



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Thursday 5 June 2008

Muc v Deputy Commissioner of Taxation [2008] NSWCA 96

Court of Appeal of New South Wales

Mason P, Beazley & Giles JJA

Income tax & related legislation - constitutional law – limitation periods - PAYE – PAYG - proceedings by & against the Crown – contracts, torts & personal actions – appellant was an employer who failed to remit deductions by due date to respondent between 1995-1998 - respondent commenced proceedings in 2003 to recover unpaid tax - appellant argued recovery of unpaid tax was statute barred by s14(1)(d) Limitation Act 1969 (NSW) which stipulates a six year period within which a cause of action to recover money under an enactment, other than a penalty or forfeiture, is to be brought - argument was rejected by primary judge - PAYE system was discontinued 1 July 2000 & new scheme, PAYG was introduced - appeal dismissed – detailed analysis of case law.

[Muc](#) (B)

Jones v Dapto Leagues Club Ltd. (No 2) [2008] NSWCA 111

Court of Appeal of New South Wales

Mason P, Beazley & Bell JJA

Costs – see 'Benchmark' Insurance Thursday 20 March 2008 & link below for substantive judgment 18 March 2008 - where offer of compromise made. (I)

[Jones](#), and

[Jones](#) – judgment 18 March 2008 – Occupier's Liability – Live open light socket at pub – (non-fatal) electrocution

And, on the subject of Calderbank offers, costs & indemnity costs, a paper presented by Beazley JA of NSW Court of Appeal at a Hunter Valley Australian Lawyers Alliance conference in March 2008. [Beazley JA](#)

**Dairy Farmers Milk Co-operative Ltd v Australian Co-operative Foods Ltd [2008] NSWCA 126**

Court of Appeal of New South Wales

Young CJ in Eq; McColl & Basten JJA

Co-operatives - Co-operatives Act 1992 (NSW) s289 - s1322 Corporations Act 2001 (Cth) – restructuring arrangement - variation of statutory cap on ownership by resolution of co-operative – whether proportion varied – whether resolutions ambiguous - schemes of arrangement – appeal dismissed.

[Diary Farmers Milk Co-Operative](#) (B)

Brooker v Friend & Brooker Pty Ltd & Anor (No 2) [2008] NSWCA 129

Court of Appeal of New South Wales

Mason P, McColl & Basten JJA

Application by respondent for orders that certain paragraphs of reasons for judgment be recalled – application dismissed. (C)

[Brooker](#) – 7 May 2008

[Brooker](#) – 29 May 2008 – finalising orders after reasons for judgment given

[Brooker](#) – judgment 20 December 2006 building, construction & development business – incorporation - partnership or joint venture - appellant sought damages or equitable compensation based on respondent's refusal to make equal contribution to repayment of personal borrowings for purposes of the business – appeal upheld – second respondent was required to contribute equally to the discharge of the outstanding obligations under certain loan arrangements – extensive consideration of case law.

Handley & Anor v Gunner [2008] NSWCA 113

Court of Appeal of New South Wales

Mason P, Hodgson & Campbell JJA

Easements - rights of way – proposed subdivision at Beecroft – interpretation of Deed – detailed consideration of [Ellmore \(Maitland\) Pty Ltd v Tull](#) (1995) 7 Butterworths Property Reports 14,305.

[Handley](#) (C)

Clawson Holdings Pty Ltd v Citigroup Global Markets Australia Pty Ltd [2008] NSWSC 537

Supreme Court of New South Wales

Barrett J

Corporations Act 2001 (Cth) s459G - winding up - statutory demand – plaintiff's application for order setting aside - written contract whereby defendant had made available to plaintiff a loan facility of \$10 million - whether genuine dispute as to existence or amount of debt – application unsuccessful.

[Clawson Holdings](#) (B)

**Carbotech-Australia Pty Ltd & Anor v Yates & 14 Ors [2008] NSWSC 540**

Supreme Court of New South Wales

Brereton J

Bias – apprehended bias – referee – waiver - plaintiffs manufacture resins, component of foam used in mining industry to consolidate fractured ground - first defendant formerly managing director & fourth & thirteenth defendants senior employees - plaintiffs alleging use of confidential information to conspire with eleventh & twelfth defendant to produce a competing product –by consent, an order for reference to a referee was made – plaintiff moved unsuccessfully for adoption of referee’s report – primary judge had held that by reason of communications passing between referee & plaintiffs’ solicitors to the exclusion of solicitors for eleventh & twelfth defendants there was a reasonable apprehension of bias on the part of referee – primary judge held report should not be adopted in its present form for other reasons – plaintiffs appealed – appeal allowed – held that communications between referee & solicitors did not ground reasonable apprehension of bias.

[Carbotech-Australia](#) (I, B, C)**IWPE Nominees Pty Ltd & Anor v Salera & Anor [2008] VSC 188**

Supreme Court of Victoria

Byrne J

Trade practices - investment in trading enterprise – convertible notes - confectionary manufacturing business - misleading & deceptive conduct – valuation of biscuit machinery - whether representations false – loss & damage – whether investor mismanaged enterprise.

[IWPE Nominees](#) (I, B)**Geelong Community for Good Life Inc v Environment Protection Authority & Anor [2008] VSC 185**

Supreme Court of Victoria

Cavanough J

Environment Protection Act 1970 (Vic) - proprietor of oil refinery applied to Environment Protection Authority to amend conditions of its licence to emit waste – whether an incorporated environment group was entitled to be heard against the application to amend — held that legitimate expectation doctrine not applicable in law or on the facts – application for certiorari to quash licence amendments refused.

[Geelong Community for Good Life](#) (C)



And from Canada...

ING Insurance Company of Canada v Manuel, 2008 ABCA 201

Court of Appeal of Alberta

Conrad, Berger & Costigan JJ

Tort – causation – whether insurer had obligation to defend & indemnify – case law considered - motor vehicle policy covered claims against insured for liability imposed by law for loss or damage “arising from the ownership, use or operation of the automobile” - insured shot & killed his son, & then himself, while both were inside the cab of insured pick-up truck – mother brought claim against deceased insured for causing her son’s death & her resulting psychological injuries – whether insurer should indemnify under the policy – answer ‘no.’

[ING Insurance Company of Canada](#) (I)

Garratt v Orillia Power Distribution Corporation, 2008 ABCA 201

Court of Appeal for Ontario

O’Connor ACJO; Gillese & Watt JJA

Negligence – personal injury claim – duty of care – standard of care - driver of motor vehicle injured while driving on motorway - construction work ropes were untied by vandals while construction workers at lunch - spider rope attached to an electrical conductor cable struck the hood of a car & wrapped itself around driver’s side rear view mirror – primary judge found for driver — whether intervening conduct of vandal was a reasonably foreseeable result of appellant’s allegedly negligent conduct - held no evidence capable of sustaining a finding that vandalous acts that directly caused respondent’s damages were reasonably foreseeable from appellant’s conduct in securing spider ropes – held that there was no evidence of an industry standard for security of spider ropes when a work crew is absent from a job site - appeal by Orillia allowed.

[Garratt](#) (I)

Key: (I) Insurance, (B) Banking, (C) Construction