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Working it out- Employee or independent contractor?

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Working it Out – Employee or Independent Contractor?

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They might sound similar, but a *contract of service* and a *contract for services* are not the same thing. What exactly is the distinction?

A contract of service is a contract of employment. The parties are in the relationship of employer and employee (or, in more traditional terminology, master and servant).

A contract for services is an independent contract. The relationship between the parties is one of engager and independent contractor.

That seems straightforward enough. An employee works under a contract of service, and an independent contractor works under a contract for services. But it doesn't explain the essential difference between these two types of workers.

Broadly speaking, an employee is an individual whose function is to personally perform a task or tasks allocated to them by their employer. In performing the task or tasks, the employee is subject to the control and direction of the employer.

An independent contractor, on the other hand, is someone who simply performs an agreed task for an agreed price. The completed task must meet any requirements set down by the engager, but the independent contractor controls how the task is done – that is, they control the manner in which the work is performed.

Fundamentally then, the distinction between an employee and an independent contractor comes down to 'the difference between a person who serves his employer in . . . the employer's business, and a person who carries on a trade or business of his own.'[1]

Importance of the distinction

The nature of the rights held and duties owed where one party agrees to perform work for another in return for remuneration is defined largely by whether the arrangement can be characterised as a relationship of employment or as an independent contract.[2]

The following sorts of matters, for example, are governed by whether the relationship is one of employer/employee or engager/independent contractor: leave entitlements, entitlements to workers' compensation, liability for the torts of a worker, liability for contracts entered into by a worker, whether tax sbould be deducted at source, and so on.

Thus an employer (but not an engager) must comply with certain statutory and award requirements, including the deduction of income tax, the payment of workers' compensation premiums, and allowance for sick leave and holidays. In addition, an employer (unlike an engager) is generally liable for the torts of a person working for them and bound to contracts entered into by a person working for them.

Identifying the work relationship between two parties

The operation of workplace relations legislation, both Commonwealth and State, is tied to the existence of an employment relationship, while the proposed *Independent Contractors Bill* 2006 (Cth) naturally concerns the conduct of independent contractors. However, nowhere in these statutes is there an attempt to define the terms 'employee' and 'independent contractor' beyond their common law meanings. Thus, it is always necessary to turn to the common law to determine the nature of the work relationship that exists between two particular parties.

At common law, no single test is conclusive when it comes to classifying a relationship as employer/employee or engager/independent contractor.

The 'control test' was the traditional test used to determine whether an employment relationship existed. A person who agreed to detailed control by another in relation to *what* work was to be performed, *when* it was to be performed, *where* it was to be performed and, most importantly, *how* it was to be performed would be characterised as an employee working under a contract of service. What was important under the control test was the degree and actual exercise of control.

Of course, the *what, when* and *where* aspects mentioned above would also be present in an independent contract. It is the *how* aspect wbich distinguishes an employment contract from an independent contract. That is, the *how* aspect is present in an employment contract, but not in an independent contract.

However, the usefulness of the control test eroded over time because, in many modern instances, the employee's skill exceeds the expertise of the employer. Thus, the employee may be given a significant degree of autonomy as to the manner in which their skills are exercised.

In practice, the courts now use a multi-factor approach. This involves weighing up the factors which point to the existence of a relationship of employer/employee and balancing them against the factors which point to the existence of a relationship of engager/independent contractor. In other words, the courts examine the totality of the situation between the parties in order to reacb a conclusion.

Control is still an important indicator, but there are other important indicators as well. This is demonstrated by the following cases.

1. *Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd* [1924] 1 KB 762

In this case, the defendant, the occupier of a dance-hall, entered into a written agreement with a band to provide music in the hall. The agreement provided that the band should not infringe any copyright in the music that it played. On one occasion, the band played certain music, the copyright of which belonged to the plaintiff, without the plaintiff's permission. The plaintiff sued the defendant, seeking to hold the defendant liable for the actions of the band. The defendant's liabtlity depended on the band being its

employee.

The court noted the following factors in connection with the work relationship between the defendant and the band, as disclosed by the written agreement between the parties:

- Regular hours of work (7 hours' daily service). ➔ Indicates employment.
- Fixed period of 'employment'. ➔ Inconclusive, but suggests employment.
- Place of work dictated (being any place in London where the defendant may direct). ➔ Inconclusive, but suggests employment.
- Exclusivity of service demanded. ➔ Indicates employment.
- Right to summarily dismiss for the breach of any reasonable instructions or requirement. ➔ The power of summary dismissal is traditionally associated with employment.
- Continuous, dominant and detailed control on every point, including the nature of the music to be played. ➔ Indicates employment.

