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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)

Australian & International Pilots Association v Fair Work Australia - *Fair Work Act 2009 (Cth)* - application for judicial review of decision of Fair Work Australia dismissed (I, B, C, G)

Izzard v Dunbier Marine Products (NSW) Pty Ltd - Negligence - apportionment - employer's duty of care - *Motor Accidents Compensation Act 1999 (NSW)* - s151Z *Workers Compensation Act 1987 (NSW)* - statutory interpretation - appeal allowed (I)

Avery v Saree Holdings Ltd; Lava Ltd v Avery - ss6(1) & 80 *Consumer Credit (NSW) Code* (B)

Zhou v Kousal & Ors - *Sheriff Act 2009 (Vic)* - sale of property - duties of the Sheriff under the Act - duty at law to owner of land (I, B, C, G)

ANZ Banking Group Ltd v Lomas & Ors - Guarantee & indemnity - plaintiff's application for summary judgment dismissed (B)

Tallenford Pty Ltd v Gilete G & B Civil Pty Ltd - Contracts - ss51A & 87 *Trade Practices Act 1974 (Cth)* - goodwill - judgment for plaintiff (B)



Shaddick v JDV Ltd - Costs (I, B)

Summaries with links (5 minute read)

Australian & International Pilots Association v Fair Work Australia [2012] FCAFC 65

Full Court of the Federal Court of Australia

Lander, Buchanan & Perram JJ

Fair Work Act 2009 (Cth) - application for judicial review of decision of Fair Work Australia - enterprise agreements - whether Qantas' announced lock out to commence at 8 pm on Monday 31 October 2011 amounted to protected industrial action - applicant had failed to establish as a matter of fact that Qantas' action was not in response to applicant's employee claim action - FWA had the power to make the order it did - application dismissed.

[Australian and International Pilots Association](#) (I, B, C, G)

[Minister for Tertiary Education, Skills, Jobs and Workplace Relations](#) - decision Full Bench of Fair Work Australia: Justice Giudice, President, Senior Deputy President Watson, Commissioner Roe 31 October 2011 - Minister's application for an order under s424 *Fair Work Act 2009* terminating, or in the alternative suspending for a period of 90 days, protected industrial action being engaged in &/or threatened impending or probable by Qantas Airways Ltd (Qantas), QCatering Ltd, the Australian Licensed Aircraft Engineers Association (ALAEA), Transport Workers' Union of Australia (TWU) & Australian & International Pilots Association (AIPA) - Full Court decided to terminate protected industrial action in relation to each of the proposed enterprise agreements immediately.

Izzard v Dunbier Marine Products (NSW) Pty Ltd [2012] NSWCA 132

Court of Appeal of New South Wales

Basten, Macfarlan & Barrett JJA

Torts - negligence - apportionment - employer's duty of care - s5B(1) *Civil Liability Act 2002* (NSW) - foreseeability - *Motor Accidents Compensation Act 1999* (NSW) - statutory interpretation - whether accident a motor accident - injury - second respondent, the plaintiff in District Court proceedings, injured in course of his employment - steel perimeter frame fell on him as he was dismounting from trailer - first respondent employer had arranged for galvanised steel boat trailers to be transported from Melbourne to its premises at Ingleburn, NSW - employer had a contract with second appellant carrier company to undertake transport of the boat & accessories - first appellant was driver employed by the carrier - third respondent was compulsory third party insurer for prime mover & 2 trailers used - in the District Court, plaintiff did not sue his employer - primary



judge in District Court had found driver & carrier both negligent, & that plaintiff was 20% contributorily negligent - appeal directed to challenge to primary judge's dismissal of appellant's cross-claim against first respondent employer - whether first respondent had been negligent - Answer: yes - s151(H) *Workers Compensation Act 1987* (NSW) - first and second appellants 60% responsible for second respondent's injuries and first respondent was 40% responsible - appeal allowed.

