Some cases and other information

My court and tribunal appearances have included the following (I have not generally referred below to the decision below unless it deals with one or more issues that differ from those on appeal)

Larmar v Commissioner of Taxation [2026] FCA 826: Wheatley J (26.6.26) - **income tax - property syndicates** —Commissioner determined additional income from syndicates was assessable as ordinary income or personal services income of the individual rather than as income of the corporate trustee of the family trust as a member of the syndicate - additional income included management fees, brokerage fees, success fees, and project management consultancy fees - **evasion opinion** - whether properly formed

Wagner v Wagner [2026] QSC 139: Treston J (18.6.26) – **succession law** – **family provision** – evidence - **adequacy of valuations** of land and shareholdings obtained by the executors –applicants seek to compel the executors to obtain further valuations and ask valuers certain questions concerning their conclusions – further valuations ordered

Maybury v Body Corporate for Contessa Condominiums CTS 6203 QSC 6803/23: Callaghan J (20.3.26) – **limitation of actions** – **economic loss** - breach of statutory duty - breach of body corporate by-laws - infringement of statutory easement of shelter - negligence - nuisance; **breach of statutory duty** – whether statute confers a civil remedy

Commissioner of State Revenue v FKG01 Pty Ltd [2026] QCA 12: Bowskill CJ, Doyle JA, Wilson J (6.2.26) – **stamp duty** - refund of duty paid on **cancelled contract** - resale agreement

Xynias v Stones Corner Village Investments Pty Ltd [2025] QSC 28: Treston J (31.10.25) - **landlord and tenant** – *Retail Shop Leases Act 1994* (Qld) – relocation notice – purported relocation to nearby premises not in the same retail shopping centre complex to allow demolition and redevelopment of centre – whether permissible – whether alternative premises "reasonably comparable"

Churches of Christ in Queensland v Trustees of the Associated Churches of Christ in Queensland Connexional Fund QSC 569/25: Freeburn J (14.2.25) – **mortgages** - defunct mortgagee; **Torrens title system** - removal of defunct mortgage from Land Title register; ***Religious Educational and Charitable Institutions Act 1863* (Qld) corporations**

Commissioner of State Revenue v Harrison [2022] QCATA 102: Member DJ McGill SC (25.7.22) - **land tax –** grouping; **issue estoppel**

Deen v Harburg Nominees Pty Ltd [2021] QCA 44: Fraser and Philippides JJA and Bradley J (16.3.21) - **guarantee** and indemnity; **estoppel** by conduct

Salemade Pty Ltd v Commissioner of State Revenue [2021] QSC 19: Dalton J (18.2.21) - **payroll tax** - grouping

Squash Vision Pty Ltd v Il Mito Pty Ltd [2020] QSC 328: Flanagan J (30.10.20) - **landlord and tenant** - determination of rental; **liquidated damages and penalties**

Benaroon Pty Ltd v Larmar [2020] QCA 62: Fraser - Morrison and Philippides JJA (3.4.20) - **rectification** of trust deeds

Queensland Building and Construction Commission v Ezra Constructions Pty Ltd [2019] QCA 304: Gotterson and McMurdo JJA and Brown J (20.12.19) – **statutory construction** - transitional provisions;

Brisbane City Council v Amos [2019] HCA 27; (2019) 266 CLR 593; (2019) 372 ALR 366; (2019) 93 ALJR 977: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ (4.9.19) - **limitation of actions** - choice between inconsistent periods - rates

Commissioner of State Revenue v Harrison [2019] QCA 50: Morrison and Philippides JJA and Davis J (26.3.19) - **land tax** - constructive trusts - separate assessments; **appeals -** when leave granted

KinCare Community Services Ltd v Chief Commissioner of State Revenue [2019] NSWSC 182: Payne J (6.3.19) **- payroll tax** - **exemptions** - **non-profit organisations** - incidental benefits

Thomas v Commissioner of Taxation [2019] FCA 114: Greenwood J (12.2.19) - **costs** on remitter by Full Court of the Federal Court – complex proceedings – partial success by both parties

Amos v Wiltshire [2018] QCA 208; [2019] 2 Qd R 232: Sofronoff P, Flanagan and Brown JJ (4.9.18) - **enforcement warrant** - validity - amendment of warrant

Commissioner of Taxation v Thomas [2018] HCA 31; (2018) 264 CLR 382; 92 ALJR 746; (2018) 359 ALR 31: Bell – Gageler, Keane, Nettle, Gordon and Edelman JJ (8.8.18) - **income tax** - **franking credit refunds** - inconsistent trust distribution resolutions; **when Commissioner not bound by *inter partes* decision**

GWC Property Group Pty Ltd v Higginson [2014] QSC 264: Dalton J (29.10.14) - **contract** – **penalty** - common law and equitable doctrines - **leases** - **incentive deed**

Harvey v Commissioner of State Revenue [2014] QSC 183: Jackson J (12.8.14) - **stamp duty** - **transfer cancelled** – administrative law - **constitutional validity of statutory privative clause**

Mulherin v Commissioner of Taxation [2013] FCAFC 115; [2013] ATC 20-423; (2013) 96 ATR 835: Edmonds - Griffiths and Pagone JJ (23.10.13) **-** income tax **- appeal from Administrative Appeals Tribunal - question of law - whether applicant was** presently entitled **to income of a resident trust estate - onus of proof -** need to prove actual taxable income **when default assessment under s 167 of Income Tax Assessment Act 1936 (Cth)**

ZKBN v Commissioner of Taxation [2013] AATA 604: RG Kenny - Senior Member (27.8.13) - **income tax** - **Australian resident** - Australia citizen working outside Australia during relevant tax years - relevance of circumstances on last day of financial year to the issue of residence

