



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

#### Executive Summary (1 minute read)

**Soliman v University of Technology, Sydney (No 2)** - Part 8 *Workplace Relations Act 1996* (Cth) - demotion of academic - disciplinary action - committees - distinction between a contract of employment & a union collective agreement (I)

**Von Reisner v Commonwealth of Australia (No 2)** - Costs (I, B)

**Hughes, in the matter of Firepower Operations Pty Ltd (in liq) (No 2)** - *Federal Court (Corporations) Rules 2000* (Cth) - order that warrant be issued (I, B)

**Vlado Adonovski v Park Tec Engineering Pty Ltd & Anor** - Personal injuries - separate question - identity of injured worker's employer within group of companies (I)

**Abdel Naser Qushair v Naji Raffoul** - *Fair Trading Act 1987* (NSW) - loan agreement - whether alleged representations made - whether representations, if made, were misleading or deceptive (I)

**Encyclopaedia Britannica Australia Ltd v Campbell (No 2)** - Costs - indemnity costs (I, B, C)

**Hastings Cooperative Ltd v. Port Macquarie Hastings Council** - *Environmental Planning & Assessment Act 1979* (NSW) - statutory interpretation - development control - appeal dismissed - "shop" (B, C)

**McDonnell v Northern Sydney Central Coast Area Health Service** - Medical negligence - application for separate determination of liability & causation refused (I)

**Kakavas v Crown Melbourne Limited & Ors** - Equity - casino sued by gambler - claim dismissed (I, B)

**TCL Airconditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd** - Arbitration clauses - scope of referral to arbitration (I, B, C)

**Permanent Trustee Australia Ltd & Ors v Valeondis & Ors** - Personal injuries - occupier's liability - first respondent had suffered injuries when roof of a lift collapsed - "agent" (I, B, C)

## Summaries with links (5 minute read)

### Thursday 10 December 2009

#### **Soliman v University of Technology, Sydney (No 2) [2009] FCAFC 173**

Full Court of the Federal Court of Australia

Graham, Logan & Flick JJ (in Sydney)

Part 8 *Workplace Relations Act* 1996 (Cth) - demotion of academic - disciplinary action - committees - for decision appealed from, see 'Benchmark' I, B & IBC Tuesday 14 October 2008 & link below - distinction between a contract of employment & a union collective agreement - whether University of Technology, Sydney Academic Staff Agreement 2006 required committee to make unanimous findings of fact - appeal dismissed.

[Soliman](#) (I)

[Soliman](#) - decision 10 October 2008 - contracts of employment - case law considered regarding incorporation of documents by reference into employment contracts - alleged breaches of certified agreement in respect of disciplinary action - remedies available for breach of certified agreement - principles relating to construction of industrial instruments, both awards & certified agreements - application dismissed.

#### **Von Reisner v Commonwealth of Australia (No 2) [2009] FCAFC 172**

Full Court of the Federal Court of Australia

Siopis, Cowdroy & Reeves JJ (in Sydney)

Costs - successful litigant in person was owner of business providing litigation services - whether entitled to be compensated by costs order for time spent or earnings lost in conducting proceeding - held that appellant was not entitled to any order for costs save in respect of out-of-pocket expenses (if any) actually, necessarily & reasonably incurred by her in the conduct of appeal & in the proceedings before the primary judge - case law considered.

[Von Reisner](#) (I, B)

[Von Reisner](#) - decision Full Federal Court 20 August 2009

**Hughes, in the matter of Firepower Operations Pty Ltd (in liq'n) (No 2) [2009] FCA 1457**

Federal Court of Australia

Siopis J (in Perth)

*Federal Court (Corporations) Rules 2000 (Cth)* - application for warrant for arrest of a person who failed to comply with order to attend an examination before the Court - order that warrant be issued.

[Hughes, in the matter of Firepower Operations](#) (I, B)

**Vlado Adonovski v Park Tec Engineering Pty Ltd & Anor [2009] NSWCA 305**

Court of Appeal of New South Wales

Tobias & Young JJA; Sackville AJA

Personal injuries - separate question - identity of injured worker's employer within group of companies - indicia for determining employer - appeal allowed in part.

[Vlado Adonovski](#) (I)

**Abdel Naser Oushair v Naji Raffoul [2009] NSWCA 329**

Court of Appeal of New South Wales

Campbell JA, Bergin CJ in Eq & Sackville AJA

*Fair Trading Act 1987 (NSW)* - loan agreement - shares in flight instruction business - whether alleged representations made - whether representations, if made, were misleading or deceptive - whether primary Judge gave adequate reasons for finding that the representations were not made and, if made, did not constitute misleading or deceptive conduct - whether a retrial should be ordered - appeal allowed - matter remitted to District Court for new trial of respondent's claim & appellant's cross-claim.

