



Monday 17 September 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Dunkerley v Comcare - workers compensation - whether failure to take into account relevant consideration (I, G)

Unifor Australia Pty Ltd v Katrd Pty Ltd atf Morshan Unit Trust t/as Beyond Completion Projects – security of payments legislation - application for declaration that adjudication decision unlawful and consequential orders (I, C, G)

Mulvaney Holdings Pty Ltd v Thorne & Ors - costs - whether non-parties affected by proceedings should be protected as to reasonable costs incurred (I, B, C, G)

Re Stanley William Gordon Moore ex parte Devanjul Pty Ltd (ACN 1176440087) - application to reinstate registration of company - whether applicant aggrieved person - whether just (I, B, C)



Tep v ATS Australasian Technical Services Pty Ltd - workplace injury - whether employer negligent or in breach of contractual duty - assessment of damages (I)

Australian International Islamic College Board Inc v Kingdom of Saudi Arabia & Anor - jurisdiction of Australian courts - foreign state immunity - lawyers' duties and liabilities - whether conflicts concerning former clients (I, B, C, G)

Westpac Banking Corporation v Helicopters Brisbane Pty Ltd & Ors - commercial loan agreement - application for summary judgment against guarantor - whether available remedies (B)

Dowdle v Pay Now For Business Pty Ltd & Anor - application to set aside guarantee and mortgage - whether misleading and deceptive conduct or unconscionability (B)

Sands v State of South Australia - defamation proceedings - bankruptcy - application for stay of proceedings - confinement of claim (I, B, G)

Summaries with links (5 minute read)

Dunkerley v Comcare [2012] FCAFC 132

Full Court of the Federal Court of Australia

Lander, Logan & Barker JJ

Appeal from decision in appeal from Administrative Appeals Tribunal (AAT) under s44 *Administrative Appeals Tribunal Act 1975* (Cth) - appellant unsuccessfully applied for more senior position in Australian Public Service and made workers compensation claim when unsuccessful - AAT refused compensation because injury resulted from *reasonable administrative action* by Selection Advisory Committee (SAC) - whether failure to take into account relevant consideration of departmental policy statement in respect of recruitment, selection and engagement (**policy**) - whether misconstruction of policy in relation to terms of employment or with respect to meaning of *principles of merit, equity and procedural fairness* - whether necessary to answer question whether policy legally binding on SAC - whether erroneous characterisation of selection procedure as flexible - whether policy's decision-making process compliant with ss10(1)(b) & 10(2) *Public Service Act 1999* (Cth).

[Dunkerley](#) (I, G)



Unifor Australia Pty Ltd v Katrd Pty Ltd atf Morshan Unit Trust t/as Beyond Completion Projects [2012] QSC 252

Supreme Court of Queensland

Daubney J

Administrative law - judicial review - application for declaration that adjudication decision under *Building and Construction Industry Payments Act 2004 (Qld) (Act)* was unlawful and consequential orders preventing respondent's reliance on decision - assessment of progress claim - respondent provided wrong spreadsheet to adjudicator - whether essential statutory pre-requisite not satisfied - whether adjudicator complied with sa26(1), 26(2) & 14 of the Act when making assessment - explanation of statutory scheme: *Queensland Bulk Water Supply Authority v McDonald Keen Group Pty Ltd & Anor* [2009] QSC 165 - whether power to make *quantum meruit* assessment - whether fatal jurisdictional error - whether error of law on face of the record - whether unlawful decision - conditions under which adjudication decision void: *John Holland Pty Ltd v TAC Pacific Pty Ltd* (2010) 1 Qd R 302.

[Unifor Australia](#) (I, C, G)

Mulvaney Holdings Pty Ltd v Thorne & Ors [2012] QSC 247

Supreme Court of Queensland

McMeekin J

Costs - applicant obtained ancillary orders affecting non-party respondents - whether non-parties affected by proceedings should be protected as to reasonable costs incurred as a result of orders - whether applicant should pay respondents' costs on indemnity basis - *prima facie* position that applicant to pay *the reasonable costs of anyone* who might be affected by the orders made - undertaking must be offered except in the most extraordinary of circumstances - principles applicable to whether applicant should be released from undertaking: *Corporate Affairs Commission v Austral Oil Estates Limited* (1985) 10 ACLR 1 - whether parties should bear own costs - conduct of respondents.

