



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Commissioner of Taxation v Anstis - *Income Tax Assessment Act 1997* (Cth) - deductibility of self-education expenses under s8-1 - appeal dismissed (I, B, C)

Weimann v Allphones Retail Pty Ltd (No 2) - Enforcement of settlement agreements - the Court's jurisdiction - no binding agreement reached (I, B, C)

Hine v New South Wales Land & Housing Corporation - Negligence - whether government Department owed duty of care to subcontractor - cleaning & maintenance work - *Housing Act 2001* (NSW) - pure economic loss - liability not established (I, B, C)

RL & CA Woods Pty Ltd v Pacific National (Victoria) Ltd & Wayne Bruce Kuschert v Pacific National (Victoria) Ltd & Anor - Negligence - level crossing accident on Riverina Highway - truck collided with train carrying grain - two appeals - appeal against truck owner - appeal against RTA - costs - Bullock orders (I)

GIO General Ltd v Love - *Limitation Act 1969* (NSW) - appeal against extension of limitation period allowed (I)

Worth Recycling Pty Ltd v Waste Recycling & Processing Pty Ltd - Solicitors - obligation of confidence - appeal dismissed (I)

Penrith Rugby League Club Ltd t/a Cardiff Panthers v Elliott (no.2) - Costs - indemnity costs - offers of compromise (I)

Deeson Heavy Haulage Pty Ltd v Cox & Ors (No 2) - Costs - departing from general rule - ex parte orders - duty to act with utmost good faith (I, B, C)

Karamanlidis v the Nominal Defendant & the Motor Accident Commission - Costs - motor vehicle accident - defendants seeking departure from usual costs orders (I)

Hadeler v Antoniou & Antoniou - *Goods Securities Act 1986* (SA) - motor vehicle - application to review magistrate's decision dismissing claim (I)

Summaries with links (5 minute read)

Friday 6 November 2009

Commissioner of Taxation v Anstis [2009] FCAFC 154

Full Federal Court of Australia

Finn, Sundberg & Edmonds JJ (in Melbourne)

Income Tax Assessment Act 1997 (Cth) - deductibility of self-education expenses under s8-1 - assessable income in the form of Youth Allowance payable under *Social Security Act 1991* (Cth) - for decision appealed from, see 'Benchmark' B & IBC Monday 6 April 2009 & link below - appeal dismissed.

[Commissioner of Taxation](#) (I, B, C)

[Anstis](#) - decision 1 April, 2009 - income tax - deductions - outgoings incurred in gaining or producing of assessable income - assessable income in form of Youth Allowance payable under *Social Security Act 1991* - requirement of full-time study - whether expenditure by taxpayer pursuing teaching degree on travel to & from teaching rounds, student administration fees, text books etc, deductible from student's assessable income - answer 'yes' - appeal from Administrative Appeals Tribunal allowed.

Weimann v Allphones Retail Pty Ltd (No 2) [2009] FCA 1230

Federal Court of Australia

McKerracher J (in Perth)

Enforcement of settlement agreements - the Court's jurisdiction - alleged oral acceptance of written offer at mediation - applicant contending settlement had been reached - representative proceedings - whether agreement sufficiently certain to be valid & enforceable - whether intention to be bound by any agreement - whether solicitors had authority to settle proceeding - His Honour concluded no binding agreement had been reached.

[Weimann](#) (I, B, C)

Hine v New South Wales Land & Housing Corporation [2009] FCA 1242

Federal Court of Australia

Jagot J (in Sydney)

Negligence - whether government Department owes duty of care to subcontractor - *Housing Act* 2001 (NSW) - reasonable foreseeability - causation - trade practices - misleading & deceptive conduct - reliance - vulnerability - pure economic loss - decision in relation to liability - first applicant sole director & shareholder of second applicant CPR Property, which carried out cleaning & maintenance work as a subcontractor on behalf of first respondent, a statutory body associated with NSW Department of Housing - in March 2004, Corporation prohibited its contractors from using CPR Property as subcontractor, relying on provision in contracts between Corporation & its contractors about use of subcontractors - applicants claiming Corporation's conduct contravened s42 *Fair Trading Act* 1987 (NSW); also breach of duty of care it owed to applicants, & negligent misstatement to contractors; also claim of unlawful interference with contractual relationship between contractors & CPR Property, thus committing tort of inducing breach of contract - no duty of care - liability not established - detailed consideration of principles & case law in an interesting decision.

