

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Huntley Management Ltd v Timbercorp Securities Ltd (No 2) - Licence agreements - management agreements - leases - novation (I, B, C)

Virgin Blue Airlines Pty Limited v Commissioner of Taxation - *Fringe Benefits Tax Assessment Act 1986* (Cth) - appeal dismissed (B)

Peterson v Merck Sharpe & Dohme (Aust) Pty Ltd (No 5) - ss74B & 74D *Trade Practices Act 1974* (Cth) - Vioxx - negligence - duty of care (I, B)

Tiver v the Official Trustee in Bankruptcy - *Bankruptcy Act 1966* (Cth) - partnership application under s116(2)(c)(iii) for order identifying items of plant & equipment (B)

McKern & Ors v the Minister administering the Mining Act 1978 (WA) - s588FA *Corporations Act 2001* (Cth) - winding up - voidable transaction - insolvent transaction - unfair preference - doctrine of ultimate effect (B)

Kruisselbrink v Nationwide Maintenance Services Pty Ltd - *Accident Compensation Act 1985* (Vic) - ambit of serious injury certificate granted pursuant to s134(AB)(16)(a) - amendment of pleadings (I)

Roads Corporation v Carter & Anor - *Land Acquisition & Compensation Act 1986* (Vic) - preliminary question for determination - Geelong Bypass - hypothetical highest & best use in 'before' situation (C)

Strasburger Enterprises (Properties) Pty Ltd & Anor v Gold Coast City Council - *Integrated Planning Act 1997* (Qld) - *Environmental Protection Act 1994* (Qld) - service station at Palm Beach on Gold Coast - appeal dismissed (C)

Gold City Developments Pty Ltd v Portpride Pty Ltd - *Commercial Arbitration Act 1985* (WA) - cost plus contract for construction on the land of six grouped dwelling units (C)

Thornton v Telegraph Media Group Ltd - Defamation - malicious falsehood - part of a book review - single meaning rule - varieties of defamation - business or professional defamation - threshold of seriousness (I)

Summaries with links (5 minute read)

Tuesday 22 June 2010

Huntley Management Ltd v Timbercorp Securities Ltd (No 2) [2010] FCA 623

Federal Court of Australia

Rares J (in Sydney)

Licence agreements - management agreements - leases - novation - for decision 8 June 2010, see 'Benchmark' I, B & IBC Thursday 10 June 2010 & link below.

[Huntley Management](#) (I, B, C)

[Huntley Management](#) - decision 8 June 2010 - Ch 5C, s601FM *Corporations Act 2001* (Cth) - managed investment scheme - consequences of change in responsible entity - what rights, obligations & liabilities of Timbercorp, as former responsible entity, have become rights, obligations & liabilities of Huntley, as new responsible entity for purposes of s601FS & 601FT - statutory novation - construction of "in relation to the scheme" in s601FS(1) & 601FT(1.)

Virgin Blue Airlines Pty Limited v Commissioner of Taxation [2010] FCA 631 Federal Court of Australia

Jagot J (in Sydney)

Fringe Benefits Tax Assessment Act 1986 (Cth) - whether Melrose Car Park is "in the vicinity of" Melbourne Airport's Terminal 3 within the meaning of s.39A(1)(f) - appeal dismissed.

[Virgin Blue Airlines](#) (B)

Peterson v Merck Sharpe & Dohme (Aust) Pty Ltd (No 5) [2010] FCA 605

Federal Court of Australia

Jessup J (in Melbourne)

ss74B & 74D *Trade Practices Act 1974 (Cth)* - Vioxx - representative proceeding - judgment for applicant in personal claim against first respondent on his causes of action pursuant to ss74B & 74D in sum of \$330,465.35 - applicant's personal claim against first respondent in respect of his causes of action in negligence & under s75AD & 82 dismissed - application against second respondent dismissed - costs - Sanderson order - stay of execution.

[Peterson](#) (I, B)

[Peterson](#) - decision 5 March 2010 - torts - negligence - product liability - representative proceeding - *Trade Practices Act 1974 (Cth)* - *Therapeutic Goods Act 1989 (Cth)* - Vioxx - prescription medication for relief of arthritic pain associated with doubling of risk of heart attack - no warning provided to doctors - whether medicine not as fit for purpose for which goods of that kind commonly bought as was reasonable to expect - negligence - duty of care - entitlement to compensation.

