

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

International Finance Trust Company Limited v New South Wales Crime Commission - Constitutional law - *Criminal Assets Recovery Act 1990 (NSW)* - challenge to validity of the provisions of the Act providing for restraining orders & assets forfeiture orders - appeal allowed (I, B, C)

Stojan (No 9) Pty Ltd v Kenway & Ballina Shire Council - Personal injuries - first respondent had fallen on stairs leading from shopping plaza car park to Council park - apportionment - concurrent tortfeasors - *Roads Act 1993 (NSW)* - "public road" - "roads authority" - "road work" - "footway" (I)

Regency Media Pty Ltd v AAV Australia Pty Ltd - Costs (B, C)

Fermiscan Pty Ltd, Fermiscan Australia Pty Ltd, Fiberscan Pty Ltd v Veronica Jean James - Contracts - assignment of rights in connection with patents - agreement to settle litigation - non-disparagement clause - penalty clause (B)

Penrose v Nominal Defendant & Anor - Personal injuries - motor accident - whether on balance of probabilities, the taxi owned at time by second defendant was the vehicle involved in the accident (I)

Roads & Traffic Authority of New South Wales v Graincorp Operations Ltd - Statutory offences - negligence - offence under s58(3) *Road Transport (General) Act 2005 (NSW)* - chain of responsibility requirements (I)

G & S Engineering v Lampson Australia Pty Ltd & Anor - Discovery of documents - first respondent failed to establish claim for legal professional privilege (I, C)

Boase v AXIS International Management Pty Ltd - Application to strike out part of statement of claim - plaintiffs' claim arising from their failed investment of funds in Firepower Group (B)

Summaries with links (5 minute read)

Monday 16 November 2009

International Finance Trust Company Limited v New South Wales Crime Commission [2009]

HCA 49

High Court of Australia

French CJ; Gummow, Bell, Hayne, Crennan, Kiefel & Heydon JJ

Constitutional law - *Criminal Assets Recovery Act* 1990 (NSW) - challenge to validity of the provisions of the Act providing for restraining orders & assets forfeiture orders - for decision NSW Court of Appeal 6 November 2008, see 'Benchmark' B & IBC Tuesday 11 November 2008, & link below - appeal allowed - "ancillary orders", "confiscation", "ex parte", "fraudulently acquired property", "illegally acquired property", "reasonably plain intendment", "serious crime related activity."

[International Finance Trust Company](#) (I, B, C)

[International Finance Trust Company](#) - decision 6 November 2008 - *Criminal Assets Recovery Act* 1990 (NSW) - restraining orders - whether s10 invests Supreme Court with power repugnant to or incompatible with its exercise of Federal judicial power - forty-eight New Zealand bank accounts, one Australian bank account & two share trading accounts - allegation that property proceeds of tax avoidance scheme - "reasonable grounds for suspicion" - "reasonable grounds for belief" - appeal allowed.

Stojan (No 9) Pty Ltd v Kenway & Ballina Shire Council [2009] NSWCA 364

Court of Appeal of New South Wales

Ipp, McColl JA & Basten JJA

Personal injuries - primary judge had found appellant had breached its duty of care to first respondent, the plaintiff in District Court proceedings : first respondent had fallen on stairs leading from shopping plaza car park to Council park - primary judge had apportioned liability at 80% against appellant & 20% against second respondent Council - whether owner of plaza occupier of stairs - whether Council "roads authority" in relation to stairs - whether stairs were or

formed part of a "public road" - s249 *Roads Act* 1993 (NSW) - causation - contributory negligence - apportionment - concurrent tortfeasors - "public road" - "roads authority" - "road work" - "footway"- appeal & cross-appeal allowed - extensive review of United Kingdom & Australian case law.

[Stojan \(No 9\)](#) (I)

Regency Media Pty Ltd v AAV Australia Pty Ltd [2009] NSWCA 368

Court of Appeal of New South Wales

Spigelman CJ; Beazley & McColl JJA

Costs - offer of compromise - appellant's application for indemnity costs in relation to proceedings at first instance refused - no basis for making special costs order for costs of appeal.

