



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

Today's Cases

Navigation Act 1912 (Cth) – Statutory interpretation – Requirement for holding tank or treatment plant for livestock effluent – See *Australian Maritime Safety Authority v Livestock Transport & Trading* (I)

Associations & clubs – Remedies for wrongful expulsion – See *Plenty v Seventh Day Adventist Church of Port Pirie* (I)

Defamation (SA) – Appeal against award of damages for defamation – Whether award was manifestly inadequate – Appeal dismissed – See *Plenty v Dickson* (I)

Gas pipe line access (Vic) – Construction of the word “operator” – See *Alinta Asset Management Pty Limited v Essential Services Commission* (B, C)

From the District Court of Queensland:

Vicarious liability – Prosecution for possession of undersized seafood – Onus of proof – Illegal possession had been without the Respondents' consent – Matter remitted to Magistrate for proper determination – See *Ely v Town* (I)

From the United Kingdom:

Corporate liability – Whether corporation could be legally responsible for mistakes made either by its computerised debt recovery system or the personnel responsible for programming and operating it – Strike out application refused – See *Ferguson v British Gas Trading Limited* (I, B, C)



Thursday 12 February 2009

Australian Maritime Safety Authority v Livestock Transport & Trading [2009] FCAFC 10

Full Federal Court of Australia

Dowsett, Rares & Gilmour JJ (in Perth)

Navigation Act 1912 (Cth) – statutory interpretation – Kuwaiti registered ship - livestock effluent - Authority's requirement that ship be equipped with holding tank or treatment plant - respondent had successfully challenged validity of marine orders before primary judge as being beyond the Authority's power to make regulations under the Act – appeal by the Authority against that decision – appeal allowed.

[Australian Maritime Safety Authority](#)

Alinta Asset Management P/L v Essential Services Commission [2008] VSCA 273

Court of Appeal of Victoria

Ashley & Dodds-Streeton JJA; Hansen AJA

Gas pipelines access legislation in Victoria - appeal principally concerned with construction of s22(1) *Gas Industry Act* 2001 (Vic) & meaning of word 'operator' in definition of 'Service Provider' in the Gas Pipelines Access Law – essential features of Victoria's current natural gas industry considered – Alinta's powers under Operating Services Agreement – appeal dismissed.

[Alinta Asset Management](#)

Plenty & Anor v Seventh Day Adventist Church of Port Pirie [2009] SASC 10

Full Court of the Supreme Court of South Australia

Gray, Vanstone & Anderson JJ

Associations & clubs - remedies for wrongful expulsion - appeal from Supreme Court decision – appellants disfellowshipped from Church in 1979 for alleged misconduct – appellants successful in seeking declaration that disfellowshipping was null & void by reason of denial of natural justice and procedural fairness – appellants unsuccessful in seeking damages for breach of contract & breach of duty of care causing appellants psychiatric & physical harm as well as loss of reputation – appeal dismissed – held that primary judge had not erred in failing to make findings of bias & malice, nor in rejecting claims in contract and tort – primary judge had not erred in finding appellants had not suffered psychiatric illnesses nor failing to award appellants damages for loss of proprietary rights nor in refusing to award damages flowing from loss of reputation suffered by appellants as a consequence of the denial of natural justice - on the cross-appeal : declaration that appellants had suffered denial of natural justice set aside as unnecessary.

[Plenty](#)

**Plenty & Anor. v Dickson & Anor [2009] SASC 9**

Full Court of the Supreme Court of South Australia

Gray, Vanstone & Anderson JJ

Appeal against award of damages for defamation - whether award was manifestly inadequate - whether Judge should have concluded defendants had acted with malice - held that facts did not justify a finding of express malice - no evidence to support an award of aggravated or exemplary damages - appeal dismissed - cross-appeal on costs dismissed.

[Plenty](#)

Lovell v Western Australian Police Union of Workers [2009] WASCA 34

Court of Appeal of Western Australia

Owen & Pullin JJA; Steytler P J

Application for extension of time to lodge notice of appeal - Master had struck out applicant's statement of claim - action essentially for loss of profits - applicant journalist, author & publisher - in 1985 applicant had published book called 'The Mickelberg Stitch' relating to Perth Mint swindle - published 'Split Image' in 1990 - application refused.

