

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

Executive Summary (1 minute read)

Edington v Superannuation Complaints Tribunal - *Superannuation (Resolution of Complaints) Act 1993* (Cth) - appeal from Superannuation Complaints Tribunal allowed (I)

R v Jones; R v Hili - Criminal law - revenue offences - Crown appeal (B)

The "Elusive" - Shipping law - a 79 ft motor yacht - plaintiff bank held a chattel mortgage over the ship - powers on default clause in chattel mortgage - plaintiff to have possession of vessel (I, B, C)

Bukorovic v the Registrar of the Workers Compensation Commission & Ors - *Workplace Injury Management & Workers Compensation Act 1998* (NSW) - assessment of impairment - appeal against decision of Registrar, approved medical specialist & Medical Appeal Panel (I)

Jinhong Design & Constructions Pty Limited v Xu & Anor - Contracts - torts claim by builder against alleged guarantors of building contract - of breach of contract, deceit and misleading & deceptive conduct - compensatory damages - exemplary damages (I, B, C)

Salib v Gakas; Newport Pacific Pty Ltd v Salib - Partnerships - whether business relationship constituted a partnership - restitution (B, C)

Nash v Stewart - Service of subpoena to attend to give evidence - requirement for personal service (I, B, C)

ANZ Trustees Ltd v Hamlet & Ors - s31(1) *Wills Act 1997* (Vic) - statutory power to order rectification of a will (B)

Summaries with links (5 minute read)

Wednesday 26 May 2010

Edington v Superannuation Complaints Tribunal [2010] FCA 504

Federal Court of Australia

Reeves J (in Brisbane)

Superannuation (Resolution of Complaints) Act 1993 (Cth) - appeal from Superannuation Complaints Tribunal - Tribunal had affirmed decision of Board of Trustees of the State Public Sector Superannuation Scheme of Queensland, the QSuper Scheme, not to pay any insurance benefit to applicant who had been assessed as totally & permanently disabled after a workplace incident because the total & permanent disablement related to his pre-existing medical condition - field assistant with Department of Primary Industries (Qld) - whether Tribunal had properly exercised its power of review of the Trustees' decision under s37 - appeal allowed - Tribunal's decision set aside & matter remitted.

[Edington](#) (I)

R v Jones; R v Hili [2010] NSWCCA 108

Court of Criminal Appeal of New South Wales

McClellan CJ at CL; Howie & Rothman JJ

Criminal law - revenue offences - Crown appeal against sentences where reduction for plea of guilty & assistance - manifest inadequacy - increase in sentence.

[R](#) (B)

The "Elusive" [2010] NSWSC 525

Supreme Court of New South Wales

Rein J

Shipping law - a 79 ft motor yacht - plaintiff bank held a chattel mortgage over the ship - powers on default clause in chattel mortgage - in April 2010, the Bank had sought an arrest of the vessel by proceedings in the Supreme Court - with the aid of the Marshal of the Court, assisted by the Sheriff of Newcastle, the vessel was arrested at Port Stephens & sailed back to its usual mooring at the Newcastle Yacht Club - bill of sale - effect of the Security Interests in *Goods Act* 2005 (NSW) & Registration of Interests in *Goods Act* 1986 (NSW) - whether leave for *in rem* proceedings required

pursuant to Corporations Act 2001 (Cth) - detailed consideration of text & case law from United Kingdom & Australia - plaintiff to have possession of 'the Elusive.'

[The "Elusive"](#) (I, B, C)

Bukorovic v the Registrar of the Workers Compensation Commission & Ors [2010] NSWSC 507

Supreme Court of New South Wales

Harrison AsJ

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - assessment of impairment - appeal against decision of Registrar, approved medical specialist & Medical Appeal Panel - WorkCover Guides - American Medical Associates Guides to the Evaluation of Permanent Impairment, 5th edition (2001) ("AMA5") - application for judicial review failed.

[Bukorovic](#) (I)

Jinhong Design & Constructions Pty Ltd v Xu & Anor [2010] NSWSC 523

Supreme Court of New South Wales

Johnson J

Contracts - torts - development at Sylvania Waters - claim by builder against alleged guarantors of building contract - alleged breach of contract, deceit and misleading & deceptive conduct under *Fair Trading Act 1987* (NSW) - denial that guarantees provided - plaintiff established its cause of action in respect of breach of contract, deceit and misleading & deceptive conduct - plaintiff entitled to compensatory damages - claim for exemplary damages - exemplary damages awarded - detailed consideration of United Kingdom & Australian case law.

[Jinhong Design & Constructions](#) (I, B, C)

Salib v Gakas; Newport Pacific Pty Ltd v Salib [2010] NSWSC 505

Supreme Court of New South Wales

Ward J

Partnerships - furniture importation business - two proceedings - whether business relationship constituted a partnership entitling Ms Salib to share of capital of business - held: no partnership but an arrangement in which she provided administrative services in return for commission on profits earned - restitution - whether Ms Salib had been overpaid commission by mistake - calculation of entitlements - detailed consideration of text & case law from the United Kingdom, Canada & Australia.

[Salib](#) (B, C)

**Nash v Stewart [2010] NSWSC 513**

Supreme Court of New South Wales

Barrett J

Service of subpoena to attend to give evidence - requirement for personal service - whether order for substituted service allowed by *Uniform Civil Procedure Rules* - no order for substituted service - order that time for service be abridged - detailed analysis of legislation.

[Nash](#) (I, B, C)**ANZ Trustees Ltd v Hamlet & Ors [2010] VSC 207**

Supreme Court of Victoria

Pagone J

s31(1) *Wills Act* 1997 (Vic) - statutory power to order rectification of a will -determining testator's intention - instructions given to solicitor.

[ANZ Trustees](#) (B)**In the news...****[17 May 2010 - Improving Access to Justice](#)**

"Attorney General, Robert McClelland, today outlined a package of measures to improve the effectiveness & accessibility of the justice system ... The Government's Access to Justice measures include:... introducing a new law, the Civil Dispute Resolution Bill, requiring people to take genuine steps to resolve their disputes before going to court ..."

[Access to Justice \(Civil Litigation Reforms\) Amendment Bill 2009](#)**[24 May 2010 - Establishment of the Military Court of Australia](#)**

"Attorney-General, Robert McClelland & Minister for Defence, Senator John Faulkner, today announced the Government's decision to establish a new federal court, the Military Court of Australia, under Chapter III of the Australian Constitution."