

Friday, 7 May 2021

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

 Follow @Benchmark\_Legal

### 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)

**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

**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

# Benchmark

## Summaries With Link (Five Minute Read)

### **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](#)

[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 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](#)

[From Benchmark Tuesday, 4 May 2021]

# Benchmark

## 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.

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