



# Professor Andrew Keay

Year of call 2010

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Andrew was called to the Bar in Australia in 1976 and subsequently practised in South Australia where a fused profession exists. He acted as both a barrister and solicitor taking instructions in general commercial litigious and non-litigious matters with particular emphasis on companies, insolvency, partnerships, securities, trusts, general contractual advice and probate. In due course Andrew became a partner in the firm of Playfords. Andrew appeared as counsel in numerous matters in the Supreme Court of South Australia and various federal courts, including the Federal Court of Bankruptcy. Reported cases in which Andrew appeared as counsel include, *Re Exclusive Master Bookbinding & Manufacturing Co. Pty Ltd* (1977) 17 SASR 522; (1977) 2 ACLR 549 (a seminal case on provisional liquidation and the right to present a winding-up petition) and *Re the Estate of Jones* (1979) 21 SASR 46. Andrew is admitted to practice in South Australia and Queensland, and before the federal courts of Australia.

After his life in practice, Andrew became an academic, and over the course of many years taught at a number of Australian universities. Andrew's time in academia in Australia was interrupted by a stint as a Deputy Registrar in Bankruptcy and Deputy Registrar of the Federal Court of Australia, when, amongst other things he heard applications under bankruptcy legislation and taxed costs. Andrew came to the UK in 1997. In 2002 he became, and continues to be Professor of Corporate and Commercial Law in the School of Law at the University of Leeds (and for some time the Director of the Centre for Business Law and Practice) where he has taught, primarily, company law, insolvency law, international corporate governance, and corporate finance law. Andrew has supervised, and continues to supervise, a large number of PhD students who are writing theses on various company law and insolvency law issues. Andrew has examined PhD theses at a number of universities including: University College, London, University of Manchester, University of Sheffield, Birkbeck College, London, University of Queensland, University of Melbourne, and the University of Pretoria.

## Practice

Chancery, and primarily in all areas of company law with a particular focus on corporate governance issues, directors' powers, duties and responsibilities, and shareholder rights and remedies, and in all areas of insolvency law (corporate and personal).

## Qualifications

- Bachelor of Laws – University of Adelaide
- Master of Divinity – Denver Seminary
- Master of Laws – University of Queensland
- Doctor of Philosophy (in law) – University of Queensland

## Consultancy

Andrew has given advice to several government and quasi-government bodies, such as the Standing Advisory Committee on Company Law in South Africa concerning the overhaul of that country's insolvency legislation, the Company Law Review Steering Group in its deliberations on the reform of company law in the UK, and to the Australian Parliamentary Joint Committee on Corporate and Financial Services in its consideration of reforming Australian corporate insolvency law. He has also provided advice to the Australian Society of Certified Practising Accountants, the Hong Kong Institute of Certified Practising Accountants and the Insolvency Practitioners' Association of Australia.

## Research and Publications

Andrew has presented papers at numerous academic and practice-oriented conferences in the UK, Germany, Australia and South Africa. He has authored 18 books, the most recent being :

- Directors' Duties, 2nd ed (Jordans, 2014),
- Insolvency Legislation : Annotations and Commentary, 4th ed, (Jordans, 2014 (co – author Louis Doyle),
- McPherson's Law of Company Liquidation, 3rd ed (Sweet and Maxwell, 2013)
- Insolvency Law : Corporate and Personal 3rd ed (Jordan, 2012) (co-author – Dr Peter Walton)
- The Enlightened Shareholder Value Principle and Corporate Governance (Routledge, 2012)
- The Corporate Objective, Edward Elgar, 2011
- Company Directors' Responsibilities to Creditors, (Routledge-Cavendish, 2007).

As well as contributing chapters to 15 books, Andrew has had published over 150 articles in various academic journals(a selection is set out below) such as, in the UK, the Law Quarterly Review, Modern Law Review, Cambridge Law Journal, Journal of Business Law, Legal Studies, Lloyds Maritime and Commercial Law Quarterly, Journal of Corporate Law Studies, Northern Ireland Legal Quarterly, International Insolvency Review, European Business Organization Law Review and the Common Law World Review, and in more practically-oriented journals, such as The Company Lawyer, The Insolvency Lawyer, Insolvency Intelligence, Insolvency Law and Practice, Civil Justice Quarterly, Corporate Rescue and Insolvency, Company and Securities Law Journal, Canadian Business Law Journal and the Australian Business Law Review. He has also published numerous articles in the United States, Germany, Australia, Canada, the Netherlands and South Africa.

