

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Summaries – Wednesday 25 February 2009

Constitutional law – freedom of interstate trade, commerce, and intercourse. See *Betfair Pty Limited v Racing New South Wales (No 1)* and *Sportsbet Pty Ltd v State of New South Wales (No 1)* (B)

Litigation procedure (Federal Court) - application for leave to file expert evidence on the valuation of shares. See *Chameleon Mining NL v Murchison Metals Ltd* (B)

Insolvency law – voidable transactions – application for indemnity from directors of company in liquidation. See *Hurricane Formwork Pty Ltd (In Liquidation) v Commissioner of Taxation* (B, C)

Building disputes (NSW) – *Building and Construction Industry Security of Payment Act 1999* (NSW) – duty of adjudicator. See *Parkview Constructions Pty Ltd v Sydney Civil Excavations Pty Ltd* (C)

Real Property (NSW) – effect of registration of forged signature by one joint tenant on mortgage. See *Perpetual Trustees Victoria Limited v Peter Van den Heuvel* (B)

Personal injury (Vic) – *Accident Compensation Act 1985* (Vic) – whether appellant suffered a chronic pain syndrome of psychiatric dimension - correct approach to appeals. See *Grant v D & R Henderson Pty Ltd* (I)

Personal injury (NSW) – *Motor Accidents Compensation Act 1999* (NSW) – assessment of injury. See *Baker v Smith Snack Food Company Ltd* (I)

Benchmark



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Insurance (California, USA) – whether policy responded to claim awarded in arbitration.
See *Executive Risk Indemnity v Jones* (I, B)

Insurance (Illinois, USA) – whether two deaths were two separate occurrences under a policy. See *Addison Insurance Company v Donna Lake* (I)

Wednesday 25 February 2009

Dunn v The Australian Crime Commission [2009] FCAFC 16

Full Federal Court of Australia

Moore, Jessup & Gilmour JJ (in Melbourne)

Mutual Assistance in Criminal Matters Act 1987 (Cth) – primary judge had dismissed applications challenging validity of written request made to Switzerland by a delegate of Commonwealth Attorney-General – Operation Wickenby – for decision appealed from see link below - appeals dismissed.

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

[Dunn](#) – decision 24 April 2008

Betfair Pty Limited v Racing New South Wales (No 1) [2009] FCA 111

Federal Court of Australia

Perram J (in Sydney)

Gaming - applicant conducts 'betting exchange' from Tasmania - imposition of fee based on betting turnover - respondents seeking that applicant provide further particulars of its statement of claim, alternatively that parts of claim be struck out – s92 Constitution – interstate trade & commerce - words 'purports to' struck out of paragraph 64 of statement of claim (which is set out at par 16 in His Honour's judgment) - applications otherwise dismissed.

[Betfair](#) (B)

Sportsbet Pty Ltd v State of New South Wales (No 1) [2009] FCA 112

Federal Court of Australia

Perram J (in Sydney)

Gaming – race field publication fee - respondents seeking further particulars of applicant's statement of claim &/or the striking out of various of its paragraphs - word "legislative" struck out of paragraph 93 of statement of claim, (which is set out at par 20 of His Honour's judgment).

[Sportsbet](#) (B)

Chameleon Mining NL v Murchison Metals Ltd [2009] FCA 137

Federal Court of Australia

Jacobson J (in Sydney)

Application for leave to file expert evidence: valuation evidence of shares ; tracing evidence ; evidence in support of damages claim & claim for loss of profits - filing of expert evidence would have effect of vacating trial date - prejudice to defendants – application for leave declined.

[Chameleon Mining](#) (B)

**Hurricane Formwork Pty Ltd (In Liquidation) v Commissioner of Taxation [2009] FCA 133**

Federal Court of Australia

Greenwood J (in Brisbane)

s588FGA *Corporations Act* 2001 (Cth) - application by liquidator for order that Commissioner pay company in liquidation amounts received as voidable transactions – application by Commissioner for order that directors of company pay amount to Commissioner by way of indemnity pursuant to s588FGA(2) having regard to ss588FGA(1), 588FGA(3) and 588FGA(4).

[Hurricane Formwork](#) (B, C)**Parkview Constructions Pty Ltd v Sydney Civil Excavations Pty Ltd & Anor [2009] NSWSC 61**

Supreme Court of New South Wales

Brereton J

Building & Construction Industry Security of Payment Act 1999 (NSW) – residential apartment development at Killara - claim that Adjudicator's decision invalid – that adjudicator did not evaluate claim under s27(2A) – whether lost profit on termination could be recovered – proceedings dismissed.

[Parkview Constructions](#) (C)**Perpetual Trustees Victoria Limited v Peter Van den Heuvel & Anor [2009] NSWSC 57**

Supreme Court of New South Wales

Price J

Mortgage – property at Queanbeyan - effect of registration of forged mortgage – signatures of one joint tenant forged by other joint tenant on loan agreement & mortgage – s57(2) *Real Property Act* 1900 (NSW) - *Contracts Review Act* 1980 (NSW) - Consumer Credit Code - entitlement of innocent party to compensation from Torrens Assurance Fund – detailed consideration of case law.