Weighing up these factors, the band was held to be an *employee*. In reaching this decision, the court said:

> 'It seems, however, reasonably clear that the final test, if there be a final test, and certainly the test to be generally applied, lies in the nature and degree of detailed control over the person alleged to be a servant.'[3]

The emphasis traditionally placed on the control test is apparent in these comments (remember, the case was decided in 1924). However, the court still considered other factors.

2. *Humberstone v Northern Timber Mills* (1949) 79 CLR 389

Humberstone was a timber carrier. He originally held himself out as being prepared to carry for any person who sought his services, but for many years he carried timber solely for Northern Timber Mills. He was injured while repairing his truck, and lapsed into a coma and died. Mrs Humberstone sought workers' compensation. Her entitlement depended on her husband being an employee of Northern Timber Mills.

The High Court identified the following factors as relevant to the work relationship between Northern Timber Mills and Humberstone, as disclosed by the facts of the case:

- Humberstone used his own truck and paid for its insurance, maintenance and petrol. ➔ Indicates an independent contract.
- Humberstone annually took out a carrier's licence in his own name, and on the side of the truck he painted his own name with the description 'carrier'. ➔ Indicates an independent contract (in the sense of Humberstone being in business on his own account).
- Each working day, Humberstone attended the mill at the same time and worked substantially the same number of hours every day, but there was no evidence that he was bound to do so. ➔ The fact that he was not required to do so indicates an independent contract.
- Humberstone was paid weekly on a weight per mileage basis. ➔ Indicates an independent contract.
- There was no evidence of any control exercised or exercisable by Northern Timber Mills as to the manner in which Humberstone was to perform his work. ➔ Indicates an independent contract.

On balance, Humberstone was held to be an *independent contractor*. The High Court observed:

> 'If the work done by one person for another is done subject to the control and direction of the latter person as to the manner in which it is to be done, the worker is a servant and not an independent contractor. If, however, the person doing the work agrees only to produce a given result but is not subject to control in the actual execution of the work, he is an independent contractor.'[4]

Again, control was obviously considered fundamental in this case, but other factors were taken into account.

3. *Zuijs v Wirth Bros Pty Ltd* (1955) 93 CLR 561

Zuijs was an acrobat who performed a trapeze act in a circus show. He fell during a performance, suffered injury and sought workers' compensation. To be eligible for workers' compensation, Zuijs had to be an employee of the circus.

The High Court noted the following factors in connection with the work relationship between the circus and Zuijs, as disclosed by the facts of the case:

- Zuijs' remuneration was in the form of wages. ➔ Indicates employment.
- Zuijs could be summarily dismissed for misconduct. ➔ Indicates employment.
- Although the circus could not exercise direct control over the manner in which Zuijs performed his act (because the circus proprietors did not have the necessary expertise), Zuijs was subject to the direction of the circus in relation to most other aspects of his act. For example, there was control and superintendence over a number of subsidiary matters, including – where the act appeared in the program; the measures of safety to be observed; the number, time and manner of rehearsals; the costumes he wore and where he dressed; his conduct before the audience; and so on. ➔ Indicates employment.

Weighing up these factors, Zuijs was held to be an *employee*. The High Court reasoned as follows:

> 'The duties to be performed may depend so much on special skill or knowledge or they may be so clearly identified or the necessity of the employee acting on his own responsibility may be so evident that little room for direction or command in detail may exist. But that is not the point. What matters is the lawful authority to command so far as there is scope for it.'[5]

The *Zuijs* case is authority for the principle that it is the right to control, rather than actual control, which is important. This reflects some erosion in the power of the control test.

However, when one considers the facts of the case, it appears that it was actual control over a range of subsidiary matters which persuaded the High Court that there was a relationship of employment between the parties.

Accordingly, if the person performing the work has such a high degree of skill that the person for whom the work is performed cannot direct the actual performance of key duties, it becomes important to consider the remaining duties and obligations, which may be only ancillary or subsidiary, of the person performing the work. If these come under the control of the person for whom the work is performed, this may indicate the existence of a contract of employment.

