

# BENCHMARK

## Insurance, Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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**Friday 21 December 2007**

**Jordan v Australian Postal Corporation [2007] FCA 2028**

Federal Court of Australia

Buchanan J (at Sydney)

Comcare Guide – use of tables – postal delivery officer - assessment of permanent impairment – requirement where possible to isolate compensable effects from effects of underlying condition. [Jordan](#) (I)

**Laserbond Limited (ACN 057 636 692), in the matter of Laserbond Limited (ACN 057 636 692) [2007] FCA 2056**

Federal Court of Australia

McKerracher J (at Perth)

Corporations – application for listing to ASX lodged 1 day late – administrative error only – analysis of appropriate relief & considerations relevant to exercise of discretion if relief is to be granted. [Laserbond](#) (B)

**Gaunt v Hille [2007] FCA 2017**

Federal Court of Australia

Siopis J (at Perth)

Copyright – appeal from Local Court of Western Australia - project home builder – collusion between builder’s client & competitor builder to copy home plans – issue not pleaded but raised by counsel in opening & closing submissions at trial without objection – Local Court of Western Australia not a court of pleadings – whether issue before the Local Court – whether principal liable for the acts of an agent who authorised the competitor builder to copy house plans – whether damages for loss of profits on building contract payable in respect of breach of copyright. [Gaunt](#) (C)

**Tempo Security v Bolton [2007] FCA 2027**

Federal Court of Australia

Buchanan J (at Sydney)

Employment law - appeal against decision of Chief Industrial Magistrate of New South Wales ordering that appellant remedy an underpayment of wages to respondent – respondent worked as security officer - appeal dismissed.

[Tempo Security](#) (I)

**McFadzean & Ors v Construction Forestry Mining and Energy Union & Ors (No 2) [2007] VSCA 313**

Court of Appeal of Victoria

Warren CJ, Nettle & Redlich JJA

Tort – false imprisonment – nuisance – damages – exemplary & aggravated damages - environmentalists partaking in anti-logging demonstration – logging contractors - costs – orders for proportions of costs to reflect mixed success & failure – single order more readily facilitating taxation than costs by issues. [McFadzean](#) (I)

**Cowell & Ors v British American Tobacco Australia Services Ltd & Ors [2007] VSCA 301**

Court of Appeal of Victoria

Warren CJ, Chernov & Nettle JJA

Discovery – restraining wrongful use of confidential information in litigation against owner – legal professional privilege – exceptions to legal professional privilege – loss of privilege – whether information privileged – injunction to restrain use of privileged information – whether prima facie case of privilege must be established – whether doctrine of clean hands is applicable – whether appropriate for court to look at document to determine question of privilege – costs – application for stay of costs. [Cowell](#) (I,B)

**Renold Australia Pty Ltd v Fletcher Insulation (Vic) Pty Ltd & Anor [2007] VSCA 294**

Court of Appeal of Victoria

Chernov, Ashley JJA & Whelan AJA

Sale of goods – supply agreement for provision of assembly line – assignment of business to associate company – assignment of potential claims under agreement to assignee company – damages from failure of assembly line manifested after assignment – loss suffered by assignee of the agreement – no loss suffered by assignor – dispute as to cause of failure – assembly line not reasonably fit for purpose for which ordered – damages – entitlement of assignee to claim damages for breach of agreement where loss occurred after

assignment – consequential loss – whether sufficient evidence of consequential loss notwithstanding no evidence of loss of specific sales or customers’ inability to obtain stock – whether holding of stock demonstrates no consequential loss – at par 25 of judgment of Chernov JA, Chitty on Contracts quoted from in relation to principle that assignee cannot recover more than assignor:

“The application of this principle has given rise to particular difficulty in relation to building contracts or tort claims for damage to buildings.” [Renold Australia](#) (I,C)

**Cousins v Merringtons Pty Ltd & Anor [2007] VSC 542**

Supreme Court of Victoria

Hansen J

Trade Practices – consumer protection – unfair practices – optometry services & sale of optical products – misleading or deceptive conduct – false or misleading representations in relation to supply of goods – supplying goods materially different from agreement – power to grant declaratory relief - Fair Trading Act 1999 (Vic.) [Cousins](#) (I)

**Holdway v Acuri [No 2] [2007] QSC 378**

Supreme Court of Queensland

Fryberg J

Solicitor & client – duties & liabilities – allegation of negligence - failure to serve or give notice of application for family provision - acceptable that solicitor will rely upon competent barrister’s advice – solicitor maintains duty to exercise reasonable care & independent judgment – duty to be familiar with law of jurisdiction relevant to solicitor’s practice. [Holdway](#) (I,B)

**Brown v Dream Homes SA Pty Ltd [2007] SASC 443**

Supreme Court of South Australia

Sulan J

Negligence – breach & defences to action for breach of contract - general & special damages - defendant prepared pre-purchase report relating to residential building - plaintiff elected not to cool off in reliance upon report - report identified several items that needed to be fixed, but concluded that building was structurally sound - plaintiff later found problems with building - plaintiff's solicitors commissioned further report which recommended obtaining engineer's report on structural soundness of building - plaintiff claimed, inter alia, that by failing to recommend an engineer's report in pre-purchase report defendant was in breach of duties arising from tort, contract & legislation. [Brown](#) (I,C)

**G F Noye Pty Ltd v Resource Management and Planning Appeal Tribunal [2007] TASSC 109**

Supreme Court of Tasmania

Crawford, Evans & Blow JJ

Energy & resources – water management – water usage rights – controlled works – permit for dam construction works – discretion to refuse where adverse effect on person with right to take water from dam – whether proposed commercial use of water required to be taken into account as a relevant consideration. [G F Noye](#) (C)

**Youth & Family Focus Inc v Hughes [2007] TASSC 108**

Supreme Court of Tasmania

Tennent J

Workers compensation – stress injury – appeal from Workers Rehabilitation & Compensation Tribunal - Workers Rehabilitation & Compensation Act 1988 – whether failure to give adequate reasons – case law considered. [Youth & Family Focus Inc](#) (I)

**Garrott and Blyton v Tote Tasmania Pty Ltd [2007] TASSC 101**

Supreme Court of Tasmania

Slicer J

Broadcasting licence – racing industry – interpretation of contracts – implied terms – business efficacy – terms implied by law. [Garrott and Blyton](#) (B)

We will be publishing Benchmark on Monday 24 December as the last date for 2007. Benchmark will not be published in the period Tuesday 25 December 2007 to Wednesday 2 January 2008 inclusive. We will recommence publishing Benchmark on Thursday 3 January 2008.

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