

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

Executive Summary (1 minute read)

Palace Films Pty Ltd & Ors v Fairfax Media Publications Pty Ltd & Ors - Defamation - publication & republication - breach of confidence - whether claim inconsistent with claim in defamation (I)

Re ANZ Nominees Limited - *s63 Trustee Act 1958 (Vic)* - power to authorise & direct execution of documents (B)

Metacorp Australia Pty Ltd v Andeco Construction Group Pty Ltd & Ors - *Building & Construction Industry Security of Payment Act 2002 (Vic)* - progress claim under s. 14 - adjudication application - natural justice (C)

Apolevski v Kennane - Motor traffic offences - sentencing (I)

Yuendumu Social Club Inc. v Day & Johnson - *Workers Rehabilitation & Compensation Act (NT)* - interim payments (I)

Jones v Purnell Motors Pty Ltd & Anor - Negligence - contracts - sale of Range Rover - alleged breach of statutory conditions & warranties (I)

Andrew Hennessey v Architectus Group Holdings Pty Ltd - Employment law - whether claim fell within equitable jurisdiction of District Court of NSW (I, B, C)

Parabola Investments Ltd & Ors v Browallia Cal Ltd & Ors - United Kingdom decision - damages - recoverability of damages in deceit for loss suffered, after discovery of the fraud, through loss of the availability of the funds of which the victim was defrauded (I, B)

Adris & Ors v The Royal Bank of Scotland Plc – United Kingdom decision - applications for non-party costs orders ("NPCO") - no after the event insurance obtained - causation (I, B)

Kingsway Hall Hotel Ltd. v Red Sky IT (Hounslow) Ltd – United Kingdom decision - contracts - office software - fitness for purpose (I, B, C)

Summaries with links (5 minute read)

Wednesday 19 May 2010

Palace Films Pty Ltd & Ors v Fairfax Media Publications Pty Ltd & Ors [2010] NSWSC 415

Supreme Court of New South Wales

McCallum J

Defamation - publication & republication - whether properly pleaded - breach of confidence - whether claim inconsistent with claim in defamation - whole of statement of claim struck out with leave to replead.

[Palace Films](#) (I)

Re ANZ Nominees Limited [2010] VSC 197

Supreme Court of Victoria

Davies J

s63 *Trustee Act* 1958 (Vic) - plaintiff custodian of assets - termination of custody agreements - shares in foreign corporation - power to authorise & direct execution of documents.

[Re ANZ Nominees](#) (B)

Metacorp Australia Pty Ltd v Andeco Construction Group Pty Ltd & Ors [2010] VSC 199

Supreme Court of Victoria

Vickery J

Building and Construction Industry Security of Payment Act 2002 (Vic) - progress claim under s14 - adjudication application made under the Act - mixed use development comprising residential & commercial properties at Wrecklyn Street, North Melbourne - service of payment claim - finding of breach of rules of natural justice.

[Metacorp Australia](#) (C)

Apolevski v Kennane [2010] ACTSC 43

Supreme Court of the Australian Capital Territory

Refshauge J

Motor traffic offences - sentencing - appeal from Magistrates Court - driving while disqualified.

[Apolevski](#) (I)

Yuendumu Social Club Inc. v Day & Johnson [2010] NTSC 22

Supreme Court of the Northern Territory

Blokland J

Workers Rehabilitation & Compensation Act (NT) - whether Judicial Registrar had power to make order allowing interim payments of workers compensation within a period in which a prior application for interim payments had been sought and refused - previous application amounted to 'interim determination' - no error - application for judicial review dismissed.

[Yuendumu Social Club](#) (I)

In the District Court of New South Wales...**Jones v Purnell Motors Pty Ltd & Anor [2010] NSWDC 82**

District Court of New South Wales

Hungerford ADCJ

Negligence - contracts - sale of Range Rover - wiring of four additional driving lights to roof rack - incorrectly wired into vehicle's engine management system causing engine failure on overheating from extended use of lights - alleged breach of statutory conditions & warranties in performance of work - damages: plaintiff had received satisfaction of his loss of \$100 as found against first defendant within the settlement with second defendant distributor - judgment for first defendant against plaintiff.

[Jones](#) (I)

Hennessey v Architectus Group Holdings Pty Ltd [2010] NSWDC 61

District Court of New South Wales

Cogswell SC DCJ

Employment law - employment terminated contrary to term in employment contract - whether claim fell within equitable jurisdiction of District Court of NSW - what amounts to a "ground of defence" in *Law Reform (Law & Equity) Act 1972* (NSW) - application by plaintiff to strike out

amended defence - paragraph in the defence struck out because Court does not have jurisdiction to make order sought in that paragraph.

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

In the United Kingdom...

Parabola Investments Ltd & Ors v Browallia Cal Ltd & Ors [2010] EWCA Civ 486

Court of Appeal of England & Wales

Mummery, Toulson & Rimer LJJ

Damages - recoverability of damages in deceit for loss suffered, after discovery of the fraud, through loss of the availability of the funds of which the victim was defrauded - second defendant, a financial institution, & third defendant futures stockbroker, appealing against a judgment in favour of second claimant Tangent - proper date for assessment of damages - scope of losses which may be recovered - *Hungerfords v Walker* (1989) 171 CLR 125 considered - appeal dismissed.

[Parabola Investments](#) (I, B)

[Hungerfords](#) - decision High Court of Australia 9 February 1989: Mason CJ & Wilson J at 1-46; Brennan & Deane JJ; Dawson J dissenting - damages - contracts - tort - breach of contract or negligent discharge of obligations - loss of use of money - interest - appellants were defendants in proceedings in Supreme Court of South Australia - by majority, appeal dismissed.

Adris & Ors v The Royal Bank of Scotland Plc [2010] EWHC 941 (QB)

High Court of England & Wales, Queen's Bench Division

Waksman QC J

Applications for non-party costs orders ("NPCO") - no after the event insurance obtained - causation - a large number of County Court proceedings in relation to *Consumer Credit Act 1974* (UK) - credit card agreements - applications for NPCO against sole shareholder & managing director of claims management company dismissed - applications for NPCO against solicitor succeeded - claims management company & solicitor liable for costs on a joint & several basis, with each other, & with claimants against whom adverse costs orders had been, or will be made.

[Adris](#) (I, B)



Kingsway Hall Hotel Ltd v Red Sky IT (Hounslow) Ltd [2010] EWHC 965 (TCC)

High Court of England & Wales, Queen's Bench Division,

Technology & Construction Court

Toulmin CMG QC J

Contracts - office software - fitness for purpose - hotel at Covent Garden - damages - replacement software - additional staff costs - judgment in the sum of £110,997.54.

[Kingsway Hall Hotel](#) (I, B, C)