

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Chief Commissioner of State Revenue v Walker & Moloney in their capacity as Voluntary Administrators of ABC Learning Centres Ltd (Administrators appointed) (Receivers & Managers app'd) - Production of documents - *Taxation Administration Act 1996* (NSW) (I, B, C)

Tucker, in the matter of Aero Inventory (UK) Ltd v Aero Inventory (UK) Ltd (No 2) - *Cross-Border Insolvency Act 2008* (Cth) (B)

David Michael Wilson v Nilepac Pty Limited t/a Vision Personal Training (Crows Nest) - Personal injuries - allegation of injury whilst plaintiff exercising at a gym - verdict for defendant (I)

George v Survery - Medical negligence - assessment of damages - failure to diagnose that plaintiff suffering from either ischaemic heart disease or an acute coronary syndrome (I)

The Estate of Rosalind Allwood v Peter Vivian Benjafield - Application for extension of time for assessment of costs (I, B)

Brennan v O'Meara - Contracts for sale - "become mentally ill" - purported rescission by purchaser invalid (I, B, C)

Findlay v State of Victoria & Ors - Personal injuries - claim by former policewoman - whether appellant sought to raise a new case on appeal - appeal dismissed (I)

Ward v Keet (No 2) - s10 *Fair Trading Act 1987* (WA) - determination of preliminary issue - whether binding agreement formed at mediation (I, B)

Cha v Oh (No 22) (Part 1) - Defamation - defences of comment & qualified privilege - defences of justification & contextual truth - assessment of damages (I)

Summaries with links (5 minute read)

Monday 14 December 2009

Chief Commissioner of State Revenue v Walker & Moloney in their capacity as Voluntary Administrators of ABC Learning Centres Ltd (Administrators appointed) (Receivers & Managers app'd) [2009] FCA 1451

Federal Court of Australia

Stone J (in Sydney)

Production of documents - *Taxation Administration Act* 1996 (NSW): Division 3 headed 'Secrecy': prohibition on certain disclosures of information by tax officers - permitted disclosures to particular persons - a Registrar of the Court had made an order requiring Chief Commissioner of State Revenue for New South Wales to produce some documents to the Court - the order was issued at request of plaintiffs Administrators of ABC Learning Centres & associated companies - Commissioner sought a declaration that the Court had no power to compel production of the documents - in the alternative, the Commissioner sought to have the order set aside - Commissioner's application dismissed.

[Chief Commissioner of State Revenue](#) (I, B, C)

Tucker, in the matter of Aero Inventory (UK) Ltd v Aero Inventory (UK) Ltd (No 2) [2009] FCA 1481

Federal Court of Australia

Foster J (in Sydney)

Cross-Border Insolvency Act 2008 (Cth) - orders that foreign main proceeding be recognised & entrusting administration or realisation of debtor company's assets located in Australia to foreign representatives.

[Tucker, in the matter of Aero Inventory \(UK\)](#) (B)

[Tucker, in the matter of Aero Inventory \(UK\)](#) - decision 20 November 2009; see 'Benchmark' B & IBC Thursday 26 November 2009 - UNCITRAL Model Law on Cross-Border Insolvency - *Cross-Border Insolvency Act* 2008 (Cth), Schedule 1 (Model Law on Cross-Border Insolvency of the United

Nations Commission on International Trade Law), Article 19 - provisional relief pending decision on application for recognition of foreign proceeding.

Wilson v Nilepac Pty Limited t/a Vision Personal Training (Crows Nest) [2009] NSWSC 1365

Supreme Court of New South Wales

McCallum J

Personal injuries - claim for damages for breach of contract & breach of duty of care - allegation of injury whilst plaintiff exercising at a gym under supervision of personal trainer- standard of care owed by the reasonable personal trainer & reasonable personal training studio - ss5B & s5D *Civil Liability Act* - causation - expert evidence - verdict for defendant.

[Wilson](#) (I)

George v Survery [2009] NSWSC 1348

Supreme Court of New South Wales

Hoeben J

Medical negligence - assessment of damages - failure to diagnose that plaintiff suffering from either ischaemic heart disease or an acute coronary syndrome - heart transplant - life expectancy - expert evidence - economic loss - earnings of business - how contribution of wife should be treated - deduction for vicissitudes - non-economic loss - total damages assessed at \$1,394,923.87 from which two amounts to be deducted (i) payments made or to be made to the GIO \$ 538,828.08 and (ii) advance by way of interim payment \$80,000.00 - when those two amounts deducted from damages schedule, plaintiff's entitlement to damages is \$776,095.79.

[George](#) (I)

The Estate of Allwood v Benjafield [2009] NSWSC 1383

Supreme Court of New South Wales

Mathews AJ

Application for extension of time for assessment of costs - inherent jurisdiction of the Court - s209C *Legal Profession Act 1987* (NSW) - discretionary considerations.

[The Estate Of Allwood](#) (I, B)

Brennan v O'Meara [2009] NSWSC 1374

Supreme Court of New South Wales

Davies J

Contracts for sale - penalties - plaintiff vendor had entered contract for sale of land with defendant purchaser - purchaser purported to rescind contract in accordance with clause in Contract for Sale on the basis that purchaser was suffering from mental illnesses - meaning of "become mentally ill" - purported rescission by purchaser invalid.

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

Findlay v State of Victoria & Ors [2009] VSCA 294

Court of Appeal of Victoria

Maxwell P, Ashley JA & Hollingworth AJA

Personal injuries - psychiatric injuries alleged - claim in contract & tort by former policewoman against State of Victoria & other serving & retired policemen - alleged omissions by supervising officers - causal link - claim had been dismissed - whether appellant sought to raise a new case on appeal - principles governing raising of a new case on appeal - appeal dismissed.

[Findlay](#) (I)

Ward v Keet [No 2] [2009] WASC 369

Supreme Court of Western Australia

Murphy J

s10 *Fair Trading Act* 1987 (WA) - determination of preliminary issue - whether binding agreement formed at mediation on 26 July 2007 - first defendant alleging that if there were a binding agreement, it was vitiated by misrepresentation - held that plaintiffs had not established a binding agreement was reached at mediation; if there was a binding agreement, then the first defendant had not established that it was vitiated by misrepresentation.

[Ward](#) (I, B)



In the District Court of New South Wales...

Cha v Oh (No 22) (Part 1) [2009] NSWDC 299

District Court of New South Wales

Gibson DCJ

Defamation - publication in Korean language newspapers - defences of comment & qualified privilege - defences of justification & contextual truth - assessment of damages - consideration of texts from Canada, the United Kingdom & Australia - a lengthy judgment with comprehensive consideration of United Kingdom & Australian case law.

[Cha \(I\)](#)