

BRYAN PAPE

NOTABLE CASES

1. *Pape v Commissioner of Taxation & Cth.* (2009) 238 CLR 1.

Challenge in the High Court to the constitutional validity of the tax bonus legislation; 30, 31 March, 1, 3 April and 7 July 2009. B. R. Pape in person as the Plaintiff. S. J. Gageler SC, Solicitor-General, S. B. Lloyd SC and G. M. Aitken for the Defendants. Counsel for Intervening States: R. J. Meadows QC, Solicitor-General and C. L. Conley for Western Australia; M. G. Hinton QC, Solicitor-General and S. A. McDonald for South Australia, and M. J. Leeming, SC and J. K. Kirk for New South Wales. Commonwealth's reliance on s.81 of the Constitution as a spending power unanimously disallowed; legislation upheld by a majority of 4:3 in reliance upon the executive power s.61 and the incidental power, s. 51(xxxix).

2. *Vabu Pty. Ltd. trading as Crisis Couriers v Commissioner of Taxation* [1996] ATC 4898 (Ct of App. Sup. Ct of NSW); [1995] ATC 4218, (Ireland J., Admin, Law Div.). Commissioner's application for special leave to appeal to the High Court refused. Appeal upheld. Appellant not liable to pay superannuation guarantee as the couriers were independent contractors and not employees. J. N. West QC and B.R. Pape for the Appellant; J. L. Trew QC and S. W. Gibb for the Respondent.

3. *Commissioner of Stamp Duties (NSW) v Commonwealth Funds Management Ltd* (1995] 38 NSWLR 173 (Ct of App. Sup. Ct. of

NSW); [1995] ATC 4756, (Windeyer J, Admin, Law Div.). Appeal upheld. A. H. Slater QC and B. R. Pape for the Appellant; D. H. Bloom QC and J. L. B. Allsop SC for the Respondent.

4. *Smith v New South Wales Bar Association* (9 May 1991, Ct of App. Sup. Ct. of NSW. Mahoney and Meagher JJA ordered applicant's name be removed from the roll of barristers; Samuels AP dissented).

B. R. Pape for the Applicant; N. R. Cowdery QC and P. Garling for the Respondent.

[Decision reversed by the High Court in (1992) 176 CLR 256. D. F. Jackson QC, C. T. Barry, J. R. K. Pryde for the Appellant; N. R. Cowdery QC, P. R. Garling and I. A. Parsons for the Respondent.]

5. *Fletcher & Ors. v Commissioner of Taxation* (1991) 173 CLR 1; (1990) 23 FCR 134. D. H. Bloom QC, B. R. Pape and M. Christie for the Appellants; D. F. Jackson QC and D. B. McGovern for the Respondent. Reversal of the Full Court of the Federal Court of Australia's decision reported on the interpretation of s. 51 (1) of the *Income Tax Assessment Act 1936* (Cth).

6. *Fletcher & Ors. v Commissioner of Taxation* [1988] ATC 362; Case V 3, [1988] ATC 113. Full Ct of the Fed Ct., Lockhart, Wilcox and Burchett JJ. A. J. Myers QC and B. R. Pape for the Applicants; J. M. N. Rolfe QC and D. B. McGovern for the Respondent. Appeal allowed on the grounds of a denial of procedural fairness in a hearing from the Administrative Appeals Tribunal. Remitted back to the AAT for a rehearing.

7. *Bunting v Commissioner of Taxation* (1989) 24 FCR 283 Full Ct. of the

Fed. Ct. Beaumont and Burchett JJ dismissing appeal, Hill J dissenting on appeal from Lockhart J; B. R. Pape for the Appellant and G. K. Downes QC and N. R. Burns for the Respondent. Issue of whether s.260 of the Income Tax Assessment Act 1936 (Cth) struck down a scheme to avoid income tax.

8. *Commissioner of Taxation v Hurley Holdings (NSW) Pty. Ltd.* [1989] ATC 5033 (Gummow J. Fed. Ct); Case V146 [1988] ATC 918. Appeal allowed. K. R. Handley QC and A. H. Slater for the Applicant; B. R. Pape for the Respondent. Issue of whether a discount on a bill of exchange was income.

9. *Kinny v Commissioner of Taxation* (1987) 11 NSWLR 657; Reversing [1985] ATC 4271. Application for Special Leave to Appeal to the High Court refused; (D.H. Bloom QC and A.H. Slater for the Applicant; A. M. Gleeson QC and B.R. Pape for the Respondent).
Appeal upheld. B. R. Pape for the Appellant; D. E. Grieve QC and M. Cashion for the Respondent. Appeal upheld by majority (Kirby P. and McHugh JA, Clarke JA dissenting), that liability for provisional tax was extinguished when the notice of assessment issued.

10. *Deputy Commissioner of Taxation v DTR Securities Pty. Ltd.* (1988) 165 CLR 56. Appeal upheld. D. F. Jackson QC and A. R. Robertson for the Appellant Commissioner; A. M. Gleeson QC and B. R. Pape for the Respondent taxpayer.
(1987) 8 NSWLR 204 (Ct. of App. Sup. Ct. of NSW, Glass and McHugh JJA upholding appeal, Samuels JA dissenting.)
A. M. Gleeson QC and B. R. Pape for the Appellant taxpayer; Sir Maurice Byers QC, T. F. Bathurst and A. R. Robertson for the

Respondent Commissioner Issue as to whether the *Limitation Act 1969* (NSW) as picked up by s. 64 of the *Judiciary Act 1903* (Cth.) stopped the recovery of additional tax by way of penalty.

11. *Commissioner of Taxation v John* [1987] ATC 4713; (Full Ct. of the Federal Court; Bowen CJ, Fox and Beaumont JJ. upholding appeal); D. E. Grieve QC and N. R. Burns for the Appellant Commissioner; D. G. Hill QC and B. R. Pape for the Respondent taxpayer.
[1986] 2 ATC 4647, (Yeldham J upholding objection in the Sup. Ct. of NSW – Admin. Law Div.)
A. M. Gleeson QC and B. R. Pape for the Plaintiff taxpayer; D. E. Grieve QC and N. R. Burns for the Respondent Commissioner.
Ultimately the dispute ended with the High Court in *John v Commissioner of Taxation* (1989) 166 CLR 417 overruling its decision in *Curran v Commissioner of Taxation* (1974) 131 CLR 409.
12. *Utmission Pty. Ltd. v Dawson & Ors* (1985) 12 I. R. 7 (In Court Session, of the Industrial Commission of NSW);
R. V. Gyles QC and P. W. Taylor for the Appellant; B. R. Pape for the Respondent. Appeal on question of jurisdiction and merit in relation to an unfair contract under s 88F of the *Industrial Arbitration Act 1940* (NSW).
13. *Dawson v Commissioner of Motor Transport* [1980] 2 NSWLR 810 (Woodward J. in the Sup. Ct. of NSW Admin. Law Div.) B. R. Pape for the Plaintiff; V. Green for the Defendant. Successful application to overturn the defendant's cancellation of a licence to drive a taxi cab on medical grounds.

15 June 2013