

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

David Cassaniti v Commissioner of Taxation - *Taxation Administration Act 1953* (Cth) - what constitutes the withholding of an amount from salary or wages paid to an individual as an employee under the Pay As You Go (PAYG) withholding system in Pt 2-5 of Sch 1 (B)

Patricia Cassaniti v Commissioner of Taxation - *Taxation Administration Act 1953* (Cth) - PAYG (B)

SNF (Australia) Pty Ltd v Commissioner of Taxation - Transfer pricing - *Income Tax Assessment Act 1936* (Cth) - application of Div. 13 of Pt III (B)

Brisbane Slipways Operations Pty Ltd v Pantaloni - *Admiralty Act 1988* (Cth) - constitutional law - actions in rem & in personam (C)

Verge v Devere Holdings Pty Ltd (No 4) - s120 *Bankruptcy Act 1966* (Cth) - undervalued transactions - onus of proof in relation to s120(6) (B)

Ahmed v Harbour Radio Pty Ltd - Defamation - *Limitation Act 1969* (NSW) - application for joinder of party to proceedings after expiration of limitation period - - defence of honest opinion (I)

Alstom Ltd & Ors v Sirakas - Substituted service - forum non conveniens (B)

Guppy v Victorian WorkCover Authority & Anor - *Accident Compensation Act 1985* (Vic) - whether loss of earning capacity that is the consequence of second injury such as to qualify the second injury as a 'serious' injury - appeal allowed (I)

Musija & Allianz Australia Workers' Compensation (Vic) Ltd v Kresa - s5 *Accident Compensation Act 1985* (Vic) - definition of "worker" - appeal dismissed (I)

DPP (Cth) v Morris; DPP (Cth) v Rae - Criminal law - sentencing appeal by DPP - company directors - appeal dismissed (I, B)

Cahir v Jamieson & Ors - Coroners - occupational health & safety - inquest - judicial review - error of law (I)

Ariss v Building Practitioners Board - *Building Act 1993* (Vic) - registration & regulation of building practitioners (C)

MC Property Investments Pty Ltd v Sunshine Coast Regional Council - *Integrated Planning Act 1997* (Qld) - Planning & Environment Court - application for leave to appeal refused (C)

Steicke v Donaldson Walsh Lawyers - Discovery of documents on a request for taxation (I)

Orr v State of Tasmania - reg13 *Workers Rehabilitation & Compensation Regulations 2001* (Tas) - costs (I)

Korda & Winterbottom as Receivers & Managers of Westpoint Corporation Pty Ltd (in liq) (receiver and managers app'd) & the companies listed in Schedule 1 v Silkchime Pty Ltd (receivers & managers app'd) - *Corporations Act 2001* (Cth) - application for directions under s424 - floating charge assets (B, C)

John Holland Pty Ltd v Australian Securities & Investments Commission - *Corporations Act 2001* (Cth) - plaintiff seeking order directing ASIC to re-register deregistered company - application granted (C)

Summaries with links (5 minute read)

Tuesday 29 June 2010

David Cassaniti v Commissioner of Taxation [2010] FCA 641

Federal Court of Australia

Edmonds J (in Sydney)

Taxation Administration Act 1953 (Cth) - what constitutes the withholding of an amount from salary or wages paid to an individual as an employee under the Pay As You Go (PAYG) withholding system in Pt 2-5 of Sch 1 - applicant is entitled to a credit by virtue of s18-15(1) of Sch 1 but only for the amounts actually withheld from payments of salary or wages actually paid to applicant - quantification of the credit on a notice of assessment is not a particular of the assessment and is not protected by s177(1) *Income Tax Assessment Act 1936 (Cth)*

[David Cassaniti](#) (B)

Patricia Cassaniti v Commissioner of Taxation [2010] FCA 642

Federal Court of Australia

Edmonds J (in Sydney)

Taxation Administration Act 1953 (Cth) - no salary or wages were paid to applicant from which amounts of PAYG withholding could be withheld - no amounts of PAYG withholding were withheld so as to entitle the applicant to a credit by virtue of s18-15(1) of Sch 1.

