

Tuesday 1 May 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

National Rugby League Investments Pty Ltd v Singtel Optus Pty Ltd - Copyright Act 1968 (Cth) - statutory interpretation - appeal allowed (I, B, C, G)

Meaden v Bell Potter Securities Ltd (No 2) - Application for order that proceedings no longer continue as representative proceedings (B)

Yum! Restaurants Australia Pty Ltd v Full Bench of Fair Work Australia (No 2) - Costs - s570 Fair Work Act 2009 - Fair Work (Transitional Provisions & Consequential Amendments) Act 2009 (Cth) (I)

Eastern Pearl Corporation v Groundhog Sales and Rentals Pty Ltd - s82 Trade Practices Act 1974 (Cth) - Goods Act 1958 (Vic) - contracts (C)

Saad v City of Canterbury - Easements - Conveyancing Act 1919 (NSW) (C)

Narradine Pty Ltd & Anor v Mascot Steel and Tools Pty Ltd & Ors - Application for security for costs (I, B, C, G)



Cassegrain & Ors v Gerard Cassegrain & Co Pty Ltd & Ors - Trusts - fiduciary duties - knowing receipt - oppression (B)

Wain & Ors v Drapac & Ors - ss232 & 233 *Corporations Act* 2001 (Cth) - oppression (B)

State of Victoria v Grawin Pty Ltd - *Commercial Arbitration Act* 1984 (Vic) - costs (I, B, C, G)

Base 1 Projects Pty Ltd v Islamic College of Brisbane Ltd - Appeal against security for costs decision dismissed (C)

Tasmanian Advanced Minerals Pty Ltd v Forestry Tasmania - *Forestry Act* 1920 (Tas) - *Government Business Enterprises Act* 1995 (Tas) - statutory interpretation (C)

Davey v Herbst, Herbst & Bray (No 2) - Application for security for costs of appeal refused (I, B, C, G)

Seldon (app) v Clarkson Wright & Jakes (a partnership) - UK decision - employment law - age discrimination - direct discrimination - appeal dismissed (I, B, C, G)

Homer (app) v Chief Constable of West Yorkshire Police - UK decision - employment law - age discrimination - indirect discrimination - appeal allowed (I, B, C, G)

Summaries with links (5 minute read)

National Rugby League Investments Pty Ltd v Singtel Optus Pty Ltd [2012] FCAFC 59

Full Court of the Federal Court of Australia

Finn, Emmett & Bennett JJ

Copyright Act 1968 (Cth) - statutory interpretation - see par 3 to 7 of the joint judgment as to the two primary issues raised on appeal, and the Full Court's conclusions on each - appeal allowed.

[National Rugby League Investments](#) (I, B, C, G)

[Singtel Optus](#) - decision Federal Court of Australia 1 February 2012: see Benchmark Friday 3 February 2012 – s111 *Copyright Act* 1968 (Cth) - whether Optus, through operation of its TV Now service, infringed copyright interests of AFL, NRL & Telstra in free to air broadcasts of some live & filmed AFL & NRL games played in September 2011 – 7 principal legal issues on application of the Act to the TV Now service - Optus succeeded on the separate issues: Optus' TV Now service did not infringe copyright in the broadcasts of AFL & NRL games in the particular ways the rightholders alleged.

**Meaden v Bell Potter Securities Ltd (No 2) [2012] FCA 418**

Federal Court of Australia

Edmonds J

Representative proceedings - *Federal Court of Australia Act 1976 (Cth)* - application by respondent for an order pursuant to s33N that proceedings no longer continue as representative proceedings under Pt IVA of the Act - application granted.

[Meaden \(B\)](#)

Yum! Restaurants Australia Pty Ltd v Full Bench of Fair Work Australia (No 2) [2012] FCA 419

Federal Court of Australia

Cowdroy J

S570 *Fair Work Act 2009 - Fair Work (Transitional Provisions & Consequential Amendments) Act 2009 (Cth)* - statutory interpretation - application by second respondent for order that its costs in each of two proceeding be paid by unsuccessful applicants, namely Yum! Restaurants Australia & Kentucky Fried Chicken Pty Ltd - matters arising - the Court was not empowered to make any order in favour of second respondent for costs of proceedings, nor of the application for costs - applications dismissed.

