



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

Executive Summary (1 minute read)

3D Scaffolding Pty Limited v Commissioner of Taxation; James Docherty v Commissioner of Taxation - Income Tax - hiring scaffolding equipment – dividend - appeals dismissed (B, C)

JMB Beverages Pty Ltd v Commissioner of Taxation - Goods and Services Tax - de-alcoholised wine not GST free (B)

Forbes Engineering (Asia) Pte Limited v Forbes (No 4) - Contracts – profit shortfall - guarantees - agency – business records (I, B, C)

Coal Management Operations & Processing Pty Limited v Resource Pacific Ltd - Expert evidence – defendant seeking to obtain expert report - application granted (I, B, C)

A J Richardson Properties Pty Ltd v Segboer - Indemnity costs order made – statutory demand (C)

IOOF Building Society Pty Ltd v Foxeden Pty Ltd; IOOF Building Society Pty Ltd v Taylor & Anor - Contract – estoppel – damages - agreement to operate branch of building society (B)

Australian Capital Providers P/L v Wakelin & Anor - Consumer Credit Code (Qld) – interest rates (B)

Rajic v Brighton Ceiling Pty Limited - Limitation period extended – personal injury (I)

From the United Kingdom:

Gray v Thames Trains & Ors - House of Lords decision - personal injuries claim by respondent – Ladbroke Grove rail crash in 1999 – post traumatic stress suffered by

Benchmark



AR CONOLLY & COMPANY
L A W Y E R S

respondent – in 2001 respondent stabbed pedestrian to death - appeal allowed (I)

Copley v Lawn & Ors - Motor accidents – replacement vehicles - no evidence that defendants' insurers could have hired replacement cars more cheaply than claimants did or that hire rates claimants paying were any other than market rates (I)

Summaries with links (5 minute read)

Wednesday 24 June 2009

3D Scaffolding Pty Limited v Commissioner of Taxation ; James Docherty v Commissioner of Taxation [2009] FCAFC 75

Full Federal Court of Australia

Emmett, Kenny & McKerracher JJ (in Perth, heard in Sydney)

Income Tax Assessment Act 1997 (Cth) - *Income Tax Assessment Act 1936* (Cth) – two appeals – for decisions appealed from, see ‘Benchmark’ B, C & IBC Wednesday 8 October 2008 & link below - Administrative Appeals Tribunal had affirmed Commissioner’s decision to disallow appellant company’s objections to claim deductions for expenditure incurred in hiring scaffolding equipment – appeal dismissed - Tribunal had affirmed Commissioner’s decision to treat payments made by 3D Scaffolding as dividend in Mr Docherty’s hands under s109C & Division 7A of the 1936 Act – control of company – appeal dismissed.

[3D Scaffolding](#) (B, C)

[3D Scaffolding](#) - decision 3 October 2008 - two appeals from decisions of Administrative Appeals Tribunal dismissed.

JMB Beverages Pty Ltd v Commissioner of Taxation [2009] FCA 668

Federal Court of Australia

Edmonds J (in Sydney)

A New Tax System (Goods & Services Tax) Act 1999 (Cth) Division 38 – held that de-alcoholised wine is not GST free.

[JMB Beverages](#) (B)

Forbes Engineering (Asia) Pte Limited v Forbes (No 4) [2009] FCA 675

Federal Court of Australia

Collier J (in Brisbane)

Contracts – guarantees - agency – ostensible authority – business records - claimed breaches of covenants in share sale agreement, breaches of guarantees related to that agreement, & alleged breaches of ss180(1), 181(1) & 182(1) *Corporations Act 2001* (Cth) - whether applicants’ claim statute-barred – whether audit report detailing profit shortfall in 1999 admissible in evidence - audit report a business record but inadmissible for unreliability & prejudice under s135 *Evidence Act 1995* (Cth) - application successful in part – first respondent liable for damages to applicants for 1998 profit shortfall in sum of \$127,284 – comprehensive review of text & UK & Australian case law.

[Forbes Engineering \(Asia\)](#) (I, B, C)

Coal Management Operations & Processing Pty Limited v Resource Pacific Ltd [2009] NSWSC 573

Supreme Court of New South Wales

Brereton J

Expert evidence – defendant’s application - defendant seeking to obtain expert report on “coal preparation process” & “management practice” within coal industry – held that defendant may obtain expert opinion – Court to determine at a later stage if evidence may be adduced.

