



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Cook (Liquidator), in the matter of Italiano Family Fruit Company Pty Ltd (in liq) v Italiano Family Fruit Company Pty Ltd (in liq) - *Corporations Act 2001 (Cth)* - liquidators seeking directions under s511 - preference recoveries (B)

Ananda Marga Pracaraka Samgha Ltd v Tomar (No 2) – ss181 & 183 *Corporations Act 2001 (Cth)*- plaintiffs seeking interlocutory injunction - defendant seeking that first plaintiff be removed as a plaintiff in the proceedings (B)

Agresta v Agresta [2010] - Personal injuries - duty of care - appeal allowed in part, that is in relation to damages for domestic gratuitous assistance (I)

RTA v Graincorp Operations Ltd - ss58(3)(b) & 58(3)(c) *Road Transport (General) Act 2005 (NSW)* - negligent conduct penalised by the criminal law - unsuccessful appeal (I)

Grade One Monitoring Pty Ltd t/as Artemis Security Solutions v Sargent Security (Aus) Pty Ltd - Contracts - provision of security services on building site - whether breach of contract (I, C)

Mossimo Systems International Pty Ltd v Deputy Commissioner of Taxation - *Corporations Act 2001 (Cth)* - application for order setting aside statutory demands (B)



Jury v Tebbs Canvas Products Pty Ltd & Anor; Ristevski v Toyota Motor Corporation (Australia) Ltd & Anor; Wandel v Fashion Crest Pty Ltd - Costs - Accident Compensation Act 1985 (Vic) (I)

Platinum United II Pty Ltd & Anor v Secured Mortgage Management Limited (in liq) - Contracts - commercial loan facility agreement - respondent seeking that certain parts of statement of claim be struck out (B)

Hansen Yuncken Pty Ltd v Ian James Ericson trading as Flea's Concreting & Anor (No 2) - Building & Construction Industry Payments Act 2004 (Qld) - application for further security (C)

Walker as Trustee for Walker Superannuation Fund v Clough Property Claremont Pty Ltd - Sale of Land Act 1970 (WA) - statutory construction (B, C)

Masood v Kerr & Ors - United Kingdom decision - personal injuries - Chronic Fatigue Syndrome - causation (I)

Summaries with links (5 minute read)

Wednesday 8 December, 2010

Cook (Liquidator), in the matter of Italiano Family Fruit Company Pty Ltd (in liq) v Italiano Family Fruit Company Pty Ltd (in liq) [2010] FCA 1355

Federal Court of Australia

Finkelstein J (in Melbourne)

Corporations Act 2001 (Cth) - plaintiff liquidators seeking directions under s511 - plaintiffs justified in paying proceeds of recoveries to National Australia Bank - at para. 43 of an interesting judgment: "In the UK, preference recoveries are not property of the company. In Australia, preference recoveries are property of the company. Is this divergence in law justified ?" - comprehensive review of case law from the United Kingdom, Australia & Canada.

[Cook](#) (B)



Ananda Marga Pracaraka Samgha Ltd v Tomar (No 2) [2010] FCA 1342

Federal Court of Australia

Dodds-Streeton J (in Melbourne)

ss181 & 183 *Corporations Act* 2001 (Cth) - plaintiffs seeking interlocutory injunction restraining defendants from certain activities & requiring a number of steps, including return of the company seal, sending of corrective letters, & the furnishing of affidavits & the company contact list - use of company funds in litigation - defendant seeking that first plaintiff be removed as a plaintiff in the proceedings - plaintiffs' application granted, defendant's refused - detailed consideration of case law.

[Ananda Marga Pracaraka Samgha \(B\)](#)

Agresta v Agresta [2010] NSWCA 330

Court of Appeal of New South Wales

McCull & Macfarlan JJA; Sackville AJA

Personal injuries - duty of care - machine for mincing tomatoes - injury to respondent's left hand - contributory negligence - whether appellant's conduct was mere momentary inattention not amounting to negligence - damages - gratuitous domestic assistance - *Civil Liability Act* 2002 (NSW) - primary judge had given judgment for respondent in sum of \$303,551 - appeal allowed in part, that is in relation to damages for domestic gratuitous assistance.

