



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Commissioner of Taxation v Star City Pty Limited (No 2) - s226L *Income Tax Assessment Act 1936* (Cth), - ss84 -145 *Taxation Administration Act 1953* (Cth), Sch 1, - administrative penalty (B)

Wide Bay Conservation Council Inc v Burnett Water Pty Ltd (No 4) - *Environment Protection & Biodiversity Conservation Act 1999* (Cth) - application by respondent to adjourn trial (C)

Parkview v Tracktech - *Corporations Act 2001* (Cth) – application to set aside statutory demand under s459G - effect of s10 *Home Building Act 1989* (NSW) – statutory demand set aside (C)

Salzano v Rolan Semaarn Salon Pty Ltd - Personal injuries – appeal from primary judge who had ordered applicant to answer interrogatories - application dismissed (I)

Smith v Canberra Press Pty Ltd - *Accident Compensation Act 1985* (Vic) – limitation of actions (I)

Montclare v Metlife Insurance Limited & Anor - *Insurance Contracts Act 1984* (Cth) - appeal from orders made in relation to pleadings - submissions of plaintiff did not succeed (I)

Lonsdale Investments Pty Ltd v Om (Manganese) Ltd [No 2] - Discovery of documents (I,C)

Commissioner of State Revenue v McShane - *Land Titles Act 1980* (Tas.) – stamp duty (B)

Morro, N & Ahadizad v Australian Capital Territory - Torts – false imprisonment - *Human Rights Act 2004* (ACT) - assessment of damages – scope of damages available (I)

Judy Oxford et al (pls/resps) v Foster Wheeler LLC (def/app - U.S. decision - personal injuries – asbestos-containing products – ship boiler - government contractor defence (I,B,C)



Summaries with links (5 minute read)

Monday 14 September 2009

Commissioner of Taxation v Star City Pty Limited (No 2) [2009] FCAFC 122

Full Federal Court of Australia

Goldberg, Dowsett & Jessup JJ (in Melbourne)

s226L *Income Tax Assessment Act 1936* (Cth), - ss284-145 *Taxation Administration Act 1953* (Cth), Sch 1, - administrative penalty – for decision 27 February 2009, see 'Benchmark' B & IBC Tuesday 3 March 2009 & link below.

[Commissioner of Taxation](#)

[Commissioner of Taxation](#) – decision Full Federal Court 27 February 2009 - *Income Tax Assessment Act 1936* (Cth) – appeal against decision to disallow objection to notice of assessment of penalty for tax shortfall - prepayment of rent - casino licence whether primary judge erred in finding that schemes did not fall within definition of "scheme" in s177A(1) – held that prepayment of rent was an outgoing of a capital nature.

Wide Bay Conservation Council Inc v Burnett Water Pty Ltd (No 4) [2009] FCA 1013

Federal Court of Australia

Logan J (in Brisbane)

Environment Protection & Biodiversity Conservation Act 1999 (Cth) -application by respondent to adjourn trial - substantive issue an alleged contravention of a condition of a ministerial approval under the Act – respondent has sought that Minister vary condition - adjournment not opposed & granted – indemnity costs.

[Wide Bay Conservation Council Inc](#)

Parkview v Tracktech [2009] NSWSC 943

Supreme Court of New South Wales

Macready AsJ

Corporations Act 2001 (Cth) – application to set aside statutory demand under s459G - plaintiff head contractor for building of mixed residential, commercial & retail development in Alison Road, Randwick – part of development involved demolition of buildings & erection of new residential accommodation & part involved restoration of two existing terraces which would, once complete, be used for commercial purposes - defendant was engaged as a sub-contractor to do specialised heritage restoration work on the two terraces - whether work was residential building work done by an unlicensed contractor – effect of s10 *Home Building Act 1989* (NSW) – statutory demand set aside.

[Parkview](#)

Salzano v Rolan Semaarn Salon Pty Ltd [2009] VSCA 201

Court of Appeal of Victoria

Mandie JA & Beach AJA

Personal injuries – respondent’s interrogatories – appeals from decisions involving discretionary considerations - applicant alleging she was required to work in highly stressful work environment - injuries claimed include psychiatric injuries - appeal from primary judge who had ordered applicant to answer interrogatories - application dismissed.

