

Tuesday 13 March 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Singtel Optus Pty Ltd v Australian Competition & Consumer Commission - *Trade Practices Act 1974* (Cth) - appeal in relation to penalty - appeal allowed (I, B, C, G)

Valcorp Australia Pty Ltd v Angas Securities Ltd - *Trade Practices Act 1974* (Cth) - ss 7(1) & 7(2) *Law Reform (Contributory Negligence & Apportionment of Liability) Act 2001* (SA) - contributory negligence (I, B, C, G)

Screen Australia v EME Productions No. 1 Pty Ltd - ss376-65(6) *Income Tax Assessment Act 1997* (Cth) - "documentary" (B)

Commonwealth Bank of Australia v Reeve - *Safety, Rehabilitation & Compensation Act 1988* (Cth) - statutory interpretation - "injury" in s5A - "administrative action" (I)

Commonwealth of Australia & Anor v Fernando - Torts - false imprisonment - damages - misfeasance in public office - appeal & cross-appeal allowed in part (I)

Australia & New Zealand Banking Group Ltd v Konza - s264 *Income Tax Assessment Act 1936* (Cth) - statutory interpretation (B)



Roads & Traffic Authority of NSW v Care Park Pty Ltd - Preliminary discovery - r5.1 & r5.2
Uniform Civil Procedure Rules 2005 - appeal dismissed (I)

Bellingen Shire Council v Colavon Pty Ltd - Torts - negligence - damage to motor vehicle – s43A
Civil Liability Act 2002 (NSW) - appeal dismissed (I, C)

Amaca Pty Ltd (under NSW administered winding up) & Ors v Messrs A G McGrath & C J Honey (as liquidators of the HIH Group of Companies) & Anor - s562A(4) *Corporations Act 2001 (Cth)* (I, B)

The Owners - Strata Plan No. 44999 v Premier Holdings Corp Pty Ltd & Gregg Ritchie & Partners Pty Ltd – s78 *Strata Titles Act 1973 (NSW)* - Deed providing for services to Owners Corporation unenforceable (I, B)

Rizhao Steel Holding Group Co Ltd v Koolan Iron Ore Pty Ltd - *International Arbitration Act 1974 (Cth)* – s33 *Commercial Arbitration Act 1985 (WA)* - appeals dismissed (I, B, C, G)

Stowe Australia Pty Ltd v Kelly – s132 *Workers Compensation Act 1951 (ACT)* - appeal from Magistrates Court dismissed - “claim” (I)

Summaries with links (5 minute read)

Singtel Optus Pty Ltd v Australian Competition & Consumer Commission [2012] FCAFC 20

Full Court of the Federal Court of Australia

Keane CJ; Finn & Gilmour JJ

Trade Practices Act 1974 (Cth) - appeal in relation to penalty - appeal allowed - penalty set aside & in lieu, order that Optus to pay the Commonwealth a penalty of \$3,610,000.

[Singtel Optus](#) (I, B, C, G)

[ACCC](#) - decision 11 February 2011 - for this & other decisions in this case, see Benchmark I, B, C & IBC Monday 11 July 2011 - s76E(2) *Trade Practices Act 1974 (Cth)* - multimedia advertising campaign had been launched by respondent



in 2010 concerned with sale of various broadband internet plans - 'Think Bigger' plans - nature & extent of the act or omission and of any loss or damage suffered as a result of the act or omission: s76E(2)(a) - confidentiality orders: s50 - respondent to pay Commonwealth a pecuniary penalty of \$5.26 million.

Valcorp Australia Pty Ltd v Angas Securities Ltd [2012] FCAFC 22

Full Court of the Federal Court of Australia

Jacobson, Siopis & Nicholas JJ (in Adelaide)

Ss52, 82 & 82(1B) *Trade Practices Act* 1974 (Cth) - ss7(1) & 7(2) *Law Reform (Contributory Negligence & Apportionment of Liability) Act* 2001 (SA) - valuation of property - appellant appealing primary judge's decision in relation to contributory negligence & the award of damages for consequential loss - respondents cross-appealing from primary judge's decision that damages awarded to them should be reduced by 25% on account of their contributory negligence - loss of opportunity damages - at par 127 of judgment: just & equitable that each of the parties should be found to have been equally responsible for the loss suffered by each of the respondents; each of respondents contributorily negligent to extent of fifty percent - appeal allowed in part; otherwise dismissed.

