

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Thursday 20 March 2008

Jones v Dapto Leagues Club [2008] NSWCA 32

Court of Appeal of New South Wales

Mason P, Beazley & Bell JJA

Negligence – occupier’s liability – dangerous premises – live open light socket at pub – (non-fatal) electrocution - psychological effects - Club contended claimant’s injuries were self-inflicted by deliberate act - causation – damages.

[Jones](#) (I)

Giunta v Commonwealth Bank [2008] NSWSC 222

Supreme Court of New South Wales

Harrison AsJ

Extension of time to appeal – proceedings in Local Court - plaintiff alleging he did not sign Terms of Settlement voluntarily - leave to appeal decision of Local Court refused. [Giunta](#) (B)

Richard Frank Horton Berryman & Anor v Robert Sonnenschein & Anor [2008] NSWSC 213

Supreme Court of New South Wales

Einstein J

Environmental planning - easements - right of carriageway - proceedings for an order that servient tenement owners sign consent to making of a development application to Council for alterations to driveway constructed on right of way – finding that proposed use of right of way to incorporate a turning circle was a reasonable use of the right of way. [Richard Frank Horton Berryman](#) (C)

Bluescope Steel Limited v Nisselle & Ors [2008] VSC 72

Supreme Court of Victoria

Osborn J

Accident Compensation Act 1985 - aggravation of injury – employer a self-insurer – worker aged sixty-five employed by the employer between 1986 & 2004 as metal machinist had been exposed to contact with a coolant with capacity to damage his skin - dermatitis – Medical Panel opinion as to current capacity to work – relief sought in nature of *certiorari* – Panel’s conclusion open on evidence – no want of procedural fairness – no failure to have regard to relevant considerations – reasons disclose a discernible path of reasoning – reasons sufficient [Bluescope Steel Limited](#) (I)

Conlan v Adams [2008] WASCA 61

Court of Appeal of Western Australia

McLure, Buss JJA & Newnes AJA

Remuneration of liquidator – detailed consideration of case law in judgment of McLure JA - approach to time based costing. [Conlan](#) (B)

Western Australian Rugby Union (Inc) v Round [2008] WASC 35

Supreme Court of Western Australia

Master Sanderson

Non-party discovery – most of documents in electronic form – non-parties concerned about threat of defamation proceedings – defendant was employed for two periods by plaintiff as chief financial officer - some newspaper articles published containing confidential information belonging to plaintiff - plaintiff seeking non-party discovery from newspaper publisher and author or co-author of articles - discovery ordered. [Western Australian Rugby Union \(Inc\)](#) (I,B,C)

From the County Court of Victoria...

Mabin v Wangaratta Rovers Football & Netball Club Inc [2007] VCC 1508

County Court of Victoria

Hampel CCJ

Tinnitus – occupier’s liability – working bee at club to install & repair benches in change rooms - plaintiff present as volunteer at request of committee member – drill & chainsaw noise – expert evidence – plaintiff had suffered depression pre-dating noise exposure - plaintiff had been exposed to noise from shot gun blast at close quarters in 1974 – Her Honour not satisfied it was reasonably foreseeable that plaintiff would suffer harm of the type suffered - verdict for defendant – an interesting judgment. [Mabin](#) (I)

From Singapore...

Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng [2008] SGCA 12

Court of Appeal of Singapore

Andrew Phang Boon Leong JA, Chan Sek Keong CJ & V K Rajah JA

Negligence – contributory negligence - breach of statutory duties – District Court limit - appeal against decision of High Court judge which had held a plaintiff was entitled to recover damages up to a District Court’s jurisdictional limit after taking into account any deduction for contributory negligence, if applicable – that meant District Court could assess damages at quantum greater than its jurisdictional limit, subject to qualification that final amount of damages ordered to be paid was within such limit - respondent a former employee of appellant - respondent had suffered severe injuries to right arm in accident while working at defendant’s premises – respondent had commenced proceedings in District Court – whether deduction for contributory negligence to be made from District Court limit or from actual damages assessed – consideration of cases from UK, Northern Ireland, NZ, Australia – appeal dismissed. [Keppel Singmarine Dockyard](#) (I)

From Canada...

Tkachuk Farms Ltd v Le Blanc Auction Service Ltd 2008 SKCA 31

Court of Appeal for Saskatchewan

Cameron, Richards & Hunter JJA

Contract for auction sale - sale of farm equipment - defendants had guaranteed a minimum net return to the plaintiff of \$577,500 - following the sale, auctioneers refused to pay plaintiff the guaranteed price, taking position plaintiff had breached contractual condition that it not bid or permit another to bid on its behalf, as well as other contractual obligations, & that defendants were therefore entitled to invoke a contractual clause that made the guarantee unenforceable at option of auctioneers & entitling the auctioneers to a 14% commission on the gross proceeds – plaintiff had argued not bound by terms of contract, also that it had not made bids at auction - trespass & conversion – on appeal, held that auctioneers not legally entitled to invoke default provisions in contract. [Tkachuk Farms](#) (B)

& From the USA, a case of 'Watership Downed'...

In the Matter of the Compensation of Hilary D Shapiro

Workers Compensation Board

Judgment entered at Salem, Oregon - 13 March, 2001

Workers Compensation – plaintiff had volunteered to play 'Easter Bunny' at Easter brunch to be held at hotel at which she worked as front office manager – employer had assigned 'Easter Bunny' duties to claimant - the day before the brunch, injury to claimant on her day-off when she was on her way to collecting Easter Bunny costume from costume hire shop – motor vehicle accident with police car – review of Administrative Law Judge's order finding in favour of self-insured employer – Board agreed with ALJ that injury did not occur within course & scope of employment. [Hilary D Shapiro](#) (I,B,C)

Due to the Easter break, the next edition of 'Benchmark' will be published on Tuesday 25 March, 2008

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