### A selection of Andrew's articles are:

"Directors' Duties and Creditors' Interests" (2014) 130 Law Quarterly Review 443-472

"The Public Enforcement of Directors' Duties : A Normative Inquiry" (2014) 43 Common Law World Review 89-119.

"Comply or Explain in Corporate Governance Codes : In Need of Greater Regulatory Oversight?" (2014) 34 Legal Studies 279-304

"Wrongful trading : problems and proposals" (2014) 65 Northern Ireland Legal Quarterly 63-79.

"An Assessment of Private Enforcement Actions for Directors' Breaches of Duty" (2014) 33 Civil Law Quarterly 76-92.

"The Authorising of Directors' Conflicts of Interests : Getting a Balance?" (2012) 12 Journal of Corporate Law Studies 129-162.

"Risk, Shareholder Pressure and Short-termism in Financial Institutions. Does Enlightened Shareholder Value Offer a Panacea?" (2011) 5 (6) Law and Financial Markets Review 435-448

"Good Faith and Directors' Duty to Promote the Success of their Company" (2011) 32 The Company Lawyer 138-143.

"The Prescribed Part : Sharing Around the Company's Funds" (2011) 24 (6) Insolvency Intelligence 81-85.

"The Office-Holder's Delivery Up Power and the Recovery of Debts" [2011] 4 Corporate Rescue and Insolvency 3-6.

"Derivative Proceedings in a Brave New World for Company Management and Shareholders" [2010] Journal of Business Law 151-178 (co-author – Ms J. Loughrey).

"Office-holders and the Duty to Promote the Success of the Company" (2010) 23 Insolvency Intelligence 133-138

- "Litigation Expenses in Liquidations" (2009) 22 Insolvency Intelligence 113-116 .
- "Ascertaining the Corporate Objective : An Entity Maximisation and Sustainability Model" (2008) 71 Modern Law Review 663-698.
- "Something Old, Something New, Something Borrowed : An Analysis of the New Derivative Action Under the Companies Act 2006" (2008) 124 Law Quarterly Review 469-500 (with Ms Joan Loughrey).
- "The Duty of Directors to Exercise Independent Judgment" (2008) 29 Company Lawyer 290-296.
- "Can Derivative Proceedings be Commenced When a Company is in Liquidation?" (2008) 21 Insolvency Intelligence 49-55.
- "Company Directors Behaving Poorly : Disciplinary Options for Shareholders" [2007] Journal of Business Law 656-682.
- "Section 172(1): An Interpretation and Assessment" (2007) 28 Company Lawyer 106-110
- "Enlightened shareholder value, the reform of the duties of company directors and the corporate objective" [2006] Lloyds Maritime and Commercial Law Quarterly 335-361.
- "Wrongful Trading and the Point of Liability" (2006) 19 Insolvency Intelligence 132-134
- "Fraudulent Trading : The Intent to Defraud Element" (2006) 35 Common Law World Review 121-134.
- "Formulating a Framework for Directors' Duties to Creditors : An Entity Maximisation Approach" (2005) 64 Cambridge Law Journal 614-646.
- "Wrongful Trading and the Liability of Company Directors : A Theoretical Perspective" (2005) 25 Legal Studies 431-461.
- "What Future for Liquidation in Light of the Enterprise Act Reforms?" [2005] Journal of Business Law 143-158.
- "Making Company Directors Liable : A Comparative Analysis of Wrongful Trading in the United Kingdom and Insolvent Trading in Australia" (2005) 14 International Insolvency Review 27-55 (with Michael Murray).
- "W[h]ither American Cyanamid?: Interim Injunctions in the Twenty-First Century" (2004) 23 Civil Justice Quarterly 132-150.
- "Another Way of Skinning the Cat : Enforcing Directors' Duties to Creditors" (2004) 17 Insolvency Intelligence 1-9.
- "Directors' Duties to Creditors : Contractarian Concerns Relating to Efficiency and Over-Protection of Creditors" (2003) 66 Modern Law Review 665-699.
- "Transactions Defrauding Creditors : The Problem of Purpose Under Section 423 of the Insolvency Act" [2003] The Conveyancer and Property Lawyer 272-288.
- "Directors Taking into Account Creditor Interests" (2003) 24 Company Lawyer 300-306
- "The Duty of Directors to Take Into Account Creditors' Interests : Has It Any Role to Play?" [2002] Journal of Business Law 379-410.
- "Pursuing the Resolution of the Funding Problem in Insolvency Litigation" [2002] Insolvency Lawyer 90-98.
- "The Director's Duty to Take into Account the Interests of Company Creditors : When is it Triggered?" (2001) 25 Melbourne University Law Review 315-339.
- "Dispositions of Company Property Post-Presentation of Winding-up Petitions and the Plights of Banks" [2001] Restitution Law Review 86-93.
- "Disputing Debts Relied On By Petitioning Creditors Seeking Winding Up Orders" (2001) 22 Company Lawyer 40-46.
- "Claims for Malicious Presentation : The Peril Lurking on the Sidelines for Petitioning Creditors" [2001] Insolvency Lawyer 136-144.
- "Insolvency and Environmental Principles : A Case Study in a Conflict of Public Interests" (2001) 3 Environmental Law Review 90-112 (with Dr Paula de Prez).
- "The Pursuit of Legal Proceedings Against Dissolved Companies" [2000] Journal of Business Law 406-421.
- "The Supervision and Control of Liquidators" [2000] The Conveyancer and Property Lawyer 295-306.
- "The Recovery of Voidable Preferences : Aspects of Restoration," [2000] Company Financial and Insolvency Law Review 1-25.
- "Insolvency Law : A Matter of Public Interest?" (2000) 51 Northern Ireland Legal Quarterly 509-534.

