

Thursday 23 August 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Unit Trend Services Pty Ltd v Commissioner of Taxation - GST - anti-avoidance provisions - benefit obtained was the result of choices and elections expressly conferred by GST law (B, C)

Coshott v Barry & Anor - application of limitation period to claim for legal costs by solicitor against client (I, B, C)

Coshott v Barry & Anor (No 2) - application to re-open case on grounds of misapprehension of relevant law (I, B, C)

Rail Corporation NSW v Vero Insurance Ltd (No 2) - indemnity costs - *Calderbank* offer - offer of compromise (I, B, C, G)

Melrose Cranes and Rigging Pty Ltd v Manitowoc Crane Group Australia Pty Ltd - claim by insurer to advice privilege or litigation privilege (I, B, C, G)



Smith by this tutor Coles v McFarland - personal injury - divergent evidence of witnesses - whether evidence of negligence (I)

Australian Rail Track Corporation Ltd v QBE Insurance (Europe) Ltd - construction of insurance contract - whether self-insured excess provision applies (I, C)

Lambert Leasing Inc v QBE Insurance Australia Ltd - whether expert evidence as to foreign law admissible (I, B)

Summaries with links (5 minute read)

Unit Trend Services Pty Ltd v Commissioner of Taxation [2012] FCAFC 112

Full Court of the Federal Court of Australia

Dowsett, Bennett, & Greenwood JJ

Taxation - GST - appellant group of companies developed residential towers at Surfers Paradise - supplies within the group were GST-free, as they involved transactions within a GST group or supplies of going concerns - those supplies established a smaller margin on later supplies of units in the development - margin scheme applied - GST calculated on margin, rather than total price - Commissioner set aside GST benefit and imposed penalties - anti-avoidance provisions - Div165, *A New Tax System(Goods and Services) Act 1999* (Cth) - held (by majority, Dowsett J dissenting): part of the GST benefit obtained was the result of choices and elections expressly conferred by the GST law - anti-avoidance provisions therefore did not operate in respect of some supplies.

[Unit Trend Services](#) (B, C)

Coshott v Barry & Anor [2012] NSWSC 850

Supreme Court of New South Wales

McCallum J

Limitation periods and costs - whether *Limitation Act 1969* (NSW) (**Act**) applies to claims for legal costs by solicitor against client - costs assessed under s201 *Legal Profession Act 1987* (NSW) - whether certificates of determination and judgments in relation to costs assessments *ultra vires* on basis that cause of action statute-barred - whether costs assessment process outside reach of Act - underlying rights and title to debt subject to Act - whether rights and title to debt extinguished.

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

**Coshott v Barry & Anor (No 2) [2012] NSWSC 944**

Supreme Court of New South Wales

McCallum J

Application for leave to re-open case - power of court to re-open proceedings after reasons for judgment but before entry of orders: *Autodesk v Dyason [No 2]* (1993) 176 CLR 300 - orders already entered in accordance with r36.11 *Uniform Civil Procedure Rules 2005* (NSW) - whether leave would have been granted if orders not entered - whether orders based on application of relevant legal authority - whether misapprehension of law in making of orders.

[Coshott](#) (I, B, C)**Rail Corporation NSW v Vero Insurance Ltd (No 2) [2012] NSWSC 926**

Supreme Court of New South Wales

Garling J

Indemnity costs - plaintiffs conveyed *Calderbank* offer and offer of compromise - defendant did not accept either offer - whether genuine offers - whether unreasonable for defendant not to accept offers - whether offer of compromise complied with Part 20 *Uniform Civil Procedure Rules 2005* (NSW) thus attracting order for indemnity costs - alternatively whether offer of compromise a non-complying offer analogous to *Calderbank* offer thus attracting order for indemnity costs: *Miwa Pty Ltd v Siantan Properties Pte Ltd (No 2)* [2011] NSWCA 344.

[Rail Corporation NSW](#) (I, B, C, G)**Melrose Cranes and Rigging Pty Ltd v Manitowoc Crane Group Australia Pty Ltd [2012] NSWSC 904**

Supreme Court of New South Wales

SG Campbell J

Privilege - claim by insurer to litigation privilege or advice privilege in respect of documents subpoenaed from three non-party investigators - dominant purpose of documents - whether litigation was reasonably anticipated: *Mitsubishi Electric Australia Pty Ltd v Victorian Work Cover Authority* (2002) 4 VR 332 - whether insurer by its conduct waived privilege - onus of establishing waiver on party asserting it: *Mann v Carnell* (1999) 201 CLR 1.

[Melrose Cranes and Rigging](#) (I, B, C, G)



Smith by this tutor Coles v McFarland [2012] NSWSC 945

Supreme Court of New South Wales

Simpson J

Personal injury - negligence - motor vehicle collision with cyclist - divergence in evidence of principal witnesses - plaintiff's lack of recollection of events - defendant only witness in defence case - consideration of material discrepancies in witnesses' evidence - whether any evidence on which finding of negligence could be made against defendant.

[Smith](#) (I)

Australian Rail Track Corporation Ltd v QBE Insurance (Europe) Ltd [2012] NSWSC 952

Supreme Court of New South Wales

Stevenson J

Insurance contracts - proper construction of contract of insurance (**Policy**) - whether self-insured excess provision applied in relation to claims made by plaintiff for indemnity under Policy - construction to be undertaken in accordance with ordinary rules of interpretation of contracts: *The Southern Cross Assurance Co Limited v Australian Provincial Assurance Association Limited* (1935) 53 CLR 618 - whether construction leads to commercially anomalous result.

[Australian Rail Track Corporation](#) (I, C)

Lambert Leasing Inc v QBE Insurance Australia Ltd [2012] NSWSC 953

Supreme Court of New South Wales

Stevenson J

Admissibility of evidence - affidavit of professor of law from United States purporting to give evidence as to law of the Commonwealth of Virginia - court's power to make ruling in relation to admissibility of evidence: s192A *Evidence Act* 1995 (NSW) - test for exercise of court's power namely that it *considers it appropriate to do so* - not necessary to show *special circumstances* or *out of the ordinary* circumstances - whether expert evidence as to foreign law admissible - distinction between *content evidence* and *application evidence*: *Allstate Life Insurance v Australia and New Zealand Banking Group Ltd (No 6)* (1996) 64 FCR 79.

[Lambert Leasing](#) (I, B)

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