



Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Transfer of general insurance business – whether policyholder likely to be detrimentally affected by the transfer – See *MMIA Pty Ltd v QBE Insurance*

Common interest privilege – common interest in defence & outcome – See *IO Group v Prestige Club*

Proceedings for possession of land – application to join insurer direct – See *Perpetual Trustees v Malouf*

Workplace injury – whether injury occurred in the course of employment – See *Reid Stockfeeds v Lindhe*

Allotment of shares – whether that allotment was made for an ulterior purpose – See *Life Therapeutics v Bell IXL Investments*

Judicial sale of land – competing interests – See *Westpac v Ollis*

Restraint of trade – labour hire services – See *Extraman v Blenkinship*

Sale of land – specific performance - *Moffatt Property Development Group v Hebron Park*

Tuesday 19 August 2008

Life Therapeutics Limited v Bell IXL Investments Limited [2008] FCAFC 144

Full Federal Court of Australia

Ryan, Goldberg & Gordon JJ (in Melbourne)

Corporations – allotment of shares – powers of directors – primary judge made a finding that allotment was for ulterior purpose – see ‘Benchmark’ Banking & IBC Monday 28 July 2008 for judgment 22 July 2008 & link below - appeal allowed – order made for retrial. (B)

[Life Therapeutics](#), and

[Bell IXL Investments Ltd v Therapeutics Ltd](#) - judgment 22 July 2008.

MMIA Pty Limited & OBE Insurance (Australia) Limited [2008] FCA 1239

Federal Court of Australia

Gyles J (in Sydney)

ss17C, 17E & 17F Insurance Act 1973 (Cth) – statutory transfer of general insurance business - scheme for transfer & amalgamation of general insurance business from one general insurance company to another within same group – application to Court for confirmation of scheme – actuarial reports - whether likely to be any material detriment to policyholders affected by the Scheme – case law considered. [MMIA and OBE Insurance \(Australia\)](#) (I, B)

IO Group Inc v Prestige Club Australasia Pty Ltd (No 3) [2008] FCA 1223

Federal Court of Australia

Flick J (in Sydney)

Common interest privilege – common interest in defence & outcome of proceeding – principles & case law considered. [IO Group](#) (I, B)

P & H Property Service Pty Ltd v Branigan; Westfield Shopping Centre Management Co Pty Ltd v Branigan [2008] NSWCA 195

Court of Appeal of New South Wales

Hodgson & Bell JJA; Rein J

Negligence – personal injuries - appellant P & H conducted cleaning services for Westfield at shopping centre at Liverpool – employee of butcher shop there slipped & fell – primary judge had found P & H and Westfield liable – Westfield appealing as to damages but not liability - contractual obligation of cleaner - quantum of damages - pre-existing back condition - percentage of most extreme case - earning capacity - Bullock order for costs – by majority, with Hodgson JA dissenting, appeal of P & H allowed – judgment against P & H set aside - judgment for P & H - appeal of Westfield dismissed – cross-appeal as to assessment of damages dismissed. (I)

[P & H Property Service](#), and [Brannigan v Westfield](#) – decision 2 May 2007.



Perpetual Trustees Victoria Ltd v Malouf [2008] NSWSC 834

Supreme Court of New South Wales

McCallum J

Insurance - proceedings for possession - cross-claim for negligence & breach of Fair Trading Act 1987 (NSW) made against solicitor - application for leave to join LawCover as cross-defendant to proceedings pursuant to s6 Law Reform (Miscellaneous Provisions) Act 1946 (NSW) - claims made policy - whether cause of action accrued prior to commencement of policy – at par 1 of judgment:

“This application concerns the operation of s6 of the Law Reform (Miscellaneous Provisions) Act 1946 & illustrates the force of the view that it is an unsatisfactory provision & should be reconsidered....”

[Perpetual Trustees Victoria](#) (I, B)

Westpac Banking Corporation v Victor Warren Ollis & Ors [2008] NSWSC 824

Supreme Court of New South Wales

Einstein J

Interests in land - judicial sale – purchasers’ liens - caveatable interests - s43A(1) Real Property Act 1900 (NSW) - unstamped transfers - purchaser for value without notice - volunteers - competing equities - charges - extensive review of case law.

[Westpac Banking Corporation](#) (B, C)

Chow v Cheung [2008] NSWSC 843

Supreme Court of New South Wales

Barrett J

Principal & agent - plaintiff & defendant formerly husband & wife - plaintiff claiming damages for breach of contract of agency - power of attorney given to defendant by plaintiff - use of power of attorney other than for benefit of principal - whether principal had consented to such use - judgment for plaintiff for \$250,000 plus interest.

[Chow](#) (B)

Countouris v Kallos [2008] NSWSC 840

Supreme Court of New South Wales

Young CJ in Eq

ss203D & 232 Corporations Act 2001 (Cth) - remedies where oppression – dispute over control of church parish - plaintiffs seeking injunction to prevent defendants from holding an annual general meeting - delay in bringing the application - Court reluctant to restrain meetings - application refused.