[Hine](#) (I, B, C)

RL & CA Woods Pty Ltd v Pacific National (Victoria) Ltd & Wayne Bruce Kuschert v Pacific National (Victoria) Ltd & Anor [2009] NSWCA 298

Court of Appeal of New South Wales

Allsop P; Ipp & Young JJA

Negligence - level crossing accident on Riverina Highway - truck collided with train carrying grain - two appeals - appeal against truck owner - appeal against RTA - property damage & personal injuries - duties of care - adequacy of warning - whether clear view - whether stand of trees obscured view of truck driver & should have been removed by RTA - costs - Bullock orders - for decision 30 October 2008, see 'Benchmark' I, C & IBC Tuesday 4 November 2008 & link below - appeal against Bullock order succeeded and order set aside - appeals otherwise dismissed.

[RL & CA Woods \(I\)](#)

[Pacific National Victoria](#) - decision 30 October 2008 - negligence - heavy vehicles - various claims & cross-claims in relation to personal injury & property damage - level crossing collision near Savernake in southern New South Wales between truck consisting of a prime mover and a tipper trailer owned & operated by Woods, being driven along the Riverina Highway by employee of Woods in the course of his employment; & a locomotive owned & operated by Pacific National - truck driver seriously injured ; truck damaged beyond repair - engineering experts - 'hot tubbing' - in claim by Pacific, verdict for Pacific against truck-driver & truck-driver's employer - in one of verdicts, a finding that truck-driver negligent in not giving way at give way sign, in driving at a speed which was excessive in the circumstances & in not keeping a proper look out.

GIO General Ltd v Love [2009] NSWCA 269

Court of Appeal of New South Wales

Basten & Young JJA; Handley AJA

Limitation Act 1969 (NSW) - appeal against extension of limitation period - in 2001, respondent suffered injury while undertaking training course in emergency procedures - respondent employee of ACI - course conducted by Firefox which was voluntarily deregistered in 2008 - appellant insurer of Firefox - in 2003, Firefox learnt of accident for first time when ACI brought proceedings under s151Z *Workers Compensation Act 1987* (NSW) against Firefox to recover compensation it had paid worker - insurer had claim investigated at that time - substantial prejudice - appeal allowed.

[GIO General \(I\)](#)

Worth Recycling Pty Ltd v Waste Recycling & Processing Pty Ltd [2009] NSWCA 354

Court of Appeal of New South Wales

Spigelman CJ; Hodgson & Campbell JJA

Solicitors - obligation of confidence - for decision appealed from, see 'Benchmark' Monday 11 May 2009 & link below - appeal dismissed.

[Worth Recycling](#) (I)

[Worth Recycling](#) - decision 5 May 2009 - application by defendant to restrain plaintiff's solicitors from acting for plaintiff - inherent jurisdiction - plaintiff's solicitors retained by other parties against defendant in earlier proceedings which settled following mediation - Harman undertaking - the solicitors were then approached to act for current plaintiff against same defendant - damages claim in respect of alleged contraventions of *Trade Practices Act 1974* - confidential information - solicitor's duty of confidence - firm of solicitors could continue to act, but not the solicitor who acted in previous proceedings.

Penrith Rugby League Club Ltd t/a Cardiff Panthers v Elliott (No 2) [2009] NSWCA 356

Court of Appeal of New South Wales

Ipp & Basten JJA; Sackville AJA

Costs - indemnity costs - offers of compromise - for Court of Appeal decision 18 August 2009, see 'Benchmark' I & IBC Thursday 20 August 2009 & link below - application for costs on indemnity basis in relation to District Court proceedings (and not the appeal) - offers of compromise in November 2007 and in October 2008 - costs on indemnity basis ordered from date in October 2008.