[Valcorp Australia](#) (I, B, C, G)

[Angas Securities](#) - decision 8 March 2010: see Benchmark I, B & IBC Thursday 10 March 2011 - *Trade Practices Act* 1974 (Cth) - *Fair Trading Act* 1987 (SA) - misleading or deceptive conduct - three applicants conducted mortgage lending businesses — respondent a valuer retained to value property to be security for loan by applicants - borrower defaulted - value of property on forced sale was substantially less than valuation - disclaimers in valuation report - reliance - ss7(2) & 8 *Law Reform (Contributory Negligence & Apportionment of Liability) Act* 2001 (SA) - mitigation of loss - loss of opportunity damages — each of the applicants had established its case under the TPA & FTA; reduction of the loss & damage by 25% for contributory negligence - first applicant entitled to interest under s51A *Federal Court of Australia Act* 1976 (Cth) after date of receipt of insurance monies - extensive consideration of the United Kingdom & Australian case law;

[Angas Securities](#) - decision 23 March 2011: see Benchmark Friday 25 March 2011 - property valuation - final orders - quantum - interest - judgment for first applicant against respondent for damages in sum of \$973,797.09 - judgment for second applicant against respondent for damages in sum of \$458,510.31 - judgment for third applicant against respondent for damages in sum of \$256,595.15;

[La Trobe Capital & Mortgage Corporation](#) - decision Full Court of the Federal Court of Australia 19 January 2011: see Benchmark I, B & IBC Tuesday 1 February 2011 - negligence - measure of damages - causation - respondent negligently valued land for purposes of a loan - loss of a chance - standard of proof - what constitutes opinion evidence - appeal allowed - judgment for appellant in sum of \$259,291.35.

Screen Australia v EME Productions No. 1 Pty Ltd [2012] FCAFC 19

Full Court of the Federal Court of Australia

Keane CJ, Finn & Gilmour JJ

Income Tax Assessment Act 1997 (Cth) - Administrative Appeals Tribunal had decided respondent was entitled to producer offset certificate under Division 376 pursuant to s376-65 in respect of a



film series - determinative issue was whether the film series was a “documentary” within s376-65(6) - Tribunal had held it was a “documentary” & on that basis had set aside decision of Screen Australia refusing respondent’s application for a certificate - appeal from Administrative Appeals Tribunal dismissed.

[Screen Australia](#) (B)

[EME Productions No. 1](#) - decision Administrative Appeals Tribunal 24 June 2011

Commonwealth Bank of Australia v Reeve [2012] FCAFC 21

Full Court of the Federal Court of Australia

Gray, Rares & Tracey JJ

Safety, Rehabilitation & Compensation Act 1988 (Cth) - statutory interpretation - whether Administrative Appeals Tribunal had erred in the construction it adopted of the phrase “administrative action” - phrase occurs in an exclusion in definition of “injury” in s5A - see par 35 of judgment of Gray J - see par 75-76 of joint judgment of Rares & Tracey J - appeal dismissed - application pursuant to *Administrative Decisions (Judicial Review) Act* 1977 (Cth) dismissed.

[Commonwealth Bank of Australia](#) (I)

Commonwealth of Australia & Anor v Fernando [2012] FCAFC 18

Full Court of the Federal Court of Australia

Gray, Rares & Tracey JJ

Torts - respondent had sought damages from appellants in relation to his period in immigration detention - he had pleaded four causes of action: false imprisonment, negligence, breach of statutory duty & misfeasance in a public office - primary judge had dismissed respondent’s claims of negligence & breach of statutory duty: those findings not challenged on this appeal - appeal & cross-appeal allowed in part - respondent succeeded in his claim to be entitled to damages for false imprisonment for the entire period of his detention - proceeding to be remitted to primary judge to assess damages on basis that the respondent was falsely imprisoned by first appellant between 5 October 2003 & 18 January 2007 - appellants successful in their appeal against primary judge’s finding that Acting Minister was liable for misfeasance in public office.

[Commonwealth of Australia](#) (I)

[Fernando](#) - decision 21 July 2010: see Benchmark I, C & IBC Monday 26 July 2010 - torts - false imprisonment - vicarious liability - duty of care - breach of statutory duty - misfeasance in public office - unlawful detention - assessment of damages in sum of \$3,000 for misfeasance & false imprisonment

Australia & New Zealand Banking Group Ltd v Konza [2012] FCA 196

Federal Court of Australia



Lander J

S264 *Income Tax Assessment Act 1936* (Cth) - statutory interpretation - Bank has been issued with two notices requiring it to provide certain information about customers who have or who have had accounts with it or any of its subsidiaries in Vanuatu - notices issued by first respondent, a Deputy Commissioner of Taxation pursuant to s264 - Bank challenging validity of the two notices issued by the Deputy Commissioner - application & cross-claim dismissed.