[Countouris](#) (B)



Churnin v Pilot Developments Pty Ltd [2008] NSWSC 831

Supreme Court of New South Wales

Young CJ in Eq

Equitable remedies - interlocutory injunctions - undertaking as to damages - calculation of damages – for decision 14 December 2007 see ‘Benchmark’ Insurance, Construction & IBC 14 December 2007 & link below - Court to offset gains against losses resultant from injunction – onus of establishing failure to mitigate. (B, C)

[Churnin](#), and

[Churnin](#) – decision 14 December 2007 - undertaking as to damages - defendant Pilot had entered into a series of contracts to sell units at Clovelly “off the plan” to people including all the plaintiffs - plaintiffs had sought specific performance of those contracts - each of those proceedings had been dismissed - plaintiffs had obtained injunctions preventing Pilot from reselling the relevant units pending final hearing of the proceedings - how damages ought to be calculated when sales of units frustrated by injunction.

Reid Stockfeeds Pty Ltd v Lindhe [2008] VSC 304

Supreme Court of Victoria

Kyrou J

s82(1) Accident Compensation Act 1985 (Vic) – “in the course of” employment – mill worker injured while lifting the arm of a hopper at his workplace as part of a “lifting competition” – held that Magistrate had erred in law in concluding it was sufficient to warrant a finding that worker’s injury was in the course of his employment if that injury occurred during prescribed work hours & at the specified place of employment - appeal allowed - proceeding remitted to the Magistrates’ Court.

[Reid Stockfeeds](#) (I)

Moffatt Property Development Group Pty Ltd v Hebron Park Pty Ltd [2008] QSC 177

Supreme Court of Queensland

Chesterman J

Sale of land - plaintiff property developer seeking specific performance - defendant owner of two acres of rural residential land on the Sunshine Coast – whether agreement binding – held that it was; plaintiff had made out its case - detailed consideration of case law.

[Moffatt Property Development](#) (B, C)

Parker & Anor v Q-Comp [2008] QSC 175

Supreme Court of Queensland

Lyons J

Workers’ Compensation & Rehabilitation Act 2000 (Qld) - judicial review - whether President of Industrial Court of Queensland had failed to exercise his jurisdiction when construing & applying s32 of the Act - allegation of bullying & harassment at work – applicant made claim which WorkCover rejected - applicant’s appeal to Q-Comp, the Queensland’s Workers’ Compensation Regulatory Authority, unsuccessful – applicant’s appeal to Industrial Magistrate dismissed - applicant’s appeal to



President of Industrial Court of Queensland dismissed - "in the course of...reasonable management action" in s32(5)(a) – application dismissed.

[Parker](#) (I)

Extraman (NT) Pty Ltd & Ors v Blenkinship & Anor [2008] NTSC 31

Supreme Court of the Northern Territory

Angel J

Restraint of trade – restraint in agreement for sale of shares in companies operating business – labour hire services – mining, engineering & construction industries - goodwill – whether restraint void for uncertainty – whether restraint contrary to public policy – whether limitations as to area & time reasonable – restraint reasonable – detailed consideration of case law.

[Extraman \(NT\)](#) (B, C)

Some early Gold Medal* Winners at the modern Olympics

Edwin Flack (1874 - 1935) – born in London, his family migrated to Melbourne when he was twelve months old - at the very first Olympic Games held in Athens in 1896 he was the only competitor from Australia - he won both the 800 metre & 1500 metre athletic events.

*Actually, at the first Games, there were no gold medals – Teddy Flack received two commemorative medals, two crowns of olive branches & a couple of diplomas.

[Teddy](#) Flack - [Wikipedia, the free encyclopedia](#)

[Athlete:](#) Edwin Flack - [Australian Olympic Committee](#)

Frederick Lane (1880-1969) - Australia's first Olympic swimmer & the only Australian competitor at the Paris Olympics in 1900 - born in Sydney, he took up swimming after being saved from drowning in Sydney Harbour aged four – at the 1900 Olympics he won the 200 metres freestyle & the 200 metres obstacle race.

Lane, Frederick [Claude Vivian \(1880 - 1969\) Biographical Entry](#)

Sarah 'Fanny' Durack (1889-1956) – swimmer, born in Sydney - first Australian woman to win a gold medal – 1912 Stockholm Olympics – 100 metres freestyle - learnt to swim at Sydney's Coogee Baths, then owned by the father of her friend Mina Wylie, who won the silver medal in the same event.

Durack, [Sarah - Australian Women Biographical entry](#)

Arne Borg (18 August, 1901 – 7 November, 1987) – swimmer, born in Stockholm , Sweden - at the 1928 Amsterdam Olympics, he won the Gold Medal in the 1500 metres freestyle – he broke thirty-two world records in the 1920s.



Johnny Weissmuller (1904 –1984) - from Chicago, USA - in July 1922, he became the first man to swim 100 metres in less than a minute - he won five Olympic gold medals & one bronze medal – he won three of the gold medals at the 1924 Olympics, again held in Paris, & the other two at the 1928 Amsterdam Olympics - he won fifty-two US National Championships & set sixty-seven world records - after his swimming career, he portrayed Tarzan in films.

[*Johnny Weissmuller Dies at 79; Movie Tarzan*](#)

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