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A selection of cases

- ***Monash IVF Pty Limited v Dr Lynn Burmeister (No 2)*** [2017] NSWSC 903 – restraint of trade covenant – s.5(2)(b) of the *Jurisdiction of Courts (Cross Vesting) Act 1987* (NSW) – choice of Law clause in favour of NSW – non-exclusive submission to the jurisdiction to the NSW Courts – *Restraints of Trade Act 1976* (NSW)
- ***Monash IVF Pty Ltd v Dr Lynn Burmeister*** [2017] NSWSC 849 – case management – restraint of trade covenant – proceedings commenced urgently to enforce that covenant in Supreme Court of NSW – proceedings had been earlier commenced in Supreme Court of Victoria by the defendants seeking a bare negative declaration that the covenant was unenforceable
- ***Re Simonds Group Limited*** [2016] VSC 609 *Corporations Act 2001* (Cth) – Scheme of Arrangement – oppression – injunctions
- ***Volunteer Fire Brigades Vic Inc v CFA (No. 2)*** [2016] VSC 613 – industrial dispute discovery – *Civil Procedure Act 2010* (Vic)
- ***Volunteer Fire Brigades Vic Inc v CFA (No. 3)*** [2016] VSC 621 industrial dispute – s.240 of the *Fair Work Act 2009* (Cth) – s.131 of the *Evidence Act 2008* (Vic) – without prejudice privilege
- ***Carron Investments Pty Ltd v Lang*** [2016] VSCA 287 (Court of Appeal) administrative law (appeal of an order for certiorari arising from an application for judicial review pursuant to Order 56
- ***Lang v Carron Investments Pty Ltd*** [2016] VSC 165 – administrative law – judicial review pursuant to Order 56
- ***CFMEU v Boral Resources (Vic) Pty Ltd*** (2015) 256 CLR 375 (High Court of Australia) (for the Attorney General for the State of Victoria) appeal from the decision of the Victorian Court of Appeal in *CFMEU v Boral Resources (Vic) Pty Ltd & Ors* [2014] 47 VR 527 (see below)

- ***FBIS International Protective Services (Aust) Pty Ltd v Maritime Union of Australia*** [2015] 232 FCR 1 (Full Court of the Federal Court of Australia) – judicial review – industrial law – construction of s.120 of the *Fair Work Act 2009* (Cth)
- ***Canty & Ors v Greyhound Racing Victoria*** [2015] VSC 71 application for interlocutory injunction arising out of the ‘live baiting’ exposé
- ***CFMEU v Grocon Constructors (Victoria) Pty Ltd & Ors*** [2015] HCATrans 24 (High Court of Australia) (for the Attorney General for the State of Victoria) – application for special leave
- ***CFMEU v Boral Resources (Vic) Pty Ltd & Ors*** [2015] HCATrans 23 (High Court of Australia) (for the Attorney General for the State of Victoria) – application for special leave
- ***CFMEU v Boral Resources (Vic) Pty Ltd & Ors; v Grocon Constructors (Victoria) Pty Ltd & Ors*** [2014] HCATrans 266 (High Court of Australia) (for the Attorney General for the State of Victoria) – application for stay pending application for special leave
- ***FBIS International Protective Services (Aust) Pty Ltd v Fair Work Commission*** [2014] FCA 1390 – industrial law construction of s.120 of the *Fair Work Act 2009*
- ***CFMEU v Grocon Constructors (Victoria) Pty Ltd & Ors; CFMEU v Boral Resources (Vic) Pty Ltd & Ors*** [2014] 47 VR 527 (Court of Appeal) (For the Attorney General for the State of Victoria) – contempt of court application for leave to appeal the decision of Digby J in *Boral Resources (Vic) Pty Ltd & Ors v CFMEU and Anor* [2014] VSC 120 (see below)
- ***Boral Resources (Vic) Pty Ltd & Ors v CFMEU and Anor*** [2014] VSC 120 (For the Attorney General for the State of Victoria) contempt of court – power of the Court to compel a corporate defendant to a proceeding for contempt of court to provide documentary evidence for use against that defendant in that proceeding
- ***CFMEU v Boral Resources (Vic) Pty Ltd & Ors*** [2013] VSCA 378 (Court of Appeal) (For the Attorney-General for the State of Victoria) – contempt of court decision of Court of Appeal upholding the decision of Digby J in *Boral Resources (Vic) Pty Ltd & Ors v CFMEU* [2013] VSC 572 to the effect that the Attorney-General for the State of Victoria had standing to be joined as a plaintiff to a

