



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to do a search of particular legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Australian Securities & Investments Commission v Healey & Ors - *Corporations Act 2001 (Cth)* - directors & officers - contraventions - disqualification - penalties (I, B, C)

Bader v Jelic - Personal injuries - occupier's liability - injury to respondent when attending at appellants' home unit to undertake work - appeal allowed (I)

Garage Fashions Pty Ltd v Insurance Australia Ltd t/a NRMA Insurance - Business Insurance Policy - retail fashion business - premises & contents damaged by fire - replacement cost - fixtures & fittings - business interruption - interest (I)

Thompson v NSW Land and Housing Corporation - Personal injuries - contracts - chemical exposure - foreseeability - residential tenancy agreement - termicide treatment - judgment for defendant (I)

Mariusz Zmudzinski v Cheapa Campa Pty Limited & Camper Travel Pty Ltd - Application to have proceedings transferred to Supreme Court of Queensland dismissed (I)

Traderight (NSW) Pty Ltd & Ors v Bank Of Queensland Ltd; Bank of Queensland Ltd & Ors v Traderight (NSW) Pty Ltd & Ors; Bank Of Queensland Ltd v SME Business Assist Pty Ltd & Anor; Geraghty & Palmer & Ors v Bank of Queensland; Jude Financial Services Pty Limited



(ACN 115 763 481) & Ors v Bank Of Queensland Ltd; Bank of Queensland Ltd & Ors v Industrial Court of New South Wales & Ors; SME Business Assist Pty Ltd & Anor v Bank Of Queensland Ltd & Ors; Rossmick No. 1 Pty Ltd & Ors v Bank Of Queensland Ltd; Rossmick No. 1 Pty Ltd & Ors v David Liddy & Ors` ; Jude Financial Services Pty Ltd & Ors v Bank Of Queensland Ltd & Ors; Southpole Financial Services Pty Ltd & Ors v Bank of Queensland Ltd; Best Deal Pty Ltd & Anor v Bank of Queensland Ltd; LJH Group Pty Ltd & Ors v Bank of Queensland Ltd Leokate Pty Ltd & Ors v Bank Of Queensland Ltd; Shamarbre Pty Ltd (ACN 114 377 258) ATF (as Trustees for) the Carron Trust & Anor v Bank Of Queensland Ltd - Contracts - torts - application to strike out various paragraphs of a number of statements of claim (I, B)

Luen Fook Tong Incorporated & Ors v Daphne Lowe & Ors - Incorporated Associations - issues of construction - Association's constitution (B)

King v Amaca Pty Ltd (under NSW administered winding up) - Personal injuries - mesothelioma - occupier's liability - defendant's application for judgment notwithstanding jury verdict refused (I)

Austin Bloodstock Pty Ltd & Ors v Massey - Contracts - whether a legally binding agreement was entered into - sale of a horse (B)

Re Dobrotwir - ss48 & 51 Trustee Act 1958 (Vic) - foreign trustee corporation - trustee deregistered under foreign law (B)

Director of Housing of the State of Victoria v Structx Pty Ltd (t/a Bizibuilders) & Anor - s7(2)(b) Building & Construction Industry Security of Payment Act 2002 (Vic) - Director seeking judicial review of adjudication determination (C)

Bird v Ace Insurance Ltd [2011] QSC 262 - Insurance - defendant's application for leave to take a step in the proceeding pursuant to r389(2) Uniform Civil Procedure Rules 1999 (Qld) (I)

Cornes v the Ten Group Pty Ltd & Ors (No 2) - Costs - defamation (I)

Leighton v Blundell - Personal injuries - motor vehicle accident - liability not in issue - assessment of damages (I)



Summaries with links (5 minute read)

Friday 2 September 2011

Australian Securities & Investments Commission v Healey & Ors (No 2) [2011] FCA 1003

Federal Court of Australia

Middleton J

Corporations Act 2001 (Cth) - contraventions - whether directors & officers should be relieved from liability under s1317S or s1318 - disqualification from management of corporations - penalties.

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

[ASIC](#) - decision 27 June 2011: see 'Benchmark' Wednesday 29 June 2011 - directors' duties - financial reporting - corporate governance - negligence - Centro Group - *Corporations Act 2001 (Cth)* contraventions - standard of proof - whether directors of substantial publicly listed entities are required to apply their own minds to, & carry out a careful review of, the proposed financial statements & proposed directors' report, to determine that the information they contain is consistent with the director's knowledge of the company's affairs, and that they do not omit material matters known to them or material matters that should be known to them - text, legislation & case law from United Kingdom, United States of America & Australia considered.

