



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commissioner of Taxation v Wentworth District Capital Ltd - s50-10 *Income Tax Assessment Act* 1997 (Cth) - "community service purposes" - appeal dismissed (B)

Zurich Australian Insurance Ltd v GIO General - Double insurance (I)

Kation Pty Ltd v Lamru Pty Ltd - s54(4) *Limitation Act* 1969 (NSW) (I, B, C)

Mrocki & Anor v Mountview Prestige Homes Pty Ltd - Building contracts - amended Housing Industry Association 'cost plus' contract (C)

Oakland Investments (Aust) Ltd v 'Certain Underwriters at Lloyds' & Ors - Mortgage indemnity cover (I, C)

Maher v Attorney-General for the State of Queensland & Anor - Charitable gifts & trusts (B)

Mace v Malone - *Succession Act* 1981 (Qld) - application for order authorising a will in certain terms be made - application dismissed (B)

Tasmania v Lin - Criminal prosecution - deflection of public officers from public duties (I, B, C)



Baturina v Times Newspapers Ltd - case from the United Kingdom - libel action - appeal & cross-appeal in relation to preliminary rulings (I)

Summaries with links (5 minute read)

Friday 1 April 2011

Commissioner of Taxation v Wentworth District Capital Ltd [2011] FCAFC 42

Full Court of the Federal Court of Australia

Emmett, Gilmour & Gordon JJ (in Sydney)

s50-10 *Income Tax Assessment Act* 1997 (Cth) - whether entity established to facilitate face-to-face banking services in rural town without face-to-face banking services was established for "community service purposes" - appeal dismissed.

[Commissioner of Taxation](#) (B)

[Wentworth District Capital](#) - decision 13 August 2010: see 'Benchmark' B & IBC Tuesday 17 August 2010 - income exempt under s50-1 of the 1997 Act.

Zurich Australian Insurance Ltd v GIO General Ltd [2011] NSWCA 47

Court of Appeal of New South Wales

Allsop P; Giles & Young JJA

Double insurance - contribution between insurers - appeal against dismissal of claim for contribution - appeal allowed.

[Zurich Australian Insurance](#) (I)

[Zurich Australian Insurance](#) - decision 19 February 2010: see 'Benchmark' I & IBC Monday 22 February 2010 - double insurance - equitable contribution between two insurers - at time of relevant accident, plaintiff Zurich bound by third-party policy under *Motor Accidents Compensation Act* 1999 (NSW) in respect of a bus - defendant GIO was at the time, bound by a policy of workers compensation insurance in respect of all workers employed by Tiger Tours (Management) Pty Ltd - 'registered operator' of the vehicle, within the meaning *Road Transport (Vehicle Registration) Act* 1997 (NSW) was Caringbah Bus Service Pty Ltd - 'owner' - no basis for operation of double insurance - proceedings dismissed;

[Albion Insurance](#) - decision High Court of Australia 31 October 1969

Kation Pty Ltd v Lamru Pty Ltd [2011] NSWSC 219

Supreme Court of New South Wales



White J

s54(4) *Limitation Act* 1969 (NSW) - appeal from orders refusing application for summary dismissal - defendant's application dismissed - principle of 'authenticated signature fiction': detailed consideration of the United Kingdom & Australian case law.

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

Mrocki & Anor v Mountview Prestige Homes Pty Ltd [2011] VSCA 73

Court of Appeal of Victoria

Harper JA & Kyrou AJA

Building contracts - amended Housing Industry Association 'cost plus' contract - appeal had been allowed from a decision of Victorian Civil & Administrative Tribunal but not the remitting of the proceeding - leave to appeal granted to owners.

[Mrocki](#) (C)

[Mrocki](#) - decision 22 December 2010 - building contracts - interpretation - warranties - domestic building work - whether written contract uncertain to such an extent that no contract - whether two swimming pools included in the contract works - whether contract works included, by variation, paving and landscaping

Oakland Investments (Aust) Ltd v 'Certain Underwriters at Lloyds' & Ors [2011] QSC 55

Supreme Court of Queensland

Martin J

Mortgage indemnity cover - construction of two policies - proceeding arising out of plaintiff's claim that the defendants have refused to indemnify it with respect to claims under those policies and that the defendants have refused to refund mistaken overpaid premiums - plaintiff seeking summary judgment in relation to parts of claim - judgment for plaintiff against second defendant in sum of \$195,000 - need for trial as to whether policies excuses payment of premiums simply upon the default of a borrower.

[Oakland Investments](#) (I, C)

Maher v Attorney-General for the State of Queensland & Anor [2011] QSC 61

Supreme Court of Queensland

Philippides J

Charitable gifts & trusts - institution ceasing to exist - St Vincent's Orphanage no longer existed at the time the testator signed his will - whether gift lapsing - four exceptions to the lapse rule - whether general charitable intent - answer 'yes' - Australian case law considered.