- "The Preferential Debts' Regime in Liquidation Law : In the Public Interest?" (1999) 3 Company Financial and Insolvency Law Review 84-105 (with Peter Walton).
- "Public Interest Petitions" (1999) 20 Company Lawyer 296-301.
- "Insolvent Companies Which are Able to Dispute Debts Owed to Petitioning Creditors : Should they be Wound Up?" (1998) 19 Company Lawyer 230-235.
- "The Avoidance of Pre-Liquidation Transactions: An Anglo-Australian Comparison" [1998] Journal of Business Law 515-549.
- "Preferences in Liquidation Law : A Time for a Change" (1998) 2 Company Financial and Insolvency Law Review 198-216.
- "An Exposition of the Principles of Provisional Liquidation" (1998) 6 Insolvency Law Journal 19-35
- "Voluntary Administrations: The Convening and Conducting of Meetings" (1996) 4 Insolvency Law Journal 9-22.
- "An Examination of the Procedural Issues Relating to the Commencement of a Liquidator's Avoidance Action" (1996) 14 Company and Securities Law Journal 78-89
- "The Effects of a Successful Action of a Liquidator to Avoid a Pre-Liquidation Transaction" (1996) 15 University of Tasmania Law Review 236-266.
- "The Power to Extend Time to Lodge Notice of Corporate Charges" (1996) 14 Company and Securities Law Journal 136-150.
- "In Pursuit of the Rationale Behind the Avoidance of Pre-Liquidation Transactions" (1996) 18 Sydney Law Review 56-86.
- "Liquidators' Avoidance of Uncommercial Transactions" (1996) 70 Australian Law Journal 390-402.
- "Preference Recoveries : Who is Entitled to Them?" (1996) 14 Company and Securities Law Journal 442-449,
- "The Insolvency Factor in the Avoidance of Antecedent Transactions in Corporate Liquidations" (1995) 21 Monash University Law Review 305-333.
- "The Parameters of Bankruptcy Examinations." (1994) 22 Australian Business Law Review 75-98.
- "Awarding Legal Costs in Bankruptcy Examinations" (1993) 10 Australian Bar Review 116-122.
- "To Bankrupt or Not to Bankrupt? The Question Faced By All Insolvency Advisers" (2 Parts) (1993) 1 Insolvency Law Journal 187-198 and (1994) 2 Insolvency Law Journal 13-24 (co- author – Peter Kennedy).
- "International Elements in Bankruptcy Law : Problems and Solutions" (1992) 14 Adelaide Law Review 245-283.
- "The Effect of the Dismissal of a Creditor's Petition on an Interim Receivership" (1990) 18 Australian Business Law Review 389-394.
- "The Moratorium Provisions of the Bankruptcy Act" (1990) 20 Queensland Law Society Journal 233-237.

