

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Wingecarribee Shire Council v Lehman Brothers Australia Ltd (No 3) - Class action - conversion into class action - City of Swan Council & Parkes Shire Council to be joined as second & third applicants to the proceedings (I, B, C)

Delaforce v Simpson-Cook - Contracts - unambiguous assurance to leave property by will - proprietary estoppel (B)

Parbery re Trio Capital Ltd - Confidentiality order discharged in relation to affidavit (I, B, C)

Meshlawn Pty Ltd & Anor v State of Qld & Anor - Negligence - duty of care - causation - liquor licensing - damages claimed for pure economic loss - appeal dismissed (I)

Pingel (resp) v Toowoomba Newspapers Pty Ltd (app) - Defamation - *Limitation of Actions Act* 1974 (Qld) (I)

Boulter v Crouch & Anor - Professional negligence - issue as to quantum of damages that plaintiff would have been awarded had personal injury proceedings been commenced in time - plaintiff's claim dismissed (I)

Furler v Haureliuk - *Road Transport (Third-Party Insurance) Act* 2008 (ACT) procedures which a claimant must comply with in order to be entitled to damages (I)

Pahoff v Canberra Institute of Technology - Personal injuries - staircase slip & fall - application for reinstatement of action taken to have been dismissed (I)

Summaries with links (5 minute read)

Thursday 22 July 2010

Wingecarribee Shire Council v Lehman Brothers Australia Ltd (No 3) [2010] FCA 747

Federal Court of Australia

Rares J (in Sydney)

s471B *Corporations Act* 2001 (Cth) - conversion into class action under Part IVA *Federal Court of Australia Act* 1976 (Cth) - collateralised debt obligations - City of Swan Council & Parkes Shire Council to be joined as second & third applicants to the proceedings.

[Wingecarribee Shire Council](#) (I, B, C)

Delaforce v Simpson-Cook [2010] NSWCA 84

Court of Appeal of New South Wales

Allsop P, Giles JA & Handley AJA

Contracts - appeal by executor of estate - unambiguous assurance to leave property by will - estoppel - reasonable reliance - detriment - loss of chance - primary judge had declared deceased's former wife had established a proprietary estoppel which entitled her to Arncliffe property & net rents since death of deceased; orders also made under *Family Provision Act* 1982 (NSW) - appeal allowed in part: *Family Provision Act* claim dismissed; appeal otherwise dismissed - extensive consideration of United Kingdom & Australian case law.

[Delaforce](#) (B)

[Simpson-Cook](#) - decision 11 May 2009

Parbery re Trio Capital Ltd [2010] NSWSC 798

Supreme Court of New South Wales

Barrett J

Confidentiality orders - for purposes of hearing of an application on 12 July, order was made to ensure that confidentiality was maintained in relation to content of affidavit - the application was dismissed - permanent suppression order sought in relation to that affidavit - two media companies applying for access to affidavit - confidentiality order discharged.

[Parbery](#) (I, B, C)

[Parbery](#) - decision 12 July 2010; see 'Benchmark' B,C & IBC Thursday 15 July 2010 -Part 5.9 *Corporations Act* 2001 (Cth) - examinations by liquidators & others - confidentiality - applications for examinations (or part thereof) to be in private - need for special circumstances to be shown - no special circumstances warrant whole being in private - special circumstances warrant part being in private - relevant part any part involving disclosure content of documents obtained by Australian Securities & Investments Commission from Securities & Futures Commission of Hong Kong under inter-agency confidentiality regime - International Organisation of Securities Commission, known as IOSCO Multilateral Memorandum of Understanding.

