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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)

Commissioner of Taxation v McWilliam - taxation - employee share schemes (B, G)

Petronaitis v Rowles - application to strike out summons - non-appearance - no claim for substantive relief (I, B, C)

Webuildem Pty Ltd v Arab Bank of Australia Ltd - interlocutory application - stay of consent orders (I, B, C)

Vagg v McPhee - procedure - application for stay of costs orders pending appeal (I, B, C)

Barlin Investments Pty Ltd v Westpac Banking Corporation - real property - unregistered dealings (B)

Marriner & Ors v Australian Super Developments Pty Ltd & Ors - contract - trusts - breach of directors fiduciary duties (I, B, C)

Neil v Legal Profession Complaints Committee - apprehended bias (I, G)



Summaries with links (5 minute read)

Commissioner of Taxation v McWilliam [2012] FCAFC 105

Full Court of the Federal Court of Australia

Edmonds, Jagot & Robertson JJ

Taxation - employee share schemes - calculation of date of acquisition of options to purchase shares - appeal under s44 *Administrative Appeals Tribunal Act 1975 (Cth)* - nature of right acquired - extensive consideration of case law - meaning of right in Division 13A *Income Tax Assessment Act 1936 (Cth)* (repealed) (Act) - date of acquisition of right - consideration of categories set out in s139G of the Act - construction of s139G with reference to *Commissioner of Taxation v Linter Textiles Australia Ltd (In Liq)* [2005] HCA 20.

[Commissioner of Taxation](#) (B, G)

Petronaitis v Rowles [2012] NSWCA 236

Court of Appeal of New South Wales

Beazley JA

Civil procedure - application to strike out summons seeking leave to appeal on grounds of non-appearance by plaintiff, frivolous or vexatious proceedings and abuse of process pursuant to Pt 13 and Pt 14 *Uniform Civil Procedure Rules 2005 (NSW)* - power of court to dispense with personal service - persistence of non-appearance by plaintiff - consideration of fairness to parties - whether grounds of appeal disclose any reasonable case on appeal.

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

Webuildem Pty Ltd v Arab Bank of Australia Ltd [2012] NSWCA 242

Court of Appeal of New South Wales

Allsop ACJ & Barrett JA

Interlocutory applications - application for leave to appeal refusal to order stay of consent orders settling proceedings - whether basis for grant of stay - no proceedings to set aside consent orders right to interlocutory relief where no claim initiated for final relief - *Australian Broadcasting Corporation v Lenah Game Meats* [2001] HCA 63 - prospects of success on appeal.

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

[Webuildem](#) - decision at first instance

**Vagg v McPhee [2012] NSWCA 237**

Court of Appeal of New South Wales

McCull JA

Stay - Costs - motion seeking stay of costs assessment of court below until appeal decided - appellants sought respondents' consent to orders before filing motion - respondents agreed to orders on morning of hearing - whether to grant stay - whether respondents should pay appellants costs of notice of motion on indemnity basis - requirement that parties and legal representatives assist court in pursuit of objectives of s56 *Civil Procedure Act* 2005 (NSW).

[Vagg](#) (I, B, C)[Vagg](#) - decision at first instance**Barlin Investments Pty Ltd v Westpac Banking Corporation [2012] NSWSC 699**

Supreme Court of New South Wales

Ball J

Real property - priority of unregistered dealings in respect of strata unit - lodgement of caveats - s74(H)4 *Real Property Act* 1900 (NSW) (Act) - definition of lodgement in s36(1B) of the Act - necessity for distinctive reference to be allocated - priority between competing equitable interests: *Latec Investments Ltd v Hotel Terrigal Pty Ltd (in liquidation)* (1964 - 1965) 113 CLR 265; *Butler v Fairclough* (1917) 23 CLR 78 - determination of better equity - case law principles concerning postponing conduct: *Perpetual Trustee Company Ltd (original plaintiff), Performance Capital Mortgage Pty Ltd* [2010] NSWSC 425 - extent of protection afforded by s43A of the Act.

[Barlin Investments](#) (B)**Marriner & Ors v Australian Super Developments Pty Ltd & Ors [2012] VSCA 171**

Court of Appeal of Victoria

Neave & Mandie JJA; Judd AJA

Contract - trusts - contract for sale of joint venture project - whether joint venture vehicle imposed expenditure cap - whether director of joint venture vehicle breached director's duty or fiduciary duty by incurring payments in excess of cap - whether excess amount paid was in respect of works relating to spending cap - whether consequential loss established - whether money was held on trust for joint venture vehicle or as debt owed to joint venture vehicle - whether solicitor in breach of trust for disbursing money on direction - whether director liable for solicitor's breach of trust.

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



Neil v Legal Profession Complaints Committee (No 2) [2012] WASCA 150

Court of Appeal of Western Australia

Pullin, Buss & Murphy JJA

Apprehended bias - application for leave to appeal decision of the State Administrative Tribunal (SAT) refusing leave to appeal decision of Legal Profession Complaints Committee - application for recusal of appeal judge - requirements for allegations of apprehension of bias: *Michael Wilson & Partners v Nicholls* [2011] HCA 48 - appeal on question of law: s105(2) of *State Administrative Tribunal Act 2004* (WA) - principles relating to grant of leave in *Paradis v Settlement Agents Supervisory Board* [2007] 33 WAR 361 - mandatory considerations required to be taken into account by SAT.

[Neil](#) (I, G)

Frogs in Chorus

by AB 'Banjo' Paterson

The chorus frogs in the big lagoon
Would sing their songs to the silvery moon.
Tenor singers were out of place,
For every frog was a double bass.
But never a human chorus yet
Could beat the accurate time they set.
The solo singer began the joke;
He sang, "As long as I live I'll croak,
Croak, I'll croak,"
And the chorus followed him: "Croak, croak, croak!"

The poet frog, in his plaintive tone,
Sang of a sorrow was all his own;
"How shall I win to my heart's desire?
How shall I feel my spirit's fire?"
And the solo frog in his deepest croak,
"To fire your spirit," he sang, "eat coke,
Coke, eat coke,"
And the chorus followed him: "Coke, coke, coke!"



The green frog sat in a swampy spot
And he sang the song of he knew not what.
"The world is rotten, oh cursed plight,
That I am the frog that must set it right.
How shall I scatter the shades that lurk?"
And the old man bullfrog sang, "Get work,
Work, get work,"
And the chorus followed him: "Work, work, work!"

The soaring spirits that fain would fly
On wings of hope to the starry sky
Must face the snarls of the jealous dogs,
For the world is ruled by its chorus frogs.

<http://www.poetrylibrary.edu.au/poets/paterson-a-b-banjo>

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