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Insurance, Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Birdon Pty Ltd v Houben Marine Pty Ltd - *Building & Construction Industry Security of Payment Act 1999* (NSW) - five questions reserved in special case - constitutional law - *Admiralty Act 1988* (Cth) & *Australian Consumer Law* (I, B, C)

Holyoake Industries (Vic) Pty Ltd & Anor v V-Flow Pty Ltd & Ors - ss181(1), 182(1) & 183(1) *Corporations Act 2001* (Cth) - directors' duties - fiduciary duties owed to employer - confidential information (I, B)

Kocic v Deputy Commissioner of Taxation - s9 *Corporations Act 2001* (Cth) - *Income Tax Assessment Act 1936* (Cth) - whether appellant a director (I, B, C)

Hansen v Slattery Transport (NSW) Pty Ltd - Appeals - motor accident case - s127(2) *District Court Act 1973* (NSW) - objection to competency dismissed (I)

Walton v Illawarra - Building contracts - interpretation - nature of superintendent's task (C)

The City of Sydney v Streetscape Projects (Australia) Pty Ltd & Anor - Contracts - confidential information - equitable duties - fiduciary duties - duty of confidence (I, B, C)



Property Builders Pty Ltd v Carlamax Properties Pty Ltd; Property Builders (Constructions) Pty Limited v Carlamax Properties Pty Ltd - Statutory demands - final orders - costs (I, B, C)

Red Bull Australia Pty Ltd v Stacey - Employment contracts - restraint of trade clause - interlocutory relief (B)

Otto v Mackay Sugar Ltd & Anor (No 2) - ss316(1) & 316(4) *Workers' Compensation & Rehabilitation Act 2003* (Qld) - costs (I)

Deputy Commissioner of Taxation v Ozone Manufacturing Pty Ltd - s459R *Corporations Act 2001* (Cth) (B)

Velez Pty Ltd v Tudor - s213(4) *Workers' Compensation & Injury Management Act 1981* (WA) (I)

Perrinepod Pty Ltd v Georgiou Building Pty Ltd - ss31(2)(a) & 46(1) *Construction Contracts Act 2004* (WA) - statutory construction (C)

Fermora Pty Ltd v Kelvedon Pty Ltd - s129C *Transfer of Land Act 1893* (WA) - *Limitation Act 1921* (WA) - construction of easement (C)

Summaries with links (5 minute read)

Birdon Pty Ltd v Houben Marine Pty Ltd [2011] FCAFC 126

Full Court of the Federal Court of Australia

Keane CJ, Rares & Buchanan JJ

Building & Construction Industry Security of Payment Act 1999 (NSW) - five questions reserved in special case - constitutional law - agreement for hire of dredge - whether provisions of the Act relating to the enforcement of a statutory claim for progress payments inconsistent with the federal jurisdiction invoked by plaintiff pursuant to *Admiralty Act 1988* (Cth) & *Australian Consumer Law* - comprehensive consideration of legislation & Australian case law.

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

**Holyoake Industries (Vic) Pty Ltd & Anor v V-Flow Pty Ltd & Ors [2011] FCA 1154**

Federal Court of Australia

Tracey J

ss181(1), 182(1) & 183(1) *Corporations Act* 2001 (Cth) - directors' duties - employment contracts - breach of fiduciary duties owed to employer - confidential information - waiver, estoppel & laches - extensive consideration of United Kingdom & Australian case law.

[Holyoake Industries](#) (I, B)

Kocic v Deputy Commissioner of Taxation [2011] NSWCA 322

Court of Appeal of New South Wales

Beazley JA, Handley AJA, Gzell J

s9 *Corporations Act* 2001 (Cth) - *Income Tax Assessment Act* 1936 (Cth) - *Taxation Administration Act* 1953 (Cth) - statutory penalties - statutory defences - PAYG deductions for wages & salaries not remitted to respondent - whether appellant a director - appeal dismissed.

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

[Deputy Commissioner of Taxation](#) - District Court decision 30 August 2010: see Benchmark B & IBC Friday 3 September 2010 - *Income Tax Assessment Act* 1936 (Cth) - whether defendant was a director so that he became liable for a penalty under s222AOB - verdict for plaintiff in sum of \$532,043.42.

Hansen v Slattery Transport (NSW) Pty Ltd [2011] NSWCA 193

Court of Appeal of New South Wales

Basten JA

Appeals - motor accident case - s127(2) *District Court Act* 1973 (NSW) - "an appeal ... that involves a matter at issue amounting to or of the value of \$100,000 or more" - objection to competency dismissed.

