

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Crawley v Short (No 2) - *Corporations Act 2001* (Cth) - oppression - compulsory purchase order - basis of valuation of hotels - costs (B, C)

Nicholls v Michael Wilson & Partners Ltd - Production of documents - security for costs dismissed - amendment of pleadings (I, B, C)

Glad Cleaning Service Pty Ltd & GIO General Ltd [formerly k/a GIO Workers Compensation (NSW) Ltd] v Vukelic - Workers compensation - restitution - unjust enrichment - mistake of fact or mistake of law (I)

Fabig v Photon Group - Dispute resolution procedure in contract - defendant seeking stay of proceedings - delay (I, B, C)

Prasad v Workers Compensation Commission - *Workplace Injury Management & Workers Compensation Act 1998* (NSW) - whether Appeal Panel failed to take into account a mandatory consideration in assessment of degree of plaintiff's whole person impairment (I)

Eclectic Investments v Polymetals Group - Cross-vesting - share buy-back agreement - interests of justice did not require that proceedings be transferred (B)

R v Quach - Criminal law - count of misconduct in public office - questions of law for consideration - elements of common law offence (I)

ACN 074 971 109 & Anor v the National Mutual Life Association of Australasia Ltd - Prosperity bond policy - amendment of pleadings application - striking out application - res judicata - issue estoppel (I, B)

CPG01 Pty Ltd v Kourinos - Contract for sale of land in subdivision near Waroona - extension of period concerning planning approval - whether contract void for uncertainty - effect of the term 'and/or nominee' on a contract for sale of land - rectification - election & waiver (C)

Deputy Commissioner of Taxation v Reidy - s221H(2) *Income Tax Assessment Act 1936* (Cth) - verdict for defendant (B)

Eversol Legal Services Pty Ltd v Bechara - *Legal Profession Act 1987* (NSW) - whether applicable to subsequent contract with third party to indemnify client by paying costs - ambit of the savings provisions of *Legal Profession Act 2004* (NSW) in Schedule 9 (I)

Summaries with links (5 minute read)

Tuesday 11 May 2010

Crawley v Short (No 2) [2010] NSWCA 97

Court of Appeal of New South Wales

Allsop P; Macfarlan & Young JJA

Corporations Act 2001 (Cth) - oppression - compulsory purchase order - basis of valuation of hotels - costs.

[Crawley](#) (B, C)

[Crawley](#) - decision Court of Appeal 16 December 2009 reported at: 76 ACSR 286: see 'Benchmark' Friday 18 December 2009 - corporations - oppression by director of companies - valuation of shares - valuation of land - highest & best use - capital gains tax (CGT) liability - equitable defences - laches & delay- fiduciary duties - directors' duties to shareholders - appeal allowed in part - cross-appeal allowed in part;

[Short](#) - decision Supreme Court 26 November 2007: see 'Benchmark' I, B & IBC Thursday 29 November 2007 - directors - breach of fiduciary duties - consideration of circumstances in which directors may owe fiduciary duties to shareholders - numerous instances of oppression by director of companies - remedies -whether discretion to order winding up should be exercised - order to wind up a solvent company only as a last resort - valuation of shares - causation - breach of obligation to act for proper purpose distinguished from failure to disclose improper purpose - account of profits - conflict of interest - director owing concurrent fiduciary duties as solicitor - duties as director owed in addition to duties owed as solicitor - onus on fiduciary to show that fully informed consent obtained - what constitutes fully informed consent - circumstances requiring independent advice - limitation periods - equitable defences - laches & delay - meetings - voting - circumstances in which directors interested in transaction may vote on

resolution to enter into transaction - consideration of case law from Australian, the United Kingdom, Canada & New Zealand;

[Short](#) - decision Supreme Court 5 September 2008: see 'Benchmark' Monday 8 September 2008 - valuation - hotel businesses - shares - Jackson's on George hotel -Marlborough Hotel - capital gains tax - compulsory buy-out order - actual profit - actual expenses - smoking ban - depressed market - poker machine entitlements.

Nicholls v Michael Wilson & Partners Ltd [2010] NSWCA 100

Court of Appeal of New South Wales

Young JA

Production of documents - respondents' application for security for costs dismissed - appellants' application for security of costs of cross-appeal dismissed - leave granted to appellants to amend notice of appeal - London arbitrators' determination - respondent's application to set aside notice to produce dismissed.

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

[Michael Wilson and Partners](#) - decision 11 December 2009: see 'Benchmark' Tuesday 2 February 2010 - employment law - fiduciary obligations - equitable compensation - joint & several liability - 'nullus commodum capere potest de injuria sua propria' principle ('no man can take advantage of his own wrong') - text & case law from the United Kingdom & Australia considered.