The difficulty is that the above may also be consistent with an independent contract. That is, the terms of an inde-

pendent contract may permit control over matters ancillary or subsidiary to the key activity (the work being performed). In the *Performing Right Society* case, for example, the court explained that it may still be an independent contract where the party for whom the work is performed reserves to themselves the general rights of watching the progress of the work, stopping the work at any stage, or dismissing the disobedient or incompetent labourers working for the independent contractor.[6]

It follows from this discussion that determining whether a relationship constitutes a contract of employment or an independent contract is very fact specific.

4. *Commissioner of Pay-Roll Tax (Vic) v Mary Kay Cosmetics Pty Ltd* (1982) 82 ATC 4444

Mary Kay, a retailer of cosmetics, sells products directly to consumers by means of the party plan system, using the services of beauty consultants. A beauty consultant arranges a cosmetics display at someone's house, that person invites all their friends, and the beauty consultant obtains orders for the cosmetics.

The case arose over whether the commissions paid by Mary Kay to its beauty consultants amounted to wages. If so, then pay-roll tax had to be paid. For the commissions to be wages, the beauty consultants would have to be employees of Mary Kay.

In determining the nature of the work relationship between Mary Kay and the beauty consultants, the following factors were considered, as disclosed by the written agreement between Mary Kay and each beauty consultant, and the facts of the case:

- The written agreement provided that the beauty consultants were required to bear all costs and expenses connected with their activities. → A high ratio of expenses to income indicates an independent contract.
- The agreement provided that Mary Kay could terminate the engagement of any beauty consultant for actions which were contrary to the company's best interests. → Indicates employment.
- The agreement provided that the beauty consultants were independent contractors and not employees. → This is a labelling clause, which is inconclusive on its own. (However, the parties cannot, simply by fixing a label to their relationship, alter the truth of its real nature.)
- The beauty consultants were encouraged to make weekly reports and to attend weekly meetings, but there was no obligation to do so. → The lack of obligation suggests an independent contract.
- They were not paid holiday pay, sick pay or other benefits commonly associated with employee status. → Indicates an independent contract.
- Income tax instalments were not deducted from their earnings. → Indicates an independent contract.
- They could delegate any of their functions or operate in partnership. → Indicates an independent contract.
- They were provided with a manual in which detailed suggestions were made as to the manner in which they should conduct their operations. → Indicates an independent contract because the manual only amounted to advice. Thus there was a lack of control.

On balance, the beauty consultants were held to be *independent contractors*. The overriding impression of the Victorian Full Supreme Court was that 'no beauty consultant is required to do anything . . . Nor is she controlled in any real sense at all.'[7]

In particular, the manual was not a manifestation of control over the beauty consultants. The court did not accept that 'any significant control over the beauty consultants is achieved by this means . . . Even if the requirements of the manual are expressed imperatively, they are clearly in the nature of advice.'[8]

Hence, the reality of the agreement was in accordance with the labelling clause, so that the labelling clause could take effect.

Overall, the lack of control, together with other factors, pointed to an independent contract in this case.

5. *Narich Pty Ltd v Commissioner of Pay-Roll Tax (NSW)* (1984) 58 ALJR 30

Narich, the franchisee of WeightWatchers International in Australia, entered into written contracts with individuals (most of whom were women) to act as lecturers of its WeightWatchers classes.

The case arose over the question of whether the fees paid by Narich to the lecturers amounted to wages. If so, then pay-roll tax had to be paid. For the fees to amount to wages, the lecturers would have to be employees of Narich.

The WeightWatchers methods for helping people to lose weight are applied by means of a detailed program. Under the franchise agreement between WeightWatchers International and Narich, the detailed program was to be adhered to rigidly in every WeightWatchers class.

The WeightWatchers program was set out in various WeightWatchers manuals, including in particular the lecturer's handbook. The handbook contained lengthy, detailed and specific instructions as to how each of the 28 subjects it covered (including food diaries, group involvement, room arrangements, and time allocation in class) were to be taught or handled by the lecturer.