Deputy Commissioner of Taxation v Eskdale South Cattle Co Pty Ltd [2013] FCA 740: Collier J (30.7.13) - **companies** – **standing** of Deputy Commissioner of Taxation to seek **provisional liquidator** - trusts - change of trustee - **transfer of assets to new trustee** - whether new trustee can claim **indemnity from previous trustee**

Commissioner of Taxation v Unit Trend Services Pty Ltd [2013] HCA 16; (2013) 250 CLR 523; (2013) 297 ALR 190; (2013) 87 ALJR 588; 2013 ATC 20-389; (2013) 87 ATR 13: French CJ - Crennan - Kiefel - Gageler and Keane JJ (1.3.13) - **GST** - **margin scheme** - **anti-avoidance** - supply of units in **property development** - respondent engaged in "scheme" and obtained "GST benefit" - whether GST benefit "not attributable to" making by respondent of choice - election - application or agreement expressly provided for by the GST law.

Mackenzie v Kentcade Properties Pty Ltd [2012] QSC 299; (2012) 91 ACSR 399: Applegarth J (5.10.12) - construction and interpretation of **contracts** - plaintiffs owned one lot and held management rights associated with a resort developed by the defendant - plaintiffs entered into an option agreement granting them the option to sell lot and the management rights to the defendant on the happening of certain "put option events" - whether put option events occurred; equity **- specific performance** - defences - whether plaintiffs exercised option in breach of **implied obligation of good faith** - whether discretion not to order specific performance should be exercised on the grounds of **unfairness** to the defendant and third parties.

R v Tatsuo Jo (2012) 273 FLR 437; (2012) 227 A Crim R 396; [2012] QCA 356: Muir and Fraser JJA and Fryberg J (24.8.12) – **income tax** - **source of income** - appellant convicted after jury trial of nine offences of dishonesty concerning alleged tax evasion scheme – whether payments to overseas company **dividends** within ss 6(1) and 44 *Income Tax Assessment Act 1936* (Cth) - deemed dividends - or "income" within ordinary meaning in s 25 - whether appellant obtained financial advantage from alleged deception – criminal law - ancillary liability - **aid - abet - counsel or procure** - **offence committed by company controlled by appellant** – **whether appellant aided company** to make payments to another company within the meaning of s 11.2(1) of the Commonwealth *Criminal Code*

K*eswick Developments Pty Ltd v Keswick Island Pty Ltd* [2012] 2 Qd R 114; [2011] QCA 379: Muir - Fraser and Chesterman JJA (20.12.11) – **contract** - **repudiation** and non-performance - **application to leases** — applicability of doctrine to **sublease of Crown land** — difficulty of establishing repudiation of sublease for lengthy term with favourable conditions to sublessee - seriousness of **failure to pay insurance** - other conduct; landlord and tenant - covenants — generally - effect of statutory notice before forfeiture of lease on breaches; crown lands - subleases - application of common law doctrines to **statutory sublease** - applicability of doctrine of **repudiation** to leases

Commissioner of Taxation v Byrne Hotels Qld Pty Ltd (2011) 196 FCR 524; (2011) 83 ATR 261; [2011] ATC 20-286; [2011] FCAFC 127: Dowsett, Bennett and Greenwood JJ (11.10.11) – **capital gains tax** - whether business eligible for capital gains tax **concessions in Division 152** of *Income Tax Assessment Act 1997* (Cth) – whether the maximum net asset value test in s 152-15 of the Act is satisfied – meaning of "**liabilitie**s" in s 152-20(1) of the Act – whether real estate commission and legal fees were "liabilities" "**just before**" the CGT event within s 152-20(1)

ING Bank (Australia) Ltd v Leagrove Pty Ltd [2012] 1 Qd R 140; [2011] QCA 131: Margaret McMurdo P, White JA and Martin J (21.2.11) – **guarantee** - appellant extended original loan facility conditionally on specified security being obtained - respondents executed joint and several deeds of guarantee and indemnity - appellant failed to obtain the securities listed in the extension agreement - whether condition a **condition precedent or an implied condition** in guarantee; debtor executed principal obligation in own capacity - guarantee executed by debtor in its capacity as **trustee** - principal debtor not prohibited from guaranteeing its principal obligation in its capacity as trustee.

National Australia Bank v McCall [2011] QSC 25: Gotterson and McMurdo JJA and Bowskill J (10.10.18) - consumer protection - **misleading or deceptive conduct** - **banks** and financial institutions – bank employee told the respondent that the third loan would stand alone from the first and second loans - the bank represented to the respondent that it had assessed and approved the third loan - **Code of Banking Practice**

Taxpayer v Commissioner of Taxation (2010) 80 ATR 885; [2010] AATA 819: Deputy President P E Hack SC; Senior Member Bernard J McCabe (25.10.10) – **income tax -** business and asset sale agreement – taxpayer agreed to accept novation of material contracts on condition that rival company paid "subsidy payment amount" – **capital or revenue**

Reynolds v Aluma-Lite Products Pty Ltd [2010] Aust Torts Reports 82-072; [2010] QCA 224 McMurdo P and Muir and Chesterman JJA (24.10.10) – torts - **trover and detinue -** appellants moved equipment on to a road reserve **-** obstructing access to the property **-** third party held bill of sale over the equipment **—** respondent caused equipment to be moved from road reserve **- whether appellants had abandoned the equipment -** whether appellants entitled to damages for consequential losses; money **-** appropriation of payments **-** whether **presumption that receipts are applied to interest** in priority to principal rebutted by conduct of parties***.***

Crystal Point Pty Ltd v Deputy Commissioner of Taxation [2010] QSC 154: Martin J (14 May 2010) - **corporations -** winding up in insolvency **- statutory demand - application to set aside -** what can constitute "some other reason" under *Corporations Act 2001* (Cth) s 459J(1)(b) **-** whether an **objection to an assessment** can constitute "some other reason".

