

Thursday 24 May 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allseas Construction SA v Minister for Immigration & Citizenship - *Migration Act 1958* (Cth) - offshore installations (I, B, C, G)

TVH Australasia Pty Ltd v Chaseling - Personal injuries - *Motor Accidents Compensation Act 1999* (NSW) - appeal dismissed (I)

Correa & The Spanish Club Ltd (subject to Deed of Company Arrangement) v Whittingham (No 3) - ss447E(1) & 449E *Corporations Act 2001* (Cth) - *Registered Clubs Act 1976* (NSW) (I, B)

A v N - Costs (B)

In the matter of Samkev Investments Pty Ltd - s459G(1) *Corporations Act 2001* (Cth) (I, B)

Schirato v SCW Pty Ltd (in liq'n) - ss477(2B) & 488(2) *Corporations Act 2001* (Cth) (B)

Ashjal Pty Ltd v Elders Toepfer Grain Pty Ltd - s38(2) *Commercial Arbitration Act 1984* (NSW) - s34A(1) *Commercial Arbitration Act 2010* (NSW) (I, B, C, G)



Othman v Stanley & Ors - Application to amend pleadings (I, B)

MR & RC Smith Pty Ltd t/as Ultra Tune (Osborne Park) v Wyatt [No 2] - Personal injuries - slip on step at work - appeal allowed (I, C)

The Public Trustee (WA) v Brumar Nominees Pty Ltd - Contract for sale of land - capacity to contract (I, B)

Summaries with links (5 minute read)

Allseas Construction SA v Minister for Immigration & Citizenship [2012] FCA 529

Federal Court of Australia

McKerracher J

Migration Act 1958 (Cth) - offshore installations - whether there was a matter before the Court within meaning of s39B *Judiciary Act 1903* (Cth) & Chapter III of the Constitution - applicant seeking 2 declarations - 2 pipe laying vessels not resource installations while wholly or principally engaged in operations relating to installation of offshore pipelines for Gorgon & Jansz gas fields - employees working on both vessels - migration zone - Australian sea bed.

[Allseas Construction SA](#) (I, B, C, G)

TVH Australasia Pty Ltd v Chaseling [2012] NSWCA 149

Court of Appeal of New South Wales

Bathurst CJ; Basten & Whealy JJA

Personal injuries - *Motor Accidents Compensation Act 1999* (NSW) - whether injury caused by a motor accident - driving forklift with unsafe load was a fault in the use or operation of the forklift - appeal dismissed.

[TVH Australasia](#) (I)

[Chaseling](#) - decision District Court of NSW 15 April 2011: see Benchmark I & IBC Thursday 28 April 2011 - palletted load of cartoned forklift spare parts fell from the tynes of employer's moving forklift truck - crushing injury to lower right leg - whether injuries caused by owner or driver of forklift truck in the use or operation of a motor vehicle within s3 *Motor Accidents Compensation Act 1999* (NSW) - no contributory negligence - damages - verdict for plaintiff in sum of \$712,275.



Correa & The Spanish Club Ltd (subject to Deed of Company Arrangement) v Kenneth Michael Whittingham (No 3) [2012] NSWSC 526

Supreme Court of New South Wales

Black J

Ss447E(1) & 449E *Corporations Act* 2001 (Cth) - plaintiffs seeking declaration that defendant had not been validly appointed as voluntary administrator - application of indoor management rule - defendant seeking order under s447C that he was validly appointed as administrator of club under s436A, alternatively, an order under s447A as to operation of Pt 5.3A, further or alternatively, orders under s1322 - *Registered Clubs Act* 1976 (NSW) - remuneration & legal costs incurred by defendant - comprehensive review of UK & Australian case law.

[Correa](#) (I, B)

A v N [2012] NSWSC 549

Supreme Court of New South Wales

Ward J

Costs - *Calderbank* offers - apportionment between plaintiff & first defendant as to costs of second defendant.

[A](#) (B)

[A](#) - decision 13 April 2012: see Benchmark B & IBCG Tuesday 17 April 2012 - contracts - deed entered into following mediation - test of capacity - onus of proof - unconscionable conduct not established - benefit to plaintiff was not procured by undue influence over second defendant - duress not established by first defendant - *Contracts Review Act* 1980 (NSW) - equitable maxims - judgment for plaintiff - orders to be made for performance by first defendant of obligations under Deed of Settlement & Release - comprehensive consideration of text & case law from UK, Hong Kong & Australia.

