



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Kuhl v Zurich Financial Services Australia Ltd** - High Court of Australia decision - personal injuries - duty of care - causation - by majority, appeal allowed (I, C)

**Wedgewood Hallam Pty Ltd v Australian Securities & Investments Commission, in the matter of Combined Building Consultants Pty Ltd** - s601AH(2) *Corporations Act* 2001 (Cth) - defendant to reinstate the registration of company (I, C)

**Karabassis v Deputy Commissioner of Taxation** - *Bankruptcy Act* 1966 (Cth) - appeal from Federal Magistrates Court dismissed (B)

**Gunns Ltd v Balani Pty Ltd** - *Trade Practices Act* 1974 (Cth) - equitable liens - contract for sale of land (B, C)

**McLaughlin v Dungowan Manly Pty Ltd** - Contracts - principles of construction - share surrender agreements (I, B, C)

**R v Agius; R v Abibadra; R v Jandagi; R v Zerafa** - Criminal law - indictment containing two counts of conspiracy against each accused - each accused seeking a stay of the second count - applications for stay refused (B)



**Roads Corporation v Dykes** - Personal injuries - motor accident - causation - circumstances of darkness & fog - appeal dismissed (I)

**Re DH: application by JE & SM** - Part 3A *Wills Act* 1968 (ACT) - statutory wills (B)

## Summaries with links (5 minute read)

**Friday 6 May 2011**

### **Kuhl v Zurich Financial Services Australia Ltd [2011] HCA 11**

High Court of Australia

French CJ; Gummow, Heydon, Crennan & Bell JJ

Negligence - personal injuries - duty of care - causation - appellant injured when arm drawn into suction inlet of vacuum hose in course of his employment - by majority, appeal allowed - judgment to be entered against first respondent in amount of \$265,000.

[Kuhl](#) (I, C)

[Kuhl](#) - *Kuhl v Zurich Financial Services Australia Ltd* [2010] WASCA 50 - decision Court of Appeal of Western Australia 24 March 2010: see 'Benchmark' I, C & IBC Monday 29 March 2010 - vacuum unit to which hose was attached, & truck on which unit was mounted, were owned by WOMA (Australia) Pty Ltd & controlled by an employee of Hydrosweep Pty Ltd - both WOMA & Hydrosweep subsequently deregistered - at the relevant time, WOMA insured by first respondent & Hydrosweep by second respondent - appellant employed by Transfield Construction Pty Ltd - appeal dismissed (Wheeler JA dissenting in relation to WOMA - as to first respondent WOMA, would have allowed appeal;)

[Kuhl](#) - *Kuhl v Zurich Financial Services Australia Ltd* on behalf of WOMA (Australia) Pty Ltd (deregistered company) & Anor [2009] WADC 4 - decision District Court of Western Australia 21 January 2009 - negligence - duty of care - hearing on liability - claims against second defendant WOMA & third defendant Hydrosweep dismissed.

### **Wedgewood Hallam Pty Ltd v Australian Securities & Investments Commission, in the matter of Combined Building Consultants Pty Ltd [2011] FCA 439**

Federal Court of Australia

Gordon J (in Melbourne)

s601AH(2) *Corporations Act* 2001 (Cth) - plaintiffs seeking re-registration of Combined Building Consultants Pty Ltd ("CBC") so that they may institute proceedings against it in the Supreme Court of Victoria - building & occupancy permit services - fire in warehouse - plaintiffs do not yet



know name (if any) of CBC's professional indemnity insurer - defendant to reinstate the registration of CBC.

[Wedgewood Hallam](#) (I, C)

### **Karabassis v Deputy Commissioner of Taxation [2011] FCA 434**

Federal Court of Australia

Ryan J (in Melbourne)

*Bankruptcy Act 1966* (Cth) - appeal from Federal Magistrates Court - Federal Magistrate had refused adjournment & had dismissed appellant's application for review of a sequestration order made by a Registrar - judgment debt on which petition is founded was based on a default judgment of Magistrates' Court of Victoria - appeal dismissed.