Reynolds v Aluma-Lite Products Pty Ltd [2010] FCA 322: Spender J (24.3.10) - **bankruptcy -** power of the court to grant a **stay of sequestration order** until determination of appeal **—** relevant considerations **—** whether there is an arguable appeal point**.**

CVC Private Equity Ltd v Suncorp-Metway Ltd [2011] 1 Qd R 101; [2009] QSC 342: Martin J (29.10.09) – **mortgages** - dispute about the validity and extent of an 'all moneys' guarantee given by property owner; **estoppel** - property owner claim that representations of first mortgagee gave rise to an estoppel; **tender** - property owner alleged that first mortgagee refused to accept offer of tender to redeem mortgage

Keswick Developments Pty Ltd v Keswick Island Pty Ltd [2009] QCA 340**:** de Jersey CJ, Holmes JA and A Lyons J (3.11.09***)*** – **contract** – **construction** of purchase agreement - provision for retention at completion of amounts in respect of loss and damage suffered by purchaser because of vendor's prior breach of warranty - whether agreement to be construed so as to require, absent agreement, the adjudication, before completion, of the amount to be retained

Kevroy Pty Ltd v Keswick Developments Pty Ltd (2009) 69 ACSR 635; 27 ACLC 120; [2009] QSC 49: A. Lyons J (11 March 2009) **contract – pre-registration contract - ratification -** whether ratification referred to in s 131 of *Corporations Act 2001* (Cth) can be retrospective – **equity** - equitable interest - **priority** - legal versus equitable interest.

Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd (2008) 237 CLR 473; (2008) 248 ALR 693; (2008) 69 ATR 357; (2008) 82 ALJR 1411; (2008) 67 ACSR 593; 26 ACLC 880; [2008] ATC 20-045; [2008] HCA 41: Gummow ACJ. Kirby, Heydon, Crennan and Kiefel JJ (3 September 2008) - **statutory demand** – **assessed income tax** - setting aside of statutory demand where genuine dispute about existence or amount of debt - taxpayers instituted review proceedings under *Taxation Administration Act 1953* (Cth) - Pt IVC and applied to Supreme Court under *Corporations Act 2001*(Cth) - s 459G to set aside statutory demands – **income tax -** whether pending Pt IVC proceedings constituted "**genuine dispute** ... about the existence or amount of a debt" within meaning of *Corporations Act* s 459H(1)(a) - whether primary judge erred in setting aside statutory demands - *Corporations Act* - s 459J(1)(b) - scope of discretion

Price Street Professional Centre Pty Ltd v Commissioner of Taxation (2007) 243 ALR 728; (2007) 97 ALD 593; (2007) 67 ATR 544; [2007] FCAFC 154: Kenny, Edmonds and Greenwood JJ (25.9.) – **income tax** – appeal – **whether question of law** – losses incurred from purchase and sale of land – **capital or revenue** - **penalties**

Bellmere Park Pty Ltd v Benson [2007] Q Conv R 54-663; [2007] QCA 102: Williams JA, Muir and Philip McMurdo JJ (30.3.07)- **contract** - **due diligence** special condition - specific performance − whether the special condition of the contract was uncertain − whether the condition could be satisfied as a matter of subjective or objective fact - **whether contract was illusory in nature** – **waiver of condition -** whether condition was for the benefit of both parties and thus capable of being waived by the respondent

Platypus Leasing Inc v Commissioner of Taxation (2005) 61 ATR 239; [2005] NSWCA 399: Handley JA Tobias JA McClellan CJ at CL (18.11.05) - **GST** - declaration with respect to liability for goods and services tax - **whether assessments and declaration** under *Taxation Administration Act 1953* (Cth) s 59 **precludes the Court from considering issues** which relate to the amount shown in the assessment or declaration - whether it was correct to dismiss proceedings in the exercise of the Court's discretion.

Nemesis Australia Pty Ltd v Commissioner of Taxation (2005) 50 FCR 152; (2005) 225 ALR 576; (2005) 61 ATR 119; [2005] FCA 1273: Tamberlin J (14.9.05) – **income tax** - appeals against assessment of under **s 99A** of the *Income Tax Assessment Act 1936* (Cth) – appointments of income by the trustee of a **discretionary trust** to the trustees of three other trusts – appointments disallowed as vesting outside the **80 year perpetuity period** specified in s 209 of the *Property Law Act 1974* (Qld) – trusts **-** whether the three other trust deeds should be **read back** into the principal trust deed - application of the **'wait and see' rule** in s 210 of the *Property Law Act 1974* (Qld)

Commissioner of Taxation v Ramsden (2005) 58 ATR 485; [2005] FCAFC 39: Lee, Merkel and Hely JJ (15.3.05) - **income tax** - whether taxpayers **"presently entitled"** to income distributed under a trust deed - whether taxpayers had **disclaimed** their interests in income under the deed - whether interests in income and in corpus under the deed constituted a single gift to be disclaimed in its entirety - whether reasonable time for disclaimer had elapsed.