## Editorial Work

Andrew has been, since 2005, Commonwealth Editor for Gore-Browne on Companies (Jordans) and is the former editor of the Insolvency Law Journal, a journal which he founded in 1993. He is a member of the editorial boards of International Insolvency Review and Insolvency Law Journal and was a member of the editorial board for the Insolvency Lawyer.

## Judicial Citations

Many of Andrew's published works have been cited in superior courts in the England and Wales, Scotland, Australia, Canada, New Zealand, South Africa, Singapore, Hong Kong and Samoa.

## Examples of appellate cases that have cited his work are:

### Privy Council :

- Countrywide Banking Corporation Ltd v Dean [1998] BCC 105 at 112.

### High Court of Australia:

- Commissioner of Taxation v Linter Textiles Australia Ltd [2005] HCA 20 at [246]
- Sons of Gwalia Ltd v Margaretic [2007] HCA 1 at [57]
- David Grant & Co Pty Ltd v Westpac Banking Corp (1995) 13 ACLC 1572 at 1580.
- Air Services Australia v Ferrier (1996) 21 ACSR 1 at 34.

**Supreme Court of New Zealand:**

- Mana Property Trustee Ltd v James Development Ltd [2010] NZSC 124 at [10]

**Scottish Court of Session (Inner House):**

- McGruther v James Scott Ltd 2004 S.C. 514 at 518 (para 9)

**Supreme Court of Appeal in South Africa:**

- Cooper v Merchant Trade Finance Ltd 2000 (3) SA 1009.

**Court of Appeal of New Zealand:**

- Dunphy and Shephard v Sleepyhead Manufacturing Co Ltd [2007] NZCA 241 at [22].

**Court of Appeal of Singapore:**

- Pacific Recreation Pte Ltd v S Y Technology Inc [2008] SGCA 1 at [19]
- Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International, Singapore Branch) v Jurong Technologies Industrial Corp Ltd (under judicial management) – [2011] SGCA 48 at para 47.
- The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal – [2012] SGCA 9 at [76]

**Hong Kong Court of Final Appeal:**

- Nam Tai Electronics Inc v Price Waterhouse Coopers [2008] HKCFA FACV No. 1 at [68].

**Hong Kong Court of Appeal:**

- Moulin Global Eyecare Holdings Ltd v Lee [2012] HKCA 537 at [32].

**New South Wales Court of Appeal:**

- Distinctive FX 9 Pty Limited v Statewide Developments Pty Limited [2012] NSWCA 393 at [12].
- Hall v Poolman [2009] NSWCA 64 at [144], [145].
- Fuji Xerox Australia Pty Ltd v Tolcher [2004] NSWCA 284 at [14]
- Keith William Skinner v Jeogla Pty Ltd & ors [2001] NSWCA 15 at [20]
- Helou v Mulligan Pty Ltd [2003] NSWCA 92 at [15] and [29]
- Deputy Commissioner of Taxation v Dick [2007] NSWCA 190 at [87].
- BP Australia Ltd v Brown [2003] NSWCA 216 at [92] and [108].
- Keith Smith East West Transport Pty Ltd v ATO [2002] NSWCA 264 at [33]
- Kirwan v Cresvale Far East Ltd [2002] NSWCA 395 at [130].

**Victorian Court of Appeal:**

- Dye & Co v Peninsula Hotels Pty Ltd [1999] 17 ACLC 954 at [31]
- McKern & Ors v The Minister administering the Mining Act 1978 (WA) [2010] VSCA 140 at [105].

**Western Australia Court of Appeal:**

- Westpac Banking Corporation v The Bell Group Ltd (in liq) (No3) [2012] WASCA 157 at [772] and [793].
- Boys & Ors v Peter Raymond Quigley (As Receiver and Manager of Geneva Finance Ltd) [2002] WASCA 99

**Queensland Court of Appeal:**

- Mier & Jonsson v F N Management P/L & Ors [2005] KCA 408 at [15].
- Elfic Ltd & Ors v Macks & Ors [2001] KCA 219 at [138].

**Full Court of the Federal Court of Australia:**

- Capital Finance Australia Ltd v Tolcher [2007] FCFAC 185
- Lawman v Queensland Building Services Authority [1999] FCA 1781 at [23].

