

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Unilever Australia Ltd v Pahi & Anor; Swire Cold Storage Pty Ltd v Pahi & Anor - Personal injuries - duty owed by principal contractor to employees of independent subcontractor - Leighton v Fox - appeals allowed (I)

Fay v Moramba Services Pty Ltd - Trusts and trustees - costs - defendants had successfully resisted plaintiffs' application that they be removed as trustees of testamentary trust (B)

Kyong Holdings Pty Ltd v Anqueline Pty Ltd (No 2) - Contracts - duties of good faith & co-operation - consulting fee (B, C)

Beluga Developments Pty Ltd v Sobel Investments Pty Ltd & Anor - s1335 *Corporations Act* 2001 (Cth) - security for costs - commercial property development (C)

NJH Pty Ltd v Billabong International Ltd & Ors - Costs of compliance with notice of non-party disclosure served pursuant to Uniform Civil Procedure Rule 242 (I, B)

Dockray v Chick - Easements (C)

Steele (claimant/respondent) v the Home Office (defendant/appellant) - Personal injuries - duty of care owed by prison service to provide prisoner with dental care (I)

Summaries with links (5 minute read)

Wednesday 7 July 2010

Unilever Australia Ltd v Pahi & Anor; Swire Cold Storage Pty Ltd v Pahi & Anor [2010] NSWCA 149

Court of Appeal of New South Wales

Allsop P; Beazley & Giles JJA

Personal injuries - duty owed by principal contractor to employees of independent subcontractor - whether duty owed by principal is co-extensive with that owed by employer - first respondent injury while employed as process worker with a labour hire company repacking ice cream products - Unilever stored its ice confectionary products at a cold storage facility operated by Swire - Swire had entered into an arrangement with Streets to repackage some of Streets' products into smaller boxes, so as to be suitable for sale in supermarkets - Swire engaged labour hire company to provide process staff to undertake this task - *Leighton v Fox* - whether standard of care requires one to undertake such measures as were within its power to obviate the dangers in question - appeals allowed - judgment for appellants.

[Unilever Australia \(I\)](#)

[Leighton Contractors](#) - decision High Court 2 September 2009: see 'Benchmark' I, C & IBC Friday 4 September 2009 - personal injuries - health & safety training - first respondent independent contractor suffered injury working on Hilton Hotel construction site in Sydney - injury resulting from negligent conduct of co-subcontractor - for NSW Court of Appeal decision 7 March 2008, see 'Benchmark' I, C & IBC Tuesday 11 March 2008 & link below - whether induction training in industry approved code of practice would have avoided cause of injury - whether principal contractor for construction work owed duty to provide, or be satisfied of prior provision of, training in safe work methods to independent contractors working on construction site - whether contractor retained to carry out concreting owed duty to provide training in safe work methods to independent subcontractor engaged by it to carry out concrete pumping - whether obligations imposed on principal contractor & contractor under *Occupational Health & Safety Act 2000 (NSW)* & *Occupational Health & Safety Regulation 2001 (NSW)* gave rise to common law duty requiring provision of training in respect of safe work methods of carrying out specialised tasks - appeal allowed - orders 1 & 5 of Court of Appeal decision set aside & in lieu thereof order made that appeals to that Court be dismissed;

[FOX](#) - NSW Court of Appeal decision 7 March 2008 - occupational health & safety - negligence - contributory negligence - contribution between tortfeasors - duty of care of principal contractor to subcontractors - building & construction work - duty of principal contractor to maintain safe workplace - duty to take reasonable care to ensure safety of subcontractor - whether non-delegable duty - failure to ensure subcontractor underwent safety induction training - extent of direct supervision of sub-contractors - order (1) (a) Allow the appeal & set aside order 2 of trial

judge dated 14 December 2006 dismissing claims made by plaintiff, Mr Fox, against first defendant, Leighton Contractors Pty Ltd & third defendant, Downview Pty Ltd; (b) in lieu thereof, give judgment for the plaintiff against first & third defendants in sum of \$472,562 - order (5) On the cross-appeal: (a) set aside orders 4 & 6 below dismissing the cross-claim & awarding costs in respect thereof; (b) order that Downview Pty Ltd pay 80% of the judgment debt incurred by Leighton Contractors Pty Ltd to Mr Fox, & (c) order that Downview Pty Ltd pay Leighton Contractors Pty Ltd's costs of cross-appeal.

Fay v Moramba Services Pty Ltd [2010] NSWSC 725

Supreme Court of New South Wales

Brereton J

Trusts and trustees - powers, duties, rights & liabilities of trustees - costs - cross-claim in relation to deed of indemnity - defendants had successfully resisted plaintiffs' application that they be removed as trustees of testamentary trust - application for judicial advice in relation to funding of defence: not appropriate to give advice sought.

[Fay \(B\)](#)

[Fay](#) - decision 16 December 2009

Kyong Holdings Pty Ltd v Anqueline Pty Ltd (No 2) [2010] NSWSC 727

Supreme Court of New South Wales

Lindgren J

Contracts - express & implied terms - purchase of land at Marrickville - contractual duties of good faith & co-operation - consulting fee payable to first cross-claimant.

[Kyong Holdings \(B, C\)](#)

Beluga Developments Pty Ltd v Sobel Investments Pty Ltd & Anor [2010] VSC 303

Supreme Court of Victoria

Mukhtar AsJ

s1335 *Corporations Act* 2001 (Cth) - security for costs - plaintiff & first defendant commercial property developers - plaintiff had agreed to purchase premises in Little Collins Street with intention of converting them into self storage units - plaintiff alleging first defendant agreed to pay \$600,000 to lease three levels of the building for five years after the plaintiff did certain works to convert those premises into backpacker accommodation - first defendant contending works not completed, plaintiff "called the deal off" & therefore it was not obliged to make any payment - plaintiff alleging first defendant repudiated lease agreement & sues for damages - order made for plaintiff to provide security for costs.

[Beluga Developments \(C\)](#)



NJH Pty Ltd v Billabong International Ltd & Ors [2010] QSC 239

Supreme Court of Queensland

Margaret Wilson J

Production of documents - discovery and interrogatories - documents in possession of a person not a party - costs of compliance with notice of non-party disclosure served pursuant to Uniform Civil Procedure Rule 242.

[NJH](#) (I, B)

Dockray v Chick [2010] TASSC 32

Supreme Court of Tasmania

Evans J

Easements - doctrine of lost modern grant - registered easement benefitting only a portion of land owned by plaintiff - plaintiff entitled to declaration sought - extensive consideration of United Kingdom & Australian case law.

[Dockray](#) (C)

From the United Kingdom...

Steele (claimant/respondent) v the Home Office (defendant/appellant) [2010] EWCA Civ 724

Court of Appeal of England & Wales

Laws, Carnwath & Smith LJJ

Personal injuries - duty of care owed by prison service to provide prisoner with dental care - appeal on liability and damages - appeal on liability not successful - appeal on quantum allowed to extent that award of £45,000 general damages quashed & award of £25,000 substituted.

[Steele](#) (I)

In the news...

Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 201

The Act came into effect on 14 April 2010, amending such acts as the *Trade Practices Act 1974*, the *Australian Securities & Investments Commission Act 2001* & the *Corporations Act 2001*, with the provisions relating to unfair contract terms (in standard-form contracts) to come into effect on 1 July 2010.



As to standard form contracts - "off-the-plan" sale contracts - land sale agreements such as retirement village contracts & manufactured homes site agreements - where a provision of a standard form contract is considered "unfair" to relevant consumer, that provision will be void.

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