THL Robina Pty Ltd v The Glades Golf Club Pty Ltd [2005] 2 Qd R 186; [2004] QSC 461: Chesterman J (17 December 2004) - **contract** - **right of first refusal** - meaning of '**sell**'- calculation of price on sale

Moloney v Marler as court appointed liquidators and trustees of the unregistered managed investment scheme known as the Sentry Alliance Scheme formerly conducted by Atlantic 3 – Financial (Aust) Pty Ltd (in liq) [2004] QCA 352: de Jersey CJ, Williams JA and Mullins J (28.9.04) – **appeal** - application to **correct or vary order** made by the Court of Appeal- **application for stay** pending hearing of the special leave application to High Court - whether an appropriate case to order a stay

Moloney & Geroff as court appointed liquidators and trustees of the Sentry Alliance Scheme formerly conducted by Atlantic 3-Financial (Aust) Pty Ltd (in liq) v Marler & Darvall: [2004] QCA 310: de Jersey CJ, Williams JA and Mullins J (27.8.04)- **solicitor's lien** - appellant claimed a solicitors' lien in respect of title deeds for outstanding fees owed by company which had conducted unregistered managed investment schemes - land subject to a mortgage acquired by the company using funds obtained from investors in one of the managed investment schemes - whether appellant held the title deeds for the company or for the original investors in that managed investment scheme

Demtear Pty Ltd v Abelian Pty Ltd [2004] QSC 103: Muir J (30.4.04) – **landlord and tenant** - whether the **relocation clause** void for uncertainty or illusory - **severance**

Corporate Business Centres International Pty Ltd v Commissioner of Taxation (2004) 137 FCR 108; (2004) 55 ATR 476; 2004 ATC 4430; [2004] FCA 458: Hill J (20.4.04) – **income tax** - **private binding ruling** –**whether applicant was a rulee** – ruling did not identify who the rulee was - validity of ruling **joinder** – moton to join applicants for rulings in proceedings for **mandamus** to require Commissioner to issue rulings before the court - joinder limited to administrative law relief and not to proceedings challenging the correctness of ruling said to be a valid ruling.

Tube Securities Pty Ltd and Commissioner of Taxation 53 ATR 1160; 2003 ATC 2220; [2003] AATA 894: B J McCabe, Member (12.9.03) – **income tax** - **extension of time** - whether Commissioner should have exercised his discretion under section 14ZX of the *Taxation Administration Act 1953* and treated the objections as having been lodged in the prescribed period

Ross Palmer Holdings Pty Ltd v Commissioner of Taxation (2003) 52 ATR 805; 2003 ATC 4495; [2003] FCA 508: Spender J (23.5.03) – **income tax** - **transfer of losses** within company group - determination by Commissioner to disallow deductions - application for extension of time to transfer losses - exercise of discretion - **administrative law** - decision of Commissioner to refuse application for **extension of time to transfer losses** - whether error of law in decision not to grant extensions of time

Prebble v Commissioner of Taxation 2002 ATC 5045; (2002) 51 ATR 459; [2002] FCA 1434: Cooper J (22.11.02) (appeal dismissed [2002] FCA 1434; (2003) 131 FCR 130; [2002] ATC 5045; (2002) 51 ATR 459; [2003] FCAFC 165) – **income tax** - **superannuation contribution** paid by taxpayer to **non-complying superannuation fund** for personal benefit - whether taxpayer entitled to claim **deduction** for contribution as an "eligible employee" under s 82AAA(1) of the *Income Tax Assessment Act 1936* (Cth) - **understatement penalty** in respect of tax shortfall - capacity of taxpayer - distinction between **employer contributions** for benefit of employees and **contributions made by individuals** for their personal benefit - **liability of trustee company** - whether contribution constituted **assessable income** of company making it liable to income tax - **penalty and interest**.

Electricity Supply Industry Superannuation (Qld) Ltd v Deputy Commissioner of Taxation [2002] FCA 1417: Cooper J (20.11.02) – **costs** - conduct of parties - where **issues abandoned** late in proceedings - whether costs should follow the event.

Electricity Supply Industry Superannuation (Qld) Ltd v Deputy Commissioner of Taxation 2002 ATC 4888; (2002) 51 ATR 163; [2002] FCA 1274: Cooper J (17.10.02) – **income tax** - avoidance - **Part IVA** - scheme to reduce tax - **franking credit benefits** - whether distribution of franked dividend paid or made in respect of share or interest in share of a company - whether requirements of s 177EA(3) satisfied.

Beachquest Pty Ltd v Interstate Mortgage and Investments Pty Ltd [2003] 2 Qd R 586; [2001] QSC 512: White J (18.12.01) – **mortgages** - **further advances** - **priority** of fresh mortgages and future advances - **rule in *Hopkinson v Rolt*** - whether determination of priorities should be based on previously released mortgages - whether the mortgage expressly imposed an obligation to make further advances – **equity** - the rule in ***Clayton's Case*** - agreement excluding the operation of the rule between creditor and debtor - the effect of running accounts - **marshalling** - whether mortgage provided for payment of **compound interest** - whether compound interest can be retrospectively included in a priority sum or **whether it constitutes a further advance** - ranking behind subsequent securities – **corporations -** whether **leave to proceed** can be granted pursuant to s 471B

Prebble v Commissioner of Taxation [2001] FCA 1474: Dowsett J (28.9.01) – **income tax** - appeal – application for **removal** to another registry where a related matter is listed

Reef and Rainforest Travel Pty Ltd v Commissioner of Stamp Duties [2002] 1 Qd R 683; 2001 ATC 4423; (2001) 47 ATR 394; [2001] QCA 249: McPherson JA, Thomas JA, Muir J (29.6.0101) – **stamp duty -** whether an **assessment** on an instrument of transfer could be **set aside** following the purported **rescission of the transfer** - whether instrument of transfer was void or capable of being rescinded

