



Monday 29 July 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



Follow us on Twitter today!

[@Benchmark Legal](https://twitter.com/BenchmarkLegal)

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Commissioner of Taxation v Messenger Press Proprietary Ltd (FCAFC) - income tax deductions - currency exchange losses - Commissioner's appeal dismissed (B, G)

Panther v Pishedda (NSWCA) - negligence - occupiers liable for slip and fall on driveway of rental premises (I)

Avery v Flood (NSWSC) - expert witnesses - medical negligence - directions given as to constitution of expert conclaves (I)



Hughes v Daley t/as Colin Daley Quinn (NSWSC) - solicitors' costs confined to capped costs under *Motor Accidents Compensation Regulation (No. 2) 1999* (NSW) (I)

State of Victoria v Tabcorp Holdings Ltd (VSCA) - discovery - challenge to State's claim of legal advice privilege upheld - leave to appeal refused (I, B, G)

Australia and New Zealand Banking Group Ltd v Marks (QSC) - private international law - registration of Singapore judgment not set aside (I, B, C)

Blackley Investments Pty Ltd v Burnie City Council (No 4) (TASSC) - breach of contract for sale of land - assessment of reliance damages - claimed items of expenditure allowed (I, B, C)

Summaries with links (5 minute read)

Commissioner of Taxation v Messenger Press Proprietary Ltd [2013] FCAFC 77

Full Court of the Federal Court of Australia

Jessup, Robertson & Griffiths JJ

Income tax - appeal by Commissioner from orders allowing appeals in thirty related matters under Pt IVC *Taxation Administration Act 1953* (Cth) from its disallowance of objections to assessments of income tax - respondents were taxpayers to which currency exchange losses, alleged to have been made by *News Publishers Holdings Pty Ltd*, were subsequently transferred - whether there were such losses and, to extent that there were, whether losses were an allowable deduction for income tax purposes under Div 3B, Pt III *Income Tax Assessment Act 1936* (Cth) - realisation of currency exchange loss - *realised - under an eligible contract* - held: no error in conclusions of primary judge - appeal dismissed.

[Commissioner of Taxation](#)(B, G)

Panther v Pischedda [2013] NSWCA 236

Court of Appeal of New South Wales

Macfarlan, Barrett & Gleeson JJA

Negligence - occupier's liability - damages - respondent fell and broke ankle while walking in rain on driveway of premises occupied by appellants - respondent claimed damages from appellants for breach of duty - expert evidence - s5B *Civil Liability Act 2002* (NSW) - foreseeability of risk - response to risk - *Jones v Dunkel* inferences - held: appellants accepted that inference was available that respondent would have used hand rails or an alternative means of access if available, with



result that her accident would not have occurred - respondent's cause of action established - primary judge's conclusion as to extent of future domestic assistance required was open on evidence - appeal dismissed.

[Panther](#) (I)

Avery v Flood [2013] NSWSC 996

Supreme Court of New South Wales

Beech-Jones J

Expert witnesses - expert conclaves - medical negligence - plaintiff sued surgeon and anaesthetist in negligence for injuries suffered as result of breast surgery - plaintiff claimed damages for assault, battery, or trespass to her person through lack of informed consent - plaintiff contended there should be one combined conclave involving all expert doctors who had provided reports concerning breach and causation - defendants contended there should be two conclaves: one dealing with causation and another dealing with breach issues - directions given in accordance with r31.24 *Uniform Civil Procedure Rules 2005* (NSW) as to constitution of expert conclaves.

[Avery](#) (I)

Hughes v Daley t/as Colin Daley Quinn [2013] NSWSC 806

Supreme Court of New South Wales

Davies J

Solicitors' costs - appeal by client under s208L *Legal Profession Act 1987* (NSW) in relation to costs assessment - costs assessment arose out of client's retainer of solicitors in claim under *Motor Accidents Compensation Act 1999* (NSW) - whether solicitors successfully contracted out of cl 11 *Motor Accidents Compensation Regulation (No.2) 1999* (NSW) - held: solicitors failed to provide estimate of counsel's costs with which they had been provided on two occasions to client - solicitors did not comply with disclosure requirement under s177 of the Act as required by cl 11(a) of the Regulation - costs remained governed by Regulation - costs confined to capped costs under Regulation.

[Hughes](#) (I)



State of Victoria v Tabcorp Holdings Ltd [2013] VSCA 180

Court of Appeal of New South Wales

Ashley & Hansen JJA

Discovery - legal advice privilege - respondent claimed entitlement to payment of money from State arising from expiry of its gambling licences and grant of new gambling licences - State applied for leave to appeal from decision upholding respondent's challenge to State's claim for legal advice privilege over documents and ordering documents to be produced for inspection - held: State failed to establish that dominant purpose of documents was provision of legal advice - exercise of discretion under s133 *Evidence Act 2008* (Vic) did not miscarry - not necessary to deal with issues of joint privilege and waiver - if necessary to conclude on joint privilege court would do so in respondent's favour - refusal of leave to appeal would not cause substantial injustice to State - leave to appeal refused.

[State of Victoria](#) (I, B, G)

Australia and New Zealand Banking Group Ltd v Marks [2013] QSC 186

Supreme Court of Queensland

Mullins J

Private international law - contract - loans and mortgages - judgment of High Court of Singapore ordered that respondent pay money to applicant; registered under Pt 2 *Foreign Judgments Act 1991* (Cth) - respondent applied under r947L *Uniform Civil Procedure Rules 1999* (Qld) to set aside the registration pursuant to s7(2)(iv) of the Act on basis that courts of Singapore had no jurisdiction in circumstances of case - held: question whether Singapore Court had jurisdiction must be determined according to jurisdictional rules of Queensland - steps taken by respondent in Singapore proceedings, and proper construction of clause of guarantee, enlivened application of s7(3)(a)(iii) of the Act concerning agreement to submit to jurisdiction - court not persuaded that registration of Singapore judgment should be set aside.

[Australia and New Zealand Banking Group Ltd](#) (I, B, C)

Blackley Investments Pty Ltd v Burnie City Council (No 4) [2013] TASSC 39

Supreme Court of Tasmania

Holt AsJ

Damages - breach of contract - Council refused to complete contract for purchase of land by plaintiff - at parties' request court awarded damages to be assessed in substitution for specific performance - plaintiff obtained determination it was entitled to recover reliance damages as supported by evidence - whether items of expenditure claimed were reasonably incurred by



plaintiff in respect of a step which should have been within defendant's contemplation as sufficiently likely to have been taken in reliance on promise to complete contract - held: claimed items allowed - damages assessed.

[Blackley Investments Pty Ltd](#) (I, B, C)

[Click Here to access our Benchmark Search Engine](#)