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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)

**Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd (No 2)** - costs payable following numerous appeals concerning payroll tax assessment (I, B, C, G)

**Cambridge v Anastasopoulos** - negligence - bailment - *concurrent wrongdoers* - apportionment of damages (I)

**Brock v Roads and Maritime Services (formerly Roads and Traffic Authority of NSW)** - compulsory acquisition of land - compensation - costs (I, B, C, G)

**The Trustees of the Roman Catholic Church for the Diocese of Lismore v T F Woollam and Son** - security of payments legislation - validity of payment claim - jurisdiction of adjudicator (I, C, G)

**Global AM Trading LLC ARBN 134 988 202 v Pan Macmillan Australia Pty Ltd ACN 001 184 014** - contract - claim for amount payable under sale and distribution agreement - construction of written agreement (B)



**Bell v Hunters Hill Council** - contract - claim for damages for breach of deed - mitigation of damages - apportionment (I, B, C)

**Stevenson Group Investments Pty Ltd v Nunn & Ors** - environment and planning - building permit - application for leave to appeal from dismissal of application to amend pleadings and summary judgment (I, C)

**Electro Optic Systems Pty Ltd v The State of New South Wales; West and West v The State of New South Wales** - Canberra bushfires 2003 – negligence - choice of law - duties of public authorities – statutory defences (I, B, C, G)

## Summaries with links (5 minute read)

### **Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd (No 2) [2012] NSWCA 403**

Court of Appeal of New South Wales

Meagher & Barrett JJA; Sackville AJA

Costs - respondents challenged appellant's assessment of payroll tax for six year period in which three different legislative regimes applied - appellant sought an order that respondents pay its costs of proceedings before primary judge and costs of two hearings in Court of Appeal - respondents submitted that appellant should pay their costs of first appeal, costs of second appeal in respect of certain issues, and costs of proceedings before primary judge - *whether*: appellant's submission took into account respondents' success before primary judge and in High Court regarding jurisdiction and powers of Supreme Court of NSW; respondents should pay appellant's costs of second appeal in which appellant established error on part of primary judge; to make allowance in respondents' favour in relation to costs of second appeal because appellant took position that Court of Appeal should apply reasoning in earlier judgment and not allow respondents to *re-litigate* any questions as to application of grouping and de-grouping provisions in the *Pay-roll Tax Act 1971* (NSW); costs of proceedings before primary judge should be determined by Equity Division at the same time as it determines matter remitted for further hearing.

[Chief Commissioner of State Revenue](#) (I, B, C, G)



## **Cambridge v Anastasopoulos [2012] NSWCA 405**

Court of Appeal of New South Wales

Meagher & Barrett JJA; Sackville AJA

Negligence - bailment - *concurrent wrongdoers* - apportionment of damages - respondent sued three appellants and another for negligence and breach of duty as bailees in relation to respondent's motorboat - *whether*: erroneous admission of and reliance upon expert evidence regarding value of motorboat as at date of damage; second appellant took possession of motorboat from time it was delivered to first appellant; if second appellant was a bailee, damage to motorboat was fault of the second appellant; erroneous apportionment of damages between appellants for damage sustained to motorboat - principles relevant to bailment: *Hobbs v Petersham Transport Co Pty Ltd* (1971) HCA 26, *Palmer on Bailment, 3rd ed* (2009) Thomson Reuters, *Ulltzen v Nicols* (1894) 1 QB 92, *Tozer Kemsley & Millbourn (A'asia) Pty Ltd v Collier's Interstate Transport Service Ltd* (1956) HCA 6 - contested valuation evidence - quantification of damages - apportionment of damages: s34(1)(a) *Civil Liability Act 2002* (NSW) - *concurrent wrongdoers* - joint bailees.

[Cambridge](#) (I)

## **Brock v Roads and Maritime Services (formerly Roads and Traffic Authority of NSW)**

**[2012] NSWCA 404**

Court of Appeal of New South Wales

Beazley & Meagher JJA; Tobias AJA

Compulsory acquisition of land - compensation - costs - appeal pursuant to s57(1) *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Act**) from determination of compensation for acquisition of part of appellant's land for public purpose of constructing road - respondent made offer of compensation to appellant as determined on behalf of Valuer-General pursuant to s42(1) of the Act - appellant lodged objection to offer pursuant to s66(1) of the Act - *whether*: error of law in respect of *eastern fence maintenance claim, internal fencing claim, stock watering system claim, or additional cattle yards claim; stock watering system claim* should be remitted to Land and Environment Court; erroneous decision in respect of order that appellant should bear own costs of proceedings.

