



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Esso Australia Resources Pty Ltd v The Commissioner of Taxation - *Petroleum Resource Rent Tax Assessment Act 1987* (Cth) (B)

Krajniw v Brisbane City Council (No 2) - *Environment Protection & Biodiversity Conservation Act 1999* (Cth) - applicant seeking injunctive relief - construction of bike path - application refused (C)

Jeffman Pty Ltd and Lawrence Dry Cleaners Pty Ltd v Environment Protection Authority of NSW, Sydney Water Corporation and Douglas and Hilary Hutchinson - *Contaminated Land Management Act 1997* (NSW) - Management Order - appeal upheld (C)

Re an application by State Trustees Ltd (as trustee of the estate of Thomas Miller) - *Administration & Probate Act 1958* (Vic) - *In Re Benjamin* [1902] 1 Ch 723 (B)

Ottedin Investments Pty Ltd v Portbury Developments Co Pty Ltd & Anor - Application for summary judgment - Part 4.4 *Civil Procedure Act 2010* (Vic) (I, B, C)

Plante & Anor v James - Costs - non-party costs orders - appeal allowed (I, B, C)



The Portland Downs Pastoral Company Pty Ltd v Great Northern Developments Pty Ltd & Ors
- Contracts - agreement for sale of share in joint venture (B, C)

Cashmere Bay Pty Ltd v Hastings Deering (Australia) Ltd (No 2) - Interest - costs - damage caused to plaintiff's vessel (I, C)

Legal Services Commissioner v Walter - *Legal Profession Act 2007* (Qld) - "practice" (I)

Bzikadze v Fielders Australia Pty Ltd - Res judicata, or cause of action estoppel - appeal allowed - magistrate's decision refusing to set aside default judgment quashed (I, B, C)

Summaries with links (5 minute read)

Wednesday 1 June 2011

Esso Australia Resources Pty Ltd v The Commissioner of Taxation [2011] FCA 565

Federal Court of Australia

Ryan J (in Melbourne)

Petroleum Resource Rent Tax Assessment Act 1987 (Cth) - statutory interpretation - appeal by applicant against objection decision made by respondent Commissioner - by the objection decision, Commissioner had disallowed objections by Esso to disallowance of certain items of expenditure which Esso had claimed as deductible under s32 - service agreement between Esso & EAL - operating agreement between Esso & BHP - Esso substantially succeeded in its attack on Commissioner's characterisation of the payments to EAL but failed in relation to its MRC contributions.

[Esso Australia Resources](#) (B)

Krajniw v Brisbane City Council (No 2) [2011] FCA 563

Federal Court of Australia

Dowsett J (in Brisbane)

Environment Protection & Biodiversity Conservation Act 1999 (Cth) - applicant seeking injunctive relief - construction of bike path within Minnippi Parklands at Cannon Hill which applicant



contending, would cause significant harm to listed threatened species under the Act - application dismissed.

[Krajniw](#) (C)

Jeffman Pty Ltd and Lawrence Dry Cleaners Pty Ltd v Environment Protection Authority of NSW, Sydney Water Corporation and Douglas and Hilary Hutchinson [2011] NSWLEC 89

Land & Environment Court of New South Wales

Preston CJ

Contaminated Land Management Act 1997 (NSW) - Management Order - remediation - applicants owners & occupiers of industrial site in Waterloo - first applicant purchased the site in 1973 & operated a dry cleaning business there till December 1984 - it sold its dry cleaning business to second applicant but retained ownership of the site - chemical solvents used in the dry cleaning business by either first or second applicant or both have escaped & contaminated soil & groundwater beneath the site - contaminants in the groundwater migrating to adjoining lands owned by various public and private interests - appeal upheld - Management Order revoked, and new Management Order to be made reflecting the findings in this judgment.

[Jeffman](#) (C)

Re an application by State Trustees Ltd (as trustee of the estate of Thomas Miller) [2011] VSC 225

Supreme Court of Victoria

Hollingworth J

Administration & Probate Act 1958 (Vic) - application for determination of questions arising in administration of an estate - administrator seeking a *Benjamin* order: *In Re Benjamin* [1902] 1 Ch 723.

[State Trustees](#) (B)

Ottedin Investments Pty Ltd v Portbury Developments Co Pty Ltd & Anor [2011] VSC 222

Supreme Court of Victoria

Dixon J

Contract for sale of land - 8.1 hectares of land at Officer - not in dispute that contract at an end - application for summary judgment - Part 4.4 *Civil Procedure Act 2010* (Vic) - plaintiff's proceeding dismissed - caveat to be removed - detailed analysis of case law & principles governing applications for summary dismissal.

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

**Plante & Anor v James [2011] QCA 109**

Court of Appeal of Queensland

McMurdo P; Muir & White JJA

Costs - non-party costs orders - primary judge had ordered that applicant directors be jointly & severally liable with plaintiff company to pay respondent's costs - applicants were not parties to the proceeding - plaintiff was presumed to be unable to meet a judgment - whether the primary judge's discretion to award costs against non-parties miscarried - appeal allowed - extensive consideration of case law from the United Kingdom & Australia.

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

The Portland Downs Pastoral Company Pty Ltd v Great Northern Developments Pty Ltd & Ors [2011] QSC 142

Supreme Court of Queensland

de Jersey CJ

Contracts - agreement for the sale of plaintiff's share in a joint venture to the first defendant - "Surfair" - second defendants, the directors of first defendant, guaranteed first defendant's performance under that agreement - purchase consideration - construction costs limit - extension of time for practical completion - waiver & estoppel - plaintiff's claim against first & second defendants dismissed.

[The Portland Downs Pastoral Company](#) (B, C)

Cashmere Bay Pty Ltd v Hastings Deering (Australia) Ltd (No 2) [2011] QSC 134

Supreme Court of Queensland

Daubney J

Interest - costs - defendant had been found liable for damage caused to plaintiff's vessel & the consequential expenses incurred by plaintiff as a result of breach by defendant of its contractual & tortious duties to exercise reasonable care & skill in the repair & rectification of the engines in the vessel & in works associated with those repairs - United Kingdom & Australian case law considered.

[Cashmere Bay](#) (I, C)

[Cashmere Bay](#)- decision 11 March 2011: see 'Benchmark' I, C & IBC Friday 18 March 2011 - building contracts - plaintiff alleging a series of contracts entered into between plaintiff & defendant which lead to implied contractual terms & concomitant duties of care - work done on forty one foot fibreglass motor yacht "Ginger Meggs" - engine problems - fuel injector nozzles - judgment for plaintiff in sum of \$196,521.16.

**Legal Services Commissioner v Walter [2011] QSC 132**

Supreme Court of Queensland

Daubney J

Legal Profession Act 2007 (Qld) - applicant applying for injunction to restrain respondent from engaging in legal practice in the State of Queensland when not an Australian legal practitioner - whether the respondent had engaged in legal practice - "practice" - distinction between a trade, business or occupation & a profession - injunction granted.

[Legal Services Commissioner \(I\)](#)

Bzikadze v Fielders Australia Pty Ltd [2011] SASC 88

Supreme Court of South Australia

Sulan J

Res judicata, or cause of action estoppel - first action brought against appellant for money owing under contract - second action brought against appellant for overdue interest & recovery costs pursuant to same contract - default judgment entered - application to set aside default judgment refused by magistrate - appeal allowed - magistrate's decision refusing to set aside default judgment quashed - United Kingdom & Australian case law considered.

[Bzikadze \(I, B, C\)](#)

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