



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Miller v Miller - decision of the High Court of Australia - personal injuries - duty of care - accident in stolen car - appellant asked respondent driver to be let out of vehicle - by majority, appeal allowed (I)

CGU Insurance Ltd v Bazem Pty Ltd - Joinder - leave to appeal dismissed - cross-appeal allowed (I, C)

Fairfax Financial Holding Ltd & Anor - *Evidence on Commission Act 1995* (NSW) (I, B, C)

Australian Financial Services & Leasing Pty Ltd v Hills Industries Ltd & Ors - Restitution - unjust enrichment - allocation of contractual risk - change of position - perpetration of a fraud by an outside party (B)

Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd - s16(9) *Commercial Arbitration Act 2010* (B)

The Owners, SP 75903 v Dix & Anor - *Home Building Regulation 1997*: meaning of word 'storey' in clause 57BC(5) (C)



Capers v State of Victoria - Personal injuries - jury verdict adverse to plaintiff/appellant - slip & fall - appeal dismissed (I)

Healthscope (Tasmania) Pty Ltd & Anor v Australian Hospital Care Pty Ltd & Anor - Contracts - terms of Novation Deed - privatisation of Queen Alexandra Hospital (B)

Koljibabic v BHP Billiton Nickel West Pty Ltd - Personal injuries - psychiatric illness - appeal dismissed (I)

Able Lott Holdings Pty Ltd v City of Fremantle - *Planning & Development Act 2005* (WA) - regulatory offences - appeals against sentence dismissed (I, C)

Summaries with links (5 minute read)

Monday 11 April 2011

Miller v Miller [2011] HCA 9

High Court of Australia

French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel & Bell JJ

Personal injuries - duty of care - illegality - appellant passenger & respondent driver illegally using stolen motor vehicle in contravention of s371A Criminal Code (WA) - appellant twice asked respondent driver to be let out of vehicle - requests not complied with - tetraplegia - "duty of care", "illegal use", "joint illegal enterprise", "statutory purpose" - by majority, appeal allowed - at para. 9 of judgment: by the time the accident happened, appellant & respondent were no longer engaged in a joint illegal enterprise - orders of W.A. Court of Appeal set aside, and, in their place, order that appeal to that Court be dismissed.

[Miller](#) (I)

[Miller](#) - *Miller v Miller* [2009] WASCA 199: decision W.A. Court of Appeal 6 November 2009 - see 'Benchmark' I & IBC Tuesday 10 November 2009 - joint illegal enterprise - whether appellant driver owed duty of care to respondent - primary judge had found duty of care existed - appeal allowed;

[Miller](#) - *Miller v Miller* [2008] WADC 46: decision 3 April 2008 of Schoombie DCJ on liability - plaintiff aged sixteen at time of accident - defendant driver a relation of plaintiff's mother - vulnerability - control - duty of care established in favour of plaintiff...

**CGU Insurance Ltd v Bazem Pty Ltd [2011] NSWCA 81**

Court of Appeal of New South Wales

Beazley, Hodgson & Macfarlan JJA

Joinder - application for leave to appeal from a decision in which first respondent Bazem granted leave to to amend its Statement of Claim to join CGU as a defendant in the proceedings that Bazem had brought against Bureau of Urban Architecture Pty Ltd - insurer seeking leave to appeal against that decision - also before the Court an application by Bazem for leave to cross-appeal against primary judge's order that Bazem pay insurer's costs of Bazem's application for leave to amend, notwithstanding that the Client was successful in obtaining that leave - leave to appeal dismissed - cross-appeal allowed.

[CGU Insurance](#) (I, C)

[Bazem](#) - decision 2 September 2010: see 'Benchmark' I, C & IBC Wednesday 15 September 2010 - joinder - in the firstnamed proceedings, plaintiff Bazem seeking leave to file amended statement of claim by which to join insurer as second defendant & to seek against it declaration that it was obliged to indemnify first defendant -in second proceedings, defendant Bazem seeking leave to amend its defence to include allegations in draft defence of insurer in the other proceedings.

