



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Appeals to the Supreme Court from the ADT on questions of law – what is a question of law. See *B & L Linings Pty Limited v Chief Commissioner of State Revenue*

Interlocutory judgment – leave to appeal – should the Court of Appeal interfere with an exercise of discretion by the primary judge. See *Nolan v Otis Elevator Company Pty Limited*

Negligence – damages for future care. See *Moran v Nominal Defendant*

Costs of successful plaintiff – whether costs should be decided on an issue by issue basis, with the plaintiff's costs reduced on issues on which it was unsuccessful. See *GT Corporation Pty Ltd v Amare Safety Pty Ltd (No 3)*

Power of attorney – whether an attorney under a revoked power can claim for remuneration and expenses incurred when acting under the power. See *Lincolne v Williams*

Registered designs – effect of exhibiting a design at an "official exhibition". See *Chiropedic Bedding Pty Ltd v Radburg Pty Ltd*

Breach of contract – whether a term concerning the subdivision of real property was a promise to subdivide the property or merely a promise to use best endeavours to subdivide the property. See *Barrington Tops Developments Pty Ltd v Low*

Liability of trust beneficiaries – whether beneficiaries liable to pay for legal advice taken where the beneficiaries had requested the trustees to provide documents. See *Hatch v Harlekin Pty Ltd*

Development consent – appeal against refusal of Council to modify consent. See *Solowave Pty Ltd v Sydney City Council*



Monday 18 August 2008

Chiropedic Bedding Pty Ltd v Radburg Pty Ltd [2008] FCAFC 142

Full Federal Court of Australia

French, Rares & Besanko JJ (in Adelaide, via videolink to Melbourne)

Statutory interpretation – intellectual property – claim that registered design for mattress infringed — mattress exhibited at furniture fair – s47 Designs Act 1906 (Cth) exception for designs exhibited at certain exhibitions - Paris Convention of 1883 not incorporated into, nor its ratification approved by, Designs Act 1906 - whether fair "international" – whether determined by presence of foreign exhibitors, place of manufacture of goods or presence of foreign visitors - appeal allowed - held that fair not an "official exhibition" within s47(1) of the 1906 Act but was an "officially recognised international exhibition" within the subsection.

[Chiropedic Beddings](#) (B)

B & L Linings Pty Limited & Anor v Chief Commissioner of State Revenue [2008] NSWCA 187

Court of Appeal of New South Wales

Allsop P; Giles & Basten JJA

Pay-roll tax - "two-person exemption" - powers of Supreme Court - approach to assessing Pay-roll Tax Act 1971 (NSW) - Administrative Decisions Tribunal Act 1997 (NSW) - Migration Act 1958 (Cth) - "affirm" – "question of law" – "question of law alone" – comprehensive consideration of legislation & case law.

[B & L Linings](#) (I, B,C)

Nolan v Otis Elevator Company Pty Limited [2008] NSWCA 196

Court of Appeal of New South Wales

Allsop P, Bell JA & Handley AJA

Application for leave to appeal from costs order – proceedings discontinued – application dismissed.

[Nolan](#) (I, B)

Barrington Tops Developments Pty Ltd v Low [2008] NSWSC 832

Supreme Court of New South Wales

Hamilton J

Contract – property development - defendant the vendor - substantive contest in the proceedings had been about defendant's cross-claim ; relevant claim is for damages for breach of contract - whether breach by plaintiff purchaser of term of a contract for sale of land near Dungog - whether the substance of a term concerning the carrying out of a subdivision of the property & sale of certain lots was an absolute promise to carry out & register the subdivision & sell those lots within two years of the completion of the contract or whether its substance was only that the purchaser would act reasonably



& use its reasonable endeavours to have the appropriate subdivision approved, registered and sold within that time - Community Land Development Act 1989 (NSW) – ‘The Meadows’ - Environmental Planning & Assessment Act 1979 (NSW) - His Honour of the view the contract should be construed so that plaintiff should be taken to have undertaken an absolute obligation to carry out development, sell the lots & pay defendant any excess over \$460,000 received on their sale - case law from USA, UK & Australia considered.

[Barrington Tops Developments](#) (B, C)

Nauru Phosphate Royalties Trust v Business Australia Capital Mortgage Andrew Hugh Jenner Wily v Nauru Phosphate Royalties Trust [2008] NSWSC 833

Supreme Court of New South Wales

McDougall J

Legal practitioners – solicitor for one party to litigation restrained from undertaking indirect communication with another party to that litigation, other than through that other party's own solicitors – indemnity costs.

[Nauru Phosphate Royalties Trust](#) (I, B)

Moran v Nominal Defendant [2008] NSWSC 804

Supreme Court of New South Wales

Hislop J

Motor accident – personal injuries – damages - plaintiff aged fifty-two at time of accident – she was pillion passenger on motorcycle which crashed when bus encroached upon its path – determination of level of care required - judgment for plaintiff in sum of \$6,515,818.42.

[Moran](#) (I)

Solowave Pty Ltd v Sydney City Council [2008] NSWLEC 1326

Land & Environment Court of New South Wales

Murrell C.

