postponed - appeal dismissed (I B)
Sandhurst Golf Estates Pty Ltd v Coppersmith Pty Ltd (VSC) - personal property - security interest - no entitlement to register financing statement - injunctions granted (I B C)

Re Chomley (VSC) - trusts - administrators of estate refused permission to bid at auction of asset of estate (B)

Defteros v Scott (VSC) - legal practitioners - unqualified costs consultant did not impermissibly engage in legal practice when performing services for solicitor - appeal dismissed (I)

Sidhu v Van Dyke [2014] HCA 19
High Court of Australia
French CJ; Kiefel, Bell, Gageler & Keane JJ
Equity - proprietary estoppel - respondent and husband moved into house on land owned by appellant - appellant and respondent commenced relationship during which appellant gave assurances to respondent that he would subdivide land and transfer house to her - respondent performed unpaid work on land and did not pursue other employment - respondent did not seek property settlement from husband when they divorced - relationship between appellant and respondent ended - appellant refused to transfer property to respondent - appeal from decision of Court of Appeal of NSW ordering equitable compensation - presumption of reliance - held: respondent bore onus of proof in relation to detrimental reliance - however respondent's evidence at trial established she had acted to her detriment in reliance on appellant's representations and was thus entitled to equitable compensation in amount to be assessed by reference to the value of land - appeal dismissed.

Sidhu (B)

ADCO Constructions Pty Ltd v Goudappel [2014] HCA 18
High Court of Australia
French CJ; Crennan, Kiefel, Gageler & Keane JJ
Workers compensation - permanent impairment - worker made initial claim for compensation under Workers Compensation Act 1987 (NSW) in 2010 - worker assessed as having 6% permanent impairment - worker made specific claim for permanent impairment compensation on 20 June 2012 - insurer declined liability on basis of amendments to Act introduced by Workers Compensation Legislation Amendment Act 2012 (NSW) (Amendment Act) limited entitlement to permanent impairment compensation to workers with impairment exceeding 10% - savings and transitional provisions of Amendment Act protected entitlements of workers who claimed permanent impairment compensation before 19 June 2012 - High Court accepted initial claim covered entitlement to permanent impairment compensation but employer argued protection
conferred by Amendment Act was displaced by transitional regulation extending disentitling operation of amendments to claims for compensation made before 19 June 2012 except for claims which specifically sought permanent impairment compensation - ss66, 280, Sch 6, Pts 19H & 20 - held: transitional regulation valid and applied to extinguish worker's entitlement - worker's initial claim not a claim which specifically sought permanent impairment compensation - appeal allowed. ADCO Constructions (I)

Johnston v Stock [2014] NSWCA 147
Court of Appeal of New South Wales
Meagher, Barrett & Ward JJA
Negligence - motor vehicle collision - grossly intoxicated pedestrian injured in collision with motor vehicle - primary judge found driver liable and reduced damages by 75% for pedestrian's contributory negligence - driver contended primary judge erred in finding negligence without considering relevant duty of care and in failing to make correct assessment of reasonableness of her conduct - driver contended that expectations to which primary judge found her to be subject went beyond things that reasonably careful motorist ought reasonably to have anticipated - motorist's duty of care - s5B Civil Liability Act 2002 (NSW) - held: exercise of reasonable care by motorist involved degree of anticipation of what others might do - required standard of care when driver saw a pedestrian progress downhill in a stumbling fashion, stop on pedestrian ramp at side of the road, look right and apparently fix her eyes on approaching vehicle as if waiting for it to pass - several precautions which primary judge found could or should have been taken by driver were not called for in interests of due care towards pedestrian - primary judge's conclusion of breach of duty by appellant erroneous - appeal allowed. Johnston (I)

