

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

Executive Summary (1 minute read)

Commissioner of Taxation v Rozman (No 2) - *Income Tax Assessment Act 1936* (Cth) - deemed dividend - appeal allowed - cross-appeal allowed in part (B)

Achieve Foundation Ltd v ACNewCo Ltd; in the matter of Achieve Foundation Ltd & the Crowle Foundation Ltd - *Corporations Act 2001* (Cth) - 'property' in s413 held to include such future bequests (B)

Windsor v Sydney Medical Service Co-operative Ltd (No. 3) - Costs - whether a certificate of taxation should be set aside (I, B)

Eat Media Pty Ltd v Mulready Media Pty Ltd (No 2) - Costs - "gross sum" (I, B)

Motor Trades Association of Australia Superannuation Fund Pty Ltd v Rickus (No 6) - Costs - *Legal Practitioners Act 1981* (SA) s42(6) & (7) - agreement to pay fees (I, B)

Yarrabee Chicken Company Pty Ltd v Steggles Ltd - Contracts - representative proceeding - promissory estoppel (B)

Australian Securities & Investments Commission v Soust (No 2) - *Corporations Act 2001* (Cth) - penalty hearing - breach of directors' duties (I, B)

Melbourne Car Shop Pty Ltd v Commissioner of Taxation - s69-10(1) *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - luxury car (B)

Da Ros v Qantas Airways Ltd - *Workplace Injury Management & Workers Compensation Act 1998* (NSW) - whether employment a "substantial contributing factor" to the injury - appeal allowed (I)

Leybourne v Permanent Custodians Ltd - Contracts - loan agreement - pre-contractual statement under Credit Code (B)

Dante De Grazia t/a All Sydney Building Services v Nicholas Solomon & Ors - Building contracts - claim by builder for variations & delay costs - estoppel - cross-claim by defendants against builder for defective work - expert evidence (C)

Chase Oyster Bar v Hamo Industries - *Building & Construction Industry Security of Payment Act 1999* (NSW) - challenge to adjudicator's determination - date of service of payment claim - issue to be referred to the Court of Appeal for determination (C)

Fardell v Coates Hire Operations Pty Ltd - Employment contracts - takeover of employer - change of control leading to material diminution in role and responsibilities (I, B, C)

Kelen v Vitaman Pty Ltd & Ors - Loans - interest rates - damages - Local Court decision set aside (B)

Meridian Pty Ltd v Rivergum Homes Pty Ltd - *Jurisdiction of Courts (Cross Vesting) Act 1987* (Cth) - defendant applying to transfer Queensland proceedings to Supreme Court of South Australia - application dismissed (C)

Summaries with links (5 minute read)

Friday 30 April 2010

Commissioner of Taxation v Rozman (No 2) [2010] FCA 387

Federal Court of Australia

Perram J (in Sydney)

Income Tax Assessment Act 1936 (Cth) - deemed dividend - whether s109T prevents s109C encompassing payments by direction - appeal allowed - cross-appeal allowed in part.

[Commissioner of Taxation](#) (B)

[Commissioner of Taxation](#) - decision 1 April 2010: see 'Benchmark' B & IBC Tuesday 13 April 2010 - *Income Tax Assessment Act 1936* (Cth) - deemed dividend provisions - Commissioner's appeal allowed - respondent's cross-appeal to the extent that it deals with penalty also allowed & penalty issue remitted to Administrative Appeals Tribunal for further determination.

Achieve Foundation Ltd v ACNewCo Ltd; in the matter of Achieve Foundation Ltd & the Crowle Foundation Ltd [2010] FCA 382

Federal Court of Australia

Foster J (in Sydney)

Corporations Act 2001 (Cth) - Schemes of Arrangement - future bequests made to pre-merger charitable corporations which remain in existence after the merger date- 'property' in s413 held to include such future bequests - orders made as sought.

[Achieve Foundation](#) (B)

Windsor v Sydney Medical Service Co-operative Ltd (No. 3) [2010] FCA 364

Federal Court of Australia

Edmonds J (in Sydney)

Costs - whether a certificate of taxation should be set aside in circumstances where a party was not entitled to have its bill of costs taxed by reason of O 63 r 3(3) but where taxed costs subsequently paid - whether repayment of costs paid under certificate of taxation could be ordered if certificate of taxation is set aside - detailed consideration of Australian case law.

[Windsor](#) (I, B)

Eat Media Pty Ltd v Mulready Media Pty Ltd (No 2) [2010] FCA 392

Federal Court of Australia

Flick J (in Sydney)

Costs - power conferred to make an order that costs for a "gross sum" be paid after an order has already been made for the payment of costs - Australian case law considered.

[Eat Media](#) (I, B)

Motor Trades Association of Australia Superannuation Fund Pty Ltd v Rickus (No 6) [2010] FCA 383

Federal Court of Australia

Flick J (in Sydney)

Costs - s42(6) & (7) *Legal Practitioners Act 1981* (SA) - agreement to pay fees - whether requirement of s42(6) that it be an "agreement in writing" satisfied - review of decision of taxing officer - whether decision has to be a final decision - detailed consideration of case law including *Catto v Hampton Australia Ltd (in liq)* [2008] SASC 231.