[Agresta \(I\)](#)

RTA v Graincorp Operations Ltd [2010] NSWCA 317

Court of Appeal of New South Wales

Giles & McCull JJA; Handley AJA

ss58(3)(b) & 58(3)(c) *Road Transport (General) Act* 2005 (NSW) - negligent conduct penalised by the criminal law - overloading regulations - magistrate had dismissed RTA's case on causation & negligence - Supreme Court judge had dismissed RTA's appeal - appeal to Court of Appeal did not succeed.

[RTA \(I\)](#)

[Graincorp Operations](#) - decision 12 November 2009 - [2009] NSWSC 1204: see 'Benchmark' I & IBC Monday 16 November 2009 - statutory offences - negligence - offence under s58(3) *Road Transport (General) Act* 2005 (NSW) - chain of responsibility requirements - defendant a consignee of grain - specified loads delivered to defendant's depots were in breach of a mass requirement - defendant had been charged on basis that failure to take steps to turn vehicles away constituted conduct likely to induce others to breach mass requirement - charges dismissed in Local Court - whether Magistrate had misconstrued element of negligence under s58(3)(c) - scope of expression 'question of law alone' - 'induce' - 'likely' - appeal dismissed - detailed consideration of Australian case law in an interesting decision.



Grade One Monitoring Pty Ltd t/as Artemis Security Solutions v Sargent Security (Aus) Pty Ltd [2010] NSWSC 137

Supreme Court of New South Wales

Davies J

Contracts - a builder had contracted with plaintiff to provide security services at one of builder's building sites in Randwick - plaintiff had then entered into arrangement with defendant for defendant to provide security services for a period - hot water units stolen from property - appeal from magistrate's decision unsuccessful: no breach of contract.

[Grade One Monitoring](#) (I, C)

Mossimo Systems International Pty Ltd v Deputy Commissioner of Taxation [2010] NSWSC 1409

Supreme Court of New South Wales

Barrett J

ss459E, 459G, 459H(1)(a), 459H(1)(b), 459J(1)(b) & 601AB *Corporations Act* 2001 (Cth) - application for order setting aside statutory demands served by the ATO on nine companies - goods & services tax.

[Mossimo Systems International](#) (B)

Jury v Tebbs Canvas Products Pty Ltd & Anor; Ristevski v Toyota Motor Corporation (Australia) Ltd & Anor; Wandel v Fashion Crest Pty Ltd [2010] VSC 553

Supreme Court of Victoria

Williams J

Costs - *Accident Compensation Act* 1985 (Vic) - Counsel's fees certified by court order at amount other than scale amount - review of decision of Associate Justice - whether, in a taxation, certified Counsel's fees could be reduced under s134AG & WorkCover Legal Costs Order 2006.

[Jury](#) (I)

Platinum United II Pty Ltd & Anor v Secured Mortgage Management Limited (in liq) [2010] QSC 455

Supreme Court of Queensland

de Jersey CJ

Contracts - commercial loan facility agreement - *Australian Securities & Investments Commission Act* 2001 (Cth) - *Trade Practices Act* 1974 (Cth) - respondent seeking that certain parts of applicants' third further amended statement of claim be struck out (or summary judgment.)

[Platinum United II](#) (B)



Hansen Yuncken Pty Ltd v Ian James Ericson trading as Flea's Concreting & Anor (No 2) [2010]

QSC 457

Supreme Court of Queensland

McMurdo J

Building & Construction Industry Payments Act 2004 (Qld) - adjudication decision - first respondent applying for provision of further security as condition of injunction put in place by an order in July 2009.

[Hansen Yuncken](#) (C)

Walker as Trustee for Walker Superannuation Fund v Clough Property Claremont Pty Ltd

[2010] WASCA 232

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Sale of Land Act 1970 (WA) - statutory construction - "land" - appeal dismissed.

[Walker](#) (B, C)

[Walker](#) - decision 4 December 2009: see 'Benchmark' B, C & IBC Tuesday 8 December 2009 - plaintiff purchasers seeking to avoid contract of sale - 'off-the-plans' strata unit in a multi-storey apartment development proposed for construction at Claremont - plaintiffs' action dismissed.

From the United Kingdom...

Masood v Kerr & Ors [2010] EWCA Civ 1347

Court of Appeal of England & Wales

Ward, Longmore & Etherton LJJ

Personal injuries - whiplash injury - primary judge had dismissed appellant's claim for damages brought on basis that motor accident had caused him to develop Chronic Fatigue Syndrome - causation - expert evidence - appeal dismissed.

[Masood](#) (I)

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