



Monday 6 May 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Commissioner of Taxation v Unit Trend Services Pty Ltd (HCA) - GST - anti-avoidance - GST benefits obtained were *not attributable to* a choice provided by GST Act (B, G)

Fischer v Howe (NSWSC) - negligence - wills and estate - failure by solicitor to prepare informal will - judgment for plaintiff (I, B)

Kingsman v NSW Trustee & Guardian (NSWSC) - Trustee's application for summary dismissal of proceedings refused - leave granted to amend statement of claim (I, B)

Purnell v Pittendridge and Anor (NSWSC) - administrative law - accident compensation - application to set aside decision of MAS Review Panel dismissed (I, G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (NSWSC) - cross-vesting - proceedings concerning mining right site lease agreements transferred to Western Australia (I, B, C)



Byrne v Byrne (VSC) - negligence - admissions - failure to respond to a notice to admit - leave to withdraw admission granted (I)

Brennan v Capital Weed Control Pty Ltd and Australian Capital Territory (ACTSC) - work injury damages - claim for contribution from third party failed (I)

Summaries with links (5 minute read)

Commissioner of Taxation v Unit Trend Services Pty Ltd [2013] HCA 16

High Court of Australia

French CJ; Crennan, Kiefel, Gageler & Keane JJ

Goods and services tax - margin scheme - anti-avoidance - Commissioner applied for special leave to appeal decision of Full Court of Federal Court concerning interpretation of s165-5(1)(b) *A New Tax System (Goods and Services Tax) Act 1999* (Cth) - whether GST benefits obtained by respondent were attributable to choice, election, application or agreement expressly provided for in Act - statutory construction - causation - *not attributable to* - held: GST benefit not attributable to making of statutory choice provided by Act - leave to appeal granted and appeal allowed.

[Commissioner of Taxation](#) (B, G)

Fischer v Howe [2013] NSWSC 462

Supreme Court of New South Wales

Adamson J

Negligence - wills and estates - solicitors - defences - evidence - beneficiary claimed damages from solicitor for failure to make informal will expressing deceased's instructions as to new will - held: solicitor's duty of care extended to means by which solicitor could ensure testatrix's wishes were carried out - solicitor duty to beneficiary required him to procure an informal will - solicitor did not make out defence under s50 *Civil Liability Act 2002* (NSW) because he did not he comply with competent professional practice - judgment for plaintiff.

[Fischer](#) (I, B)

**Kingsman v NSW Trustee & Guardian [2013] NSWSC 487**

Supreme Court of New South Wales

Schmidt J

Summary dismissal - pleadings – plaintiff, catastrophically injured as a child sued Trustee, former solicitors, mother and stepfather in relation to transfer of property and removal of money from bank account - Trustee sought orders summarily dismissing proceedings against it pursuant to r13.4 *Uniform Civil Procedure Rules 2005* (NSW) - applicable test of *triable quality*: *Shaw v State of New South Wales* [2012] NSWCA 102 - held: court not satisfied on evidence that plaintiff's case would fail - motion dismissed.

[Kingsman](#) (I, B)

Purnell v Pittendridge and Anor [2013] NSWSC 463

Supreme Court of New South Wales

Johnson J

Administrative law - accident compensation - permanent impairment - plaintiff injured in motor vehicle collision whilst a passenger in vehicle driven by first defendant - plaintiff claimed relief under s69 *Supreme Court Act 1970* (NSW) setting aside decision of MAS Review Panel under s63 *Motor Accidents Compensation Act 1999* (NSW) that severe constipation leading to ileostomy was not caused by accident - jurisdictional error - error on face of record - procedural fairness - requirement to give reasons - held: plaintiff had not demonstrated any unlawful decision-making by panel - amended summons dismissed.

[Purnell](#) (I, G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd [2013] NSWSC 466

Supreme Court of New South Wales

Stevenson J

Cross-vesting - proceedings concerning performance of obligations under mining right site lease agreements - defendants sought order pursuant to s5(2) *Jurisdiction of Courts (Cross Vesting) Act 1987* (Cth) that proceedings be transferred to Western Australia - held: proceedings appeared to have no connection to New South Wales - considerable weight in defendants' contention that Western Australia was natural forum for proceedings - even if matter would be heard more quickly in Sydney, all other factors pointed to conclusion it was in interests of justice to transfer proceedings - proceedings transferred.

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

**Byrne v Byrne [2013] VSC 218**

Supreme Court of Victoria

Derham AsJ

Negligence - admissions - plaintiff passenger claimed damages for injuries suffered when defendant driver braked suddenly – defendant deemed to have made admissions by failure to respond to notice to admit facts - application by defendant for leave to withdraw admission - held: notice to admit rolled together mixed questions of law and fact and did not comply with r35.03 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - open to defendant to set aside notice - application to withdraw admissions allowed if necessary.

[Byrne \(I\)](#)**Brennan v Capital Weed Control Pty Ltd and Australian Capital Territory [2013] ACTSC 78**

Supreme Court of the Australian Capital Territory

Master Harper

Negligence - work injury damages - contribution by third party (the ACT) - plaintiff injured at work - plaintiff claimed damages in negligence - defendant company was carrying out work pursuant to contract with ACT - defendant asserted plaintiff's injury was caused by negligence of ACT's officer, for which ACT was vicariously liable - plaintiff and defendant settled - claim for contribution by defendant from third party - held: no duty of care between ACT and plaintiff - no liability under s21 *Civil Law (Wrongs) Act 2002* (ACT) - defendant's claim against ACT failed.

[Brennan \(I\)](#)

[Click Here to access our Benchmark Search Engine](#)