[Patricia Cassaniti](#) (B)

SNF (Australia) Pty Ltd v Commissioner of Taxation [2010] FCA 635

Federal Court of Australia

Middleton J (in Melbourne)

Transfer pricing - *Income Tax Assessment Act 1936 (Cth)* - application of Div. 13 of Pt III - taxpayer wholly owned subsidiary of company resident in France - taxpayer incorporated in Australia - purchase by taxpayer from related manufacturers of polyacrylamide products - whether taxpayer gave more than the 'arm's length consideration' as defined in s136AA(3)(d) in respect of those purchases - appeals allowed against respondent's objection decisions disallowing applicant's objection against income tax assessments - extensive consideration of United Kingdom & Australian case law.

[SNF \(Australia\)](#) (B)

Brisbane Slipways Operations Pty Ltd v Pantaloni [2010] FCA 654

Federal Court of Australia

Greenwood J (in Brisbane)

Admiralty Act 1988 (Cth) - constitutional law - jurisdiction of the Court - contract - ship 'Aremiti 4' a fifty metre high speed car passenger ferry of aluminium construction - plaintiff agreed to provide work & labour & supply materials in Brisbane - dispute over payments - actions *in rem* & *in personam* - joinder - freezing order - monies paid into court.

[Brisbane Slipways Operations](#) (C)

Verge v Devere Holdings Pty Ltd (No 4) [2010] FCA 653

Federal Court of Australia

McKerracher J (in Perth)

s120 *Bankruptcy Act 1966* (Cth) - undervalued transactions - onus of proof in relation to s120(6) - Trustees in Bankruptcy seeking to set aside land & share transactions - valuation - expert evidence - value of consideration - consideration must be given not promised - constitutional law - indefeasibility of title & *Bankruptcy Act* - inconsistency of laws pursuant to s109 *Constitution* - in the context of fraud - good faith - estoppel - fiduciary duty - obligation to account - equitable compensation.

[Verge](#) (B)

Ahmed v Harbour Radio Pty Ltd [2010] NSWSC 676

Supreme Court of New South Wales

Simpson J

Defamation - *Limitation Act 1969* (NSW) - application for joinder of party to proceedings after expiration of limitation period - s56A *Limitation Act* test - whether s31(4)(b) *Defamation Act 2005* (NSW) available to a plaintiff who has sued employer, but not employee, where employer has raised defence under s31(2) - defence of honest opinion - application dismissed.

[Ahmed](#) (I)

Alstom Ltd & Ors v Sirakas [2010] NSWSC 669

Supreme Court of New South Wales

Palmer J

Substituted service - *forum non conveniens* - separate question - whether Court should decline to exercise jurisdiction to determine claims arising from transactions in Romania in alleged breach of

service contract made in Australia - defendant's application to set aside substituted service & for stay dismissed.

[Alstom Ltd & Ors](#) (B)

Guppy v Victorian WorkCover Authority & Anor [2010] VSCA 164

Court of Appeal of Victoria

Maxwell P, Nettle JA & Emerton AJA

Accident Compensation Act 1985 (Vic) - whether loss of earning capacity that is the consequence of second injury such as to qualify the second injury as a 'serious' injury - back injury while in employment with earthmoving & road construction firm - on medical advice, he left the job - appellant then approached a job network agency specialising in assisting disabled people to return to or find work - he commenced work on a part-time basis for the agency - he suffered a further injury, which was an aggravation of the earlier injury, in the course of his employment - appeal allowed - appellant granted leave to bring proceedings in respect of second injury.

