

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

### Executive Summary (1 minute read)

**Darrelen Pty Ltd v Commissioner of Taxation** - *Income Tax Assessment Act 1936* (Cth) - appeal from decision of Administrative Appeals Tribunal - complying superannuation fund - appeal dismissed (B)

**Takemoto v Moody's Investors Service Pty Ltd** - *ss51A & 84 Trade Practices Act 1974* (Cth) - pleadings - misleading & deceptive conduct claims in relation to employment dispute - requirements to be met when a contravention of s52 is being advanced (I, B, C)

**Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 4)** - *Trade Practices Act 1974* (Cth) - application to set aside subpoena - power to set aside interlocutory orders (B)

**Forty Two International Pty Limited v Barnes** - *Trade Practices Act 1974* (Cth) - obligations as to documents produced pursuant to compulsory processes of the Court (B)

**Clark v Commissioner of Taxation** - *Taxation Administration Act 1953* (Cth) - costs (B)

**The Owners Strata Plan SP 63342 & Ors v Brookfield Multiplex Ltd** - *Home Building Act 1989* (NSW) - application by defendant for leave to amend list response to allege sub-contractors are concurrent wrongdoers (I, C)

**Coastal Seafarms Holdings Pty Ltd & Anor v Port of Portland Pty Ltd** - *Pt IVAA Wrongs Act 1958* (Vic) - joinder - proportionate liability (I)

**Oakton Services Pty Ltd v Tenix Solutions IMES Pty Ltd** - *s53(1) Commercial Arbitration Act 1984* (Vic) - arbitration agreement within subcontract - application for stay of Court proceedings granted (I, B, C)

**Goulburn-Murray Rural Water Authority v Rawalpindi Nominees Pty Ltd & Reid** - Contracts - s96 *Water Act* 1989 (Vic) - statutory interpretation - Minister's power to exempt an authority from statutory requirement (C)

**Condren v Southport Workers Community Club Inc** - Employment law - torts - counterclaim in conversion - whether plaintiff was wrongfully dismissed (I)

**Norris v McGeachy** - Personal injuries - motor accident - application for security for costs (I)

**Pavicic v Webb** - Personal injuries - damages - whiplash injury to neck - psychological condition secondary to chronic pain - judgment for plaintiff in sum of \$904,895.85 (I)

**R v Antoniazio** - Criminal law - standard of care required of ordinary prudent driver (I)

**Mantzios v Mount Pritchard District & Community Club Ltd** - Personal injuries - trespass to person - whether plaintiff assaulted by security guard at club - causation - damages (I)

## Summaries with links (5 minute read)

**Tuesday 4 May 2010**

### **Darrelen Pty Ltd v Commissioner of Taxation [2010] FCAFC 35**

Full Court of the Federal Court of Australia

Stone, Edmonds & Jagot JJ (in Sydney)

*Income Tax Assessment Act* 1936 (Cth) - appeal from decision of Administrative Appeals Tribunal - complying superannuation fund - receiving 'special income': dividends from a private company - whether Tribunal erred in holding that Commissioner did not err in declining to exercise his discretion under s273 not to treat such dividends as special income - appeal dismissed.

[Darrelen](#) (B)

**Takemoto v Moody's Investors Service Pty Ltd [2010] FCA 407**

Federal Court of Australia

Flick J (in Sydney)

*Trade Practices Act 1974* (Cth) - pleadings - misleading & deceptive conduct claims in relation to employment dispute - requirements to be met when a contravention of s52 is being advanced - s84 as to connexion which will make conduct of an individual that of a corporation - interpretation of s51A - "embarrassment" - extensive consideration case law from the United Kingdom & Australia.

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

**Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 4) [2010] FCA 398**

Federal Court of Australia

Yates J (in Sydney)

*Trade Practices Act 1974* (Cth) - application to set aside subpoena to National Australia Bank - respondents claiming relief in respect of alleged infringements of copyright in documents & sound recordings, & breaches of directors' duties both under the *Corporations Act 2001* (Cth) & at general law with respect to alleged confidential information residing in the documents and sound recordings - also alleging breach of contract - power to set aside interlocutory orders - comprehensive consideration of case law.

[Campaign Master \(UK\)](#) (B)

**Forty Two International Pty Ltd v Barnes [2010] FCA 397**

Federal Court of Australia

Yates J (in Sydney)

*Trade Practices Act 1974* (Cth) - obligations as to documents produced pursuant to compulsory processes of the Court - development & marketing of software known as "Campaign Master" - implied undertaking - disclosure - striking out - case law from the United Kingdom & Australia considered.

[Forty Two International](#) (B)

**Clark v Commissioner of Taxation [2010] FCA 415**

Federal Court of Australia

Greenwood J (in Brisbane)

*Taxation Administration Act 1953* (Cth) - costs - for decision 30 November 2009, see 'Benchmark' B & IBC Thursday 3 December 2009 & link below - issues for determination set out at para 8 of judgment - s4 Federal Court Act: 'proceeding' - comprehensive consideration of case law.

[Clark](#) (B)

[Clark](#) - decision 30 November 2009 - Taxation - trust income - capital gains - Commissioner contending break in continuity - whether taxpayer had established on balance of probabilities that trustee of trust estate acquired shares in Rothwells Ltd in 1988 - Trust Deed - Joint Venture Deed - Unit Transfer Deeds - Release & Discharge Deed - detailed consideration of principles & case law.

