

**DAVID H DENTON, S.C.**

Barrister | Arbitrator

I am a Senior Counsel and I appear in the commercial and appellate divisions of the Federal Court of Australia; the Supreme Courts in Victoria, New South Wales, Queensland and Tasmania; the Planning & Environment Court of Queensland and the Victorian Civil & Administrative Tribunal. More recently I have been retained to appear for commercial clients in the High Court and Court of Appeal in the Fiji Islands.

I have a keen interest in commercial arbitration and in all aspects of company law, especially insolvency and shareholder disputes; environmental torts concentrating on defence work and planning matters.

My principal practice areas are in:

- Commercial, Equity & Trade Practices Law
- Corporations, Insolvency & Securities Law
- Banking, Finance & Property Law
- Commercial Arbitration & Mediation
- Planning & Environment Law

I maintain chambers in Melbourne at Chancery Chambers, in Cairns at Macrossan Chambers and in Hobart at Republic Chambers. I have chamber arrangements in both Sydney and Brisbane.

Qualifications

EDUCATION

- Xavier College, Kew
- Royal Military College, Duntroon
- Monash University, Victoria - B.A. (1977); LL.B. (1979); LL.M. (1994)

ADMISSION TO PRACTICE

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|------------------------------------|------|--|------|
| • Supreme Court of Victoria | 1981 | • Supreme Court of South Australia | 1991 |
| • High Court of Australia | 1981 | • Supreme Court of Queensland | 1991 |
| • Supreme Court of New South Wales | 1985 | • Superior Courts of Fiji (<i>pro tem</i>) | 2008 |

BARRISTER

- Victorian Bar - Roll of Counsel: signed 1987
- Appointed a Senior Counsel (S.C.) for the State of Victoria - 2001

ARBITRATOR

- Fellow (Certified Arbitrator) of the Australian Institute for Commercial Arbitration (FAICA) – 2004

MEDIATOR

- National Accreditation as a Mediator – 2008

ACADEMIC

- Adjunct Professor - Professorial Associate, Victoria Law School, Faculty of Business & Law, Victoria University, Melbourne – since 2005
- Course Director, Graduate Diploma in Commercial Arbitration, Sir Zelman Cowen Centre, Victoria Law School, Victoria University, Melbourne – since 2004
- Chair of the Faculty of Business & Law Review Committee into the Sir Zelman Cowen Centre, Victoria Law School 2009 – 2010
- Victorian Bar Council Representative, Programs Advisory Committee, Victoria Law School, Victoria University, Melbourne 2004 - present
- Advisory member of Head of Law School's Building and Accommodation Committee for the Victoria Law School 2008 - present
- Occasional Lecturer, International Commercial Arbitration, Victoria Law School 2005 – present
- Acting Moot Master, Victoria Law School Mooting Competition, 2005 - present
- Advisory member *pro tem* to Provost, Professor the Hon J H Phillips AC QC, 2004 - 2008

Practice Profile

Commercial, Equity & Trade Practices Law

These cases cover every instance of commercial disputation arising out of trade and commerce from contractual disputes to passing off applications to protection of intellectual property rights.

Corporations, Insolvency & Securities Law

I have a strong interest in Securities, Corporate Governance and Insolvency Law issues. I have appeared in many cases under the Corporations Law/Act and especially so in the Corporate Insolvency area. Significant case development in cases under Part 5.3A Corporations Act in respect of administrations and insolvencies.

Corporations, Insolvency & Securities Law Publications

I have written and lectured extensively. Publications in corporate law are as follows:

- *Liquidated Damages and Penalties - Ensuring Enforceability* (2010 LexisNexis)
- *Misconduct of Insolvency Practitioners* (2009 Insolvency Practitioners Association)
- *The Accountability of 'Corporate Undertakers' for their Misconduct in Office* (2009 Legalwise Seminars)
- *Litigation Intensive - A Practical Session On Preparing for and Conducting a Commercial Trial* (2007 Leo Cussen Institute - "LCI")
- *Directors' Duties - Some Observations - USA - UK - Australia* (2004 Law Institute of Victoria - "LIV")
- *Re Wakim - Cross-Vesting - Quo Vadis?* (1999 LIV)
- *Voluntary Administration - Framework and Principles* (1995 LCI)
- *Issues and Decisions for Lenders Arising from Company Administration* (1994 LCI)
- *External Administration - Receivers and Managers* (1994 LCI)
- *Liquidation of Corporations* (1993 LCI)
- *Liquidation of Companies* (1988 and 1989 revised, LCI)
- *Winding Up Law and Procedure under the Companies Code* (1983 and 1984 LCI revised)
- *Australian Corporation Law, Principles and Practice*, Butterworths, (contributor)

- *Australian Corporations and Securities Reports*, Butterworths (law reporter)
- *Australian Company Law Reports*, Butterworths (law reporter)

Commercial Arbitration & Mediation

Well developed practice in commercial arbitrations and mediations for over 20 years, both in Australia and overseas. Arbitrations have involved consideration of private international law; advice on international treaties concerning International Sale of Goods, International Air Law, UNCITRAL Model Law on International Commercial Arbitration. In Australia, arbitrations have also involved large contractual construction disputes and commercial tenancy arbitrations, flowing through to arbitral awards.

Banking, Finance & Property Law

These cases involve the application of securities and suretyship law with emphasis on banking documentation covering debentures, mortgages, charges, cross-deeds of covenant, guarantees and indemnities. The corresponding rights of parties to rely upon equitable and statutory defences principally trade practices law and unconscionable conduct are closely examined. All aspects of land law covered including compensation due to compulsory acquisition.

Planning & Environment Law

Additionally, I have developed a specialist practice in Victoria in VCAT and in Queensland in Planning & Environment Law matters. I have an interest in defence work involving environmental offences. My practice also has involved matters under the *Integrated Planning Act 1997* (Qld); environmental prosecutions under the *Local Government Act 1990* and Local Laws; and the Cairns City Council, Douglas Shire Council, Eacham Shire Council and Johnstone Shire Council Planning Schemes in Far North Queensland and in South East Queensland before the Planning & Environment Court (Queensland).