[Lovell](#)

[Lovell](#) - decision appealed from - 17 December 2004

From the District Court of Queensland...**Johnson v Laing O'Rourke (BMC) Pty Ltd [2009] QDC 10**

District Court of Queensland

McGill SC DCJ

Personal Injuries Proceedings Act 2002 (Qld) - *Workers' Compensation & Rehabilitation Act 2003 (Qld)* - application under *Personal Injuries Proceedings Act 2002 (Qld)* for leave to commence proceedings after expiration of limitation period - application opposed only on ground that the 2002 Act did not apply - respondent company carrying on business in Queensland & elsewhere - applicant had worked for respondent company in Brisbane & Vietnam - he suffered workplace stress in Vietnam & made a claim for compensation on WorkCover - working for respondent in Indonesia - diagnosis of work-related anxiety & depression - returned from Indonesia, had not returned to employment since then - applicant claiming damages from respondent for psychiatric injury - held that 2002 Act did not apply to applicant's injury, because excluded by s6(2)(c) - application dismissed.

[Johnson](#)

**Ely v Town [2009] QDC 16**

District Court of Queensland

Clare SC DCJ

Vicarious liability – prosecution under *Fisheries Act* 1994 (Qld) for possession of undersized or illegal crabs & Moreton Bay bugs - respondent the skipper of licensed fishing trawler - responsibility for acts

or omissions of representatives, including employee deckhands – defence to charge - onus of proof - illegal possession had been without respondents' consent – respondent had to prove he had issued appropriate instructions & used all reasonable precautions to ensure compliance with the Act & that he could not, by the exercise of reasonable diligence, have stopped the commission of the offence – held that charges should be remitted to magistrate for proper determination.

[Ely](#)**From the United Kingdom...****Lisa Ferguson v British Gas Trading Ltd. [2009] EWCA Civ 46**

Court of Appeal of England & Wales

Sedley, Jacob & Lloyd LJ

Protection from Harassment Act 1997 (UK) – corporate liability - striking out application – respondent had been customer of appellant, but then switched to another supplier – alleging that thereafter continued to receive unjustified bills & letters threatening action, despite writing letters of complaint – one argument advanced for striking out claim : that corporation could not be legally responsible for mistakes made either by its computerised debt recovery system or by the personnel responsible for programming & operating it – striking out application refused.

[Ferguson](#)**Two hundred years since the birth of Charles Darwin and Abraham Lincoln****Charles Darwin**

Sunday 12 February, 1809 – 19 April, 1882

Born near Shrewsbury, on the English border with Wales – mother the daughter of Josiah Wedgwood, father the son of Erasmus Darwin, scientist, inventor & writer – in October 1825, began studying medicine at Edinburgh University but left in April, 1827 - in January, 1828 began studying for the clergy at Cambridge University – he befriended the botany professor, Revd. John Stevens Henslow (1796 – 1861); he collected beetles, examined rocks, minerals & plants, & attended geology lectures – he passed his final examinations in 1831 & left Cambridge – he arrived home on 29 August, 1831 to find a letter from Revd. Henslow advising him that the captain of a Royal Navy survey ship wanted an



unpaid naturalist to accompany the ship on a round the world voyage – Darwin was to be responsible for collecting specimens of plants, animals, fossils, & minerals & sending them back to England – aged twenty-two, he sailed from England in the *HMS Beagle* on 27 December 1831 - the main purpose of *the Beagle's* voyage was to prepare detailed maps of parts of the South American coastline for the Royal Navy – Darwin was able to study the wildlife on the Galapagos Islands before it was affected by the activities of the human settlers – *the Beagle* returned to England on 2 October, 1836 – he married his cousin Emma Wedgwood in 1839 – in November 1859, he published 'On the Origin of Species by Means of Natural Selection' & in 1871, 'The Descent of Man.'

[About Darwin](#)

[Abraham Lincoln](#)

Sunday, 12 February 2009 – 15 April 1865

Born in a one room log cabin on Sinking Spring Farm in southeast Hardin County, Kentucky – father was Thomas Lincoln, mother was Nancy Hanks – two uneducated farmers – the family relocated to Indiana in 1816 – mother died when he was nine years old – father remarried to Sarah Bush Johnston – the family then relocated again to Illinois in 1830 – married Mary Todd in 1842, daughter of a prominent slave-owning family from Kentucky – the couple had four sons – Lincoln became the 16th President of the United States of America on 4 March 1861 – perhaps most famous for his "Emancipation Proclamation" announced on 22 September 1862 and put into effect on 1 January 1863 which freed slaves in territories not already under Union control and his "Gettysburg Address" which he delivered in Gettysburg, Pennsylvania on 19 November 1863 which commenced with the famous words "Four score and seven years ago..." and concluded with the equally famous words "...government of the people, by the people, for the people..." – was re-elected and had his second inauguration on 4 March 1865 but was assassinated just one month later while attending the play "Our American Cousin" on 14 April 1865 – he was pronounced dead the following morning after sustaining fatal gunshot wounds to the head.

[Abraham Lincoln](#)

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