



Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

St Andrew's Life Insurance Pty Ltd, the application of St Andrew's Life Insurance Pty Ltd & the Colonial Mutual Life Assurance Society Ltd (No 2) - *Life Insurance Act 1995 (Cth)* - transfer & amalgamation

Vitaz v Westform (NSW) Pty Ltd & Ors - *Workplace Injury Management & Workers Compensation Act 1998 (NSW)* - decisions by Approved Medical Specialist & Appeal Panel

Oasis Fund Management Ltd v Royal Bank of Scotland NV - Representative proceedings - third plaintiff seeking to withdraw as plaintiff representative

Everest Project Developments Pty Ltd v Minister Administering the Environmental Planning & Assessment Act 1979 & The Roads & Traffic Authority of New South Wales - *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* - South Sydney Local Environmental Plan 1998 - valuation

Pravidur v Scental Pacific Pty Ltd - sub-ss 134AB(7), (8) & (11) *Accident Compensation Act 1985 (Vic)* - whether Victorian WorkCover Authority had complied with disclosure obligations under the Act

Blake v J R Perry Nominees Pty Ltd - Personal injuries - prank by fellow worker - plaintiff suing employer - claim dismissed

Chubb Security Australia Pty Ltd v Kotzman & Ors (No 2) - s8 *Administrative Law Act* 1978 (Vic)

Deputy Commissioner of Taxation v Haritos - Application for summary judgment

Bufalo Corporation Pty Ltd (Rec'r & Manager app'td) (in liq) v Lendlease Primelife Ltd & Ors (No 3) - Security for costs - further security sought

Howlett v Blissenden - Professional negligence - appeal from order permitting amendment of statement of claim

R v Purcell - Criminal law - sentencing - misconduct of holder of a public office

Summaries with links (5 minute read)

Thursday 24 June 2010

St Andrew's Life Insurance Pty Ltd, the application of St Andrew's Life Insurance Pty Ltd & the Colonial Mutual Life Assurance Society Ltd (No 2) [2010] FCA 637

Federal Court of Australia

Jacobson J (in Sydney)

Life Insurance Act 1995 (Cth) - application for confirmation under Part 9 of a scheme for transfer & amalgamation of life insurance businesses - scheme approved with modification for minor typographical error.

[St Andrew's Life Insurance](#)

Vitaz v Westform (NSW) Pty Ltd & Ors [2010] NSWSC 667

Supreme Court of New South Wales

Johnson J

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - plaintiff seeking prerogative relief with respect to decisions by Approved Medical Specialist & Appeal Panel - whether error of law or jurisdictional error by approved medical specialist in approach to s323 of

Act - whether failure by approved medical specialist to give reasons - whether denial of procedural fairness - whether error of law or jurisdictional error by Appeal Panel - no error established - proceedings dismissed - extensive consideration of Australian case law.

[Vitaz](#)

Oasis Fund Management Ltd v Royal Bank of Scotland NV [2010] NSWSC 584

Supreme Court of New South Wales

Biscoe AJ

Representative proceedings - allegations as to investment advice & misleading or deceptive conduct - whether plaintiff in representative proceedings, who sues on his own behalf & on behalf of numerous persons but who is unwilling to continue as the representative plaintiff, can only cease to be a plaintiff if he discontinues his personal proceedings & on condition that he relinquish his claims against the defendant - here, third plaintiff seeking to withdraw as plaintiff representative - another member of the group willing to take his place - nature of representative proceedings - whether any order for joinder, substitution or withdrawal should be made - withdrawal permitted, on terms as to costs - detailed consideration of legislation, text & case law from the United Kingdom & Australia.

[Oasis Fund Management](#)

Everest Project Developments Pty Ltd v Minister Administering the Environmental Planning & Assessment Act 1979 & The Roads & Traffic Authority of New South Wales [2010] NSWLEC 88

Land & Environment Court of New South Wales

Sheahan J

Land Acquisition (Just Terms Compensation) Act 1991 (NSW) - South Sydney Local Environmental Plan 1998 - relevant area at Waterloo - Green Square - parent lot Sydney Gate - acquired land - claim for market value compensation - claim for disturbance - bonus floor space - contamination & remediation plans - town planning - valuation - extensive consideration of Australian case law.

[Everest Project Developments](#)

Pravidur v Scental Pacific Pty Ltd [2010] VSCA 144

Court of Appeal of Victoria

Neave JA (dissenting), Redlich JA & Habersberger AJA

Accident Compensation Act 1985 (Vic) - principles of statutory interpretation - jury trial - common law damages for serious injury - whether Victorian WorkCover Authority had complied with

disclosure obligations under the Act - whether evidence of witness fell within phrase 'other material' in s134AB(8), (11) - relevance of Ministerial Direction to question of construction - whether trial judge had residual discretion to admit or exclude evidence - by majority, appeal dismissed: in allowing the appeal, Neave JA took a different view as to combined effect of sub-ss 134AB(7), (8) & (11) - detailed consideration of legislation & case law in an interesting decision.

