



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Russell v Commissioner of Taxation - *Income Tax Assessment Act 1997 (Cth) - A New System (Goods & Services Tax) Act 1999 (Cth)* (B)

Dolevski v Hodpik Pty Ltd - *Superannuation Industry (Supervision) Act 1993 (Cth)* - defences under s323(2) & 221(2) (B)

Weston v Publishing & Broadcasting Ltd - Production of documents - litigation funding agreement - client legal privilege. (I, B, C)

Altain Khuder LLC v IMC Mining Inc & Anor (No 2) - Costs - special costs orders - indemnity costs in arbitration matters (I, B, C)

Pepe v Platypus Asset Management Pty Ltd (No 2) - Costs - offer of compromise - Calderbank offer (I)

Dank v Tabcorp Holdings Ltd - Personal injuries - workplace injury while lifting box (I)

R v Santos & Ors - *Transport Operations (Marine Pollution) Act 1995 (Qld)* - prosecution - rulings sought by defence in relation to two questions - prosecution objecting to wording of questions (I)



ACN 115 722 248 Pty Ltd v Milligan - Negligence - property damage - motor accident – pleadings (I)

Summaries with links (5 minute read)

Wednesday 9 February 2011

Russell v Commissioner of Taxation [2011] FCAFC 10

Full Court of the Federal Court of Australia

Dowsett, Edmonds & Gordon JJ (in Brisbane)

Income Tax Assessment Act 1997 (Cth) - *A New System (Goods & Services Tax) Act 1999* (Cth) - for decision appealed from, see 'Benchmark' B & IBC Thursday 5 November 2009 & link below - appeal allowed in part.

[Russell](#) (B)

[Russell](#) - decision 30 October 2009 - Part 2-42 *Income Tax Assessment Act 1997* (Cth) - whether an overseas company can be a personal services entity in relation to assessment of personal services income of an individual - Australia-New Zealand Double Taxation Agreement - goods & services tax - characterisation of "enterprise" of partnership - forestry enterprise - accountancy practice - naturist retreat - detailed consideration of legislation from Australia, New Zealand & the United Kingdom - case law from the United Kingdom & Australia considered.

Dolevski v Hodpik Pty Ltd [2011] FCA 54

Federal Court of Australia

Yates J (in Sydney)

Superannuation Industry (Supervision) Act 1993 (Cth) - applicant, as delegate of Commission of Taxation, seeking declarations & civil penalties arising out of alleged contraventions - self-managed superannuation fund - reliance - defences under s323(2) & 221(2) available - application dismissed.

[Dolevski](#) (B)



Weston v Publishing & Broadcasting Ltd [2011] NSWSC 14

Supreme Court of New South Wales

Barrett J

Production of documents - first, second, third, fourth, fifth & eighth defendants seeking production of plaintiffs' litigation funding agreement - plaintiffs are One.Tel Ltd & its special purpose liquidator - agreement protected by client legal privilege.

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

Altain Khuder LLC v IMC Mining Inc & Anor (No 2) [2011] VSC 12

Supreme Court of Victoria

Croft J

Costs - special costs orders - application by plaintiff for order that second defendant pay plaintiff's costs on an indemnity basis - indemnity costs in arbitration matters - categories of special circumstances not closed - an interesting decision with detailed analysis of case law from Australia & Hong Kong.

[Altain Khuder LLC](#) (I, B, C)

[Altain Khuder LLC](#) - decision 28 January 2011: see 'Benchmark' Tuesday 1 February 2011 - *International Arbitration Act 1974* (Cth) - recognition & enforcement of foreign arbitral award - Mongolia - Convention on the recognition & Enforcement of Foreign Arbitral awards, New York, 1958 - estoppel - second defendant's summons to set aside orders of 20 August 2010 enforcing the award dismissed - detailed examination of case law from the United Kingdom, the United States of America, Hong Kong & Singapore.

Pepe v Platypus Asset Management Pty Ltd (No 2) [2011] VSC 21

Supreme Court of Victoria

Almond J

Costs - offer of compromise - *Calderbank* offer - indemnity costs - whether abandonment of claims required special costs order - no special costs order against plaintiff arising either from non-acceptance of offers of settlement or in relation to abandoned claims - plaintiff to pay defendant's costs on party/party basis.

[Pepe](#) (I)

[Pepe](#) - decision 16 December 2010 - dispute in relation to termination of employment - plaintiff's claim dismissed.



In the District Court of Queensland...

Dank v Tabcorp Holdings Ltd [2011] QDC 2

District Court of Queensland

Wall QC DCJ

Personal injuries - workplace injury while lifting box - breach of employer's duty of care - judgment for plaintiff in sum of \$239,613.62 plus costs.

[Dank](#) (I)

R v Santos & Ors [2011] QDC 1

District Court of Queensland

Robin QC DCJ

Transport Operations (Marine Pollution) Act 1995 (Qld) - prosecution - discharge of oil from ship's hull into Queensland coastal waters in March 2009 - rulings sought by defence in relation to two questions - prosecution objecting to way the questions framed - "damage," "intentional damage."

[Santos](#) (I)

In the District Court of South Australia...

ACN 115 722 248 Pty Ltd v Milligan [2011] SADC 8

District Court of South Australia

Soulio J

Negligence - property damage - motor accident - plaintiff company alleged to be owner of motor vehicle driven by its employee - Master had struck out plaintiff's pleading & given leave to re-plead - plaintiff's appeal dismissed - detailed consideration of case law from South Australia.

[Milligan](#) (I)

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