[Karabassis](#) (B)

### **Gunns Ltd v Balani Pty Ltd [2011] FCA 431**

Federal Court of Australia

Marshall J - Melbourne

*Trade Practices Act 1974* (Cth) - equitable liens - unusual contract for sale of land - conditions precedent to completion of contract - respondent was required, under its contract with applicant, to give effect to applicant's equitable lien - no order on cross-claim, save as to costs.

[Gunns](#) (B, C)

### **McLaughlin v Dungowan Manly Pty Ltd [2011] NSWSC 215**

Supreme Court of New South Wales

Pembroke J

Contracts - principles of construction - share surrender agreements - series of individual agreements in identical form between first defendant & all but two of its shareholders - Australian text & case law considered.

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

[McLaughlin](#) - *McLaughlin v Dungowan Manly Pty Ltd* [2010] NSWSC 187 - written reasons 16 March 2010 of Ward J for orders made on 26 February 2010, referred to at para. 2 of Pembroke J's judgment above - contracts - repair & redevelopment of home unit building in Manly - whether leave should be granted to commence derivative suit - oppression - leave granted to commence derivative suit for breach of statutory duties - assessment of damages.

**R v Agius; R v Abibadra; R v Jandagi; R v Zerafa [2011] NSWSC 367**

Supreme Court of New South Wales

Simpson J

Criminal law - indictment containing two counts of conspiracy against each accused - each accused seeking a stay of the second count - Crown alleging scheme to defraud the Commonwealth of revenue due to it by way of taxation - change in legislative regime - applications for stay refused.

[Agius \(B\)](#)**Roads Corporation v Dykes [2011] VSCA 118**

Court of Appeal of Victoria

Harper &amp; Hansen JJA; Hargrave AJA

Personal injuries - motor accident - causation - whether primary judge had erred in not finding driver's conduct was sole cause of the accident - whether reasonably foreseeable that a directional sign erected by appellant would, in circumstances of darkness & fog, cause driver confusion - whether appellant had breached its duty of care - whether any breach caused the accident - appeal dismissed.

[Roads Corporation \(I\)](#)

[PDF version](#) - *Dykes v Roads Corporation* [2009] VCC 1415 - County Court judgment 11 December 2009 - plaintiff a long-distance truck driver - early morning, dark; thick fog - plaintiff awarded \$500,238.00.

**Re DH: application by JE & SM [2011] ACTSC 69**

Supreme Court of the Australian Capital Territory

Master Harper

Part 3A *Wills Act* 1968 (ACT) - testamentary capacity - application to authorise creation of a statutory will - application successful.

[Re DH \(B\)](#)

**And for Mother's Day Sunday 8 May 2011...**

To My Daughter

On Being Separated from Her on Her Marriage (1802)

by





*Anne Hunter (1742-1821)*

Dear to my heart as life's warm stream  
 Which animates this mortal clay,  
 For thee I court the waking dream,  
 And deck with smiles the future day;  
 And thus beguile the present pain  
 With hopes that we shall meet again.

Yet, will it be as when the past  
 Twined every joy, and care, and thought,  
 And o'er our minds one mantle cast  
 Of kind affections finely wrought ?  
 Ah no ! the groundless hope were vain,  
 For so we ne'er can meet again !

May he who claims thy tender heart  
 Deserve its love, as I have done !  
 For, kind and gentle as thou art,  
 If so beloved, thou art fairly won.  
 Bright may the sacred torch remain,  
 And cheer thee till we meet again !

*Anne Hunter (née Home) published two volumes of poetry, 'Poems' (1802) & "The Sports of the Genii" (1804). In 1771 she married the famous Scottish surgeon John Hunter (1728-1793). They had four children, of whom two survived infancy. Ann Hunter was one of the hostesses of the conversazione in London that the 'Blue Stockings' attended. As an alternative to the main diversion of card-playing, and in imitation of the French salons, various women in society held gatherings in which eminent men of letters often took part. The men were not required to don full dress and so the usual black silk hose of the time began to be replaced by other colours - one attendee, Benjamin Stillingfleet, habitually wore blue worsted stockings. When the famous composer Franz Joseph Haydn moved to London in 1791, he settled near the Hunters in London & a friendship developed between the composer & Anne, which led to Haydn's composing English songs using Anne's lyrics.*

[Anne Hunter - Wikipedia, the free encyclopedia](#)

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