



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

Executive Summary (1 minute read)

Australian Postal Corporation v Hughes - *Safety, Rehabilitation & Compensation Act 1988* (Cth) - appeal dismissed (I)

Eat Media Pty Ltd v Mulready Media Pty Ltd - Costs - applicant had obtained declaratory relief without necessity for fully contested hearing (I,B,C)

Application of Monier Inc - *Evidence on Commission Act 1995* (NSW) - subpoena to produce documents set aside (B,C)

Graham v Queensland Nursing Council - Statutory interpretation – *Nursing Act 1976* (Qld) - disciplinary proceedings (I)

Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd - Singapore case – torts – conversion - potential liability of a carrier &/or bailee transporting &/or handling goods belonging to a third party – primary judge had found appellant liable – appeal allowed (I)

Purdy, R (on the application of) v Director of Public Prosecutions - UK decision - prosecutorial discretion – European Convention on Human Rights art 8(2) (I)

Summaries with links (5 minute read)

Wednesday 23 September 2009

Australian Postal Corporation v Hughes [2009] FCA 1057

Federal Court of Australia

Flick J (in Sydney)

Safety, Rehabilitation & Compensation Act 1988 (Cth) - respondent had been injured whilst performing her duties as a postal delivery officer on a motorcycle - Administrative Appeals Tribunal had concluded she continued to suffer from the effects of an injury to her lower back & left hip joint - Tribunal had also concluded she was not entitled to compensation for permanent impairment pursuant to ss24 & 27 of the Act - conclusion of Tribunal as to permanent impairment not in issue on appeal - Corporation appealing from that part of Tribunal's decision whereby it concluded respondent continued to suffer from effects of the injury to her lower back & left hip joint & that the Corporation continues to be liable – appeal dismissed – detailed examination of Australian text & case law.

[Australian Postal Corporation](#)

Eat Media Pty Ltd v Mulready Media Pty Ltd [2009] FCA 1058

Federal Court of Australia

Flick J (in Sydney)

Costs - applicant had obtained declaratory relief without necessity for fully contested hearing - claim for loss or damage withdrawn – respondents opposing the making of any order as to costs & contending that each party should pay its own costs – applicant seeking sought costs either on a party/party basis or on an indemnity basis – applicant entitled to order for costs but not on an indemnity basis.

[Eat Media Pty Ltd](#)

Application of Monier Inc [2009] NSWSC 986

Supreme Court of New South Wales

Mathew AJ

Evidence on Commission Act 1995 (NSW) - Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970) - application by Boral Ltd to set aside a subpoena issued on application of Monier Inc. pursuant to request of a court in the USA – consideration of UK legislation & case law including In re Asbestos Insurance Coverage Cases [1985] 1 All E.R 716 – consideration of British American Tobacco Australian Services Ltd & ors v Eubanks (2004) 60 NSWLR 483 - subpoena to produce documents set aside.

[Application of Monier Inc](#)



Graham v Queensland Nursing Council [2009] QCA 280

Court of Appeal of Queensland

Chief Justice, Fryberg J; McMurdo P (dissenting)

Statutory interpretation – *Nursing Act 1976* (Qld) - disciplinary proceedings - determination of appropriate test as to discreditable conduct – death of person in custody suffering from opiate withdrawal – Nursing Tribunal had found charge proved against respondent of conduct discreditable to a registered nurse – respondent's appeal to District Court had been upheld - appeal dismissed.

[Graham](#)

From Singapore...

Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd [2009] SGCA 42

Court of Appeal of Singapore

Andrew Phang Boon Leong, Chao Hick Tin, & V K Rajah JJA

Torts – history of tort of conversion examined - potential liability of a carrier &/or bailee transporting &/or handling goods belonging to a third party – storing another's goods – redelivery of goods to bailor - particulars when pleading a claim of conversion - view expressed as to where burden of proof lies on the issue of good faith - primary judge had found appellant liable for conversion of a Heidelberg 4-colour off-set press machine - respondent in business of providing hire-purchase services for heavy equipment – machine was let to a company RGPL which shifted its offices to new premises – appellant hired to transport machine & machine could not be later found – whether the respondent had the requisite title to sue - issue of the innocent handler considered by the UK Law Reform Committee – appeal allowed – a very interesting decision with thorough examination of text & UK case law.

[Tat Seng Machine Movers Pte Ltd](#)

From the United Kingdom...

Purdy, R (on the application of) v Director of Public Prosecutions [2009] UKHL 45

House of Lords Appellate Committee - 30 July 2009

Lord Phillips of Worth Matravers, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood, & Lord Neuberger of Abbotsbury

Prosecutorial discretion – at para 43 of judgment of Lord Hope : law should be formulated with sufficient precision to enable individual, if need be with appropriate advice, to regulate their conduct - European Convention on Human Rights art 8(2) – *Suicide Act 1 1961* UK) - assisting a person with terminal illness to commit suicide a crime in UK – travel to Switzerland - [Pretty v United Kingdom](#) (2002) 35 EHRR 1, decision of European Court of Human Rights, Strasbourg



considered – appeal allowed - Director to promulgate an offence-specific policy identifying facts & circumstances which he will take into account in deciding, in a case such as that which Ms Purdy's case exemplifies, whether or not to consent to a prosecution under s2(1) of the 1961 Act – article 8 rights of Ms Purdy entitled her to be provided with guidance from Director as to how he proposed to exercise his discretion under s2(4) of the 1961 Act.

[Purdy](#)