[Yum! Restaurants Australia \(I\)](#)

[Polites](#) - decision High Court of Australia 20 June 1991 reported at (1991) 173 CLR 78

Eastern Pearl Corporation v Groundhog Sales and Rentals Pty Ltd [2012] FCA 406

Federal Court of Australia

Marshall J

S82 *Trade Practices Act 1974 (Cth) - Goods Act 1958 (Vic)* - contracts - joint venture - earthmoving equipment - first respondent to pay applicant sum of \$499,641.33 damages for breach of contract - application otherwise dismissed - cross-claim dismissed.

[Eastern Pearl \(C\)](#)

Saad v City of Canterbury [2012] NSWSC 389

Supreme Court of New South Wales

Nicholas J

Easements - *Conveyancing Act 1919 (NSW)* - plaintiff seeking order under s88K imposing right of carriageway over land owned by defendant - requirements of s88K(2) & s88K(4) met.

[Saad \(C\)](#)

**Narradine Pty Ltd & Anor v Mascot Steel and Tools Pty Ltd & Ors [2012] NSWSC 385**

Supreme Court of New South Wales

Black J

Application for security for costs - first plaintiff to provide security for defendants' costs of proceedings - UK & Australian case law considered.

[Narradine](#) (I, B, C, G)

Cassegrain & Ors v Gerard Cassegrain & Co Pty Ltd & Ors [2012] NSWSC 403

Supreme Court of New South Wales

Bergin CJ in Eq

Trusts - impugned share transactions - fiduciary duties - knowing receipt - s37A *Conveyancing Act* 1919 (NSW) - ss232 & 1318 *Corporations Act* 2001 (Cth) - oppression - plaintiffs entitled to relief - cross-claim dismissed - extensive consideration of UK & Australian case law.

[Cassegrain](#) (B)

Wain & Ors v Drapac & Ors [2012] VSC 156

Supreme Court of Victoria

Ferguson J

Ss232 & 233 *Corporations Act* 2001 (Cth) - oppression - whether plaintiffs, 2 former employees, beneficially entitled to shares & other interests registered in their names or whether they held them for benefit of entities controlled by former employer - plaintiffs beneficial owners of share & units issued to them.

[Wain](#) (B)

State of Victoria v Grawin Pty Ltd [2012] VSC 157

Supreme Court of Victoria

Croft J

Commercial Arbitration Act 1984 (Vic) - State seeking leave to discontinue present proceeding - defendant not opposing that course - issue between parties arises in relation to question of costs - State granted leave to discontinue & ordered to pay costs of defendant on party/ party basis.

[State of Victoria](#) (I, B, C, G)

[Commercial Arbitration Act 1984](#)

**Base 1 Projects Pty Ltd v Islamic College of Brisbane Ltd [2012] QCA 114**

Court of Appeal of Queensland

McMurdo P, Wilson AJA & Applegarth J

Building & Construction Industry Payments Act 2004 (Qld) - appeal against primary judge's decision that appellant provide security for costs in sum of \$90,000 - appeal dismissed.

[Base 1 Projects](#) (C)

Tasmanian Advanced Minerals Pty Ltd v Forestry Tasmania [2012] TASSC 20

Supreme Court of Tasmania

Porter J

Forestry Act 1920 (Tas) - *Government Business Enterprises Act 1995* (Tas) - statutory interpretation - whether Forestry Tasmania has power to impose any charge in respect of applicant's use of State forest roads - if so, nature of the charge - toll - applicant had not established that respondent did not have power to impose a charge.

[Tasmanian Advanced Minerals](#) (C)

Davey v Herbst, Herbst & Bray (No 2) [2012] ACTCA 19

Court of Appeal of the Australian Capital Territory

Refshauge J

Application for security for costs of appeal - comprehensive consideration of UK & Australian case law - application for security refused.