[Guppy](#) (I)

[Guppy](#) - *Guppy v VWA and Bendigo Access Employment Inc* [2008] VCC 1481 - decision County Court of Victoria 28 November 2008 - accident compensation - application for serious injury certificates pursuant to s134AB(16) - Accident Compensation Act 1985 - two separate accidents affecting low back - whether second injury a serious injury or aggravation of first injury - plaintiff granted leave to commence common law proceedings against earthmoving firm, for both pain and suffering and pecuniary loss damages . - action against job agency to be dismissed.

Musija & Allianz Australia Workers' Compensation (Vic) Ltd v Kresa [2010] VSCA 163

Court of Appeal of Victoria

Neave & Redlich JJA; Hansen AJA

s5 *Accident Compensation Act 1985 (Vic)* - definition of "worker" - respondent seriously injured his left hand while doing carpentry work on a house being built by first appellant - primary judge had not wrongly relied on circumstances of alleged worker's earlier engagement to characterise later engagement - appeal dismissed.

[Musija & Anor](#) (I)

[Kresa](#) - *Kresa v Musija and Allianz Australia Worker's Compensation (Vic) Ltd* [2008] VCC 1190 - decision County Court of Victoria 30 September 2008 - plaintiff was a worker within s5, employed under a contract of service.

DPP (Cth) v Morris; DPP (Cth) v Rae [2010] VSCA 149

Court of Appeal of Victoria

Buchanan & Weinberg JJA; Coghlan AJA

Criminal law - appeal by Commonwealth DPP against sentencing orders - respondents had each pleaded guilty to having recklessly failed as company directors to exercise powers & discharge duties in good faith, in best interests of company, contrary to s184(1) *Corporations Act 2001* (Cth) - whether sentences imposed pursuant to s19B *Crimes Act 1914* (Cth) manifestly inadequate - appeal dismissed.

[DPP \(Cth\)](#) (I, B)

Cahir v Jamieson & Ors [2010] VSC 285

Supreme Court of Victoria

Beach J

Coroners - occupational health & safety - inquest - judicial review - whether findings open - whether findings should be quashed - in the circumstances, certiorari did not lie - plaintiff entitled to declaration - declaration made that Coroner's finding that plaintiff had failed to take reasonable care for his own health & safety &/or the health & safety of another police officer when he removed himself from police vehicle & confronted civilian &, as such, may have committed an indictable offence under s25 *Occupational Health & Safety Act 2004* (Vic), was wrong in law & constituted an error of law on the face of the record.

[Cahir](#) (I)

Ariss v Building Practitioners Board [2010] VSC 295

Supreme Court of Victoria

Bell J

Building Act 1993 (Vic) - registration & regulation of building practitioners -inquiries & disciplinary action - whether Building Practitioners Board has jurisdiction where builder's registration is suspended after inquiry commenced - application for judicial review granted.

[Ariss](#) (C)

MC Property Investments Pty Ltd v Sunshine Coast Regional Council [2010] QCA 163

Court of Appeal of Queensland

Holmes & Chesterman JJA; Atkinson J

Integrated Planning Act 1997 (Qld) - applicant seeking leave to appeal against decision of Planning & Environment Court to dismiss its appeal against decision of respondent - Council had refused an impact assessable material change of use application for thirty-eight multiple dwelling units in the Sippy Downs planning area - Maroochy Plan 2000 - application for leave to appeal refused.

[MC Property Investments](#) (C)

Steicke v Donaldson Walsh Lawyers [2010] SASC 188

Supreme Court of South Australia

Judge Lunn a Master of the Supreme Court

Discovery of documents - power of Court to make an order for discovery of documents on a request for taxation under s42(1) *Legal Practitioners Act 1981* (SA) for taxation of costs.

[Steicke](#) (I)

Orr v State of Tasmania [2010] TASSC 28

Supreme Court of Tasmania

Blow J

reg13 *Workers Rehabilitation & Compensation Regulations 2001* (Tas) - interpretation of regulation governing assessment of party & party costs - fatal workplace accident - appeal by worker's relatives - appeal allowed - matter remitted.

