

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Thursday 17 January 2008

Humane Society International Inc v Kyodo Senpaku Kaisha Ltd [2008]FCA3
Federal Court of Australia

Allsop J

Public interest injunction – discretion whether to grant relief – futility of enforcement: lack of means to make injunction effective – “political questions” - environment - declaration made that respondent has killed, injured, taken & interfered with Antarctic minke whales & fin whales & injured, taken & interfered with humpback whales in Australian Whale Sanctuary in contravention of Environment Protection and Biodiversity Conservation Act 1999 (Cth), (the "Act"), & has treated & possessed such whales killed or taken in the Australian Whale Sanctuary in contravention of the Act – order made that respondent be restrained from killing, injuring, taking or interfering with any Antarctic minke whale fin whale or humpback whale in Australian Whale Sanctuary, or treating or possessing any such whale killed or taken in the Australian Whale Sanctuary, unless permitted or authorised under the Act – an interesting judgment with detailed consideration of principles, case law & legislation. [Humane Society International](#) (I,B,C)

In the application of her Majesty's Attorney General in and for the State of New South Wales under ss 32 & 33 Evidence on Commission Act 1995 [2007] NSWSC 1501

Supreme Court of New South Wales

Harrison J

Evidence on Commission Act 1995 (NSW) – request from Swedish court for taking of evidence abroad, namely blood & buccal samples from putative father of child for the purposes of establishing paternity – legislation & case law considered - order made for samples to be taken. [In the application of her Majesty's Attorney General](#) (I,B)

Thompson v White [2008] NSWSC 1

Supreme Court of New South Wales

Biscoe AJ

Joint venture – land purchased for development & sale – accounts - calculation of shares of profits. [Thompson](#) (C)

Australian Education Union (SA Branch) & Ors v the Chief Executive Department of Education & Children's Services [2007] SASC 458

Supreme Court of South Australia

White J

Administrative law – powers of Minister - an interesting judgment with links provided to other interesting decisions including as to liability of Crown & duty of care of teacher to pupil - application for judicial review of direction issued by Acting Chief Executive of Department of Education & Children's Services concerning method of reporting of students' progress to parents - whether direction unlawful - whether Chief Executive had power to issue directions with regard to reporting methods - whether duties imposed on teachers by Regulation displaced powers of Chief Executive – Education Act & Education Regulations - legislation considered as to role of governing councils in schools & duties of teachers – “answerable to” — held that Minister had power to issue direction. [Australian Education Union](#) (I)

Morgan & Co Pty Ltd v Commonwealth Bank of Australia Ltd [2007] WASC 316

Supreme Court of Western Australia

Acting Master Chapman

Practice & procedure - insurance – concurrent tortfeasors - contribution - application by plaintiff seeking orders that plaintiff's claim against second, third & fourth defendants be dismissed - plaintiff had taken out insurance policy - plaintiff brought claim for damages of \$1 million against first defendant for failing to exercise reasonable care in keeping plaintiff informed as to requirements to keep a keyman life insurance policy in force - first defendant denies claim - plaintiff was a customer of first defendant & assigned policy to first defendant as security for its loan facilities - fourth defendant was plaintiff's insurance agent who was employed either by second or third defendants - first defendant argued agent failed to take reasonable care in keeping it & plaintiff informed as to requirements regarding payment of appropriate premiums - second & fourth defendants informed first defendant they had settled with plaintiff - first defendant was not party to these negotiations – deed entered into between relevant parties - first defendant contended it would suffer prejudice if orders sought by plaintiff for

discontinuance were made - application by first defendant granted seeking leave to issue third party notice against second & fourth defendants - first defendant's concern was that if second & fourth defendants removed from proceedings, then the claim which the first defendant might have otherwise available under Law Reform (Miscellaneous Provisions) Act 1941 (WA) might be lost – first defendant’s application granted. [Morgan & Co](#) (I,B)

Barfuss & Ors v Altmann [2008] NTCA 1

Court of Appeal of Northern Territory

Martin (B) CJ, Riley & Southwood JJ

Appeal against interlocutory injunction – adequacy of reasons for primary judge’s decision - dealing with applications expeditiously & under pressure of time - case law considered as to proper approach to ex tempore reasons – joint venture agreement – mining tenements - interlocutory injunction had been granted restraining appellants until further order from dealing with money held in accounts of third appellant with Westpac & a third bank account with Bendigo Bank - purpose of interlocutory injunction was to preserve the balance USD\$850,000 held in those accounts pending determination of respondent’s substantive claims against appellants – respondent a US citizen - draft agreement entitled “Australian Mining Agreement (Novation) considered - detailed consideration of UK & Australian case law as to granting of interim injunctions - serious question to be tried - balance of convenience - adequacy of undertaking as to damages - whether equitable rights sufficiently identified - whether sufficient likelihood of success – case law considered as to whether a relationship between parties is one of trust or debt, or some other relationship – no error by primary judge in granting interlocutory injunction - appeal dismissed. [Barfuss](#) (I,B,C)

One from the District Court of New South Wales...

Photi v Target Australia Pty Ltd [2007] NSWDC 265

District Court of New South Wales

Gibson DCJ

Tort - assault - plaintiff arrested by store security officer - wrongful arrest - false imprisonment - defamation - justification - late plea of qualified privilege - damages - aggravated compensatory damages - punitive damages claim for causes of action other than defamation – orders made: (1) judgment for plaintiff for \$50,000 in relation to claim for wrongful arrest, false imprisonment & defamation; (2) judgment for the plaintiff in relation to claim for assault for \$10,000; (3) punitive damages of \$25,000 (for causes of action other than defamation) awarded to plaintiff. [Photi](#) (I)

& A decision from the UK in 2006...

General Medical Council v Meadow [2006] EWCA Civ 1390

Court of Appeal of England & Wales

Sir Anthony Clarke PM, Auld & Thorpe LJJ

Experts witnesses – mother tried for murder of her two sons – expert’s evidence relied on by Crown to refute defence’s contention that children may have died from Sudden Infant Death Syndrome – expert gave evidence as to statistical probability of two SIDS deaths in one family – figures cited were erroneous - whether incorrect opinion can give rise to a charge of professional misconduct – whether an expert witness should be entitled to immunity from disciplinary, regulatory or fitness to practise proceedings in relation to statements made or evidence given – principles & case law as to witness immunity from civil suit at common law - roles & responsibilities of expert witness – case law considered as to purpose of disciplinary proceedings - whether to extend immunity to fitness to practice proceedings – answer ‘ no ’ – a very interesting judgment. [General Medical Council](#) (I,B,C)

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