Professional Positions

COMMERCIAL BAR ASSOCIATION

- President of the Commercial Bar Association – Melbourne (*CommBar*) 2001 – 2005
- Senior Vice President of *CommBar* 1999 – 2001
- Chairman of the Corporations and Securities Law Section of *CommBar* 1998 – 2005
- Deputy Chair Corporations and Securities Law Section of *CommBar* 2005 - present
- Vice President (Convenor) of *CommBar* 1994 - 1998
- Founder of *CommBar* 1994

AUSTRALIAN INSTITUTE FOR COMMERCIAL ARBITRATION, INC.

- President of the Australian Institute for Commercial Arbitration 2004 - present

VICTORIAN BAR

- Founder and List Chairman, Clerk “Q”, Lyus Legal, first national barristers’ clerk covering Victoria, New South Wales, the ACT and Queensland - 2009 - present
- Member of the Independent Chambers Committee 2008 – present
- Victorian Bar Representative, Programs Advisory Committee, Victoria Law School, Victoria University, Melbourne 2004 - present
- Member of the Continuing Legal Education Committee 2001 – 2007
- Member of the Aboriginal Law Student Mentoring Support Group 2000 – 2001
- Member of the Litigation Procedure Review Committee for Commercial Law 1999 – 2001
- Member of the Legal Education Committee 1998 - 2000
- Member of Chancery Chambers 1997 – present
- Member of the Academic and Continuing Legal Education Committee 1995 – 1997

- Founding director, List Committee member and member of List A Barristers 1990 - 2010
- Member of the Bar Library Committee 1987 - 1989
- Member of the Victorian Bar 1987 - present
- Mentor to the following Barristers: Joanne Piggott, Peter G Lovell, Margaret Lodge, Alan Herskope, David L Bailey, Richard W Short, Picha Djohan

OTHER APPOINTMENTS

- Chairman, *Law Hawks*, Legal Coterie, Hawthorn Football Club, since 2007
- Head of Chambers, Chancery Chambers, Melbourne (1997 - 1999, 2003 - 2005, 2006 - 2008)
- Member of the Supreme Court of Victoria Corporations Users' Group 2010 - present
- Member of the Supreme Court of Victoria Commercial List Users' Group 2003 - present
- *Rapporteur* and member of the Papers Committee, 13th Commonwealth Law Conference, Melbourne, 2002-2003
- Member of the Business Law Section of the Law Council of Australia 1998
- Committee member of the Executive of the Commercial Law Association of Australia Limited 1995-98
- Honorary Secretary of the International Commission of Jurists (Australian Section) in Victoria in 1995 and 1996 and a member of its Executive Committee
- Fellow of the Australian Institute of Company Directors (*FAICD*) in 1992
- Official Observer, Australian Constitutional Convention, Brisbane 1985
- President, Senior Common Room, Newman College, University of Melbourne 1984 - 1985
- Senior Resident Tutor in Law, Newman College, University of Melbourne 1982 - 1985
- Commissioned Officer: Australian Army Legal Corps (Reserve). Decorated with the Reserve Forces Decoration (*RFD*) 1979 - 2002

STATE BAR ASSOCIATION MEMBERSHIPS

- Member of the Tasmanian Independent Bar since 2010
- Member of the Bar Association of Queensland since 2005
- Member of the New South Wales Bar Association since 1985
- Member of the Victorian Bar since 1982

Chambers



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Macrossan Chambers

Level 1 | 14 Spence Street
Cairns | Queensland | 4870

Republic Chambers

Level 1 | 13-17 Castray Esplanade
Hobart | Tasmania | 7004

List of Significant Cases¹

Acropol Stars Pty Ltd v Rysal-One Pty Ltd [1999] VSC 87; BC9901658

Equity - Injunctions - interim injunctions - principles - serious question to be tried - balance of convenience

Anscorp Pty Ltd v GRS Nominees Pty Ltd [1994] FCA No 106; BC9405668

Corporations - Insolvency - statutory demand - whether power to extend time to set aside demand

Australia & New Zealand Banking Group Limited v Costikidis (1994) VSC; BC9401304

Real property - Mortgages and securities - Guarantee mortgage given as security for financial accommodation - Claim for relief based on allegations of unconscionable conduct, negligent statement and misleading or deceptive conduct - Bank entitled to be subrogated

Australia & New Zealand Banking Group Limited v Dunosa Pty Ltd (1994) VSC; BC9406147

Real property - Mortgages and securities - Whether liability under mortgage and cross deed to be understood as that of a surety - Whether security documents should be set aside on basis of principle in *Yerkey v Jones*.

Australia & New Zealand Banking Group Limited v Pham & Ors [1999] VSC 503; BC9908203

Real property - Mortgages and securities - Loan secured by mortgages and guarantees - Unconscionable conduct and non-disclosure alleged against the bank - 'married woman's defence' - Whether common mistake or *non est factum*.

Avram Investments Pty Ltd (No 2), Re (1992) 10 ACLC 1747

Corporations - scheme of arrangement - s.411 - applicable considerations

Avram Investments Pty Ltd, Re (1992) 11 ACLC 224; (1992) 24 ATR 553

Taxation and revenue - Recovery - Appeal against order for winding up - Scheme of arrangement in place - Relevant matters in exercise of court's discretion.

Avram Investments Pty Ltd, Re (1992) 8 ACSR 574; (1992) 10 ACLC 1583

Corporations - Scheme of arrangement — Winding up — Resolution of question whether company should be wound up or whether order for meeting of creditors Consideration of relevant matters — Public policy and commercial morality considerations — Use of tax losses — *Corporations Law* ss 411(1), (2), 412

Barnes v Hance & Muir [2001] VSC 238; BC200104190

Contract - enforcement of option agreements by plaintiff - whether alleged act of default entitled defendants to terminate option agreements - act of default constituted by breach of provision in associated agreements between plaintiff and former employer - whether provision in associated agreements was an unreasonable restraint of trade - severance - estoppel

Beach Club Port Douglas Pty Ltd v Douglas Shire Council [2005] QP&E Cairns 16 May 2005

Planning - Declarations - Douglas Shire Planning Scheme - meaning and calculation of gross floor area - s. 4.1.21(1)(b) *Integrated Planning Act*

Beatty v Australia & New Zealand Banking Group Ltd [1995] 2 VR 301; (1995) VConvR 54-517; [1995] ANZConvR 478; BC9503272

Real property - Mortgages - Registration - Torrens system - Indefeasibility principles - Fraud of bank officer - consequences - Mortgage removed from Register

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Blondell & Assoc Pty Ltd v Ilouri Nominees Pty Ltd [2008] VSC 358; BC200808073
Practice and procedure – leave to appeal against a costs order of the Master – principles

Brashs Limited, Re (1994) 15 ACSR 477; (1995) 13 ACLC 110; BC9406167
Corporations - Deed of company arrangement - Application for court order that company not required to have words “subject to deed of company arrangement” after its name in public documents - Whether discretion of court to grant order under s 447A should be exercised.