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



**The Trustees of the Roman Catholic Church for the Diocese of Lismore v T F Woollam and Son [2012] NSWSC 1559**

Supreme Court of New South Wales

McDougall J

Security of payments legislation - dispute concerning claims by first defendant builder for scaffolding hire - dispute was referred to second defendant adjudicator for determination pursuant to s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) (**Act**) - *whether*: adjudicator had jurisdiction to consider and determine payment claim; payment claim complied with ss13(4) & 13(5) of the Act; payment claim was an abuse of process because it repeated earlier claims that had been made and rejected; inconsistency of reasons; denial of natural justice; plainly wrong conclusion; misreading or misapplication of ss13(4) & 13(5) of the Act; payment claim was valid; statutory mechanism which depended on existence of valid claim had been engaged.

[The Trustees of the Roman Catholic Church](#) (I, C, G)

**Global AM Trading LLC ARBN 134 988 202 v Pan Macmillan Australia Pty Ltd ACN 001 184 014 [2012] NSWSC 1512**

Supreme Court of New South Wales

Nicholas J

Contract - claim for payment of amount payable under sale and distribution agreement (**agreement**) - principles applicable to construction of written agreement: *Cordon Investments Pty Ltd v Lesdor Properties Pty Ltd* (2012) NSWCA 184, *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* (1973) HCA 36, *Wilkie v Gordian Runoff Ltd* (2005) HCA 17 - *whether*: clauses of contract were confined to customers to which defendant had both sold and distributed publications; defendant was required to assume the risk of bad debt for all sales of publications.

[Global AM Trading](#) (B)





## **Bell v Hunters Hill Council [2012] NSWSC 1522**

Supreme Court of New South Wales

Young AJ

Contract - claim for damages for breach of deed in relation to upgrading stormwater drainage system - claim included damages for legal costs incurred to mitigate damages, costs of mounting surveillance camera and costs of retaining private investigator - *whether*: defendant breached deed; if breach of deed, any damages flowed from breach; claims for damages were too remote; claim for legal costs was proper head of damage; plaintiff acted reasonably in incurring costs; plaintiff waived alleged breaches; claims were for money which plaintiff was not liable to pay; plaintiff's claim was apportionable under the *Civil Liability Act 2002* (NSW); defendant liable for damage caused by independent contractor retained by defendant - law as to mitigation of damages: *McGregor on Damages, 17th ed (2003)* - whether plaintiff who had suffered damage as a result of breach of contract or tort and reasonably anticipated a repeat performance was obliged to mitigate potential damage and claim cost of such measures if in fact there was a repeat performance.

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

## **Stevenson Group Investments Pty Ltd v Nunn & Ors [2012] QCA 351**

Court of Appeal of Queensland

MA McMurdo P; Fraser JA & Mullins J

Environment and planning - development control - pleadings - summary judgment - applicant applied for declaration under s4.2.21 *Integrated Planning Act 1997* (Qld) (Act) that building permit issued by first respondent was void and of no legal effect - applicant made numerous amendments to pleadings - applicant sought leave to appeal from orders dismissing application to amend pleadings, giving summary judgment to respondents and from costs order under s4.1.56 of the Act - whether to grant leave to appeal in each case - merits of proposed grounds of appeal - *whether*: permit was void and of no legal effect; if permit was void and of no legal effect court would exercise its discretion to make declaration; factual errors; wrongly placed weight on history and course of application; inadequate reasons; applicant had real prospect of succeeding on all or part of its claim and there was need for a trial of the claim or the part of the claim: r293 *Uniform Civil Procedure Rules 1999* (Qld); proceeding was frivolous or vexatious under s4.1.23(b) of the Act; adjournment of proceeding was caused by applicant's conduct: s4.1.23(2) of the Act.

[Stevenson Group Investments](#) (I, C)



**Electro Optic Systems Pty Ltd v The State of New South Wales; West and West v The State of New South Wales [2012] ACTSC 184**

Supreme Court of Australian Capital Territory

Higgins CJ

Negligence - Canberra bushfires 2003 - spread of fire to neighbouring lands - strategy adopted to fight fires - damage to property - choice of law - law applicable to determination of liability is the law of the jurisdiction where the tort was committed - duty of care owed by Crown - distinction between failure to exercise statutory duty and negligent exercise of statutory power - whether negligent exercise of statutory power gives rise to a private cause of action - adequacy of resources provided to public authorities is not justiciable issue - whether the Crown had assumed a duty to warn citizens of approaching peril - whether acts or omissions with respect to public warnings were an unreasonable response by public authorities - whether acts or omissions were so unreasonable that no authority having the functions of the relevant authority could properly consider act or omission was a proper exercise of its functions; s43 *Civil Liability Act 2002* (NSW) - statutory immunity from liability - whether acts otherwise negligent were done in *good faith*; s128 *Rural Fires Act 1997* (NSW) – plaintiffs deprived by statute of what would, under the general law, have been regarded as just compensation.

[Electro Optic Systems](#) (I, B, C, G)

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