

# Case law update

## An overview of select case law and defining principles

### CHAIR

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**DARROW**  
CHAMBERS

CASE THEORY

EVIDENCE

PROOF

CAUSATION AND THE COUNTERFACTUAL

# CAUTION

## Cases

- Institutional Abuse
  - GLJ
  - Willmot
  - BYM

- Slip and Fall
  - Gomez v Woolworths
  - Jackson v Furner
  - Manca v Teys

- Damages
  - Carey-Schofield v Hays
  - Norsgaard v Aldi
  - Welsh v Biggin





# GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore [2023] HCA 32

1 November 2023

- Plaintiff abused in 1968 when 14 years of age by priest in Lismore
- Priest known to have abused several others and now deceased
- Stay of proceedings an exceptional remedy
- Grant of a stay itself operates an unfairness
- Abolition of limitation period has fundamentally changed the landscape and ought be recognised in stay applications
- No unfairness in allowing trial to proceed
- Court not bound to accept uncontradicted evidence
- Circumstantial evidence is available
- Tendency evidence available



# Willmot v Queensland [2023] QCA 102 16 May 2023

## High Court Case – B65/2023 heard 7 May 2024

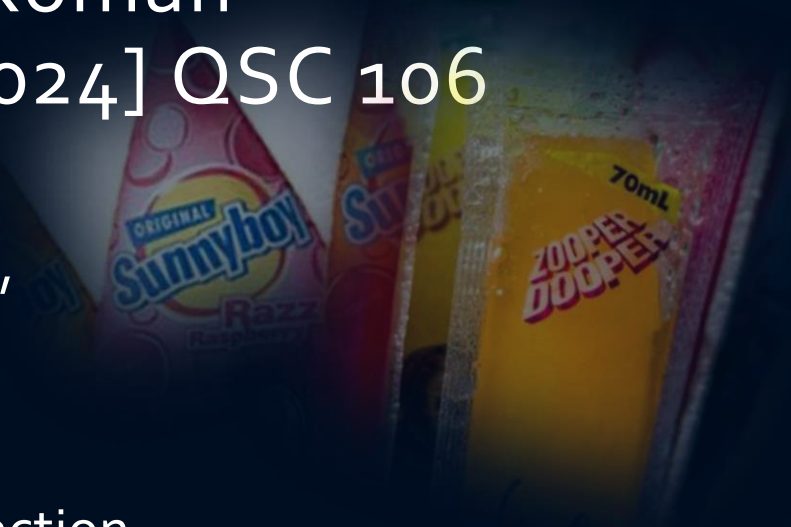


- Application for the permanent stay of proceedings by the State
- Supreme Court held to stay the proceedings - *Willmot v Queensland* [2022] QSC 167 - Bowskill CJ – delivered 22 August 2022
- The Court of Appeal confirmed the decision of the Supreme Court - *Willmot v Queensland* [2023] QCA 102 - Gotterson AJA, Mullins P, Boddice AJA
- The onus is on the State in an application for a stay to show the trial of the claim would be so unfair or oppressive to the State as to constitute an abuse of process
- The thrust of the appellant's argument was that it was not unfair to find yourself faced with the claim against which you cannot marshal evidence to contradict. This is particularly so in circumstances of child abuse where it is conducted in covert circumstances
- State argues that it would be left with effectively unchallenged evidence where the State is unable and is deprived of any real opportunity to participate in the trial in a responsive way

# BYM v Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane [No 2][2024] QSC 106

Williams J – 30 May 2024 – Under Appeal

- Student at a primary school sexually abused by a groundsman, when the student had left class to go to the toilet
- Application of Briginshaw test
- Plaintiff did not prove her case to the necessary level of satisfaction
- Plaintiff “was not dishonest” but inconsistencies, passage of time, clients age at the time, improbability of the circumstances meant that Judge could not be satisfied that the assault occurred as alleged
- Alleged perpetrator denied the allegations, and judge assessed she would need to be satisfied that he had deliberately lied to find for the plaintiff
- In any event, no vicarious liability and no breach of duty





# Gomez v Woolworths Group Limited [2024]

NSWCA 121 21 May 2024

- Plaintiff slipped on a piece of dropped mango at the entrance of the Woolworths store
- 9 minutes between when the fruit was dropped and when the plaintiff slipped
- Plaintiff unsuccessful at first instance and on appeal
- CCTV footage of the area in which the fall occurred
- Consultant engineer evidence as to the adequacy of the cleaning systems
- The risk was foreseeable and not insignificant
- Breach was found against Woolworths however causation was not made out
- Warning regarding hindsight



Woolworths  
*the fresh food people*



# Jackson v Furner

## [2024] NSWCA 66

27 March 2024

- Plaintiff slipped on wet, sloping driveway while attending an open house real estate inspection
- Admitted that the property owners had painted the driveway about a week before
- Property owners alleged this was a non-slip paint
- Finding for the plaintiff upheld on appeal
- Court of Appeal did not interfere with the trial judges finding that the appellants had not established that the paint which had been applied was “non-slip”
- Shifting versions by the owner
- Other evidence of its slipperiness – the agent had slipped on it earlier, had been raining, driveway had a glossy appearance
- Use of expert opinion
- Breadth of the appellants case on appeal was criticised by the Court of Appeal – “a reasonable person in the position for the respondent would not have walked up the driveway, there being an alternative entrance available” (stairs)
- “the availability of stairs does not obviate the need to take reasonable care to prevent risks caused by the recent painting of the sloping driveway”





# Manca v Teys Australia Beenleigh Pty Ltd [2024]

QCA 60 19 April 2024

- Meatworker fell down a set of stairs while carrying his apron and knives
- Principal issue was what caused the plaintiff to slip on the steps
- No evidence regarding physical issues or damage to the step, whether the steps were wet or the slipperiness or otherwise of blood
- No counterfactual pleading – what alternative would have avoided his fall
- Reminder regarding the burden of proof – probability – not possibility



# Carey-Schofield v Hays Specialist Recruitment (Australia) Pty Ltd[2024] QSC 60

Crow J – 22 April 2024 – Under appeal

- Facilities/ groundsperson emptying wheelie bins, in the process of doing so stepped backwards a tripped on a bag of rubbish which he had placed in the ground as an interim measure
- Plaintiff's injuries and their impacts
- Assessment of the medical opinion
- Section 306J (section 55 CLA)
- Care



# Norsgaard v Aldi Stores (A Limited Partnership)

[2023] QCA 204

20 October 2023



- The plaintiff suffered a lower back injury unpacking trays of canned tomatoes
- Consideration of whether the plaintiff's efforts to return to work were genuine and mitigation of loss
- Absence of evidence to support plaintiff's assertions
- Potential career path at odds with the level of claimed pain and impairment
- No evidence provided as to potential for income in potential career path or loss
- Need for treatments outside of the traditional model not supported by experts



# Welsh v Biggin Pty Ltd (No.2) [2023] QSC 211

Henry J — 20 September 2023

- The plaintiff suffered a quadriceps tear with complicating DVT
- Consideration of the effect of degeneration on discount for contingencies
- Reminder regarding the assessment of superannuation on the percentage of gross loss of income
- Story of the plaintiff's history of employment
- Consensus that the plaintiff would struggle to compete with more youthful, less disabled competitors for employed positions
- Utilisation of the national minimum wage as a yardstick for loss





Questions?