



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ali v Collection Point Pty Ltd, in the matter of Collection Point Pty Ltd (No 2) - Contempt proceedings - failure to comply with court order (I, B, C)

Hanna v OAMPS Insurance Brokers Ltd [2010] NSWCA 267 - Employment law - post-employment restraint deed - appeal dismissed (I)

Barecall Pty Limited v David Hoban - Guarantee & indemnity (B)

Metro Hotel Sydney Pty Ltd v Kol Tov Pty Ltd - Costs (I, B, C)

Ralph Lauren 57 Pty Ltd v Byron Shire Council - Discovery of documents - erosion caused by coastal processes - revetment wall constructed by Council - Belongil Beach (C)

Arthur's Seat Scenic Chairlift Pty Ltd v The Queen - Occupational health & safety - appeal against penalty allowed (I, C)

Challenger Listed Investments Ltd v Commissioner of State Revenue - s89C *Duties Act* 2000 (Vic) - public float of land rich trust - appeal allowed (B)

Szmulewicz & Ors v Recht & Anor - Fiduciary duties - solicitors - preparation of will - right under will to charge professional fees - pleadings - application for summary judgment (B)



Appo v Stanley & Anor - Personal injuries - duty of care to jockey injured during race - damages (I)

Owen v Menzies & Ors - *Anti-Discrimination Act* 1991 (Qld) - constitutional law (I)

Bechara v Bonacorso (No 4) - *Defamation Act* 2005 (NSW) - common law qualified privilege - defence under s33 (I)

Employers' Liability Insurance "Trigger" Litigation, Re - decision from the United Kingdom - personal injuries - employer's liability insurance policies - mesothelioma (I)

Summaries with links (5 minute read)

Thursday 21 October 2010

[Ali v Collection Point Pty Ltd, in the matter of Collection Point Pty Ltd \(No 2\) \[2010\] FCA 1125](#)

Federal Court of Australia

Gordon J (in Melbourne)

Contempt proceedings filed by two non-parties - onus of proof - failure to comply with court order - detailed consideration of case law from the United Kingdom & Australia.

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

[Ali](#) - decision 28 September 2010: see 'Benchmark' Wednesday 6 October 2010 - contempt proceedings filed by two non-parties - data files - whether statement of charge provided sufficient detail of the particular act, matter or thing alleged as the foundation of the charge - each charge not distinctly stated - two paragraphs of the Statement of Charge struck out - an interesting review of principles & case law from the United Kingdom & Australia.

[Hanna v OAMPS Insurance Brokers Ltd \[2010\] NSWCA 267](#)

Court of Appeal of New South Wales

Allsop P, Hodgson JA & Handley AJA

Employment law - post-employment restraint deed - for decision appealed from, see 'Benchmark' I & IBC Thursday 29 July 2010 & link below - s4(1) *Restraints of Trade Act* 1976 (NSW) - reasonableness of restraint period - appeal dismissed.

[Hanna](#) (I)



[OAMPS Insurance Brokers](#) - decision 27 July 2010 - defendant resigned from plaintiff to work for a competitor - Post Employment Restraint Deed - plaintiff seeking to enforce confidentiality obligations undertaken & restraint covenants given by defendant - so-called cascading, ladder or step clause - held covenant not void for uncertainty - twelve months reasonably required to protect plaintiff's legitimate business interest.

Barecall Pty Ltd v David Hoban [2010] NSWCA 269

Court of Appeal of New South Wales

Allsop P, Macfarlan JA & Handley AJA

Guarantee & indemnity - for decision appealed from, see 'Benchmark' I, B & IBC Wednesday 28 October 2009 & link below - appeal dismissed, subject to other orders in relation to costs.

[Barecall](#) (B)

[Barecall](#) - decision 16 October 2009 - whether defendants guaranteed performance of lessee's obligations under lease, as varied & sub-lease - nightclub/restaurant at Manly - whether failure of some defendants to sign documents would discharge other defendants from liability - held that defendants not liable as guarantors - estoppel by convention - held that defendants not estopped from denying guarantee obligation - plaintiff's claim dismissed - detailed examination of text & case law from the United Kingdom, New Zealand & Australia.

Metro Hotel Sydney Pty Ltd v Kol Tov Pty Ltd [2010] NSWSC 1195

Supreme Court of New South Wales

Hamilton AJ

Costs - proceedings originally fixed for trial for ten days were partially settled; fixture was reduced to four days - subsequently, proceedings were completely settled - dispute in relation to hotel management agreement - rr42.19, 42.20 *Uniform Civil Procedure Rules* 2005 (NSW) - no order as to costs of proceedings - detailed examination of legislation & Australian case law in an interesting decision.

