

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

Search Engine Now Available

[Click here](#) to access our new 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)

ACT Cross Country Club Inc v Cundy - The Canberra Marathon - contracts - implied terms - whether settlement agreement had been breached (I, B, C)

Flashback Holdings Pty Ltd v Showtime DVD Holdings Pty Ltd (No 6) - Copyright - infringement - lost sales (I, B)

Kerr, in the matter of Angel's Castle Pre-School Pty Ltd (in liquidation) - *Corporations Act 2001* (Cth) - appointment of liquidator (B)

Australian Competition & Consumer Commission v Cabcharge Australia Ltd - Application by respondent for transfer of proceedings to Sydney dismissed (I, B)

Mentha, In the matter of Griffin Coal Mining Company Pty Ltd (administrators appointed) - *Corporations Act 2001* (Cth) - application by administrators under s447A to alter operation of Pt 5.3A (B)

Gaskin v Ollerenshaw - Personal injuries - occupier's liability - duty to independent contractor - collapse of roof verandah - judgment for defendant (I)

Cupac v Motor Accidents Authority - *Motor Accidents Compensation Act 1999* (NSW) - appeal against decision of MAS Assessor & Proper Officer of Motor Accidents Authority - application dismissed (I)

RTA of NSW v Rolfe - Negligence - road authorities – s 45(1) *Civil Liability Act 2002* (NSW) - actual knowledge (I)

Todd Owen Dean v Mark Phung - *Limitation Act 1969* (NSW) - professional negligence - dental treatment (I)

Centro (CPL) Ltd v Chief Commissioner of State Revenue – s24 *Duties Act 1997* (NSW) - assessment revoked (B, C)

Rayner & Ors v N J Sheaffe Pty Ltd & Ors - Trusts - *Powers of Attorney Act 2003* (NSW) (B)

Mark Robert Jumikis v Gary Archer - Wills - capacity - undue influence (B)

Walsh v Croucher- Application for summary judgment or permanent stay - negligence (I)

Automotive Dealer Administration Services Pty Ltd v Kulik & Ors - Discovery of documents - confidentiality - computer data base (I, B, C)

Greig & Anor v Commissioner of Taxation & Ors (No 2) - Interest – s46 *Supreme Court Act 1995* (Qld) (B)

Pacella v Sherborne [No 2] - Wills - earnings on investment of contingent legacy - executor's remuneration (B)

Fairhead v Macauley - Criminal law - reckless driving - leave to appeal refused (I)

Ertech Pty Ltd v GFWA Contracting Pty Ltd - *Construction Contracts Act 2004* (WA) - adjudicator's determination - application to make order suspending enforcement of determination declined (C)



Summaries with links (5 minute read)

Wednesday 28 July 2010

ACT Cross Country Club Inc v Cundy [2010] FCA 782

Federal Court of Australia

Perram J (in Sydney)

The Canberra Marathon - contracts - implied terms - whether settlement agreement had been breached - each party to a contract to do all things necessary for the other party to have the benefit of the contract - applicant's proceedings dismissed - judgment on the cross-claim for cross-claimant, with damages to be assessed.

[ACT Cross Country Club](#) (I, B, C)

Flashback Holdings Pty Ltd v Showtime DVD Holdings Pty Ltd (No 6) [2010] FCA 694

Federal Court of Australia

Perram J (in Sydney)

Copyright - infringement - lost sales - judgment in favour of first applicant against third respondent in sum of \$40,000 plus interest.

[Flashback Holdings](#) (I, B)

Kerr, in the matter of Angel's Castle Pre-School Pty Ltd (in liquidation) [2010] FCA 786

Federal Court of Australia

Jacobson J (in Sydney)

Corporations Act 2001 (Cth) - appointment of liquidator of company as receiver & manager of trust assets for purpose of discharging liabilities of company as trustee.

[Kerr](#) (B)

Australian Competition & Consumer Commission v Cabcharge Australia Ltd [2010] FCA 731

Federal Court of Australia

Finkelstein J (in Melbourne)

Application by respondent for transfer of proceedings to Sydney - applicant contending that respondent has contravened ss45 & 46 *Trade Practices Act 1974* (Cth) - application dismissed.

[Cabcharge Australia](#) (I, B)

[s45 Trade Practices Act](#) - contracts, arrangements or understandings that restrict dealings or affect competition

[s46 Trade Practices Act](#) - misuse of market power

Mentha, In the matter of Griffin Coal Mining Company Pty Ltd (administrators appointed) [2010] FCA 764

Federal Court of Australia

Gilmour J (in Perth)

Corporations Act 2001 (Cth) - application by administrators under s447A to alter operation of Pt 5.3A - sought to relieve administrators of personal liabilities from proposed financing arrangement - whether in best interest of company - application granted.

[Mentha](#) (B)

Gaskin v Ollerenshaw [2010] NSWSC 791

Supreme Court of New South Wales

Garling J

Personal injuries - occupier's liability - duty to independent contractor - plaintiff experienced roof painter - collapse of roof verandah - plaintiff fell about three metres onto concrete floor - no breach of duty - contributory negligence not found - judgment for defendant but damages calculated at \$1,292,273.88.

