

Wednesday 14 December 2011

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Broadcast Australia Pty Ltd v Kim Noonan & Anor - Compulsory acquisition of land - *Land Acquisitions Act 1955-1956* (Cth) - characterisation or nature of right acquired by Commonwealth - *National Transmission Network Sale Act 1998* (Cth) (C)

Dargan v United Super Pty Ltd (No 2) - Costs (I)

Deputy Commissioner of Taxation v TDE Nominees Pty Ltd (No 2) - s14ZZR *Taxation Administration Act 1953* (Cth) - s177 *Income Tax Assessment Act 1936* (Cth) (B)

Peter Parkinson v Diabetes Australia & Anor - Wills - which of defendants was the object of one of the gifts in the will (B)

DC Consolidated Investments Pty Ltd v Maroondah City Council - *Planning & Environment Act 1987* (Vic) - appeal on question of law dismissed (C)

Drew v Bundaberg Regional Council - Planning schemes (C)

Sanders v The Nominal Defendant - ss37(3) & 39 *Motor Accidents Insurance Act 1994* (Qld) (I)



Syddall v National Mutual Life Association of Australasia Ltd - ss21, 26, 29 & 31 *Insurance Contracts Act* 1984 (Cth) (I)

Watpac Developments Pty Ltd v Latrobe King Commercial Pty Ltd & Anor - s71 *Property Law Act* 1974 (Qld) - contractual interpretation (B, C)

Bank of Western Australia Ltd v National Australia Bank Ltd - Banking - guarantees - fixed & floating charge (B, C)

Summaries with links (5 minute read)

Broadcast Australia Pty Ltd v Kim Noonan & Anor [2011] NSWSC 1524

Supreme Court of New South Wales

Bergin CJ in Eq

Compulsory acquisition of land - *Land Acquisitions Act* 1955-1956 (Cth) - characterisation or nature of right acquired by Commonwealth in 1968 - whether the acquired right (or land) so acquired was only able to be used for the public purpose for which it was acquired - whether the right was transferred to the plaintiff's predecessor pursuant to a declaration made under the *National Transmission Network Sale Act* 1998 (Cth) - characteristics of an easement - conclusions at par 87 of judgment - detailed analysis of UK & Australian case law - "right".

[Broadcast Australia](#) (C)

Dargan v United Super Pty Ltd (No 2) [2011] NSWSC 1527

Supreme Court of New South Wales

Gzell J

Costs - offer of compromise - demonstration of reasonableness in rejection of the offer - defendant to pay plaintiff's costs on ordinary basis.

[Dargan](#) (I)

[Dargan](#) - decision 1 November 2011 - superannuation - total & permanent disablement - interpretation of clause of Group Life Policy - work for which insured "reasonably fitted" by education, training or experience - Australian case law considered.

**Deputy Commissioner of Taxation v TDE Nominees Pty Ltd (No 2) [2011] NSWSC 1528**

Supreme Court of New South Wales

Gzell J

s14ZZR *Taxation Administration Act* 1953 (Cth) - s177 *Income Tax Assessment Act* 1936 (Cth) - application by TDE Nominees for order that there be a stay of recovery proceedings pending outcome of any appeal or review under Part IV - application dismissed - detailed examination of legislation.

[Deputy Commissioner of Taxation](#) (B)

Peter Parkinson v Diabetes Australia & Anor [2011] NSWSC 1530

Supreme Court of New South Wales

Bryson AJ

Wills - construction of will - which of defendants was the object of one of the gifts in the will - declaration that the object of the gift was the first defendant.

[Peter Parkinson](#) (B)

DC Consolidated Investments Pty Ltd v Maroondah City Council [2011] VSC 634

Supreme Court of Victoria

Osborn J

Planning & Environment Act 1987 (Vic) - appeal on question of law - construction of statutory offence - whether penalty manifestly excessive - appeal dismissed.

[DC Consolidated Investments](#) (C)

Drew v Bundaberg Regional Council [2011] QCA 359

Court of Appeal of Queensland

McMurdo P; Muir JA & Douglas J

Planning schemes - statutory interpretation - application for leave to appeal refused.

[Drew](#) (C)

[Bundaberg Regional Council](#) - decision 9 June 2011 Planning & Environment Court of Queensland - whether building development approval granted by third respondent, a private certifier, invalid - material change of use was for domestic storage only - building approval invalid.

**Sanders v The Nominal Defendant [2011] QSC 391**

Supreme Court of Queensland

Boddice J

Motor Accidents Insurance Act 1994 (Qld) - statutory interpretation - pedestrian injured by unidentified motor vehicle - whether applicant's Notice of Claim had complied with s39 - respondent statutorily estopped from denying that the Notice had been given as required - applicant's claim is not barred by s37(3).

[Sanders](#) (I)

Syddall v National Mutual Life Association of Australasia Ltd [2011] QSC 389

Supreme Court of Queensland

Daubney J

Income protection insurance policy - duty of disclosure - whether defendant entitled to avoid policy - ss21, 26, 29 & 31 *Insurance Contracts Act 1984 (Cth)* - plaintiff's claim dismissed.

[Syddall](#) (I)

Watpac Developments Pty Ltd v Latrobe King Commercial Pty Ltd & Anor [2011] QSC 392

Supreme Court of Queensland

McMurdo J

Property Law Act 1974 (Qld) - contractual interpretation - plaintiff had agreed to sell real property to first defendant - second defendant had guaranteed purchaser's performance of contract & had agreed to indemnify vendor against any loss or expense arising from purchaser's default - whether contract was an instalment contract under s71 - amounts paid & agreed to be paid as deposit together constituted a "deposit" as defined in s71 - time of the essence - vendor had been entitled to terminate contract - judgment for plaintiff against defendants in sum of \$1,849,553.31

[Watpac Developments](#) (B, C)

[Phillips](#) - decision Court of Appeal of Queensland 30 May 2008 - what constitutes a deposit - s71 *Property Law Act 1974 (Qld)* - appeal dismissed;

[Phillips](#) - decision Supreme Court of Queensland 18 December 2007



Bank of Western Australia Ltd v National Australia Bank Ltd [2011] QSC 379

Supreme Court of Queensland

McMurdo J

Banking - guarantees - second defendant in liquidation - plaintiff had lent money to second defendant - its security included fixed & floating charge over second defendant's assets - sum of money deposited with first defendant - plaintiff's claim dismissed - detailed examination of UK & Australian case law.

[Bank of Western Australia Limited](#) (B, C)

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