



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Kuzmanovski v New South Wales Lotteries Corporation - Contracts - \$5 instant scratchie lottery ticket - applicants entitled to recover prize in contract (I, B, C)

Wenkart v Pantzer - *Bankruptcy Act 1966 (Cth)* - *Bankruptcy (Estate Charges) Act 1997 (Cth)* - costs - interest up to judgment - trustee's right to remuneration (B)

Grapsas v Deputy Commissioner of Taxation - *Bankruptcy Act 1966 (Cth)* - appeal dismissed under s31A *Federal Court of Australia Act 1976 (Cth)* (B)

Faulkner v Elliot - *Commonwealth Electoral Act 1918 (Cth)* - alleged contravention of s329(1) - proceedings dismissed (I, B, C)

Noon v Bondi Beach Astra Retirement Village Pty Ltd - *Retirement Villages Act 1989 (NSW)* - buyback "option" - appeal allowed, proceedings dismissed (B, C)

Ralston v Bell & Smith t/a Xentex Patch & Grout (No 2) - Costs - personal injuries - injury on construction site (I, C)

Credit Connect v Carney Credit Connect v Smit - Application for summary judgment - forged mortgage - whether agent's fraud attributable to mortgagee (I, B, C)



Primebroker Securities Ltd (recs & mgrs apptd) (in liq) v Fortis Clearing Sydney Pty Ltd (No 2)
- Australian Master Securities Lending Agreement (AMSLA) - calculation of value of borrowed securities for purpose of netting (B)

R v Baldock - Criminal law - Crown appeal against sentence - defrauding the Commonwealth (B)

Summaries with links (5 minute read)

Friday 20 August 2010

Kuzmanovski v New South Wales Lotteries Corporation [2010] FCA 876

Federal Court of Australia

Rares J (in Sydney)

Contracts - \$5 instant scratchie lottery ticket - use of dictionaries to construe words used in contract - whether any one dictionary authoritative - whether statutory licensee engaged in conduct in contravention of ss51A, 52 & 53 *Trade Practices Act 1974* (Cth) in the creation for sale & sale of lottery ticket - applicants entitled to recover prize in contract.

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

Wenkart v Pantzer [2010] FCA 866

Federal Court of Australia

Flick J (in Sydney)

Bankruptcy Act 1966 (Cth) - *Bankruptcy (Estate Charges) Act 1997* (Cth) - costs - indemnity costs - interest up to judgment - trustee's right to remuneration - rule in *Cherry v Boulthbee* - the decision in *Baldry v Jackson* - extensive consideration of text & case law.

[Wenkart](#) (B)



Grapsas v Deputy Commissioner of Taxation [2010] FCA 868

Federal Court of Australia

Middleton J (in Melbourne)

Bankruptcy Act 1966 (Cth) - appeal against decision of Federal Magistrate - application for annulment of sequestration order under s153B - application to be permitted to travel overseas - appellant's appeal dismissed under s31A *Federal Court of Australia Act* 1976 (Cth) as appellant has no reasonable prospect of successfully prosecuting the appeal.

[Grapsas](#) (B)

Faulkner v Elliot [2010] FCA 884

Federal Court of Australia

Greenwood J (in Brisbane)

Commonwealth Electoral Act 1918 (Cth) - applicant independent candidate alleging contraventions 329(1) - applicant seeking injunction - whether respondents' conduct arguably likely to mislead or deceive an elector in relation to the *casting* of a vote as opposed to influencing the formation of a judgment by an elector as to whom to vote for - proceedings dismissed.

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

Noon v Bondi Beach Astra Retirement Village Pty Ltd [2010] NSWCA 202

Court of Appeal of New South Wales

Giles, Macfarlan & Young JJA

Retirement Villages Act 1989 (NSW) - appellants executors of an estate of the late Brian Noon who, with his late wife, purchased a unit in a retirement village from second respondent - first respondent had purported to assert a right in the way of a buyback "option" to purchase the unit for its original purchase price - for decision 2 June 2009, see 'Benchmark' B & IBC Tuesday 9 June 2009 & link below - whether there was a "Residence Contract" under the Act - appeal allowed, proceedings dismissed - extensive consideration of United Kingdom & Australian case law.

[Noon](#) (B, C)

[Bondi Beach Astra Retirement Village](#) - decision 2 June 2009 - s66ZG *Conveyancing Act* 1919 (Cth) - *Retirement Villages Act* 1989 (NSW) - *Retirement Villages Act* 1999 - Mandatory Code of Practice - sale of unit in 1996 - contract contained "buy back" provisions which plaintiffs seeking to enforce - Disclosure Statements - whether buy back arrangement amounted to option within s66ZG - order for specific performance.



Ralston v Bell & Smith t/a Xentex Patch & Grout (No 2) [2010] NSWSC 913

Supreme Court of New South Wales

Hislop J

Costs - personal injuries - multiple defendants - for decision 31 March 2010, see 'Benchmark' I, C & IBC Thursday 8 April 2010 & link below.

[Ralston](#) (I, C)

[Ralston](#) - decision 31 March 2010 - personal injuries - plaintiff injured whilst working on a construction site at Kincumber - an unregistered mobile elevated work platform, or boom lift collided with him - vehicle was a motor vehicle as defined in s3 *Motor Accidents Compensation Act* 1999 (NSW) - five defendants - cross-claims - liability - apportionment - *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) - equipment hiring agreement - contract indemnity - whether relationship of plaintiff with Xentex that of employer/employee or principal/independent contractor - answer: the latter - plaintiff's damages assessed at \$632,357.53.

