



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bruton Holdings Pty Ltd (in liq) v Commissioner of Taxation - Trusts - duties of bare trustee - appeal allowed (I, B)

London City Equities Ltd v Penrice Soda Holdings Ltd - s247A Corporations Act 2001 (Cth) - application for inspection of company books (I, B)

Caterpillar Financial Australia Ltd v Ovens Nominees Pty Ltd - s1318 Corporations Act 2001 (Cth) - s67 Trustee Act 1958 (Vic) - duties, powers & rights of a bare trustee (I, B)

Henley Arch Pty Ltd v McDonald Jones Homes Pty Ltd - Preliminary discovery (I, B, C)

Olivaylle Pty Ltd v Flottweg GMBH & Co KGAA (No 6) - Costs - gross sum - Practice Note CM 4 (I, B)

Olivaylle Pty Ltd v Flottweg GMBH & Co KGAA (No 7) - Costs - application for costs against non-party (I, B)

Maynes v Casey - Torts - trespass to land - application for leave to appeal dismissed (I)



H M Australia Holdings Pty Ltd v Edelbrand Pty Ltd t/as Domus Homes & Anor - *Building & Construction Industry Security of Payment Act 1999* (NSW) - challenge to adjudication determination (C)

Commissioner of State Revenue v Lend Lease Funds Management Pty Ltd - s22(2) s22(3), s33(3) *Duties Act 2000* (Vic) - statutory interpretation - by majority, appeal dismissed (B)

Algeri; Re Colorado Group Ltd - s439A(6), s447A(1) *Corporations Act 2001* - extension of time to convene second meeting of creditors (B)

Allianz Australia Insurance Ltd v Swainson - Personal injuries - contributory negligence - *Civil Liability Act 2003* (Qld) - appeal allowed (I)

McGrath Corporation Pty Ltd v Global Construction Management (Qld) Pty Ltd & Anor - Negligence - contracts - defective work - s31(1)(a) *Civil Liability Act 2003* (Qld) - whether claim an apportionable claim (I, C)

Summaries with links (5 minute read)

Thursday 23 June 2011

Bruton Holdings Pty Ltd (in liq) v Commissioner of Taxation [2011] FCAFC 79

Full Court of the Federal Court of Australia

Stone, Jacobson & Edmonds JJ (in Sydney)

Trusts - duties of bare trustee - whether trustee entitled to indemnification out of trust fund for litigation expenses: see para. 27 of judgment - appeal allowed - orders made on 3 & 9 September 2010 to be set aside - detailed consideration of text and case law from the United Kingdom & Australia: case summary of High Court decision of *CGU v One.Tel* in 'Benchmark' Friday 6 August 2010.

[Bruton Holdings](#) (I, B)

[Bruton Holdings](#) - decision 23 November 2010: see 'Benchmark' B & IBC Thursday 23 November 2010 - trustees' powers & rights - plaintiff applying for leave to appeal from declarations to the effect that plaintiff is not entitled to indemnification by exoneration or recoupment out of the property of the Bruton Educational Trust for expenses incurred in certain proceedings after 28 February 2007 - first defendant, the Commissioner, seeking security for the



costs of the appeal in the sum of \$38,590 and a stay or dismissal of the appeal failing payment - plaintiff's application granted - Commissioner's application dismissed;

[Commissioner of Taxation](#) - decision 3 September 2010: see 'Benchmark' B & IBC Tuesday 7 September 2010 for this decision & links to other decisions (including from High Court & Full Court of the Federal Court) in this case - ss449E & 504(1) *Corporations Act 2001* (Cth) - s21 & 23 *Federal Court of Australia Act 1976* - whether corporate trustee in liquidation entitled to indemnification by exoneration or recoupment out of trust assets for costs incurred after it became a bare trustee - answer 'no';

[Commissioner of Taxation](#) - decision 9 September 2010 - declaration that plaintiff not entitled to indemnification by exoneration or recoupment out of the property of the Bruton Educational Trust for expenses incurred in proceedings NSD 1222 of 2006.

London City Equities Ltd v Penrice Soda Holdings Ltd [2011] FCA 674

Federal Court of Australia

Robertson J (in Sydney)

s247A *Corporations Act 2001* (Cth) - application for inspection of company books - scope of inspection - directors & officers insurance policies - Australian case law considered.

[London City Equities](#) (I, B)

[Snelgrove](#) - decision 17 March 2010: see 'Benchmark' I, B & IBC Friday 19 March 2010 - *Corporations Act 2001* (Cth) - winding up - proceedings against company in liquidation - leave required - proceedings to inspect books of a Registered Investment Scheme - insurance policy - plaintiff's applications granted.

Caterpillar Financial Australia Ltd v Ovens Nominees Pty Ltd [2011] FCA 677

Federal Court of Australia

Gordon J (in Melbourne)

Corporations Act 2001 (Cth) s1318 - s67 *Trustee Act 1958* (Vic) - company wound up recorded as trustee under a trust deed - duties, powers & rights of a bare trustee - interesting & detailed analysis of United Kingdom & Australian case law.