[Pravidur](#)

Blake v J R Perry Nominees Pty Ltd [2010] VSC 272

Supreme Court of Victoria

J Forrest J

Personal injuries - agreement reached between parties as to quantum of damages - injury to plaintiff due to prank by fellow worker at Portland Wharf when, without warning, a fellow worker struck plaintiff's knees with some force, causing his legs to give way - back pain - plaintiff suing employer making two substantive allegations of negligence (a) that employer is directly liable to plaintiff for failing to take reasonable care for his safety; and (b) that employer vicariously liable for actions of worker who played prank - claim dismissed.

[Blake](#)

Chubb Security Australia Pty Ltd v Kotzman & Ors (No 2) [2010] VSC 281

Supreme Court of Victoria

Cavanough J

s8 *Administrative Law Act* 1978 (Vic) - detailed analysis of the section which is headed: reasons for decision to be furnished by tribunal on request by party concerned - for decision 4 June 2010, see 'Benchmark' I & IBC Tuesday 8 June 2010 & link below.

[Chubb Security Australia](#)

[Chubb Security Australia](#) - decision 4 June 2010 - *Accident Compensation Act* 1985 (Vic) - application for judicial review of a certified opinion of Medical Panel concerning fourth defendant worker - alternatively, employer seeking order under s8(4) *Administrative Law Act* 1978 (Vic) that Panel provide a further & better statement of its reasons - see paragraph 5 of judgment re: *Sherlock v Lloyd*.

Deputy Commissioner of Taxation v Haritos [2010] VSC 275

Supreme Court of Victoria

Mukhtar As J

Application for summary judgment - contracts - agreement with taxpayer - time stipulation for performance of action - breach - summary judgment granted to Commissioner.

[Deputy Commissioner of Taxation](#)

Bufalo Corporation Pty Ltd (Rec'r & Manager app'td) (in liq) v Lendlease Primelife Ltd & Ors (No 3) [2010] VSC 263

Supreme Court of Victoria

Judd J

Security for costs - further security sought - relevance of litigation funder - further security allowed on each application.

[Bufalo Corporation](#)

[Bufalo Corporation](#) - also decision 21 June 2010 - application for leave to amend pleadings - costs.

Howlett v Blissenden [2010] TASSC 27

Supreme Court of Tasmania

Tennent J

Professional negligence - claim against solicitors - appeal from order permitting amendment of statement of claim to allow claim for interest - dispute about payment for work done on subdivision at Blackmans Bay - plaintiffs then earthmoving contractors - nature of an appeal from a decision of Associate Judge - order allowing amendment set aside - amendment of pleading refused.

[Howlett](#)

In the District Court of New South Wales...

R v Purcell [2010] NSWDC 98

District Court of New South Wales

Berman SC DCJ

Criminal law - sentencing - misconduct of holder of a public office - police officer - see para. 16 of judgment: common law misdemeanour.

[Purcell](#)



Thomas Hardy

(b. Higher Brockhampton, Dorset 2 June 1840 - d. Dorchester 11 January 1928)

Novelist/poet - author of "Far from the Madding Crowd" (1874), "The Mayor of Casterbridge" (1886), "Tess of the D'Urbervilles" (1891), "Jude the Obscure" (1895) - "Wessex Poems" (1928)

Weathers

This is the weather the cuckoo likes,
And so do I;
When showers betumble the chestnut spikes,
And nestlings fly;
And the little brown nightingale bills his best,
And they sit outside at 'The Traveller's Rest,'
And maids come forth sprig-muslin drest,
And citizens dream of the south & west,
And so do I.

This is the weather the shepherd shuns,
And so do I;
When beeches drip in browns & duns,
And thresh & ply;
And hill-hid tides throb, throe on throe,
And meadow rivulets overflow,
And drops on gate bars hang in a row,
And rooks in families homeward go,
And so do I.

Once at Swanage

The spray sprang up across the face of the moon,
And all its light loomed green
As a witch-flame's weirdsome sheen
At the minute of an incantation scene;
And it greened our gaze - that night at demilune.

Roaring high & roaring low was the sea



Benchmark

Behind the headland shores;
It symbolized the slamming of doors,
Or a regiment hurrying over hollow floors ...
And there we two stood, hands clasped: I and she !

[Collected poems of Thomas Hardy](#)

[Thomas Hardy - Wikipedia, the free encyclopedia](#)

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