[Perpetual Trustees Victoria](#) (B)**Wang v Council of the Law Society of New South Wales [2009] NSWSC 67**

Supreme Court of New South Wales

Schmidt AJ

Appeal against decision of Law Society - claim against Fidelity Fund – appellant had entrusted money to solicitor – migration matter – appellant seeking order that decision of Law Society refusing claim under *Legal Profession Act* 2004 (NSW) be set aside - role of the Law Society in appeal proceedings - Hardiman principle - Law Society's proper role that of active contradictor - whether provisions of *Legal Profession Act* 2004 (NSW) applied to appeal - appeal upheld.

[Wang](#) (I, B)

Grant v D & R Henderson Pty Ltd [2009] VSCA 15

Court of Appeal of Victoria

Ashley, Redlich & Kellam JJA

Accident Compensation Act 1985 (Vic) – appeal against primary judge’s refusal of application brought by the appellant for leave to bring proceedings for recovery of damages pursuant to s134AB(16)(b) in respect of injury affecting right forearm – issue as to whether appellant suffered a chronic pain syndrome of psychiatric dimension - case law considered as to correct approach to appeals governed by s134AB - appeal dismissed.

[Grant](#) (I)

Geor v Delaney; Ryan v Delaney [2009] QSC 015

Supreme Court of Queensland

Fryberg J

s153 *Bankruptcy Act 1966 (Cth)*– effect of discharge - plaintiffs in both proceedings were, with fourteen others, contributors to a loan – defendant a solicitor who participated in organisation of private mortgage loans – plaintiffs claiming in negligence & breach of contract - defendant made bankrupt in 2001, discharged from bankruptcy three years later – plaintiffs seeking leave because no steps taken in proceedings for at least two years – whether present claims provable in defendant’s bankruptcy – consideration of s82(2) of the Act – Coventry v Charter Pacific Corp. Ltd (2005) 227 CLR 204 considered – s53 a complete defence – applications dismissed - an interesting decision.

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

ABN Amro Morgans Ltd v Davies [2009] QSC 018

Supreme Court of Queensland

Fryberg J

Trades - application for summary judgment by plaintiff – plaintiff alleging defendant owed money for purchase, on the instructions of the defendant, of share warrants on stock exchange – plaintiff had established that defendant had no real prospect of successfully defending the claim – judgment given for plaintiff in sum of \$1,855,814.20 plus interest and costs.

[ABN Amro Morgans](#) (B)

From the District Court of New South Wales...

Baker v Smith Snack Food Company Ltd [2009] NSWDC 11

District Court of New South Wales

Goldring DCJ

Motor Accidents Compensation Act 1999 (NSW) - "injury" – Medical Assessment Service had assessed plaintiff as not crossing the threshold established by the Act in a way that would entitle him to damages for non-economic loss - weight to be attached to documents of Medical Assessment Service – admissions - effect of acknowledgment by workers compensation insurer – verdict for plaintiff in sum of \$521,011.69.

[Baker](#) (I)

From the United States of America...

Executive Risk Indemnity v Jones, A119005

Court of Appeal of the State of California,

First Appellate District, Division Four

Ruvolo PJ; Reardon & Rivera JJ

Insurance – policy had been issued by respondent to a company providing the company with cover for claims arising from investment advice & financial planning – appellant had been a client of insured company – appellant had brought an arbitration proceeding claiming faulty investment advice - insured became insolvent & assigned its rights under the policy – whether policy responded – whether an arbitration award a "Loss" under the policy – trial court had said 'no' – trial court decision reversed.

[Executive Risk Indemnity](#) (I, B)

Addison Insurance Company v Donna Lake et al. No. 105752

Supreme Court of Illinois

Garman, Freeman, Thomas, Kilbride, Karmeier & Burke JJ

Insurance – policy limits – 'occurrence' - burden of proof - two boys died when trapped in excavation pit while using land as short cut to get back to the home where one of the boys lived – boys' families sued landowner, who conducted a business on the land, alleging negligent maintenance of property – failure to properly secure & manage property - landowner's insurer agreed to settle claims for an amount equal to policy's limits – dispute as to which policy limit applied - whether the injuries to the boys constituted a single or multiple occurrences under terms of policy – primary judge had found boys' injuries were result of two occurrences; causes of death were different & circumstances immediately prior to the deaths were different - appellate court had concluded boys' deaths were "so closely linked in time & space as to be considered by a reasonable person as one 'occurrence' – respondent insurer contended it was for appellants to prove number of occurrences in order to



establish coverage – held that insurer bore burden of proving two deaths constituted one occurrence – appeal court decision reversed - held that the two deaths constituted two occurrences – detailed examination of case law.

[Addison Insurance Company](#) (I)

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