**Examples of cases at first instance (in superior courts) that have cited Andrew's work are:**

**High Court of England and Wales:**

- Rawnsley v Weatherall Green and Smith North Ltd [2009] EWHC 2482 (Ch) at [71]-[72].
- Vertex Trading SARL v Infinity Holdings [2009] EWHC 461 (Ch) at [8].
- Re OMP Leisure Ltd [2008] BCC 67 at 68.
- Re Cheyne Finance plc [2007] EWHC 2402 (Ch) at [38]
- Re Collins & Aikman Europe SA Collins [2006] EWHC 1343 (Ch) at [15].
- Unadkat and Co (Accountants) Ltd v Bhardwaj [2006] EWHC 2785 (Ch); [2007] BCC 452 at [7], [8];
- Re Prestige Grindings Ltd [2005] EWHC 3076 (Ch); [2006] 1 BCLC 440 at [16]

- Colt Telecom Group Plc, Re [2002] EWHC 2815 (Ch) at [66]-[67].

#### Scottish Court of Session (Outer House):

- MacPlant services Ltd v Contract Lifting Services (Scotland) Ltd [2008] CSOH 158; 2009 S.C. 125 at [64].
- Eastford Ltd v Gillespie [2010] CSOH 132 at [22].

#### High Court of New Zealand:

- Sleepyhead Manufacturing Co Ltd v Dunphy and Shephard [2006] NZHC 125 at [29]
- Orion International Limited (in liq) v Horne [2009] NZHC 2458 at [16] and [24].
- Petterson v Gothard no.3 [2012] NZHC 666 at [52]
- Walker v Gibbston Water Services Limited [2013] NZHC 2933 at [81]

#### Ontario Superior Court of Justice:

- Re Air Canada (2004) Can LII 34416; 2 C.B.R. (5th) 4 at [10].
- Millgate Financial Corp Ltd v BCED Holdings Ltd (2003) Can LII 39497; 47 C.B.R. (4th) 278 at [88].

#### Supreme Court of Singapore – High Court:

- Fustar Chemicals Ltd v Liquidator of Fustar Chemicals Pte Ltd [2008] SGHC 198 at [35].
- Jurong Shipyards Pte Ltd v BNP Paribas [2008] SGHC 86 at [37]
- Deldar Tony Singh and another v Rajinder Singh and others [2012] SGHC 268 at [19].

#### Hong Kong Court of First Instance:

- Elite Construction Company v City Top Engineering Ltd (2006) HKCFI 344 at [24].
- Re Orient Power Holdings Ltd [2007] HKCFI HCCW 191/2007; [2009] BCC 452 at [26].
- Agifel International Ltd v James Wardell [2003] HKCFI 166 at [18]
- Re Pinemill Co Ltd v Lai Hong San [2002] HKCFI 221 at [60] and [63]
- Re Universal Dockyard Ltd [2003] HKCFI 524 HCCW000663 at [25].
- Re Cheery City Contractors Ltd [2004] HKCFI 336 HCCW000896 at [40];
- Re Jinro (HK) International Ltd [2003] HKCFI 444 at [69]
- Cargo Services Ltd v Hundred Honest Ltd [2003] HKCFI 823 at [124].

#### Federal Court of Australia:

- Re United Investments Trust (in liq) [2013] FCA 635 at [24].
- Kazar, in the matter of Frontier Architects Pty Limited (in liq) [2010] FCA 1381 at [17].
- Gould v Companies Auditors and Liquidators Disciplinary Board [2009] FCA 475 at [209].
- J P Morgan Portfolio Services Limited v Deloitte Touche Tohmatsu [2008] FCA 433 at [7].
- Highstoke Pty Ltd v Hayes Knight GTO Pty Ltd [2007] FCA 13 at [59].
- McLellan, in the matter of The Stake Man Pty Ltd v Carroll [2009] FCA 1415 at [106].
- Pollak v Lombe [2004] FCA 362 at [14]
- Motor Group Australia Pty Limited (Administrators Appointed) (ACN 101 051 101) [2005] FCA 985 at [11]
- Re Irene Aeckerle; Ex p Ci nco Holdings Pty Ltd [1996] FCA 933
- Condon v Watson [2009] FCA 11 at [68].