Clarke v Deputy Commissioner of Taxation [2001] FCA 780: Heerey J (14.6.01) – **income tax** - **discovery** in an *Administrative Decisions (Judicial Review) Act 1977* (Cth) application for **review of a decision** of the respondent not to give a ruling sought under section of the Taxation Administration Act 1953 (Cth)

Australian Securities and Investments Commission v Enterprise Solutions 2000 Pty Ltd [2003] 1 QdR 135; (2000) 158 FLR 220; (2000) 35 ACSR 620; [2000] QCA 452 – interests other than shares – offer or issue to the public – **betting** on horse races – **managed investment scheme** within s 9 *Corporations Law* – contributions pooled – whether pooling produces benefits

Australian Securities and Investments Commission v Enterprise Solutions 2000 Pty Ltd [2000] QCA 452; [2003] 1 Qd R 135; (2000) 158 FLR 220; (2000) 35 ACSR 620: McMurdo P, Pincus and Thomas JJA (7.11.00) - interests other than shares – offer or issue of "interest"- whether schemes run by appellants constituted "managed investment scheme" as defined in s 9 *Corporations Law* - requirements in definition that rights be acquired - that contributions be pooled - and that pooling of contributions produce benefits - need for proprietary interest - need for benefit unobtainable without pooling - need for knowledge of pooling - aggregate betting scheme

Jeffcoat v Queensland Coal & Oil Shale Mining Industry (Superannuation) Ltd [2000] FCA 655: Kiefel J (19.5.00) – **superannuation** - decision by Superannuation Complaints Tribunal affirming trustee's determination of benefits - whether membership ceased on retirement de-activating trustee's obligation to pay fund monies to dependants - payment to de-facto following death of fund member - **membership retained between retirement and death** where entitlements not paid - Trustee's findings as to appropriate recipient of monies **not justiciable** – accrued **jurisdiction** to review trustees' decisions under *Trusts Act 1973* (Qld) - or general equitable jurisdiction

Klement v Pencoal Ltd (2000) Q ConvR 54-546; [2000] QCA 152 (5 May 2000)

CONVEYANCING – indefeasibility – fraud or forgery exception - appellant's signature forged to effect transfer of property - claims that eventual transferee held one-half of its proprietary interest on trust for the appellant - for rectification of the register - for damages for conversion and for an account dismissed at trial - whether trial judge wrongly concluded the circumstances of the forgery did not prevent transfer of title

LEGAL PRACTITIONERS- whether first respondent's solicitor's default led to acquisition of title to the appellant's detriment - whether solicitors should have enquired expressly into the validity of the appellant's signatures and the fifth defendant's entitlement to all moneys payable

PRINCIPAL AND AGENT - whether trial judge wrongly found fifth defendant had appellant's ostensible authority to tender documents at settlement - and to tender forged documents as authentic - whether trial judge wrongly held that appellant's deliberate silence - despite knowledge of forgery - amounted to ratification - whether trial judge wrongly found the appellant duty bound to warn the first and second respondents of the forgery

ESTOPPEL - whether trial judge wrongly found the appellant estopped from denying the effectiveness of the transfers because of his failure to inform the first and second respondents of the forgery and of the termination of the power of attorney

EA & S Plaster Co Pty Ltd v The Registrar of Titles (2000) Q ConvR 54-543; [2000] QSC 14 (9 February 2000)
CONVEYANCING - second caveat - whether substantially the same grounds - s129 *Land Titles Act 1994* — equitable charge — equitable mortgage.

MIM Holdings Ltd v Commissioner of Stamp Duties [1999] QSC 345 (18 November 1999)

COSTS - application to vary original costs order

MIM Holdings Ltd v Commissioner of Stamp Duties [1999] QSC 327 (28 October 1999)

COSTS – costs of issues - applicant successful on some issues only.

Commissioner of Stamp Duties v MIM Holdings Ltd [2001] 1 Qd R 294; (1999) 152 FLR 169; (1999) 99 ATC 5084; (1999) 42 ATR 741; [1999] QCA 390 (17 September 1999)

STAMP DUTY - "prescribed provisions" of *Stamp Act 1894* (s 56FA to s 56FO) - respondent acquired 51% of shares in "land-rich" company - respondent entitled to ordinary voting rights - to participate in declared dividends - but not to receive surplus in winding up - whether respondent acquired "majority interest in a corporation" as defined in s 56FN - whether respondent acquired an interest by "variation - abrogation or alteration of a right pertaining to any share" as defined in s 56FA - whether contractual rights part of company's realty or separate property - whether unpaid premiums on shares "property" for purposes of "prescribed provisions"

CORPORATIONS - shares - articles of association conferred on shareholder right to participate in winding-up of company upon payment of call - whether payment effected variation to rights conferred by respondent's shares - whether uncalled premiums on shares "property"

INTEREST - rate - whether trial judge erred in exercise of discretion pursuant to s 30(1)(d) Judicial Review Act

Thakral Fidelity Pty Ltd v The Commissioner of Stamp Duties [2001] 1 Qd R 428 (10 September 1999)

INTEREST - award of interest - amendment of previous order - interest on overpaid stamp duty - *Judicial Review Act* 1991 *ss* 30(1)(d) - 30(4).

Sita Queensland Pty Ltd v Beattie [2000] 2 Qd R 433 (10 September 1999)

CONSTITUTIONAL LAW - the Crown - requirement that Ministers act "jointly - requirement of "consultation" with Minister - what constitutes compliance - decision of Ministers about report of Queensland Competition Authority - *Queensland Competition Authority Act 1997* ss 6(1)(a) - 57

ADMINISTRATIVE LAW – grounds for review of decision - breach of rules of natural justice

Windsurf Pty Ltd v HIH Casualty and General Insurance Ltd (1999) 10 ANZ Ins Cas 61-447; [1999] QCA 360 (3 September 1999)

INSURANCE - construction of policy - owner of units injured falling on carpet negligently laid in liability period - liability to indemnify for an "occurrence" - whether negligent act or fall the occurrence.