[Caterpillar Financial Australia](#) (I, B)

Henley Arch Pty Ltd v McDonald Jones Homes Pty Ltd [2011] FCA 687

Federal Court of Australia

Tracey J (in Melbourne)

Preliminary discovery - requirements of O 15A r 6 *Federal Court Rules* - copyright - project home design - application for pre-action discovery granted.

[Henley Arch](#) (I, B, C)

**Olivaylle Pty Ltd v Flottweg GMBH & Co KGAA (No 6) [2011] FCA 688**

Federal Court of Australia

Logan J (in Brisbane) - 17 June 2011

Costs - respondent's application to fix trial costs in a gross sum - Practice Note CM 4 - appropriate case in which to exercise discretion to fix costs in gross - Australian case law considered.

[Olivaylle](#) (I, B)

&

Olivaylle Pty Ltd v Flottweg GMBH & Co KGAA (No 7) [2011] FCA 689

Federal Court of Australia

Logan J (in Brisbane) - 17 June 2011

Costs - application for costs against non-party - joint & several liability - case summaries of earlier decisions referred to at paras. 2-3 of judgment available via 'Benchmark' search link.

[Olivaylle](#) (I, B)

[Olivaylle](#) - decision Federal Court 20 May 2009: see 'Benchmark' I, B & IBC Friday 22 May 2009 - *Trade Practices Act 1974* (Cth) - contract for provision of olive oil processing line - nitrogen blanketing of industrial systems - expert evidence - purported termination for breach - contract between Australian & German companies — United Nations Convention on Contracts for the International Sale of Goods — incorporation of an international convention into Victorian law — *Sale of Goods (Vienna Convention) Act 1987* (Vic) — express contractual exclusion of application of international convention to the contract — held exclusion permissible - acceptance by electronic mail - withdrawal clauses - held no misleading or deceptive conduct by respondent - held termination not validly invoked.

Maynes v Casey [2011] NSWCA 156

Court of Appeal of New South Wales

Allsop P; Basten JA

Torts - trespass to land - implied right of a person having legitimate business with occupier of premises to enter & remain until asked to leave - assault - breach of privacy - competency of appeal - application for leave to appeal dismissed.

[Maynes](#) (I)**H M Australia Holdings Pty Ltd v Edelbrand Pty Ltd t/as Domus Homes & Anor [2011] NSWSC 604**

Supreme Court of New South Wales

Einstein J

Building & Construction Industry Security of Payment Act 1999 (NSW) - challenge to adjudication determination - adjudication void & to be set aside - detailed examination of Australian case law.

[H M Australia Holdings](#) (C)



Commissioner of State Revenue v Lend Lease Funds Management Pty Ltd [2011] VSCA 182

Court of Appeal of Victoria

Maxwell ACJ, Tate JA, Pagone AJA

s22(2) s22(3), s33(3) *Duties Act* 2000 (Vic) - statutory interpretation - dutiable value - whether transfer of estate in fee simple in land at Maribyrnong exempt from duty - Tate JA & Pagone AJA: transfer was exempt - by majority, appeal dismissed - a lengthy decision with comprehensive analysis of case law from the United Kingdom & Australia.

[Commissioner of State Revenue](#) (B)

[Lend Lease Funds Management](#) - decision 27 August 2009: see 'Benchmark' B & IBC Friday 28 August 2009 - land at Maribyrnong upon which stands retail shopping centre - whether transfer of land by custodian to responsible entity & trustee of unit trust exempt from duty - whether the trust was a "managed investment scheme" for purposes of s251(b) - whether there was a "change in trustees" for purposes of s33(3) - appeal allowed - assessment set aside.

Algeri; Re Colorado Group Ltd [2011] VSC 260

Supreme Court of Victoria

Judd J

s439A(6), s447A(1) *Corporations Act* 2001 - 'Daisytek' order - extension of time to convene second meeting of creditors - sale process by receiver - detailed analysis of legislation - succinct summary of principles & Australian case law.

[Algeri](#) (B)

Allianz Australia Insurance Ltd v Swainson [2011] QCA 136

Court of Appeal of Queensland

Fraser JA, Ann Lyons & Martin JJ

Personal injuries - contributory negligence - *Civil Liability Act* 2003 (Qld): "intoxication" - appeal from District Court: plaintiff had been walking home at night when first defendant's vehicle collided with him - primary judge had given judgment in favour of plaintiff against second defendant insurer - primary judge had found contributory negligence of forty percent - challenge to primary judge's findings that first defendant negligent & that his negligence was a cause of the collision; in the alternative, insurer contending primary judge's apportionment of responsibility for the collision was too generous to plaintiff - appeal allowed - contributory negligence of sixty percent - primary judge's apportionment set aside.

[Allianz Australia Insurance](#) (I)



McGrath Corporation Pty Ltd v Global Construction Management (Qld) Pty Ltd & Anor [2011]

QSC 178

Supreme Court of Queensland

Daubney J

Negligence - contracts - defective work - overpayment claim - management fees - s31(1)(a) *Civil Liability Act 2003* (Qld) - whether claim an apportionable claim - construction of twin tower unit development at Kangaroo Point - first defendant was construction manager - delay costs, termination costs & other costs - rectification - plaintiff had terminated services of first defendant - counter-claim by first defendant contending repudiation of construction -management contract dismissed.

[McGrath Corporation](#) (I, C)

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