[Australia and New Zealand Banking Group](#) (B)

Roads & Traffic Authority of NSW v Care Park Pty Ltd [2012] NSWCA 35

Court of Appeal of New South Wales

Beazley, Basten, Campbell, Young & Barrett JJA

Preliminary discovery - r5.1, r5.2 *Uniform Civil Procedure Rules 2005* - statutory interpretation - appeal dismissed.

[Roads and Traffic Authority](#) (I)

[RTA](#) - decision 14 July 2011: see Benchmark I & IBC Monday 18 July 2011 - preliminary discovery to identify defendants - plaintiff RTA's appeal from Local Court - whether Magistrate had been correct in holding the defendant had established that it sought the information requested from plaintiff for "the purpose of commencing proceedings against that person" within meaning of r5.2 *Uniform Civil Procedure Rules 2005* - appeal from orders for production dismissed - appeal in respect of indemnity costs order allowed.

Bellingen Shire Council v Colavon Pty Ltd [2012] NSWCA 34

Court of Appeal of New South Wales

Beazley & Whealy JJA; Sackville AJA

Torts - negligence - damage to motor vehicle - s43A & other sections *Civil Liability Act 2002* (NSW) - s87 *Roads Act 1993* (NSW) - respondent's prime mover & tanker had rolled down embankment at Dorrigo - edge of road gave way - edge not part of formed roadway, but a soft section of built-up soil & loose material, pushed to the side of the road during periodic grading work - primary judge had held that accident was due to negligence of appellant in failing to install guide posts along the road so as to delineate the edge of formed surface from soft edge - appeal dismissed.

[Bellingen Shire Council](#) (I, C)

Amaca Pty Ltd (under NSW administered winding up) & Ors v Messrs A G McGrath & C J Honey (as liquidators of the HIH Group of Companies) & Anor [2012] NSWSC 176

Supreme Court of New South Wales

Black J



Corporations Act 2001 (Cth) - statutory interpretation - winding up - insolvency - proceeds of contract of reinsurance - orders made under s562A(4) - extensive consideration of case law from UK & Australia.

[Amaca \(I, B\)](#)

The Owners - Strata Plan No. 44999 v Premier Holdings Corp Pty Ltd & Gregg Ritchie & Partners Pty Ltd [2012] NSWSC 171

Supreme Court of New South Wales

Black J

S78 *Strata Titles Act 1973 (NSW)* - ratification - election & waiver - Deed providing for services to Owners Corporation unenforceable - extensive consideration of UK & Australian case law.

[The Owners - Strata Plan No. 44999 \(I, B\)](#)

Rizhao Steel Holding Group Co Ltd v Koolan Iron Ore Pty Ltd [2012] WASCA 50

Court of Appeal of Western Australia

Martin CJ; Buss & Murphy JJA

International Arbitration Act 1974 (Cth) [IAA] - Model Law referred to in IAA – s33 *Commercial Arbitration Act 1985 (WA)* - statutory interpretation - contracts for sale & purchase of iron ore - each contract contained dispute resolution clause - awards made in arbitration proceedings heard simultaneously before same arbitrator - appeal from decisions of primary judge in which His Honour granted leave to enforce in the same manner as a judgment or order of the Court awards made by arbitrator - whether leave to appeal required - whether orders made by primary judge interlocutory - answer “no”: leave to appeal not required - whether appropriate Act the federal Act or the state Act - repeal & substitution of a section in the IAA - question of retrospectivity - appeals dismissed - extensive consideration of case law from UK, USA, Hong Kong & Australia.

[Rizhao Steel Holding Group \(I, B, C, G\)](#)

[Koolan Iron Ore](#) - decision 3 November 2010 - applications to register two arbitral awards - registration appropriate

Stowe Australia Pty Ltd v Kelly [2012] ACTSC 34

Supreme Court of the Australian Capital Territory

Master Harper

Workers Compensation Act 1951 (ACT) - appeal from Magistrates Court - application to Magistrates Court by employer for leave to reject claim - application refused - whether “claim” in s132 means claim for a single injury or claim for each payment of compensation or medical treatment expense



- "claim" has former & not latter meaning - whether s132 available to insurer where no current demand by worker for weekly compensation on treatment - application properly refused - appeal dismissed.

[Stowe Australia \(I\)](#)

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