



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to do a search of particular legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Permanent Custodian Ltd & Anor v KCRAM Pty Ltd (in liq'n) & Anor - Professional indemnity insurance - applicants seeking Court's leave to proceed against first respondent pursuant to s500(2) *Corporations Act* 2001 (Cth) (I)

Australian Competition & Consumer Commission v Trading Post Australia Pty Ltd & Google Inc - *Trade Practices Act* 1974 (Cth) (I, B)

Lym International Pty Ltd v Marcolongo - Negligence - causation - agency - contracts - s177 *Conveyancing Act* 1919 (NSW) - appeal dismissed (I, C)

Hinkley v Star City Pty Ltd & Anor - *Casino Control Act* 1992 (NSW) - statutory interpretation (I, B)

Perpetual Trustee Company Ltd in its capacity as trustee of the HIH NZ Converting Notes 1998 Trust - *Trustee Act* 1925 (NSW) - application for judicial advice (I, B, C)

Morris v Riverwild Management Pty Ltd - Costs (I, C)

Simpson v Cunning - Wills - principle of ademption - exceptions (B)



Leading Synthetics Pty Ltd v Adroit Insurance Group Pty Ltd & Anor - Contracts - credit risk insurance - equitable estoppel (I, B)

Ilievski v Olympic Aluminium Pty Ltd & Ors - *Accident Compensation Act 1985* (Vic) - medical panel opinion quashed (I)

St Barnabas Nominees Pty Ltd v Stallard Corp Pty Ltd - *Stamp Act 1921* (WA) - statutory interpretation - pleading & tender of unstamped contracts allowed (I, B, C)

Summaries with links (5 minute read)

Monday 26 September 2011

Permanent Custodian Ltd & Anor v KCRAM Pty Ltd (in liq'n) & Anor [2011] FCA 1083

Federal Court of Australia

Cowdroy J

Professional indemnity insurance - *Corporations Act 2001* (Cth) - applicants seeking Court's leave to proceed against first respondent pursuant to s500(2) - applicant claiming damages arising out of valuations of land relating to land & townhouse erected thereon Highland Park in Queensland - first respondent held Miscellaneous Professional Indemnity Insurance Policy - "Wrongful Professional Act", "Insured Profession" defined in policy - notification of claim - s40(3) *Insurance Contracts Act 1984* (Cth) - first respondent went into liquidation - leave to be granted pursuant to s500(2)

[Permanent Custodian](#) (I)

Australian Competition & Consumer Commission v Trading Post Australia Pty Ltd & Google Inc [2011] FCA 1086

Federal Court of Australia

Nicholas J

Trade Practices Act 1974 (Cth) - online advertising - declaration that first respondent had contravened s52(1) - no contraventions by second respondent.

[ACCC](#) (I, B)



Lym International Pty Ltd v Marcolongo [2011] NSWCA 303

Court of Appeal of New South Wales

Basten & Campbell JJA & Sackar J

Negligence - causation - agency - contracts - s177 *Conveyancing Act* 1919 (NSW) "duty of care not to do anything on or in relation to land..." - s5D *Civil Liability Act* 2002 (NSW) - respondent was owner of land at Mona Vale on which building being constructed - appellant owned adjacent property on which demolition & excavation work carried out - side of excavation nearest appellant's property shored up with sheeting piling by a company which, by time of the trial, had been deregistered - damage to respondent's building - challenge by appellant developer to finding of twenty-five percent proportionate liability in District Court proceedings - appeal dismissed.

[Lym International](#) (I, C)

Hinkley v Star City Pty Ltd & Anor [2011] NSWCA 299

Court of Appeal of New South Wales

Giles & Young JJA & Tobias AJA

Casino Control Act 1992 (NSW) - statutory interpretation - first respondent holder of licence & operator of Casino - second respondent lessee of whole of casino premises under lease from Casino Liquor & Gaming Authority, the registered proprietor of the site - Notice given in writing that any express or implied licence appellant may have had to enter or remain on any part of casino complex had been withdrawn - primary judge had rejected appellant's claim that he was entitled to natural justice or procedural fairness before Notice was issued - appeal dismissed - extensive consideration of case law from United Kingdom, New Zealand & Australia.

