

Wednesday 29 February 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search 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)

Tadrous v Tadrous - Equitable estoppel - interest (B)

Equititrust Ltd v Checkling Pty Ltd (Receiver & Manager app'd) (in Liq'n) – s73 *Civil Procedure Act* 2005 (NSW) - construction of settlement agreement (B)

Goluzd v Minister Administering the Environmental Planning & Assessment Act 1979 (NSW) - *Land Acquisition (Just Terms Compensation) Act* 1991 (NSW) (C)

Georgopoulos v Silafort's Painting Pty Ltd & Ors - s134AB(2) *Accident Compensation Act* 1985 (Vic) - statutory interpretation (I)

Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Ltd - Injunctions - security for costs (B)

Hutchinson & Anor v Bank of Scotland Plc - Wills - interpretation of will & codicil (B)

Nicholson & Ors v Morgan - Application by non-party to inspect pleading (I, B, C, G)



Howle v Best - *Home Building Contracts Act 1991* (WA) - application for leave to appeal refused (C)

Newton v Network Aviation Pty Ltd - *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - statutory interpretation (I)

Smith v Nottinghamshire Police - UK decision - personal injuries - pedestrian struck by car - apportionment of contributory negligence (I)

Summaries with links (5 minute read)

Tadrous v Tadrous [2012] NSWCA 16

Court of Appeal of New South Wales

Young & Meagher JJA; Handley AJA

Equitable proprietary estoppel - monies advanced by respondent and spouse to appellant for development of residential property - relief by way of equitable charge - appeal unsuccessful on all grounds except for ground relating to award of compound interest - appeal allowed in part - UK, Australian & New Zealand case law considered.

[Tadrous](#) (B)

[Tadrous](#) - decision Supreme Court of New South Wales 3 December 2010

Equititrust Ltd v Checkling Pty Ltd (Receiver & Manager app'd) (in Liq'n) [2012] NSWSC 121

Supreme Court of New South Wales

Schmidt J

S73 *Civil Procedure Act 2005* (NSW) - construction of settlement agreement, as reflected in Court's consent orders - possession - non-compliance with order.

[Equititrust](#) (B)



Goluzd v Minister Administering the Environmental Planning & Assessment Act 1979 (NSW)
[2012] NSWLEC 25

Land & Environment Court of New South Wales

Biscoe J

Land Acquisition (Just Terms Compensation) Act 1991 (NSW) - compulsory acquisition of residential oceanfront land for purpose of foreshore reservation area & park - objection to statutory offer of compensation - market value - disturbance loss - compensation determined in sum of \$572,000.

[Goluzd \(C\)](#)

Georgopoulos v Silaforts Painting Pty Ltd & Ors [2012] VSC 56

Supreme Court of Victoria

Kaye J

S134AB(2) *Accident Compensation Act 1985 (Vic)* - statutory interpretation - plaintiff alleging injury in fall from scaffolding as painter in employ of first defendant - also joined, as second defendant, the builder, &, as third defendant, person responsible for erection of scaffolding at the premises at Malvern - serious injury certificate granted pursuant to s134AB(16)(a) in respect of psychological but not physical/organic injuries - whether plaintiff entitled to claim damages for physical injuries - submission of first defendant upheld, that plaintiff only entitled to plead & rely on such injury or injuries as have been held, certified or deemed to be a serious injuries or injuries as defined by s134AB.

[Georgopoulos \(I\)](#)

[Kruisselbrink](#) - decision Supreme Court of Victoria 18 June 2010: see Benchmark I & IBC Tuesday 22 June 2010 - *Accident Compensation Act 1985 (Vic)* - injury arising out of or in course of employment - serious injury - entitlement to sue - certificate granted by Authority - application to amend Statement of Claim - ambit of serious injury certificate granted pursuant to s134(AB)(16)(a) - leave to amend statement of claim given - leave to amend defence refused, but leave to replead defence granted.

Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Ltd [2012] QSC 33

Supreme Court of Queensland

McMurdo J

Injunctions - security for costs - question of interlocutory injunction & impact on worth of liquidator's undertaking as to damages from the removal of approval of funding agreement - balance of convenience does not warrant variation of freezing orders at the moment - proceedings



stayed until 28 May 2012 or earlier order - outcome in each application adjourned for three months.

[Fletcher](#) (B)

[Fletcher](#) - decision Supreme Court of Queensland 8 March 2011: see Benchmark B & IBC Monday 14 March 2011 - corporations - winding up - Octaviar Ltd (Receivers & Managers App'd) (in liq'n) - freezing orders sought - alternatively application for preservation of certain funds;

[Fortress Credit Corporation](#) - decision Full Court of the Federal Court of Australia 25 July 2011: see Benchmark I, C & IBC Thursday 28 July 2011 - Octaviar Ltd owed Fortress approximately \$71 million - Fortress appointed Receivers to the assets of Octaviar Ltd - Octaviar Ltd & a subsidiary, Octaviar Administration Pty Ltd, were put into liquidation - Octaviar Administration also owed Octaviar Ltd money - this debt was under the control of the Receivers, who caused Octaviar Ltd to lodge a \$500 million proof of debt in the liquidation of Octaviar Administration - the liquidators caused Octaviar Ltd & Octaviar Administration to enter into agreements for Octaviar Administration to fund litigation by Octaviar Ltd against Fortress, and to fund the public examination of certain officers of Fortress - these agreements required the approval of the Court - the primary judge approved the agreements - Fortress sought leave to appeal from this decision - leave was required because Fortress had not been a party to the primary proceedings - held: a person who was not a party to proceedings, but who is bound by the orders made, or aggrieved, prejudicially affected, or otherwise sufficiently interested in them, can appeal those orders with the leave of the Court - as a rule, leave is granted as long as the person seeking leave might properly have been a party to the primary proceedings - in this case, there were good prospects of success in the appeal, if leave were to be granted - leave was granted to Fortress to appeal - the appeal was allowed, and the matter remitted for further consideration.