[Michael Wilson and Partners](#) - decision 6 October 2009: see 'Benchmark' I, B & IBC Thursday 8 October 2009 - employment law - fiduciary obligations - when & to what extent employees may owe fiduciary obligations to employer - accessorial liability - confidential information - conspiracy to defraud - interference with contractual relations - causation - defendants claiming proceedings amount to an abuse of process - equitable remedies - identifying the appropriate remedy in the case of a breach of fiduciary obligation - monetary compensation - causation - text & case law considered from the United Kingdom, Australia, Canada & New Zealand.

Glad Cleaning Service Pty Ltd & GIO General Ltd [formerly k/a GIO Workers Compensation (NSW) Ltd] v Vukelic [2010] NSWSC 422

Supreme Court of New South Wales

Slattery J

Workers compensation - restitution - unjust enrichment - mistake of fact or mistake of law - second plaintiff paid workers compensation settlement to defendant worker without deducting monies owed to Commonwealth - Centrelink issued Recovery Notice to second plaintiff requesting payment of \$63,603.12 before payment to defendant - second plaintiff paid this sum to Centrelink after payment to defendant - judgment for plaintiffs in sum of \$98,076.48 (made up of the sum claimed of \$63,603.12 together with interest of \$34,473.36 accrued to date under s100 *Civil Procedure Act* 2005 (NSW)) - detailed analysis of legislation as to statutory basis for deduction.

[Glad Cleaning Service](#) (I)

Fabig v Photon Group [2010] NSWSC 358

Supreme Court of New South Wales

McDougall J

Dispute resolution procedure in contract - expert determination provisions - share purchase agreement - defendant seeking stay of proceedings - delay - stay not ordered.

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

Prasad v Workers Compensation Commission [2010] NSWSC 418

Supreme Court of New South Wales

Harrison J

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - certiorari - plaintiff alleged workplace injury affecting lung function - plaintiff had relied on scientific evidence to suggest she was racially predisposed to reduced lung capacity - where evidence not referred to in Appeal Panel's reasons - whether Appeal Panel failed to take into account a mandatory consideration in assessment of degree of plaintiff's whole person impairment - application dismissed.

[Prasad](#) (I)

Eclectic Investments v Polymetals Group [2010] NSWSC 300

Supreme Court of New South Wales

McDougall J

Cross-vesting - share buy-back agreement - application to stay proceedings or for court to decline to exercise jurisdiction - whether Supreme Court of Queensland the more appropriate forum - interests of justice did not require that proceedings be transferred - plaintiff's application to restrain solicitor from acting dismissed.

[Eclectic Investments](#) (B)

R v Quach [2010] VSCA 106

Court of Appeal of Victoria

Ashley & Redlich JJA; Hansen AJA

Criminal law - count of misconduct in public office - questions of law for consideration - elements of common law offence - issue as to what prosecution required to prove; as to required nexus between the public office & the acts that comprise the misconduct; as to seriousness of conduct to be described - relevant comparisons between criminal offence & tort of misfeasance in public

office as to mental element: see para. 28 of judgment -extensive consideration of case law from the United Kingdom, Hong Kong & Australia.

[Quach](#) (I)

ACN 074 971 109 & Anor v the National Mutual Life Association of Australasia Ltd [2010] VSC 186

Supreme Court of Victoria

Croft J

Prosperity bond policy - amendment of pleadings application - striking out application - res judicata - issue estoppel - operation of a prosperity bond investment scheme utilising prosperity bonds, which were policies of life insurance within the meaning of *Life Insurance Act 1995* (Cth): bonds were issued by defendant as insurer - leave to amend granted - striking out application dismissed.

[ACN 074 971 109 & Anor](#) (I, B)

CPG01 Pty Ltd v Kourinos [2010] WASC 92

Supreme Court of Western Australia

Hasluck J

Real estate transactions - contract for sale of land in subdivision near Waroona - extension of period concerning planning approval - whether contract void for uncertainty - answer 'no' - effect of the term 'and/or nominee' on a contract for sale of land - construing Special Condition - rectification - election & waiver - plaintiff entitled to relief as pleaded including order for specific performance.

[CPG01](#) (C)

[CPG01](#) - decision 9 February 2010 - joinder - issue estoppel - application by non-parties to intervene in trial proceedings refused.

In the District Court of New South Wales...

Deputy Commissioner of Taxation v Reidy [2010] NSWDC 69

District Court of New South Wales

Levy SC DCJ

s221H(2) *Income Tax Assessment Act 1936* (Cth) - whether defendant entitled to credit for amounts her employer deducted from her earnings between 1996-2000 on account of tax where employer failed to remit such deducted amounts to ATO - verdict for defendant.

[Deputy Commissioner of Taxation](#) (B)



Eversol Legal Services Pty Ltd v Bechara [2010] NSWDC 72

District Court of New South Wales

Gibson DCJ

Legal Profession Act 1987 (NSW) - whether applicable to subsequent contract with third party to indemnify client by paying costs - ambit of the savings provisions of *Legal Profession Act 2004 (NSW)* in Schedule 9 - which Act applies - answer: the 1987 Act.

[Eversol Legal Services](#) (I)