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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

The Commissioner of Taxation of the Commonwealth of Australia v Traviati - ss226G, 226K & 227(3) *Income Tax Assessment Act* 1936 (Cth) - statutory interpretation - penalty tax - appeal allowed (B)

BestCare Foods v Origin Energy - Damages - breach of contract - negligence - causation - adoption of referee's report with variations (I, C)

Bhushan Steel Ltd v Severstal Export GmbH - Rule 25.14 *Uniform Civil Procedure Rules* - plaintiff applying for freezing orders in aid of foreign proceedings (I, C)

In the matter of Cheal Industries Pty Ltd - Fitzpatrick v Cheal - s232 *Corporations Act* 2001 (Cth) - equitable damages (I, B)

In the matter of Gemaveld Pty Ltd - Application to set aside statutory demand dismissed (B)

Yazbek v Ghosn Yazbek & Anor - *Succession Act* 2006 (NSW) - will found on deceased's computer admitted to probate (B)



Bendigo & Adelaide Bank Ltd v Chowdhury & Anor - *Uniform Civil Procedure Rules 2005 (NSW)* - order made under Rule 4.10(4) refusing to accept defence for filing (B)

Bank of Western Australia Ltd v Abdul & Anor - Guarantee & indemnity - receivers & managers (I, B)

UI International Pty Ltd v Interworks Architects Pty Ltd & Ors - Applications for further security for costs (I, C)

Newman v President of the Industrial Court of Qld & Anor - *Electrical Safety Act 2002 (Qld)* - application for judicial review dismissed (I, C)

Summaries with links (5 minute read)

The Commissioner of Taxation of the Commonwealth of Australia v Traviati [2012] FCA 546

Federal Court of Australia

Middleton J

Ss226G, 226K & 227(3) *Income Tax Assessment Act 1936 (Cth)* - statutory interpretation - extrinsic materials - penalty tax - tax shortfall - reasonably arguable - detailed consideration of Australian case law - appeal allowed - decision of Administrative Appeals Tribunal set aside - matter remitted.

[The Commissioner of Taxation](#) (B)

BestCare Foods v Origin Energy [2012] NSWSC 574

Supreme Court of New South Wales

McDougall J

Damages - breach of contract - negligence - causation - assessment by referee - identification of lost opportunity - principles in *Malec v J C Hutton* - standard of proof - discount rate - tax - adoption of report with variations.

[BestCare Foods](#)

[BestCare Foods](#) - decision Supreme Court of NSW 23 August 2011: see Benchmark I, C & IBC Friday 26 August



2011 - negligence - causation - ss71(1) & 74(1) *Trade Practices Act* 1974 (Cth) - contracts - destruction by fire on a long weekend of pet food manufacturing factory at Gunnedah - common ground that fire & explosion resulted from leakage of liquefied petroleum gas into the factory, which then ignited - judgment as to liability - issue of damages had been referred to a referee - expert evidence - duty of care - contributory negligence - whether claim for apportionment established - ss5R-S *Civil Liability Act* 2002 (NSW) - whether terms implied in contract requiring provision, inspection & maintenance of a gas installation to ensure its safe operation - whether exclusion clauses apply - whether breaches of contract established - a lengthy judgment in which plaintiffs succeeded in their claims against each defendant for damages to be assessed by referee - defendants' claim for apportionment of damages under s5S dismissed - extensive consideration of Australian legislation & case law;

[Malec](#) - decision High Court of Australia 26 June 1990

Bhushan Steel Ltd v Severstal Export GmbH [2012] NSWSC 583

Supreme Court of New South Wales

Sackar J

Rule 25.14 *Uniform Civil Procedure Rules* - plaintiff applying for freezing orders in aid of foreign proceedings before High Court in India - plaintiff company incorporated in India - defendant company incorporated in Switzerland carries on business as an exporter of steel products - no issue estoppel - no abuse of process - extensive consideration of UK & Australian case law - freezing order made.