Hutchinson & Anor v Bank of Scotland Plc [2012] QSC 28

Supreme Court of Queensland

Applegarth J

Wills - principles governing interpretation of wills & codicils - creation of testamentary trust to endure for benefit of beneficiaries, all but one of whom located in Scotland - issue of applicable law in respect of administration of trust governed by *Convention on the Law Applicable to Trusts and on their Recognition* made at the Hague on 1 July 1994, given legislative force by the *Trusts (Hague Convention) Act 1991 (Cth)* - law of Scotland applied to administration of trust.

[Hutchinson](#) (B)

Nicholson & Ors v Morgan [2012] WASC 65

Supreme Court of Western Australia

Corboy J

Application by non-party to inspect statement of claim on the court file - non-party permitted inspect redacted version of statement of claim.

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



Howle v Best [2012] WASC 62

Supreme Court of Western Australia

Simmonds J

Home Building Contracts Act 1991 (WA) - Builders Registration Act 1939 (WA) - application for leave to appeal against decision of State Administrative Tribunal refusing extension of time to apply for leave to review decision of Building Disputes Tribunal - application for leave refused.

[Howle](#) (C)

In the District Court of Western Australia...

Newton v Network Aviation Pty Ltd [2012] WADC 18

District Court of Western Australia

Scott DCJ

Civil Aviation (Carriers' Liability) Act 1959 (Cth) - statutory interpretation - personal injuries claim - application by defendant for summary judgment - delay - waiver/estoppel - leave to defendant to bring application granted - judgment for defendant - "accident", "action brought" - case law from USA & Australia considered.

[Newton](#) (I)

From the United Kingdom...

Smith v Nottinghamshire Police [2012] EWCA Civ 161

Court of Appeal of England & Wales

Ward, Lloyd & Kitchin LJJ

Personal injuries - pedestrian crossing street at night struck by police car responding to emergency call - on appeal, issue as to proper apportionment of contributory negligence - defendant's appeal dismissed, claimant's appeal allowed - defendant responsible for two-thirds of claimant's damage.

[Smith](#) (I)



Charles Lamb

(b. London, 10 February 1775 - d. Edmonton, 27 December 1834)

His father was a clerk to Samuel Salt, a lawyer - Charles was born in the Inner Temple, and lived there for seventeen years - he was educated at Christ's Hospital, where he formed an enduring friendship with Samuel Taylor Coleridge (1772 - 1834) - for thirty-three years, he worked for the East India Company (1792 - 1825) - on 22 September 1796, his sister Mary, ten years his senior, killed their mother in a fit of insanity - he became Mary's guardian; she was to survive him by thirteen years - in 1805, he was commissioned by William Godwin, father-in-law of Shelley, to write some of Shakespeare's plays in the form of stories for children as part of a Juvenile Library - Lamb undertook the task with Mary, she doing the comedies, he the tragedies (the histories were not turned into story form) - 'Tales from Shakespeare' was published in 1807 - the first series of his 'Essays of Elia' appeared in the 'London Magazine' between 1820 and 1823; the second series was published in 1833 - the essays include 'The Old Benchers of the Inner Temple,' 'A Bachelor's Complaint of the Behaviour of Married People,' 'On Some of the Old Actors,' 'Newspapers Thirty-five years Ago,' & 'Barrenness of the Imaginative Faculty in the Productions of Modern Art' - the paragraph below concludes an essay entitled 'The Two Races of Men,' being those who are lenders and those who are borrowers - in this particular instance, Lamb is referring to book borrowing, and S.T.C. is a reference to his friend Samuel Taylor Coleridge - in the essay 'Christ's Hospital', S.T.C. is described by Lamb as "Logician ! Metaphysician ! Bard !"

"Reader, if haply thou art blessed with a moderate collection, be shy of showing it; or if thy heart overfloweth to lend them, lend thy books; but let it be to such a one as S.T.C. - he will return them (generally anticipating the time appointed) with usury: enriched with annotations, tripling their value. I have had experience. Many are these precious MSS. of his - (in matter oftentimes, & almost in quantity not unfrequently, vying with the originals) - in no very clerkly hand - legible in my Daniel; in old Burton; in Sir Thomas Browne; and those abstruser cogitations of the Greville ... - I counsel thee, shut not thy heart, nor thy library, against S.T.C."

[Charles Lamb - Wikipedia, the free encyclopedia](#)

The authors referred to by Lamb near the end of the passage quoted above are:

Samuel Daniel (1562-1619) - poet & historian: "The First Four Books of the Civil Wars" was an historical poem on the subject of the Wars of the Roses;



Robert Burton (1577 - 1640) - scholar at Oxford University, best known for his classic 'The Anatomy of Melancholy' (1621);

Sir Thomas Browne (1605-1682) - author of varied works, he trained and practised in medicine;

Fulke Greville, 1st Baron Brooke (1554 - 1628) - Elizabethan poet, dramatist & statesman, he sat in the House of Commons at various times between 1581 & 1621 when he was raised to the peerage - he wrote a biography of his contemporary Sir Philip Sidney

http://upload.wikimedia.org/wikipedia/commons/1/18/Charles_Lamb_by_William_Hazlitt.jpg

- portrait of Charles Lamb (1804) by his friend William Hazlitt (1778 -1830)

- essayist, literary critic, painter, philosopher

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