Brown v AEP Belgium SA [2004] VSC 255; BC200404636
Practice and procedure - Leave to appeal - stay and injunctive relief pending application - principles to be considered - *Victorian Civil and Administrative Tribunal Act* s 148 - *Transfer of Land Act* ss 76 and 78

Cairns City Council v Xontan Pty Ltd [2001] QSC 192; BC200103515
Practice and procedure - Judgments – declarations – principles to be applied on evidence led by consent of parties

Carwoode Pty Ltd v Cardinia SC (2008) 31 VPR 247; [2008] VCAT 1334
Planning - *EPBC Act* and Tribunal jurisdiction , futility, Ministerial call-in powers, Freeway service centres, excision of lot in Farming Zone, access to land in a public acquisition overlay, Casey-Cardinia Growth Area, interpretation of Clause 52.30, rural v urban freeway, Freeway Service Centre- Design Guidelines, Growling Grass Frog, natural justice, Tribunal inspection procedures, *Charter of Human Rights and Responsibilities Act* 2006.

Central Spring Works Australia Pty Ltd, Re: Tubemakers of Australia Ltd v McLellan (as Administrator) (2000) 34 ACSR 169; [2000] VSC 145; BC200002311
Corporations - Removal of administrators - Whether reasonable apprehension of lack of independence of administrators such that they should be removed – Corporations Law s.447A, 448C

Cha Van Pham & Ors v Australia & New Zealand Banking Group Limited [2002] VSCA 206; BC200207647
Appeal - Practice and procedure - Late application to amend Notice of Appeal - Discretionary considerations - Fresh evidence - Costs thrown away - Application refused. Fresh evidence - Availability at trial and character of evidence - Reasons for non-production at trial - Credibility of fresh evidence. Findings of fact - When challengeable on appeal - Inferences available from non-calling of witness. Guarantee and indemnity - Contract of guarantee - Nature of disclosure necessary to surety - Whether non-disclosure.

Chariah Resources Limited v Tricontinental Corporation Limited & Johns (1991) VSC; BC91000686
Practice and procedure - Trial - application to stay civil trial whilst criminal charges yet to be heard – applicable principles

Chariah Resources Limited v Tricontinental Corporation Limited (1991) VSC; BC9102925
Contract – mining leases – banking & finance – misleading and deceptive conduct – gold bullion loan documentation – representation by managing director to borrowers.

Cherry Print Pty Ltd and Ors v Chateau Court Pty Ltd and Ors [2002] VSC 167; BC200202273
Equity - Injunctions – interlocutory – unpaid vendor holding securities – balance of convenience – injunction to restrain receiver and manager

CMG Equity Investments Pty Ltd v Australia and New Zealand Banking Group Ltd (2008) 65 ACSR 650; [2008] FCA 455; BC200802288
Contract – contract to lend shares – rectification – rights of innocent third parties intervening – whether rectification is available - Practice And Procedure – interlocutory injunction – application to restrain sale of shares by legal owner – requirement to support undertaking in damages – no irreparable harm

Cohen v Macefield Pty Ltd & Ors [2010] QCA 95; BC201002563

Appeal - Magistrates - Jurisdiction And Procedure Generally - Procedure - Information And Complaint - Form And Sufficiency - *Duplicity And Uncertainty* - In General And Power Of Amendment - where first and second respondent charged in the same count of damaging and permitting to be damaged protected vegetation - where first and second respondent found guilty as charged - where first and second respondent agreed to the formulation of the charge - where first and second respondent suffered no unfairness in the way the matter proceeded - where first and second respondent claimed, on appeal, that the charge and convictions were duplicitous - whether an objection based on duplicity can be raised for the first time on appeal - whether the section on which the charge relied created two separate offences or one offence with several characteristics - whether applicant's complaint duplicitous - whether the *Justices Act 1886* (Qld) operated to save the *duplicitous complaint* - whether the first and second respondents' convictions duplicitous - *whether Court of Appeal should order the amendment of the convictions*. Local Government - Legal Relationships And Proceedings - Procedure Relating To Legal Proceedings By And Against Councils - *Authority To Prosecute Or Commence Proceedings* - where first and second respondent found guilty of damaging and permitting to be damaged protected vegetation - where the *Local Government Act 1993* (Qld) provided that the act of damaging protected vegetation had to occur within one year of the complaint - where damage meant the destruction of vegetation or interference with its natural growth - where no findings were made by the Magistrate that damage occurred within the limitation period - whether damage occurred within the limitation period - whether the matter should be remitted to the Magistrates Court for further hearing. Magistrates - Jurisdiction And Procedure Generally - Procedure - Orders And Convictions - Particular Orders - Orders For Costs - *Costs Against Prosecutor* - Informant Or Complainant - Discretion Of Court - where proceedings against the third respondent in the Magistrates Court were unsuccessful - where third respondent sought a costs order in her favour - where Magistrate found that the third respondent's conduct had precluded the availability of such an order - where third respondent successfully appealed this order - whether District Court judge on appeal erred in substituting a costs order in favour of the third respondent

Civoken Pty Ltd & Anor v Madden Grove Developments Pty Ltd & Ors [2006] VSC 283; BC200606000

Contract - contract for the sale of land and construction of retirement village - interpretation - whether parties to contract agreed to variation of terms - breach of express terms; - *Rescission* of contract of sale - conditions 5 and 6(2) of Table A of the Seventh Schedule of the *Transfer of Land Act 1958* (Vic) - operation vis-à-vis contractual rights to terminate - absence of notice does not preclude termination where conduct repudiatory or breach incapable of remedy; - *Repudiation* - persistent and pervasive disregard of contractual provisions - inference contracting party not prepared to take primary obligations seriously - promisee unaware of conduct; - *Intermediate terms* - requirement of sufficiently serious breach to permit termination by non-breaching party - terminating party permitted to rely on breaches unknown at the time of termination. *Estoppel* - silence or failure to complain - requirement of reliance upon assumption induced by representor's conduct - absence of relevant assumption - absence of conduct inducing adoption of any assumption. *Misleading And Deceptive Conduct* - *Trade Practices Act 1974* (Cth) ss.51A and 52 - misleading representations - effect of disclaimers - reliance by representee - representor as "conduit" - representations as to "intention, expectation and anticipation" - continuing representations - liability for aiding, abetting, counseling or procuring contravention - knowledge required to establish accessorial liability. *Sale Of Land* - *Sale of Land Act 1962* (Vic), ss.2(4), 32(5) and 32(7) - failure to comply with s.32 - meaning of "terms contract". *Fiduciary Relationship* - whether plaintiffs akin to "investors" or "promoters" - no relevant fiduciary duty established.