Maxwell-Smith v S & E Hall Pty Ltd [2014] NSWCA 146
Court of Appeal of New South Wales
Beazley P; McColl & Barrett JJA
Professional negligence - tort of collateral abuse of process - solicitors' duties - limitation of actions - appellants retained solicitor to act for them on purchase of land and building company to build house - dispute arose in relation to building work - solicitor acted for builder in that litigation - appellants lost case - appellants alleged solicitor breached retainer, duty of care and equitable duty of loyalty by acting for builder and that builder and solicitor committed collateral abuse of process by serving bankruptcy notices - s14 Limitation Act 1969 (NSW) - held: no retainer between appellants and solicitor when he began to act for building company - no continuing equitable or contractual duty of loyalty to former client - doubtful bankruptcy notice was a process to which tort of collateral abuse of process applied - appellants did not prove builder engaged in any overt act or threat in furtherance of allegedly improper purpose - action for collateral abuse of process did not lie against solicitor because it only be committed by party to proceedings said to constitute the abuse - all claims except collateral abuse of process claim in respect of one bankruptcy notice were statute-barred - no procedural unfairness - appeal dismissed.
Hobbes v NSW Trustee & Guardian [2014] NSWSC 570
Supreme Court of New South Wales
White J
Equity - gifts - *donatio mortis causa* - deceased died intestate - plaintiff friend of deceased contended that shortly before his death deceased made gifts to her which became effective on his death - alleged gifts were credit balance in bank account, fixed term deposit with bank and home unit - principles on which otherwise imperfect gifts will be effective if gifts made in contemplation of death - whether there could be valid gift *mortis causa* of land in NSW held under *Real Property Act 1900* (NSW) - held: bank accounts satisfied all three requirements of *donationes mortis causae* - in relation to alleged gift of unit, delivery of keys and a council rate notice did not satisfy second requirement of delivery of the means or part of the means of getting at the property or delivery of the essential indicia of title - there was a valid *donatio mortis causa* of passbook account and fixed term investment account but not of land - declaration and order made.

Polon v Dorian [2014] NSWSC 571
Supreme Court of New South Wales
Hall J
Professional negligence - solicitors' duties - implied retainer - vicarious liability - concurrent wrongdoers - negligent misstatement - misleading and deceptive conduct - investor claimed damages from solicitor and firm for losses suffered after investing money in bridging finance scheme - scheme originally operated by companies now in liquidation and directors bankrupt - investor alleged solicitor made representations concerning scheme which played material part in her decision to invest - plaintiff claimed representations related to both security of scheme and security of transactions between companies and third-party borrowers - investor alleged firm vicariously liable for solicitor's conduct - credibility and demeanour of witnesses - whether reasonable reliance on representations - whether solicitor was mere conduit - held: representations made by solicitor and scheme's proponents - implied retainer between plaintiff and solicitor - defendants liable in negligence, breach of s42 *Fair Trading Act*, breach of retainer and breach of fiduciary duty - liability arose from failure to take reasonable care within meaning of s34(1)(a) *Civil Liability Act 2002* (NSW) - combined proportionate liability of directors of companies assessed at 60% - proportionate liability of first defendant, who introduced plaintiff to companies and took no part in proceedings assessed at 10% - proportionate liability of solicitor and firm assessed at 30% because role in promoting scheme was more than drafting documents on instructions - judgment for plaintiff.
Levy v Watt [2014] VSCA 60
Court of Appeal of Victoria
Warren CJ; Tate & Santamaria JJA
Limitation of actions - conversion - fraudulent concealment - appellant solicitor was left Rupert Bunny painting by client - solicitor unaware painting stolen and of searches by its previous owner and by respondent executors - no evidence to suggest client involved in or knew about theft - police seized painting at solicitor's home - Magistrate ordered painting to be placed in executors' possession - solicitor sought declaration executors' proprietary rights had been extinguished - solicitor appealed from decision in which trial judge held s27(b) Limitation of Actions Act 1958 (Vic) operated to postpone commencement of limitation period as executors' right of action in conversion had been concealed by fraud of original thief through whom solicitor was claiming - solicitor did not challenge conclusion that s27(a) did not apply as he had been given painting and had not established client was a bona fide purchaser for value without notice - ss3(4), 5(1), 5(1AAA), 6, 23B, 27(a) & 27(b) - held: no error in primary judge's ruling on fraudulent concealment - trial judge correctly dismissed executors' argument concerning scope of operation of s27(a) - rulings on s27(a) and s 27(b) affirmed - appeal dismissed.
Levy (I B)

