



Thursday 22 December 2011

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

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Executive Summary (1 minute read)

Omnilab Media Pty Ltd v Digital Cinema Network Pty Ltd - Directors - fiduciary duties (I, B, C, G)

Oliver v Commonwealth Bank of Australia (No 1) - Contracts - strike out application - margin loan agreements (B)

Australian Securities & Investments Commission v Letten (No 17) - Trustees - duties & obligations - trustee's right of indemnity - identifying the trust estate (I, B)

Hanks v Admiralty Resources NL (No 2) - *Corporations Act* 2001 (Cth) - legal professional privilege - whether privilege abrogated by s247A (I, B, C, G)

Queensland Maintenance Services Pty Ltd v Commissioner of Taxation - s260-5 of Sch 1 *Taxation Administration Act* 1953 (Cth) (B)

World Titanium Resources Ltd, in the matter of World Titanium Resources Ltd - s411 *Corporations Act* 2001 (Cth) (B)



SAS Trustee Corporation v Arthur Cox - Trustees - *Superannuation Administration Act 1987* (NSW) - appeal allowed (I, B)

George v Webb & Ors - Trusts - duty of care - accessory liability (I, B)

Helm v Helm & Anor; Application of Conti - Liens (I, B)

Thompson v DP World Australia - s31(2) *Limitation of Actions Act 1974* (Qld) (I)

Summaries with links (5 minute read)

Omnilab Media Pty Ltd v Digital Cinema Network Pty Ltd [2011] FCAFC 166

Full Court of the Federal Court of Australia

Jacobson, Rares & Besanko JJ

Directors - fiduciary duties - knowing assistance - actual knowledge - appeal dismissed - leave to appeal against order as to the extent of contribution to be awarded to second & third respondents against appellant refused.

[Omnilab Media](#) (I, B, C, G)

[Digital Cinema Network](#) - decision 16 May 2011: see Benchmark I, B & IBC Tuesday 24 May 2011 - *Trade Practices Act 1974* (Cth) - s1317H *Corporations Act 2001* (Cth) - "Virtual Print Fees" agreements - liability hearing - accessory liability - Australian & UK case law considered.

Oliver v Commonwealth Bank of Australia (No 1) [2011] FCA 1440

Federal Court of Australia

Perram J

Contracts - strike out application - margin loan agreements - pleading of implied term of good faith - causation - extensive consideration of UK & Australian case law.

[Oliver](#) (B)

Australian Securities & Investments Commission v Letten (No 17) [2011] FCA 1420

Federal Court of Australia

Gordon J

Trustees - duties & obligations - unregistered managed investment scheme - receivership - trustee's right of indemnity - identifying the trust estate - whether receivers justified in refusing to



accept any of the claims of trade creditors or investor claimants as “trust creditor claims” for purposes of Pooling Orders.

[Australian Securities and Investments Commission](#) (I, B)

[Australian Securities and Investments Commission](#) - decision 11 November 2010

Hanks v Admiralty Resources NL (No 2) [2011] FCA 1464

Federal Court of Australia

Gordon J

s247A *Corporations Act* 2001 (Cth) - legal professional privilege - whether privilege abrogated by s247A - order sought permitting inspection of advice - application for inspection refused.

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

Queensland Maintenance Services Pty Ltd v Commissioner of Taxation [2011] FCA 1443

Federal Court of Australia

Collier J

s260-5 of Sch 1 *Taxation Administration Act* 1953 (Cth) - detailed consideration of case law, in particular *O'Reilly v Commissioners of the State Bank of Victoria* [1983] HCA 47; (1983) 153 CLR 1 - application dismissed.

[Queensland Maintenance Services](#) (B)

[O'Reilly](#) - decision High Court of Australia 14 April 1983 - questions of law raised by stated case - Commissioner of Taxation's power to require person to attend to give evidence & produce documents - Notices to attend - delegation of Commissioner's power to subordinate officer - validity of notice - s264(1) *Income Tax Assessment Act* 1936 (Cth).

World Titanium Resources Ltd, in the matter of World Titanium Resources Ltd [2011] FCA 1480

Federal Court of Australia

Gilmour J

Corporations Act 2001 (Cth) - requirements of s411 met - scheme of arrangement approved.

[World Titanium Resources](#) (B)

SAS Trustee Corporation v Arthur Cox [2011] NSWCA 408

Court of Appeal of New South Wales

McCull & Campbell JJA & Sackville AJA

Trustees - *Superannuation Administration Act* 1987 (NSW) - police superannuation - ambit of duty of a trustee of a defined benefit fund - trustee's discretion - trustee had granted respondent a superannuation allowance payable from date of application - respondent appealed to District



Court - primary judge had held that the allowance should have been payable from date of his discharge - appeal allowed - matter remitted - comprehensive consideration of legislation, text & case law from UK & Australia.

[SAS Trustee Corporation](#) (I, B)

George v Webb & Ors [2011] NSWSC 1608

Supreme Court of New South Wales

Ward J

Trusts - negligence - duty of care - proportionate liability - *Civil Liability Act* 2002 (NSW) - judgment for plaintiff on claim against first & second defendants for equitable compensation for breach of Quistclose trust & against third defendant for accessorial liability in respect of that breach of trust - claim against first & second defendants not an apportionable claim for purposes of statutory proportionate liability regime - judgment for cross-claimants on cross-claim against third defendant for misleading & deceptive conduct in breach of *Fair Trading Act* 1987 (NSW) - comprehensive review of text & case law from UK & Australia.

[George](#) (I, B)

[Barclays Bank](#) - decision House of Lords 31 October 1968 reported at [1970] AC 567

Helm v Helm & Anor; Application of Conti [2011] NSWSC 1595

Supreme Court of New South Wales

White J

Liens - claim by solicitor over legacy to be paid to plaintiff - solicitor entitled to lien over fruits of action & to have lien protected - order that amount claimed for legal costs be paid into court.

[Helm](#) (I, B)

Thompson v DP World Australia [2011] QSC 406

Supreme Court of Queensland

Lyons J

Limitation of Actions Act 1974 (Qld) - personal injuries - time for commencement of proceedings extended pursuant to s31(2).

[Thompson](#) (I)

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