Clark v Dept of Treasury & Finance [2002] VCAT 1040

Administrative Law - Freedom of Information Act - exemption under ss 29(a), 30(1) and 36(1)(a) - effect of access on State's finances and negotiating position.

Command Energy Pty Ltd v Nauru Phosphate Royalties Trust [2003] VSC 261; BC200303814 {assoc - Sogelease Australia Limited v Nauru Phosphate Royalties Trust [2003] VSC 262; BC200303812 below} Contract - Contracts for installation and maintenance of equipment in a major city building - Alleged failure to maintain equipment - Alleged falsified reports - Repudiation - Whether breach of essential term - Alleged repeated breaches - Whether wrongful termination.

Commercial Credit Co-Operative Limited v Jedan Pty Ltd & Ors (1993) VSC; BC9300952 Practice and procedure - Judgments and orders - amending, varying setting aside - substitution of plaintiff by statute - slip rule r.36.07 - r.36.01

Commonwealth Bank of Australia v Milder Elfman Szmerling & Krycer [1998] CJV 45,410; BC9800411

Equity - Equitable estoppel - Whether bank estopped from making demand for repayment - Whether use by bank of letter outlining defendants' financial problems unconscionable conduct within meaning of s 51BA Trade Practices Act 1974 (Cth) - Receivers - Powers and duties - Duty to act in good faith - Whether receivers acted in good faith

Cook v Benson [2000] FCA 1777; BC200007577

Bankruptcy - application by trustee of bankrupt estate for declarations and orders in respect of payments made by bankrupt to respondents prior to date of commission of act of bankruptcy - whether each such payment was void against the trustee by force of ss120 or 121 of the *Bankruptcy Act 1966* (Cth) - whether there was a disposition of property of the bankrupt within two years before the commencement of the bankruptcy and if so, whether that disposition was not in favour of a purchaser for valuable consideration - whether s116(2)(d) of the *Bankruptcy Act 1966* (Cth) applied so that payments were excluded from the operation of ss120 and 121

Cousins v Johnstone Shire Council & Anor [2006] QPEC 126

Planning - material change of use - transitional planning scheme - whether the land is exempt, assessable or impact assessable development - preservation of development and use rights

Coutts v Leonard (1991) VSC; BC9100683

Statutory interpretation - Statutes - amendment - construction - whether amendment retrospective

Cran (Administrator of Sher Furniture Pty Ltd) v Taylor [1996] CJV 33,445; BC9601711

Corporations - debentures - sale of shares - rectification of debenture - distinction between debenture and guarantee intended

Curtain v Eacham Shire Council [2006] QPEC Cairns 164

Planning - Reconfiguration and refusal by local council - *Integrated Planning Act 1997* Qld - Eacham Shire Council Planning Scheme - conflict - sufficient planning grounds

D'Aloia (as administrator of Smarter Way (Aust) Pty Ltd) v Jarvie (2000) 18 ACLC 289; [2000] VSC 16; BC200000630

Corporations - Appointment of administrator - Appointment pursuant to charge - Whether applicants duly appointed as administrators pursuant to charge under s 436C(1) Corporations Law - Whether applicants established existence of charge within meaning of s 436C(1) Corporations Law

Deputy Commissioner of Taxation v Avram Investments Pty Ltd (1992) 9 ACSR 580; (1993) 11 ACLC 224; (1992) 24 ATR 553

Corporations - winding up - scheme of arrangement in place - court's discretion to refuse DCT application - balance between prima facie entitlement of petitioning creditor for winding up and supporting creditors for scheme of arrangement - interests of majority of creditors to be favoured - irrelevance of tax losses

Digicel (Fiji) Limited v Dickson International Trading Company Limited [2009] FJHC 278; HBC184.2009L

Equity - Interlocutory injunction application - Mandatory Injunction - principles - Fair Trading Decree (Fiji) - application to restrain unlocking of mobile phones - allegation of intentional interference with third party contracts - balance of convenience - whether damages sufficient remedy - *American Cyanide* the test in Fiji not *ABC v O'Neill*

Earth Synergy Pty Ltd and Anor v Red Earth Licensing Ltd [2002] VSC 325; BC200204886

Equity - Injunction - interlocutory injunction - balance of convenience - undertaking as to damages - inability of plaintiffs to secure undertaking as to damages.

Egankarra Pty Ltd v Vince (1990) 2 ACSR 463; BC9000846

Corporations - Liquidators - costs - application against liquidator personally - meaning of 'creditor' - discretion of court to make order - Companies Code ss 377(5), 420(1)(b)

Endresz v Whitehouse (1999) 21(1) LegRep SL1a

High Court - Application for civil special leave to High Court - Takeovers - Acquisition of more than prescribed percentage of shares in company - Exception to prohibition

Endresz v Whitehouse [1998] 3 VR 461; (1997) 139 FLR 359; (1997) 24 ACSR 208; (1997) 15 ACLC 936; BC9702797

Corporations - Takeovers - Acquisition of more than prescribed percentage of shares in company - Exception to prohibition

Energy Conservation Systems Pty Ltd v Lighting Technology Pty Ltd [1992] FCA No 984; BC9203896

Trade Practices - misleading and deceptive conduct - s 52 Trade Practices Act 1974 (NSW) - statements as to extent of installation of lighting control systems - whether untrue - whether misleading - understanding of reasonable reader - use of formula to estimate extent of respondents' installations — absence of empirical evidence — onus of proof of falsity of statement. Trade Practices Act 1974 s 52

Freeman Cosmetic Corporation v Jenola Trial Pty Ltd (1993) ATPR 41-270; BC9305088

Trade practices - Misleading or deceptive conduct - Strikingly similar get-up of products - Products sold at different outlets - Whether consumers would be misled - Entitlement to injunctive relief - Tort - Passing off - Strikingly similar get-up of products - Entitlement to injunctive relief.

