



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commissioner of Taxation v Bruton Holdings Pty Ltd (in liq) - ss449E & 504(1) *Corporations Act* 2001 (Cth) - ss21 & 23 *Federal Court of Australia Act* 1976 - indemnification for costs (B)

Anderson Formrite Pty Ltd v Baulderstone Pty Ltd (No 8) - Costs (I, C)

RCI Pty Ltd v Commissioner of Taxation - *Income Tax Assessment Act* 1936 (Cth) - capital gains tax - Part IVA schemes (B)

Acohs Pty Ltd v Ucorp Pty Ltd (No 4) - Costs - indemnity costs - offer of compromise - undertakings as to damages (I, B, C)

Chubs Constructions Pty Ltd v Chamma (No 2) - *Work Injury Management & Workers Compensation Act* 1998 (NSW) - clauses 91 & 93 *Workers Compensation Regulation* 2003 - costs (I)

Wakim v Coleman - - Time for service of originating process - Uniform Civil Procedure Rule 6.2(4) (I)

Dense Medium Separation Powders Pty Ltd trading as DMS Powders v Gondwana Chemicals Pty Ltd & Anor - Subpoenas - defendants seeking order that subpoena issued on behalf of plaintiff to defendants' insurance broker be set aside (I, B, C)



A F C Holdings Pty Ltd v Shiprock Holdings Pty Ltd - Contracts for sale of land - goods & services tax (B)

PN v Department of Education and Training (GD) - *Privacy & Personal Information Protection Act 1998* (NSW) - communications about employee to insurer & rehabilitation provider (I)

Altaranesi v NSW Self Insurance Corporation - *Freedom of Information Act 1989* (NSW) - workers compensation claim files - adequacy of search - jurisdiction (I)

Tamborine Mountain Progress Association Inc v Scenic Rim Regional Council & Anor - *Integrated Planning Act 1997* (Qld) - rezoning of land for proposed tourist facility - application for leave to appeal refused (C)

Such v Police - Traffic offences - appeals against conviction for exceeding speed limit - certificate of accuracy for laser speed gun (I)

Lyons v Labathas, Sports Centres Australia Pty Ltd t/as Canberra International Sports & Aquatic Centre (CISAC) & The Club Group Pty Ltd - Joinder - personal injuries (I)

Kalis v Waltham - Joinder - motor vehicle personal injury claim - plaintiff injured in subsequent motor vehicle collision (I)

Summaries with links (5 minute read)

Tuesday 7 September 2010

Commissioner of Taxation v Bruton Holdings Pty Limited (in liq) [2010] FCA 978

Federal Court of Australia

Graham J (in Sydney)

ss449E & 504(1) *Corporations Act 2001* (Cth) - *Federal Court of Australia Act 1976* ss21 & 23 - whether corporate trustee in liquidation entitled to indemnification by exoneration or recoupment out of trust assets for costs incurred after it became a bare trustee - answer 'no.'

[Bruton Holdings](#) (B)



[Bruton Holdings](#) - decision High Court of Australia 26 August 2009; see 'Benchmark' B & IBC Friday 28 August 2009 - *Taxation Administration Act 1953* (Cth) - for decision appealed from, see 'Benchmark' B & IBC Thursday 4 December 2008 & link below - shortly before creditors of appellant company in voluntary administration resolved that the company be wound up, first respondent Commissioner issued assessment assessing company to tax of more than \$7.7 million - after the passing of resolution for winding up, Commissioner lodged proof of debt in the winding up, but also issued notice under s260-5 in Sched 1 to the Act - the Notice required second respondent, a firm of solicitors, to pay to Commissioner money appellant had deposited with that firm - whether solicitors were obliged to pay Commissioner the amount demanded by the Notice from the sum standing to the credit of the company in the firm's trust bank account - "attachment", "property" - primary judge had granted declaration that the Notice was void - Full Court of the Federal Court allowed appeal by Commissioner - company's appeal from Full Court of the Federal Court allowed;

[Bruton Holdings](#) - decision Full Court of the Federal Court 1 December 2008 - trust assets in a winding up - insolvent corporate trustee with tax debts - trust deed recited that settlor wished to establish trust "for the purpose of enabling & facilitating the promotion, advancement and encouragement of purposes which are charitable as that term is understood at law at or on behalf of any public benevolent organization or institution in Australia in general and for such other public charitable purposes in Australia as shall hereinafter appear" - appeal allowed;

[Bruton Holdings](#) - Federal Court decision 30 May 2007

Anderson Formrite Pty Ltd v Baulderstone Pty Ltd (No 8) [2010] FCA 973

Federal Court of Australia

Graham J (in Sydney)

Costs - whether global assessment or issue by issue approach appropriate - Calderbank offer - for decision 25 August 2010, see 'Benchmark' I, C & IBC Monday 30 August 2010 & link below.