proceeding for contempt of court commenced by a private plaintiff for breach of an injunctive order in favour of that plaintiff

- ***Permark International Interiors Pty Ltd v Amoveo Pty Ltd & Ors*** [2013] VSC 563 – principles relating to the award of costs of a proceeding against non-parties
- ***Qube Logistics (Vic) Pty Ltd v Wimmera Container Line Pty Ltd*** [2013] VSC 695 – legal professional privilege – whether conduct inconsistent with maintenance of claim for privilege – *Evidence Act 2008* (Vic) s122(2) and s122(3)(a) and (b)
- ***Boral Resources (Vic) Pty Ltd & Ors v CFMEU*** [2013] VSC 572 (For the Attorney-General for the State of Victoria) – contempt of court standing of the Attorney-General for the State of Victoria to be joined as a plaintiff to contempt proceedings commenced by a private plaintiff for breach of an injunctive order in favour of that plaintiff
- ***Ambridge Investments Pty Ltd (in liq) (receiver appointed) v Baker & Ors (No. 4)*** [2013] VSC 178 – complex questions of legal professional privilege – application made alleging misfeasance against a solicitor by one of a number of former clients who jointly retained that solicitor – whether the balance of former clients, who did not join in the action for misfeasance, also impliedly waived privilege in their joint file
- ***Xiao Hui Ying v Perpetual Trustees Victoria Ltd & Ors*** [2012] VSCA 316 (Court of Appeal) – error in the exercise of discretion to order a new trial – allegations of fraud – property law including indefeasibility of Torrens mortgage where fraud and entitlement to indemnity under the *Transfer of Land Act* (Vic) 1958
- ***Xiao Hui Ying v Perpetual Trustees Victoria Ltd & Ors*** [2012] VSCA 85 (Court of Appeal) – application for leave to appeal the trial judge’s refusal to exercise his discretion to order a new trial where fraud was alleged and judgment had been entered in absence of the defendant
- ***Goddard Elliott (a firm) v Fritsch*** [2012] VSC 87 – professional liability – solicitors and counsel – advocate’s immunity – whether agreement to settle produced by negligence – breach of fiduciary duties or coercion – whether pre-settlement representations made in trade or commerce within the meaning of s.9(1) of the *Fair Trading Act 1985* (Vic) – assessment of damages for lost opportunity
- ***Sitzler Savage Pty Ltd v Northern Mining Pty Ltd*** [2012] VSC 104 – commencement of proceeding on behalf of corporation without its authority – indemnity costs including indemnity costs against solicitors