Meshlawn Pty Ltd & Anor v State of Qld & Anor [2010] QCA 181

Court of Appeal of Queensland

McMurdo P, Chesterman JA & Fryberg J

Negligence - duty of care - causation - for decision appealed from, see 'Benchmark' I & IBC Friday 7 August 2009 & link below - appellants owned & operated nightclubs at Surfers Paradise - second respondent was, at all relevant times, chief executive of first respondent's liquor licensing division & responsible under *Liquor Act* 1992 (Qld) for granting or refusing applications to renew extended hours permits - damages claimed for pure economic loss - primary judge had dismissed claims - whether relationship between appellants & chief executive such as to give rise to a duty of care - whether chief executive breached alleged duty - whether primary judge had erred in discounting his assessment of damages by twenty percent - appeal dismissed - detailed analysis of United Kingdom & Australian case law in an interesting decision.

[Meshlawn \(I\)](#)

[Meshlawn](#) - decision 5 August 2009 - negligence - misfeasance in public office - nightclubs at Surfers Paradise - plaintiffs claiming damages against second defendant Chief Executive of the Liquor Licensing Division & her employer ("the State") for losses plaintiffs alleging they suffered as a result of not being able to trade between three & five a.m. from 1 April 2004 until decision of Commercial & Consumer Tribunal on 13 August 2004 granting extended hours permits to plaintiffs subject to a lockout condition being imposed - whether as Chief Executive administering *Liquor Act* 1992 (Qld) second defendant owed duty of care to plaintiffs - whether the State owed plaintiffs a duty of care to ensure Chief Executive acted in accordance with her obligations under the Act - judgment for defendants - detailed consideration of United Kingdom & Australian case law.

Pingel (resp) v Toowoomba Newspapers Pty Ltd (app) [2010] QCA 175

Court of Appeal of Queensland

Fraser JA; Fryberg & Applegarth JJ

Defamation - *Limitation of Actions Act* 1974 (Qld) - one year limitation period - whether primary judge had erred in finding that it was not reasonable in the circumstances for respondent to have commenced an action for defamation against appellant within one year from date of publication of article - by majority, Applegarth J dissenting, appeal allowed: respondent's application for extension of limitation period dismissed - detailed analysis of legislation - extensive consideration of United Kingdom & Australian case law.

[Pingel \(I\)](#)

[Noonan](#) - *Noonan (resp) v MacLennan & Hookham (apps.)* [2010] QCA 50 - decision Queensland Court of Appeal 12 March 2010: see 'Benchmark' I & IBC Tuesday 16 March 2010 - *Limitation of Actions Act* 1974 (Qld) - appellants university lecturers published article critical of respondent's PhD thesis - s10AA of the Act provides that an action for defamation must not be brought after the end of one year from date of publication of material complained of - appeal allowed - judgment for defendants/appellants - primary judge's decision in *Pingle v Toowoomba Newspapers Pty Ltd* unreported, P Lyons J, SC No 9056, Supreme Court of Queensland, 22 September 2009, cited.

Boulter v Crouch & Anor [2010] QSC 258

Supreme Court of Queensland

Atkinson J

Professional negligence - personal injuries - accident involving council bus - plaintiff sued her former lawyers for their negligence in failing to commence a personal injury claim within statutory limitation period - issue in dispute as to quantum of damages that plaintiff would have been awarded had proceedings commenced in time - plaintiff's claim dismissed.

[Boulter \(I\)](#)**Furler v Haureliuk [2010] ACTSC 68**

Supreme Court of the Australian Capital Territory

Master Harper

Road Transport (Third-Party Insurance) Act 2008 (ACT) legislation applicable to motor accidents occurring after 1 October 2008 - personal injuries - procedures with which a claimant must comply in order to be entitled to damages - reciprocal obligations of claimant & insurer - order that compulsory conference be dispensed with - preferable for applicant to start fresh action against respondent, which for practical reasons may be filed in the present proceeding, rather than to join respondent as a defendant in action arising out of plaintiff's work injury.

[Furler \(I\)](#)**Pahoff v Canberra Institute of Technology [2010] ACTSC 69**

Supreme Court of the Australian Capital Territory

Master Harper

Personal injuries - staircase slip & fall - application for reinstatement of action taken to have been dismissed - interests of justice - competing factors - action reinstated.

[Pahoff \(I\)](#)

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