GF & GM Balsillie Pty Ltd v GF & GM Balsillie Pty Ltd [2001] FCA 1872; BC200108169

Corporations - administration - meeting of creditors irregularly convened - meeting of creditors irregularly adjourned - termination of administration - order made to regularise

Glowtide Pty Ltd v Oceanic Life Ltd (1996) 19 ACSR 471; BC9601287

Practice and procedure - Cross-vesting - Transfer of proceedings to state Supreme Court - Proceedings instituted in the Federal Court

Hicks, Re; ex p. Lamb (1994) 217 ALR 195; [1994] FCA; BC9406120

Bankruptcy - Trustee - review of decision of trustee refusing consent to bankrupt to leave Australia - Bankruptcy Act 1966 s 178 - relevant considerations

Huon Valley Springs Pty Ltd, Re [1986] TasR 112; (1986) 10 ACLR 883; (1986) 4 ACLC 575

Corporations - receivership - scheme of arrangement - proxies - form of - whether admissible - statutory majority and value - Companies Code ss 315(1), (4)(a)(i)

Iliopoulos v BM2008 Pty Ltd (in liq) (2010) FMCA 376; BC201003637

Bankruptcy - Application to set aside bankruptcy notice - asserted cross-demand - consideration of matters raised by cross-demand

Immunosearch Pty Ltd, Re (1990) 2 ACSR 455; (1990) 8 ACLC 1031; BC9000686

Corporations - Registration - reinstatement application - former director - standing - discretion of the court - relevant considerations - Companies Code s 459(6) - Appeal from Master adjourning case - appeal competent

Insolvency Litigation Fund Pty Ltd v Advanced Communications Technologies (Aust) Pty Ltd [2004] VSC 228; BC200404524

Practice and Procedure - receiver to protect property at risk - whether sufficient in the property - present disposal of future rights - whether receiver and manager can confer on creditor priority over debenture holder.

Interbanca Pty Ltd, Re (1989) VSC; BC9000925

Corporations - Winding up application - opposed - whether a bona fide dispute - relevant principles - threshold - profit and loss test and review of assets against liabilities

Irani v St George Bank Ltd [2004] VSC 260; BC200405547

Banking - Guarantee and Surety - construction of Bank Fully Drawn Advance facility - whether Bank entitled to sell security - whether sale by Bank a breach of facility - whether material variation of facility so as to discharge surety - whether repudiation by Bank - whether common mistake.

Java 452 Pty Ltd (Administrators Appointed) (No.2), Re [1999] VSC 273; BC9905371

Corporations - Voluntary administration under Pt 5.3A Corporations Law - Taking possession of leased property - Whether to grant leave under s 440C Corporations Law to take possession of leased premises.

Java 452 Pty Ltd (Administrators Appointed), Re; ex parte Permanent Trustee Australia Limited v Stout (1999) 32 ACSR 507; [2000] ANZConvR 555; (1999) VConvR 54-606; [1999] VSC 252; BC9904116; [(2000) 8 InsolvLJ 43]

Corporations - Administration - Property - Lease determined after beginning of administration - Whether s 440C application equivalent to re-entry - whether leave to take possession should be granted - Corporations Law ss 440C, 441F, 444F(4). Landlord and Tenant - Lease - Termination of lease - re-entry - whether s 440C application equivalent of re-entry - Re-entry by demand for possession - Corporations Law s 440C - Property Law Act 1958 s 146

Jervois Mining Limited; Campbell v Jervois Mining Limited [2009] FCA 316; BC200902215

Corporations - Application to inspect books of a company - s 247A and s 198F of the *Corporations Act 2001* (Cth) - common law rights of inspection for directors - Company Register maintained electronically by agent - Register features live proxy count - good faith and proper purpose - company purpose and personal purpose - whether lobbying proxies proper purpose. *Corporations Act 2001* (Cth): ss 9, 174, 198F, 233, 247, 320

Jervois Mining Limited; Campbell v Jervois Mining Limited [2009] FCA 401; BC200903150

Corporations - Extraordinary General Meeting - Appointment of proxy - whether Chairman in breach of direction given by proxy-givers - validity of resolutions - s 250A(4)(c) of the *Corporations Act 2001* (Cth) - proxy form and contract construction - whether Chairman's intention construed as direction - Company Constitution - Common law duty of agency.

Jewel Group Pty Ltd & Ors v Farrow Mortgage Services Pty Ltd & Ors [1993] FCA No 868; BC9305101

Equity - Specific performance of a number of agreements, declarations under provisions of the Trade Practices Act 1974 (Cth) as well as under the Fair Trading Act 1985 (Vic), relief under s87 of the Trade Practices Act and s41 of the Fair Trading Act - orders under a number of the provisions of the

Corporations Law - interlocutory and final orders restraining a number of the respondents from entering into possession of or assuming control of the assets, property or undertakings of some of the applicants, and from interfering in the management of some of the resorts being developed in Queensland. Other relief sought includes an order for an enquiry pursuant to s536 and/or s538 of the Corporations Law into the administration

Jianshe Southern Pty Ltd (ACN 007 031 905) v Turnbull Cooktown Pty Ltd (ACN 069 894 275) (No 3) [2007] FCA 489; BC200705883

Practice and procedure - Application for summary judgment - applicant alleges breaches of *Trade Practices Act 1974* (Cth) and breach of contract - applicant seeks summary judgment for damages to be assessed on part of claim only - where applicant alleges an oral agreement between applicant and first respondent - where respondents allege oral agreement with different terms - whether relevant part of claim can be determined with certainty without determination of factual issues at trial - where applicant makes alternative claim for declaratory relief - whether declaratory relief should be granted in the circumstances - whether application for summary judgment should be brought pursuant to O 20 r 1 of the *Federal Court Rules* or s 31A of the *Federal Court of Australia Act 1976* (Cth).

