



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ovens v Civil Aviation Safety Authority - Air navigation safety - private pilot's licence - "Protocol for Type1 Diabetic Pilot Applicants" published by CASA - decision of Administrative Appeals Tribunal set aside & matter remitted (I)

Allianz Australia Insurance Ltd v Roads and Traffic Authority of New South Wales; Kelly v Roads and Traffic Authority of New South Wales - Personal injuries - motor accident - s43A *Civil Liability Act* 2002 (NSW) - appeals dismissed (I)

Newton v Equititrust Ltd - *Contracts Review Act* 1980 (NSW) - loan agreements & registered mortgage (B)

Ambridge Investments Pty Ltd (in liq) (Recvr app'td) v Baker & Ors (No 3) - Application for release from implied undertaking not to use documents & evidence produced by a party in the course of a trial (I, B, C)

Kermani v Westpac Banking Corporation - Guarantees - abuse of process (B)

Smeaton v Victorian Workcover Authority (General) - *Freedom of Information Act* 1982 - exempt documents - public interest override (I, B, C)



Thiess & Anor v Queensland Power Company Ltd & Ors - *Commercial Arbitration Act 1990 (Qld)*
- royalty agreement - application for stay refused (I, B, C)

Last v Workcover Corporation - *Workers Rehabilitation & Compensation Act 1986 (SA)* - injury sustained while undertaking rehabilitation program (I)

Duncan & Ors v IBEB Pty Ltd & Anor - *Trade Practices Act 1974 (Cth)* - *Fair Trading Act 1987 (NSW)* - purchase of newsagency business from first & second defendants (I, B)



Summaries with links (5 minute read)

Monday 13 December, 2010

Ovens v Civil Aviation Safety Authority [2010] FCA 1354

Federal Court of Australia

Bennett J (in Sydney)

Air navigation safety - private pilot's licence - appeal from Administrative Appeals Tribunal - condition imposed by the Civil Aviation Safety Authority on applicant's licence that he could only fly with a safety pilot - denial of procedural fairness - applicant had been denied the opportunity to present his case on the applicability of the Published Protocol entitled "Protocol for Type1 Diabetic Pilot Applicants" published by CASA - decision of AAT set aside & matter remitted.

[Ovens \(I\)](#)

Allianz Australia Insurance Ltd v Roads & Traffic Authority of New South Wales; Kelly v Roads & Traffic Authority of New South Wales [2010] NSWCA 328

Court of Appeal of New South Wales

Giles & McColl JJA; Sackville AJA

Personal injuries - motor accident - car aquaplaned - "Water over road" sign placed 924 metres east of water hazard where accident occurred - consideration of *Wednesbury* unreasonableness in negligence context - s43A *Civil Liability Act* 2002 (NSW) - consideration of "so unreasonable that no authority having the special statutory power could properly consider the act or omission to be a reasonable exercise of, or failure to exercise, its power" - appeals dismissed.

[Allianz Australia Insurance \(I\)](#)

[Civil Liability Act 2002 - Sect 43A](#) headed "Proceedings against public or other authorities for the exercise of special statutory powers";

[Rickard](#) - decision 23 October 2009: see 'Benchmark' I & IBC Monday 26 October 2009 - personal injuries - negligence - nuisance - determination of liability - fatal motor accident - water flowing across Riverina Highway caused one of vehicles involved to "aquaplane" so that driver, who was killed in the accident, lost control, drove onto wrong side of road & collided with small truck being driven by plaintiff Mr Rickard - claim against CTP insurer of deceased driver - liability of RTA - occupiers liability - public nuisance - duty owed by landowners to users of adjoining highway - causation - *Compensation to Relatives Act* 1897 claim - detailed analysis of s43A *Civil Liability Act* 2002 (NSW) - for orders made, see paras. 209-213 of judgment - damages to be assessed - a lengthy decision with detailed examination of legislation, text & case law;



[Rickard](#) - decision 26 February 2010: see 'Benchmark' I & IBC Tuesday 2 March 2010 - costs - motor vehicle accident - alternative claims against more than one defendant - action succeeding against one defendant only - Bullock & Sanderson orders.

Newton v Equititrust Ltd [2010] NSWSC 1075

Supreme Court of New South Wales

Hall J

Contracts Review Act 1980 (NSW) - loan agreements & registered mortgage - evidence did not disclose an arguable case in relation to the loan transactions based on unconscionability principles - detailed examination of Australian case law.

