



## Insurance Banking & Construction

# A Daily Bulletin listing Decisions of Superior Courts of Australia

### Today's Cases

**Negligence** – Suicide - Whether police had duty of care to prevent suicide - Mental illness – No duty of care - Widow's claim unsuccessful – See *Stuart v Kirkland-Veenstra* (I)

**Defamation** - Difference from injurious falsehood - Community standards - Right thinking - True innuendo - See *Radio 2UE Sydney Pty Limited v Chesterton* (I, B, C)

**Copyright** - Electronic program guide – Whether Respondent could obtain relief for copyright infringement arising from reproduction of individual items of information, part of the time & title information, in respect of various programs contained in weekly schedules - Nine Network unsuccessful – See *IceTV Pty Limited v Nine Network Australia Pty Limited* (I, B, C)

**Application for stay of Judgment refused** – Consent Judgment - Contract between purchaser and vendor for sale of property at Manly – See *Appleby v Nellis* (I, B, C)

**Speed cameras** - Australian Road Rules - School zone - Appeal from Local Court upheld – See *RTA v Parvez* (I)

**Speed cameras** - Australian Road Rules – Lane Cover Tunnel - Appeal from Local Court upheld – See *RTA v Ahmed* (I)

#### FROM THE UK:

**Personal injuries** - Jogger in incident with Great Dane - Reasonable dog handler/owner won on appeal – See *Whippey v Jones* (I)

## Thursday 23 April 2009

### Stuart v Kirkland-Veenstra [2009] HCA 15

High Court of Australia

French CJ; Gummow, Hayne, Heydon, Crennan & Kiefel JJ

Negligence – for Victorian Court of Appeal decision, see ‘Benchmark’ I & IBC Wednesday 5 March 2008 & link below - where duty of care alleged to arise in context of power conferred by s10 – s10 *Mental Health Act 1986* (Vic), empowered police to apprehend person who "appears to be mentally ill" if reasonable grounds for believing that person had recently attempted suicide or likely to do so - principles relevant to determining legislative intention that cause of action be available – whether person who has attempted suicide to be equated with person "mentally ill" – no duty of care - appeal allowed [except in relation to a costs order.]

[Stuart](#)

[Kirkland](#) – decision 29 February 2008 - police interviewed accountant in relation to business transactions - police had power under *Mental Health Act 1986* (Vic) to detain mentally ill – suicide of person interviewed – psychiatric injury suffered by wife of deceased -whether duty of care owed by police to wife of deceased – whether a common law duty of care arises in circumstances which include the existence of a statutory power - case law from Australia & UK considered in judgment of Warren CJ, Maxwell P concurring with Her Honour, Chernov JA dissenting – by majority, appeal by widow allowed.

### Radio 2UE Sydney Pty Ltd v Chesterton [2009] HCA 16

High Court of Australia

French CJ; Gummow, Heydon, Kiefel & Bell JJ

Defamation – words spoken on morning radio show about respondent – for NSW Court of Appeal decision, see ‘Benchmark’ Friday 18 April 2008 & link below - test to be applied in determining what is defamatory – distinction between defamation & injurious falsehood - whether general test has application to imputations concerning business or professional reputation - appeal dismissed - "business defamation", "general community standards", "hypothetical referee", "ordinary decent person", "ordinary reasonable person", "reputation", "right-thinking", "true innuendo".

[Radio 2UE](#)

[Radio 2UE](#) – decision 17 April 2008 - tort of defamation - actual disparagement of plaintiff's reputation - reputation includes general character & standing & trade, business or professional reputation – directions to jury as to standards by which to determine whether an imputation injures plaintiff's trade business or professional reputation - consideration of case law & texts in judgment of McColl JA.

### IceTV Pty Limited v Nine Network Australia Pty Limited [2009] HCA 14

High Court of Australia

French CJ; Gummow, Hayne, Heydon, Crennan & Kiefel JJ.

Intellectual property – copyright - electronic program guide - whether respondent could obtain relief for copyright infringement arising from reproduction of individual items of information, part of the

time & title information, in respect of various programmes contained in Weekly Schedules – appeal allowed.

[IceTV](#)

**Appleby v Nellis [2009] NSWSC 299**

Supreme Court of New South Wales

White J

Application for stay of judgment - judgment had been by consent - contract between plaintiff as vendor & defendant as purchaser – property at Manly - plaintiff had sought an order for specific performance of contract - parties had entered into a document called a Deed of Settlement & Guarantee & Indemnity – defendant’s application dismissed.

