

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

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### Executive Summary (1 minute read)

**Ferella v Official Trustee in Bankruptcy** - s179(1) *Bankruptcy Act 1966* (Cth) - whether applicants entitled to bring an action seeking inquiry to be made by the Court - whether notice to produce should be set aside (B)

**Kanes Hire Pty Ltd v Mitchell** - Employment law - whether Chief Industrial Magistrate had erred in finding respondent employed in or in connection with a retail shop (I)

**Australian Insurance Holdings Pty Ltd v Chan** - Injunctions - employment contracts - confidential information - s183 *Corporations Act 2001* (Cth) (I, B, C)

**Fernando v Commonwealth of Australia** - Torts - false imprisonment - vicarious liability - duty of care - breach of statutory duty - misfeasance in public office - unlawful detention (I, C)

**Mt Romance Australia Pty Ltd v Forest Products Commission** - Costs - applicant seeking leave to discontinue proceedings against second respondent (I, B, C)

**Vinciguerra v MG Corrosion Consultants Pty Ltd** - s237 *Corporations Act 2001* (Cth) - derivative action (B)

**Szozda v Szozda** - Powers of attorney - whether power of attorney void for want of mental capacity of donor (I, B, C)

**AM Marketing Pty Ltd v Howard Media Pty Ltd** - Partnerships - whether partnership existed (B)

**Dromana Estate Ltd v Wilmoth Field Warne (a firm)** - *Legal Profession Act* 2004 (Vic) - time limit within which to review interim & final bills of costs (I, B, C)

**Queensland Construction Materials Pty Ltd v Redland City Council & Ors** - *Integrated Planning Act* 1997 (Qld) - sand mining operations on North Stradbroke Island native title (C)

**Sambastian v Kemp** - Personal injuries - motor accident appellant appealed magistrate had dismissed claim - no error shown (I)

**Healy v Commissioner for Consumer Protection** - *Fair Trading Act* 1987 (WA) - leave to appeal sought against two convictions & against sentence imposed (I)

**Morais & Anor v Mills (No 2)** - Costs - "liberty to apply" (I, B, C)

## Summaries with links (5 minute read)

### Monday 26 July 2010

#### **Ferella v Official Trustee in Bankruptcy [2010] FCA 766**

Federal Court of Australia

Yates J (in Sydney)

*Bankruptcy Act* 1966 (Cth) - whether applicants entitled to bring an action under s179(1) seeking inquiry to be made by the Court into conduct of respondent in relation to applicants' respective bankruptcies - whether notice to produce should be set aside - legal professional privilege - waiver - "bankrupt" - detailed consideration of Australian case law.

[Ferella](#) (B)

**Kanes Hire Pty Ltd v Mitchell; Fair Work Ombudsman (intervenor) [2010] FCA 756**

Federal Court of Australia

Moore J (in Sydney)

Employment law - whether Chief Industrial Magistrate had erred in finding respondent employed in or in connection with a retail shop - appellant's principal business hiring out equipment & goods - respondent made redundant & employment terminated - 'retail shop employee' - principles of award interpretation - entitlement to severance pay - appeal dismissed.

[Kanes Hire](#) (I)

**Australian Insurance Holdings Pty Ltd v Chan [2010] FCA 781**

Federal Court of Australia

Greenwood J (in Brisbane)

Injunctions - employment contracts - confidential information - s183 *Corporations Act 2001* (Cth) - pricing of insurance policies - application for interlocutory injunction restraining threatened breach of obligation of confidence - respondent to be restrained from working for competitor within Motor Portfolio Personal Insurance or Home Portfolio Personal Insurance sections pending trial.

[Australian Insurance Holdings](#) (I, B, C)

**Fernando v Commonwealth of Australia [2010] FCA 753**

Federal Court of Australia

Siopis J (in Perth)

Torts - false imprisonment - vicarious liability - duty of care - breach of statutory duty - misfeasance in public office - unlawful detention - assessment of damages in sum of \$3,000 for misfeasance & false imprisonment - detailed consideration of United Kingdom & Australian case law.