[Maher](#) (B)

Mace v Malone [2011] QSC 49

Supreme Court of Queensland

Daubney J

Succession Act 1981 (Qld) - application for order authorising a will in certain terms be made - testator does not have testamentary capacity - testator has an existing will - application dismissed - consideration of the United Kingdom & Australian legislation & case law.

[Mace](#) (B)

Tasmania v Lin [2011] TASSC 14

Supreme Court of Tasmania

Blow J

Criminal Law - deflection of public officers from public duties - prosecution under *Living Marine Resources Management Act* 1995 (Tas.) - what public duties can be the foundation of a conspiracy charge.

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

From the United Kingdom...

Baturina v Times Newspapers Ltd [2011] EWCA Civ 308

Court of Appeal of England & Wales

Lord Neuberger MR; Sedley & Hooper LJJ

Libel action- appeal & cross-appeal in relation to preliminary rulings - alleged libel contained in a newspaper article which also appeared on website where it remained for two days - primary judge had decided the claim should be permitted to proceed against two of four classes of alleged readers of the article, but dismissed the claim in so far as it related to two other classes of reader - appeal allowed for claim in respect of all four categories of reader - cross-appeal allowed to the extent of requiring appellant to identify readers in the various categories, who, on reading the article or the trailer, inferred the innuendo meaning which she alleges that they had.

[Baturina](#) (I)



And on 1 April 1845, at Warwick Assizes ...

R v Hall

On 1 April 1845 Mr. Justice Maule presided at the bigamy trial of Thomas Hall, alias Pollins [or Rollins?] at the Warwick Spring Assizes. Hall, thirty-five, had married one Maria Hadley after he & his children had been deserted by his wife, who had gone to live with another man. In a famous passage in his remarks on sentencing Hall, Maule J with solemn irony set out the procedure for obtaining a divorce in those days - the only way the prisoner could have become free to remarry was by a complicated & expensive procedure, quite beyond the means of all but the wealthy, involving a decree in the Ecclesiastical Courts followed by a private Act of Parliament.

“..... I will tell you what you ought to have done; ... You ought to have instructed your attorney to bring an action against the seducer of your wife for criminal conversation [*an action for damages based upon adultery*]. That would have cost you about a hundred pounds. When you had obtained judgment for (though not necessarily actually recovered) substantial damages against him, you should have instructed your proctor [*a lawyer practising in the ecclesiastical courts*] to sue in the Ecclesiastical Courts for a divorce *a mensa et thoro*. That would have cost you two hundred or three hundred pounds more. When you had obtained a divorce *a mensa et thoro*, you should have appeared by Counsel before the House of Lords in order to obtain a private Act of Parliament for a divorce *a vinculo matrimonii* which would have rendered you free and legally competent to marry the person whom you have taken on yourself to marry with no such sanction. The Bill might possibly have been opposed in all its stages in both Houses of Parliament, and together you would have had to spend about a thousand or twelve hundred pounds. You will probably tell me that you have never had a thousand farthings of your own in the world; but, prisoner, that makes no difference. Sitting here as an English Judge, it is my duty to tell you that this is not a country in which there is one law for the rich and one for the poor ...”

The two sentences that are usually then included in quoting this famous judgment are as follows: “You will be imprisoned for one day. Since you have been in custody since the commencement of the Assizes you are free to leave.” However, it appears that the original Times law report of the Assizes in 1845 showed that the sentence imposed was actually imprisonment for four months with hard labour, in Maule J’s words: “as a warning how people trifled with matrimony.”

See the interesting article on Mr Justice Maule in “The Western Circuiter,” the newsletter of the Western Circuit Issue no. 9 in 2000.



[The Newsletter of The Western Circuit Issue9•MichaelmasTerm 2000 ...](#)

[Matrimonial Causes Act 1857 - Wikipedia, the free encyclopedia](#)

The Matrimonial Causes Act 1857 (20 & 21 Vict., c. 85) modernised the law on divorce, moving litigation from the jurisdiction of the ecclesiastical courts to the civil courts & widening the availability of divorce beyond the privileged few.

[Matrimonial Causes Act 1937 - Wikipedia, the free encyclopedia](#)

In 1934 A. P. Herbert [of 'Misleading Cases' fame] published his best-selling novel "Holy Deadlock" in which he sought to highlight the need for divorce law reform - he was elected as an Independent MP for the Oxford University constituency in November 1935 - divorce reform had been a principal plank in his electoral platform & he arrived at Westminster with a private member's bill prepared - the Matrimonial Causes Act passed into law in 1937.

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