The following factors, disclosed by the written contract between Narich and each lecturer, were relevant to determining the nature of the work relationship between Narich and the lecturers:

- Classes had to be held at such times and places as Narich may arrange, and substitute lecturers required approval by Narich. → Suggests control by Narich over the lecturers, indicating employment.
- Lecturers, in delivering the lectures, had to teach 'the program'. (This was taken to be a clear reference to the contents of the lecturer's handbook. Note, however, that another part of the agreement described the handbook as being 'for guidance only'.) → Indicates employment because the handbook provided a means of exercising control over the manner in which the lecturers performed their work.
- Lecturers, in conducting the lectures, had to advance the principles of WeightWatchers. → Suggests control by Narich over the lecturers, indicating employment.
- Narich was entitled to summarily dismiss a lecturer if she failed to carry out her duties and obligations in a proper manner or if she exceeded her own 'goal weight'. → Indicates employment.
- According to a labelling clause, the lecturers were not employees of Narich but were independent contractors, and should perform their duties free from the direction and control of the company. → Inconclusive on its own.

The Privy Council held that the contract as a whole contradicted the labelling clause and so effect could not be given to that clause. The lecturers were in fact employees and not independent contractors. The Privy Council explained, with obvious reference to the control test:

'The plain situation in law is that a lecturer is tied hand and foot by the contract with regard to the manner in which she performs her work under it.'[9]

The Privy Council also made these comments about the handbook, again referring to control:

'If . . . she does teach and act in the manner prescribed, not only the nature and scope of her work, but also the precise manner in which she does it, is closely controlled and directed by Narich through the medium of the handbook . . . It is impossible for a lecturer, who is required to teach and act . . . in accordance with this handbook, to use it "for guidance only". She either teaches and acts in the way prescribed, in all its elaborate detail, or she does not.'[10]

This case demonstrates, again, that control is an important factor, but that other factors are considered as well.

6. *Stevens v Brodribb Sawmilling Company Pty Ltd* (1986) 160 CLR 16

Brodribb operated a sawmill in Victoria and engaged fellers (to chop the wood), sniggers (to load the logs on to trucks using bulldozers or tractors), and truckers (to cart the logs to the sawmill).

Stevens was a trucker and Gray was a snigger. While Gray was loading logs on to Stevens' truck, a log fell and rolled on to Stevens, causing him severe injuries.

Stevens sued Brodribb for damages, claiming that:

(a) Brodribb was vicariously liable for the negligence of Gray, because the relationship between Brodribb and Gray was that of employer/employee (note that vicarious liability depends on a relationship of employment); or

(b)(i) Brodribb had breached the duty of care it owed to its employees (namely Stevens); or

(ii) if Stevens was not an employee, Brodribb had breached the general duty of care it owed pursuant to the law of negligence.

With respect to claims (a) and (b)(i), the critical question was whether or not Gray and Stevens were employees of Brodribb.

In addressing this question, the High Court identified the following factors, as disclosed by the facts of the case:

- Gray and Stevens provided and maintained their own equipment. → Indicates an independent contract.
- They set their own hours of work. → Indicates an independent contract.
- They received fortnightly payments calculated by reference to the volume of timber they had snigged or trucked. → Indicates an independent contract.
- Income tax instalments were not deducted from these payments. → Indicates an independent contract.
- Stevens had a high ratio of expenses to income. (No financial records were produced for Gray.) → Indicates an independent contract.
- Gray employed his son as a driver. → Taken as evidence of a power to delegate, indicating an independent contract.
- Brodribb's 'bush boss', who was responsible for the overall coordination of activities in the logging area, had little to do with the manner in which fellers, sniggers and truckers carried out their functions. → Suggests a lack of control, indicating an independent contract.
- Gray and Stevens were part and parcel of Brodribb's organisation in that their snigging and trucking activities were integral to the supply of timber for Brodribb's sawmilling operations. → This refers to the integration/organisation test, under which the relevant question to ask is: Does the worker carry out their activities as an integral part of the business? Or, in other words: Is the worker 'part and parcel' of the organisation? If the answer is 'yes', this indicates an employment relationship.

Weighing up these factors, the High Court held that Gray and Stevens were *independent contractors,* so that arguments (a) and (b)(i) therefore collapsed. The court was unable to accept that the integration test could result in a finding that the contract was one of employment when the control test and other factors led to the conclusion that it was an independent contract.