[Bhushan Steel](#) (I, C)

In the matter of Cheal Industries Pty Ltd - Fitzpatrick v Cheal [2012] NSWSC 595

Supreme Court of New South Wales

Ward J

S232 *Corporations Act* 2001 (Cth) - equitable damages - oppression - parties had elected for the Court to determine nominal value of goodwill associated with use of company name - valuation of shares - extensive consideration of UK & Australian case law.

[Cheal Industries](#) (I, B)

[Cheal Industries](#) - decision 21 March 2012: see Benchmark I, B & IBCG Friday 23 March 2012 - ss180, 181 & 182 *Corporations Act* 2001 (Cth) - directors' duties - oppression - intellectual property agreement - s20(1) *Trade Marks Act* 1995 (Cth) - principles relating to pleadings - application brought by first plaintiff on her own behalf & pursuant to leave granted under s237 on behalf of second plaintiff - relief sought on basis of alleged breaches of statutory & fiduciary duties by first defendant in his capacity as a director of second plaintiff - as against second & third defendants, relief sought on the grounds of knowing assistance in first defendant's breach - summary of findings at par 15 & 16, 190 and continuing - relief removing adverse effects of oppression - valuation of shares - good will - valuation methodology - judgment for plaintiffs - extensive consideration of UK, New Zealand & Australian case law.

**In the matter of Gemaveld Pty Ltd [2012] NSWSC 582**

Supreme Court of New South Wales

Black J

S459J *Corporations Act* 2001 (Cth) - UK & Australian case law considered - application to set aside statutory demand dismissed.

[Gemaveld](#) (B)

Yazbek v Ghosn Yazbek & Anor [2012] NSWSC 594

Supreme Court of New South Wales

Slattery J

Succession Act 2006 (NSW) - document created on deceased's computer - plaintiff seeking order for Court to dispense with requirements for execution of Will.doc as a will in exercise of Court's discretion under s8 - Will.doc to be admitted to probate.

[Yazbek](#) (B)

Bendigo & Adelaide Bank Ltd v Chowdhury & Anor [2012] NSWSC 592

Supreme Court of New South Wales

Johnson J

Uniform Civil Procedure Rules 2005 (NSW) - claim for possession of land - defence containing no pleadings or particulars - order made under Rule 4.10(4) refusing to accept defence for filing.

[Bendigo and Adelaide Bank](#) (B)

Bank of Western Australia Ltd v Abdul & Anor [2012] VSC 222

Supreme Court of Victoria

Croft J

Guarantee & indemnity - receivers & managers - plaintiff seeking to enforce a financial facilities agreement & various guarantees with respect to other financial facilities agreements - certificates of indebtedness - agency - undue influence - Code of Banking Practice - questions for determination set out at par 12 of judgment - answers to questions at par 104 of judgment.

[Bank of Western Australia Ltd](#) (I, B)



UI International Pty Ltd v Interworks Architects Pty Ltd & Ors [2012] QSC 142

Supreme Court of Queensland

Daubney J

Applications for further security for costs by first, second & fourth defendants - applications granted.

[UI International](#) (I, C)

[UI International](#) - decision 30 July 2010: see Benchmark Wednesday 4 August 2010 - torts - contracts - plaintiff purchaser of land for development - Raby Bay Harbour Community Titles Scheme - plaintiff's case against fourth defendant in contract & tort - provision of engineering consulting services - seventh defendant sued in its statutory capacity as building certifier & assessment manager - whether a sub-paragraph of statement of claim should be struck out - plaintiff pleading that plaintiff was vulnerable to any failure by seventh defendant to exercise reasonable care - whether plaintiff should be ordered to provide further & better particulars of alleged vulnerability - answer 'yes' - striking out application dismissed.

Newman v President of the Industrial Court of Qld & Anor [2012] QSC 145

Supreme Court of Queensland

AM Lyons J

Electrical Safety Act 2002 (Qld) - Industrial Magistrate had struck out complaint on basis the essential factual ingredients had not been pleaded - President of the Industrial Court had come to same conclusion as Industrial Magistrate - application for judicial review dismissed.

[Newman](#) (I, C)

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