[Gaskin](#) (I)

Cupac v Motor Accidents Authority [2010] NSWSC 631

Supreme Court of New South Wales

Harrison AsJ

Motor Accidents Compensation Act 1999 (NSW) - medical assessment - appeal against decision of MAS Assessor & Proper Officer of Motor Accidents Authority - application dismissed.

[Cupac](#) (I)

RTA of NSW v Rolfe [2010] NSWSC 714

Supreme Court of New South Wales

Harrison AsJ

Negligence - road authorities - s45(1) *Civil Liability Act* 2002 (NSW) - actual knowledge - defendant driver of a prime mover & attached trailer which collided with and caused damage to Armco guardrail located on side of roadway - vehicle was damaged in the accident - in the Local Court plaintiff RTA commenced proceedings seeking damages for costs of repair to a guardrail - defendant had defended the proceedings & cross-claimed against RTA alleging negligence - magistrate ordered verdict for RTA & verdict for defendant on the cross-claim - *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) - error of law in so far as the Magistrate made an order for contribution - appeal allowed in part.

[Rolfe](#) (I)

Dean v Phung [2010] NSWSC 722

Supreme Court of New South Wales

Harrison AsJ

Limitation Act 1969 (NSW) - professional negligence - dental treatment - limitation period extended.

[Dean](#) (I)

Centro (CPL) Ltd v Chief Commissioner of State Revenue [2010] NSWSC 751

Supreme Court of New South Wales

Gzell J

s24 *Duties Act* 1997 (NSW) - grant of a long-term concurrent lease of land - acquisition of reversionary interest in land - assessment revoked - matter remitted to Chief Commissioner to reassess in accordance with the decision & to refund overpaid duty with interest.

[Centro](#) (B, C)

Rayner & Ors v N J Sheaffe Pty Limited & Ors [2010] NSWSC 810

Supreme Court of New South Wales

Lindgren J

Trusts - *Powers of Attorney Act* 2003 (NSW) - renunciation - estoppel - deed of settlement - power of removal & appointment of a trustee - fiduciary obligation.

[Rayner](#) (B)

Jumikis v Archer [2010] NSWSC 767

Supreme Court of New South Wales

Pembroke J

Wills - capacity & authority - *inter vivos* banking transactions - undue influence - unconscientious use of special opportunity.

[Jumikis](#) (B)

Walsh v Croucher [2010] VSC 296

Supreme Court of Victoria

Mukhtar AsJ

Application for summary judgment or permanent stay - abuse of process - plaintiff convicted on criminal charges: appeal dismissed - subsequent civil action for damages against barrister for conduct of appeal - collateral attack on finality of appeal & conviction - permanent stay of civil proceeding.

[Walsh](#) (I)

Automotive Dealer Administration Services Pty Ltd v Kulik & Ors [2010] VSC 293

Supreme Court of Victoria

Mukhtar AsJ

Discovery of documents - confidentiality - computer data base as document plaintiff seeking a further inspection of second defendant's database by a forensic computer expert - application granted.

[Automotive Dealer Administration Services](#) (I, B, C)

Greig & Anor v Commissioner of Taxation & Ors (No 2) [2010] QSC 265

Supreme Court of Queensland

Margaret Wilson J

Interest - s46 *Supreme Court Act* 1995 (Qld) - recoverability of interest - delay - exercise of discretion - costs.

[Greig](#) (B)

[Greig](#) - decision 9 July 2010 - plaintiff seeking to recover payments made by the company in voluntary administration to defendant on basis they were voidable preferential payments. - defendant seeks indemnity from first, second and fourth third parties (directors of the company) against any amount he is ordered to make to the company.

Pacella v Sherborne [No 2] [2010] WASC 186

Supreme Court of Western Australia

Blaxell J

Wills - whether earnings on investment of contingent legacy formed part of residuary estate - whether investment in a market linked fund was a breach of trust - executor's remuneration - whether executor and trustee also entitled to commission.

[Pacella](#) (B)

Fairhead v Macauley [2010] WASC 187

Supreme Court of Western Australia

Murray J

Criminal law - reckless driving - frightening encounter with another driver - magistrate had convicted appellant & had found that defence of duress had been disproved beyond reasonable doubt - application for leave to appeal refused.

[Fairhead](#) (I)

Ertech Pty Ltd v GFWA Contracting Pty Ltd [2010] WASC 181

Supreme Court of Western Australia

Acting Master Chapman

Construction Contracts Act 2004 (WA) - adjudicator's determination - plaintiff seeking leave to enforce determination; defendant seeking that the plaintiff's application be adjourned *sine die*, dismissed or a suspension order be made pursuant to *Civil Judgments Enforcement Act 2004* (WA) - application to make order suspending enforcement of determination declined.

[Ertech](#) (C)

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