Indeed, the court took the view that the integration test is simply 'a further factor to be weighed, along with control, in deciding whether the relationship is one of employment or of independent contract.'[11]

In drawing a connection between the integration test and the control test, the court said:

'It [the integration test] is merely to use the fact that A is part of B's business organisation as additional material from which to infer that B has legal authority to control what A does.'[12]

In other words, the integration of a worker into a business organisation will be evidence of control over that worker.

The High Court also placed the control test in perspective:

'But the existence of control, whilst significant, is not the sole criterion by which to gauge whether a relationship is one of employment. The approach of this court has been to regard it merely as one of a number of indicia which must be considered in the determination of that question.'[13]

It then reinforced the point:

'[C]ontrol is not now regarded as the only relevant factor. Rather it is the totality of the relationship between the parties which must be considered.'[14]

In this case, the High Court acknowledged that the control test is not a magic solution. As mentioned before, the proper approach is simply to weigh up the factors which point to the existence of an employment contract and balance them against the factors which point to the existence of an independent contract.

With respect to argument (b)(ii), the court found that Brodribb did owe a general duty of care to Stevens, but that this duty had not been breached. Therefore, argument (b)(ii) also failed.

7. *Building Workers Industrial Union v Odco Pty Ltd (t/a Troubleshooters Available)* (1991) 99 ALR 735

Troubleshooters was a company that supplied workers to builders. The Building Union had become concerned that these workers were not being paid in accordance with building industry awards. The relationship in dispute was the one between Troubleshooters and the workers on its books. To be entitled to award wages, these workers would have to be

employees.

Troubleshooters argued that its relationship with its workers was one of independent contract. The Building Union claimed that the relationship was one of employment.

In resolving the matter, the High Court considered the following factors, as disclosed by the facts of the case:

- Workers were placed 'on the books' of Troubleshooters. → This suggests exclusivity of service, which indicates employment.
- The workers were eligible to be offered work by Troubleshooters, but Troubleshooters was under no obligation to provide work and the workers were under no obligation to accept any work offered. → Indicates an independent contract, since the workers were free to work when they pleased.
- If the workers accepted the work offered, they followed the directions of the particular builder on whose site they were working. → This shows a lack of control by Troubleshooters over the manner in which the workers performed their tasks, indicating that the relationship was one of independent contract.
- Troubleshooters paid the workers after invoicing the builders. → The workers did not receive a weekly wage. Troubleshooters merely paid the workers their share of the fee received from the builders. This, coupled with the lack of any obligation to work, indicates an independent contract.
- Income tax instalments were not deducted from the workers' earnings. → Indicates an independent contract.
- There was no provision for annual leave or long service leave. → Indicates an independent contract.
- There was a labelling clause saying that the relationship was not one of employment. → Inconclusive on its own.

Weighing up these factors, the court held that the workers were *independent contractors*. In this case, the labelling clause was consistent with the agreement as a whole.

8. *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21

This case concerned the relationship between Vabu (a courier company) and one of its bicycle couriers, who struck down and injured Mr Hollis on a pavement in Sydney. For Vabu to be vicariously liable to Mr Hollis for the courier's negligent performance of his work, the courier would have to be employed by Vabu.

In assessing the relationship between Vabu and the bicycle courier, the High Court considered the following factors, as disclosed by the facts of the case:

- Vabu allocated the work, which the couriers were not able to refuse, and the couriers performed their delivery tasks in the manner in which Vabu directed. → This suggests that the couriers had little control over the manner of performing their work, indicating employment.
- The couriers were presented to the public as emanations of Vabu, as the company assumed all responsibility for the direction, training, discipline and attire of the couriers. → Indicates employment.
- Vabu set the rates of remuneration of the bicycle couriers and there was no scope for negotiation of those rates. → Indicates employment.
- The couriers supplied and maintained their own bicycles, and were responsible for the cost of repairs. → Generally, this indicates an independent contract. However, the High Court observed that this factor was not contrary to a relationship of employment in this case because the capital outlay was relatively small and because bicycles are not tools that are inherently capable of use only for courier work.[15]

On balance, the bicycle couriers were held by the High Court to be *employees*. The Court concluded:

> 'As a practical mater, the bicycle couriers were not running their own business or enterprise, nor did they have independence in the conduct of their operations.'[16]

Factors to consider

Based on the above cases, relevant factors to be considered in identifying a work relationship would include at least those listed below. This list is in no particular order and is by no means exhaustive. Also, its usefulness is tempered by the warning issued by Wilson and Dawson JJ in *Stevens v Brodribb Sawmilling Company Pty Ltd:*

> '[A]ny attempt to list the relevant matters, however incompletely, may mislead because they can be no more than a guide to the existence of the relationship of master and servant.'[17]

Nevertheless, the following factors may be of assistance:

1. Ownership of tools and equipment. In an employment situation, the employer generally provides the equipment needed (unless it is customary in a particular calling for the employee to have their own tools and equipment). Where the worker provides their own tools and equipment (on a major scale rather than a minor scale), this indicates an independent contract.