[Abdel Naser Oushair](#) (I)

[Naji Raffoul](#) - District Court decision 21 November 2008

**Encyclopaedia Britannica Australia Ltd v Campbell (No 2) [2009] NSWCA 335**

Court of Appeal of New South Wales

Giles & Macfarlan JJA; Sackville AJA

Costs - indemnity costs - for Court of Appeal decision 10 September 2009, see 'Benchmark' Tuesday 15 September 2009 & link below - offer of compromise at trial - not renewed on appeal - assessment of interest - jurisdiction of costs assessors under the *Legal Profession Act 2004 (NSW)*.

[Encyclopaedia Britannica Australia](#) (I, B, C)

[Encyclopaedia Britannica Australia](#) - decision Court of Appeal 10 September 2009 - employment contracts - period of notice required in the event of termination of respondent's contract - redundancy - restitution - for decision appealed from, see 'Benchmark' Wednesday 12 November 2008 & link below - appeal allowed - respondent entitled to three months notice on termination, otherwise than for misconduct or by reason of redundancy - "in the event of redundancy" - Australian case law considered;

[Campbell](#) - decision Supreme Court 11 November 2008 - termination of employment - whether employment contract included a provision fixing period of notice for termination without cause - whether termination was "a redundancy" - plaintiff entitled to recover balance of redundancy package - plaintiff entitled to nine months notice.

### **Hastings Cooperative Ltd v Port Macquarie Hastings Council [2009] NSWCA 400**

Court of Appeal of New South Wales

Allsop P; Basten JA; Handley AJA

*Environmental Planning & Assessment Act 1979* (NSW) - statutory interpretation - development control - primary judge had held supermarket not a 'shop' for purposes of *Hastings Local Environmental Plan 2001* (NSW) & dismissed challenge to validity of consent - appeal dismissed - "building or place" - "general store" - "prohibited development" - "shop."

[Hastings Cooperative](#) (B, C)

[Hastings Cooperative](#) - reported at 167 LGERA 205 - decision Land & Environment Court of NSW 26 June, 2009

### **McDonnell v Northern Sydney Central Coast Area Health Service [2009] NSWSC 1364**

Supreme Court of New South Wales

Harrison AsJ

Medical negligence - application for separate determination of liability & causation from other issues in the trial - r28.2 *Uniform Civil Procedure Rules 2005* (NSW) - application refused.

[McDonnell](#) (I)

### **Kakavas v Crown Melbourne Limited & Ors [2009] VSC 559**

Supreme Court of Victoria

Harper J

Equity - problem gambling - casino sued by gambler - whether gambler subject to a special disability - Casino's knowledge of any disability - self-exclusion - whether unequal bargaining position between the parties - interstate exclusion order - claim dismissed.

[Kakavas](#) (I, B)

**TCL Airconditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd [2009] VSC 553**

Supreme Court of Victoria

Hargrave J

Arbitration clauses - scope of referral to arbitration - distribution agreement - detailed examination of case law from the United Kingdom & Australia.

[TCL Airconditioner \(Zhongshan\) Co](#) (I, B, C)

**Permanent Trustee Australia Ltd & Ors v Valeondis & Ors [2009] SASC 375**

Full Court of the Supreme Court of South Australia

Bleby, Gray & Layton JJ

Personal injuries - occupier's liability - first respondent had suffered injuries when roof of a lift collapsed - for decision appealed from, see 'Benchmark' I, C & IBC Thursday 6 November 2008 & link below - fourth appellant managing agent for building - whether managing agent was independent contractor - consideration of relationship between building owner & managing agent - whether building owner vicariously liable for negligence of managing agent - "agent" - extensive consideration of case law.

[Permanent Trustee Australia](#) (I, B, C)

[Valeondis](#) - decision District Court 31 October 2008 - lift ceiling falling on courier driver, then aged fifty - plaintiff delivering parcel to office building took goods lift - lift ceiling collapsed while plaintiff travelling between second level & ground floor - plaintiff sued building owner, building manager & the business that had recently reinstalled the lift ceiling - both liability & quantum in dispute - expert evidence - verdict for plaintiff in sum of \$370,893.50;

[Valeondis](#) - costs decision District Court 16 March 2009