[Anderson Formrite](#) (I, C)

[Anderson Formrite](#) - decision 25 August 2010 - Trade Practices Act 1974 (Cth) - torts - conversion - contracts - dispute relating to formwork subcontract - building site at St Georges Terrace, Perth on which high-rise commercial building was constructed - 'Woodside Building' - respondent was head contractor - judgment for applicant in sum of \$4,611,317.09, inclusive of a lump sum of \$1,965,000.76 in lieu of interest up to judgment.

RCI Pty Ltd v Commissioner of Taxation [2010] FCA 939

Federal Court of Australia

Stone J (in Sydney)

Income Tax Assessment Act 1936 (Cth) - capital gains tax - Part IVA schemes - whether applicant entered into scheme for dominant purpose of obtaining a tax benefit - application dismissed.

[RCI](#) (B)



Acohs Pty Ltd v Ucorp Pty Ltd (No 4) [2010] FCA 956

Federal Court of Australia

Jessup J (in Melbourne)

Costs - indemnity costs - offer of compromise - undertakings as to damages - whether respondents entitled to compensation for damage suffered as a result of complying with undertakings & order - applicant to pay first respondent Ucorp sum of \$38,322.84 by way of compensation for the steps which it took in compliance with its obligations under interlocutory undertakings & order.

[Acohs](#) (I, B, C)

[Acohs](#) - decision 10 June 2010: see 'Benchmark' Tuesday 15 June 2010 - *Copyright Act 1968* (Cth) - occupational health & safety - copyright in relation to particular kinds of electronic information sheets which must be prepared & provided in relation to hazardous substances & dangerous goods - Material Safety Data Sheet ("MSDS") - applicant suing first respondent & second respondent, the director of first respondent for alleged infringement of copyright - whether an electronic database can be regarded as literary work - application dismissed - United Kingdom & Australian case law considered - detailed analysis of occupational health and safety regulations, both federal and in all states and territories.

Chubs Constructions Pty Ltd v Chamma (No 2) [2010] NSWCA 225

Court of Appeal of New South Wales

Beazley & McColl JA; Mathews AJA

Work Injury Management & Workers Compensation Act 1998 (NSW) - whether s346 governs costs in relation to an appeal against costs - *Workers Compensation Regulation 2003* clauses 91 & 93 - ancillary proceeding - each party to pay its & his own costs of the appeal.

[Chubs Constructions](#) (I)

[Chamma](#) - decision 7 May 2008; see 'Benchmark' I & IBC Monday 12 May 2008 - costs - whether to order indemnity costs following failure of offeree to accept Calderbank offer where offeror obtains better result at hearing - whether failure to accept unreasonable - see link below for substantive judgment 5 March, 2008;

[Chamma](#) - judgment 5.3.08 -personal injury - fall on building site.

Wakim v Coleman [2010] NSWCA 221

Court of Appeal of New South Wales

Giles, Hodgson & Macfarlan JJA

Application for leave to appeal &, if leave granted, appeal from decision dismissing proceedings in which applicant sought an award of damages for professional negligence against defendant lawyers - injury suffered at work - in relation to application for leave to appeal, challenge to primary judge's conclusion that originating process was not served within the period for which



Uniform Civil Procedure Rule 6.2(4) stated that it was valid for service - whether primary judge should have extended period of validity for service - application for leave to appeal dismissed.

[Wakim](#) (I)

[Wakim](#) - decision 19 December 2008.

Dense Medium Separation Powders Pty Ltd trading as DMS Powders v Gondwana Chemicals Pty Ltd & Anor [2010] NSWSC 994

Supreme Court of New South Wales

Einstein J

Subpoenas - plaintiff alleging defendants conducted certain importing activities in breach of exclusive agency agreement between plaintiff & defendants - defendants seeking order that subpoena issued on behalf of plaintiff to defendants' insurance broker be set aside - defendant's application dismissed - an interesting review of principles & Australian case law.

