



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Leveraged Equities Ltd v Goodridge Contracts - assignment - construction of margin lending loan & securities agreement - appeals allowed breach of contract by unauthorised sale of applicant's property - damages - mitigation. (B)

La Trobe Capital & Mortgage Corporation Ltd v Hay Property Consultants Pty Ltd - Negligence - measure of damages - causation - land valuation - appeal allowed (I, B)

Commissioner of Taxation v Clark - *Income Tax Assessment Act 1936* (Cth) - continuity of trust estate - appeal dismissed (B)

Copenhagen Reinsurance Company Ltd, in the matter of the application of The Copenhagen Reinsurance Company Ltd - *Insurance Act 1973* (Cth) - scheme confirmed. (I)

Munich Reinsurance America Inc, in the matter of Munich Reinsurance America Inc (no 2) - *Insurance Act 1973* (Cth) - scheme confirmed. (I)

Australian Competition & Consumer Commission v Robinson - *Trade Practices Act 1974* (Cth) - eBay sales - fire hazard labelling - fines imposed (I)

Primus Telecommunications Pty Ltd v Kooee Communications Pty Ltd - s51A(1)(a) *Trade*



Practices Act 1974 (Cth) - applicable rates of interest in respect of pre-judgment period to be included in a judgment (I, B, C)

Altain Khuder LLC v IMC Mining Inc & Anor - *International Arbitration Act 1974 (Cth) - recognition & enforcement of foreign arbitral award (I, B, C)*

T & M Buckley Pty Ltd v 57 Moss Rd Pty Ltd - *Building & Construction Industry Payments Act 2004 (Qld) - leave to appeal summary judgment refused - leave to cross-appeal granted (C)*

St Clair v Timtalla Pty Ltd & Anor (No 2) - *Costs - claim for indemnity costs - use of "and/or" in pleadings (I, B, C)*

Applebee v Alsaffar - *Discovery of documents - hospital records as to similar incidents during similar operations (I)*

Helmhout v Apostoloff & Ors; Dempsey-Fiddes v Commonwealth of Australia & Anor; Reynders v Commonwealth of Australia & Anor - *Personal injuries - whether agent can appear for a corporation - the position of amicus curiae - supply of particulars (I)*

K & J Burns Electrical Pty Ltd v GRD Group (NT) Pty Ltd & Anor (NT) Pty Ltd & Anor - *Construction Contracts (Security of Payments) Act 2004 (NT) - appeal allowed (C)*



Summaries with links (5 minute read)

Tuesday 1 February 2011

Leveraged Equities Ltd v Goodridge [2011] FCAFC 3

Full Court of the Federal Court of Australia

Finkelstein, Stone & Jacobson JJ (in Sydney)

Contracts - assignment - construction of margin lending loan & securities agreement - appeals allowed - comprehensive consideration of case law from Australia, New Zealand, the United Kingdom. & United States of America.

[Leveraged Equities](#) (B)

[Goodridge](#) - decision 12 February 2010: see 'Benchmark' I, B & IBC Tuesday 16 February 2010 - banker & customer - contracts - novation - privity - margin lending - loan & security agreement - *Conveyancing Act* 1919 (NSW) - statutory assignment under s12 - whether unconscionable conduct within s12CA or s12CB *Australian Securities & Investments Commission Act* 2001 (Cth) - breach of contract by unauthorised sale of applicant's property - damages - mitigation.

La Trobe Capital & Mortgage Corporation Limited v Hay Property Consultants Pty Ltd [2011] FCAFC 4

Full Court of the Federal Court of Australia

Finkelstein, Jacobson & Besanko JJ (in Melbourne)

Negligence - measure of damages - causation - respondent negligently valued land for purposes of a loan - loss of a chance - standard of proof - what constitutes opinion evidence - appeal allowed - judgment for appellant in sum of \$259,291.35.

[La Trobe Capital & Mortgage Corporation](#) (I, B)

[La Trobe Capital & Mortgage Corporation](#) - decision 18 March 2010: see 'Benchmark' I, B & IBC Monday 22 March 2010 - *Trade Practices Act* 1974 (Cth) - whether applicant suffered loss or damage as a result of respondent's breach of s52 & whether this conduct induced it to enter into a loan agreement that it would otherwise not have entered into - application dismissed.

Commissioner of Taxation v Clark [2011] FCAFC 5

Full Court of the Federal Court of Australia

Dowsett, Edmonds & Gordon JJ (in Brisbane)

Div 6 of Pt III *Income Tax Assessment Act* 1936 (Cth) - continuity of trust estate - appeal dismissed.

[Clark](#) (B)



[Clark](#) - decision 30 November 2009: see 'Benchmark' I & IBC Thursday 3 December 2009 - taxation - trust income - capital gains - Commissioner contending break in continuity - whether taxpayer had established on balance of probabilities that trustee of trust estate acquired shares in Rothwells Limited in 1988 - Trust Deed - Joint Venture Deed - Unit Transfer Deeds - Release & Discharge Deed - detailed consideration of principles & case law.

Copenhagen Reinsurance Company Ltd, in the matter of the application of The Copenhagen Reinsurance Company Ltd [2011] FCA 23

Federal Court of Australia

Edmonds J (in Sydney)

Insurance Act 1973 (Cth) - transfer of general insurance business of Australian branch of foreign insurer to Australian company within same group of companies - application to Court for confirmation of scheme - scheme confirmed.

