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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)

IBEB Pty Ltd & Anor v Duncan & Ors [2011] NSWCA 368 - Contracts - sale of business - damages - goodwill - proportionate liability - s34A *Civil Liability Act* 2002 (NSW) (I, B, C, G)

Perpetual Trustee Company Ltd v Milanex Pty Ltd (in liq'n) - *Fair Trading Act* 1987 (NSW) - loan contract - mortgage - concurrent wrongdoer (I, B, C, G)

Tomasetti v Brailey - Partnerships - financial advice - verdict for defendants (I, B, C, G)

Sapphire (SA) Pty Ltd (trading as River City Grain) v Barry Smith Grains Pty Ltd (in liq'n) - *Commercial Arbitration Act* 1984 (NSW) - application for leave to appeal from final arbitration award (I, B, C, G)

Axiak b.h.t. D. Axiak v Ingram - Personal injuries - ss7A, 7D & 7F *Motor Accidents Compensation Act* 1999 (NSW) - judgment for defendant (I)

Re N - s42 *Trustee & Guardianship Act* 2009 (NSW) - orders relating to persons outside New South Wales (I, B, C, G)



AMP Superannuation Ltd as Trustee of the AMP Superannuation Savings Trust - Superannuation Industry Superannuation Act 1993 (Cth) - application for judicial advice (B)

US Securities & Exchange Commission v Citigroup Global Markets – United States decision - securities law - Court did not approve proposed consent judgment (I, B)

Summaries with links (5 minute read)

IBEB Pty Ltd & Anor v Duncan & Ors [2011] NSWCA 368

Court of Appeal of New South Wales

Macfarlan, Young & Meagher JJA

Contracts - sale of business - misleading & deceptive conduct - reliance - causation - damages - goodwill - continuing losses - proportionate liability - s34A *Civil Liability Act* 2002 (NSW) - appellant vendors did not succeed on challenge to capital loss award but succeeded in reducing continuing losses award from \$275,000 to \$36,200 - appeal allowed in part.

[IBEB Pty Ltd](#) (I, B, C, G)

[Duncan & Ors](#) - decision District Court of New South Wales 9 December 2010: see Benchmark I, B & IBC Monday 13 December 2010 - *Trade Practices Act* 1974 (Cth) - *Fair Trading Act* 1987 (NSW) - plaintiffs had purchased newsagency business from first & second defendants - second defendant principal of the vendor first appellant - plaintiffs alleging misrepresentation of financial & trading position of the business - reliance - causation - breach of duty - measure of damages - whether a question of proportionate liability arose under Pt 4 *Civil Liability Act* 2002 - verdict for plaintiffs against first & second defendants in sum of \$671,144.13.

Perpetual Trustee Company Ltd v Milanex Pty Ltd (in liq'n) [2011] NSWCA 367

Court of Appeal of New South Wales

Campbell, Macfarlan & Young JJA

Fair Trading Act 1987 (NSW) - loan contract - mortgage - appeal against dismissal of cross-claim - misleading & deceptive conduct - reliance - causation - mortgage origination & management agreement - respondent not entitled to rely on proportionate liability provisions of *Civil Liability Act* 2002 (NSW) - concurrent wrongdoer - appeal allowed - see par 99 & 107 of Macfarlan JA's judgment: appellant's claim against respondent limited to an amount reflecting respondent's sixty-five percent share of responsibility as between it & solicitor for appellant's loss - see par 127 to 132 of judgment of Young JA as to issue of share of responsibility.



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

[Perpetual Trustee Company Ltd](#) - decision Supreme Court of New South Wales 16 November 2009 - loan agreement secured by first mortgage over unit owned by defendant - plaintiff seeking possession - *Contracts Review Act 1980* (NSW) - cross-claim by Perpetual against mortgage broker Milanex - *Trade Practices Act 1974* (Cth) - *Fair Trading Act 1987* (NSW) - Perpetual had not established reliance on representations - cross-claim against Milanex dismissed - two actions: in each, verdict for defendant.

Tomasetti v Brailey [2011] NSWSC 1446

Supreme Court of New South Wales

R A Hulme J

Contracts - negligence - damages - limitation of actions - what constitutes a partnership - financial advice - investments in managed investment schemes - verdict for defendants - comprehensive review of Australian case law.

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

Sapphire (SA) Pty Ltd (trading as River City Grain) v Barry Smith Grains Pty Ltd (in liq'n) [2011] NSWSC 1451

Supreme Court of New South Wales

Ward J

Commercial Arbitration Act 1984 (NSW) - application for leave to appeal from final arbitration award - discovery of documents - confidentiality - futures contracts for sale of grain - Trade Rules & Standard Terms - threshold requirements in s38(5) satisfied only in relation to ground of appeal identified in fifth ground pleaded in Commercial List Arbitration Statement - leave granted pursuant to s38(4)(b) in relation to that ground - comprehensive review of text & case law from United Kingdom & Australia.

[Sapphire \(SA\) Pty Ltd](#) (I, B, C, G)

Axiak b.h.t. D. Axiak v Ingram [2011] NSWSC 1447

Supreme Court of New South Wales

Adamson J

Personal injuries - ss7A, 7D & 7F *Motor Accidents Compensation Act 1999* (NSW) - "blameless accident" - proper construction of Division 1 - statutory interpretation - Division 1 did not apply - contributory negligence - s5R *Civil Liability Act 2002* (NSW) - judgment for defendant.

[Axiak b.h.t. D. Axiak](#) (I)

**Re N [2011] NSWSC 1433**

Supreme Court of New South Wales

White J

s42 *Trustee & Guardianship Act* 2009 (NSW) - orders relating to persons outside New South Wales - declaration that defendant incapable of managing her own affairs - ordered that estate of defendant be subject to management under the Act.

[Re N](#) (I, B, C, G)**AMP Superannuation Ltd as Trustee of the AMP Superannuation Savings Trust [2011] NSWSC 1439**

Supreme Court of New South Wales

Windeyer AJ

Superannuation Industry Superannuation Act 1993 (Cth) - application for judicial advice under *Trustee Act* 1925 (NSW) - trustee has power to implement employer proposal.

[AMP Superannuation Ltd](#) (B)

From the United States ...

US Securities & Exchange Commission v Citigroup Global Markets, 11 Civ. 7387 (JSR)

United States District Court, Southern District of New York

Rakoff USDJ

Securities law - whether proposed consent judgment fair, reasonable & adequate - Court cannot grant remedy of injunctive relief without considering public interest - Court refused to approve proposed Consent Judgment.

[US Securities Exchange Commission](#) (I, B)

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