[Hinkley](#) (I, B)

[Hinkley](#) - decision 2 December 2010

Perpetual Trustee Company Ltd in its capacity as trustee of the HIH NZ Converting Notes 1998 Trust [2011] NSWSC 1091

Supreme Court of New South Wales

Brereton J

Trustee Act 1925 (NSW) - Trust Deed - Deed of Guarantee - application for judicial advice - proposed NSW proceedings & New Zealand proceedings - trustee seeking advice as to institution & continuation of proceedings & obtaining litigation funding.

[Perpetual Trustee Company](#) (I, B, C)



Morris v Riverwild Management Pty Ltd [2011] VSCA 283

Court of Appeal of Victoria

Nettle, Redlich & Weinberg JJA

Costs - appeal from Supreme Court judgment in effect to refuse claim for declaration & injunction to restrain respondent from enforcing costs orders made in favour of respondent in Victorian Civil & Administrative Tribunal in a Domestic Building proceeding - appellant contending the judge had erred in holding that he was estopped by Victorian Civil & Administrative Tribunal decision - at par 58 to 83, Weinberg JA considers doctrine of issue estoppel & in particular, the application of that doctrine to decisions of Victorian Civil & Administrative Tribunal: case law considered - appeal dismissed.

[Morris](#) (I, C)

[Morris](#) - decision 2 October 2009: see 'Benchmark' I, C & IBC Thursday 8 October 2009 - costs - rule against double recovery - how to apportion costs between multiple parties - burden of proof - settlement of claims made at Victorian Civil & Administrative Tribunal regarding development at Falls Creek - estoppel - whether question of apportionment had been determined by VCAT in previous proceedings;

[Bilbarin](#) - decision Victorian Civil & Administrative Tribunal 17 February 2007

Simpson v Cunning [2011] VSC 466

Supreme Court of Victoria

Hargrave J

Wills - principle of ademption - exceptions - house sold during deceased's lifetime - whether the gift of the house in the will had been adeemed - answer 'no.'

[Simpson](#) (B)

Leading Synthetics Pty Ltd v Adroit Insurance Group Pty Ltd & Anor [2011] VSC 467

Supreme Court of Victoria

Macaulay J

Contracts - credit risk insurance - equitable estoppel - inducement - s21 *Insurance Contracts Act* 1984 (Cth) - plaintiff supplies synthetic resins to its customers who process that material into plastic containers, particularly cups and bottles - in November 2008, one of its customers went into liquidation owing plaintiff approximately \$2.265 million - in late 2007, around the time when the global financial crisis was unfolding, plaintiff had instructed first defendant, its insurance broker, to seek a policy of insurance against the risk that the customer might fail to pay money due under its trading account - between January & May 2008 broker negotiated with second defendant, a



credit risk insurer, to place cover for that risk up to an amount of \$800,000 - second defendant denying that any binding agreement came into force - conclusions at par 115 of judgment, including that contract of credit risk insurance was made between plaintiff & second defendant on 28 April 2008; even if that were not so, second defendant estopped from denying that such a contract of insurance was made.

[Leading Synthetics](#) (I, B)

Ilievski v Olympic Aluminium Pty Ltd & Ors [2011] VSC 472

Supreme Court of Victoria

Kaye J

Accident Compensation Act 1985 (Vic) - plaintiff seeking order in nature of certiorari, quashing opinion of medical panel relating to claim by the plaintiff for compensation for non-economic loss, under s98C - psychiatric injury - relief sought by plaintiff granted - medical panel opinion quashed.

[Ilievski](#) (I)

St Barnabas Nominees Pty Ltd v Stallard Corp Pty Ltd [2011] WASC 261

Supreme Court of Western Australia

Edelman J

Stamp Act 1921 (WA) - statutory interpretation - prohibition in s27(1) of pleading or tendering an unstamped document - pleading & tender of unstamped contracts allowed - an interesting review of United Kingdom & Australian case law.

[St Barnabas Nominees](#) (I, B, C)

[Click Here to access our Benchmark Search Engine](#)