[Newton](#) (B)

Ambridge Investments Pty Ltd (in liq) (Recvr app'td) v Baker & Ors (No 3) [2010] VSC 545

Supreme Court of Victoria

Vickery J

Application for release from implied undertaking not to use documents & evidence produced by a party in the course of a trial - *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125 considered - consideration as to what may constitute "special circumstances" - application refused - an interesting decision with extensive consideration of the United Kingdom & Australian case law regarding legal obligation as to documents produced to a court under compulsion.

[Ambridge Investments](#) (I, B, C)

[Ambridge Investments](#) - decision 12 March 2010: see 'Benchmark' B, C & IBC Tuesday 16 March 2010 - building in Wellington Parade, East Melbourne - definition of "joint venture" - conduct giving rise to implied agreement of joint venture - equitable fiduciary obligations - *Statute of Frauds Instruments Act 1958* - no acquisition or disposition of land under joint venture agreement;

[Hearne](#) - decision High Court of Australia 6 August 2008: see 'Benchmark' Friday 8 August 2008 - production of documents - contempt - implied undertaking not to disclose documents filed in court until received in evidence - implied undertaking by corporate litigant not to use documents prepared by another party otherwise than for purpose of proceedings in which they were prepared - NSW Supreme Court proceedings, tort of nuisance - claim against Luna Park Sydney Pty Ltd & Metro Edgley Pty Ltd - whether a servant or agent of such a party into whose hands the documents come, & who is aware that the documents were prepared for legal proceedings, is to be liable as if he or she had personally given such an undertaking - if so, whether a wilful but not contumacious breach of that undertaking by that servant or agent is a 'criminal contempt' for purposes of s101(6) *Supreme Court Act 1970* - first appellant was managing director and chief executive officer of Luna Park Sydney Pty Ltd - appeal dismissed -detailed review of the United Kingdom & Australian case law relating to implied undertaking in joint judgment of Hayne, Heydon & Crennan JJ

**Kermani v Westpac Banking Corporation [2010] VSC 556**

Supreme Court of Victoria

Davies J

Guarantees - suit based on claims of illegality & public policy - defendant's application for an order dismissing or permanently staying the proceeding - proceeding should be permanently stayed as an abuse of process.

[Kermani](#) (B)

Smeaton v Victorian Workcover Authority (General) [2010] VCAT 1908

Victorian Civil & Administrative Tribunal

Member I. Proctor

Freedom of Information Act 1982 - exempt documents - s33 document affecting personal privacy - draft letter - s55: whether disclosure of one of documents would be reasonably likely to impair the ability of WorkCover to obtain similar information in the future - answer 'no' - legal professional privilege exemption - public interest override.

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

Thiess & Anor v Queensland Power Company Ltd & Ors [2010] QSC 461

Supreme Court of Queensland

Ann Lyons J

Commercial Arbitration Act 1990 (Qld) - respondents & applicants parties to a royalty agreement pursuant to which the applicants agreed to pay respondents royalty payments - dispute as to calculation & payment of royalties - applicants seeking that the respondents' proceedings be stayed & referred to arbitration - royalty deed imposes time limits in relation to a reference to arbitration - application for stay refused.

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

Last v Workcover Corporation [2010] SASC 338

Supreme Court of South Australia

Gray J

Workers Rehabilitation & Compensation Act 1986 (SA) - application for permission to appeal against decision of Full Bench of Workers Compensation Tribunal - issue as to whether reasonably arguable that worker entitled to income maintenance in relation to injury sustained while undertaking rehabilitation program - permission to appeal granted.

[Last](#) (I)



In the District Court of New South Wales...

Duncan & Ors v IBEB Pty Ltd & Anor [2010] NSWDC 275

District Court of New South Wales

Levy SC DCJ

Trade Practices Act 1974 (Cth) - Fair Trading Act 1987 (NSW) - plaintiffs had purchased newsagency business from first & second defendants - plaintiffs alleging misrepresentation of financial & trading position of the business - reliance - causation - breach of duty - measure of damages - whether a question of proportionate liability arose under Pt 4 *Civil Liability Act 2002* - verdict for plaintiffs against first & second defendants in sum of \$671,144.13.

[Duncan](#) (I, B)

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