[Regency Media](#) (B, C)

[Regency Media](#) - decision NSW Court of Appeal 15 July 2009 - share sale deed - termination of joint venture - pursuant to Deed, purchase price & certain other payments were either to be made on &/or calculated as at close of business on the day of Completion - on day of completion, Sony made payment in respect of its outstanding account - meaning of the terms "close of business on the day of completion" & "Bank Statements" in the Letter Agreement & the characterisation of the Sony payment - appeal allowed - respondent's claim dismissed.

Fermiscan Pty Ltd, Fermiscan Australia Pty Ltd, Fiberscan Pty Ltd v Veronica Jean James [2009] NSWCA 355

Court of Appeal of New South Wales

Allsop P, Ipp JA & Handley AJA

Contracts - assignment of rights in connection with patents - agreement to settle litigation - whether respondent had breached non-disparagement clause - penalty clause void & unenforceable - appeal dismissed.

[Fermiscan](#) (B)

[Fermiscan](#) - decision 29 May 2009 - three questions for determination - proceedings dismissed.

Penrose v Nominal Defendant & Anor [2009] NSWSC 1187

Supreme Court of New South Wales

Hoeben J

Personal injuries - motor accident - plaintiff effectively rendered tetraplegic - plaintiff attempting to get into taxi when it drove away ; he became attached to the taxi & was dragged for over 300 metres - whether on balance of probabilities, the taxi owned at time by second defendant was the taxi involved in the accident - [Briginshaw v Briginshaw](#) (1938) 60 CLR 336 - whether contributory

negligence should be found against plaintiff - plaintiff's level of contributory negligence assessed at 10% - plaintiff to have Bullock order in respect of first defendant's costs - verdict for plaintiff against second defendant, with damages to be assessed - verdict for first defendant.

[Penrose](#) (I)

Roads & Traffic Authority of New South Wales v Graincorp Operations Ltd [2009] NSWSC 1204

Supreme Court of New South Wales

Hall J

Statutory offences - negligence - offence under s58(3) *Road Transport (General) Act 2005* (NSW) - chain of responsibility requirements - defendant a consignee of grain - specified loads delivered to defendant's depots were in breach of a mass requirement - defendant had been charged on basis that failure to take steps to turn vehicles away constituted conduct likely to induce others to breach mass requirement - charges dismissed in Local Court - whether Magistrate had misconstrued element of negligence under s58(3)(c) - scope of expression 'question of law alone' - "induce" - "likely" - appeal dismissed - detailed consideration of Australian case law in an interesting decision.

[Roads & Traffic Authority of New South Wales](#) (I)

G & S Engineering v Lampson Australia Pty Ltd & Anor [2009] QSC 361

Supreme Court of Queensland

Applegarth J

Discovery of documents - applicant applying for order that first respondent give to Court or Court's appointed expert documents submitted by first respondent to Department of Mines & Energy - grounds for resisting production - legal professional privilege - waiver of privilege - s159 *Coal Mining Safety & Health Act 1999* (Qld) - incident at Blackwater Mine owned by second respondent in which damage caused to dragline & crane - the Department had seized crane & investigated incident to determine its cause - crane supplier prepared incident report for its legal representatives & for purposes of Department's investigations - whether incident report created for dominant purpose of submission to legal advisers or for use in legal proceedings - first respondent failed to establish claim for legal professional privilege - waiver of privilege.

[G & S Engineering](#) (I, C)



Boase v AXIS International Management Pty Ltd [2009] WASC 331

Supreme Court of Western Australia

Beech J

Application to strike out part of statement of claim - plaintiffs' claim arises from their failed investment of funds in Firepower Group - seven defendants - facts said to give rise to conclusion that one party owed a fiduciary duty to another must be pleaded - paragraph of statement of claim struck out with leave to replead.

[Boase](#) (B)