



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

Executive Summary (1 minute read)

Commissioner of Taxation v BHP Billiton Finance Ltd - Taxation - appeals dismissed (B)

Australian Competition & Consumer Commission v Australia & New Zealand Banking Group Ltd - Interrogatories - loan arrangement services - the objective of interrogatories (I, B, C)

Kayora Pty Ltd v Leichhardt Council - Development control - commercial uses - hotels - existing uses (C)

McLaughlin v Dungowan Manly Pty Ltd - Contracts - whether leave should be granted to commence derivative suit – oppression (B, C)

Clarke v National Mutual Life Assurance Ltd & Ors - *Accident Compensation Act 1985* (Vic) - appeal against order refusing application to amend further amended statement of claim - appeal against refusal of application to refer further medical questions to Medical Panel (I)

Tenth Vandy Pty Ltd v Natwest Markets Australia Pty Ltd (No 2) - Costs - dispute as to lease for retail premises - Offer of compromise - costs against a non-party (I, B)

Priceline Pty Ltd v JHY Nominees Pty Ltd & Ors - Production of documents - legal professional privilege – waiver (I, B, C)

Hamilton v Hunt Engineering Pty Ltd - *Accident Compensation Act 1985* (Vic) - issue estoppel (I)

James v Hill & Anor - Joinder of an insurer - application for leave to proceed where a party has died - substitution of a party (I)

Dickson v Australian Associated Motor Insurers Ltd - Personal injuries - applicant a person under a legal disability - court-sanctioned compromise - whether Court had jurisdiction to sanction compromise where applicant had not commenced a proceeding to prosecute claim for damages (I)

Perpetual Trustee Company Ltd v Cowley & Anor - Costs against non-party - solicitor's duty to court (I, B)

Snelgrove v Great Southern Managers Australia Ltd (in liq'n)(Receiver & Manager app'd) - *Corporations Act* 2001 (Cth) - winding up - proceedings against company in liquidation - proceedings to inspect books - leave required - insurance policy (I, B)

Canberra Data Centres Pty Ltd v Vibe Constructions (ACT) Pty Ltd - Application for leave to file Amended Statement of Claim - importance of pleadings (I, B, C)

Fair Trading Administration Corporation v Meriton Apartments Pty Ltd - *Building Services Corporation Act* 1989 (NSW) - proceedings for recovery of debt from builder by statutory insurer for defective building work (I, C)

Summaries with links (5 minute read)

Friday 19 March 2010

Commissioner of Taxation v BHP Billiton Finance Ltd [2010] FCAFC

Full Court of the Federal Court of Australia

Sundberg, Stone & Edmonds JJ - Sydney (heard in Melbourne)

Taxation - for decision appealed from, see 'Benchmark' B & IBC Wednesday 1 April, 2009 & link below - retention loans - whether loans were 'limited recourse debt' within ss243-20(1) or (2) *Income tax Assessment Act* 1997 (Cth): held they were not - appeals dismissed.

[Commissioner of Taxation](#) (B)

[BHP Billiton Finance](#) - decision 30 March 2009 - *Income Tax Assessment Act* 1997 (Cth) - *Income Tax Assessment Act* 1936 (Cth) - writing off of part of two debts - whether Finance, internal financier to the BHPB Group, was in the

business of lending money &, if so, whether each loan was made by Finance in the course of that business - allowable deductions - comprehensive consideration of case law.

Australian Competition & Consumer Commission v Australia & New Zealand Banking Group Ltd [2010] FCA 230

Federal Court of Australia

Greenwood J (in Brisbane)

Interrogatories - loan arrangement services - the objective of interrogatories - objections to interrogatories - detailed consideration of case law from the United Kingdom & Australia.

[Australian Competition and Consumer Commission](#) (I, B, C)

Kayora Pty Ltd v Leichhardt Council [2010] NSWCA 35

Court of Appeal of New South Wales

Tobias & Campbell JJA; Sackville AJA

Development control - commercial uses - hotels - existing uses - characterising purpose of use - appeal allowed.

[Kayora](#) (C)

[Kayora](#) - decision 10 August 2009 - applicants claiming they were entitled to use rear yard of North Annandale Hotel as a beer garden without any further development consent.

McLaughlin v Dungowan Manly Pty Ltd [2010] NSWSC 187

Supreme Court of New South Wales

Ward J

Contracts - repair & redevelopment of home unit building in Manly - whether leave should be granted to commence derivative suit - oppression - leave granted to commence derivative suit for breach of statutory duties - assessment of damages - extensive consideration of case law.

[McLaughlin](#) (B, C)

Clarke v National Mutual Life Assurance Ltd & Ors [2010] VSCA 43

Court of Appeal of Victoria

Neave & Mandie JJA; Hansen AJA

Accident Compensation Act 1985 (Vic) - plaintiff/appellant claimed weekly compensation payments in County Court - appeal against order refusing application to amend further amended statement of claim - appeal against refusal of application to refer further medical questions to Medical Panel - appeal as of right lying from interlocutory decision.