- ***Permark International Interiors Pty Ltd v Amoveo Pty Ltd & Ors (Ruling No.1)*** [2012] VSC 491 – reverse strike out application – s.29 of the *Civil Procedure Act* 2010 (Vic)
- ***Traditional Values Management Limited (in liq) v Taylor & Ors*** [2012] VSC 299 – consolidation of proceedings – separate proceedings against directors and officers, auditors, accountants and unit holders in failed managed investments scheme
- ***ACN 101074095 Pty Ltd v Oaks Hotels & Resorts Limited*** [2012] VSC 336 application for leave to amend consideration of the principles in *Aon Risk Services Australia Limited v ANU* (2009) 239 CLR 175
- ***Perpetual Trustees Victoria Limited v Xiao*** [2012] VSC 65 – application to set aside judgment entered at trial in absence of defendant where allegations of fraud
- ***National Nominees Ltd & Anor v Agora Asset Management Pty Ltd*** [2011] VSCA 327 (Court of Appeal) – managed investment scheme – construction of contract – breach of trust
- ***Austin Bloodstock Pty Ltd & Ors v Massey*** [2011] VSC 421 – construction of contract – specific performance
- ***National Nominees Ltd & Anor v Agora Asset Management Pty Ltd (No.2)*** [2011] VSC 425 managed investment scheme – construction of contract breach of trust
- ***Direct Share Purchase Corporation Pty Ltd v Australian Unity Funds Management Ltd*** [2011] FCA 996 – *Corporations Act* 2001 (Cth) – costs
- ***Rosenberg & Ors v Fifteenth Eestin Nominees & Ors*** [2011] VSC 66 – trustee’s right of indemnity – declaratory judgment – right to interest
- ***Johnson & Ors v AED Oil Ltd & Ors*** [2011] VSC 94 – construction of contract – whether clause void for public policy *Civil Procedure Act*
- ***National Nominees Ltd & Anor v Agora Asset Management Pty Ltd & Anor*** [2011] VSC 243 – injunction – construction of contract – discretionary considerations
- ***Australian & Pacific Investment Corporation Pty Ltd v Property Investment Management Pty Ltd*** [2011] VSC 44 – injunction sale of land – construction of contract – managed investment scheme
- ***Perpetual Trustees Victoria Limited v Xiao*** [2011] VSC 680 – mortgages – whether loan agreement and mortgage signed by defendant – ratification of agent’s dealing with mortgage – application for adjournment of trial

- *Priceline Pty Ltd v JHY Nominees Pty Ltd & Ors* [2010] VR 513 (Court of Appeal) – waiver of legal professional privilege
- *Priceline Pty Ltd v JHY Nominees Pty Ltd & Ors* [2010] VSC 61 – waiver of legal professional privilege
- *AED Oil Limited & Ors v Back & Ors (No.2)* [2010] VSC 43 – application to strike out – Barnes v Addy – dishonest and fraudulent design
- *AED Oil Limited & Ors v Back & Ors (No.3)* [2010] VSC 403 – application for further discovery
- *TAB Limited v Racing Victoria Limited* [2009] VSC 506 – statutory construction: *Gambling Regulation Act 2003* (Vic)
- *Dartberg v Wealthcare Financial Planning Pty Ltd (No. 2)* [2009] FCA 1153 – trade practices - *Corporations Act* - managed investment schemes
- *Abrahams v Brown* [2009] VSCA (16 June 2009) – conflict of interest – unconscionable conduct
- *Anjin No. 13 Pty Ltd v Allianz Australia Insurance Limited* (2009) 26 VR 148 contract of insurance – indemnity dispute – joinder of insurer by non-party to policy
- *AED Oil Limited & Ors v Back & Ors* [2009] VSC 158 – application for summary judgment or to strike out pleading – conspiracy to injure
- *Vass (GRE) App 10 2008* [2009] VRAT 1 (13 March 2009) (Racing Appeal)
- *Sacco (GRE) App12 2008* [2009] VRAT 4 (17 April 2009) (Racing Appeal)
- *Carr (GRE) – App 02 2009* [2009] VRAT 7 (25 May 2009) (Racing Appeal)
- *CGU Insurance Limited v Corrections of Australia Staff Superannuation Ltd* [2008] FCAFC 173 (Full Federal Court) contract of insurance – indemnity dispute – *Insurance Contracts Act 1984* (Cth)
- *Mijac Investments Pty Ltd v Graham* [2008] FCA 1251 *Corporations Act 2001* (Cth) – security for costs
- *Beston Parks Management Holding Pty Ltd v Sexton & Anor* [2008] VSC 95 – *Jurisdiction of Courts (Cross Vesting) Act 1987* (Vic)
- *Beston Parks Management Holding Pty Ltd v Sexton & Anor* [2008] VSC 392 – preliminary discovery
- *Walter Murdoch French v Queensland Premier Mines Pty Ltd* [2008] VSC 118 – construction of loan contract