[Coal Management Operations & Processing](#) (I, B, C)

A J Richardson Properties Pty Ltd v Segboer [2009] NSWSC 576

Supreme Court of New South Wales

Austin J

Building & Construction Industry Security of Payment Act 1999 (NSW) – defendant builder had served statutory demand - defendant to pay plaintiff’s costs on indemnity basis.

[A J Richardson Properties](#) (C)

IOOF Building Society Pty Ltd v Foxeden Pty Ltd; IOOF Building Society Pty Ltd v Taylor & Anor [2009] VSCA 138

Court of Appeal of Victoria

Maxwell P, Ashley JA & Hansen AJA

Contract – estoppel – damages - agreement to operate branch of building society – termination of agreement – breach by building society of implied term that reasonable notice be given – loss of building society commissions & financial planning income during putative period of notice – lost chances - each appeal allowed in part.

[IOOF Building Society](#) (B)

Australian Capital Providers P/L v Wakelin & Anor [2009] QSC 167

Supreme Court of Queensland

Dutney J

Consumer Credit Code (Qld) – interest rates - plaintiff finance broker provided loan to first defendant – second defendant guaranteed the loan – plaintiff commenced proceedings to recover debt & possession of property provided by way of security – defendants resisting claim by alleging loan did not comply with the Code – variation by Court of interest rate to 4% per month – claim for possession dismissed but judgment for plaintiff against defendants for amount owing under credit contract as varied.

[Australian Capital Providers](#) (B)

Rajic v Brighton Ceiling Pty Limited [2009] ACTSC 68

Supreme Court of the Australian Capital Territory

Master Harper

Limitation of actions – personal injury – claim against employer – workers' compensation claim previously accepted – action commenced eight weeks out of time – explanation for delay unsatisfactory – extension granted.

[Rajic](#) (I)

From the United Kingdom...**Gray v Thames Trains & Ors [2009] UKHL 33**

The House of Lords

Lord Phillips of Worth Matravers, Lord Hoffmann, Lord Scott of Foscote, Lord Rodger of Earlsferry, Lord Brown of Eaton-under-Heywood

Personal injuries – negligence - public policy - whether the intervention of respondent's criminal act in the causal relationship between defendants' breaches of duty & damage of which respondent complains prevented him from recovering that part of his loss caused by the criminal act - Ladbroke Grove rail crash in 1999 – respondent, a passenger, suffered post-traumatic stress disorder – in 2001, he stabbed a pedestrian to death – Crown accepted plea of guilty to manslaughter on grounds of diminished responsibility - he was detained under Mental Health Act – in 2005 he commenced action in negligence against appellants - appeal allowed – detailed analysis of case law from UK, Canada & Australia, including decision of Samuels JA in State Rail Authority of New South Wales v Wiegold (1991) 25 NSWLR 500 considered at para. 99 of Lord Brown's judgment & at para. 67 of judgment of Lord Phillips where His Lordship quotes from Samuel JA's judgment (from p.514 of SRA v Wiegold):
“..... If the law of negligence were to say, in effect, that the offender was not responsible for his actions and should be compensated by the tortfeasor, it would set the determination of the criminal court at naught. It would generate the sort of clash between civil and criminal law that is apt to bring the law into disrepute.”

[Gray](#) (I)

Copley v Lawn & Ors [2009] EWCA Civ 580

Court of Appeal of England & Wales

Waller LJ (Vice-President of the Court of Appeal); Longmore & Jacob LJJ

Motor accidents – replacement vehicles - two appeals with common issue: where, after road accident caused by a defendant's negligence, insurers of negligent defendant offer to provide a "free" car to claimant for such period as claimant needs a replacement car while his own car is being repaired & offer is rejected by claimant, can negligent defendant say claimant has failed to take reasonable steps to mitigate his loss? – held no evidence that defendants' insurers could have hired replacement cars



more cheaply than claimants did or that hire rates claimants paying were any other than market rates – appeals allowed.

[Copley](#) (I)

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