[Clarke](#) (I)

Tenth Vandy Pty Ltd v Natwest Markets Australia Pty Ltd (No 2) [2010] VSC 70

Supreme Court of Victoria

Croft J

Costs - dispute as to lease for retail premises - Offer of compromise - Calderbank offer - effect of unaccepted offer - whether wholly successful defendant entitled to costs on an indemnity basis - costs against a non-party - case law considered.

[Tenth Vandy](#) (I, B)

Priceline Pty Ltd v JHY Nominees Pty Ltd & Ors [2010] VSC 61

Supreme Court of Victoria

Croft J

Production of documents - legal professional privilege - waiver of privilege - *Evidence Act 2008* (Vic) - detailed consideration of Australian case law.

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

Hamilton v Hunt Engineering Pty Ltd [2010] VSC 62

Supreme Court of Victoria

Williams J

Accident Compensation Act 1985 (Vic) - issue estoppel - County Court judge had granted plaintiff leave to commence proceeding under subs. 134AB(16)(b) plaintiff seeking a ruling that, under subs 134AB(19)(c), the Judge's findings give rise to an issue estoppel as to certain facts - an interesting decision with detailed consideration of legislation & case law.

[Hamilton](#) (I)

James v Hill & Anor [2010] QSC 70

Supreme Court of Queensland

Jones J

Joinder of an insurer - application for leave to proceed where a party has died - r.72 *Uniform Civil Procedure Rules 1999* (Qld) - substitution of a party - application to add a defendant (professional indemnity insurer) pursuant to s51 *Insurance Contracts Act 1984* (Cth): right of third party to recover against insurer - adding of a party pursuant to r.69 of UCPR - insurer to be joined.

[James](#) (I)

Dickson v Australian Associated Motor Insurers Ltd [2010] QSC 69

Supreme Court of Queensland

Mullins J

Personal injuries - applicant a person under a legal disability the result of a severe head injury sustained in motor vehicle accident - applicant's claim for damages for personal injuries against respondent settled at mediation before a proceeding was commenced in the Court to prosecute the claim - court-sanctioned compromise - applicant subsequently claimed that Court had no jurisdiction to sanction compromise & compromise was voidable at applicant's election - whether Court had jurisdiction to sanction compromise where the applicant had not commenced a proceeding to prosecute claim for damages - application adjourned.

[Dickson](#) (I)

Perpetual Trustee Company Ltd v Cowley & Anor [2010] QSC 65

Supreme Court of Queensland

Atkinson J

Costs against non-party - solicitor's duty to court - costs on indemnity basis.

[Perpetual Trustee](#) (I, B)

Snelgrove v Great Southern Managers Australia Ltd (in liq'n)(Receiver & Manager app'd) [2010] WASC 51

Supreme Court of Western Australia

Le Miere J

Corporations Act 2001 (Cth) - winding up - proceedings against company in liquidation - leave required - proceedings to inspect books of a Registered Investment Scheme - leave required - insurance policy - plaintiff's applications granted.

[Snelgrove](#) (I, B)

Canberra Data Centres Pty Ltd v Vibe Constructions (ACT) Pty Ltd [2010] ACTSC 20

Supreme Court of the Australian Capital Territory

Refshauge J

Application for leave to file Amended Statement of Claim & for security for costs - dispute arising out of building works - importance of pleadings - intelligibility of pleadings - comprehensive review of text & case law from the United Kingdom, Hong Kong & Australia in an interesting decision.

[Canberra Data Centres](#) (I, B, C)

In the District Court of New South Wales...

Fair Trading Administration Corporation v Meriton Apartments Pty Ltd [2010] NSWDC 22

District Court of New South Wales

Hungerford ADCJ

Building Services Corporation Act 1989 (NSW) - proceedings for recovery of debt from builder by statutory insurer for defective building work - judgment for plaintiff against defendant in sum of \$473,247 plus interest.

[Fair Trading Administration Corporation](#) (I, C)

Henrik Ibsen

b. Skien, Norway 20 March 1828 - d. Christiania (now Oslo) 23 May 1906

DR. STOCKMANN : That's just where you're wrong ! The majority *never* has right on its side - never, I say ! That's just one of those social fallacies which any fair-minded individualist has to fight against ! After all, who constitutes the majority in any country ? The wise men or the fools ? And it's the same all the world over - the fools are in an absolute and overwhelming majority - and you can't deny that ! But for heaven's sake don't suggest that it's right and proper for the fools to govern the wise ! (*Cries, boos and general uproar.*) Oh yes, you can shout me down - but you can't prove me wrong ! The majority has might, unfortunately - but it hasn't right ! It's I, and a few like me, who are right ! The minority's always right ! (*Renewed uproar.*)

From Act Four of 'An Enemy of the People.' In a letter to his publisher in September 1882, Ibsen wrote: " I have enjoyed writing this play, and I feel quite lost and lonely now that it is out of my hands. Dr. Stockmann and I got on so very well together; we agree on so many subjects. But the doctor is more muddle-headed than I am; and moreover he has other peculiarities that permit him to say things which would not be taken so well if I myself said them..."

[Henrik Ibsen - Wikipedia, the free encyclopedia](#)

[An Enemy of the People - Wikipedia, the free encyclopedia](#)