

High Court judgments:

June - August 2009



Income tax – Deductions – Fee paid by professional sports player to manager to negotiate new contract with new club – Whether income or capital item

In Spriggs v C of T; Riddell v C of T [2009] HCA 22 (18 June 2009) a Federal Court justice held that a management fee paid by each professional sports player S and R to a manager to negotiate a new contract with a new club was deductible from income. This was reversed by the Full Court of the Federal Court which found the fees were of a capital nature. The High Court in a joint judgment reversed this and found the fees were deductible: French CJ, Gummow, Heydon, Crennan, Kiefel, Bell J. Appeals allowed.

Criminal law – Punishment – Sentence imposed by NT court – Prisoner removed to SA

In Bakewell v Q [2009] HCA 24 (7 July 2009) the High Court in a joint judgment concluded that an NT court could not revoke a non-parole period it had fixed for a sentence of murder after the person was transferred to be a prisoner in SA: French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel, Bell JJ.

Constitutional law – Validity of legislation authorising payment of “stimulus” payment

In Pape v C of T [2009] HCA 23 (7 July 2009) P challenged the constitutional validity of the “stimulus package” enacted in the Tax Bonus for Working Australians Act (No 2) 2009 (Cth). The High Court found the provisions

that authorised payments were supported by the executive power and incidental power (Constitution ss61 and 51(xxxix)): French CJ; Gummow with Crennan and Bell JJ; Hayne with Kiefel JJ; contra Heydon J.

Trade practices – Misleading conduct – Incorrect statement of financial performance – When estimate may be misleading – Damages – Whether loss caused by misleading conduct

In Campbell v Backoffice Investments Pty Ltd [2009] HCA 25 (29 July 2009) the High Court considered whether misleading and deceptive conduct had occurred in the context of the sale of an interest in a business and whether the allegations pleaded were made out. The Court concluded that alleged misleading conduct as to past financial performance of the company was not made out, and while there was a contravention in relation to future projections this did not cause loss. The Court declined to determine whether there was an implied term in the agreements, or a duty, that the parties would cooperate as the issue was not clearly raised: French CJ; sim Gummow with Hayne, Heydon, Kiefel jointly. Appeal allowed.

Bankruptcy – Transactions void against Official Receiver – Power to require recipient of property to pay its value – Time at which value determined

In Vale v Sutherland [2009] HCA 26 (29 July 2009) the High Court

in a joint judgment considered how a dispute as to how the amount that the Official Receiver could demand in a notice under s137ZQ of the Bankruptcy Act 1966 (Cth) from a person, as being the value of property received from the bankrupt, was to be determined: Gummow, Hayne, Heydon, Crennan, Kiefel JJ jointly.

Practice – Amendment – Application for amendment at eve of trial – Relevance of case management considerations

In Aon Risk Services Australia Ltd v Australian National University [2009] HCA 27 (5 August 2009) the High Court rejected the view that an application for leave to amend a pleading should be approached on the basis that a party was entitled to raise an arguable claim subject to payment of costs by compensation. The Court concluded that questions of case management and waste of court resources were relevant matters: French CJ; sim Gummow with Hayne, Crennan, Kiefel, Bell JJ; Heydon J. Decision of the Court in *Queensland v JL Holdings* (1997) 189 CLR 146 explained.

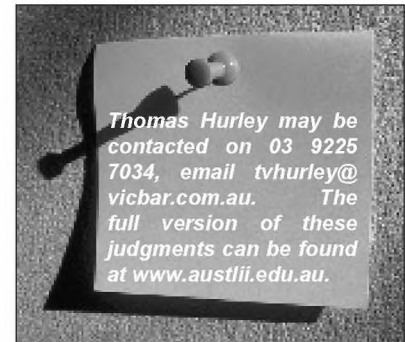
Personal injuries – Terms – “Caused by” – Linesman injured while repairing conductor struck by aircraft – Whether injuries “caused by” impact of aircraft

In ACQ Pty Ltd v Cook [2009] HCA 28 (5 August 2009) the High Court considered what damage was covered in the phrase “damage or destruction caused by . . . something that is the result of an

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impact [of an aircraft or part of an aircraft]" in s10(1)(c) of the *Damage By Aircraft Act 1999 (Cth)*. The Court concluded the Court of Appeal (NSW) was not in error in accepting the injury suffered by a linesman sent to repair power lines dislodged as a result of impact between an aircraft and an electrical facility was covered by the section: French CJ, Gummow, Heydon, Crennan, Bell JJ jointly.

Federal Court – Leave to appeal against interlocutory order – Order restricting publication of evidence

In *Hogan v ACC* [2009] FCAFC 71 (19 June 2009) a Full Court reviewed authority as to when an interlocutory decision of a single judge is attended by sufficient doubt that leave to appeal against it should be granted under s24(1A) of the *Federal Court of Australia Act 1976 (Cth)*.