- ***Kernaghan v Corrections Corporations of Australia Superannuation Ltd (No 2)*** [2007] FCA 1040 – contract of insurance – indemnity dispute – *Insurance Contracts Act* 1984 (Cth) – reasonableness of settlement
- ***Kernaghan v Corrections Corporations of Australia Superannuation Ltd [No 3]*** [2007] FCA 2018 (as above)
- ***Pan Orient Shipping Services Pty Ltd v Basell Australia Pty Ltd*** [2007] VSC 215 construction of shipping contract – estoppel
- ***Premier Building and Consulting Pty Ltd (receivers appointed) v Spotless Group Limited*** [2007] VSC 377 – professional negligence – nuisance – *Wrongs Act Part IVAA* – proportionate liability
- ***Yard v Yardoo Pty Ltd*** (2007) VSCA 35 (Court of Appeal) – trusts – *Corporations Act* 2001(Cth) – partnership dispute
- ***Lovett on behalf of the Gunditjmara People v State of Victoria*** [2007] FCA 474 – native title – for the State of Victoria
- ***AGL Victoria v SPI Networks (Gas) Pty Ltd & Anor*** [2006] VSCA 173 (Court of Appeal) construction of contract – gas distribution tariff agreement – expert determination – mistake
- ***Kernaghan v Corrections Corporations of Australia Superannuation Ltd*** [2006] FCA 2 contract of insurance – indemnity dispute – *Insurance Contracts Act* 1984 (Cth) – reasonableness of settlement
- ***Australian Securities and Investments Commission v Primelife Corporation Limited & Ors*** (2006) 235 ALR 328 – managed investment scheme
- ***Mirvac (Docklands) Pty Ltd v Philp*** [2004] VSC 301 – Domestic Building Contract – contract of sale of apartment "off the plan" - whether Domestic Building Contract
- ***Cyno Pty Ltd and Australian Fisheries Management Authority and Ors*** [2004] AATA 203 – merits review
- ***Director of Public Prosecutions (Cth) v Chia*** (2004) 13 VR 625 – banker and customer
- ***Mobile World Communications Pty Ltd and Ors v Q & Q Global Enterprise Pty Ltd*** (2003) 59 IPR 107 – intellectual property – *Trade Marks Act* 1995 (Cth)
- ***Kantfield Pty Ltd v Lockwood*** [2003] VSC 420 – contract of insurance – indemnity dispute

- *Australian Competition and Consumer Commission v Australian Safeway Stores & Ors (No 3)* (2001) 119 FCR 1 – trade practices – price fixing
- *Smith v French* [2000] VSC 381 – partnership dispute
- *The Coca-Cola Company v All-Fect Distributors Limited* (1999) 47 IPR 481 (Full Federal Court) – intellectual property - *Trade Marks Act 1995* (Cth)
- *The Coca-Cola Co v All-Fect Distributing Co trading as Millers Distributing Co* [1998] FCA 1638 – intellectual property – *Trade Marks Act 1995* (Cth)
- *Foodco Group Pty Ltd and Anor v Norhgan Pty Ltd and Anor* (1998) 41 IPR 138 – Anshun estoppel - misleading and deceptive conduct - limitation periods
- *Abigroup Contractors Pty Ltd v Transfield Pty Ltd & Anor* (1998) 217 ALR 435 – building contract - arbitration, stay of court proceedings - *Commercial Arbitration Act 1984* (Vic)
- *Pell v Council of Trustees of the National Gallery of Victoria* [1998] 2 VR 391 – injunction - freedom of expression