**The Owners Strata Plan SP 63342 & Ors v Brookfield Multiplex Ltd [2010] NSWSC 360**

Supreme Court of New South Wales

McDougall J

*Home Building Act 1989 (NSW)* - Pt 4 *Civil Liability Act 2002 (NSW)* - three strata title developments - application by defendant for leave to amend list response to allege sub-contractors are concurrent wrongdoers - proportionate liability - duty of care - leave granted.

[The Owners Strata Plan SP 63342 & Ors](#) (I, C)

**Coastal Seafarms Holdings Pty Ltd & Anor v Port of Portland Pty Ltd [2010] VSC 167**

Supreme Court of Victoria

Ross J

Pt IVAA *Wrongs Act 1958 (Vic)* - joinder - proportionate liability - application by defendant to join alleged concurrent wrongdoer as an additional party - plaintiff abalone farm alleging erosion damage to property as a result of breakwater at the Port - joinder application granted.

[Coastal Seafarms Holdings & Anor](#) (I)

**Oakton Services Pty Ltd v Tenix Solutions IMES Pty Ltd [2010] VSC 176**

Supreme Court of Victoria

Croft J

s53(1) *Commercial Arbitration Act 1984 (Vic)* - "Subcontract for Information Technology Design, Billed & Testing Services" - arbitration agreement within subcontract - "staged" or "stepped" series of dispute resolution procedures - application for stay of Court proceedings granted.

[Oakton Services](#) (I, B, C)

**Goulburn-Murray Rural Water Authority v Rawalpindi Nominees Pty Ltd & Reid [2010] VSC 166**

Supreme Court of Victoria

Ross J

s96 *Contracts - Water Act 1989 (Vic)* - statutory interpretation - dispute as to whether Rawalpindi agreed to participate in a pipeline project, to make a capital contribution to that project & to pay

certain tariffs based on an agreed capacity share - Minister's power to exempt an authority from statutory requirement - parties intended they not be bound unless & until they executed a formal contract.

[Goulburn-Murray Rural Water Authority](#) (C)

**Condren v Southport Workers Community Club Inc [2010] QSC 130**

Supreme Court of Queensland

McMurdo J

Employment law - torts - counterclaim in conversion - whether plaintiff was wrongfully dismissed - onus of proof - since termination of his employment, plaintiff not entitled to use of car provided by Club.

[Condren](#) (I)

**Norris v McGeachy [2010] TASSC 20**

Supreme Court of Tasmania

Wood J

Personal injuries - motor accident - application for security for costs - pending appeal to Full Court - application refused.

[Norris](#) (I)

**Pavicic v Webb [2010] ACTSC 37**

Supreme Court of the Australian Capital Territory

Master Harper

Personal injuries - damages - whiplash injury to neck - probable facet joint injury - psychological condition secondary to chronic pain - loss of earning capacity - whether failure to submit to recommended treatment was failure to mitigate loss - death of expert witness before trial - whether statement of witness admissible - judgment for plaintiff in sum of \$904,895.85.

[Pavicic](#) (I)

**R v Antoniazio [2010] ACTSC 36**

Supreme Court of the Australian Capital Territory

Gray J

Criminal law - trial by judge alone - culpable driving causing death - failure to keep a proper lookout - degree of departure from the standard of care required of the ordinary prudent driver - not guilty.

[R](#) (I)

## In the District Court of New South Wales...

### Mantzios v Mount Pritchard District & Community Club Ltd [2010] NSWDC 70

District Court of New South Wales

Bozic SC DCJ

Personal injuries - trespass to person - whether plaintiff assaulted by security guard at club - causation - whether plaintiff's psychiatric condition was caused or materially contributed to by the assault by security guard - defendants contending any damage suffered by plaintiff was as a result of first assault by male patrons & that the subsequent actions of security guard were insignificant - award of compensatory, aggravated and exemplary damages - judgment for plaintiff in the sum of \$219,409.

[Mantzios \(I\)](#)

**“..... the movers & shakers of the world ....”**

We are the music-makers,  
And we are the dreamers of dreams,  
Wandering by lone sea-breakers,  
And sitting by desolate streams;  
World-losers and world-forsakers,  
On whom the pale moon gleams:  
Yet we are the movers and shakers  
Of the world for ever, it seems.

With wonderful deathless ditties  
We build up the world's great cities,  
And out of a fabulous story  
We fashion an empire's glory:  
One man with a dream, at pleasure,  
Shall go forth and conquer a crown;  
And three with a new song's measure  
Can trample an empire down.



We, in the ages lying  
In the buried past of the earth,  
Built Nineveh with our sighing,  
And Babel itself with our mirth;  
And o'erthrew them with prophesying  
To the old of the new world's worth;  
For each age is a dream that is dying,  
Or one that is coming to birth .....

[Ode - Arthur William Edgar O'Shaughnessy](#)

Arthur William Edgar O'Shaughnessy

(b. 14 March 1844, London – d. 30 January 1881)

Poet and singer - earned his living in the Natural History Department of the British Museum - published four volumes of poetry, in 1870, 1872, 1874, and posthumously in 1881 – the 'Ode' appeared in the 1874 volume "Music & Moonlight" – it was set to music by Edward Elgar in 1912 - the poem speaks of poets & musicians as the bards that guide lay thinking with the strength of their imagination.

[Movers and shakers](#)

[Arthur O'Shaughnessy - Wikipedia, the free encyclopedia](#)