

# Benchmark

Friday, 13 December 2019

## Weekly Banking Law Review Selected from our Daily Bulletins covering Banking

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### CIVIL (Insurance, Banking, Construction & Government) Executive Summary (1 minute read)

**PKT Technologies Pty Ltd (formerly known as Fairlight.Au Pty Ltd) v Peter Vogel Instruments Pty Ltd** (FCAFC) - damages - contract - trade mark - copyright - appeal allowed in part - cross-appeal dismissed

**Clark v Minister for the Environment** (FCA) - administrative law - Minister declined to make declarations under ss10 & 12 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) - judicial review application upheld - decision set aside

**Hardingham v RP Data Pty Limited** (FCA) - copyright - separate determination of liability concerning certain works - applicants failed to establish infringement of copyright by respondent

**Republica Democratica de Timor Leste v Lighthouse Corporation Limited** (VSCA) - stay - contract - no error in finding Supreme Court of Victoria was not a 'clearly inappropriate forum' - leave to appeal refused

**Woods v Collins** (SASCFC) - motor vehicle accident - appeal against apportionment of liability and award of damages - appeal allowed in part

**Barrett-Lennard v River Wind Pty Ltd** (WASCA) - easement - appeal against damages allowed - damages reduced to 'nominal sum' of \$100 - appeal otherwise dismissed

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## Summaries With Link (Five Minute Read)

### **PKT Technologies Pty Ltd (formerly known as Fairlight.Au Pty Ltd) v Peter Vogel Instruments Pty Ltd [2019] FCAFC 216**

Full Court of the Federal Court of Australia  
Besanko, Banks-Smith & Stewart JJ

Damages - contract - trade mark - copyright - proceedings concerned quantification of damages for breach of "Development and Licensing Agreement", determination concerning liability and damages with respect to copyright infringement claim, and determination concerning damages for trade mark infringement - 'expectation damages' - 'reliance damages' - 'mitigation costs' - 'trade mark infringement' damages - 'account of profits' - *Copyright Act 1968* (Cth) - *Trade Marks Act 1955* (Cth) *Trade Marks Act 1995* (Cth) - held: appeal allowed in part - cross-appeal dismissed.

[PKT Technologies](#)

[From Benchmark Tuesday, 10 December 2019]

### **Clark v Minister for the Environment [2019] FCA 2027**

Federal Court of Australia  
Robertson J

Administrative law - applicants sought protection of 'Specified Area' and 'six trees' (Application) - Minister declined to make declarations under ss10 & 12 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (Heritage Protection Act) - applicants sought to quash Minister's decision and remittal of matter to Minister - applicants also sought 'consequential relief' against State - whether misconstruction of Heritage Protection Act - 'statutory concepts of injury or desecration' - 'Aboriginal tradition' - whether breach of 'natural justice or procedural fairness' - whether 'Wednesbury unreasonableness' - whether 'improper purpose' - materiality - held: judicial review application upheld - Minister's decision set aside.

[Clark](#)

[From Benchmark Tuesday, 10 December 2019]

### **Hardingham v RP Data Pty Limited [2019] FCA 2075**

Federal Court of Australia  
Thawley J

Copyright - applicants claimed against respondent for infringement of copyright in respect of 'a large number of works' - Court made consent order for separate determination of liability concerning certain works - works were in relation to 'photographs and floor plans in respect of twenty properties' - 'licence of copyright' - sub-licence granted by cross-respondent to respondent - scope of licence which applicants granted to real estate agencies - whether applicants licensed real estate agencies to sub-license 'copyright works' to cross-respondent on terms authorising cross-respondent to grant a sub-licence - *Copyright Act 1968* (Cth) - held: applicants failed to establish infringement of copyright by respondent.

[Hardingham](#)

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[From Benchmark Thursday, 12 December 2019]

## **Republica Democratica de Timor Leste v Lighthouse Corporation Limited [2019] VSCA 290**

Court of Appeal of Victoria

Maxwell P, Niall & Emerton JJA

Stay - contract - respondents brought proceedings in Supreme Court of Victoria against applicants, contending they breached fuel supply agreement they made with applicants - applicants sought proceedings' stay or dismissal - applicants, in reliance on 'common law 'act of state' doctrine', contended Supreme Court of Victoria lacked jurisdiction to entertain claim challenging 'lawfulness of conduct by the sovereign state of Timor' - alternatively, applicants contended Supreme Court of Victoria was 'clearly inappropriate forum' for dispute's determination - trial judge rejected applicants' contentions - applicants challenged finding concerning forum - applicants sought leave to appeal - *Voth v Manildra Flour Mills Pty Ltd* [1990] HCA 55 - held: no error in finding that Supreme Court of Victoria was not a 'clearly inappropriate forum' - leave to appeal refused.