[Metro Hotel Sydney](#) (I, B, C)

Ralph Lauren 57 Pty Ltd v Byron Shire Council [2010] NSWLEC 207

Land & Environment Court of New South Wales

Craig J

Discovery of documents - erosion caused by coastal processes - revetment wall constructed by Council - applicants the owners of registered interests in land that has frontage to Belongil Beach - issue in proceedings as to whether terms of development consent imposed an obligation upon Council to repair revetment wall, the extent of that repair & the need to renourish sand dune - unusual & exceptional nature of issues raised by proceedings justifies making of an order for discovery.

[Ralph Lauren 57](#) (C)

**Arthur's Seat Scenic Chairlift Pty Ltd v The Queen [2010] VSCA 269**

Court of Appeal of Victoria

Buchanan & Neave JJA

Occupational health & safety - appeal against penalty - primary judge had imposed fine of \$110,000 - chairlift at Dromana on the Mornington Peninsula - chair grip mechanism not gripping cable - chair in which patron was riding slid down cable & collided with rear of next chair - patron sustained compound fractures of her legs - appeal allowed & fine of \$60,000 substituted.

[Arthur's Seat Scenic Chairlift](#) (I, C)**Challenger Listed Investments Ltd v Commissioner of State Revenue [2010] VSC 464**

Supreme Court of Victoria

Pagone J

s89C *Duties Act* 2000 (Vic) - public float of land rich trust - exemptions - reduction in penalty - appeal allowed.

[Challenger Listed Investments](#) (B)**Szmulewicz & Ors v Recht & Anor [2010] VSC 447**

Supreme Court of Victoria

Mukhtar AsJ

Fiduciary duties - solicitors - preparation of will - solicitor appointed as trustee & executor - right under will to charge professional fees - additional entitlement to executor's commission - defendants contending case should proceed by way of pleadings - no basis to either strike out or give summary judgment for defendants.

[Szmulewicz & Ors](#) (B)**Appo v Stanley & Anor [2010] QSC 383**

Supreme Court of Queensland

McMeekin J

Personal injuries - duty of care - damages - plaintiff worked as a jockey - injury to discs in his cervical spine in a fall from 'Lough Key' during a race - plaintiff alleging fall caused by negligent riding of respondents - for determination: why Lough Key was squeezed &, if caused by either of respondent's horses, whether a reasonably skilful jockey in their position could have avoided it occurring- whether restrictions on damages imposed by *Civil Liability Act* 2003 (Qld) applied to claim - judgment for plaintiff against defendants in sum of \$945,895.02.

[Appo](#) (I)



Owen v Menzies & Ors [2010] QSC 387

Supreme Court of Queensland

Douglas J

Anti-Discrimination Act 1991 (Qld) - constitutional law - respondents had made a complaint against appellant to Anti-Discrimination Tribunal Queensland for vilification in contravention of s124A(1) - in this application, appellant seeking to argue separately one issue arising in the appeal, namely that the Tribunal had improperly attempted to exercise the judicial power of the Commonwealth - orders of Anti-Discrimination Tribunal set aside & matter remitted to Queensland Civil & Administrative Tribunal to be dealt with according to law.

[Owen](#) (I)

In the District Court of New South Wales...

Bechara v Bonacorso (No 4) [2010] NSWDC 234

District Court of New South Wales

Gibson DCJ

Defamation Act 2005 (NSW) - common law qualified privilege - defence under s33: "unlikely to sustain any harm" - judgment for defendant - extensive review of United Kingdom, New Zealand & Australian case law.

[Bechara](#) (I)

From the United Kingdom...

Employers' Liability Insurance "Trigger" Litigation, Re [2010] EWCA Civ 1096

Court of Appeal of England & Wales

Rix, Smith & Stanley Burnton LJJ

Personal injuries - employer's liability insurance policies - mesothelioma - identifying the 'trigger' under various insurance policies - issue as to what has to happen in any particular policy year to make the insurer on risk during that year liable to respond & so to indemnify employer insured - whether it is the time or occurrence of the cause of that disease, in the form of the inhalation of asbestos dust, which serves to identify a particular policy year & thus the policy in question; or whether it is the time or occurrence of the onset of the disease, which performs that function.

[Employers' Liability Insurance "Trigger" Litigation](#) (I)

[Durham](#) - decision 21 November 2008

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