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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)

Google Inc v Australian Competition and Consumer Commission - trade practices - misleading or deceptive conduct - publication of *sponsored links* conveying misleading representations (I, B, C)

Prior v Brown - domestic relationship adjustment of property interests (B)

Maxwell-Smith v Hall (No 2) - costs - appeal allowed on ground not identified by applicants (I, B, C)

Waters v Commonwealth of Australia - work injury damages - claim extinguished by statute - application for leave to appeal - whether errors in judgment below material (I)

Tanamerah Estates Pty Ltd v Tibra Capital Pty Ltd - right of unqualified person to represent company - discretion to dispense with rules (I, B, C, G)

Perth Airport Pty Ltd v Ridgpoint Corporation Pty Ltd - deed of release - injunction to restrain litigation (I, B, C, G)



John Grimes Partnership Ltd v Gubbins - breach of contract - test for remoteness of damage - loss arising from fall in market value of property during delay before completion date (I, B, C)

The Insurance Council of NZ Incorporated v Christchurch City Council - judicial review - insurance - policy of territorial authority - earthquake prone buildings - statutory construction (I)

Summaries with links (5 minute read)

Google Inc v Australian Competition and Consumer Commission [2013] HCA 1

High Court of Australia

French CJ; Hayne, Heydon, Crennan & Kiefel JJ

Trade practices - misleading or deceptive conduct - appeal from decision of Full Court of Federal Court of Australia that appellant had contravened *Trade Practices Act 1974* (Cth) (**Act**) by publishing *sponsored links* which conveyed misleading or deceptive representations - *sponsored links* a form of advertisement created by or for advertisers willing to pay Google for advertising text which directed users to a website of the advertiser's choosing - whether appellant contravened s52 of the Act - relevant provisions of the Act: ss52 & 85(3) of the Act - identification of impugned conduct - consideration of High Court decisions: *Yorke v Lucas* (1985) 158 CLR 661, *Butcher* [2004] HCA 60, and *Australian Competition and Consumer Commission v Channel Seven Brisbane Pty Ltd* (2009) 239 CLR 305 - *whether*: appellant endorsed or adopted representations which it displayed on behalf of advertisers; intermediary must expressly adopt or endorse a statement to be liable under s52 of the Act; necessary to determine issues raised by defence contained in s85(3) of the Act - appeal allowed - appellant did not create the *sponsored links* - ordinary users would have understood that the representations conveyed by the *sponsored links* were those of the advertiser and not adopted or endorsed by Google.

[Google Inc](#) (I, B, C, G)

Prior v Brown [2013] NSWCA 4

Court of Appeal of New South Wales

Basten, Hoeben & Ward JJA

Domestic relationship - adjustment of property interests - indirect financial contribution - appellant brought proceedings seeking adjustment of interests pursuant to s20 of the *Property Relationships Act 1984* (NSW) - *whether*: trial judge adopted a legitimate and accepted approach to assessment of value of appellant's indirect financial contribution which was *just and equitable*:



Chanter v Catts [2005] NSWCA 41; conclusion that appellant's indirect contribution to payments on property was very small was justifiable on the evidence - appeal dismissed.

[Prior](#) (B)

Maxwell-Smith v Hall [No 2] [2013] NSWCA 3

Court of Appeal of New South Wales

Basten JA & Tobias AJA

Costs - self represented applicants for leave to appeal - primary basis for application for leave refused - orders of lower court set aside by consent on alternative basis - respondent sought costs - order that each party pay its own costs - respondent ought reasonably to have identified and accepted justification for setting aside orders in court below before hearing of appeal.

[Maxwell-Smith](#) (I, B, C)

Waters v Commonwealth of Australia [2013] NSWCA 5

Court of Appeal of New South Wales

McColl & Basten JJA

Work injury damages - primary judge found cause of action extinguished by s44(1) *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**Act**) and no election to sue for damages for non-economic loss under s45 and struck out statement of claim with no opportunity to replead - applicant self represented before primary judge but not on appeal - new ground raised on appeal whether applicant's injury fell outside definition of injury in s4 of the Act and outside bar on proceedings in s44(1) of the Act - s44(1) not limited to causes of action in tort or for breach of statutory duty - submissions not raised in court below - error by primary judge did not cast doubt on his conclusion - application dismissed.