[Orr](#) (I)

Korda & Winterbottom as Receivers & Managers of Westpoint Corporation Pty Ltd (in liq) (receiver and managers app'd) & the companies listed in Schedule 1 v Silkchime Pty Ltd (receivers & managers app'd) [2010] WASC 155

Supreme Court of Western Australia

Le Miere J

Corporations Act 2001 (Cth) - application for directions under s424 - loan agreement - guarantee & indemnity - whether receivers obliged to realise floating charge assets pursuant to s433 - whether receivers obliged to retire - whether receivers entitled to create retention fund - declaration as to proper construction of provisions.

[Korda](#) (B, C)

John Holland Pty Ltd v Australian Securities & Investments Commission [2010] NTSC 33

Supreme Court of the Northern Territory

Kelly J

Corporations Act 2001 (Cth) - building works at Alice Springs Hospital - the Territory suing plaintiff for alleged defects in that work - subcontractor performed part of the works under the subcontract & then, part way through the contract, sold the business to another company which was subsequently deregistered - plaintiff seeking order directing ASIC to re-register deregistered company - application granted.

[John Holland](#) (C)

From the Music Hall stage...

George Leybourne

(b. 1842, Newcastle Gateshead - d. 15 September 1884, Islington)

One of the '*Lions Comiques*' of the music halls of Victorian England, whose songs steered the music halls from street songs to more sophisticated fare, including political satire - he worked as an engine fitter before finding his métier in the Free & Easies, informal singsongs popular in pubs - one of his most famous character songs was "*Champagne Charlie*," with lyrics by Leybourne and tune by Alfred Lee (1868) - Leybourne came on stage dressed as a 'swell' in immaculate evening dress: top hat, tails, gloves, cane & scarf, waving a champagne bottle - he drove to appearances in a brougham with a coachman and four white horses - Lee & Leybourne also wrote "*The Man on the Flying Trapeze*" (1868) about the brilliant French trapeze artist Léotard.

Charles Coborn

(b. 4 August 1852, Stepney, East London - d. 23 November 1945, London)

Born Colin Whitton McCallum, adopted his stage name from Coborn Road, near Mile End, East London - he started his career at the Alhambra on the Isle of Dogs, where he was a vocalist/waiter/bouncer - 1886 was a year of high drama, with Gladstone forced to resign over his attempt to give Home Rule to Ireland - in that year Coborn wrote "*Two Lovely Black Eyes*," arranged by Edmund Forman, a light-hearted look at the physical risks of discussing politics - he was also famous as the singer of "*The Man Who Broke the Bank at Monte Carlo*," written and composed by Fred Gilbert in 1892: Charles de Ville Wells did actually break the bank at the Monte Carlo casino - Coborn lived to see his performances filmed: he appeared in the film "*Variety Jubilee*" at age ninety-one in 1943 - his son became MP for Argyll.

[Charles Coborn - Wikipedia, the free encyclopedia](#)



Gus Elen

(b. 22 July 1862, Pimlico - d. 17 February 1940, Balham)

Apprenticeship as a busker - singer of coster* songs such as "*Never introduce your donah to a pal*": the Cockney word for 'girlfriend', 'donah' was a corruption of the Italian for 'woman,' 'donna' - other songs in his repertoire '*It's a great big shame*' about an ill-matched marriage, '*If it wasn't for the 'ouses in between*' (Bateman/Le Brunn 1894) - filmed in 1930 singing '*It's a great big shame*' and two other songs.

[Costermonger - Wikipedia, the free encyclopedia](#)

*A street-seller of fruit and vegetables -

'costard' a type of large ribbed apple - 'monger' seller, peddler

Edwardian [Music Hall Songs](#)

recommended reading: "*The Illustrated Victorian songbook*" compiled and presented by
Aline Waites and Robin Hunter

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