[Fernando](#) (I, C)

**Mt Romance Australia Pty Ltd v Forest Products Commission [2010] FCA 761**

Federal Court of Australia

Gilmour J (in Perth)

Costs - applicant seeking leave to discontinue proceedings against second respondent Wescorp Sandalwood Pty Ltd - no real prospect of applicant's action against Wescorp under s46 Trade Practices Act 1974 (Cth) succeeding - allegation of misuse of market power in the delivery of

harvested & processed sandalwood - Wescorp to have benefit of a positive order of dismissal rather than somewhat neutral order granting leave to discontinue - applicant to pay costs of Wescorp on indemnity basis, except where costs have already been ordered.

[Mt Romance Australia](#) (I, B, C)

**Vinciguerra v MG Corrosion Consultants Pty Ltd [2010] FCA 763**

Federal Court of Australia

Gilmour J (in Perth)

*Corporations Act* 2001 (Cth) - derivative action - leave to commence proceedings under s237 - five requirements under s237(2) established - detailed consideration of United Kingdom & Australian case law.

[Vinciguerra](#) (B)

**Szozda v Szozda [2010] NSWSC 804**

Supreme Court of New South Wales

Barrett J

Powers of attorney - whether power of attorney void for want of mental capacity of donor - general & enduring power of attorney - test of incapacity - onus - whether general law test affected by *Powers of Attorney Act* 2003 (NSW) - declarations of invalidity - "capacity," "incapacity" - consideration of text & case law from United Kingdom & Australia.

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

**AM Marketing Pty Ltd v Howard Media Pty Ltd [2010] NSWSC 803**

Supreme Court of New South Wales

Barrett J

Partnerships - whether partnership existed - production of regional publications in Northern Rivers district - plaintiff suing defendant for debt - defendant contending it was not indebted because parties were partners - defendant seeking account - contractual relationship not fiduciary relationship - no partnership; judgment for debt in favour of plaintiff.

[AM Marketing](#) (B)

**Dromana Estate Ltd v Wilmoth Field Warne (a firm) [2010] VSC 308**

Supreme Court of Victoria

Wood AJ

*Legal Profession Act 2004* (Vic): see link below - Part 3.4: costs disclosure & review - time limit within which to review interim & final bills of costs - whether client entitled to seek a costs review under Division 7 of the bills which were given more than twelve months before the date of the application for review - question answered in the negative - case law from NSW & Canada considered.

[Dromana Estate](#) (I, B, C)

[Legal Profession Act 2004](#) of State of Victoria

**Queensland Construction Materials Pty Ltd v Redland City Council & Ors [2010] QCA 182**

Court of Appeal of Queensland

McMurdo P, Chesterman JA & Applegarth J

*Integrated Planning Act 1997* (Qld) - respondent's development application to remove & transport stockpiled sand tailings from its sand mining operations on North Stradbroke Island, overland to Dunwich for transport by barge to the mainland - native title rights - detailed consideration of legislation & case law.

[Queensland Construction Materials](#) (C)

[Queensland Construction Materials](#) - decision 29 September 2009 Queensland Planning & Environment Court - application for determination of preliminary points of law

**Sambastian v Kemp [2010] SASC 227**

Supreme Court of South Australia

Bell J

Personal injuries - appellant appealed findings of magistrate as to liability & quantum - collision between appellant's motorcycle & respondent's motor vehicle - magistrate had dismissed claim & allowed counterclaim - whether either party failed to keep a proper look out - whether either party performing illegal manoeuvre - whether crack in motorcycle frame caused by collision - appeal dismissed - magistrate's conclusions as to liability open on the evidence - no error shown in approach to quantum.

[Sambastian](#) (I)



**Healy v Commissioner for Consumer Protection [2010] WASC 177**

Supreme Court of Western Australia

E M Heenan J

*Fair Trading Act 1987 (WA)* - application for leave to appeal against two convictions & against sentence imposed - representation that air conditioners could be used for heating - appeal dismissed.

[Healy \(I\)](#)

## **In the District Court of Queensland...**

**Morais & Anor v Mills (No 2) [2010] QDC 282**

District Court of Queensland

Dorney QC DCJ

Costs - "liberty to apply" - offers to settle at mediation - no further orders made.

[Morais \(I, B, C\)](#)

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