



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Gerard Cassegrain & Co Pty Ltd v Commissioner of Taxation - Part IIA Income Tax Assessment Act 1936 (Cth) - capital gains tax (B)

Barclay v The Board of Bendigo Regional Institute of Technical & Further Education - *Fair Work Act* 2009 (Cth) - decision by employer to take adverse action - appeal allowed (I, B, C)

Entirity Business Services v Garsoft - Directors' duties - s180(1) *Corporations Act* 2001 (Cth) - *Fair Trading Act* 1987 (NSW) (I, B)

Prosperity Advisers Pty Ltd & Anor v Secure Enterprises Pty Ltd t/as Strathearn Insurance Brokers Pty Ltd - Negligence - insurance broker - proceedings dismissed (I, B)

RIL Aviation HL 7740 and HL 7741 Pty Ltd v Alliance & Leicester plc & Ors - Costs (I, B, C)

Crowe v Trevor Roller Shutter Services Pty Ltd (No 2) - *Accident Compensation Act* 1985 (Vic) - pecuniary loss damages - pain & suffering damages (I)

Highway Construction Pty Ltd v Commissioner of Main Roads - Contracts - expert determination agreement (I, B, C)



Summaries with links (5 minute read)

Tuesday 15 February 2011

Gerard Cassegrain & Co Pty Ltd v Commissioner of Taxation [2011] FCAFC 12

Full Court of the Federal Court of Australia

Downes, Edmonds, Greenwood JJ (in Sydney)

Part IIA *Income Tax Assessment Act 1936* (Cth) - capital gains tax provisions payment pursuant to deed of settlement & release - appeal & cross-appeal from Administrative Appeals Tribunal dismissed.

[Gerard Cassegrain & Co](#) (B)

Barclay v The Board of Bendigo Regional Institute of Technical & Further Education [2011] FCAFC 14

Full Court of the Federal Court of Australia

Gray, Lander & Bromberg JJ (in Melbourne)

Fair Work Act 2009 (Cth) - decision by employer to take adverse action - distribution of email - extent of protection afforded to an officer of a union by s346 - appeal allowed - comprehensive consideration of legislation, text & Australian case law.

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

[Barclay](#) - decision 25 March 2010: see 'Benchmark' Tuesday 30 March 2010 - whether actions taken by Bendigo Regional Institute of TAFE for one or more of the reasons proscribed by the *Fair Work Act* - application dismissed.

Entirety Business Services v Garsoft [2011] FCA 76

Federal Court of Australia

Moore J (in Sydney)

Directors' duties - allegation of breach of obligation under s180(1) *Corporations Act 2001* (Cth) to discharge duties with care & diligence - standard of skill - scope of s180 - no breach of duty - *Fair Trading Act 1987* (NSW) - material difference between representation as pleaded & representation about which evidence given - see para. 5 for summary of His Honour's conclusions.

[Entirety Business Services](#) (I, B)



Prosperity Advisers Pty Ltd & Anor v Secure Enterprises Pty Ltd t/as Strathearn Insurance Brokers Pty Ltd [2011] NSWSC 35

Supreme Court of New South Wales

Ball J

Negligence - whether insurance broker provided misleading advice to insured concerning professional indemnity insurance policy - whether insured could have obtained alternative policy - whether insured's loss should be assessed as a loss of a chance - whether insured's settlement with insurer reasonable - whether company under administration can assign cause of action - damages - proceedings dismissed.

[Prosperity Advisers](#) (I, B)

RIL Aviation HL 7740 and HL 7741 Pty Ltd v Alliance & Leicester plc & Ors (Costs) [2011] NSWSC 34

Supreme Court of New South Wales

Bergin CJ in Eq

Costs - defendants submitting that central or main issue in the proceedings was resolved in their favour & that costs should follow the event - each party to pay its own costs of the proceedings.

[RIL Aviation HL 7740 and HL 7741](#) (I, B, C)

[RIL Aviation HL 7740 and HL 7741](#) - decision 29 October 2010 - financing & leasing arrangements in respect of purchase of two Airbus 330-300 commercial passenger aircraft - whether RILA obliged to pay Ladbroke monthly fee that was payable to previous manager

- answer 'yes' - defendant not entitled to rely on Notice of Default.

Crowe v Trevor Roller Shutter Services Pty Ltd (No 2) [2011] VSC 28

Supreme Court of Victoria

Beach J

Accident Compensation Act 1985 (Vic) - workplace injury - negligence - breach of statutory duty - *Occupational Health & Safety (Manual Handling) Regulations* 1999 (Vic) - pecuniary loss damages \$810,941 - pain & suffering damages \$250,000.

[Crowe](#) (I)



Highway Construction Pty Ltd v Commissioner of Main Roads [2011] WASCA 27

Court of Appeal of Western Australia

Pullin & Murphy JJA; Allanson J

Contracts - expert determination agreement - scope of power conferred on second respondent as expert in determination of disputes between appellant & first respondent - appeal dismissed.

[Highway Construction](#) (I, B, C)

[Highway Construction](#) - *Highway Construction Pty Ltd v Commissioner of Main Roads* [2010] WASC 9 - decision 21 January 2010: see 'Benchmark' Wednesday 24 February 2010 - costs - plaintiff had been contracted by first defendant to construct two portions of Ripon Hills Road - later further contracted by first defendant to undertake work on Eyre Highway - in respect of both there were disputes as to work done with parties eventually agreeing to submit the matters in dispute to expert for binding determination - agreement formalised in a document entitled 'Expert Determination Appointment Agreement' - whether expert can determine legal costs incurred prior to appointment - plaintiff contending that on a proper construction agreement only permitted expert to determine costs in relation to expert determination process & that did not include costs incurred before agreement was made - plaintiff's action dismissed.

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