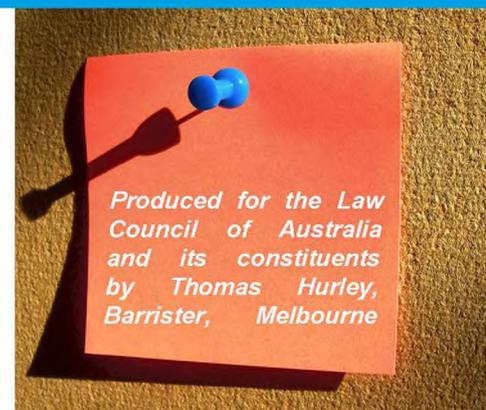


High Court judgments: October - November 2011



CRIMINAL LAW

- *Trial*
- *Directions to jury*
- *Assessing witnesses*
- *Assessment of "interest" of witness in result*

In *Hargraves v Q* [2011] HCA 44 (26 October 2011) the High Court reiterated that the primary function of the trial judge was to ensure that the jury was focused on assessing the evidence to determine guilt beyond reasonable doubt. The appeal concerned comments by the trial judge, in the charge, that the jury should, in assessing the evidence of the accountant called by persons accused of defrauding the Commonwealth by entering a tax scheme, consider whether the accountant had an interest in the outcome of the trial. The High Court concluded the comments would not have deflected the jury from its task. Consideration of whether the decision in *Robinson v Q* (1991) 180 CLR 531 [1991] HCA 38 established a new doctrine or re-stated established principle. Appeal dismissed: French CJ, Gummow, Hayne, Crennan, Kiefel, Bell JJ jointly; sim Heydon

J. Appeal dismissed.

COURTS

- *Precedent*
- *Status of Codelfa Construction Pty Ltd v State Rail Authority NSW*

In *Western Export Services Pty Ltd v Jireh International Pty Ltd* [2011] HCA 45 (28 October 2011) in considering an application for special leave the Court (Gummow, Heydon, Bell JJ) reiterated that the doctrine of precedent required intermediate courts apply the decision in *Codelfa Construction Pty Ltd v State Rail Authority* [1992] HCA 24 (1982) 149 CLR 337 as to the admissibility of surrounding circumstances until the High Court reviewed the decision. Special leave refused.

CRIMINAL LAW

- *Liability*
- *Criminal liability for omission*

In *DPP (Cth) v Poniatowska* [2011] HCA 43 (26 October 2011) the SA Court of Criminal Appeal had concluded the provisions of the *Criminal Code* (Cth) did not

operate to attach criminal liability to a failure of a person to do an act the person was not obliged by law to do. The High Court granted special leave and reviewed the operation of the Code and concepts of criminal liability generally before dismissing the appeal: French CJ, Gummow, Kiefel, Bell JJ jointly; contra Heydon J.

CORPORATIONS

- *Reinstatement and winding up of deregistered companies*

In *ACN 078 272 867 Pty Ltd (In liq) v Deputy C of T* [2011] HCA 46 (2 November 2011) Heydon J considered whether deregistered companies had any right to be heard on an application by the Commissioner of Taxation for re-registration of a deregistered company and an order that the company then be liquidated and whether any right of hearing would have altered the result. He considered when re-registration occurred. Application for constitutional writs to quash reinstatement orders of the Federal Court dismissed. ●

ATO

The Australian Tax Office has issued a notice to the Society pursuant to the Income Tax Assessment Act 1936 (ITAA) and the Taxation Administration Act 1953 (TAA) requiring the Society to provide information to the ATO. In general terms the information relates to the names and contact details, including mobile phone and email addresses for legal practitioners holding current practising certificates. The Society is also required to provide details of people that have been refused a practising certificate, or struck off the roll between 1 July 2006 and 30 June 2011.

This is to advise the profession that the Society is compelled to comply with such a notice. You can obtain information about your rights and obligations at www.ato.gov.au and searching for 'Charter'