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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)

Collection Point Pty Ltd v Commissioner of Taxation (FCAFC) - freedom of information - agency not obliged to provide access to document which required new computer software to produce it (I, B, C, G)

Shoreform (Qld) Pty Ltd v Millenium Coal Pty Ltd (FCA) - discovery - relevance - respondent ordered to serve further affidavit of discovery (I, B, C)

McPharlin, in the matter of United Investments Trust (in liq) (FCA) - corporations - liquidator permitted to distribute surplus of scheme to contributories (B)

McMahon v Permanent Custodians Ltd (NSWCA) - loans and mortgages - injunction granted to prevent lender from disposing of properties (B, G)

Estate of Rochester (NSWSC) - wills and estates - deceased lacked testamentary capacity when she made purported will - plaintiffs appointed as administrators (B)

Swaab v Sayed (NSWSC) - costs - legal practitioners - client accepted costs agreement by conduct (I, B, C, G)



Alexiadis v Zirpiadis (SASCFC) - equity - unjust enrichment - no basis for restitution - appeal allowed (B, G)

Summaries with links (5 minute read)

Collection Point Pty Ltd v Commissioner of Taxation [2013] FCAFC 67

Full Court of the Federal Court of Australia

Besanko, Bromberg & Dodds-Streeton JJ

Freedom of information - statutory interpretation - appellant assisted clients to retrieve unclaimed money - appeal from affirmation of AAT's decision that agency not obliged to provide access to document requested by appellant in circumstances where the document did not exist because the agency was incapable of generating one document from information on two separate registers - held: primary judge did not err in construction of s17(1)(c)(i) *Freedom of Information Act 1982* (Cth) - the need for a new computer program to enable agency to produce requested document was a fact capable of meaning that agency could not by use of computer *ordinarily available* produce it - appeal dismissed.

[Collection Point](#) (I, B, C, G)

Shoreform (Qld) Pty Ltd v Millenium Coal Pty Ltd [2013] FCA 645

Federal Court of Australia

Robertson J

Discovery - relevance - contract dispute - applicant contended discovery provided by respondent was deficient - applicant sought order requiring respondents to discover all documents within certain categories or that respondents serve amended list of documents or order for particular discovery - whether reasonable search had been undertaken - held: assessment whether documents were discoverable for relevance depended on whether they were directly relevant to issues raised by pleadings - orders made for respondents to serve further affidavit of discovery.

[Shoreform \(Qld\)](#) (I, B, C)

McPharlin, in the matter of United Investments Trust (in liq) [2013] FCA 635

Federal Court of Australia

Besanko J

Corporations - liquidator of managed investment scheme sought orders adjusting rights of contributories pursuant to s485(2) *Corporations Act 2001* (Cth) on basis that remaining assets in



scheme were distributed on pro-rata basis and special leave under s488(2) of the Act to distribute surplus - held: Court satisfied that provisions of the Act and Regulations had been complied with, that a surplus existed in amount specified by liquidator and that proposed adjustment of rights of contributories among themselves was appropriate in the circumstances.

[McPharlin, in the matter of United Investments Trust \(in liq\)](#) (B)

McMahon v Permanent Custodians Ltd [2013] NSWCA 201

Court of Appeal of New South Wales

Basten JA

Loans and mortgages - applicant borrowers sought interim injunction to prevent respondent lender disposing of secured properties - borrowers had defaulted under loan agreements and mortgages - defaults subject to *Farm Debt Mediation Act 1994* (NSW) - borrowers failed to comply by specified date with heads of agreement signed at mediation - borrowers sought to challenge decision of primary judge that certificate issued under s11 *Rural Assistance Act 1989* (NSW) four days prior to the specified date was valid - held: potential disadvantage to lender in being able to proceed with disposal of properties was limited - injunction granted.

[McMahon](#) (B, G)

Estate of Rochester [2013] NSWSC 884

Supreme Court of New South Wales

McDougall J

Wills and estates - expert evidence - plaintiffs were children of deceased - deceased had dementia - plaintiffs asserted deceased lacked testamentary capacity and sought administration on intestacy - doctor provided opinion on testamentary capacity - held: doctor failed to acknowledge he had read Expert Witness Code of Conduct and agreed to abide by it, thus report not admissible unless court otherwise ordered: r31.23(3) *Uniform Civil Procedure Rules 2005* (NSW) - consideration of reasons in favour of exercising discretion to admit report - report admitted which was an exceptional outcome - Court satisfied on evidence that deceased lacked testamentary capacity at time she made her purported will and that she died intestate - plaintiffs appointed as administrators - administration bond dispensed with.

[Estate of Rochester](#) (B)

Swaab v Sayed [2013] NSWSC 887

Supreme Court of New South Wales

Kunc J

Costs - legal practitioners - plaintiff solicitors sought declarations they had equitable charge over defendant/former client's property to secure costs - client had not signed letter accepting firm's *General Terms of Business* (terms) - client contended no costs agreement arose and if there was an agreement, he was not bound to it - held: reasonable bystander would regard client's conduct of continuing to instruct firm and paying some invoices as acceptance of offer set out in terms notwithstanding he never returned executed copy of letter - client bound by costs agreement evidenced by terms and letter - declaration granted.

[Swaab](#) (I, B, C, G)**Alexiadis v Zirpiadis [2013] SASCFC 64**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Gray & White JJ

Judicial review - equity - unjust enrichment - contract - respondent delivered cheques to appellant - appellant only repaid small percentage of money - appeal from decision that despite absence of pleading, respondent was entitled to restitution on basis of money had and received - procedural fairness - evidence - onus of proving defence of illegality - held (by majority, White J dissenting): judge's inability to make findings about conditions on which payment had been made precluded conclusion that retention of money was unjust - judge's finding could not stand on the evidence - restitutionary claim on which judgment was given not proved - appeal allowed.

[Alexiadis](#) (B)**Poppies on the Wheat**

by Helen Hunt Jackson

Along Ancona's hills the shimmering heat,
A tropic tide of air with ebb and flow
Bathes all the fields of wheat until they glow
Like flashing seas of green, which toss and beat
Around the vines. The poppies lithe and fleet
Seem running, fiery torchmen, to and fro
To mark the shore.



The farmer does not know
That they are there. He walks with heavy feet,
Counting the bread and wine by autumn's gain,
But I,--I smile to think that days remain
Perhaps to me in which, though bread be sweet
No more, and red wine warm my blood in vain,
I shall be glad remembering how the fleet,
Lithe poppies ran like torchmen with the wheat.

[Helen Hunt Jackson](#)

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