

Friday, 7 May 2021

Weekly Civil Law Review

Selected from our Daily Bulletins covering Insurance, Banking,
Construction & Government

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Executive Summary (1 minute read)

Fuchs Lubricants (Australasia) Pty Ltd v Quaker Chemical (Australasia) Pty Ltd (FCAFC) - patent - respondent sued appellant for patent infringement - appellant brought cross-claim 'for invalidity' - primary judge rejected appellant's cross-claim and accepted respondent's claim of infringement 'in part' - parties appealed and cross-appealed - appeal allowed - cross-appeal dismissed (I B)

MetLife Insurance Ltd v Hart (FCA) - superannuation - insurance - Superannuation Complaints Tribunal erred in setting aside 'purported "constructive rejection" of' first respondent's claim for total and permanent disability benefit pursuant to insurance policy - Tribunal did not appreciate consequences of terms limiting appellant's liability, failed to answer 'correct questions and erroneously concluded investigations attempted by appellant were 'not fair and reasonable' - appeal allowed - matter remitted (I B)

Turner v Carrington Ginning Pty Limited (NSWSC) - negligence - workers compensation - plaintiff injured in accident at defendant's premises - failure to take reasonable care and causation established - contributory negligence assessed at 35% - defendant not entitled to have liability reduced on basis of employer's 'notional contribution' - judgment for plaintiff in sum of \$401,428.46 (I B C G)

Bhundia v Sommers (No 4) (NSWSC) - contract - guarantee - loan - doctrine of penalties - plaintiff made loan to company - first and second defendants were directors of company and guarantors of loan - plaintiff claimed debt of US\$925,076.38 with interest from first and second defendant guarantors - default judgment entered against first defendant - judgment for plaintiff against second defendant (I B)

Mokbel v County Court of Victoria & Anor (VSC) - judicial review - contempt - human rights - appellant's appeal against imprisonment order dismissed for want of jurisdiction - appellant sought judicial review - application refused (I B C G)

Lifestyle Investments 1 Pty Ltd v Commissioner of State Revenue (VSCA) - taxation - land tax - statutory interpretation - 'proportionate exemptions' - applicants registered land as a caravan park - applicants did not discharge onus s110 *Taxation Administration Act 1997* (Vic) to prove land exempt from land tax - appeal dismissed - cross-appeal allowed (B)

In the Estate of Flack (NTSC) - wills and estates - probate - Registrar referred matter under s17(2)(c) *Administration and Probate Act 1969* (NT) - Court satisfied that 'Attachment' to deceased's will was an alteration to Will within s16(1)(d) *Administration and Probate Act* - probate issued (B)

Summaries With Link (Five Minute Read)

Fuchs Lubricants (Australasia) Pty Ltd v Quaker Chemical (Australasia) Pty Ltd [2021] FCAFC 65

Full Court of the Federal Court of Australia

Beach, Moshinsky & Thawley JJ

Patent - respondent sued appellant for patent infringement - appellant brought cross-claim 'for invalidity' - primary judge rejected appellant's cross-claim and accepted respondent's claim of infringement 'in part' - appellant appealed against rejection of 'invalidity case' concerning 'lack of novelty' ground - respondent cross-appealed, contending 'further findings' should have been made in respondent's favour on 'infringement case' - whether 'erroneous construction of relevant grace period exception' - whether error in relation to disclosures - whether erroneous approach to damages - whether erroneous application of s117(2)(b) *Patents Act 1990* (Cth) - held: appeal allowed - cross-appeal dismissed.

[Fuchs](#) (I B)

[From Benchmark Friday, 7 May 2021]

MetLife Insurance Ltd v Hart [2021] FCA 410

Federal Court of Australia

Derrington J

Superannuation - insurance - Superannuation Complaints Tribunal set aside 'purported "constructive rejection" of' first respondent's claim for total and permanent disability benefit pursuant to insurance policy - Tribunal decided claim should be accepted and directed appellant to first respondent interest - appellant appealed - s57 *Insurance Contracts Act 1984* (Cth) - whether Tribunal failed to appreciate consequence of terms which limited appellant's liability - whether Tribunal failed to answer 'correct questions' in relation to liability of appellant - whether

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Tribunal erred in concluding appellant's 'attempted investigations were not fair and reasonable' - definition of 'total and permanent disability' - *Superannuation (Resolution of Complaints) Act 1993* (Cth) held: appeal allowed - determination set aside - matter remitted.