[Copenhagen Reinsurance Company](#) (I)

Munich Reinsurance America Inc, in the matter of Munich Reinsurance America Inc (no 2) [2011] FCA 9

Federal Court of Australia

Stone J (in Sydney)

Insurance Act 1973 (Cth) - scheme for transfer of Australian direct insurance business of Munich Reinsurance America, Inc. to Australian branch of Great Lakes Reinsurance (UK) plc confirmed.

[Munich Reinsurance America Inc](#) (I)

Australian Competition & Consumer Commission v Robinson [2011] FCA 17

Federal Court of Australia

Besanko J (in Adelaide)

Trade Practices Act 1974 (Cth) - sentencing of defendant for eight offences under s75AZS(1) where defendant pleaded guilty to eight offences - sleeping bags imported from China sold on eBay did not comply with relevant Australian Standard in relation to fire hazard labelling - fines imposed.

[Robinson](#) (I)

Primus Telecommunications Pty Ltd v Kooee Communications Pty Ltd [2011] FCA 8

Federal Court of Australia

Marshall J (in Melbourne)

s51A(1)(a) *Trade Practices Act 1974 (Cth)* - applicable rates of interest in respect of pre-judgment period to be included in a judgment - rates agreed upon by Discount & Interest Rate



Harmonisation Committee established following a referral by Council of Chief Justices of Australia & New Zealand - misleading & deceptive conduct - reliance - loss & damage - judgment for applicant in sum of \$2,386,349.

[Primus Telecommunications](#) (I, B, C)

Altain Khuder LLC v IMC Mining Inc & Anor [2011] VSC 1

Supreme Court of Victoria

Croft J (in Melbourne)

International Arbitration Act 1974 (Cth) - recognition & enforcement of foreign arbitral award - Mongolia - Convention on the recognition & Enforcement of Foreign Arbitral awards, New York, 1958 - estoppel - second defendant's summons to set aside orders of 20 August 2010 enforcing the award dismissed - detailed examination of case law from the United Kingdom, United States of America, Hong Kong & Singapore.

[Altain Khuder LLC v IMC Mining Inc & Anor \[2011\] VSC 1 \(28 January 2011\)](#) (I, B, C)

T & M Buckley Pty Ltd v 57 Moss Rd Pty Ltd [2010] QCA 381

Court of Appeal of Queensland

Fraser & White JJA; Philippides J

Building & Construction Industry Payments Act 2004 (Qld) - summary judgment had been given in favour of respondent on a part of payment claim in sum of \$19,100.74 - leave to appeal summary judgment sought - leave to appeal refused - leave to cross-appeal granted: summary judgment for respondent in sum of \$77,563 together with interest.

[T & M Buckley](#) (C)

St Clair v Timtalla Pty Ltd & Anor (No 2) [2010] QSC 480

Supreme Court of Queensland

Martin J

Costs - claim for indemnity costs - use of "and/or" in pleadings - whether Statement of Claim alleged defendants to be jointly or jointly & severally liable - whether an offer to settle was made to all defendants - an interesting decision, with detailed examination of case law from Australia, the United Kingdom & United States of America.

[St Clair](#) (I, B, C)

[St Clair](#)- decision 20 August 2010 - personal injuries - helicopter accident - claim against first defendant dismissed - judgment against fifth defendant (ATA) in sum of \$1,729,566.

**Applebee v Alsaffar [2011] TASSC 1**

Supreme Court of Tasmania

Blow J

Discovery of documents - claim of negligence during surgical operation - hospital records as to similar incidents during similar operations - records in question are relevant and discoverable for the purposes of rr386(1) *Supreme Court Rules 2000* (Tas.)

[Applebee](#) (I)**Helmhout v Apostoloff & Ors; Dempsey-Fiddes v Commonwealth of Australia & Anor; Reynders v Commonwealth of Australia & Anor [2011] ACTSC 2**

Supreme Court of the Australian Capital Territory

Refshauge J

Personal injuries - plaintiff alleging administration of capsicum spray - whether agent can appear for a corporation - the position of *amicus curiae* - supply of particulars - CCTV footage - comprehensive consideration of text & case law from Australia & U.K.

[Helmhout v Apostolof](#) (I)**K & J Burns Electrical Pty Ltd v GRD Group (NT) Pty Ltd & Anor (NT) Pty Ltd & Anor [2011] NTCA 1**

Court of Appeal of the Northern Territory

Southwood & Kelly JJ; Olsson AJ

Security of payments legislation - *Construction Contracts (Security of Payments) Act 2004* (NT) - appeal allowed & decision of adjudicator restored - cross-appeal dismissed - extensive consideration of U.K. & Australian case law.

[K & J Burns Electrical](#) (C)

[GRD Group \(NT\)](#)- decision 28 June 2010: see 'Benchmark' C & IBC Tuesday 6 July 2010 - payment claims - subcontract - lump sum contract for electrical work - remedial works - late completion - in relation to summary invoice, adjudicator had lacked jurisdiction except for so much of the SI as related to the balance of the retention fund.



William Charles Piguenit

Australian painter

(b. Hobart, Tasmania 1836 - d. Hunters Hill, NSW 1914)

[Turner to Monet | W.C. PIGUENIT | The flood in the Darling 1890](#)

- the painting is part of the Art Gallery of NSW collection

[DAAO William Charles Piguenit](#)

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