Jianshe Southern Pty Ltd (ACN 007 031 905) v Turnbull Cooktown Pty Ltd (ACN 069 894 275) (No 2) [2007] FCA 903; BC200704540

Practice and procedure - Costs - indemnity costs - application by respondent for indemnity costs - where applicant failed to comply with orders of Court requiring applicant to file certain documents in preparation for trial - where respondents brought notice of motion seeking orders in relation to applicant's non-compliance - where commencement of trial adjourned - where applicant's failure to file documents the principal reason for adjournment of trial - circumstances in which Court may vary ordinary rule as to costs - whether applicant's conduct warrants special order as to costs. COSTS - application for costs to be paid before conclusion of principal proceeding - whether appropriate to depart from general rule in O 62, r 3(3) - guillotine orders - where respondents seek order pursuant to O 35A that proceedings be stayed or dismissed if applicant does not comply with another order of Court - whether such order appropriate in circumstances - relevant principles.

Jonit Nominees Pty Ltd v Newton [1997] CJV 44,562; BC9704603

Insurance - General insurance - Allegations of arson, fraud and unlawful acts of insured - Refusal to indemnify - onus of proof - standard of proof - insufficient evidence - insured entitled to indemnity under policy of insurance

KC Parksafe Pty Ltd v SEAA Enterprises Pty Ltd (1994) VSC; BC9406264

Practice and procedure - third party discovery application - costs of compliance

Konica Australia Pty Ltd v Arolab Flashpoint (Australia) Pty Ltd (DCA) (1999) 17 ACLC 1651; [1999] VSC 257; BC9904418

Corporations - Arrangements and reconstructions - Deed of company arrangement - Prejudice - Notion of motion by creditor of company seeking to set aside resolution passed at meeting of creditors of company and seeking consequential relief pursuant to s 600A(2) Corporations Law - Whether passing of resolution contrary to interests of creditors as whole.

Lew v Coles Myer Limited & Anor (2002) 43 ACSR 432; [2002] VSC 535; BC200207302

Corporations - annual general meeting - proxies - director seeking to inspect proxy votes - conditions of such inspection

Lin Creations Pty Ltd; Lin Creations Pty Ltd v Morton, Re [1999] VSC 490; BC9908234

Corporations - Administration - Fraudulent charge - Whether court should interfere in administration of company

Lofts Property Developments Pty Ltd v Optus Vision Pty Ltd [1997] CJV 42,377; BC9707345

Equity - Equitable estoppel - Whether defendant induced plaintiff developer's false assumption - Plaintiff claimed defendant was estopped from denying it was bound to take a lease from plaintiff - Where plaintiff incorrectly assumed agreement for lease existed between it and defendant - Whether defendant encouraged plaintiff to maintain or to continue to hold assumption.

Marlan Financial Services Pty Ltd, Re; Marlan Financial Services Pty Ltd v New England Agricultural Traders Pty Ltd (1999) 33 ACSR 259; [1999] VSC 435; BC9907709

Corporations - Application to set aside statutory demand - Whether effective service of notice of motion and supporting affidavit - Appeal against Master's decision dismissing appellant's motion to set aside statutory demand on basis of appellant's failure to comply with provisions of Service and Execution Process Act 1992 (Cth) (SEPA).

McVeigh & Anor v Linen House Pty Ltd & Rugs Galore Australia Pty Ltd & Ors [1999] 3 VR 394; [1999] VSCA 138; BC9905821

Legal practitioners - Ethics - Conflict of duty - Restraint from acting - Whether firm of solicitors should be restrained for acting against former client - Whether Court of Appeal had jurisdiction to restrain solicitors from acting in appeal - Whether court could be satisfied that breach of duty real, not merely fanciful possibility.

Milburn v Pivot Limited (1997) 78 FCR 472; (1997) 149 ALR 439; (1997) 25 ACSR 237; (1997) 15 ACLC 1520; BC9705076

Corporations - Corporate finance - Giving of financial assistance for acquisition of own shares - Application opposing giving of financial assistance - Whether company gave financial assistance in connection with purchase of shares in company by entering into dividend reinvestment plan under which provided undertaking that purchaser obtain certain value of shares.

MLW Technology Pty Ltd v May (No. 2) [2003] VSC 199; BC200302985

Contract - consideration - whether past consideration - whether total failure of consideration - whether repudiatory breach of contract - whether acceptance.

MLW Technology Pty Ltd v May (No. 3) [2003] VSC 254; BC200303552

Damages - breach of warranty as to future value of shares issued for consideration - shares worth less than warranted value - shares retained by promisee - no loss suffered - nominal damages.

MLW Technology Pty Ltd v May (No. 4) [2003] VSC 293; BC200304423

Practice and procedure - Costs - where nominal damages only are obtained by the plaintiff - where defendants' defences and counterclaims substantially failed.

New Zealand Pacific Training Centre Limited v Training & Productivity Authority of Fiji [2008] FJCA 19 Nov 08

Appeal - Equity - Estoppel - Misleading and deceptive conduct - Fair Trading Decree 1995 (Fiji) - Administrative law - Alleged breaches by government authority - Appeal dismissed.

Object Design Inc v Object Design Australia Pty Ltd (1997) 78 FCR 60; (1997) 24 ACSR 678; (1997) 15 ACLC 1356; BC9704183

Corporations - Whether administrator able to be appointed to company to which provisional liquidator appointed.

Perth Freightlines Pty Ltd v BM2008 Pty Ltd (in liq) [2010] VSC

Corporations - Application to set aside statutory demand - offsetting claim - how calculated - assessment of offsetting claim - variation of demand.

Platt v Morris Appel [1998] VSCA 48; BC9805375

Practice and procedure - Discovery of documents - Application for discovery refused - Further application after amendment of statement of claim - Documents discoverable by reason of amendment Supreme Court Rules, R.29.08

PSL Industries Ltd & Ors v Simplot Australia Pty Ltd (2003) 7 VR 106; [2003] VSCA 7; BC200300607 {assocd -*Agrack (NT) Pty Ltd v Hatfield* (2003) 7 VR 63; [2003] VSCA 6}

Practice and procedure - Pleadings - Amendment to pleadings - Amendment claiming breach of s.52 of the Trade Practices Act 1974 after expiration of limitation period in s.82(2) of the Act - Whether inconsistency for purpose of s.109 of the Constitution between s.82(2) and s.34 of the Limitation of Actions Act 1958 and r.36.01(6) of the Rules of Court - Whether s.82(2) provides "otherwise" for the purposes of s.79(2) of the Judiciary Act 1903 - Whether repeal of Fair Trading Act 1985 (Vic.) by Fair Trading Act 1999 abolished potential claims through breach of s.11 of Fair Trading Act 1985 - Whether potential claim for breach of s.11 of Fair Trading Act 1985 prosecutes "accrued rights" at time of its repeal for the purposes of s.14(2)(e) of the Interpretation of Legislation Act 1984 - Constitution Act, s.109, Judiciary Act 1903 (Cth) ss.39(2), 79, Trade Practices Act 1974 (Cth) ss.82(1)(2), Limitation of Actions Act 1958 (Vic.) s.34, Rules of Court, r.36.01(6).

