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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Yum! Restaurants Australia Pty Ltd v Full Bench of Fair Work Australia - administrative law - power to make modern awards (G)

Groundhog Sales and Rentals Pty Ltd v Eastern Pearl Corporation - contracts - implied conditions of fitness for purpose and merchantable quality excluded by express term - appeal dismissed (I, B, C)

Clyne v State of New South Wales - wrongful arrest and false imprisonment - malicious prosecution - apprehended bias (I, G)

Fuji Xerox Finance Ltd v CSG Ltd & Ors - construction of contract - estoppel - implied terms (I, B)

James Australia Group Pty Ltd v Yu - trade practices - misleading and deceptive conduct by silence (I, B, G)



Lowe v Pascoe (No 3) - apprehended bias - application for recusal of judge (I, B, C, G)

Bank of Queensland Ltd v Heritage Village Estate Pty Ltd - construction and rectification of guarantees (I, B)

Fulton Hogan Construction Pty Ltd v Grenadier Manufacturing Pty Ltd (in liq) & Ors - concurrent wrongdoers - proportionate liability (I, B, C)

Fairfax Media Publications Pty Ltd (ACN 068 675 221) Lahey, and Fairfax Printers Pty Ltd (ACN 068 675 221) v Cummings - application for leave to appeal from interlocutory judgment in defamation proceedings (I, G)

Summaries with links (5 minute read)

Yum! Restaurants Australia Pty Ltd v Full Bench of Fair Work Australia [2012] FCAFC 114

Full Court of the Federal Court of Australia

Lander, Flick & Jagot JJ

Administrative law - Full Bench of Fair Work Australia dismissed applications to make modern awards for Pizza Hut and KFC workers - Full Bench granted the union's application to terminate awards formerly in place - first instance judge dismissed employer's application for writs of *certiorari* and *mandamus* quashing Full Bench's decisions - items 4 & 6, Division 2, Part 2, Schedule 6, *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) - held: in making decision under item 4, Full Bench must consider objectives in item 6 - Full Bench did consider these objectives - Full Bench did not misconstrue item 6 - appeals dismissed with costs.

[Yum! Restaurants Australia](#) (G)

Groundhog Sales and Rentals Pty Ltd v Eastern Pearl Corporation [2012] FCAFC 113

Full Court of the Federal Court of Australia

Greenwood, McKerracher & Katzmann JJ

Contracts - Eastern Pearl successfully sued Groundhog for breach of joint venture agreement involving sale of earthmoving equipment - Groundhog unsuccessfully cross-claimed on basis that



equipment delivered by Eastern Pearl was not fit for purpose and not of merchantable quality - s19 *Goods Act* 1958 (Vic) - Groundhog appealed against dismissal of cross-claim - held: express term of contract provided equipment was sold *as is* - implied conditions of fitness for purpose and merchantable quality excluded from contract - appeal dismissed.

[Groundhog Sales and Rentals](#) (I, B, C)

Clyne v State of New South Wales [2012] NSWCA 265

Court of Appeal of New South Wales

Campbell, Macfarlan & Meagher JJA

Tort - robbery at post office resulted in arrest of post office employee - whether wrongful arrest and false imprisonment - whether primary judge erred in rejecting evidence and transcript of Local Court proceedings - whether malicious prosecution - elements of malicious prosecution: *A v State of New South Wales* [2007] HCA 10 - apprehended bias - whether primary judge erred in failing to disqualify herself after raising matters which were adverse to appellant and not raised by respondent.

[Clyne](#) (I, G)

[Clyne](#) - 2nd decision at first instance

[Clyne](#) - 1st decision at first instance

Fuji Xerox Finance Ltd v CSG Ltd & Ors [2012] NSWSC 890

Supreme Court of New South Wales

Sackar J

Contract for lease of copying and printing equipment - construction of contract - whether defendant held money paid to it by plaintiff's customers on trust for plaintiff - principles of contractual construction: *McCourt v Cranston* [2012] WASCA 60 - relevance of surrounding circumstances where contractual language uncertain - conditions necessary for rectification of contract: *Ryledar Pty Ltd v Euphoric Pty Ltd* [2007] 69 NSWLR 603 - conditions for establishment of estoppel - whether implied terms.

[Fuji Xerox Finance](#) (I, B)



James Australia Group Pty Ltd v Yu [2012] NSWSC 892

Supreme Court of New South Wales

Ball J

Trade practices - misleading and deceptive conduct - first defendant involved in setting up business to purchase plaintiff's wine under value to re-sell at profit and to provide benefits to second defendant at plaintiff's expense - whether misleading and deceptive conduct by silence - circumstances in which silence will be misleading or deceptive: *Demagogue Pty Ltd v Ramensky* (1992) 39 FCR 31 - relevance of relationship between parties - whether first defendant's misleading conduct caused plaintiff's loss - calculation of damages.

[James Australia Group](#) (I, B)

Lowe v Pascoe (No 3) [2012] NSWSC 907

Supreme Court of New South Wales

Gzell J

Apprehended bias - application that judge recuse himself on basis of statement made in reasons for judgment - whether statement was with respect to an essential matter in issue: *Kwan v Kang* [2003] NSWCA 336 - whether fair-minded lay observer would conclude reasonable apprehension of judge's inability to bring free mind to bear on evidence and submissions of fresh trial as a result of statement: *British American Tobacco Australia Services Ltd v Laurie* [2011] HCA 2.

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

Bank of Queensland Ltd v Heritage Village Estate Pty Ltd [2012] NSWSC 925

Supreme Court of New South Wales

Stevenson J

Mortgages and security - guarantees - plaintiff sued on guarantees given by second and third defendants in respect of debt of first defendant - construction of guarantees - court's power to correct obvious mistakes in process of construction: *Fitzgerald v Masters* (1956) 95 CLR 420 - principles relevant to rectification: *Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd* (1995) 41 NSWLR 329 - whether clear and convincing proof that parties signed a document that did not give effect to agreement between them.

[Bank of Queensland](#) (I, B)



Fulton Hogan Construction Pty Ltd v Grenadier Manufacturing Pty Ltd (in liq) & Ors [2012] VSC 358

Supreme Court of Victoria

Almond J

Torts - negligence - application of coating to trusses and handrails of footbridge - coating failed - whether coating manufactured by third defendant was defective - whether coating was properly applied by first and second defendants - expert evidence - whether expert had adequate expertise to express opinion - whether expert can rely on work of others in preparation of report - concurrent wrongdoers: s24AH *Wrongs Act* 1958 (Vic) - proportionate liability - whether damages should include GST paid by plaintiff to third parties for rectification of damage.

[Fulton Hogan Construction](#) (I, B, C)

Fairfax Media Publications Pty Ltd (ACN 068 675 221) Lahey, and Fairfax Printers Pty Ltd (ACN 068 675 221) v Cummings [2012] ACTCA 36

Supreme Court of the Australian Capital Territory

Refshauge ACJ

Defamation proceedings - whether judge erred in refusing to consolidate proceedings against defendants who were part of the same corporate group and refusing to strike out imputations - whether separate proceedings an attempt to circumvent cap on damages in s139F *Civil Law (Wrongs) Act* 2002 (ACT) (**Act**) - abuse of process in s133 of the Act - principles preventing vexation by separate suits: *Maple v David Syme & Co Ltd* [1975] 1 NSWLR 97 - whether *Anshun* estoppel - whether imputations incapable of carrying relevant implications: *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158.

[Fairfax Media Publications](#) (I, G)

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