[Lizzard](#) (I)

Avery v Saree Holdings Ltd; Lava Ltd v Avery [2012] NSWSC 463

Supreme Court of New South Wales

Slattery J

Ss6(1) & 80 *Consumer Credit (NSW) Code* - 2 related proceedings being heard together - apartment at Walsh Bay - plaintiff seeking relief against first & second mortgagees - first mortgagee Lava Ltd had obtained judgment for possession - plaintiff seeking to set that judgment aside - plaintiff seeking declaration against second mortgagee that no money owing under the second mortgage - loan & option agreement - call option deed - discharge & release - plaintiff unsuccessful in application to have Lava mortgage set aside - further submissions directed to be provided in relation to the other proceedings.

[Avery](#) (B)

[Lava](#) - decision Supreme Court of NSW 18 March 2009 - possession proceedings - order for possession - grant of stay on terms.

Zhou v Kousal & Ors [2012] VSC 187

Supreme Court of Victoria

Vickery J

Sheriff Act 2009 (Vic) - sale of property - valuation - former common law writs considered: *feri facias & venditioni exponas* - kinds of special disability which may invoke the equitable principles giving rise to relief against unconscionable dealing considered - duties of the Sheriff under the Act - duty at law to owner of land - plaintiff seeking declaration that third defendant Sheriff breached his legal duty by selling his interest in a property at Braybrook at auction for an amount which was illusory, unfair, unreasonable in that it bore no relation to the evident worth of his interest in the property - property sold at second auction to first defendant for \$1,000 - plaintiff seeking order that the purported sale be set aside - plaintiff also seeking damages against the Sheriff - against first defendant, plaintiff seeking declaration that he acted unconscionably in insisting upon his



purported right to settle the contract of sale and register the transfer of the interest in his favour with Land Victoria - plaintiff also seeking an order that the purported sale and transfer be set aside and that first defendant be permanently restrained from lodging the transfer with the Registrar for registration - against Registrar of Titles, plaintiff seeking injunction permanently restraining him from the lodging the transfer for registration - history of the office of the Sheriff - an interesting review of UK & Australian case law - second auction had not been conducted in accordance with the common law or the *Sheriff Act* - sale by Sheriff set aside.

[Zhou](#) (I, B, C, G)

ANZ Banking Group Ltd v Lomas & Ors [2012] QSC 124

Supreme Court of Queensland

Margaret Wilson J

Guarantee & indemnity - plaintiff seeking summary judgment against defendants for \$2,180,958.09, together with interest & costs - application for summary judgment dismissed.

[ANZ Banking Group](#) (B)

Tallenford Pty Ltd v Gilete G & B Civil Pty Ltd [2012] WASC 156

Supreme Court of Western Australia

Allanson J

Contracts - ss51A & 87 *Trade Practices Act 1974* (Cth) - plaintiff's drainage contractor business sold to first defendant - sale price included \$1.3 million for goodwill - goodwill was not payable immediately - second defendant, as a director of the purchaser, guaranteed the payment of goodwill - purchaser defaulted - second defendant contending plaintiff in breach of contract, & further that the guarantees were obtained by misleading or deceptive conduct - second defendant counterclaiming for declarations that guarantees void - plaintiff not in breach of contract; nor had it obtained the guarantees by misleading or deceptive conduct - plaintiff entitled to the balance of the goodwill, & second defendant liable as guarantor to pay it - judgment for plaintiff in sum of \$597,273 plus interest at 8% - counterclaim dismissed.

[Tallenford](#) (B)



Shaddick v JDV Ltd [2012] WASC 120 (S)

Supreme Court of Western Australia

Allanson J

Costs - *Calderbank* offer - defendants to pay costs of the third party in the third party proceedings - plaintiff & third party to pay defendants' costs of primary proceedings.

[Shaddick](#) (I, B)

[Shaddick](#) - decision Supreme Court of Western Australia: see Benchmark I, B & IBCG Wednesday 11 April 2012 - negligence claim - contracts - implied warranties - causation - margin loan agreement entered into for purpose of share purchase - first defendant carried on business as investment adviser & stockbroker - second defendant was an advisor with first defendant - plaintiff pleading breaches of statutory warranties arising under ss12ED(1) & 12ED(2) *Australian Securities & Investments Commission Act*, alternatively ss74(1) & 74(2) *Trade Practices Act 1974* (Cth) - claim against both defendants dismissed - third party notice dismissed.

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