[Salzano](#)

Smith v Canberra Press Pty Ltd [2009] VSCA 200

Court of Appeal of Victoria

Mandie JA & Beach AJA

Accident Compensation Act 1985 (Vic) – limitation of actions – appeal from decision of County Court refusing leave to commence common law proceeding for damages pursuant to s135A(4)(b) in respect of injuries suffered during the course of employment with respondent – primary judge had accepted that applicant sustained compensable injury & that this injury was a serious injury within s135A – application for leave to appeal dismissed.

[Smith](#)

Montclare v Metlife Insurance Limited & Anor [2009] VSC 402

Supreme Court of Victoria

Harper J

Insurance Contracts Act 1984 (Cth) - plaintiff suing under a policy of term life insurance - appeal from orders made in relation to pleadings – information provided in insurance application form - particulars of agency - whether necessary to plead particulars of condition of mind, including knowledge – submissions of plaintiff did not succeed – an interesting decision.

[Montclare](#)

Londsdale Investments Pty Ltd -v- Om (Manganese) Ltd [No 2] [2009] WASC 253

Supreme Court of Western Australia

Beech J

Discovery of particular categories of documents previously ordered - whether additional categories of documents sought to be discovered relate to a matter in question - relevance of expert report to matters in question – insurance policy - application dismissed.

[Londsdale Investments](#)

Commissioner of State Revenue v McShane [2009] TASSC 73

Supreme Court of Tasmania

Crawford CJ

Land Titles Act 1980 (Tas.) – respondent’s father had signed a Transfer of rural property to

respondent son & another person not a relative - stamp duty payable on the transfer was assessed by appellant Commissioner under Duties Act 2001 – appeal from magistrate's determination that duty was only assessable in respect of half-interest transferred to non-relative & not in respect of half-interest transferred to respondent – appeal upheld.

[Commissioner of State Revenue](#)

Morro, N & Ahadizad v Australian Capital Territory [2009] ACTSC 118

Supreme Court of the Australian Capital Territory

Gray J

Torts – false imprisonment - *Human Rights Act 2004 (ACT)* - assessment of damages – scope of damages available – consideration of whether award of aggravated damages justified : answer no - liability admitted - by consent, proceedings heard together – three separate plaintiffs - plaintiffs seeking redress for being falsely imprisoned by defendant – in the case of N, also a claim that whilst in detention, assault by another prisoner :defendant admits assault occurred as a consequence of its breach of duty of care to N - whether s18(7) gives an independent statutory right to compensation or is only declaratory of a right to compensation - Human Rights Commissioner had been given leave to intervene pursuant to s36(1) – awards of damages to the three plaintiffs to give full effect to statutory right to compensation for unlawful detention conferred by s18(7) – detailed analysis of legislation, text & case law from UK, Australia & New Zealand (in relation to New Zealand *Bill of Rights Act 1990*.)

[Morro](#)

From the United States...

Judy Oxford et al (pls/resps) v Foster Wheeler LLC (def/app), A121577

Court of Appeal of California

Marchiano PJ, Margulies & Graham JJ

Personal injuries – asbestos- containing products – ship boiler - government contractor defence - application to negligence & failure to warn - complaint alleging exposure to asbestos between 1963 & 1967 while assigned to boiler room of USS Klondike, a US Navy vessel that functioned as a repair ship for other Navy warships, & while working at various shipyards – mesothelioma – defence alleged its asbestos-containing products had been manufactured in accordance with contract specification imposed by the US government – a jury had found against plaintiffs on their products liability claims for design defect & failure to warn, but in favour of plaintiffs on their claim for negligence – jury had also found defendant had proved the three elements of government contractor defence – defendant had requested judgment by entered in its favour, arguing the positive finding on the elements of government contractor defence immunised it from liability – trial court entered judgment for plaintiffs – irreconcilable inconsistency in verdicts as to defendant's liability - decision of trial court reversed – matter remanded for new trial – an interesting decision examining US case law as to government contractor defence including [Boyle v United Technologies](#)



Corp. (1988) 487 US 500 & case law as to the term “military equipment.”

Judy Oxford