Bader v Jelic [2011] NSWCA 255

Court of Appeal of New South Wales

Macfarlan & Young JJA, Sackville AJA

Personal injuries - occupier's liability - s5B *Civil Liability Act 2002 (NSW)* - respondent had fallen into plate glass window when attending at appellants' home unit to undertake work - Jones v Bartlett (2000) 205 CLR 166 applied - appeal allowed - judgment for appellants.

[Bader](#) (I)

[Jones](#) - decision High Court of Australia 16 November 2000 - occupier's liability - glass door - whether respondent owners of a dwelling house at Mt Pleasant in Western Australia liable to appellant, the son of tenants of the house - appeal dismissed.

Garage Fashions Pty Ltd v Insurance Australia Ltd t/a NRMA Insurance [2011] NSWSC 968

Supreme Court of New South Wales

Schmidt J

Business Insurance Policy - retail fashion business - premises & contents damaged by fire - whether replacement cost should include mark-ups, expenses and profits - expert accounting



evidence as to value of stock - stock purchased through wholesale company - retail & wholesale companies no longer trading - fixtures & fittings - business interruption - interest - s57 *Insurance Contracts Act* 1984 (Cth) - defendant to pay plaintiff \$192,498, & interest, in respect of stock from 8 June 2011, & otherwise from 3 November 2009.

[Garage Fashions](#) (I)

Thompson v NSW Land and Housing Corporation [2011] NSWSC 941

Supreme Court of New South Wales

Hislop J

Personal injuries - contracts - chemical exposure - foreseeability - residential tenancy agreement - defendant owner of villa unit entered into written contract with pest control business to carry out pest control services - plaintiff alleging he suffered injury as result of termiticide treatment - s18A *Limitation Act* 1969 (NSW) defence rejected - defendant cross-claimed against pest control business - public liability insurance - principal controlled policy - plaintiff's duty to take care - delegation to independent contractor - judgment for defendant.

[Thompson](#) (I)

Mariusz Zmudzinski v Cheapa Campa Pty Limited & Camper Travel Pty Ltd [2011] NSWSC 996

Supreme Court of New South Wales

Black J

Application to have proceedings transferred to Supreme Court of Queensland - caravan rental insurance - application dismissed.

[Mariusz](#) (I)

Traderight (NSW) Pty Ltd & Ors v Bank Of Queensland Ltd; Bank of Queensland Ltd & Ors v Traderight (NSW) Pty Ltd & Ors; Bank Of Queensland Ltd v SME Business Assist Pty Ltd & Anor; Geraghty & Palmer & Ors v Bank of Queensland; Jude Financial Services Pty Limited (ACN 115 763 481) & Ors v Bank Of Queensland Ltd; Bank of Queensland Ltd & Ors v Industrial Court of New South Wales & Ors; SME Business Assist Pty Ltd & Anor v Bank Of Queensland Ltd & Ors; Rossmick No. 1 Pty Ltd & Ors v Bank Of Queensland Ltd; Rossmick No. 1 Pty Ltd & Ors v David Liddy & Ors; Jude Financial Services Pty Ltd & Ors v Bank Of Queensland Ltd & Ors; Southpole Financial Services Pty Ltd & Ors v Bank of Queensland Ltd; Best Deal Pty Ltd & Anor v Bank of Queensland Ltd; LJH Group Pty Ltd & Ors v Bank of Queensland Ltd Leokate Pty Ltd & Ors v Bank Of Queensland Ltd; Shamarbre Pty Ltd (ACN



114 377 258) ATF (as Trustees for) the Carron Trust & Anor v Bank Of Queensland Ltd [2011] NSWSC 972

Supreme Court of New South Wales

Ward J

Contracts - torts - application to strike out various paragraphs of a number of statements of claim - franchisees of Bank of Queensland & persons associated with them - seventeen sets of proceedings concerning ten franchises - *Industrial Relations Act 1996 (NSW)* - *Independent Contractors Act 2006 (Cth)* - *Trade Practices Act 1974 (Cth)* - claims for negligent misrepresentation & breach of warranty - *Civil Procedure Act 2005 (NSW)* - claims based on Post Opening Representations to be struck out - claims for personal injuries should not proceed till properly pleaded - Owner Manager Branch parties granted leave to replead their claims based on Post Opening Representations & to plead their claims for personal injuries.