Sandhurst Golf Estates Pty Ltd v Coppersmith Pty Ltd [2014] VSC 217
Supreme Court of Victoria
Robson J
Securities - personal property - injunctions - joint venture for purchase and development of golf course - plaintiffs sought to prevent registration by defendants of financing statement under Personal Property Securities Act 2009 (Cth) - defendants claimed they had been deprived of interest in project and threatened to lodge new financing statements for registration if existing registrations removed - plaintiffs claimed that even if defendants held a proprietary interest in project that did not give rise to any security interest - consensual transaction - ss12, 150, 180, 181 &182 - held: defendants not entitled to register financing statement as they did not have any interest in plaintiffs' personal property - third defendant accountant had not been involved in any transactions or dealings with plaintiffs - Court had jurisdiction to restrain defendants from engaging in threatened conduct - Court satisfied there was unacceptable risk that defendants would file a financing statement with respect to plaintiffs' personal property - injunctions granted.
Sandhurst Golf Estates Pty Ltd (I B C)

Re Chomley [2014] VSC 220
Supreme Court of Victoria
McMillan J
Succession - intestacy - plaintiff, and defendants were deceased's three adult children - children granted letters of administration and entitled to participate equally in distribution of estate - two children interested in purchasing property which was asset of estate - each had made offer but were unable to agree on how property was to be dealt with - plaintiff sought orders that parties sell
property by auction and that each be at liberty to bid and to purchase property from estate -
second defendant claimed rule against self-dealing prohibited parties from bidding at auction -
held: if plaintiff was able to bid at the auction his involvement in the sale process was inextricably
compromised - conflict could only be resolved if party wishing to bid and purchase property was no
longer an administrator of estate and an independent administrator was appointed to estate -
parties directed to sell property by public auction through agency of an appropriate land agent -
application refused.

Re Chomley (B)

Defteros v Scott [2014] VSC 205
Supreme Court of Victoria
Kaye J
Legal practitioners - retainer for provision of costing services - appellant solicitor engaged struck
off solicitor as legal cost consultant - fee dispute arose - solicitor appealed from judgment of
Magistrate ordering solicitor to pay cost consultant - solicitor claimed Magistrate erred in law in
failing to hold that by performing work in respect of which outstanding fees were claimed
consultant had engaged in legal practice contrary to s2.2.2 Legal Practice Act 2004 (Vic) - held:
Court not satisfied Magistrate erred in finding solicitor failed to prove consultant had engaged in
legal practice in respect of work which was subject of fees claimed - lack of evidence was such
that it was open to Magistrate to conclude that appellant solicitor had not satisfied her that work
performed by consultant answered description of legal practice - appeal dismissed.

Defteros (I)

Binsey Poplars
*felled 1879*
By Gerard Manley Hopkins

My aspens dear, whose airy cages quelled,
Quelled or quenched in leaves the leaping sun,
All felled, felled, are all felled;
Of a fresh and following folded rank
Not spared, not one
That dandled a sandalled
Shadow that swam or sank
On meadow & river & wind-wandering weed-winding bank.

O if we but knew what we do
When we delve or hew —
Hack and rack the growing green!
Since country is so tender
To touch, her being só slender,
That, like this sleek and seeing ball
But a prick will make no eye at all,
Where we, even where we mean
    To mend her we end her,
When we hew or delve:

After-comers cannot guess the beauty been.
Ten or twelve, only ten or twelve
    Strokes of havoc unselve
    The sweet especial scene,
Rural scene, a rural scene,
    Sweet especial rural scene.

Binsey Poplars