

Tuesday 28 February 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Taylor v Crossman (No 2) – s56 *Fair Trading Act* 1987 (SA) - causation – s82 *Trade Practices Act* 1974 (Cth) - appeal dismissed (I, B)

Suzlon Energy Ltd v Bangad (No 3) - Private international law - appropriateness of Australia as forum (B)

Taxation v Interhealth Energies Pty Ltd as Trustee of the Interhealth Superannuation Fund - s262A(4) *Superannuation Industry Supervision Act* 1993 (Cth) (B)

Wood v R - Criminal law - appeal upheld - conviction quashed - entry of verdict of acquittal ordered (I, B, C, G)

A W Ellis Engineering Pty Ltd & Ors v Malago Pty Ltd & Ors - Contracts - Heads of Agreement signed at mediation - declaration of binding & enforceable contract - specific performance ordered (I, B, C, G)



Collins v Sydney Ports Corporation - Personal injuries - workplace injury - causation - apportionment of liability (I, C)

Portland Downs Pastoral Company Pty Ltd v Great Northern Developments Pty Ltd & Ors - Building contracts - equitable estoppel - appeal dismissed (B, C)

O'Brien v Noble - Personal injuries - motor accident - damages - appeal allowed (I)

Summaries with links (5 minute read)

Taylor v Crossman (No 2) [2012] FCAFC 11

Full Court of the Federal Court of Australia

Lander, Cowdroy & Flick JJ

Fair Trading Act 1987 (SA) - misleading or deceptive conduct - whether representations made in trade or commerce as required by s56 - causation - s82 *Trade Practices Act* 1974 (Cth) - appeal dismissed.

[Taylor](#) (I, B)

[Crossman](#) - decision Federal Court of Australia 29 June 2011: see Benchmark I, B & IBC Friday 1 July 2011 - joint venture involving acquisition & operation of a marina for houseboats on River Murray near Mannum - misleading & deceptive conduct under s56 *Fair Trading Act* established - ss232 & 233 *Corporations Act* 2001 (Cth) - plaintiff did not succeed in oppressive conduct case or fiduciary duty case - extensive examination of Australian case law.

Suzlon Energy Ltd v Bangad (No 3) [2012] FCA 123

Federal Court of Australia

Rares J

Private international law - application by Swiss banks to set aside service of originating process, being a cross application, in a foreign country under r13.01(b) *Federal Court Rules* 2011 (Cth) - *Barnes v Addy* LR 9 Ch App at 251-252 - knowledge - appropriateness of Australia as a forum - Swiss banking secrecy laws - preponderance of factors in favour of granting a stay, provided Suzlon parties' rights against the banks can be protected by appropriate conditions.

[Suzlon Energy](#) (B)

[Beluga Shipping GmbH](#) - decision Federal Court 4 March 2011: see Benchmark Wednesday 9 March 2011 reported at (2011) 278 ALR 56 - *Admiralty Act* 1988 (Cth) - *Hague Convention on the Service Abroad of Judicial & Extrajudicial Documents in Civil and Commercial Matters* 1965 - appropriate for leave to be granted to Suzlon parties to



amend their pleadings to join three banks as further respondents to their cross-claim & to grant leave for the banks to be served in Switzerland under the Hague Convention;

[Suzlon Energy](#) - decision Federal Court 7 October 2011: see Benchmark Wednesday 11 October 2011 - production of documents - applications by three Swiss banks, which have been served as cross-defendants, to set aside, or excuse each Bank from production of documents sought under, notices to produce served on them by the Suzlon parties, the cross claimants - impact of Swiss banking secrecy laws.

Taxation v Interhealth Energies Pty Ltd as Trustee of the Interhealth Superannuation Fund

[2012] FCA 120

Federal Court of Australia

Logan J

S262A(4) *Superannuation Industry Supervision Act* 1993 (Cth) - duties of trustees - breach of enforceable undertaking - order for payment.

[Commissioner of Taxation](#) (B)

Wood v R [2012] NSWCCA 21

Court of Criminal Appeal of New South Wales

McClellan CJ; Latham & Rothman JJ

Criminal law - circumstantial evidence - identification evidence - Expert Witness Code of Conduct - Crown Prosecutor's address - onus of proof - appeal upheld - conviction quashed - entry of verdict of acquittal ordered.

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

A W Ellis Engineering Pty Ltd & Ors v Malago Pty Ltd & Ors [2012] NSWSC 55

Supreme Court of New South Wales

Sackar J

Contracts - marina development - handwritten Heads of Agreement signed at mediation - agreement to execute more formal agreement with more formal and additional terms - whether parties intended agreement to be immediately binding - answer "yes" - contract for sale of shares & units in a unit trust where those shares & units are not available on the market is one susceptible of specific performance - declaration of binding & enforceable contract - specific performance ordered - UK & Australian case law considered.

[A W Ellis Engineering](#) (I, B, C, G)



Collins v Sydney Ports Corporation [2012] NSWSC 115

Supreme Court of New South Wales

Harrison J

Personal injuries - workplace injury - causation - apportionment of liability - plaintiff had been walking across jetty gangway when shackle fractured & failed & counterweight was released - shackle made of a type of stainless steel unsuitable for sub-marine use - plaintiff alleging employer negligent & in breach of statutory duties - plaintiff also alleging second defendant liable because it selected, supplied & installed the shackle - expert evidence - quantum of damages agreed with some outstanding issues: see par 159 to 179 of judgment - ss151G & 151Z(2) *Workers Compensation Act* 1987 (NSW) - ss5B, 5D & 5E *Civil Liability Act* 2002 (NSW) - cross-claims between defendants seeking contribution or indemnity as concurrent tortfeasors pursuant to s5(2) *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) - at par 136 of judgment: finding of breach of duty of care as against both defendants - at par 156 of judgment: apportionment of damages as between the two defendants is sixty-five percent to employment and thirty-five percent to second defendant - verdict for plaintiff.

[Collins](#) (I, C)

Portland Downs Pastoral Company Pty Ltd v Great Northern Developments Pty Ltd & Ors [2012] QCA 18

Court of Appeal of Queensland

Chesterman & White JJA; Wilson AJA

Building contracts - sale agreement - appellant had sold its interest in joint venture to first respondent - equitable estoppel - appeal dismissed.

[Portland Downs Pastoral Company](#) (B, C)

[Portland Downs Pastoral Company](#) [2011] QSC 142 - see Benchmark B, C & IBC Wednesday 1 June 2011 - agreement for the sale of plaintiff's share in a joint venture to the first defendant - second defendants, the directors of first defendant, guaranteed first defendant's performance under that agreement - purchase consideration - construction costs limit - extension of time for practical completion - waiver & estoppel - plaintiff's claim against first & second defendants dismissed.

**O'Brien v Noble [2012] ACTCA 13**

Court of Appeal of the Australian Capital Territory

Refshauge, Penfold & North JJ

Personal injuries - motor accident - three heads of damage the subject of appeal from Master - appeal allowed - matter to be referred to Master for a re-trial limited to the assessment of the respondent's damages in respect of future out-of-pocket expenses; past and future loss of earning capacity; & the claims, past and future, under *Griffiths v Kerkemeyer* & s100 *Civil Law (Wrongs) Act 2002* (ACT).

[O'Brien](#) (I)

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