[Traderight](#) (I, B)

Luen Fook Tong Incorporated & Ors v Daphne Lowe & Ors [2011] NSWSC 1004

Supreme Court of New South Wales

Slattery J

Incorporated Associations - issues of construction - whether Association's constitution requires committee of management elected in 2009 to retire by 31 December 2009 - whether general meetings called on 3 January 2010 & 1 May 2011 were validly called in accordance with Association's constitution - extensive consideration of United Kingdom & Australian case law.

[Luen](#) (B)

King v Amaca Pty Ltd (under NSW administered winding up) [2011] VSC 422

Supreme Court of Victoria

Kyrou J

Personal injuries - mesothelioma - occupier's liability - factory emitting asbestos dust & fibres - jury of six had returned unanimous verdict for the plaintiff in the sum of \$1,150,000 in his action in negligence against the defendant - defendant's application for judgment notwithstanding jury verdict refused.

[King](#) (I)

**Austin Bloodstock Pty Ltd & Ors v Massey [2011] VSC 421**

Supreme Court of Victoria

Pagone J

Contracts - whether a legally binding agreement was entered into between plaintiffs & defendant for sale of a horse - plaintiffs contending no legally binding agreement - defendant contending she was entitled to keep the \$750,000 paid to her & that she is entitled to specific performance of the contract hereafter.

[Austin](#) (B)**Re Dobrotwir [2011] VSC 402**

Supreme Court of Victoria

Mukhtar AsJ

ss48 & 51 *Trustee Act* 1958 (Vic) - foreign trustee corporation - trustee deregistered under foreign law - applications by beneficiaries in Victoria to appoint new trustee — rule in Saunders v Vautier - adjudication of application suspended until further order or application - an interesting decision.

[Dobrotwir](#) (B)

[Saunders](#) - Saunders v Vautier (1841) EWHC Ch J82; (1841) Cr & Ph 240, 41 ER 482 - English decision of the High Court of Chancery June 1841, Lord Cottenham LC - rule in Saunders v Vautier: where all beneficiaries of a trust are of full age & capacity, they may, acting jointly & unanimously, direct the trustee to terminate the trust & transfer full legal interest in the trust property to them, or in accordance with their direction - testator had given East India stock to trustees to accumulate the income until great nephew should attain age of twenty-five years, and then to transfer the stock and accumulations to him;

[CPT Custodian](#) - decision High Court of Australia 28 September 2005 - *Land Tax Act* 1958 (Vic) - "owner", "joint owners", "unit trust"

Director of Housing of the State of Victoria v Structx Pty Ltd (t/a Bizibuilders) & Anor [2011] VSC 410

Supreme Court of Victoria

Vickery J

s7(2)(b) *Building & Construction Industry Security of Payment Act* 2002 (Vic) - Director seeking judicial review of adjudication determination - "in the business of building residences" - whether valid payment schedule - procedural fairness - natural justice - adjudication determination quashed.

[Director](#) (C)

**Bird v Ace Insurance Ltd [2011] QSC 262**

Supreme Court of Queensland

McMeekin J

Insurance - defendant's application for leave to take a step in the proceeding pursuant to r389(2) Uniform Civil Procedure Rules 1999 (Qld) despite there having been a delay of more than two years - respondent has effectively abandoned his claim against Ace but Ace interested in maintaining its counter-claim - defendant's application refused.

[Bird](#) (I)**Cornes v the Ten Group Pty Ltd & Ors (No 2) [2011] SASC 141**

Supreme Court of South Australia

Peek J

Costs - defamation - judgment for first defendant against plaintiff - no order as to costs regarding first defendant - judgment for plaintiff against second, third, fourth & fifth defendants in sum of \$93,000 inclusive of the amount of \$8,000 for interest - subject to any specific orders for costs relating to interlocutory applications in the action, second, third, fourth & fifth defendants to pay plaintiff's costs of the action on an indemnity basis.

[Cornes](#) (I)[Cornes](#) - decision 5 July 2011: see 'Benchmark' I & IBC Tuesday 12 July 2011**Leighton v Blundell [2011] ACTSC 136**

Supreme Court of the Australian Capital Territory

Refshauge J

Personal injuries - motor vehicle accident - liability not in issue - assessment of damages - causation - domestic assistance - judgment for plaintiff in sum of \$866,266.66.

[Leighton](#) (I)

[Click Here to access our Benchmark Search Engine](#)