Pudney v Man GHH Logistics GMBH (1993) VSC (FC); BC9304139

Equity - Equitable charge - consideration - promise to pay debt from a specified fund - sufficiency of evidence to support finding of the creation of a charge - corporation - control by non-director.

Robmatjus Pty Ltd & Anor v Violet Home Loans Australia Pty Ltd [2007] VSC 165; BC200704112

Equity - Injunctions - Application for freezing orders against defendant and non-parties - Relief, including ancillary orders, granted - Standard of proof - 'real case to be investigated' - Balance of convenience - Whether impecunious corporate plaintiffs should be required to support undertaking as to damages with security - *Supreme Court (General Civil Procedure) Rules 2005* (Vic), Order 37A.

REMM Construction (SA) Pty Ltd v Allco Newsteel Pty Ltd [1991] SASC 3100

Practice and procedure - application by plaintiff for order for early trial and separate trials of causes of action - plaintiff not having provided security for costs of fifth, sixth and seventh defendants pursuant to order of Master - all defendants apart from first defendant joined in proceedings pursuant to order under R.27 - preliminary objection that proceedings against all defendants stayed by virtue of R.100.03.

Rodgers v CJS Panels Pty Ltd [2001] VSC 470; BC200108008

Corporations - appeal against winding up order - standing to bring appeal. *Corporations Act 2001* - ss.471A, 482. Costs - application hopeless and high-handed - costs sought against both solicitor and client - indemnity costs against client.

Sands Print Group Limited (Receiver & Manager Appointed) v. Jackson [2000] VSC 346; BC200005198

Equity - Equitable estoppel - Where alleged representation made that bank agreed to permit continued trading if companies placed in voluntary administration - Whether proceedings erroneous without consent of administrators or leave of court pursuant to s 440D(1) Corporations Law.

Sheehan v Abeyratne (as trustee of the deed of arrangement of Sheehan) [1993] FCA; BC9304783

Bankruptcy - application by liquidator for invalidation of Part X deed of arrangement - guarantee by debtor of liability of third party mortgagor - mortgagor's liability doubtful or not proved - liquidator not permitted to vote although claiming to be a creditor - unascertained or doubtful debt - time for determining status of debt - inadequate documentation and particularisation of debt - duty of chairman - role of court - whether demand is a precondition of liability. Bankruptcy Act 1966 ss 5, 198(2), 198(4), 201, 222(1), 222(2), 236(1), 236

Sheehan, Re; ex parte Farrow Mortgage Services Pty Ltd & Ors [1991] FCA No 256
Bankruptcy - order under section 222(1) or 236(1)(c) of the Bankruptcy Act declaring void a deed of arrangement accepted by the creditors

Silverpeach Pty Ltd & anor v Cairns City Council & Buchans Point Pty Ltd [2009] QPELR 306; [2008] QPEC 109
Planning and Environment- objector appeal against development approval - Douglas Shire Council Superseded Planning Scheme - conflict - whether sufficient planning grounds justified approval over objection - grounds satisfied - appeal dismissed.

Simplot Australia Pty Ltd v PSL Industries Ltd & Ors [2001] VSC 419; BC200107200
Trade Practices - Sale of business - claims under Trade Practices Act 1974 (Cth), Fair Trading Act 1985, in contract and at common law - application for leave to amend to rely upon pre-contractual conduct of defendants - whether statement of claim in original form sufficiently raised the claim the subject of application - whether the court should consider if the claim the subject of application would be statute-barred - whether leave to amend could be granted in light of s. 82(2) Trade Practices Act and s. 37(2) Fair Trading Act - application of R. 36.01(6) of Chapter 1 - whether plaintiff had an acquired or accrued right under the Fair Trading Act 1985 at the time of its repeal on 1 September 1999 - Interpretation of Legislation Act 1984, s. 14(2)(e).

Skalkos v Australia & New Zealand Banking Group Ltd [1994] FCA No 48; BC9406488
Bankruptcy - order under section 222(1) or 236(1)(c) of the Bankruptcy Act declaring void a deed of arrangement accepted by the creditors

Sogelease Australia Limited v Nauru Phosphate Royalties Trust [2003] VSC 262; BC200303812 {assoc - *Command Energy Pty Ltd v Nauru Phosphate Royalties Trust* [2003] VSC 261; BC200303814}
Contract - Finance agreement - Equipment purchased pursuant to third party contract - Assignment to financier of hirer's rights there under - Whether notice to third party binds that party.

SpaCorp Australia Pty Ltd v Myer Stores Ltd (2001) 19 ACLC 1270; [2001] VSCA 89; BC200103084
Corporations - Statutory demand - Genuine dispute - Appeal against decision of trial judge refusing application to set aside statutory demand - Advance to company setting up business in department store - Construction of agreement - Whether moneys owing on termination of agreement - Whether genuine dispute as to existence or extent of debt.

SpaCorp Australia Pty Ltd v Myer Stores Ltd (No 2) [2000] VSC 484; BC200007178
Corporations - dispute between parties resulting in defendant serving statutory demand on plaintiff claiming entitlement to repayment of monies provided to plaintiff - Plaintiff disputed defendant's entitlement to repayment - Master set aside statutory demand - Whether genuine dispute about debt existed.

SpaCorp Australia Pty Ltd v Myer Stores Ltd [2000] VSC 469; BC200006748
Corporations - Corporations Law, ss.459E, 459G and 459H - setting aside statutory demand - construction of agreement - whether monies owed - arguable case.

Stout & Scales v Permanent Trustee Australia Limited [1999] VSCA 168; BC9906563
Corporations - Administration - Execution of deed of company arrangement - Discretion to extend time - Application for extension of time to appeal against refusal of restraining order, and for extension of time for execution of deed of company arrangement - Whether execution of deed of company arrangement subject to time limits of Corporations Law.

