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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bellbird Ridge Pty Ltd as trustee for Bellbird Ridge Unit Trust v Chief Commissioner of State Revenue (NSWSC) - taxes and duties - exemption pursuant to s10AA *Land Tax Management Act 1956* (NSW) - 2011 assessment revoked - 2012-2015 assessments confirmed

Moloney v Adams t/as Tri-Meridian Corporate and Commercial Law (SASC) - solicitors' costs - compromise of proceedings did not preclude appellant from invoking remedies under s42(7) *Legal Practitioners Act 1981* (SA) - appeal allowed

Habitat 1 Pty Ltd v Formby (WASC) - restraint of trade - balance of convenience favoured injunction - interlocutory injunction granted

Allianz Australia Insurance Ltd v Smeaton (ACTCA) - insurance - boating accident - loss giving rise to claim not caused by unlicensed driving - insurer not entitled to refuse to indemnify respondents - appeal dismissed

Fogarty v CGU Insurance Ltd (ACTCA) - contract - insurance - no breach by insurer of obligation to repair or duty of utmost good faith - appeal dismissed

Summaries With Link (Five Minute Read)

[Bellbird Ridge Pty Ltd as trustee for Bellbird Ridge Unit Trust v Chief Commissioner of State Revenue \[2016\] NSWSC 1637](#)

Supreme Court of New South Wales

White J

Taxes and duties - taxpayer sought review of Chief Commissioner of State Revenue's decisions to issue land tax assessments on basis of exemption pursuant to s10AA *Land Tax Management Act 1956* (NSW) - held: use of land for grazing cattle was dominant use for land tax years in question - 2011 assessment revoked - in relation to 2012-2015 years Court concluded land's primary production use did not have commercial purpose or character under s10AA - 2012-2015 assessments confirmed.

[Bellbird](#)

Moloney v Adams t/as Tri-Meridian Corporate and Commercial Law [2016] SASC 177

Supreme Court of South Australia

Stanley J

Solicitors' costs - appellant retained respondent to represent him in proceedings - appellant executed costs agreement - dispute arose concerning payment of fees - respondent sought in District Court to recover fees - appellant sought fixing of legal costs - appellant challenged validity of costs agreement and sought that it be 'set aside' - appellant, in application for fixing of costs, sought adjudication of invoices - District Court proceedings settled by Deed of Settlement and Release - appellant appealed from decision in which Master held appellant precluded by deed from entitlement to seek that costs agreement be rescinded or varied - s42 *Legal Practitioners Act 1981* (SA) - held: compromise preserved appellant's right to invoke remedies under s42(7) of the Act - appeal allowed.

[Moloney](#)

Habitat 1 Pty Ltd v Formby [2016] WASC 376

Supreme Court of Western Australia

Banks-Smith J

Restraint of trade - plaintiff contended first defendant, which it formerly employed, had taken steps to establish business and interfere with plaintiff's relationship with clients and suppliers, and had sought to transfer plaintiff's name to third defendant company he controlled - plaintiff sought to enforce restraint of trade clause in executive sale agreement and sought recovery of loans - plaintiff sought injunction to enforce aspects of restraint of trade clause - held: Court satisfied that balance of convenience favoured injunction - interlocutory injunction granted.

[Habitat 1](#)

Allianz Australia Insurance Ltd v Smeaton [2016] ACTCA 59

Court of Appeal of the Australian Capital Territory

Burns, Elkaim & Perry JJ

Insurance - third respondent injured in boating accident involving jet ski driven by second respondent and owned by first respondent - appellant insured jet ski - third respondent sued first and second respondents - appellant refused to indemnify respondents - appellant joined to the proceedings - primary judge found in third respondent's favour against first and second

respondents - primary judge found in first and second respondents' favour against appellant - primary judge found loss giving rise to claim not caused by unlicensed driving and insurer not entitled to refuse to pay claim for that reason - s19 *Civil Liability Act 2003* (Qld) - ss54(2) & 54(3) *Insurance Contracts Act 1984* (Cth) - s95(3) *Transport Operations (Marine Safety) Regulations 2004* (Qld) - held: relevant licencing requirements were New South Wales - compliance with licencing requirements prior to accident would not have made different to second respondent's actions - result would have been no different if Queensland licencing requirements applied - appeal dismissed.

[Allianz](#)

Fogarty v CGU Insurance Ltd [2016] ACTCA 62

Court of Appeal of the Australian Capital Territory
Refshauge, Burns & Perry JJ

Contract - insurance - respondent insurer entered contract with appellant insured to insure building and contents against accidental loss or damage, including damage by fire - fire occurred in kitchen of premises - insurer accepted claim and elected to repair damage - dispute arose in relation to damage caused to three kitchen floorboards - insured sued insurer under s57 *Insurance Contracts Act 1984* (Cth) for cost of repairs - primary judge found Magistrate erred in finding insurer breached contractual obligation to repair and in finding insurer breached duty of utmost good faith - insured appealed - held: insurer stood willing to discharge obligations - no occasion for breach of insurance contract had arisen - no error in decision of primary judge on liability - appeal dismissed.

[Fogarty](#)

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