Road Australia Pty Ltd v Commissioner of Stamp Duties [2001] 1 Qd R 327; (1999) 99 ATC 4877; (1999) 42 ATR 636; [1999] QCA 328 (20 August 1999)

STAMP DUTY - share acquisition in relation to "land-holder" - what constitutes "land-holder" — "estate" — company contracting to purchase land and paying deposit — *Stamp Act* 1894 *ss* 56FA(1) - 56FL(2).

Sita Queensland Pty Ltd v Queensland (1999) 164 ALR 18; [1999] FCA 793 (15 June 1999)

COMPETITION LAW - market power — identity of market - mere allegation of financial power - adequacy of pleading - *Trade Practices Act 1974* (Cth) s 46.

TORT - interference with trade by unlawful means - allegation of conduct constituting misfeasance in public office - adequacy of pleading.

Noosa Shire Council v TM Burke Estates Pty Ltd [2000] 1 Qd R 398; 100 LGERA 318 ; [1999] QPELR 142 (3 November 1998)

LOCAL GOVERNMENT - compensation claim - Planning and Environment Court - exclusive jurisdiction - declaratory relief sought in Supreme Court - whether Supreme Court's declaratory jurisdiction ousted

PROCEDURE - miscellaneous procedural matters - discretion of court - existence of alternative remedy - matter within jurisdiction of special tribunal

Litz v State of Queensland [1998] QSC 130 (2 November 1998)
PRACTICE - leave to proceed - no step by either party within three years.

Sita Queensland Pty Ltd v Queensland Transport [1998] QSC 130

JUDICIAL REVIEW - whether application brought within reasonable time – s 26 of *Judicial Review Act 1991* considered — prejudice a relevant consideration — necessary parties — joinder of common law claims Re

Re World Expo Park Pty Ltd (in liq) [1999] 1 Qd R 566 (6 April 1998)

CORPORATIONS - winding up - proof of debt - no deduction for payments received and disgorged - *Bankruptcy Act* 1966 (Cth)*s.* 121 — *Corporations Law s.* 565(1).

Commissioner of Taxation v Century Yuasa Batteries Pty Ltd (1998) 82 FCR 288; (1998) 38 ATR 442; (1998) 98 ATC 4380; BC9800914 (27 March 1998)

INCOME TAX - interest withholding tax - resident borrower obliged to repay non-resident lender principal and interest without deduction for tax payable - whether further amounts payable by borrower to "gross up" interest payments to lender constituted "interest" or "an amount in the nature of interest" within the meaning of s128A(1) *Income Tax Assessment Act 1936* (Cth).

Re WorkCover Queensland [2000] 1 Qd R 107; (1998) 143 FLR 391; (1998) 16 ACLC 999 (18 March 1998)

CORPORATIONS - voluntary administration – administrator - functions - powers - rights and liabilities - liability for workers' compensation premium - issue of policy to administrators — *Corporations Law* s. 443A(1) — *WorkCover Queensland Act 1996* ss 28 - 61 - 64 - 65(3).
Workers' compensation — Insurance or levy — Queensland — Policy — Premium — Liability of company administrators to pay — Issue of policy to administrators — Corporations Law s. 443A(1) — WorkCover Queensland Act 1996 ss 28 - 61 - 64 - 65(3). (A.Dig. 3rd [250]).

STATUTORY CONSTRUCTION — meaning of "services rendered" and "debt" — application of s443A Corporations Law — application of WorkCover Queensland Act — whether administrator of company is personally liable for payment of insurance premium — issue of policy under s 28 WorkCover Act during period of administration.

Campbells Hardware & Timber Pty Ltd v Commissioner of Stamp Duties (Qld) (1998) 98 ATC 4273; (1998) 40 ATR 1 (27 February 1998)

STAMP DUTY — sale of a business - agency agreement' in relation to trading stock - whether purchaser of business also acquired trading stock - powers of Commissioner of Stamp Duties to amend forms and reassess duty payable - *Stamp Act 1894* (Q) - s22A - s80 - s54A. #last BC below

Anchez Pty Ltd v Dragon Corp Pty Ltd [1997] QCA 254; BC9703821 (15 August 1997)

CORPORATIONS – statutory Demand - appeal against order to set aside statutory demand on conditions

Suncorp Insurance & Finance v Commissioner of Stamp Duties [1998] 2 Qd R 285; (1997) 97 ATC 4826; (1997) 36 ATR 514; [1997] QCA 225; BC9703367 (29 July 1997)

STAMP DUTY - transaction resulting in obtaining of interest in real property where no dutiable instrument — landowner subjecting land to unit trust

Peters v Kerle [1997] QSC 68; BC9701534 (24 April 1997); BC9702289 (2 May 1997)
ASSOCIATIONS AND CLUBS - rules and meetings - whether rules of association envisage membership by individuals –whether compliance with rules relating to withdrawal from membership

INCORPORATED ASSOCIATIONS - whether unincorporated association can be a member of an incorporated association — *Associations Incorporation Act 1956* (SA) — *Associations Incorporation Act 1985*

ASSOCIATIONS AND CLUBS - expulsion - suspension and disqualification - grounds for expulsion - disobedience of constitution and by-laws of association.