[MetLife](#) (I B)

[From Benchmark Wednesday, 5 May 2021]

Turner v Carrington Ginning Pty Limited [2021] NSWSC 445

Supreme Court of New South Wales

Cavanagh J

Negligence - workers compensation - plaintiff alleged he was injured in accident at defendant's premises - defendant acknowledged plaintiff was injured at its premises but disputed, contending accident had occurred due to plaintiff placing himself in 'position of danger' - defendant also contended plaintiff was not disabled as maintained by plaintiff that entitlement of plaintiff to damages 'would be limited' - *Civil Liability Act 2003* (Qld) - 'risk of harm' of 'cotton bale falling from a trailer during' unloading process - whether failure to 'exercise reasonable care' - whether causation established - whether contributory negligence - whether defendant entitled to have liability reduced on basis of employer's 'notional contribution' - s151Z *Workers Compensation Act 1987* (NSW) - held: defendant liable - contributory negligence assessed at 35% - judgment for plaintiff in sum of \$401,428.46.

[Turner](#) (I B C G)

[From Benchmark Wednesday, 5 May 2021]

Bhundia v Sommers (No 4) [2021] NSWSC 455

Supreme Court of New South Wales

Adamson J

Contract - guarantee - loan - plaintiff claimed debt of US\$925,076.38 with interest from first and second defendants - defendants guaranteed loan from plaintiff to company - defendants were directors of company - default judgment entered against second defendant for sum of US\$935,071.19 - first defendant filed amended defence admitting loan and guarantee - first defendant 'did not admit' receipt of notices of demand, admitted non-repayment of claimed amount, and claimed 'operative provisions of' 'transactional documents' were 'void and unenforceable as penalties' - *Andrews v Australia and New Zealand Banking Group Limited* (2012) 247 CLR 205 - *Ringrow Pty Ltd v BP Australia Pty Ltd* (2005) 224 CLR 656 - onus - held: judgment for plaintiff against first defendant.

[Bhundia](#) (I B)

[From Benchmark Wednesday, 5 May 2021]

Mokbel v County Court of Victoria & Anor [2021] VSC 191

Supreme Court of Victoria

Taylor J

Judicial review - contempt - human rights - plaintiff 'summonsed to appear at a compulsory examination hearing' - plaintiff appeared 'but refused to answer any questions' - plaintiff

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convicted of contempt and received sentence of 14 days in prison - plaintiff appealed against imprisonment order - appeal 'struck out for want of jurisdiction' - plaintiff sought judicial review - whether contempt proceeding under s134 *Magistrates' Court Act 1989* (MCA) was 'summary criminal proceeding' attracting 'right of appeal in' s254 *Criminal Procedure Act 2009* (Vic) - held: application refused.

[Mokbel](#) (I B C G)

[From Benchmark Tuesday, 4 May 2021]

Lifestyle Investments 1 Pty Ltd v Commissioner of State Revenue [2021] VSCA 107

Court of Appeal of Victoria

Ferguson CJ, Tate & Kennedy JJA

Taxation - land tax - statutory interpretation - applicants registered land as a caravan park - appeal concerned 'proper construction of' exemption in s77 *Land Tax Act 2005* (Vic) - question was whether land was exempt from land tax - 'fluctuating levels of occupancy' - 'on what part of the land could movable dwellings be situated' on date relevant to land tax's assessment - 'proportionate exemptions' - held: applicants did not discharge onus under s110 *Taxation Administration Act 1997* (Vic) to prove land was exempt from land tax - appeal dismissed - cross-appeal allowed.

[Lifestyle](#) (B)

[From Benchmark Wednesday, 5 May 2021]

In the Estate of Flack [2021] NTSC 37

Supreme Court of the Northern Territory

Brownhill J

Wills and estates - probate - Registrar referred matter under s17(2)(c) *Administration and Probate Act 1969* (NT) (Administration and Probate Act) - proceedings concerned question whether 'Attachment' to will was an 'alteration' - whether Attachment embodied deceased's testamentary intention - whether deceased, at time Attachment was 'being brought into existence' and upon deceased's execution of will, revealed intention that Attachment should operate as part of deceased's will - whether disposition clause of will was altered by disposition which Attachment described - held: Court satisfied Attachment was an alteration to Will within s16(1)(d) *Administration and Probate Act* - probate issued.

[In the Estate of Flack](#) (B)

[From Benchmark Wednesday, 5 May 2021]

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Song in the Key of Autumn

By: Scudder Middleton

WE are walking with the month
To a quiet place.
See, only here and there the gentians stand!
Tonight the homing loon
Will fly across the moon, 5
Over the tired land.

We were the idlers and the sowers,
The watchers in the sun,
The harvesters who laid away the grain. 10
Now there's a sign in every vacant tree,
Now there's a hint in every stubble field,
Something we must not forget
When the blossoms fly again.

Give me your hand!
There were too many promises in June. 15
Human-tinted buds of spring
Told only half the truth.
The withering leaf beneath our feet,
That wrinkled apple overhead,
Say more than vital boughs have said 20
When we went walking
In this growing place.
There is something in this hour
More honest than a flower
Or laughter from a sunny face.

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