[Motor Trades Association of Australia Superannuation Fund](#) (I, B)

Yarrabee Chicken Company Pty Ltd v Steggles Ltd [2010] FCA 394

Federal Court of Australia

Jagot J (in Sydney)

Contracts - representative proceeding - applicant represents members of Hunter Valley Tunnel Group, an unincorporated association of tunnel growers of broiler chickens in the Hunter Valley - determination of separate questions - promissory estoppel: case law considered - separate questions answered at para. 203.

[Yarrabee Chicken Company](#) (B)

Australian Securities & Investments Commission v Soust (No 2) [2010] FCA 388

Federal Court of Australia

Goldberg J (in Melbourne)

Corporations Act 2001 (Cth) - penalty hearing - breach of directors' duties - market manipulation - defendant disqualified from managing corporations for a period of 10 years commencing from the date of this order - defendant to pay Commonwealth of Australia a pecuniary penalty of \$80,000.

[Australian Securities & Investments Commission](#) (I, B)

[Australian Securities & Investments Commission](#) - decision 15 February 2010: see 'Benchmark' I, B & IBC Wednesday 17 February 2010 - ss1317E, 181(1) & 1041B(1)(b) *Corporations Act* 2001 (Cth), - directors' duties - purchase of shares on Stock Exchange - whether transaction created an artificial price for trading in financial products on a financial market - doing an act which had effect of creating false & misleading appearance in relation to market & price for trading in shares - good faith & proper purpose -detailed analysis of legislation in an interesting decision.

Melbourne Car Shop Pty Ltd v Commissioner of Taxation [2010] FCA 373

Federal Court of Australia

Jessup J (in Melbourne)

s69-10(1) *A New Tax System (Goods & Services Tax) Act* 1999 (Cth) - luxury car: Bentley Arnage - whether applicant licensed motor car trader was "entitled to quote" its ABN in relation to supply to it of the Arnage - whether, Arnage acquired, applicant's purpose was not merely to hold the car for sale or exchange, but to do so "in the ordinary course of [its] trade" - administrative penalty.

[Melbourne Car Shop](#) (B)

Da Ros v Qantas Airways Ltd [2010] NSWCA 89

Court of Appeal of New South Wales

Tobias, McColl & Basten JJA

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - appellant long-haul flight attendant - on 'slip-time' between flights, whilst returning to the hotel accommodation provided by Qantas for its crew, he was knocked off his bicycle & suffered injuries - whether proper construction of s9A *Workers Compensation Act 1989 (NSW)* involved a point of law - whether employment a "substantial contributing factor" to the injury - appeal allowed.

[Da Ros \(I\)](#)

[Da Ros](#) - decision 27 May 2009 Workers Compensation Commission of New South Wales - Presidential

Leybourne v Permanent Custodians Ltd [2010] NSWCA 78

Court of Appeal of New South Wales

Giles & Tobias JJA; Sackville AJA

Contracts - loan agreement - property at Wentworth Falls - pre-contractual statement under Credit Code - mortgage - agency - appeal dismissed.

[Leybourne \(B\)](#)

[Permanent Custodians](#) - decision 20 April 2009

Dante De Grazia t/a All Sydney Building Services v Nicholas Solomon & Ors [2010] NSWSC 322

Supreme Court of New South Wales

Einstein J

Building contracts - plaintiff builder entered into a contract with defendants architects, to build two houses for defendants on land at Bronte - claim by builder for variations & delay costs - estoppel - cross-claim by defendants against builder for defective work - expert evidence - whether brochure produced by cross-defendants was misleading or deceptive - extensive consideration of text & case law from the United Kingdom & Australia.

[Dante De Grazia trading as All Sydney Building Services \(C\)](#)

Chase Oyster Bar v Hamo Industries [2010] NSWSC 332

Supreme Court of New South Wales

McDougall J

Building & Construction Industry Security of Payment Act 1999 (NSW) - challenge to adjudicator's determination - date of service of payment claim - issue to be referred to the Court of Appeal for determination - plaintiff submitting that reasoning of Court of Appeal in *Brodyn Pty Ltd v Davenport* (2004) 61 NSWLR 421 could no longer be supported in light of subsequent High Court case *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531.

[Chase Oyster Bar](#) (C)

Fardell v Coates Hire Operations Pty Ltd [2010] NSWSC 346

Supreme Court of New South Wales

White J

Employment contracts - employee was senior executive - chief financial officer - takeover of employer - change of control leading to material diminution in role and responsibilities - employee gave conditional notice under change of control provision - employer terminated contract & employment - entitlements - judgment for plaintiff in sum of \$819,180.50.

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

Kelen v Vitaman Pty Ltd & Ors [2010] NSWSC 328

Supreme Court of New South Wales

Schmidt J

Loans - interest rates - damages - leave to appeal from Local Court decision granted - loans advanced to defendant company on security of personal guarantees provided by directors - calculation of monies outstanding under loan - appeal upheld - Local Court decision set aside.

[Kelen](#) (B)

Meridian Pty Ltd v Rivergum Homes Pty Ltd [2010] QSC 123

Supreme Court of Queensland

Daubney J

Jurisdiction of Courts (Cross Vesting) Act 1987 (Cth) - plaintiff alleging breach of employment contract - defendant applying to transfer Queensland proceedings to Supreme Court of South Australia - application dismissed.

[Meridan](#) (C)