



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Kevin Denlay v Commissioner of Taxation - Income Tax assessment - whether purported assessments made by Commissioner of tainted with jurisdictional error due to conscious maladministration of the Taxation Acts - application dismissed (I, B)

Mansour Taouk v Maroun Taouk & Anor (t/a E & MT Plumbing) - *Workers Compensation Act* 1987 (NSW) - leave to bring proceedings out of time - appeal dismissed (I)

Asim v Penrose & Anor - Personal injuries - motor accident - question as to whether taxi the culpable taxi - standard of proof - contributory negligence (I)

Samootin v Shea - *Bankruptcy Act* 1966 (Cth) - effect of vesting on standing to bring proceedings (B)

Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd & Ors - *Payroll Tax Act* 1971 (NSW) & *Taxation Administration Act* 1996 (NSW) as in force at relevant times between 1 July 2001 & 30 June 2007 - grouping & de-grouping provisions (B, C)

Kheirs Financial Services Pty Ltd & Anor v Aussie Home Loans Pty Ltd & Anor - Costs - appeals concerning orders for costs made in respect of third party & fourth party proceedings (I, B, C)



Commissioner of State Revenue v STIC Australia Pty Ltd & Anor – s85 *Duties Act* 2000 (Vic) - scope of dispensing power - “just & reasonable” exemption (B)

Sharpe v Town of Vincent - Planning & development - house on local government inventory of buildings of cultural heritage significance (C)

Partridge v Hobart City Council - Personal injuries - occupier’s liability - slip & fall (I)

Preston v Colquhoun - Professional negligence - claim in contract & tort against solicitors - judgment for defendants (I)

Brandeaux Advisers (UK) Ltd & Ors v Chadwick - U.K. decision - employment law - claimant companies seeking order for delivery up of confidential information by defendant former employee (I, B, C)



Summaries with links (5 minute read)

Christmas Eve, Friday 24 December 2010

Kevin Denlay v Commissioner of Taxation [2010] FCA 1434

Federal Court of Australia

Logan J (in Brisbane)

Income Tax Assessment Act 1936 (Cth) - application under s39B(1) *Judiciary Act 1903* (Cth) - whether purported assessments made by Commissioner tainted with jurisdictional error due to conscious maladministration of the 1936 Act, *Income Tax Assessment Act 1997* (Cth) & *Taxation Administration Act 1953* (Cth) - application dismissed - taxation appeal to be listed for hearing - detailed examination of text & case law from the United Kingdom, Australia, United States of America & New Zealand, as to where information obtained from third party in circumstances where third party has illegally obtained that information - an interesting decision.

[Kevin Denlay](#) (I, B)

Mansour Taouk v Maroun Taouk & Anor (t/a E & MT Plumbing)[2010] NSWCA 372

Court of Appeal of New South Wales

Giles JA; Handley & Sackville AJJA

Workers Compensation Act 1987 (NSW) - leave of the Court required for proceedings brought more than three years after date the injury was received - inability of respondents to pursue cross-claim for contribution against third party because limitation period had expired - whether primary judge was correct in finding that respondent had been prejudiced, given that respondent had made no claim for indemnity against third party under s151Z(1)(d) - appeal dismissed.

[Mansour Taouk](#) (I)

Asim v Penrose & Anor [2010] NSWCA 366

Court of Appeal of New South Wales

Tobias, Macfarlan & Young JJA

Personal injuries - motor accident - onus on Nominal Defendant to establish taxi was culpable taxi - standard of proof - contributory negligence - first respondent's cross-appeal allowed in part - verdict in favour of cross- appellant against second cross-respondent with damages to be assessed - verdict in favour of appellant against first respondent.



Asim (I)

Penrose - decision 12 November 2009: see 'Benchmark' I & IBC Monday 16 November 2009 - motor accident - plaintiff effectively rendered tetraplegic - plaintiff attempting to get into taxi when it drove away; he became attached to the taxi & was dragged for over 300 metres - whether on balance of probabilities, the taxi owned at time by second defendant was the taxi involved in the accident - *Briginshaw v Briginshaw* (1938) 60 CLR 336 - whether contributory negligence should be found against plaintiff - plaintiff's level of contributory negligence assessed at 10% - plaintiff to have Bullock order in respect of first defendant's costs - verdict for plaintiff against second defendant, with damages to be assessed - verdict for first defendant.

Samootin v Shea [2010] NSWCA 371

Court of Appeal of New South Wales

Beazley, Hodgson & Campbell JJA

Bankruptcy Act 1966 (Cth) - administration of property - effect of bankruptcy on antecedent transactions - effect of vesting on standing to bring proceedings - effect of discharge on standing - detailed examination of the United Kingdom & Australian case law.

Samootin (B)

Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd & Ors [2010] NSWCA 326

Court of Appeal of New South Wales

Giles JA & Macfarlan JJA; Handley AJA

Payroll Tax Act 1971 (NSW) & *Taxation Administration Act* 1996 (NSW) as in force at relevant times between 1 July 2001 & 30 June 2007 - grouping & de-grouping provisions - tax threshold - appeal allowed.