[Hansen](#) (I)

**Walton v Illawarra [2011] NSWSC 1188**

Supreme Court of New South Wales

McDougall J

Building contracts - interpretation - refurbishment of hotel at Wollongong - adoption of referee's report - nature of superintendent's task - whether superintendent had acted reasonably in relation to extensions of time and her valuation of variations - s52 *Trade Practices Act 1974* (Cth) - interest - GST - losses arising from inability to earn income from trading operations of hotel - plaintiff entitled to damages for breach of contract - defendant entitled to damages for delay & rectification costs - analysis of United Kingdom & Australian case law.

[Walton](#) (C)**The City of Sydney v Streetscape Projects (Australia) Pty Ltd & Anor [2011] NSWSC 1214**

Supreme Court of New South Wales

Einstein J

Contracts - the Smartpole project - licence agreement varied by deeds - confidential information - *ultra vires* claim - intellectual property - equitable duties - fiduciary duties - duty of confidence - *Trade Practices Act 1974* (Cth) - accessorial liability - injunctive relief - election - comprehensive analysis of legislation, text & case law from United Kingdom & Australia.

[The City of Sydney](#) (I, B, C)

[Maggbury](#) - decision High Court of Australia 13 December 2001 - confidentiality agreement - "quality of confidence" - appeal allowed.

Property Builders Pty Ltd v Carlamax Properties Pty Ltd; Property Builders (Constructions) Pty Limited v Carlamax Properties Pty Ltd [2011] NSWSC 1200

Supreme Court of New South Wales

White J

Statutory demands - final orders - in each case statutory demand served by defendant on plaintiffs varied as to sum - costs.

[Property Builders](#) (I, B, C)

[Property Builders](#) - decision 14 September 2011; see Benchmark Friday 16 September 2011 - *Corporations Act 2001* (Cth) - applications to set aside two statutory demands served by defendant - District Court judgment - definition of "offsetting claim" in s459H.

**Red Bull Australia Pty Ltd v Stacey [2011] NSWSC 1212**

Supreme Court of New South Wales

Rein J

Employment contracts - restraint of trade clause - Deed of Release - interlocutory relief.

[Red Bull Australia](#) (B)

Otto v Mackay Sugar Ltd & Anor (No 2) [2011] QSC 305

Supreme Court of Queensland

Douglas J

ss316(1) & 316(4) *Workers' Compensation & Rehabilitation Act* 2003 (Qld) - costs - applicant not a claimant for damages who had suffered injury for which damages under Ch 5 could be claimed, nor a worker with an assessed work related impairment - the costs regime in Pt 12 Div 2 of the Act did not apply to him.

[Otto](#) (I)

Deputy Commissioner of Taxation v Ozone Manufacturing Pty Ltd [2011] SASC 172

Supreme Court of South Australia

Judge Lunn, a Master of the Supreme Court

Corporations Act 2001 (Cth) - application to wind up for presumed insolvency - by s459R, action dismissed if not determined within six months - application after expiration to extend the period - extension of time refused.

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

Velez Pty Ltd v Tudor [2011] WASCA 218

Court of Appeal of Western Australia

Pullin JA, Newnes JA, Murphy JA

s213(4) *Workers' Compensation & Injury Management Act* 1981 (WA) - assessment of respondent worker's degree of permanent disability - Commissioner in Dispute Resolution Directorate had found arbitrator's reasons inadequate - appeal allowed.

[Velez](#) (I)

**Perrinepod Pty Ltd v Georgiou Building Pty Ltd [2011] WASCA 217**

Court of Appeal of Western Australia

Martin CJ, McLure P, Murphy JA

Construction Contracts Act 2004 (WA) - statutory construction - whether State Administrative Tribunal has jurisdiction under s46(1) to review "a decision not to dismiss" an application for adjudication under s31(2)(a) - appeal dismissed.

[Perrinepod](#) (C)

[Perrinepod](#) - decision State Administrative Tribunal WA 29 September 2010

Fermora Pty Ltd v Kelvedon Pty Ltd [2011] WASC 281

Supreme Court of Western Australia

Edelman J

s129C *Transfer of Land Act 1893 (WA)* - *Limitation Act 1921 (WA)* - construction of easement - whether easement abandoned - whether terminated by agreement - whether terminated by operation of condition subsequent - easement not discharged - "an action to recover any land" - "corporeal hereditaments ... and any share, estate, or interest in them."

[Fermora](#) (C)

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