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Executive Summary (1 minute read)

Sunchen Pty Ltd v Commissioner of Taxation - Sub Div 40C *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - statutory construction - whether property, at time of its supply to appellant, residential premises "to be used predominately for residential accommodation", within meaning of s40-65(1) of the Act - appeal dismissed (B)

John Holland Pty Ltd v Industrial Court of New South Wales; Parsons Brinckerhoff (Australia) Pty Ltd v Industrial Court of New South Wales - *Occupation Health & Safety Act 2000* (NSW) - prosecution - *Kirk v Industrial Court of New South Wales* [2010] HCA 1 (I, C)

Marinчек v Cabport Pty Ltd - Contracts - agreement to settle disputes (C)

R v Hartman - ss1043A(1) & 1043A(2) *Corporations Act 2001* (Cth) - insider trading (B)

Wood & Anor v McLean & Anor - Administration & probate - standing (B)

Powell v Athanasopoulos - *Local Government Act 1989* (Vic) - whether defendant had been occupier of part of property (I)

State of Tasmania v Clements - *Workers Rehabilitation & Compensation Act 1988* (Tas) - level of whole person impairment (I)

Harrison v Black Horse U.K. case - sale to claimants of payment protection insurance - claimants contending unfair relationship - appeal dismissed (I, B)

Summaries with links (5 minute read)

Friday 10 December 2010

Sunchen Pty Ltd v Commissioner of Taxation [2010] FCAFC 138

Full Court of the Federal Court of Australia

Edmonds, Jessup & Gilmour JJ (in Sydney)

Sub Div 40C *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - statutory construction - residential premises - whether property, at time of its supply to appellant, was residential premises "to be used predominately for residential accommodation", within meaning of s40-65(1) of the Act - whether test to be determined by reference to use to which purchaser intends to put the property or whether to be determined by characteristics of the property - appeal dismissed.

[Sunchen](#) (B)

[Sunchen](#) - decision Federal Court 29 January 2010: see 'Benchmark' B & IBC Thursday 4 February 2010 - input taxed supply - taxpayer purchased land at Port Macquarie on which was a dwelling occupied by residential tenant - appeal from decision of Administrative Appeals Tribunal did not succeed.

John Holland Pty Ltd v Industrial Court of New South Wales; Parsons Brinckerhoff (Australia) Pty Ltd v Industrial Court of New South Wales [2010] NSWCA 338

Court of Appeal of New South Wales

Spigelman CJ; Beazley & Giles JJA

Occupation Health & Safety Act 2000 (NSW) - prosecution - partial collapse of roof of Lane Cove Tunnel construction project - each applicant submitting charges failed to identify an offence known to law - reference from trial judge to Full Bench of Industrial Court of New South Wales - *Kirk v Industrial Court of New South Wales* [2010] HCA 1.

[John Holland](#) (I, C)

[Inspector Hamilton](#) - decision Full Bench of the Industrial Court of New South Wales 4 June 2009: see 'Benchmark' I, C & IBC Monday 5 July 2010 - validity of charges laid against defendant - duties of employers - reference of questions of law - questions of law referred set out at paras. 22-23 of Full Bench's judgment - alleged contraventions of s8(1) & s8(2) - whether charges contain essential legal elements - whether charges contain essential



factual ingredients - extensive consideration of case law including *Kirk v Industrial Relations Commission*; *Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1; (2010) 262 ALR 569 - answers to referred questions at paras. 111 -112 of Full Bench's judgment;

[Inspector Hamilton](#) - decision 6 March 2009 - applications challenging Industrial Court's jurisdiction to deal with the prosecutions

[Kirk](#) - High Court decision 3 February 2010: see 'Benchmark' I & IBC Thursday 4 February 2010 - constitutional law - *Occupational Health and Safety Act 1983 (NSW)* - costs - whether Court of Appeal had erred in refusing orders in nature of certiorari to quash orders for convictions of appellants in what is now Industrial Court of New South Wales for offences against the Act - 'act or omission', "certiorari", "description of offence", "error of law on the face of the record", "jurisdictional error", "privative provisions", "reasonably practicable", "superior court of record", "Supreme Court of a State", "the record" - appeal allowed - convictions quashed;

&

[Kirk Group Holdings](#) - decision 30 June 2006 - reported decision: 66 NSWLR 151; 154 IR 310

Marinchek v Cabport Pty Ltd [2010] NSWCA 334

Court of Appeal of New South Wales

Macfarlan JA, Handley AJA, Harrison J

Contracts - *Home Building Act 1989 (NSW)* - *Trade Practices Act 1974 (Cth)* - agreement to settle disputes - whether general terms of provisions preserving liabilities should be treated as qualified.

[Marinchek](#) (C)

R v Hartman [2010] NSWSC 1422

Supreme Court of New South Wales

McClellan CJ at CL

ss1043A(1) & 1043A(2) *Corporations Act 2001 (Cth)* - criminal law - sentencing - front running - insider trading & tipping offences in relation to Contracts for Difference trading - terms of imprisonment.

[Hartman](#) (B)

Wood & Anor v McLean & Anor [2010] VSC 550

Supreme Court of Victoria

Sifris J

Administration & probate - standing - in addition to commencing Part IV proceeding under *Administration & Probate Act 1958 (Vic)*, plaintiffs had commenced this proceeding against Executor & their sister - in relation to this proceeding, defendants contending plaintiffs did not have standing to make claim pleaded in amended statement of claim - plaintiffs had not established a real connection with the dispute.

[Wood](#) (B)

Powell v Athanasopoulos [2010] VSC 558

Supreme Court of Victoria

Beach J

Local Government Act 1989 (Vic) - plaintiff, in her capacity as Minister responsible under the Act, seeking an order that defendant be ousted from office of councillor for Stonnington City Council - whether defendant had been occupier of part of property at South Yarra & at the same time liable to pay rates in respect of that part of the property - proceeding dismissed.

[Powell](#) (I)

State of Tasmania v Clements [2010] TASSC 59

Supreme Court of Tasmania

Porter J

Workers Rehabilitation & Compensation Act 1988 (Tas) - appeal from Workers Rehabilitation & Compensation Tribunal - level of whole person impairment - appeal dismissed.

[Clements](#) (I)

From the United Kingdom...**Harrison v Black Horse Ltd [2010] EWHC 3152 (QB)**

High Court of England & Wales, Queen's Bench Division

Waksman J

Payment protection insurance policies - sale to claimants of payment protection insurance ("PPI") in respect of a loan - appeal from primary judge's dismissal of proceedings - PPI was sold by defendant Bank to claimants as agent for the actual insurer, Lloyds TSB General Insurance Ltd - claimants had sought damages for breach of statutory duty under *Financial Services & Markets Act* 2000 & *Insurance Conduct of Business Rules*, damages in negligence & statutory remedy under *Consumer Credit Act* 1974 (United Kingdom) contending there was an unfair relationship ("UR") between parties within meaning of s140A thereof - appeal dismissed.

[Harrison](#) (I, B)

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