




Friday, 7 February 2020

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Howard v Merdaval Pty Ltd (trading as North Essendon Auto Spares) (FCA) - industrial law - dismissal of application for compensation under s545(1) *Fair Work Act 2009* (Cth) - no error in finding appellant was contractor not employee - appeal dismissed (I B)

Ireland v WG Riverview Pty Ltd (NSWCA) - consumer law - trade practices - claim arising from purchase of bull at auction - misleading and deceptive conduct not established - appeal allowed (I B C G)

Deputy Commissioner of Taxation v De Simone (VSC) - security for costs - plaintiff sought that defendant pay security for costs of appeal - application dismissed (B)

Griffin v Burleigh Marr Distributions Pty Ltd & Anor (QSC) - negligence - contract - claim by truck driver against employer arising from injury suffered due to allegedly 'defective seat' - employer liable (I)

McDonald v Broadspectrum (Australia) Pty Ltd (QSC) - private international law - negligence - contract - defendant sought declaration New South Wales law was 'substantive law applicable' to plaintiff's claims - application refused (I)

D'Ortenzio v Charles Parletta Real Estate Pty Ltd (SASC) - corporations - plaintiff sought to bring proceedings on behalf of company against company's directors - application granted (B)

Subasic v Hewlett-Packard Australia Pty Ltd (ACTSC) - employment contract - claim by former employee against employer for payment of commission amount plus interest - judgment for employee (I B)

Summaries With Link (Five Minute Read)

Howard v Merdaval Pty Ltd (trading as North Essendon Auto Spares) [2020] FCA 43

Federal Court of Australia

O'Callaghan J

Industrial law - appellant provided 'courier services' to respondent - appellant, under s545(1) *Fair Work Act 2009* (Cth), sought compensation from respondent for contravention of *Road Transport Distribution Award 2010* (RTD Award) or *Vehicle Manufacturing, Repaired, Services and Retail Award 2010* (VMRSR Award) - appellant contended she was respondent's employee not independent contractor, that RTD Award or VMRSR Award covered her employment and that she was underpaid - primary judge dismissed application - whether primary judge erred in finding appellant was a contractor not employee of respondent - held: appeal dismissed.

[Howard](#) (I B)

Ireland v WG Riverview Pty Ltd [2019] NSWCA 307

Court of Appeal of New South Wales

Bell ACJ, Macfarlan JA & Barrett AJA

Consumer law - trade practices - respondent purchased Angus bull (K34) at auction which appellants - K34 listed in 'auction catalogue' with sire identified as a 'stud bull' (GRT) - DNA testing showed GRT not sire of K34 - bull's value 'considerably less' than purchase price - respondent brought proceedings against appellants in reliance on s18 *Competition and Consumer Act 2010* (Cth) - primary judge upheld respondent's claim - whether misleading and deceptive conduct - whether primary judge failed to consider conduct 'as a whole' - whether primary judge should have found appellants' statement concerning sire of K34 'was at most a representation as to their beliefs' - whether primary judge erred in awarding 'expectation loss' damages - held: respondent failed to establish misleading and deceptive conduct - appeal allowed.

[View Decision](#) (I B C G)

Deputy Commissioner of Taxation v De Simone [2020] VSC 14

Supreme Court of Victoria

Ierodiconou AsJ

Security for costs - Court granted summary judgment in plaintiff's favour against defendant - defendant filed appeal - plaintiff sought security for costs - *Jafari v 23 Developments Pty Ltd* [2019] VSCA 16 - prospects of success on appeal - whether risk costs order would not be satisfied - public interest - held: security for costs refused.

[Deputy Commissioner](#) (B)

Griffin v Burleigh Marr Distributions Pty Ltd & Anor [2019] QSC 321

Supreme Court of Queensland

North J

Negligence - contract - plaintiff employed as truck driver by defendant - plaintiff claimed damages arising from injury due to allegedly 'defective seat' in truck - plaintiff contended defendant breached duty of care and implied term of employment contract - third party had repaired seat after plaintiff complained to defendant but plaintiff later suffered injury - defendant claimed indemnity or contribution from third party - employer's duty of care - causation - *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: defendant breached duty of care - causation established - third party claim dismissed - judgment for plaintiff in sum of \$554,352.52.

[Griffin](#) (I)

McDonald v Broadspectrum (Australia) Pty Ltd [2019] QSC 313

Supreme Court of Queensland

Bradley J

Private international law - negligence - contract - plaintiff employed by defendant as teacher - plaintiff sued defendant for injuries allegedly suffered at Regional Processing Centre in Republic of Nauru - defendant sought declaration that New South Wales law was 'substantive law applicable' to plaintiff's claims - defendant sought that plaintiff's claims be set aside or stayed and transferred to Supreme Court of New South Wales - *Workplace Injury Management Act 1998* (NSW) - held: substantive law applicable to plaintiff's claims was law of Republic of Nauru - application dismissed.

[McDonald](#) (I)

D'Ortenzio v Charles Parletta Real Estate Pty Ltd [2020] SASC 9

Supreme Court of South Australia

Judge Bochner

Corporations - plaintiff sought to bring proceedings on behalf of company against company's directors - ss236 & 237 *Corporations Act 2001* (Cth) - whether criteria in s237(2) *Corporations Act* satisfied - serious question to be tried - good faith - company's best interests - company's inaction - requirements of notice - held: application granted.

[D'Ortenzio](#) (B)

Subasic v Hewlett-Packard Australia Pty Ltd [2020] ACTSC 2

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Employment contract - plaintiff was defendant's former employee - plaintiff sought to recover commission amount from defendant in sum of \$309,750.39 plus interest - plaintiff contended amount payable due to sales plaintiff made while employed with defendant over certain period -

terms of employment agreement at 'material time' - whether plaintiff entitled to be paid incentive amount calculated according to criteria defendant established - whether 'implied duty to act in good faith' and if so whether defendant breached the implied duty - estoppel - held: judgment for plaintiff in sum of \$309,750.39 plus interest.

[Subasic \(I B\)](#)

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

The Lane

By: Edward Thomas

Some day, I think, there will be people enough
In Froxfield to pick all the blackberries
Out of the hedges of Green Lane, the straight
Broad lane where now September hides herself
In bracken and blackberry, harebell and dwarf gorse.
Today, where yesterday a hundred sheep
Were nibbling, halcyon bells shake to the sway
Of waters that no vessel ever sailed ...
It is a kind of spring: the chaffinch tries
His song. For heat it is like summer too.
This might be winter's quiet. While the glint
Of hollies dark in the swollen hedges lasts—
One mile—and those bells ring, little I know
Or heed if time be still the same, until
The lane ends and once more all is the same.

[https://en.wikipedia.org/wiki/Edward_Thomas_\(poet\)](https://en.wikipedia.org/wiki/Edward_Thomas_(poet))

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