



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

Today's Cases

Workplace relations – prosecution for unlawful industrial action. See *Alfred v Wakelin* (No. 2) (C)

Income tax – whether legal expenses of attempt to recover income due under employment contract are deductible. See *Romanin v The Commissioner of Taxation* (B)

Admiralty law – orders permitting arrested ship to be moved. See *Tai Shing Maritime CO SA v The Ship "Samsun Veritas" as surrogate for the Ship "Tai Hawk"* (I, B, C)

Practice and procedure – application by employer to compel former employee to produce his laptop computer to Court - case involving alleged breaches of restraint of trade clauses by former employee. See *Cadence Australia Pty Ltd v Chew* (I, B, C)

Human rights – allegation that teachers discriminated against students and failed to prevent racist remarks by other students. See *A v Director-General, Department Education & Training* (I)

De facto relationship – adjustment of property interests. See *SPD v DRH* (B)

Partnership – valuation of partnership assets. See *Mills v Mills* (B)

Personal injuries (Eng) – liability of employer for stress-related conditions. See *Dickins v O2 Plc* (I)



Tuesday 21 October 2008

Alfred v Wakelin (No. 2) [2008] FCA 1543

Federal Court of Australia

Jagot J (in Sydney)

Building & Construction Industry Improvement Act 2005 (Cth) - industrial action by employees of John Holland Engineering Pty Ltd at gold mine near Lake Cowal in New South Wales in 2005 – applicant an inspector under the Act – prosecution for unlawful industrial action - contravention of s170MN Workplace Relations Act & certified agreement.

[Alfred](#) (C)

Newcrest Mining Limited v Apache Northwest Pty Ltd [2008] FCA 1527

Federal Court of Australia

Tracey J (in Melbourne)

Preliminary discovery – gas processed on Varanus Island & piped ashore to Telfer Gold Mine in the Northwest of Western Australia – catastrophic explosion on Varanus Island – interruption to gas supply – respondent resisting application, contending Court lacked jurisdiction to entertain application, because the only federal claim made, that under Trade Practices Act 1974 (Cth) was colourable & bound, in any event, to fail – commercial confidentiality - jurisdictional objection rejected – Court considered there was reasonable cause to believe that applicant might have a right to obtain relief under TPA – application for preliminary discovery granted.

[Newcrest Mining](#) (I, B, C)

Goodin, in the matter of the Grand United Order of Free Gardeners Friendly Society Ltd (in liq) [2008] FCA 1537

Federal Court of Australia

Finkelstein J (in Melbourne)

Friendly society - winding up – registered as a corporation under Corporations Law – fund held by applicant liquidator – unclaimed money - amount of \$124,350.00 representing the current provision for Untraceable Members Funeral Entitlements in the Management Fund to the Australian Securities and Investment Commission to be dealt with by ASIC under Part 9.7 Corporation Act 2001 - applicant pay any further amounts representing the provision by it for any future additional Untraceable Member Funeral Entitlements to ASIC to be dealt with by ASIC under Part 9.7 Corporations Act 2001.

[Goodin, in the matter of the Grand United Order of Free Gardeners Friendly Society](#) (I, B)



Romanin v The Commissioner of Taxation [2008] FCA 1532

Federal Court of Australia

McKerracher J (in Perth)

Income tax – deductions – legal expenses incurred in proceedings instituted to recover income due under employment contract – case law considered – appeal allowed.

[Romanin](#) (B)

Tai Shing Maritime CO SA v The Ship "Samsun Veritas" as surrogate for the Ship "Tai Hawk" [2008] FCA 1546

Federal Court of Australia

McKerracher J (in Perth)

Ship under arrest – Port Hedland – very real likelihood of fully laden vessel running aground – ship to sail to port of Dampier – an interesting decision.

[Tai Shing Maritime CO SA](#) (I, B, C)

Livestock Transport & Trading v Australian Maritime Safety Authority (No 2) [2008] FCA 1544

Federal Court of Australia

Siopis J (in Perth)

International Convention on the Prevention of Pollution from Ships 1973 – Kuwaiti flagged vessel – respondent's representative had issued notice preventing applicant from loading livestock – applicant successful in challenging lawfulness of notice.

[Livestock Transport & Trading](#) (I, B)

Cadence Australia Pty Ltd v Chew [2008] NSWSC 1074

Supreme Court of New South Wales

Hamilton J

Application under s61 Civil Procedure Act 2005 (NSW) for production to Court of laptop computer on which defendant has conducted his business affairs & affairs generally since leaving the plaintiff's employ - case alleged against him: that he has committed breaches of restraints contained in his employment contract - whether denial by party that computer contains any relevant material conclusive - access granted to permit inspection of contents of computer.

[Cadence Australia](#) (I, B, C)

&

Cadence Australia Pty Ltd v Chew [2008] NSWSC 1076

Supreme Court of New South Wales

Hamilton J

Application under Uniform Civil Procedure Rules 2005 for examination by an independent expert on a confidential basis of contents of defendant's laptop computer - ambit of material of which inspection should be permitted.

