

High Court judgments:

October - November 2009



CONSTITUTIONAL LAW

- *Judicial power*
- *State courts*
- *Kable*
- *Whether State Court compromised by wielding executive power*
- *Provisions in State criminal asset seizure legislation directing how court to proceed*

In *International Finance Trust Company v NSW Crime Commission* [2009] HCA 49; 12 Nov 09 the High Court by majority concluded that provisions of the Criminal Asset Recovery Act 1990 (NSW) which required the Supreme Court to make restraining orders without notice to those affected were invalid as the Act impermissibly directed the court how to exercise its jurisdiction contrary to the need for State Courts to be independent to comply with Constitution Part III as explained in *Kable v DPP* [1996] HCA 24; French CJ; Gummow with Bell JJ; Heydon J; contra Heydon, Crennan, Kiefel JJ. Appeal allowed.

NEGLIGENCE

- *Duty of care*
- *Duty of publican to driving patron*
- *Whether duty - patron killed in motorcycle accident after leaving hotel*
- *Whether any duty breached or any breach caused loss*

In *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board (Tas)* [2009] HCA 47; 10 Nov 09 a drinker at a Tasmanian hotel died while driving his motorcycle home from

the hotel where he had been drinking for some time. The deceased had come to an arrangement with the licensee that his motorcycle would be locked away so he could not drive it home without his wife being telephoned to collect him. However he was given the keys without his wife being telephoned. The High Court concluded that the licensee of premises did not owe a duty of care to prevent patrons driving away from the premise in an intoxicated state: French CJ agreeing with Gummow, Haydon, Crennan JJ jointly; sim Hayne J. They also concluded if there was a duty it had not been breached and if there was a breach it had not caused the death. The matter preceded the Civil Liability Act 2002 (Tas). Appeals allowed.

NEGLIGENCE

- *Duty of care*
- *Duty of licensee of licensed premises to have security to prevent shooting of patron*

In *Adeels Palace Pty Ltd v Moubarak* [2009] HCA 48; 10 Nov 09 the High Court in a joint judgement concluded that the operator of licensed premises was not liable in negligence after the commencement of the Civil Liability Act 2002 (NSW) for failing to have security that might have prevented a patron being shot by another patron: French CJ, Gummow, Hayne, Heydon, Crennan JJ jointly. Consideration of the causation provisions in s 5D(1) of the Civil Liability Act. Appeal allowed.

Federal Court judgments

INDUSTRIAL LAW

- *Workplace agreement*
- *Income protection for employees*

In *Australian Maritime Officers Union v Sydney Ferries Corp* [2009] FCAFC 145; 15 Oct 09 a Full Court allowed an appeal on finding that a clause in a workplace agreement that required the employer insure the employees for loss of income was a matter that did pertain to the employment relationship as defined by regulations under s 356(1)(f) of the *Workplace Relations Act 1966* (Cth).

INCOME TAX

- *Foreign entities*

In *C of T v Tasman Group Services Pty Ltd* [2009] FCAFC 148; 22 Oct 09 a Full Court considered whether a Japanese corporation had the "necessary connection to Australia" for the purposes of the GST legislation.

CONTEMPT

- *Contempt in the face of the court*

In *Clampett v A-Gen for C of A* [2009] FCAFC 151; 28 Oct 09 a Full Court reviewed authority as to when a Federal Magistrate should exercise the discretion given by s 17(3) of the *Federal Magistrate's Court Act 1999* (Cth) and hear charges for contempt of court in the face of the court that occurred before that magistrate.