[Davey](#) (I, B, C, G)

From the United Kingdom...

Seldon (app) v Clarkson Wright & Jakes (a partnership) [2012] UKSC 16

Supreme Court of the United Kingdom

Hope, Hale, Brown, Mance & Kerr LJ

Employment law - age discrimination - direct discrimination - *Employment Equality (Age) Regulations 2006* (UK) - *Equality Act 2010* (UK) - the developing Luxembourg jurisprudence - issue as to which policy considerations justify such discrimination - partnership deed - law firm - mandatory retirement at age 65 - inter-generational fairness - dignity - see par 68-69 of judgment of Lady Hale: appeal dismissed.

[Seldon](#) (I, B, C, G)

[Press summary](#)



Homer (app) v Chief Constable of West Yorkshire Police [2012] UKSC 15

Supreme Court of the United Kingdom

Hope, Hale, Brown, Mance & Kerr LJJ

Employment law - age discrimination - indirect discrimination - *Employment Equality (Age) Regulations 2006 (UK)* - Equality Act 2010 (UK) - appeal allowed.

[Homer \(L, B, C, G\)](#)

[Press summary](#)

The Curse of St. Custard's

Nigel Molesworth, the self-styled "curse of st custards" which is the skool I am at, "is here giving some tips on how to divert a Latin master's attention, thereby avoiding having to do the boring exercise the class has been set - Molesworth has asked the teacher: "What is the use of Latin, sir?" Now read on:

Master clutches the board ruber but he knos he is beaten this one always rouses the mob. The class breaks into an uproar with boos catcalls & cries of "Answer!"

The master begin

er well er that er quite simple molesworth. latin is er classicks you know and classicks are - well they are er - they are the studies of the ancient peoples.

Sir Nigel Molesworth Q.C. So what?

er latin gives you not only the history of Rome but er (*hapy inspiration*) its culture, it er tells you about interesting men like J. Caesar, hannibal, livy, Romulus remus and er lars porsena of elusium.

Sir Nigel Molesworth Q.C. And the Gauls you do not mention the Gauls. Would you not consider them interesting.

O most certainly.

Sir Nigel Molesworth Q.C. (consulting his brief) I observe from the work of this class that the Gauls hav atacked the camp with shouts they hav frightened the citizens they hav killed the enemy with darts & arows and blamed the belgians. They hav also continued to march into Italy. Would it not be more interesting if they did something new?

er possibly

Sir Nigel Molesworth Q.C. Would you perhaps explane why latin never deals with the



exploits of nero and one or two of the fruitier emperors. Or empresses for that mater ?

(The master is silent clutching the board ruber convulsilvely. Sir Nigel looks round the court with a meaning look.)

That is my case, m'lud.

(He sits down on the inkwell which peason [Peason is Molesworth's best friend] hav shoved under him.)

The above fantasy - Molesworth immediately concedes to the reader " Actually it never really happens like that. You have to listen to the same old stuff about latin giving you depth & background" - is described by Molesworth in Chapter 3 "Akquire Culture & keep the Brane Clean" of the book " How to be Topp" by Geoffrey Willans, with illustrations by Ronald Searle, first published in 1954 – earlier in the same chapter, Molesworth writes about how the masters think they can trick pupils into liking Latin by having a Latin play. "Latin plas are like this," writes Molesworth – "The Hogwarts by Marcus Plautus Molesworthus" – a small amount of dialogue in this playlet is in Latin (eg: "Eheu !" meaning "O dear !") & the masters watching react with "larffter they are in stiches."

Geoffrey Willans

(4 February 1911 – 6 August 1958)

[Geoffrey Willans - Wikipedia, the free encyclopedia](#)

Ronald Searle

(3 March 1920 – 30 December 2011)

[Ronald Searle - Wikipedia, the free encyclopedia](#)

[Ronald Searle Tribute: Molesworth](#)

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