Fairfax Financial Holding Ltd & Anor [2011] NSWSC 223

Supreme Court of New South Wales

Hall J

Evidence on Commission Act 1995 (NSW) - plaintiffs' application for an order pursuant to s32 for evidence to be obtained in this State - subpoenas - Letter of Request from Superior Court of New Jersey, Morris County United States of America - orders made pursuant to s32.

[Fairfax Financial Holding](#) (I, B, C)

[British American Tobacco Australia Services](#) - reported at 60 NSWLR 483: decision of NSW Court of Appeal 18 May 2004 - evidence on commission - requests by foreign courts - s33, s34 *Evidence on Commission Act 1995* - joinder - legal professional privilege.

Australian Financial Services & Leasing Pty Ltd v Hills Industries Ltd & Ors [2011] NSWSC 267

Supreme Court of New South Wales

Einstein J

Restitution - unjust enrichment - allocation of contractual risk - change of position - perpetration of a fraud by an outside party - determination as to which of a number of entities should bear the cost of that fraud - plaintiff carrying on finance business providing customers with finance to purchase commercial or industrial equipment for use in the customer's business - verdict for



plaintiff against first defendant - verdict for second defendant against plaintiff - verdict for plaintiff against third defendant.

[Australian Financial Services and Leasing](#) (B)

Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd [2011] NSWSC 268

Supreme Court of New South Wales

Hammerschlag J

s16(9) *Commercial Arbitration Act* 2010 - intellectual property - licensing agreement - jurisdiction of arbitrator to determine dispute concerning patents - meaning of term "dispute" in arbitration clause - plaintiff's challenge to jurisdiction failed.

[Larkden](#) (B)

The Owners, SP 75903 v Dix & Anor [2011] NSWSC 245

Supreme Court of New South Wales

Hammerschlag J

Home Building Act 1989 (NSW) - proposed residential and commercial development in Manly Vale - plaintiff seeking order for determination and decision of a separate question - *Home Building Regulation* 1997: meaning of word 'storey' in clause 57BC(5) - exemptions from insurance for multi-storey building - answer to separate question at para. 112 of judgment.

[The Owners, SP 75903](#) (C)

Capers v State of Victoria [2011] VSCA 97

Court of Appeal of Victoria

Warren CJ, Ashley JA & Kyrou AJA

Personal injuries - jury verdict adverse to plaintiff/appellant - slip & fall on stairs at work - whether evidence had compelled a conclusion favourable to appellant - appeal dismissed.

[Capers](#) (I)

Healthscope (Tasmania) Pty Ltd & Anor v Australian Hospital Care Pty Ltd & Anor [2011] VSC 132

Supreme Court of Victoria

Sifris J

Contracts - terms of Novation Deed - privatisation of Queen Alexandra Hospital - clause entitled first plaintiff to recover from first defendant for liabilities & debts incurred before completion date



- meaning of 'incur' - whether second plaintiff could recover from second defendant under guarantee for debt paid on behalf of first plaintiff.

[Healthscope](#) (B)

Koljibabic v BHP Billiton Nickel West Pty Ltd [2011] WASCA 87

Court of Appeal of Western Australia

Pullin, Buss & Newnes JJA

Personal injuries - appellant suffering from psychiatric illness - allegation that respondent negligently exposed appellant to unsafe level of noxious gas at work - appeal dismissed.

[Koljibabic](#) (I)

[Koljibabic](#) - decision District Court 7 November 2008

Able Lott Holdings Pty Ltd v City of Fremantle [2011] WASC 87

Supreme Court of Western Australia

Murray J

Planning & Development Act 2005 (WA) - regulatory offences - development of land without approval - appeals against sentence - imposition of fines - appeals dismissed.

[Able Lott Holdings](#) (I, C)

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