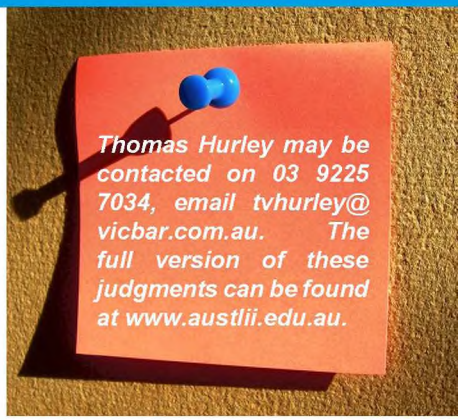
Federal Court judgments:
November - December 2010



verdicts and concluded the Court of Appeal had erred in deciding the verdict was unsafe. The appeal by the crown was allowed and the question of any retrial left for the decision of the DPP (Vic) in light of the history of the matter. Appeal allowed.

Federal Court judgments

INCOME TAX
- ***Capital gains tax***
- ***Scrip-for-scrip roll-over relief***
- ***"Deal with each other at arm's length"***

In *C of T v AXA Asia Pacific Holdings Pty Ltd* [2010] FCAFC 134 (18 November 2010) a Full Court considered the operation of the phrase "did not deal with each other at arm's length" as it appears in s124-780(4) of the *Income Tax Assessment Act* 1997 (Cth). The Full Court concluded, by majority, that the findings of the primary judge that a taxpayer company dealt at arm's length with its financier in disposing of an interest in a subsidiary were correct. Appeal by Commissioner dismissed.

INCOME TAX
- ***Scheme for Part IVA ITAA***
- ***Capital gains tax***

In *British American Tobacco Australia Services Ltd v C of T* [2010] FCAFC 130 (10 November 2010) a Full Court in a joint judgment concluded the trial judge did not err in concluding that in structuring the Australian transactions in an international restructure of a tobacco business so as to exclude capital gains tax from the sale of certain brands the taxpayer had obtained a tax benefit under a scheme within Part IVA of the *ITAA* 1936 (Cth).

CONSTITUTIONAL LAW
- ***Interstate trade***
- ***Racetrack betting***
- ***Requirement in NSW Act that all wagering enterprises pay a fee for race track information***
- ***NSW operators compensated***
- ***Whether trade of NT operator affected***

In *Racing NSW v Sportsbet Pty Ltd* [2010] FCAFC 132 (17 November 2010) s49 of the *Northern Territory (Self-Government) Act* 1978 (Cth) provided that all trade between the Northern Territory and the states "shall be absolutely free". From 2006 legislation in NSW permitted racing authorities in that state to grant approval for the use of race field information to wagering operators for a fee. The respondent (Sportsbet) was a NT wagering operator. It applied under protest for approval between 2008 and 2010 and this was granted. It brought proceedings in the Federal Court contending that other arrangements between the NSW racing authorities and wagering operators in that State effectively insulated NSW wagerers from the fee contrary to s49 of the *NT(SG) Act* within s109 of the Constitution. The primary judge accepted this and ordered the fee for the first approval be repaid. The appeal by the NSW authorities was allowed in a joint judgment. The Court concluded the challenged fee was payable by all operators and the operation of the compensation schemes did not affect this. A cross-appeal by Sportsbet as to the failure to declare the legislation invalid and failing to address other payments was dismissed. Appeal by Racing NSW allowed.

CONSTITUTIONAL LAW
- ***Interstate trade***
- ***Racetrack betting***
- ***Requirement in NSW Act that all wagering enterprises pay a fee for race track information***
- ***Scheme to compensate NSW operators***
- ***Whether trade of Tasmanian operator affected***

In *Betfair Pty Ltd v Racing NSW* [2010] FCAFC 133 (17 November 2010) the same Full Court reached a like result under the Constitution s92 in relation to a challenge to the NSW legislation made by a wagering enterprise from Tasmania. Appeal against decision of primary judge that the NSW legislation was invalid dismissed.

TRADE PRACTICES
- ***Misleading conduct***
- ***"Scientific" tests***

In *Dynamic Hearing Pty Ltd v Polaris Communications Pty Ltd* [2010] FCAFC 135 (19 November 2010) a Full Court concluded the primary judge was not wrong in concluding claims that a test as to the effectiveness of hearing devices was the product of objective science were contrary to the *Trade Practices Act*..