[Penrith Rugby League Club](#) (I)

[Penrith Rugby League Club](#) - Personal injuries - injuries to persons entering premises - slip & fall in car park of appellant's premises, a licensed club - failure of automatic external floodlights - consideration of precautions that would have been taken by a reasonable person to avoid risk of failure of lighting - s5B(2) *Civil Liability Act 2002* (NSW) - causation - appeal allowed - judgment for appellant ;

[Elliott](#) - District Court decision 28 November 2008 - personal injuries - fall in car park - plaintiff awarded \$114,601.00 in damages, plus costs.

Deeson Heavy Haulage Pty Ltd v Cox & Ors (No 2) [2009] QSC 348

Supreme Court of Queensland

McMeekin J

Costs - departing from general rule - ex parte orders - duty to act with utmost good faith - settlement with third defendant - three week trial - relevant misconduct of plaintiff - reserved costs - at paragraph 67 of judgment: appropriate that plaintiff be largely deprived of its costs & be ordered to pay defendant's costs.

[Deeson Heavy Haulage](#) (I, B, C)

[Deeson Heavy Haulage](#)

- decision 8 September 2009 - employment law - duty of good faith owed by employee - soliciting work - duty of confidence owed by employee - maxims of equity - misuse of confidential information - application of "head start" or "springboard concept" to measure of liability - judgment for plaintiff against first, second & fourth defendants in sum of \$12,120 together with interest - judgment for first defendant on his counterclaim against plaintiff in amount claimed of \$4,760 together with interest.

In the District Court of South Australia...**Karamanlidis v the Nominal Defendant & the Motor Accident Commission [2009] SADC 1118**

District Court of South Australia

Beazley DCJ

Costs - motor vehicle accident - for decision 16 October 2009, see 'Benchmark' I & IBC Monday 26 October 2009 & link below - plaintiff successful in proceedings against both defendants - defendants seeking departure from usual costs orders - plaintiff entitled to costs of action on party/ party basis on District Court scale.

[Karamanlidis](#) (I)

[Karamanlidis](#) - decision 16 October 2009 - personal injuries - motor accident - proceedings issued by plaintiff as passenger against his wife as driver & against Nominal Defendant pursuant to s115 *Motor Vehicles Act 1959* (SA) - plaintiff alleging unidentified truck collided with rear of his wife's vehicle causing latter vehicle to collide with rear of a stationary third vehicle - independent witnesses called by defendants asserting plaintiff's wife sole occupant of car at time of accident - held that plaintiff was passenger in the rear of his wife's vehicle at the time of collision - independent witnesses mistaken - injuries sustained by plaintiff solely caused in collision between plaintiff's wife's vehicle & stationary third vehicle - unidentified truck did not immediately cause any injury sustained by plaintiff but accident caused by negligent driving of both driver of unidentified truck & plaintiff's wife - liability apportioned at fifty percent each - judgment for plaintiff against defendants in sum of \$40,786.52.

Hadeler v Antoniou & Antoniou [2009] SADC 113

District Court of South Australia

Tilmouth DCJ

Goods Securities Act 1986 (SA) - appellant had claimed value of interest in a motor vehicle sold to respondents by a third party - application to review magistrate's decision dismissing claim - rights of unpaid seller of goods protected under the Act against bona fide purchaser for value without notice - although magistrate had erred in failing to apply facts to relevant statutory framework, result the same - appellant did not hold a valid registered interest in the vehicle, either because he failed to make the appropriate application in accordance with the provisions of the Act, or it was erroneously entered - case law considered as to nature and scope of a "review" in an interesting decision.

[Hadeler \(I\)](#)

Earlier availability of 'Benchmark'

This week we have pushed the publication of 'Benchmark' forward by between six & seven hours. This means our readers will now receive the bulletin at 7 pm on the day prior to the date on the bulletin, rather than at 1 a.m. on the date shown.