Commissioner of Taxaton v Pearson (1997) 36 ATR 35; BC9701526 (18 April 1997)

SUMMARY JUDGMENT - s175 of *Income Tax Assessment Act 1936* - assessment in good faith

FAI Developments Pty Ltd v Noosa Waters Pty Ltd [1997] QSC 193; BC9703700 (20 March 1997)

TRUSTS - trust property - what constitutes property - proceeds of property of unit trust

GUARANTEE - whether trustee entitled to enforce right of indemnity against unit-holders - under finance arrangement - trustee guaranteed loans made to unit-holders from financier.

Cameron v Noosa Shire Council [1998] 1 Qd R 124; (1996) 93 LGERA 407; BC9606142 (3 December 1996)

PLANNING - appeals - declaratory relief - as to council's obligation to create rezoning deed and apply for rezoning - jurisdiction of Planning and Environment Court exclusive

LOCAL GOVERNMENT - Local Government Court - validity of order - failure to specify time for making rezoning application
Jones v Walker Corporation (Qld) Pty Ltd [1996] QSC 224; BC9605945 (28 November 1996)

SPECIFIC PERFORMANCE - sale of lot on buildings units plan - application for summary judgment - plan referred to in contract abandoned - construction in accordance with new plan - whether purchasers entitled to units similarly placed on new plan - held triable issue raised - summary judgment refused.

Magic Menu Systems Pty Ltd v AFA Facilitation Pty Ltd (1996) 137 ALR 260; BC9601902 (8 May 1996)

TORTS - champerty and maintenance - "Facilitation agreement" - assistance provided by franchise association to franchisees suing their franchisor in return for substantial payment out of proceeds of litigation relevance of maintainer's objective to earn commercial profit - distinguished from assistance provided by expert witnesses and solicitors - actual damage essential to cause of action

Gonzo Holdings No50 Pty Ltd v McKie [1996] 2 Qd R 240; [1995] QCA 304; BC9506034 (14 July 1995)

MINES AND MINERALS LAW - definition of "mine" in s.1.8(1) of Mineral Resources Act 1989 - extraction of mineral from samples taken as part of exploration -extraction for purpose of testing - whether extraction "mining" within definition - effect of distinction between concepts of exploration and mining generally - whether extraction of mineral from sample removed from site of winning is extraction of the mineral "from its natural state" - ambit of phrases "extracting mineral from its natural state" and "disposing of any ... waste substances resulting from mining or extraction" - whether activities on neighbouring land constitute "mining" in contravention of the Act.

Kaffe Pty Ltd v Vasta - Costantino and Coco [1995] QCA 155; BC9505770 (5 May 1995)

AGENCY – commission - construction of contract
Amerio v Qld Rural Adjustment Authority [1995] QSC 77; BC9505800 (5 April 1995)

JUDICIAL REVIEW — decisions made in relation to a proposed qld tobacco industry restructuring scheme under the Rural Adjustment Authority Act — whether any of the decisions were a "decision to which this Act applies" within the meaning of s4 Judicial Review Act — whether scheme administrative or legislative — whether scheme ultra vires — whether prerogative or declaratory relie appropriate.
Schonnect v The Golden Casket Art Union Office [1995] 2 Qd R 346; [1994] QCA 480; BC9404182 (11 November 1994)
CONTRACT – construction - Instant Casket Ticket - whether dollar amount contained in heading under latex cover part of game.

APPEAL - practice and procedure - when appeal lies - appeal as to costs - jurisdiction of Court of Appeal - appeal without leave of judge —*Judicature Act 1876* s. 9. Procedure —

COSTS – appeals as to costs - jurisdiction to entertain - appeal without leave of judge — *Judicature Act 1876* s. 9 - leave to appeal from the judge who made the order required — *Wheeler v Somerfield* [1966] 2 QB 94 not followed.

H & T Trawling Co Pty Ltd v Daikyo (North Queensland) Pty Ltd BC9404186; BC9404243 (3 November 1994)
CONTRACT LAW — sale of leasehold land held under Harbours Act — whether ministerial consent obtained — refusal to complete — whether breach — whether misrepresentation — election of basis for calculating damages — quantum of damages
Skelton v Collins BC9404139 (5 October 1994)

NEGLIGENCE – personal injuries - quantum of damages — conflicting medical evidence — trial judge found that plaintiff was exaggerating symptoms — it was open to the trial Judge to make the findings of facts and the conclusion decided.

Arco Resources Ltd v Commissioner of Stamp Duties (Qld) [1996] 1 Qd R 1; (1996); 28 ATR 459; BC9404047 (26 August 1994)

STAMP DUTY - conveyance or transfer on sale - of any property - “property” - application for mining lease —

Exemptions - company reconstruction or amalgamation - transfer of property from one associated company to another - statutory requirement concerning consideration

Assessment and amount payable including fines - exemption for company reconstruction granted - subsequently disallowed following discovery of further facts - no previous assessment — Commissioner’s power to issue original assessment following disallowance of exemption - to recover interest

Shannon v Australia & New Zealand Banking Group Ltd (No 3) [1996] 1 Qd R 340; BC9404332 (24 June 1994)

PROCEDURE - Supreme Court procedure Queensland - commercial cause - what constitutes - appeal against listing - whether competent - listing to avoid trial by jury - whether proper - *Commercial Causes Act 1910* ss 2 - 4(2)

Australian Securities Commission v Corplan Nominees Pty Ltd (29 April 1994)

EQUITY - application for Mareva injunction by ASC against corporate trustee of superannuation funds - related corporations and directors - seriously deficient record-keeping - substantial payments of trust moneys by one corporate respondent to other respondents in which individual respondents also directors - inadequate verification of justification of payments - breach of s232(2) and s232(6) *Corporations Law* - failure to comply with s289(1)(a) and s289(1)(b)(i) - Mareva relief granted

Shannon v Australia & New Zealand Banking Group Ltd (No. 2) [1994] 2 Qd R 563; [1994] QSC 097; BC9407017 (28 April 1994)

COSTS - security for costs – plaintiff - natural persons – jurisdiction - inherent power - need for exceptional circumstances - security ordered

Amount of security - relevant factors.