Tasty Chicks (B, C)

Tasty Chicks - decision 25 September 2009: see 'Benchmark' B & IBC Monday 28 September 2009 - pay-roll tax - Chief Commissioner had grouped a partnership with first plaintiff, second plaintiff & third plaintiff companies, for the purposes of now repealed *Pay-roll Tax Act* 1971 (NSW) & for purposes of *Taxation Administration Act* 1996 (Cth) - Chief Commissioner's decisions replaced by decision that prior to *Pay-roll Tax Legislation Amendment (Avoidance) Act* 2002 service providers did not form part of a group & by a decision that following the amendments the service providers be determined not to be members of a group.

Kheirs Financial Services Pty Ltd & Anor v Aussie Home Loans Pty Ltd & Anor [2010] VSCA 355

Court of Appeal of Victoria

Maxwell P, Tate JA & Habersberger AJA

Costs - appeals concerning orders for costs made in respect of third party & fourth party proceedings - Bullock orders - extensive consideration of text & case law from the United

Kingdom & Australia - principles to be derived from the authorities set out at para. 28 of joint judgment.

[Kheirs Financial Services](#) (I, B, C)

[Solak](#)- decision 17 March 2009: see 'Benchmark' Thursday 19 March 2009 - *Transfer of Land Act* 1958 (Vic) - indefeasibility of title - mortgage - registration of forged instrument - mortgagee innocent of fraud - whether indefeasibility extends to obligation contained in loan agreement - apportionment of liability between concurrent wrongdoers - whether apportionable claim.

Commissioner of State Revenue v STIC Australia Pty Ltd & Anor [2010] VSC 608

Supreme Court of Victoria

Davies J

Duties Act 2000 (Vic) - scope of dispensing power - "just & reasonable" exemption in s85 - leave to appeal refused.

[STIC Australia](#) (B)

Sharpe v Town of Vincent [2010] WASC 391

Supreme Court of Western Australia

Jenkins J

Planning & development - refusal of application for approval to demolish house on local government inventory of buildings of cultural heritage significance - appeal from decision of State Administrative Tribunal dismissed.

[Sharpe](#) (C)

Partridge v Hobart City Council [2010] TASSC 62

Supreme Court of Tasmania

Porter J

Personal injuries - occupiers' liability - slip & fall on external stairway to offices - contributory negligence assessed at twenty percent - assessment of damages.

[Partridge](#) (I)

In the District Court of New South Wales...

Preston v Colquhoun [2010] NSWDC 281

District Court of New South Wales

Johnstone DCJ



Professional negligence - claim in contract & tort against solicitors - allegation of failure to properly investigate & advise in connection with certain civil litigation - claim for refund of practitioner/client legal fees - judgment for defendants.

[Preston](#) (I)

From the United Kingdom...

Brandeaux Advisers (UK) Ltd & Ors v Chadwick [2010] EWHC 3241 (QB)

High Court of England & Wales, Queen's Bench Division

Jack J

Employment law - claimant companies seeking order for delivery up of confidential information by defendant former employee - employee's duty of good faith - transfer of information to private email address - breach of employment contract.

[Brandeaux Advisers \(UK\)\[2010\] EWHC 3241 \(QB\)](#) (I, B, C)

And until Tuesday 1 February 2011

The Old Year

by

Henry Kendall

(b. 17 June 1867 in a tent at Grenfell goldfields, New South Wales

– d. 2 Sept 1922, Abbotsford, NSW)

It passed like the breath of the night-wind away,

It fled like a mist at the dawn of the day;

It lasted its moment, then backward was hurled,

Another increase to the age of the world.



It passed with its shadows, its smiles & its tears,
It passed as a stream to the ocean of years;
Years that were coming—were here—and are o'er,
The ages departed to visit no more.

It passed, but the bark on its billowy track
Leaves an impression on waters aback:
The glow of the gloaming remains on the sky,
Unwilling to leave us—unwilling to die.

It fled; but away & away in its wake
There lingers a something that time cannot break.
The past & the future are joined by a chain,
And memories live that must ever remain.

*from "Leaves from Australian Forests -
poetical works of Henry Kendall" (1869)*

Cicadas at Christmastime

A memory of a back verandah,
Mid-morning Christmas Day -
A small girl sits on a couch, smiling,
In her lap a box of dessert nougat, faux-Edwardian design,



And a story-book about a flying Edwardian nanny.

She's pleased as punch with her new-old, newly acquired booty.

The buffalo grass on the long back lawn spreads out before her,

The glare builds up in the hot bright sky,

& she can hear

Cicadas at Christmastime.

Now mangled by the renovations of later owners, the house survives.

The child is well into middle-age.

Gone is the novelty of Christmas customs;

Presents got or given are not remembered.

But thoughts of old-fashioned nougat,

And new-smelling story-books with flying nannies,

And buffalo grass in a bright hot glare,

Can revive the feeling of repleteness on that morning long ago;

& she can hear

Cicadas at Christmastime.

D.F.

From All of Us at 'Benchmark' -

To All our Readers

Our very best wishes for Christmas & the New Year



'Benchmark' will be taking a break in January 2011. This Christmas Eve edition will be our last bulletin for 2010. The first edition for 2011 will be dated Tuesday 1st February.

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