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Tuesday, 14 April 2015

Insurance

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Executive Summary (1 minute read)

Fletcher v Nextra Australia Pty Ltd (FCAFC) – consumer law – publication of article on internet blog was misleading and deceptive conduct – appeal dismissed

Mouti v Nguyen (NSWCA) – contract – sale of half-share in business – irreconcilable findings – appeal allowed – matter remitted

Bong Bong Town Centre v Illawarra Clay Target Club (NSWSC) – contract – lease – lessee required to remove lead contamination from land and put it in condition suitable for development

Westpac Banking Corporation v Jamieson (QCA) – negligence – damages - investment advice – bank negligent and in breach of contract – appeal and cross-appeals dismissed

Perisher Blue Pty Ltd v Nair-Smith (NSWCA) – negligence – skier injured when ski-lift chair struck her – Perisher's breach of duty did not cause skier's injuries - appeal allowed

Summaries with links (5 Minute Read)

Fletcher v Nextra Australia Pty Ltd [2015] FCAFC 52
Full Court of the Federal Court of Australia
Middleton, McKerracher & Davies JJ
Consumer law – appellant involved in newsagency industry – appellant appealed from primary judge's decision that appellant's publication of article on internet blog was misleading and deceptive conduct in contravention of s18 *Australian Consumer Law* – article criticised contents of flyer circulated by respondent – respondent was competitor of company of which appellant was director and 50% shareholder – appellant contended publishing blog not conduct in trade or commerce and that respondent did not establish representations – Sch 2 *Competition and Consumer Act 2010* (Cth) - s52 *Trade Practices Act 1974* (Cth) - held: publication of article occurred in trade or commerce - at least one representation correctly found to be representation of fact – representation false and misleading – appeal dismissed.
Fletcher

Mouti v Nguyen [2015] NSWCA 93
Court of Appeal of New South Wales
Leeming JA, Bergin CJ in Eq & Sackville AJA
Contract – appellant owned business – respondent negotiated with appellant to purchase a fifty per cent share of business - respondent paid appellant portion of agreed sale price and also worked in business for period - parties' relationship soured – appellant sold business – respondent sued for return of money – appellant cross-claimed for balance of purchase price – primary judge gave judgment for respondent and also found appellant's cross-claim made out – primary judge set off amount claimed to reduce judgment in respondent's favour - appellant appealed - respondent sought leave to appeal – whether agreement reached between parties - held: findings on main claim and cross-claim irreconcilable – primary judge erred in failing to resolve factual disputes which were pivotal to determination of parties' intentions – primary judge made factual findings that were inconsistent with evidence – Court not satisfied it was possible or appropriate to make findings whether agreement reached – appeal allowed - matter remitted for new trial.
Mouti

Bong Bong Town Centre v Illawarra Clay Target Club [2015] NSWSC 316
Supreme Court of New South Wales
McDougall J
Contract – remediation clause - plaintiff leased land to defendant club - two variations to lease – by second variation term of lease increased and new clause inserted – dispute concerned club's obligations to remediate land under clause of lease read in conjunction with clause inserted by second variation – proper construction of remediation clause – validity of notice for purposes of clause inserted by second variation - held: club liable to remove lead contamination from and otherwise make good leased land, and in default to reimburse plaintiff for doing so.

BongBong

Westpac Banking Corporation v Jamieson [2015] QCA 50
Court of Appeal of Queensland
McMurdo P, Morrison JA & Applegarth J
Negligence – investment advice – damages - primary judge found bank in breach of contract and negligent in provision of investment advice – primary judge also found bank's conduct misleading or deceptive or likely to mislead or deceive in contravention of s12DA(1) *Australian Securities and Investments Commission Act 2001* (Cth) – parties appealed and cross-appealed – held: bank's appeal against finding of liability in respect of superannuation investment dismissed - respondents' cross-appeal against decision to limit damages in relation to superannuation fund loan to two years' interest payments dismissed – first respondent's cross-appeal concerning methodology to gross-up his net loss dismissed.
Westpac

Perisher Blue Pty Ltd v Nair-Smith [2015] NSWCA 90
Court of Appeal of New South Wales
Barrett & Gleeson JJA; Tobias AJA
Negligence – causation - appellant operated ski fields– respondent injured when ski-lift chair struck her – respondent sued appellant for damages and breach of contract – primary judge upheld claim - appellant appealed – held: lift operator's failure to observe condition of chair as it exited bullwheel constituted breach of appellant's duty of care - not open to primary judge to conclude appellant's breach was necessary condition of occurrence of harm - respondent's injuries not materialisation of inherent risk - limitations on damages imposed by Pt 2 were invalid under s109 Constitution - limitations directly inconsistent with right to "full contractual liability" conferred by s74(1) *Trade Practices Act 1975* (NSW) (TPA) - ticket contract was for supply of "recreational services" under s68(2) TPA - term of ticket contract which excluded liability for more than personal injury or death was void by operation of s68 TPA – appeal allowed.
Perisher

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