[Cadence Australia](#) (I, B, C)

A v Director-General, Department Education & Training [2008] NSWSC 1091

Supreme Court of New South Wales

Harrison J

ss7 & 17 Anti-Discrimination Act 1977 (NSW) - plaintiffs pupils at state primary school – complaints that teachers discriminated against plaintiffs & failed to prevent racist remarks by other pupils - allegations of racial discrimination by an educational authority on ground of race contrary to the Act – no error of law demonstrated – proceedings dismissed.

[A](#) (I)

Deputy Commissioner of Taxation (plaintiff/respondent) v Falzon (defendant/applicant) [2008] QCA 327

Court of Appeal of Queensland

McMurdo P, Fraser JA & Philippides J

Income tax - collection & recovery – applicant company director was liable to pay to Commissioner by way of penalty an amount equal to unpaid amount of each liability of company – respondent issued applicant with Director Penalty Notices advising applicant of penalty amounts – respondent contended Director Penalty Notices were invalid as they incorrectly stated amounts owed – whether Director Penalty Notices were invalid - decision in Deputy Commissioner of Taxation v Gruber considered – detailed consideration of legislation & case law in judgment of Fraser JA.

[Deputy Commissioner of Taxation](#) (B)

Logan & Anor v Camm & Whitson (as executors of the Will of LR Camm dec'd) [2008] QSC 255

Supreme Court of Queensland

Dutney J

Family provision – joinder - first applicant, daughter of testator, commenced proceedings within limitation period – application filed by first applicant was not served on second applicant, his wife – first applicant filed a notice of discontinuance – second applicant claims under family maintenance provision in reliance on s41(6) Succession Act 1981 (Qld) – whether s41(6) entitled second applicant to take advantage of first applicant's application notwithstanding notice of discontinuance – one of requirements for joinder that there be an existing proceeding – whether Court has power to reinstate proceedings despite notice of discontinuance – case law considered – an interesting decision.

[Logan](#) (I, B)

SPD v DRH [2008] QSC 254

Supreme Court of Queensland

McMurdo J

Property Law Act 1974 (Qld) – de facto relationship - adjustment of property interests – separation agreements.

[SPD](#) (B)



Mills v Mills [2008] QSC 249

Supreme Court of Queensland

Applegarth J

Deed of partnership – mixed business – death of partner - conflicting expert valuations of partnership interests - what the value of the partnership assets were at date of deceased partner's death.

[Mills](#) (B)

From the United Kingdom...

Dickins v O2 Plc [2008] EWCA Civ 1144

Court of Appeal (Civil Division)

Lord Justice Sedley, Lady Justice Smith & Lord Justice Wal

Personal injuries - approach to claims for damages arising from allegations of excessive stress at work – respondent had worked for appellant since 1991, during which her department moved from Slough to Hemel Hemstead – increase in travelling time - irritable bowel syndrome – appeal by employer from judgment in favour of respondent in sum of £109,754.22 inclusive of interest – primary judge at Slough County Court had found appellant liable to its former employee for psychiatric injury negligently caused by excessive stress in the course of her employment as a regulatory finance manager during 2001 & 2002 – appeal dismissed.

[Dickins](#) (I)

It is an ancient Mariner, & he stoppeth one of three

The Rime of the Ancient Mariner

The ancient Mariner inhospitably killeth the pious bird of good omen

“God save thee, ancient Mariner !
From the fiends, that plague thee thus !
Why look'st thou so ?” - With my cross-bow
I shot the Albatross.

.....

Birth Day of Samuel Taylor Coleridge

(21 October 1772 – 25 July 1834)

“The Poet is the man made to solve the riddle of the Universe.”

[Samuel Taylor Coleridge - Wikipedia, the free encyclopedia](#)

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..... Farewell, farewell ! but this I tell
To thee, thou Wedding-Guest !
He prayeth well, who loveth well
Both man & bird & beast.

He prayeth best, who loveth best
All things both great & small ;
For the dear God who loveth us,
He made & loveth all.

[The Rime of the Ancient Mariner](#)

[Mervyn Peake the illustrator](#)

[Mervyn Peake \(1911-1968\)](#)

English artist, poet, playwright & novelist, best known for the 'Gormenghast' trilogy of novels - 'Titus Groans,' 'Gormenghast' & 'Titus Alone.' His illustrations for 'The Rime of the Ancient Mariner' were published in 1943.

Corrigendum – [here is the link from the decision from the Full Federal Court of Australia – Collins v Northern Territory](#), which was the decision appealed from in the High Court decision [Northern Territory v Collins \[2008\] HCA 49](#) published in yesterday's 'Benchmark. We apologise for any problems experienced with opening the link in yesterday's bulletin :

[Collins v Northern Territory \[2007\] FCAFC 152 \(20 September 2007\)](#)

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