Tiver v the Official Trustee in Bankruptcy [2010] FCA 620

Federal Court of Australia

Besanko J (in Adelaide)

Bankruptcy Act 1966 (Cth) - five applicants carrying on in partnership a farming business - application under s116(2)(c)(iii) for order identifying items of plant & equipment - application dismissed - nature of each partner's interest in partnership property such that no specific item of partnership property could be subject of an order under s116(2)(c)(iii).

[Tiver](#) (B)

McKern & Ors v the Minister administering the Mining Act 1978 (WA) [2010] VSCA 140

Court of Appeal of Victoria

Nettle & Mandie JJA; Beach AJA

s588FA *Corporations Act* 2001 (Cth) - winding up - for decision appealed from, see 'Benchmark' B & IBC Friday 17 October 2008 & link below - voidable transaction - insolvent transaction - unfair preference - doctrine of ultimate effect - appellants liquidators of Centaur Mining & Exploration Ltd & Centaur Nickel Pty Ltd - whether proof of unfair preference dependent on 'ultimate effect' of 'entire transaction' - whether payments of mining lease rent & royalties unfair preferences - appeal allowed in relation to payments made on account of royalties but otherwise dismissed.

[McKern & Ors](#) (B)

[Mckern & Ors](#) - decision 15 October 2008 - s588FA *Corporations Act* 2001 (Cth) - unfair preferences - whether rent paid in advance on mining tenements an unfair preference - whether payment of royalties paid in arrears on minerals sold from mining tenements an unfair preference - held that landlord's defence available to meet allegation that payments for rent and royalties were unfair preferences - liquidators' claims dismissed.

Kruisselbrink v Nationwide Maintenance Services Pty Ltd [2010] VSC 260

Supreme Court of Victoria

J Forrest J

Accident Compensation Act 1985 (Vic) - injury arising out of or in course of employment - serious injury - entitlement to sue - certificate granted by Authority - application to amend Statement of Claim - ambit of serious injury certificate granted pursuant to s134(AB)(16)(a) - leave to amend statement of claim given - leave to amend defence refused, but leave to replead defence granted.

[Kruisselbrink](#) (I)

Roads Corporation v Carter & Anor [2010] VSC 273

Supreme Court of Victoria

Osborn J

Land Acquisition & Compensation Act 1986 (Vic) - preliminary question for determination: as at the date of acquisition what zoning of claimant's land should be assumed in the 'before' situation, and what prospect (if any) was there of the land being rezoned for urban purposes? - Geelong Bypass - hypothetical highest & best use in 'before' situation.

[Roads Corporation](#) (C)

Strasburger Enterprises (Properties) Pty Ltd & Anor v Gold Coast City Council [2010] QCA 153

Court of Appeal of Queensland

Holmes, Chesterman & White JJA

Integrated Planning Act 1997 (Qld) - Environmental Protection Act 1994 (Qld) - service station at Palm Beach on Gold Coast - Town Planning Permit issued in 1987 under the now repealed Local Government Act 1936 (Qld) - first applicant lessee & operator of service station since 2004 - primary judge had been right to conclude that first applicant carrying out assessable development, being a material change of use of the site; it did not have development approval for the relevant activity; respondent was entitled to issue enforcement notice; issuing of the development permit by the Council was within power - appeal dismissed.

[Strasburger Enterprises \(Properties\) \(C\)](#)

[Strasburger Enterprises \(Properties\)](#) - decision Planning & Environment Court of Queensland 22 October 2009

Gold City Developments Pty Ltd v Portpride Pty Ltd [2010] WASC 148

Supreme Court of Western Australia

Mazza J

Commercial Arbitration Act 1985 (WA) - appellant seeking leave to appeal & to appeal against interim award made by second respondent, a arbitrator -appellant owner of land situated at Port Hedland - first respondent a builder - cost plus contract for construction on the land of six grouped dwelling units - leave refused - appeal dismissed.

[Gold City Developments \(C\)](#)

From the United Kingdom...**Thornton v Telegraph Media Group Ltd [2010] EWHC 1414 (QB)**

High Court of Justice, Queen's Bench Division

Tugendhat J

Defamation - malicious falsehood - part of a book review - application by defendant for summary judgment or alternative order - single meaning rule - definition of word 'defamatory' - varieties of defamation - personal - business or professional defamation - threshold of seriousness - application for summary judgment succeeded in relation to copy approval allegation.

[Thornton \(I\)](#)

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