In the matter of Samkev Investments Pty Ltd [2012] NSWSC 527

Supreme Court of New South Wales

Black J

S459G(1) *Corporations Act* 2001 (Cth) - application to set aside statutory demand granted.

[Samkev Investments](#) (I, B)

**Schirato v SCW Pty Ltd (in liq'n) [2012] NSWSC 541**

Supreme Court of New South Wales

Hammerschlag J

Corporations Act 2001 (Cth) - liquidator applying pursuant to s488(2) for special leave to make interim distribution to shareholders for surplus funds in liquidation, & for an order declaring that an agreement which liquidator made with solicitors for provision of legal services not invalid by reason of the failure of liquidator to obtain prior approval under s477(2B).

[Schirato](#) (B)

Ashjal Pty Ltd v Elders Toepfer Grain Pty Ltd [2012] NSWSC 545

Supreme Court of New South Wales

Hammerschlag J

S38(2) *Commercial Arbitration Act* 1984 (NSW) - s34A(1) *Commercial Arbitration Act* 2010 (NSW) - contracts - test for an implied term.

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

Othman v Stanley & Ors [2012] VSC 211

Supreme Court of Victoria

Mukhtar AsJ

Trusts - torts - fiduciary duty - application to amend pleadings - elements of *Barnes v Addy* second limb claim.

[Othman](#) (I, B)

[Barnes](#) - *Barnes v Addy* (1874) 9 Ch App 244; (1873-74) LR 9 Ch. App. 244 - decision 12 February 1874 Court of Appeal in Chancery

MR & RC Smith Pty Ltd t/as Ultra Tune (Osborne Park) v Wyatt [No 2] [2012] WASCA 110

Court of Appeal of Western Australia

Pullin, Newnes & Murphy JJA

Personal injuries - respondent employee of appellant - slip on step at work - whether breach of duty of care - whether stairs built in compliance with statutory provisions - whether stairs dangerous - damages - appeal allowed - comprehensive review of UK & Australian case law.

[MR & RC Smith](#) (I, C)

[Wyatt](#) - *Wyatt v M R & R C Smith Pty Ltd* [2010] WADC 178 decision District Court of Western Australia 30 November 2010 - judgment for the plaintiff against first defendant for \$1,142,353.50 - plaintiff's claim against second defendant dismissed.



The Public Trustee (WA) v Brumar Nominees Pty Ltd [2012] WASC 161

Supreme Court of Western Australia

Pritchard J

Contract for sale of land - capacity to contract - deceased had sufficient mental capacity to understand the nature of the contract into which he was entering - contract valid.

[The Public Trustee](#) (I, B)

Mark Lemon

(b. London 30 November 1809 - d. Crawley 23 May 1870)

Convivial first editor of the magazine "*Punch*" - its founders were Joseph Last, a printer, & the journalist Henry Mayhew (Mayhew's "*London Labour and the London Poor*" was published in 1851) - the first edition of '*Punch*' was published on 17 July 1841 & Lemon remained its editor for twenty-nine years until his death.

He was the eldest son of a Lincolnshire hop merchant - he was sent to Boston in Lincolnshire in his early teens to learn the brewing business, but attraction to the literary life proved too strong - his first play was performed in 1835, and he continued to turn out melodramas, operettas, burlesques & farces - '*Hearts are Trumps*' was performed at the Strand Theatre, London in 1848 and 1849 - he contributed verses & articles to several magazines including the '*Illustrated London News*,' & '*Household Words*.'

Lemon was for several years the landlord of the '*Shakespeare's Head*' public house in Wych Street, Drury Lane where gathered poets, playwrights, artists & journalists; his employment there ended in 1840 - like his good friend Charles Dickens, he was a keen amateur actor - in 1847, for example, he appeared as Falstaff to Dickens' Justice Shallow in "*The Merry Wives of Windsor*" touring Manchester, Liverpool, Birmingham, Edinburgh & Glasgow - in 1851, he and Dickens wrote a one act farce, "*Mr. Nightingale's Diary*," which premiered at the time of the Great Exhibition & a novel, "*Falkner Lyle, or, The story of two wives*" was published in 1866.

[Mark Lemon - Wikipedia, the free encyclopedia](#)



[The Project Gutenberg eBook of The History of "Punch", by M. H. ...](#)

[Mark Lemon as Falstaff in "The Merry Wives of Windsor"](#)

illustrator: Sir John Tenniel (28 February 1820 - 25 February 1914)

[Mr. Nightingale's Diary - by Charles Dickens and Mark Lemon \(1851\)](#)

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