[Appleby](#)

**The Roads & Traffic Authority of New South Wales v Parvez [2009] NSWSC 274**

Supreme Court of New South Wales

Schmidt AJ

Australian Road Rules - *Road Transport (Safety & Traffic Management) Act 1999* (NSW) - appeal from Local Court - speed camera - school zone - defendant charged with two offences - what had to be proven was that defendant had exceeded the speed limit applicable to the length of road at which the offence was alleged to have occurred – appeals allowed – matter returned to Local Court for further hearing.

[The Roads and Traffic Authority](#)

**The Roads & Traffic Authority of New South Wales v Ahmed [2009] NSWSC 273**

Supreme Court of New South Wales

Schmidt AJ

*Australian Road Rules - Road Transport (Safety & Traffic Management) Act 1999* (NSW) – speed camera - alleged offence occurred in Lane Cove Tunnel where variable speed limits applied – appeal upheld – matter returned to Local Court for further hearing.

[The Roads and Traffic Authority](#)

## From the United Kingdom...

**Whippey v Jones [2009] EWCA Civ 452**

Court of Appeal of England & Wales

Waller, Rimer & Aikens LJ

Personal injuries – the reasonable dog handler – park adjacent to riverside footpath - the respondent Mr. Jones, a business visitor to Leeds, was doing some running training along a footpath at Riverside Walk at the side of the River Aire at Kirstall in Leeds - aged forty-two & an experienced runner – on the



footpath, he had an encounter with a fully grown two year old Great Dane called Hector owned by the appellant, Mr Whippey, an RSPCA Inspector & closely connected with the care of Great Danes – evidence was that dog weighed about 12 ½ stone - respondent fell down a slope to the river & broke ankle - respondent alleged appellant negligent in handling dog ; also liable under *Animals Act* 1971, in particular under s2 - primary judge had found appellant not liable under the Act but that he was liable to appellant in negligence & awarded judgment for appellant including interest in sum of £15,359.10 plus costs - appeal allowed - at para. 19 of an interesting judgment by Aikens LJ:

“In my opinion, had the judge posed the correct question, he could only have concluded, on the facts found & on the unchallenged evidence of Mr Whippey, that a reasonable man in Mr Whippey's position would not anticipate that physical injury to another adult park user such as Mr Jones would be caused by Hector physically contacting him. As already noted, the judge had found expressly that Hector had no tendency to jump up at other people; at the most he stopped & barked at people some five or ten feet away. There was no reason why Mr Whippey, as a reasonable dog handler in the park, should therefore have anticipated that if Hector was let off the lead when some other adult was about, physical harm to that adult would result from Hector bounding up to him and contacting him.”

[Whippey](#)

### For St. George's Day 2009

And did those feet in ancient time,  
Walk upon England's mountains green:  
And was the holy Lamb of God,  
On England's pleasant pastures seen !

And did the Countenance Divine,  
Shine forth upon our clouded hills ?  
And was Jerusalem builded here,  
Among these dark Satanic Mills ?

Bring me my Bow of burning gold;  
Bring me my Arrows of desire:  
Bring me my Spear: O clouds unfold:  
Bring me my Chariot of fire !

I will not cease from Mental Fight,  
Nor shall my Sword sleep in my hand:  
Till we have built Jerusalem,  
In England's green & pleasant Land.

*Poem by William Blake (born in London 28 November 1757 – d. 12 August 1827) from the preface of his epic*

*'Milton: a Poem' printed c. 1808 – set to music in 1916 by Sir Charles Hubert Hastings Parry (b. Bournemouth, Hampshire 27 February 1848 – d. 7 October 1918) – first performed in 1916 at London's Queen's Hall – unison chorus with organ accompaniment – for a concert at the Royal Albert Hall in 1918, Parry arranged the song with accompaniment for standard orchestra, after which it became more generally known as 'Jerusalem' – after Parry's death, Sir Edward Elgar (b. 2 June 1857 near Worcester – d. 23 February 1934) reorchestrated the melody for performance by a large orchestra at the Leeds Festival\* of 1922.*

[And did those feet in ancient time - Wikipedia, the free encyclopedia](#)

\*The first of these classical music festivals celebrated the opening of Leeds Town Hall in September 1858 – from 1880-1970 it was held triennially - the 1880 Festival was the first of seven Triennial festivals conducted by Sir Arthur Sullivan (b. Lambeth 1840 – d. Westminster 1900) - the last festival was held in 1985 - Leeds Festival Chorus was founded for the first festival, gaining independence in 1976; it continues to perform & make recordings.

[Victorian Landscape Art - Rehs Galleries, Inc.](#)

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