[Dense Medium Separation Powders](#) (I, B, C)

A F C Holdings Pty Ltd v Shiprock Holdings Pty Ltd [2010] NSWSC 985

Supreme Court of New South Wales

Ball J

Contracts for sale of land - goods & services tax - whether purchaser must, in addition to paying amount specified in the contract as the purchase price, reimburse vendor for GST payable by it - construction of special condition in contract - defendant vendor contending special condition required plaintiff purchaser to pay, in addition to purchase price, the amount of GST payable by defendant in respect of supply by it under the sale contract - plaintiff contending special condition simply recorded fact that amount payable by purchaser included an amount payable by defendant in respect of GST - defendant's interpretation preferred - application dismissed.

[A F C Holdings](#) (B)

PN v Department of Education and Training (GD) [2010] NSWADTAP 59

Administrative Decisions Tribunal of New South Wales - Appeal Panel - Internal

O'Connor K - DCJ (President); Fitzgerald K - Judicial Member; Bolt M - Non-Judicial Member

Privacy & Personal Information Protection Act 1998 (NSW) - employee of public sector agency - communications about employee to insurer & rehabilitation provider - whether Information Protection Principles contravened - appeal dismissed.

[PN](#) (I)

[PN](#) - decision 23 November 2009

**Altaranesi v NSW Self Insurance Corporation [2010] NSWADT 217**

Administrative Decisions Tribunal of New South Wales

Molony P - Judicial Member

Freedom of Information Act 1989 (NSW) - access to workers compensation claim files, including medical reports & exchanges between insurer, employer & doctors - adequacy of search - jurisdiction.

[Altaranesi \(I\)](#)

Tamborine Mountain Progress Association Inc v Scenic Rim Regional Council & Anor [2010]

QCA 237

Court of Appeal of Queensland

McMurdo P, Muir & Fraser JJA

Integrated Planning Act 1997 (Qld) - rezoning of land for proposed tourist facility - applicant sought leave to appeal against decision of Planning & Environment Court - application for leave to appeal refused.

[Tamborine Mountain Progress Association \(C\)](#)

[Tamborine Mountain Progress Association](#) - [2009] QPEC 98 - decision Planning & Environment Court 20

October 2009 - declarations sought that three purported amendments in 2004-2006 were beyond Council's power & of no effect; that the approval of the plan of development approved in early 2008 as being 'generally in accordance with' the plan of development approved at time of original rezoning could not, in truth, be described in that way; & that the reconfiguration or subdivision approval was also unlawful

Such v Police [2010] SASC 274

Supreme Court of South Australia

Anderson J

Traffic offences - appeals against conviction for exceeding speed limit - offence detected by laser speed gun - certificate of accuracy for laser speed gun - onus on appellant to prove on balance of probabilities that the laser speed gun was inaccurate - no error on part of magistrate - appeal dismissed.

[Such \(I\)](#)



Lyons v Labathas, Sports Centres Australia Pty Ltd t/as Canberra International Sports & Aquatic Centre (CISAC) & The Club Group Pty Ltd [2010] ACTSC 93

Supreme Court of the Australian Capital Territory

Gray J

Joinder - personal injuries - appeal from interlocutory decision of Master refusing third defendant's application to set aside order made by acting Deputy Registrar - order of acting Deputy Registrar allowing joinder of second & third defendants - appeal dismissed except as to order as to costs.

[Lyons \(I\)](#)

[Labathas](#) - decision 27 March 2009; see 'Benchmark' I & IBC Tuesday 31 March 2009 - joinder - personal injuries - plaintiff alleging back injury at gymnasium - plaintiff alleging personal trainer manipulated back - joined defendant not served with joinder application - whether joinder a nullity - whether power in court to treat as irregularity - limitation period expiring subsequent to joinder - joinder declared valid.

Kalis v Waltham [2010] ACTSC 94

Supreme Court of the Australian Capital Territory

Master Harper

Joinder - motor vehicle personal injury claim - plaintiff injured in subsequent motor vehicle collision - application to join proposed second defendant - same insurer - joinder ordered - removal of proceeding from Magistrates Court.

[Kalis \(I\)](#)

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