#### New South Wales Supreme Court:

- Re SCW Pty Ltd [2013] NSWSC 578 at [12].
- Jones v Hirst [2013] NSWSC 163
- In the matter of Employ (No 96) Pty Limited (in liquidation) [2013] NSWSC 61 at para 62.
- In the matter of Free Wesleyan Church of Tonga in Australia Inc (administrators appointed) Phoenix Lacquers & Paints Pty Limited v Free Wesleyan Church of Tonga in Australia Inc (administrators appointed) & Ors [2012] NSWSC 214 at [18].
- Campbell Street Theatre Pty Ltd (receiver and manager appointed) (in liquidation) & Ors v Commercial Mortgage Trade Pty Ltd & Anor [2012] NSWSC 669 at [16].
- Cussen v Sultan [2009] NSWSC 1114 at [19].
- Re Mendarma Pty Ltd (No2) [2007] NSWSC 99 at [26]
- BL GY International Co Ltd v Hytec Electronics Pty Ltd (in liq) [2008] NSWSC 856 at [46]
- Lewis v Doran [2004] NSWSC 608 at [101]
- The Application of Youris and Godfrey ([2004] NSWSC 384 at para 13).
- Tolcher v National Australia Bank [2004] NSWSC 6 at [14]
- Macks v Valamios Produce [2003] NSWSC 993 at [14]
- Melliush v Underwood Development Pty Ltd [2004] NSWSC 429 at [15].

- Re HIH Casualty Pty Ltd (2002) NSWSC 1036 at [10]
- Anderson v Palmer (2002) NSWSC 192 at [33]
- Perpetual Nominees v Masri Apartments [2004] NSWSC 551 at [56]
- Deputy Commissioner of Taxation v Lencal Excavations Pty Ltd (in liq) [2004] NSWSC 783 at [20]
- Re ACN 003 671 387 [2004] NSWSC 368 at [39]
- Allstate Exploration v Batepro ([2004] NSWSC 261 at [22]
- Brightwell v RFB Holdings Ltd (2003) NSWSC 7 at [61]
- Australian Securities and Investments Commission v Rich [2005] NSWSC 417 at [270].
- White v Baycorp Advantage Business Information Services Ltd [2006] NSWSC 441 at [116].
- Green v Chiswell Furniture Pty Ltd [1999] NSWSC 608 at [14]
- Cashflow Finance v Westpac COD Factors [1999] NSWSC 671 at [574]
- Brown v DML Resources No.2 [2001] NSWSC 590 at [29]
- Sutherland v Dexion Pty Ltd (2003) NSWSC 24 at [24].
- John Raymond Gibbons & Anor as official liquidators of Deemah Marble & Granite Pty Ltd (in liq) v Deputy Commissioner of Taxation [2003] NSWSC 936 at [20]

#### Supreme Court of Victoria:

- Australian Securities and Investments Commission v Plymin [2003] VSC 123 at [370]
- Peter Pan Management Pty Ltd (in liq.) v Capital Finance Corporation (Australia) Pty Ltd [2001] VSC 227 at [44]
- Empire (Aust) Nominees Pty Ltd v Vince (2000) 35 ACSR 167 at 170 Supreme Court of Western Australia
- Bell Group Ltd v Westpac Banking Corp (No 9) [2009] WASC 239 at [1061] and [1069]
- Professional Services of Australia v Computing and Tax Pty Ltd [2010] WASC 38 at [81].
- Low v Performance Finance Ltd [2004] WASC 80 at [31]
- McMaster v Eznut Pty Ltd [2006] WASC 109 at [125] and [133]
- Professional Services of Australia v Computing and Tax Pty Ltd [2010] WASC 38 at [81].
- Khoury v Rosemist Holdings Pty Ltd [2003] WASC 228 at para 15
- CLC Corporation v Read [2000] WASC 109 at para 24. Supreme Court of South Australia
- R v Jackson [2005] SASC 365 at [7].
- Mills v Sheahan [2006] SASC 162 at [53] and [55].
- Davies v Chicago Boot Co Pty Ltd [2011] SASC 27 at [14]

#### Supreme Court of Queensland:

- McDonald v. Dare [2001] QSC 405 at para 32

#### Supreme Court of Samoa

- Ting-Foong Fang v Amazing International Co Ltd [2009] WSSC 118.