



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to do a search of particular legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

John Holland Pty Ltd v Construction, Forestry, Mining & Energy Union & Ors - *Workplace Relations Act 1996* (Cth) - claims for orders for imposition of pecuniary penalties dismissed (I, B, C)

Bechara v Campbell-Williams - Costs - appeal dismissed (I, C)

Amaca Pty Ltd v Aartsen - *Jurisdiction of Court (Cross-Vesting) Act 1987* (Cth) - application to transfer proceedings in Dust Diseases Tribunal of NSW to Supreme Court of South Australia (I)

BHP Billiton Ltd v Stephens - *Jurisdiction of Court (Cross-Vesting) Act 1987* (Cth) application to transfer proceedings in Dust Diseases Tribunal of NSW to Supreme Court of South Australia (I)

Flowers v National Australia Bank Ltd - Settlement deed - whether plaintiff had arguable case for setting aside consent judgment (B)

Effeney v Millar Investments Pty Ltd & Ors - Easements - application for extinguishment or modification of easement (B, C)

Manpower Services (Australia) Pty Ltd v Workcover Corporation of South Australia - s66



Workers Rehabilitation & Compensation Act 1986 (SA) - challenge to validity of decision by WorkCover Levy Review Panel as to amount payable by way of levy (I)

Clifton [as liquidator of Adelaide Fibrous Plasterboard Linings Pty Ltd (in liq)] & Anor v CSR Building Products Pty Ltd - s588F *Corporations Act 2001 (Cth)* - relation back period - unfair preferences (B, C)

Cornes v the Ten Group Pty Ltd & Ors - Defamation - plaintiff awarded damages (I)

Salia Property Pty Ltd v Commissioner of Highways - *Land Acquisition Act 1969 (SA)* - judicial review (C)

Rehins Pty Ltd v Debin Nominees Pty Ltd [No 2] - Contract for sale of land - specific performance (C)

Re Estate of Margaret Criddle; ex parte Numans - *Wills Act 1970 (WA)* - application for grant of letters of administration in intestacy refused (B)

Scottish Widows plc v Commissioners for Her Majesty's Revenue & Customs - United Kingdom case - High Court - s83 *Finance Act 1989 (UK)* - approach to statutory construction - life assurance company (I)

Summaries with links (5 minute read)

Tuesday 12 July 2011

John Holland Pty Ltd v Construction, Forestry, Mining & Energy Union & Ors [2011] FCA 770

Federal Court of Australia

Greenwood J (in Brisbane)

Workplace Relations Act 1996 (Cth) - applicant's claims for orders for imposition of pecuniary penalty upon first, second & third respondents in respect of contended contraventions of s767 & s768 dismissed.

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



[John Holland](#) - decision Federal Court 6 August 2010 - consideration of steps to be taken upon referral of proceedings to primary judge for further consideration consequent upon orders of Full Court;

[Construction, Forestry, Mining and Energy Union](#) - decision Full Court of the Federal Court 16 July 2010: see 'Benchmark' I, C & IBC Tuesday 20 July 2010 - s760, 767 & 768 *Workplace Relations Act* 1996 (Cth) - construction of greenfield workplace agreement - primary judge had found Expansion Agreement applied exhaustively to work performed by employees of John Holland at X50 Expansion worksite, Bargaining Period Notices were invalid & of no effect; penalties imposed - appeal allowed - matter remitted;

[John Holland](#) - decision Federal Court 13 August 2009 - pecuniary penalties;

[John Holland](#) - decision Federal Court 24 July 2009

[John Holland](#) - decision Federal Court 19 June 2009: see 'Benchmark' I, C & IBC Monday 22 June 2009 - rights of entry - trespass to land - *Occupational Health & Safety Act* 2000 (NSW) - s109 *the Constitution* - *Workplace Relations Act* 1996 (Cth): alleged contraventions of s767(1) and 768(1) - applicants involved in construction of Sydney Desalination Plant in Kurnell area - in September 2007, 2nd & 3rd respondents entered site - applicants contending unlawful entry - "authorised representative", "officer", "office" - applicants succeeded in establishing that 2nd & 3rd respondents were not authorised under OHS Act to enter the premises: declaration made to that effect - in all other respects applicants' claims was dismissed.

Bechara v Campbell-Williams [2011] NSWCA 177

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan JA, Handley AJA

Costs - appeal from refusal of application that respondent be ordered to pay appellants' costs - appeal dismissed.

[Bechara](#) (I, C)

[Tarabay](#) - decision 23 March 2010: see 'Benchmark' I, C & IBC Thursday 25 March 2010 - costs - whether costs incurred without reasonable cause - claim was for unpaid costs of building work - whether solicitor for plaintiff to indemnify successful defendants - statutory power to order costs against practitioner - s99(1)(b) & s99(2)(c) *Civil Procedure Act* 2005- application against twenty-third respondent dismissed.

Amaca Pty Ltd v Aartsen [2011] NSWSC 676

Supreme Court of New South Wales

Harrison AsJ

Jurisdiction of Court (Cross-Vesting) Act 1987 (Cth) - application to transfer proceedings in Dust Diseases Tribunal of NSW to Supreme Court of South Australia dismissed.

[Amaca](#) (I)

BHP Billiton Ltd v Stephens [2011] NSWSC 675

Supreme Court of New South Wales



Harrison AsJ

Jurisdiction of Court (Cross-Vesting) Act 1987 (Cth) - application to transfer proceedings in Dust Diseases Tribunal of NSW to Supreme Court of South Australia dismissed.

