



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Huntsman Chemical Company Australia Pty Ltd v Narellan Pools Pty Ltd - *Trade Practices Act 1974* (Cth) - onus of proof - balance of probabilities - appeal dismissed (I, C)

Board of Trustees of the State Public Sector Superannuation Scheme v Edington - *Superannuation (Resolution of Complaints) Act 1993* (Cth) - total & permanent disablement benefit - appeal allowed (I, B)

Uren v Corporate Leisure (UK) Ltd - United Kingdom case - personal injuries - injury during pool game/relay race - appeal allowed - cross-appeal dismissed (I)

Sibthorpe & Anor v London Borough of Southwark - United Kingdom case - fee agreements - champerty (I, B)

Haugesund Kommune & Anor v Depfa Acs Bank & Wikborg Rein & Co (app.) - Contracts - negligent advice - restitution (I, B)



Summaries with links (5 minute read)

Friday 4 February 2011

Huntsman Chemical Company Australia Pty Ltd v Narellan Pools Pty Ltd [2011] FCAFC 7

Full Court of the Federal Court of Australia

Moore, Flick & Yates JJ (in Sydney)

Trade Practices Act 1974 (Cth) - for decision appealed from, see 'Benchmark' I, C & IBC Monday 29 March 2010 & link below - onus of proof - balance of probabilities - finding by primary judge on the balance of probabilities, that the cause of blistering in swimming pools was use of Resin 942, either alone or mixed with another vinyl ester resin, in the 'tie layer' of those pools - appeal dismissed.

[Huntsman Chemical Company Australia](#) (I, C)

[Narellan Pools](#) - decision 25 March 2010 - *Trade Practices Act 1974* (Cth) - negligence - breach of contract - hearing on liability - resin used in production of fibreglass swimming pools - misleading or deceptive representations or representations likely to mislead or deceive in contravention of s52 - contravention of s53(a) *Sale of Goods Act 1923* (NSW) - condition of the contract implied by s19(2) *Sale of Goods Act 1923* (NSW) that the goods would be of merchantable quality - goods not of merchantable quality.

Board of Trustees of the State Public Sector Superannuation Scheme v Edington [2011] FCAFC

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Full Court of the Federal Court of Australia

Kenny, Lander & Logan JJ (in Brisbane)

Superannuation (Resolution of Complaints) Act 1993 (Cth) - total & permanent disablement benefit - appeal allowed - orders made on 21 May 2010 set aside & in lieu, order made that appeal pursuant to s46 be dismissed - comprehensive analysis of legislation & Australian case law.

[Board of Trustees of the State Public Sector Superannuation Scheme](#) (I, B)

[Edington](#) - decision 21 May 2010: see 'Benchmark' I & IBC Wednesday 26 May 2010 - *Superannuation (Resolution of Complaints) Act 1993* (Cth) - appeal from Superannuation Complaints Tribunal - Tribunal had affirmed decision of Board of Trustees of the State Public Sector Superannuation Scheme of Queensland, the QSuper Scheme, not to pay any insurance benefit to applicant who had been assessed as totally & permanently disabled after a workplace incident because the total & permanent disablement related to his pre-existing medical condition - field assistant with Department of Primary Industries (Qld) - whether Tribunal had properly exercised its power of review of the Trustees' decision under s37 - appeal allowed - Tribunal's decision set aside & matter remitted.



From the United Kingdom...

Uren v Corporate Leisure (UK) Ltd [2011] EWCA Civ 66

Court of Appeal of England & Wales

Smith, Aikens & Pitchford LJJ

Personal injuries - claimant tetraplegic after accident when entering inflatable rectangular pool during pool game/relay race - appeal allowed - cross-appeal dismissed.

[Uren](#) (I)

[Uren](#)- decision 22 January 2010: see 'Benchmark' I & IBC Friday 5 February 2010 - personal injuries - sporting activities - liability - risk assessments - whether defendants took reasonable measures to ensure game was safe - claim failed.

Sibthorpe & Anor v London Borough of Southwark [2011] EWCA Civ 25

Court of Appeal of England & Wales

Master of the Rolls, Lloyd & Gross LJJ

Fee agreements - whether indemnity in costs agreement with lawyers amounted to *champerty* - detailed examination of the United Kingdom case law - appeal dismissed.

[Sibthorpe](#) (I, B)

Haugesund Kommune & Anor v Depfa Acs Bank & Wikborg Rein & Co (app.) [2011] EWCA Civ 33

Court of Appeal of England & Wales

Rix, Gross & Peter Smith LJJ

Contracts - solicitors asked to advise about a validity of proposed swap contracts - scope of contractual duty - nature of retainer specific - negligent advice - restitution - appeal allowed - an interesting review of U.K. case law including *the Liverpool principle*, a reference to *Liverpool (No 2)* [1963] P 64: a claimant with remedies against more than one defendant must be free to choose which defendant to pursue, without the need to give credit for his claim against the other.

[Haugesund Kommune](#) (I, B)

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