[Republica Democratica](#)

[From Benchmark Tuesday, 10 December 2019]

## **Woods v Collins [2019] SASCFC 146**

Full Court of the Supreme Court of South Australia

Kourakis, Kelly & Parker JJ

Motor vehicle accident - vehicle which appellant was driving collided with vehicle which respondent was driving - judge apportioned liability 70% against appellant and 30% against respondent - appellant contended apportionment 'adverse to her' should have been no greater than 50% - appellant also challenged judge's failure to award past and future economic loss damages and decision not to award 'future voluntary services' damages - held: Court could not 'differentiate the respective culpability' of parties - responsibility apportioned 50% against appellant and 50% against respondent - future economic loss damages increased by \$15,000 - challenged concerning future voluntary services damages dismissed - appeal allowed in part.

[Woods](#)

[From Benchmark Wednesday, 11 December 2019]

## **Barrett-Lennard v River Wind Pty Ltd [2019] WASCA 199**

Supreme Court of Western Australia

Murphy, Mitchell & Vaughan JJA

Easement - respondent claimed easement in appellant's favour did not give access rights to parts of appellant's farm - primary judge found easement did not give access beyond certain lot (lot 200) to 'other parts' of appellant's farm - primary judge also found 'no substantial interference' with use of carriageway - primary judge ordered that appellant pay respondent \$5,000 for trespass for use of easement 'to go from lot 200 to other parts of' appellant's farm - appellant appealed against primary judge's decision - appellant sought alternatively that Court

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find 'prescriptive easement' allowing carriageway user to access parts of 'appellant's farm beyond lot 200' - construction of easement - held: easement did not provide for carriageway's use for accessing other parts of appellant's farm beyond lot 200 - appellant not permitted to raise 'alternative argument' argument concerning prescriptive easement when it was not raised at trial - appellant established that there was 'no evidence' of loss and damage to respondent by carriageway's 'excessive use' - damages reduced to 'nominal sum' of \$100 - appeal against damages allowed - appeal otherwise dismissed.

[Barrett-Lennard](#)

[From Benchmark Wednesday, 11 December 2019]

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## The Jumblies

By: Edward Lear

They went to sea in a Sieve, they did,  
In a Sieve they went to sea:  
In spite of all their friends could say,  
On a winter's morn, on a stormy day,  
In a Sieve they went to sea!  
And when the Sieve turned round and round,  
And every one cried, 'You'll all be drowned!'  
They called aloud, 'Our Sieve ain't big,  
But we don't care a button! we don't care a fig!  
In a Sieve we'll go to sea!'  
Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

## II

They sailed away in a Sieve, they did,  
In a Sieve they sailed so fast,  
With only a beautiful pea-green veil  
Tied with a riband by way of a sail,  
To a small tobacco-pipe mast;  
And every one said, who saw them go,  
'O won't they be soon upset, you know!  
For the sky is dark, and the voyage is long,  
And happen what may, it's extremely wrong  
In a Sieve to sail so fast!'  
Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

## III

The water it soon came in, it did,  
The water it soon came in;  
So to keep them dry, they wrapped their feet



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In a pinky paper all folded neat,  
And they fastened it down with a pin.  
And they passed the night in a crockery-jar,  
And each of them said, 'How wise we are!  
Though the sky be dark, and the voyage be long,  
Yet we never can think we were rash or wrong,  
While round in our Sieve we spin!'  
Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

## IV

And all night long they sailed away;  
And when the sun went down,  
They whistled and warbled a moony song  
To the echoing sound of a coppery gong,  
In the shade of the mountains brown.  
'O Timballo! How happy we are,  
When we live in a sieve and a crockery-jar,  
And all night long in the moonlight pale,  
We sail away with a pea-green sail,  
In the shade of the mountains brown!'  
Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

## V

They sailed to the Western Sea, they did,  
To a land all covered with trees,  
And they bought an Owl, and a useful Cart,  
And a pound of Rice, and a Cranberry Tart,  
And a hive of silvery Bees.  
And they bought a Pig, and some green Jack-daws,  
And a lovely Monkey with lollipop paws,  
And forty bottles of Ring-Bo-Ree,  
And no end of Stilton Cheese.

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Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

VI

And in twenty years they all came back,  
In twenty years or more,  
And every one said, 'How tall they've grown!'  
For they've been to the Lakes, and the Torrible Zone,  
And the hills of the Chankly Bore;  
And they drank their health, and gave them a feast  
Of dumplings made of beautiful yeast;  
And everyone said, 'If we only live,  
We too will go to sea in a Sieve,—  
To the hills of the Chankly Bore!'  
Far and few, far and few,  
Are the lands where the Jumblies live;  
Their heads are green, and their hands are blue,  
And they went to sea in a Sieve.

[https://en.wikipedia.org/wiki/Edward\\_Lear](https://en.wikipedia.org/wiki/Edward_Lear)

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