[BHP Billiton](#) (I)

Flowers v National Australia Bank Ltd [2011] NSWSC 698

Supreme Court of New South Wales

Ball J

Settlement deed - margin lending agreement - proceedings settled following mediation - plaintiff did not pay settlement money; defendant entered consent judgment in accordance with deed - whether plaintiff had arguable case for setting aside consent judgment - Banking Code of Practice - plaintiff's application dismissed - proceedings dismissed.

[Flowers](#) (B)

Effeney v Millar Investments Pty Ltd & Ors [2011] NSWSC 708

Supreme Court of New South Wales

Ward J

Easements - application for extinguishment or modification of easement benefitting local council - property at Burradoo - application dismissed - no intentional abandonment of easement established - comprehensive consideration of legislation, text & U.K. & Australian case law.

[Effeney](#) (B, C)

Manpower Services (Australia) Pty Ltd v Workcover Corporation of South Australia [2011] SASC 107

Supreme Court of South Australia

Doyle CJ

s66 *Workers Rehabilitation & Compensation Act 1986 (SA)* - judicial review - challenge to validity of decision by WorkCover Levy Review Panel as to amount payable by Manpower by way of levy under the Act - "the class of industry" in which Manpower employed workers - decision of WorkCover Levy Review Panel set aside - Panel to reconsider the matter.

[Manpower Services](#) (I)

Clifton [as liquidator of Adelaide Fibrous Plasterboard Linings Pty Ltd (in liq)] & Anor v CSR Building Products Pty Ltd [2011] SASC 103

Supreme Court of South Australia



Peek J

Corporations Act 2001 (Cth) - plaintiff liquidators seeking declaration pursuant to s588FF for five payments made by AFPL to the defendant during six month relation back period were unfair preferences & therefore voidable transactions - running account between parties continuing from before start of six month period until 14 July 2006 when it ceased to operate as a running account of the requisite type - plaintiffs entitled to recovery of final three of the five payments.

[Clifton](#) (B, C)

Cornes v the Ten Group Pty Ltd & Ors [2011] SASC 104

Supreme Court of South Australia

Peek J

Defamation - consideration of case law as to "the single meaning rule" - plaintiff awarded damages in sum of \$85,000.00

[Cornes](#) (I)

Salia Property Pty Ltd v Commissioner of Highways [2011] SASC 106

Supreme Court of South Australia

Bleby J

Land Acquisition Act 1969 (SA) - judicial review - plaintiff seeking to set aside as invalid the purported acquisition of its land by defendant - proposed South Road Superway Project between Port River Expressway at Wingfield & Southern Expressway at Darlington - plaintiff's application dismissed.

[Salia Property](#) (C)

Rehins Pty Ltd v Debin Nominees Pty Ltd [No 2] [2011] WASC 168

Supreme Court of Western Australia

Murray J

Contracts - land at Kwinana - plaintiff purchasers contending contract for purchase of land by them from defendants remained on foot although defendants had sought to terminate the contract on a number of occasions - plaintiffs seeking specific performance or, alternatively, if the contract at an end, defendants claiming breach of contract & damages - judgment for plaintiffs.

[Rehins](#) (C)



Re Estate of Margaret Criddle; ex parte Numans [2011] WASC 169

Supreme Court of Western Australia

Registrar C Boyle

Wills Act 1970 (WA) - application for grant of letters of administration in intestacy of the estate of deceased - whether an undoubted will that testator made was ever revoked - no intestacy - application refused.

[Estate of Margaret Criddle \(B\)](#)

From the United Kingdom...

Scottish Widows plc v Commissioners for Her Majesty's Revenue & Customs [2001]UKSC 32

Supreme Court of the United Kingdom

Hope, Walker, Hale, Neuberger & Clarke LJJ

s83 *Finance Act 1989 (UK)* - taxing statutes - approach to statutory construction - life assurance company - annual returns - calculating profits or loss - Society established in Edinburgh in 1814 demutualised in 2000 - transfer of business to Company - "investment income", "as brought into account for a period of account", "and not otherwise", "value (whether realised or not) of those assets" - book values - taxable receipts - capital reserve - Revenue's cross-appeal upheld - at para. 40 & continuing, historical background of life assurance & taxation of life offices considered in judgment of Lord Walker.

[Press summary \(PDF\)](#) (I)

Scottish Widows plc (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) (Scotland)

[Judgments \(PDF\)](#)

In the news...

Evidence Amendment (Journalist Privilege) Act 2011 (NSW) - Act No 18 of 2011 (NSW) - date of assent 21 June 2011 - an Act to amend *Evidence Act 1995 (NSW)* with respect to disclosure of the identity of persons who give information to journalists; and for other purposes.

[Evidence Amendment \(Journalist Privilege\) Act 2011 No 18](#) (I, B)

[s126B](#) *Evidence Act 1995 (NSW)*



Evidence Amendment (Journalists' Privilege) Act 2011 (Cth) - Act No. 21 of 2011 (Cth) - date of assent 12 Apr 2011 - An Act to amend the *Evidence Act 1995*, and for related purposes

[Evidence Amendment \(Journalists' Privilege\) Act 2011 \(I, B\)](#)

Division 1A of Part 3.10 of *Evidence Act 1995* (Cth) headed "Journalists' privilege" & consisting of 126G (definitions) and s126H (protection of journalists' sources) is repealed by the 2011 Act above.

[s126G](#) of 1995 Act repealed

[s126H](#) of 1995 Act repealed

[Click Here to access our Benchmark Search Engine](#)