



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Australian Prudential Regulation Authority v ACN 000 007 492 (in liq'n) - s62ZI *Insurance Act* 1973 (Cth) - winding up - judicial manager's report (I)

Easyway Australia Pty Ltd v Infinite Plus Pty Ltd - *Trade Practices Act* 1974 (Cth) - comparative advertising (I, B, C)

Australian Competition & Consumer Commission v Allphones Retail Pty Ltd (No 4) - Contempt of court - undertakings made to Court (I, B, C)

International Business Machines Corporation v Commissioner of Taxation - s128B(5A) & s128C *Income Tax Assessment Act* 1936 (Cth) (B)

Australian Competition & Consumer Commission v Japan Airlines International Co Ltd - *Trade Practices Act* 1974 (Cth), now *Competition & Consumer Act* 2010 (Cth) - pecuniary penalty (B)

Stephen Reskymer (Kym) Monkton v Edward Allan Stephenson & Anor - Appeal from refusal of Magistrate to set aside a default judgment (I)



Charmyne Palavi v Queensland Newspapers Pty Ltd & Anor - Abuse of process - Court's discretionary power to dismiss proceedings (I)

Namberry Craft Pty Ltd & Anor v Watson & Anor - Certiorari - prohibition - amendment of pleadings (I)

Re Rich - Commencement of proceedings - abuse of process (I)

Treton Pty Ltd v HM Australia Holdings Pty Ltd and Anor (No 2) - Costs (C)

Pass v Gerling Australia Insurance Company Pty Ltd - Personal injuries - insurance policy - "injury" (I)

Lightsource Technologies Australia Pty Ltd v Pointsec Mobile Technologies AB - *Arbitration Act* 1986 (A.C.T.) - *International Arbitration Act* 1974 (Cth) - whether dispute of a type that could properly be subject of arbitration (I, B, C)

Summaries with links (5 minute read)

Friday 15 April 2011

Australian Prudential Regulation Authority v ACN 000 007 492 (in liq'n) [2011] FCA 35

Federal Court of Australia

Perram J (in Sydney)

s62ZI *Insurance Act* 1973 (Cth) - general insurer - winding up order - application for order giving effect to course of action in judicial manager's report.

[Australian Prudential Regulation Authority](#) (I)

Easyway Australia Pty Ltd v Infinite Plus Pty Ltd [2011] FCA 351

Federal Court of Australia

Foster J (in Sydney)



Trade Practices Act 1974 (Cth) - misleading & deceptive conduct - non-alcoholic beverages - comparative advertising - alleged representations held to have been made - injunction & corrective advertising ordered.

[Easyway Australia](#) (I, B, C)

Australian Competition & Consumer Commission v Allphones Retail Pty Ltd (No 4) [2011] FCA 338

Federal Court of Australia

Nicholas J (in Sydney)

Contempt of court - civil contempt - allegation of contravention of undertakings made to Court - three of four charges made out.

[Allphones Retail](#) (I, B, C)

International Business Machines Corporation v Commissioner of Taxation [2011] FCA 335

Federal Court of Australia

Bennett J (in Sydney)

Income Tax Assessment Act 1936 (Cth) - whether applicants entitled to declarations that they were not liable to withholding tax under s128B(5A) & s128C on the full amount of fees paid under clause in Software Licence - answer 'no.'

[International Business Machines Corporation](#) (B)

Australian Competition & Consumer Commission v Japan Airlines International Co Ltd [2011] FCA 365

Federal Court of Australia

Ryan J (in Melbourne)

Trade Practices Act 1974 (Cth), now *Competition & Consumer Act 2010 (Cth)* - respondent to pay pecuniary penalty in sum of \$5.5 million in respect of contraventions of s45(2)(a)(ii) & (b)(ii.)

[Japan Airlines International](#) (B)

Stephen Reskymer (Kym) Monkton v Edward Allan Stephenson & Anor [2011] NSWSC 67

Supreme Court of New South Wales

Hall J

Appeal from refusal of Magistrate to set aside a default judgment - collision between motor vehicle & livestock - default judgment of liquidated damages where claim for unliquidated



damages - judgment in default obtained irregularly - to be set aside *ex debito justitiae* - Local Court to re-determine damages.

[Monkton](#) (I)

Charmyne Palavi v Queensland Newspapers Pty Ltd & Anor [2011] NSWSC 274

Supreme Court of New South Wales

Nicholas J

Abuse of process - Court's discretionary power to dismiss proceedings - proceedings for damages for defamation - destruction of material by plaintiff when legal proceedings in contemplation - whether conduct amounted to an attempt to pervert the course of justice - whether proceedings should be dismissed - proceedings dismissed.

[Charmyne Palavi](#) (I)

Namberry Craft Pty Ltd & Anor v Watson & Anor [2011] VSC 136

Supreme Court of Victoria

Vickery J

Certiorari - prohibition - amendment of pleadings - circumstances in which *certiorari* or *prohibition* may issue in respect of grant of amendments - hearing in Magistrate's Court - name "the Big Kahuna" used by syndicates of persons who were accustomed to purchasing shares in large Tattsлото drawings from an agency conducted by first plaintiff & its director & business proprietor the second plaintiff - defendant contending that he was a member of The Big Kahuna syndicate for a particular draw & entitled to ten percent of the winnings less the cost of his share of the ticket - second plaintiff denying this was the case - hearing in Magistrate's Court - Magistrate's discretion did not miscarry - an interesting decision, with detailed analysis of legislation & case law.

[Namberry Craft](#) (I)

Re Rich [2011] VSC 144

Supreme Court of Victoria

Mukhtar As J

Commencement of proceedings - abuse of process - Prothonotary's unwillingness to issue proceeding without direction of the Court - Prothonotary directed not to issue process.

[Re Rich](#) (I)



Treton Pty Ltd v HM Australia Holdings Pty Ltd and Anor (No 2) [2011] QSC

Supreme Court of Queensland

McMurdo J

Costs - no contest as to costs between the plaintiff and the first defendant: first defendant ordered to pay the plaintiff's costs against it upon the standard basis - joinder of second defendant result of the stance taken by first defendant - on the claim against second defendant no order as to costs.

[Treton](#) (C)

[Treton](#) - decision 21 March 2011

Pass v Gerling Australia Insurance Company Pty Ltd [2011] WASCA 93

Court of Appeal of Western Australia

Pullin & Newnes JJA; Mazza J

Personal injuries - insurance policy - "injury" - whether death caused by thrombosis of coronary artery was a death caused by bodily injury resulting from accident - deceased a pilot technician - appeal dismissed.

[Pass](#) (I)

[Pass](#) - decision District Court 18 November 2009 - exclusions to the definition of injury in the policy did not apply - injury resulted in death - however, the bodily injury did not result from an accident - plaintiff's claim did not succeed.

Lightsource Technologies Australia Pty Ltd v Pointsec Mobile Technologies AB [2011] ACTSC 59

Supreme Court of the Australian Capital Territory

Refshauge J

Arbitration Act 1986 (A.C.T.) - International Arbitration Act 1974 (Cth) - arbitration clause - whether dispute of a type that could properly be subject of arbitration - the matter should not be referred to arbitration - comprehensive review of case law from the United Kingdom, Australia, Canada & New Zealand

[Lightsource Technologies Australia](#) (I, B, C)

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