



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Australian Securities & Investments Commission v Cassimatis - Interlocutory costs (I, B, C)

Atkinson v Crowley - *Home Building Act 1989* (NSW) - substituted service - limitation of actions (I, C)

Shellharbour City Council v Minister for Planning - *Environmental Planning & Assessment Act 1979* (NSW) - expert evidence - r31.19 *Uniform Civil Procedure Rules 2005* (I, B, C)

Environinvest Ltd v Pescott & Ors; Environinvest Ltd v Blackburne Pty Ltd & Ors - Striking out applications - s180, s182 *Corporations Act 2001* (Cth) - s18 *Civil Procedure Act 2010* (Vic) (I, B)

William McIroy (Swindon) Ltd & Ors v Rannoch Investments Ltd – United Kingdom decision - public liability insurance - whether refusal of indemnity triggered time bar clause - “claim” (I)

O' Connor v Stuttard – United Kingdom decision - personal injuries - duty of care of motorist driving near young children (I)



Summaries with links (5 minute read)

Thursday 21 July 2011

Australian Securities & Investments Commission v Cassimatis [2011] FCA 796

Federal Court of Australia

Reeves J (in Brisbane)

Costs - O62 r3(3) *Federal Court Rules* - respondents' application for an order for interlocutory costs to be taxed & paid forthwith granted.

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

Atkinson v Crowley [2011] NSWCA 194

Court of Appeal of New South Wales

Giles, Basten & Young JJA

Home Building Act 1989 (NSW) - judicial review - whether order for substituted service resulted in procedural unfairness - limitation of actions - proceedings dismissed.

[Atkinson](#) (I, C)

[Atkinson](#) - decision 11 May 2010: see 'Benchmark' I, C & IBC Monday 17 May 2010 - substituted service - second & third defendants had purchased recently renovated Castle Cove residential property from plaintiffs - plaintiffs seeking order in nature of certiorari to set aside decision of CTTT in which ordered plaintiffs ordered to pay 2nd & 3rd defendants \$42,700.00 - difficulties in serving plaintiffs with CTTT application - Chairperson had directed substituted service - plaintiffs did not appear at CTTT hearing - application dismissed.

Shellharbour City Council v Minister for Planning [2011] NSWCA 195

Court of Appeal of New South Wales

Giles, Hodgson & Campbell JJA

Environmental Planning & Assessment Act 1979 (NSW) - expert evidence - evidence as to technical meaning of words used in statutory instruments - r31.19 *Uniform Civil Procedure Rules 2005* - application for leave to appeal refused.

[Shellharbour City Council](#) (I, B, C)

[Shellharbour City Council](#) - decision 26 May 2011: see 'Benchmark' C & IBC Wednesday 29 June 2011 - whether direction allowing filing of expert ecological evidence ought to be granted in judicial review proceedings concerning operation of *State Environmental Planning Policy (Major Development) 2005* - *Shellharbour Local Environmental Plan 2000* - Council's application for a direction to rely on expert evidence refused.



Environinvest Ltd v Pescott & Ors; Environinvest Ltd v Blackburne Pty Ltd & Ors [2011] VSC 325

Supreme Court of Victoria

Judd J

Applications by some defendants in two proceedings to strike out parts of statement of claim - proceedings arise out of collapse of Environinvest group of companies & managed investment schemes operated by Environinvest - s180, s182 *Corporations Act* 2001 (Cth) - allegations against directors - allegation of knowledge - s18 *Civil Procedure Act* 2010 (Vic): Overarching obligation-requirement of proper basis - detailed examination of United Kingdom & Australian case law.

[Environinvest](#) (I, B)

From the United Kingdom...

William McIroy (Swindon) Ltd & Ors v Rannoch Investments Ltd [2011] EWCA Civ 825

Court of Appeal of England & Wales

Rix, Hooper & Brooke LJJ

Public liability insurance - General Condition: time bar on arbitration proceedings - whether refusal of indemnity triggered time bar clause - "claim" - primary judge had held time bar clause not onerous & that claims time-barred - fire in shop premises in Lewes owned by second appellants which spread to neighbouring premises - premises owned by second appellants leased to first appellants - at time of fire, refurbishment works being carried out in shop - source of fire alleged to be negligent use of blowtorch - appeal allowed - detailed examination of United Kingdom case law in an interesting decision.

[William McIroy](#) (I)

O' Connor v Stuttard [2011] EWCA Civ 829

Court of Appeal of England & Wales

Rix, Lloyd & Smith LJJ

Personal injuries - duty of care of motorist driving near young children - claimant, then aged nine, playing ball game with other children in a quiet street - onus on defendant driver as an adult & as the driver of a car, either to sound his horn or stop or both so as to ensure that claimant kept still while driver proceeded - appeal allowed.

[O'Connor](#) (I)



Chapter Heading

by Ernest Hemingway

(b. Illinois 21 July 1899 - d. Idaho 2 July 2, 1961)

For we have thought the longer thoughts,
And gone the shorter way.
And we have danced to devils' tunes,
Shivering home to pray;
To serve one master in the night,
Another in the day.

[The Wondering Minstrels: Chapter Heading - Ernest Hemingway](#)

[Ernest Hemingway - Wikipedia, the free encyclopedia](#)

[Estate of Hemingway v Random House](#) (1968) 23 N.Y. 2d 341, 244 N.E. 2d 250 (1968)

- a decision 12 December 1968 New York Court of Appeals

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