Strasburger Enterprises (Properties) P/L V Gold Coast City Council [2010] QCA 153; BC201004103
Appeal - Planning and Environment - Environmental Planning - Development Control - Consents, Approvals And Permits - Validity - Other Matters - where second applicant is the owner and first applicant the lessee and operator of a service station - where service station has been conducted

pursuant to a Town Planning Permit issued in 1987 under the now repealed Local Government Act 1936 (Qld) – where no other permit or approval for the storage of large amounts of petroleum on the site was ever issued – where respondent sent an enforcement notice to first applicant in 2005 requiring it to apply for a development permit under the Integrated Planning Act 1997 (Qld) in order to carry out assessable development – where respondent issued a decision notice in 2007 approving first applicant’s application subject to conditions – where cost of complying with the conditions would be considerable – where applicants applied for declarations in the Planning & Environment Court against the development permit – where applicants now appeal against the dismissal of that application – whether the 1987 permit operates as a development approval for the environmentally relevant activity in the form of a development permit for the purposes of the Integrated Planning Act 1997 (Qld) and the Environmental Protection Act 1994 (Qld) – whether the primary judge misconstrued the relevant legislation – whether the operation of the service station constitutes a material change of use under s 1.3.5 of the Integrated Planning Act 1997 (Qld) and so amounts to assessable development – whether the 2007 development permit is valid. Acts Interpretation Act 1954 (Qld), s 20A Environmental Protection Act 1994 (Qld), s 40, s 624, s 624(2)(b), sch 4 Environmental Protection (Interim) Regulation 1995 (Qld), s 4.1(1), s 63 Environmental Protection Regulation 1998 (Qld), s 5, s 5(2), s 64 Integrated Planning Act 1997 (Qld), s 1.3.5(c), s 4.3.1, s 6.1.23, s 6.1.23(2), s 6.1.23(2), s 6.1.24, sch 8, sch 10 Local Government (Planning and Environment) Act 1990 (Qld), s 8.10(8)

The Beach Club Port Douglas Pty Ltd v Page [2005] QSC 195; BC200505051

Practice and procedure - Pleadings - Negligence – duty of care – reasonable foreseeability of damage – where economic or financial loss – where claim made for damages for negligent commencement of appeal by applicant – where respondent asserts applicant owed it a duty of care regarding commencement of appeal - where respondent asserts appeal had no reasonable prospects of success – whether duty of care exists between parties contemplating commencement of civil proceedings – whether damages recoverable from a party for loss suffered due to commencement of claim – where finality in litigation an issue

The Beach Club Port Douglas Pty Ltd v Page [2005] QCA 475; [2006] 1 Qd R 307; (2005) 143 LGERA 180; (2005) Aust Torts Reports 81-823; BC200510860

Appeal - Torts – where economic or financial loss – defendant objected to development application of plaintiff developer and lodged appeal in the Planning and Environment Court against the council decision granting the development permit – plaintiff claimed damages for ‘negligence’ – plaintiff alleged that defendant had breached duty of care not to appeal without properly or reasonably assessing whether the development qualified for a permit – circumstances where person may lawfully and deliberately cause economic harm to another – whether, apart from malicious prosecution, a duty of care in negligence is owed by a litigant for negligent conduct of litigation that causes loss to the plaintiff - *Integrated Planning Act* 1997 (Qld), s 4.1.10, s 4.1.11, s 4.1.23, s 4.1.28(1)(b), *Planning and Environment Court Rules* 1999 (Qld), r 3(2) r 20(2)(b) *Uniform Civil Procedure Rules* 1999 (Qld), r 149(1)(b), r 171(1)(a), r 293.

The Big Four Pty Ltd v DaimlerChrysler Australia/Pacific Pty Ltd & Ors [2001] FCA No 1013

Equity - Injunctions – Trade Practices Act - Franchise Code – failure to engage dispute resolution procedure in Code – serious question to be tried – balance of convenience

The Big Four Pty Ltd v DaimlerChrysler Australia/Pacific Pty Ltd [2002] FCA 783; BC200203284

Trade Practices - Franchising - Trade Practices Act 1974, ss 51AC, 51ACA, 51AD, 51AE, 80, 82 Trade Practices (Industry Codes - Franchising) Regulations 1998 - Franchising Code of Conduct

Thirteenth Corp Pty Ltd v State & ors (2004) 50 ACSR 425; [2004] VSC 320; BC200405683

Corporations - insolvent trading - creditor's claim - application to summarily dismiss proceeding - whether creditor had arguable case that its debt was wholly or partly unsecured - Practice and Procedure - application for security for costs - delay - nature of case - circumstances justifying order

Tracey, Re; ex parte Ryan (1989) 166 CLR 518; (1989) 63 ALJR 250; (1989) 84 ALR 1; (1989) 16 ALD 730

High Court - Constitutional law - Courts - Chapter III - Courts-martials - Defence power of the Commonwealth - Judicial power of the Commonwealth - *Defence Force Discipline Act 1982* (Cth) - Constitutional validity of Act - Exception to Chapter III of *the Constitution*

Twenty-First Larena Pty Ltd, Re: Maximova v Goodin [2010] VSC 84; BC201001471

Practice and procedure - exercise of power to dismiss summarily where plea of *res judicata* substantiated - estoppel - *res judicata* - settlement of earlier proceeding - action struck out with a right of reinstatement in the event of failure to pay settlement sum - compliance with settlement terms - conclusive determination of rights and liabilities in earlier proceeding - finality of order for the purposes of *res judicata* - application of principles of *res judicata* to consent order - where different causes of action in later proceedings - whether cause of action is substantially the same in subsequent proceeding.

Zorita Nominees Pty Ltd & Ors v Australia & New Zealand Banking Group Limited (1995) VSC; BC9503849

Practice and procedure - Whether claim for damages based on duty owed by defendant to plaintiff constitutes a new claim barred by effluxion of time - Whether damages claim authorised by the notice of contribution.

Zorita Nominees Pty Ltd ATF Wise Family Trust v Australia & New Zealand Banking Group Limited (1994) VSC; BC9406463

Real property - Mortgages and securities - Mortgages - Power of sale - Application for interlocutory injunction to restrain exercise - Whether bank knew mortgagor trustee so implicated in breach of trust - Whether cross deed of covenant limited liability of parties to it - Whether bank acted unconscionably in not explaining effect of cross deed - Whether effect should be given to belief that liability limited notwithstanding no outward expression of agreement.