[Mulvaney](#) (I, B, C, G)



Re Stanley William Gordon Moore ex parte Devanjul Pty Ltd (ACN 1176440087) [2012] QSC 249

Supreme Court of Queensland

McMeekin J

Corporations law - trusts - action against trustee - application to reinstate registration of a company pursuant to s601AH *Corporations Act* 2001 (Cth) - purpose of application to enable applicant to execute against assets of trust - threshold test whether applicant a person aggrieved by deregistration - applicable principles as to whether just to reinstate registration: *Re Brockweir Pty Ltd* [2012] VSC 225.

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

Tep v ATS Australasian Technical Services Pty Ltd [2012] QSC 258

Supreme Court of Queensland

Fryberg J

Workplace injury - plaintiff sued employer for damages for injuries due to employer's negligence and breach of contractual duty - evidence of witnesses on liability - divergent accounts of plaintiff and defendant - credit and consequential findings - whether negligence or breach could be attributed to defendant - assessment of damages.

[Tep](#) (I)

Australian International Islamic College Board Inc v Kingdom of Saudi Arabia & Anor [2012] QSC 259

Supreme Court of Queensland

Martin J

Jurisdiction of Australian courts - lawyers' duties and liabilities - applications by defendants for declarations that proceeding not properly commenced for want of jurisdiction or alternatively that plaintiff's statement of claim not properly served in accordance with *Foreign States Immunities Act* 1985 (Cth) (**Act**) - application by plaintiff for disqualification of defendants' solicitors for breach of r4 *Legal Profession (Solicitors) Rules* 2007 (Qld) (**Rules**) - immunity from jurisdiction of Australian courts for foreign states: s9 of the Act - whether exclusion from immunity applicable to defendants contained in s11 of the Act - whether claim in respect of scholarship or payment of a like kind pursuant to s11(2)(b) of Act - whether defendants' solicitors should be disqualified - conflicts concerning former clients: r10 of the Rules - whether requirements of establishment of an effective information barrier satisfied.

[Australian International Islamic College Board](#) (I, B, C, G)



Westpac Banking Corporation v Helicopters Brisbane Pty Ltd & Ors [2012] QSC 263

Supreme Court of Queensland

Martin J

Summary judgment - commercial loan agreement - application for summary judgment by lender pursuant to r292 *Uniform Civil Procedure Rules 1999 (Rules)* against guarantor for debt arising under agreement - effect of *no set off clause* contained - applicant's duties under s85 *Property Law Act 1974 (Qld)* - whether remedies available under *Trade Practices Act 1974 (Cth)* or *Competition and Consumer Act 2010 (Cth)* - principles for granting summary judgment: *Deputy Commissioner of Taxation v Salcedo* [2005] 2 Qd R 232 - whether clear case - whether no real question to be tried.

[Westpac](#) (B)

Dowdle v Pay Now For Business Pty Ltd & Anor [2012] QSC 272

Supreme Court of Queensland

Mullins J

Equity - application to set aside guarantee and mortgage on grounds of misleading and deceptive conduct or unconscionability - plaintiff signed guarantee and mortgage making her liable for husband's loan from first defendant and for existing debt to first defendant - plaintiff did not understand purport and effect of transaction - whether first defendant failed to advise plaintiff of change in structure of transaction - whether principle in *Yerkey v Jones* (1939) 63 CLR 649 applies - explanation of application of *Yerkey v Jones*: *Garcia v National Australia Bank Ltd* (1998) 194 CLR 395 - whether first defendant took advantage of superior position by entering into transactions: *Amadio* unconscionability - whether misleading and deceptive conduct or unconscionability under *Trade Practices Act 1974 (Cth)* or *Australian Securities and Investments Commission Act 2001 (Cth)* - whether knowing concern of second defendant - whether guarantee and mortgage should be set aside - whether damages flowing from variation of guarantee.

[Dowdle](#) (B)

Sands v State of South Australia [2012] SASC 159

Supreme Court of South Australia

Kelly J

Defamation - bankruptcy - hybrid claim for general damages and specific pecuniary loss - applications by defendants for stay of proceedings pursuant to s60(2) *Bankruptcy Act 1966 (Cth)* (**Act**) until plaintiff limits claim to damages for loss of personal reputation or, alternatively, for



stay of proceedings with declaration of extent to which plaintiff required to limit case - whether claims other than defamation claims stayed by operation of s60(2) of the Act - whether plaintiff must confine claim - whether all plaintiff's claims of a personal rather than proprietary nature - whether claims fall within exception contained in s60(4) of the Act - ambit of damages recoverable.

[Sands](#) (I, B, G)

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