2. Method of remuneration. Remuneration based on time worked, or regular/periodic payment (for example, weekly, monthly), indicates an employment contract. Remuneration on other bases (for example, weight per mileage, lump sum, commission) may indicate an independent contract.

3. Contracting under a business name. Where the worker undertakes the work as part of their own business, this indicates an independent contract. The ability to enter a partnership and to incorporate also indicate an independent contract (that is, where the party contracted to perform services is a partnership or company, the courts are unlikely to find an employment relationship).

4. Ratio of expenses to income. If the worker has a high ratio of expenses to income, this indicates an independent contract.

5. Duration of service. If the worker is engaged for an indefinite period, this indicates an employment contract. If the worker is engaged to perform a specific task, this indicates an independent contract. (Note, however, that employment contracts may also be fixed-term and related to a specific task.)

6. Hours of work. Regular/fixed hours of work and the ability to take holidays only at prescribed times indicate an employment contract. (However, a person can work regular hours and still be an independent contractor.)

7. Exclusivity of service. Where one party has the right to demand exclusive service from the other, this indicates an employment contract. (However, a person can work exclusively for someone and still be an independent contractor.)

8. Delegation of duties. The right to delegate work so that there is a duty to see that the work is done but not necessarily to do it oneself indicates an independent contract. (But some employees may have powers of delegation.)

9. Deduction of income tax. The deduction of income tax from payments make to a worker indicates an employment contract.

10. Power of summary dismissal. A power of summary dismissal on the part of the person for whom the work is performed indicates an employment contract. (But an independent contractor may also be dismissed.)

11. Place of work. The power to control where the work is done indicates an employment contract. (But this is also consistent with an independent contract.)

12. Labelling clause. A label will only be effective if it accords with the reality of the relationship between the parties. If the label contradicts reality, it will be ineffective.

13. Workers' compensation. The provision of workers' compensation insurance by the person for whom the work is performed for the benefit of those performing the work indicates an employment contract.

14. Integration/Organisation test. Does the worker carry out their activities as an integral part of the business? Has the worker been integrated into the organisation? 'Yes' answers indicate an employment relationship. (But it is possible for an independent contractor to be considered an integral part of an organisation.)

15. Control test. Where control is exercised by the party for whom the work is performed over the manner in which the other party performs the work, this indicates an employment contract.

In summary then, it is simply a matter of weighing up the factors which point to the existence of an employment contract and balancing them against the factors which point to the existence of an independent contract. That is the multi-factor approach.

References

1 *Marshall v Whittaker's Building Supply* (1963) 109 CLR 210, 217 per Windeyer J.
2 Perhaps the better view is that the issue for determination is not whether a person is an employee or independent contractor – because other possibilities might exist (such as being an agent or trustee, for instance) – but, rather, whether the relationship under review is one of employment or not.
3 [1924] 1 KB 762, 767 per McCardie J.
4 (1949) 79 CLR 389, 396 per Latham CJ.
5 (1955) 93 CLR 561, 571 per Dixon CJ, Williams, Webb and Taylor JJ.
6 [1924] 1 KB 762, 767.
7 (1982) 82 ATC 4444, 4452.
8 Ibid 4453.
9 (1984) 58 ALJR 30, 35 per Lord Brandon of Oakbrook.
10 Ibid 34.
11 (1986) 160 CLR 16, 27 per Mason J.
12 Ibid.
13 Ibid 24.
14 Ibid 29.
15 (2001) 207 CLR 21, [56].
16 Ibid [47] per Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ.
17 (1986) 160 CLR 16, 37.

You be the judge:

Are the following individuals employees or independent contractors?

(a) An apprentice.
(b) The managing director of a company.
(c) A tradesperson building a new bathroom at your house.