Hong Kong Bank of Australia Ltd v McKenna *BC9303538* *(13 December 1993)*

PRACTICE – pleading - respondents failed to plead defective notice of demand - point not raised below until final address - decision made against appellant on the basis that the notice was defective - whether respondents may now be granted leave to amend their pleading to raise the point.

RES JUDICATA - second action brought in matter before appeal on first action heard - judgment awarded for the appellants in second action for a lesser sum than that claimed in the first action - whether cause of action in first proceeding has merged in judgment in second action.

Shannon v Australia & New Zealand Banking Group Ltd (No1) [1994] 2 Qd R 560; BC9303110 (21 October 1993)

PRACTICE - transfer of actions from District Courts to Supreme Court - important question of law or fact - difficult questions between parties sufficient - transfer ordered — District Courts Act 1967s. 83(2). Practice —

Anthony v Draper *BC9303474* *(18 October 1993)*

PRACTICE - necessity for plaintiff in transferred action to elect to proceed in Supreme Court — R.S.C. O. 61 r. 5.

WILLS AND PROBATE - construction of will - appeal against order that house of testatrix - having failed to be disposed of by will - passed on intestacy - testatrix devised "house contents" to eldest son - whether testamentary intention to devise house or merely contents - whether recourse to extrinsic materials necessary

Northcorp Ltd v Allman Properties (Australia) Pty Ltd [1994] 2 Qd R 405 (4 October 1993)

INJUNCTIONS - interlocutory injunctions - injunctions to preserve status quo and property pending determination of rights - Mareva injunctions - nature of evidence required - purpose of defendant.

Re FAI Leasing Pty Ltd [1994] 2 Qd R 482; *BC9304053*

(13 September 1993)

LOCAL GOVERNENT - building control - council consent and approval - historic buildings - “owner” - transferable site area - whether subject to registered mortgage - whether chargeable — Town Plan for the City of Brisbane

MORTGAGES - property secured - mortgage of heritage building site - whether transferable site area included - Town Plan for the City of Brisbane

J v L. & A. Services Pty Ltd [1993] 2 Qd R 380 *BC9303201*

(24 March 1993)

Appeal and new trial - stay of proceedings and security for costs - pending application to High Court for special leave - relevant considerations.

J P Smith v Nowland Motels Pty Ltd *BC9303035* *(3 February 1993)*

INJUNCTIONS - fixed and floating charge - appointment of receivers - mortgagor refusing to give possession to receivers - interlocutory injunction - existence of possible defences - balance of convenience - conditions of interlocutory injunction.

Exagym Pty Ltd v Professional Gymnasium Equipment *BC9303063* *(15 January 1993)*

BUSINESS NAMES - use of business name — alleged equitable right to assignment of trademark

Hongkongbank of Australia v McKenna *BC9303362* *(8 January 1993)*

PRACTICE - summary judgment

ESTOPPEL - Anshun estoppels

GUARANTEE - demand for payment within 48 hours - sufficiency of demand for payment "forthwith" - allegations of waiver - estoppel - election - misleading conduct - validity of mortgagee's entry into possession and sale - measure of damages to mortgagor

Re Fintax Ltd BC9202604 *(20 October 1992)*

COMPANIES – winding up – setting aside statutory demand

Re MGT Nominees Pty Ltd BC9202615 *(20 October 1992)*

COMPANIES – winding up

Taylor v Natwest Australia Bank Ltd BC9203757 *(16 October 1992)*

BANKRUPTCY - ordinarily resident

Beardsley v Registrar of Titles [1993] 2 Qd R 117; (1992) Q ConvR 54-440; BC9202430 (12 October 1992)

CONVEYANCING - land titles under the Torrens system - remedies for deprivation - limitation of actions - liability of assurance fund - applicability of *Limitation of Actions Act 1974* - action commenced more than six years after deprivation but less than six years after insolvency of fraudulent person - *Real Property Act 1861* ss 126 - 127

CONVEYANCING - remedies for deprivation - measure of damages - value of fee simple less than value of forged mortgages - whether damages recoverable for dispossession and sale by mortgagee - *Real Property Act 1861* s. 126

CONVEYANCING - remedy against others — Registrar registering forged mortgages - action against person who derived benefit by fraud - only available where fraudulent person becomes registered proprietor - *Real Property Act 1861* s. 126

Gentry Brothers Pty Ltd v Wilson Brown & Associates Pty Ltd (1992) 8 ACSR 405; (1992) 10 ACLC 1394; (1992) ATPR 41-184; BC9203659 (18 August 1992)

PRACTICE - security for costs - discretion of the court - interests of justice - relevant factors vary from case to case - *Corporations Law* s 1335

Holmes v Webb [1992] QCA 172; BC9202491(18 August 1992)

WILLS - family provision - distribution of estate - assets held by executrix as trustee at time of application

Clancy v Attorney-General (1992) 26 ALD 746 ; BC9202371 (3 April 1992)

ADMINISTRATIVE LAW – mandamus - whether Minister obliged to establish Council before providing to establish system for examinations for Justices of the Peace - delay pending investigation of prosecution by Securities Commission - whether an irrelevant consideration.