

Tuesday 22 November 2011

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Altaranesi v Industrial Relations Commission of New South Wales - *Industrial Relations Act 1996* (NSW) - Uniform Civil Procedure Rules as to offers of settlement (I, B, C, G)

Wagga Truck Towing Pty Ltd v O'Toole; IAG Ltd t/as NRMA Insurance v O'Toole (No 2) - Costs (I)

Bendigo & Adelaide Bank Ltd v Adam Christopher Cairncross, Bendigo & Adelaide Bank Ltd v Elite Advertising Group Pty Ltd - Loan deeds - leave sought to file cross-claims - leave granted (B)

Premier Capital (China) Ltd v Sandhurst Trustees Ltd & Ors - Security for costs (B, C)

Kazakova v Queensland Fire & Rescue Service - *Fire & Rescue Service Act 1990* (Qld) - *Building Act 1975* (Qld) - building classification (I, C)

HSH Hotels (Australia) Ltd v State of Queensland - Land valuation - lease & sub-lease - statutory interpretation - "unimproved value" (B, C)



Raymond Charles Estall (dec'd) - ss65 & 67 *Administration & Probate Act 1919* (SA) (B)

Summaries with links (5 minute read)

Altaranesi v Industrial Relations Commission of New South Wales [2011] NSWCA 351

Court of Appeal of New South Wales

Campbell, Whealy & Meagher JJA

Industrial Relations Act 1996 (NSW) - Uniform Civil Procedure Rules as to offers of settlement - summons dismissed - Australian case law considered including Kirk v Industrial Court of NSW [2010] HCA 1.

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

[Tareq Altaranesi](#) - decision 9 December 2010 of the Full Bench of the Industrial Relations Commission of New South Wales - application for leave to appeal refused;

[Tareq Altaranesi](#) - decision NSW Industrial Commission 5 July 2010 - unfair dismissal claim - applicant represented by Counsel - hearing commenced - parties sought conciliation from Commission - conciliation undertaken by Commission - settlement reached - terms of settlement signed by applicant - settlement confirmed in proceedings on day - application sought re-opening - application dismissed.

Wagga Truck Towing Pty Ltd v O'Toole; IAG Ltd t/as NRMA Insurance v O'Toole (No 2) [2011] NSWCA 347

Court of Appeal of New South Wales

Giles & McColl JJA

Costs - personal injuries - for decision Court of Appeal 15 July 2011, see Benchmark I & IBC Tuesday 19 July 2011 & link below - variation of order which had been made as to costs.

[Wagga Truck Towing Pty Ltd](#) (I)

[Wagga Truck Towing Pty Limited](#) - decision 15 July 2011 Court of Appeal of NSW - personal injuries - duty of care - respondent passenger in truck - advice by truck towing company to respondent truck owner to remove tail-shaft of truck - direction by truck owner to respondent assistant to remove tail-shaft - respondent injured when tail-shaft came away from truck & rolled forward - whether fault of truck owner in directing assistant to remove tail-shaft without chocking wheels of truck was fault "in the use or operation of the vehicle" within definitions in *Motor Accidents Compensation Act 1999* (NSW) - Wagga Towing's appeal dismissed - NRMA's appeal against respondent dismissed - NRMA's appeal against Wagga Towing allowed as to apportionment: order as to 70:30 percent respectively set aside, and 50:50 percent declared.



Bendigo & Adelaide Bank Ltd v Adam Christopher Cairncross, Bendigo & Adelaide Bank Ltd v Elite Advertising Group Pty Ltd [2011] NSWSC 1385

Supreme Court of New South Wales

Macready AsJ

Corporations Act 2001 (Cth) & other legislation - loan deeds - product disclosure statement - agency - leave sought to file cross-claims - leave granted.

[Bendigo and Adelaide Bank Limited](#) (B)

Premier Capital (China) Ltd v Sandhurst Trustees Ltd & Ors [2011] VSC 572

Supreme Court of Victoria

Mukhtar AsJ

Security for costs - defendants' application - plaintiff a foreign corporation with no assets in Victoria or Australia - plaintiff in business of negotiating sale of real estate in Hong Kong, China, New Zealand &, in the last three years, Australia - quantification of expected costs of litigation.

[Premier Capital \(China\) Ltd](#) (B, C)

Kazakova v Queensland Fire & Rescue Service [2011] QCA 328

Court of Appeal of Queensland

McMurdo P, Muir & Chesterman JJA

Fire & Rescue Service Act 1990 (Qld) - Building Act 1975 (Qld) - building classification - fire safety compliance - "a single dwelling", "budget accommodation building" - application for adjournment refused - application for leave to appeal refused.

[Kazakova](#) (I, C)

HSH Hotels (Australia) Ltd v State of Queensland [2011] QCA 329

Court of Appeal of Queensland

Fraser JA, McMurdo & Boddice JJ

Land valuation - lease & sub-lease - interpretation - Stamford Plaza Brisbane Hotel site - method for fixing rental payable by appellant from sixteenth year to end of the term of lease & sub-lease - appeal dismissed - "unimproved value."

[HSH Hotels](#) (B, C)

[HSH Hotels](#) - s297 *Land Valuation Act 2010 (Qld)* - ss3, 6 & 12 *Valuation of Land Act 1944 (Qld)* - statutory interpretation - whether rent should be determined by reference to the statutory provisions in force at the commencement of the lease and sublease as applicant contending, or by reference to provisions currently in force - application dismissed.



Raymond Charles Estall (dec'd) [2011] SASC 188

Supreme Court of South Australia

Gray J

Administration & Probate Act 1919 (SA) - application under s67 by administrator of deceased's estate for order dispensing with requirement to pay over money & deliver property to Public Trustee in accordance with s65 - application granted.

[Raymond Charles Estall \(B\)](#)

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