City of Sydney Local Environmental Plan 2005 - Sydney Development Control Plan 1996 - Development Control Plan 2007– objectives & matters for consideration - late night trading premises – nightclub – development consent - modification application - further trial of extended hours of operation; noise compliance; security; impact on surrounding area - non compliance with conditions of consent - resident objectors - appeal in respect of premises, formerly known as DCM Hotel now, known as UN Sydney nightclub in Oxford Street, Surry Hills dismissed.

[Solowave](#) (C)



Rhagodia Pty Ltd v National Australia Bank Ltd [2008] VSC 295

Supreme Court of Victoria

Robson J

s459H Corporations Act 2001 (Cth) – application to set aside statutory demand – guarantee & indemnity - appeal from Master dismissing application – appeal dismissed.

[Rhagodia](#) (B)

GT Corporation Pty Ltd v Amare Safety Pty Ltd (No 3) [2008] VSC 296

Supreme Court of Victoria

Robson J

Costs - indemnity costs - proportion of costs - whether successful plaintiff's costs should be reduced on issues it failed on – whether issue by issue approach to awarding costs should be adopted – Lord Woolf's Access to Justice interim report June 1995 – extensive consideration of case law – an interesting judgment. (I, B)

[GT Corporation \(No 3\)](#), and

[GT Corporation](#) - judgment 6 May 2008 – see 'Benchmark' Banking & IBC Wednesday 7 May 2008 - agency agreement – alleged territory breach – sale of personal protective equipment - wrongful termination of authority of agent - principles & case law as to amending a contract – estoppel by convention – case law as to penalties in contractual stipulations.

[GT Corporation \(No 2\)](#) – judgment 24 June 2008 giving reasons on damages claims.

Rapid Roofing P/L & Anor v Natalise P/L (as trustee for the St Ange Family Trust) & Anor [2008] QCA 237

Court of Appeal of Queensland

Keane & Holmes JJA; Dutney J

Costs - Rule 5 Uniform Civil Procedure Rules: "Philosophy – overriding obligations of parties & court" - defendants seeking variation of an order made by Court in respect of costs of proceedings in District Court - defendant's application dismissed. (I)

[Rapid Roofing](#), and

[Rapid Roofing](#) - appeal 23 March 2007 - torts of trover & detinue - conversion – Trade Practices Act - plaintiffs had shipped to defendants personal & partnership property in same container - defendants had refused to return property unless plaintiffs paid port charges.

Hatch v Harlekin Pty Ltd [2008] WASC 167

Supreme Court of Western Australia

Master Sanderson

Trusts & trustees - liability of plaintiff discretionary beneficiaries to pay for legal advice taken by defendant trustee when trustee requested by them to provide documents relating to the trust – taking of advice reasonable - provision of documents requested by plaintiffs to be conditional upon them paying the reasonable legal costs incurred by the defendant.

[Hatch](#) (B)



Lincolne v Williams [2008] TASSC 41

Supreme Court of Tasmania

Blow J

Power of attorney – principal & agent – enduring power of attorney given by defendant to plaintiff, her niece - it was revoked by defendant - plaintiff making claims by way of reimbursement of expenses said to have been incurred by her "in the carrying out of her obligations and authority under the Power"; claim for remuneration for "managing the defendant's properties, preparing her financial records and tax returns, and attending to her affairs"; claim for interest on the sum of \$266,000 – statement of claim defective & struck out.

[Lincolne](#) (I, B)

Lewincamp v ACP Magazines Limited (No 2) [2008] ACTSC 73

Supreme Court of the Australian Capital Territory

Besanko J

Interest on damages – damages for defamation – for substantive judgment 23 July 2008, see 'Benchmark' Thursday 24 July 2008 & link below - determination of appropriate interest rate - interest on costs - claim for indemnity costs - indemnity costs awarded for period after Calderbank letter – vindication order sought under s122 Civil Law (Wrongs) Act 2002 (ACT) – relevant publication no longer published – not appropriate to make vindication statement part of court orders. (I, B)

[Lewincamp](#), and

[Lewincamp](#) – judgment 23 July 2008 - defamation – plaintiff former Director of Defence Intelligence Organisation – publications in "The Bulletin" relating to events arising out of Australian Defence Force involvement in InterFET – East Timor - judgment for plaintiff in sum of \$375,000, comprising ordinary or normal compensatory damages of \$325,000 & aggravated damages or an allowance for aggravating features in the case of \$50,000 – extensive consideration of case law.

From the District Court of New South Wales...

Wakaniuci v Adecco Australia Pty Limited; re Abboud [2008] NSWDC 174

District Court of New South Wales

Johnstone DCJ

Costs – wasted costs - non-party solicitor had failed to comply with a subpoena to produce his file & defendant had thereby incurred costs -application by non-party solicitor to set aside orders made against him dismissed – case law included as to solicitor's duties.

[Wakaniuci](#) (I)



And in the news...

Australian Privacy Law & Practice Report of the Australian Law Reform Commission (ALRC 108, 2008) - Professor David Weisbrot (President of the Division of the ALRC constituted under the Australian Law Reform Commission Act 1996 for the purposes of this Inquiry.)

[Australian Law Reform Commission](#) (I, B)

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