Credit Connect v Carney Credit Connect v Smit [2010] NSWSC 910

Supreme Court of New South Wales

Macready AsJ

Application for summary judgment - forged mortgage - whether agent's fraud attributable to mortgagee - whether Consumer Credit Code & ASIC Act apply to forged mortgage - unconscionability - Registrar-General's position - consideration of what constitutes fraud for purposes of s42 *Real Property Act* 1900 (NSW) - application refused - an interesting review of case law from the United Kingdom, Australia & New Zealand.

[Credit Connect](#) (I, B, C)

[Dollars & Sense Finance](#) - decision of Court of Appeal of New Zealand 4 May 2007, referred to at para. 80 of judgment above - agency - fraud - an interesting decision with consideration of text & case law from the United Kingdom, Australia & New Zealand.

Primebroker Securities Ltd (recs & mgrs apptd) (in liq) v Fortis Clearing Sydney Pty Ltd (No 2) [2010] VSC 358

Supreme Court of Victoria

Judd J

Australian Master Securities Lending Agreement (AMSLA) - borrowed securities - default powers - construction of documents - application of netting provisions - calculation of value of borrowed securities for purpose of netting - for decision 28 August 2009, see 'Benchmark' B & IBC Tuesday 1 September 2009 & link below - value for securities in Blue Energy Ltd, Luminas Ltd & Octavia Ltd.

[Primebroker Securities](#) (B)



[Primebrokers Securities](#) - decision 28 August 2009 - contracts - plaintiff carried on business as share trader, then went into voluntary administration - defendant company a specialist broker & third party clearer with membership of Australian Stock Exchange & Sydney Futures Exchange - Standard Client Agreement - borrowed securities - rights of borrower - default powers - construction of documents - dealing loan facility - applicability of netting provisions - estoppel by convention - United Kingdom, Australian & New Zealand case law considered.

R v Baldock[2010] WASCA 170

Court of Appeal of Western Australia

Pullin & Buss JJA; Kenneth Martin J

Criminal law - Crown appeal against sentence - defrauding the Commonwealth - tax evasion - no personal benefit - appeal allowed in part.

[Baldock](#) (B)

And on the eve of the 2010 Federal Election - on the Campaign Trail in 1903

To the voters of Glen Innes 'twas O'Sullivan that went,
To secure the country vote for Mister Hay.
So he told 'em what he'd borrowed, and he told 'em what he'd spent,
Though extravagance had blown it all away.
Said he, "Vote for Hay, my hearties, and wherever we may roam
We will borrow, undismayed by Fortune's frown !"
When he got his little banjo, and he sang them "Home, Sweet Home !"
Why, it made a blessed horse fall down.

Then he summoned his supporters, and went spouting through the bush,
To assure them that he'd build them roads galore,
If he could but borrow something from the "Plutocratic Push",
Though he knew they wouldn't lend him anymore.
With his Coolangatta Croesus, who was posing for the day
As a Friend of Labour, just brought up from town:
When the Democratic Keystone told the workers, "Vote for Hay",
Then another blessed horse fell down!



When the polling day was over, and the promising was done -
 The promises that never would be kept
 Then O'Sullivan came homeward at the sinking of the sun,
 To the Ministerial Bench he slowly crept.
 When his colleagues said, "Who won it ? Is our banner waving high ?
 Has the Ministry retained Glen Innes Town ?"
 Then the great man hesitated, and responded with a sigh -
 "There's another blessed seat gone down!"

A.B. Paterson

*(b. 17 February 1864 at Narrambla near Orange
 - d. 5 February 1941 in Sydney)*

- the above poem "Gone Down" appeared in "The Evening News" 27 October 1903 & referred to the New South Wales election - candidates included Alexander Hay, Progressive, Glen Innes & Follett Johns Thomas, Independent Liberal, Glen Innes

from "The Sydney Morning Herald"

Monday 26 October 1903

GLEN INNES ELECTION

A keen contest

Each side confident

(from our Special Reporter)

GLEN INNES, Sunday

The Minister for Works, Mr. O'Sullivan, had some extraordinary experiences during his touring on Saturday in the Glen Innes electorate. The party which he headed left the train at Deepwater & drove to Tent Hill, a grazing & tin-mining settlement. While Mr. O Sullivan was speaking a coach with a brass band aboard arrived, & was pulled up beside the hall. Mr. O'Sullivan concluded with a vehement appeal, and shortly afterwards one of the horses dropped dead. The incident caused some delay, and a humourist tendered the advice, "Send for Hay." On arrival at Emmaville, a mining town of importance, Mr. O'Sullivan spoke to the townspeople from his buggy. He was indulging in fiery oratory when smoke was seen rising close to the buggy and it was found that a woman was in flames. Some bystanders grabbed the burning skirt, and the fire was extinguished, while Mr O'Sullivan proceeded without further alarming results.

The campaign amounts to a skirmish, preceding the battle of the general elections. For a skirmish it is a warm business, the Government making a tremendous effort to save the seat. The



Opposition is equally intent upon capturing it. Each candidate is personally highly respected. Although Mr. Hay went to Glen Innes as an outsider, within a few days he had made the result of the election somewhat doubtful. From an Opposition standpoint, although Mr Thomas is likely to be successful, it would be unwise to regard the result as a foregone conclusion. Opinion in many parts of the electorate inclines to the view that either candidate is likely to be returned by a narrow majority. Mr. Thomas has a strong local following ... It is beyond all doubt that Mr. Hay has impressed the miners... Mr. O'Sullivan, wearing when among the miners a cap instead of a silk hat, has been coaching through Tent Hill and Emmaville, and thence to Glen Innes ...

... The town vote, the mining vote and the farming vote are all split. An incident that bordered on the tragic was the descent of the Big Hill by Mr. Hay in a trap. The brake refused to work, and the team, including a flighty grey, went down the hill at a terrific pace...

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