[Waters](#) (I, B)

Tanamerah Estates Pty Ltd v Tibra Capital Pty Ltd [2013] NSWSC 36

Supreme Court of New South Wales

Hallen J

Directors - right of unqualified person to represent company in proceedings - court's discretion to dispense with requirements of *Uniform Civil Procedure Rules 2005* (NSW) (**Rules**) - defendant sought order pursuant to r6.29 of the Rules that second plaintiff (director of first plaintiff) claim be removed as party to proceedings or, alternatively, an order pursuant to r13.4 of the Rules that proceedings by that party be dismissed generally - director admitted no individual cause of action against defendant - "lack of dispassionate consideration of real issues" - finding that director



would lack the experience necessary for contested litigation involving these issues - meaning of plaintiff in rr7.1, 7.2, 7.11, of the Rules - *whether: company* within meaning of the *Corporations Act 2001* (Cth) could commence proceedings *in person*: r7.1 of the Rules, *Hubbard Association of Scientologists International v Anderson and Just* [1972] VR 340, *Bay Marine Pty Ltd v Clayton Country Properties Pty Ltd* (1986) 8 NSWLR 104; to dispense with rules - matters court may consider in relation to exercise of discretion under s14 *Civil Procedure Act 2005* (NSW) to dispense with the Rules: *Damjanovic v Maley* [2002] NSWCA 230 - director removed as plaintiff, proceedings stayed unless solicitor appointed to act for company.

[Tanamerah Estates](#) (I, B, C, G)

Perth Airport Pty Ltd v Ridgepoint Corporation Pty Ltd [2013] WASC 33

Supreme Court of Western Australia

K Martin J

Deed of release - action for breach of contract - plaintiff (**Perth Airport**) sought to permanently restrain first defendant (**Ridgepoint**) from continuing to advance as plaintiff in another action in the court (**2007 action**) - defendants in 2007 action resisted professional negligence claim made against them by Ridgepoint and sought contribution from Perth Airport as concurrent wrongdoer - Perth Airport relied on covenant not to sue contained in a deed of release to which defendants in 2007 proceedings were not parties - *whether*: Ridgepoint breached deed of release; scope of clause of deed of release prevented Ridgepoint from maintaining 2007 action - construction of deed of release - normal remedy for breach of restrictive covenant is injunction - *whether*: damages are an adequate remedy, delay in seeking injunction: - relevance of corporate strain in dealing with litigation *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27 - principles applicable to grant of permanent stay enforcing compliance with negative covenant: *Meagher, Gummow & Lehane's Equity: Doctrines and Remedies* (4th ed, 2002) - permanent injunction against Ridgepoint granted - application to reopen: *Osborne v Landpower Developments Pty Ltd* [2003] WASCA 117.

[Perth Airport](#) (I, B, C, G)

From the United Kingdom...

John Grimes Partnership Ltd v Gubbins [2013] EWCA Civ 37

Court of Appeal of England and Wales

Tomlinson & Laws LJ & Sir David Keene

Contract - breach - remoteness of damage - engineer failed to perform tasks by agreed date - developer sought damages for diminution in market value of development during delay - appeal from judgment awarding damages to developer - whether loss too remote - case law on remoteness of damage: *Hadley v Baxendale* (1854) 9 Exch. 341, *The Achilleas* 2008 UKHL 48 - implied term re responsibility for losses which can reasonably be foreseen when contract made - loss from diminution in property market was foreseeable where delay was egregious - appeal dismissed.

[John Grimes](#) (I, B, C)

From New Zealand...

The Insurance Council of NZ Incorporated v Christchurch City Council [2013] NZHC 51

High Court of New Zealand

Panckhurst J

Judicial review of Christchurch City Council *Earthquake - Prone, Dangerous and Insanitary Buildings Policy 2010* (**policy**) - applicant argued that if policy was allowed to stand it would result in increased repair costs for owners of buildings damaged in Christchurch earthquakes who would, in turn, seek to claim against their insurers - *whether*: policy unlawful or invalid because terms overreached respondent's statutory powers under *Building Act 2004 NZ* (**Act**); policy provided that respondent could require the strengthening of earthquake-prone buildings to a level higher than that prescribed in regulations made under the Act - construction of operative sections and broader context of the Act - meaning of *earthquake prone building*: s122 of the Act - powers of territorial authorities in respect of earth-quake prone buildings: s124 of the Act - would be anomalous if territorial authorities could utilise s124 of the Act to achieve strengthening performance criteria higher than that used to define an earthquake-prone building.

[The Insurance Council of NZ Incorporated](#) (I, C)



A Crocodile

by Thomas Lovell Beddoes

Hard by the liliated Nile I saw
A duskish river-dragon stretched along,
The brown habergeon of his limbs enamelled
With sanguine almandines and rainy pearl:
And on his back there lay a young one sleeping,
No bigger than a mouse; with eyes like beads,
And a small fragment of its speckled egg
Remaining on its harmless, pulpy snout;
A thing to laugh at, as it gaped to catch
The baulking merry flies. In the iron jaws
Of the great devil-beast, like a pale soul
Fluttering in rocky hell, lightsomely flew
A snowy trochilus, with roseate beak
Tearing the hairy leeches from his throat.

<http://www.poetryfoundation.org/bio/thomas-lovell-beddoes>

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