Freedom of information – Whether state university an “agency” for FOI Act (Cth)

In *Luck v University of Southern Queensland* [2009] FCAFC 73 (19 June 2009) a Full Court concluded the AAT and the primary judge did not err in holding that the respondent was not a “prescribed authority” and subject to the FOI Act (Cth). The Full Court also concluded the primary judge did not err in not disqualifying himself for bias.

Administrative law – Decision – Power to approve premises as a pharmacy – Power limited to prevent approval where pharmacy not permitted

In *Terry White Chemists Australia Fair v Secretary, Department of Health and Ageing* [2009] FCAFC 74 (19 June 2009) s90(1) of the *National Health Act 1953 (Cth)* authorised the respondent to approve premises as a pharmacy and by s90(4) the Act provided that nothing authorised the Secretary to approve premises at which a pharmacist was not permitted to carry on that business. The Full Court held that s90(4) was declaratory and did not prevent approval of premises that may yet require approval under state laws such as town planning, but the Secretary was not required to investigate such issues.

AAT – Hearings – Natural justice

In *3D Scaffolding Pty Ltd v C of T* [2009] FCAFC 75 (22 June 2009) a Full Court concluded the AAT had not denied a taxpayer natural justice where the taxpayer was on notice that the authenticity of documents was an issue in dispute.

Designs Act – Fraudulent imitation

In *Technicon Industries Pty Ltd v Caroma Industries Ltd* [2009] FCAFC 76 (26 June 2009) a Full Court concluded the primary judge did not err in finding fraudulent imitation of the toilet pan in question.

Corporations – Takeover Panel

In *Cemex Australia Pty Ltd v Takeovers Panel* [2009] FCAFC 78 (30 June 2009) a Full Court dismissed a challenge to a declaration of unacceptable circumstances for s657A of the *Corporations Act 2001 (Cth)*. The Court concluded the Panel was not required by s657A to decide whether the conduct had contravened ss670A or 1041H of the *Corporations Act*.

Migration – Absorbed person

In *Toia v Minister for Immigration and Citizenship* [2009] FCAFC 79 (30 June 2009) a Full Court concluded there was no error in the finding that T was an “absorbed person” and that there was error in the AAT’s decision to affirm a decision of the Minister to cancel this visa.

Migration – Refugee Review Tribunal – Whether hearing required on remitter from court

In *MZXRE v Minister for Immigration and Citizenship* [2009] FCAFC 82 (30 June 2009) a decision of the RRT that it had no jurisdiction in a review was set aside by the Federal Magistrates Court by consent and the RRT was ordered to “rehear” the review. The Full Court observed that the use of the word “rehear” was in error. The Full Court concluded the RRT was not in the circumstances required to convene a second hearing in the review.

Migration – Tribunals – Whether tribunal required to give notice of findings on issues

In *Minister for Immigration and Citizenship v SZMOK* [2009] FCAFC 83 (2 July 2009) a Full Court considered when a tribunal is required to give a party notice before it finds a document forged or subject to fraud or rejects evidence that would corroborate an applicant.

Patents – “The complete application”

In *Mont Adventure Equipment Pty Ltd v Phoenix Leisure Group Ltd* [2009] FCAFC 84 (7 July 2009) a Full Court considered what constituted “the complete application” for reg 2.2(1A) of the Patents Regulations 1991 (Cth).

Migration – Student visas – Cancellation for non-attendance

In *Minister for Immigration v Brar* [2009] FCAFC 53 (10 July 2009) a Full Court considered how and when a student breached the attendance requirements in condition 8202 of a student visa when the breach of the condition only arose when the Minister “certified” that there was a breach and this was after any breach had occurred.

Australian Crime Commission – Notices to produce – Relevant matters – Medical records of Aboriginal children

In *ACC v NTD8* [2009] FCAFC 86 (10 July 2009) a single justice had set aside a decision of an ACC examiner to issue notices requiring production of medical records of Aboriginal children as not taking

into account a primary relevant consideration of the power, being the best interests of the children. A Full Court allowed an appeal by the ACC. It reviewed authority as to when considerations must be taken into account and observed that on occasions the exercise of statutory coercive powers may act to the detriment of the persons intended to be assisted.

Income tax – Power of Commissioner to extend time

In *MW McIntosh Pty Ltd v C of T* [2009] FCAFC 88 (28 July 2009) a Full Court concluded the statutory scheme did not authorise the Commissioner to extend under s388-55 of the Taxation Administration Act 1953 (Cth) the time under s703-50(3) for the giving of a form to make a choice to consolidate a consolidatable group.

Corporations – Extraterritorial service of summons for examination

In *Waller v Freehills* [2009] FCAFC 89 (31 July 2009) Freehills, as a creditor of a corporation and having been granted “eligible person” status by ASIC, was issued a summons under s596B Corporations Act 2001 (Cth) to examine W who was an Australian citizen resident in Monaco. Freehills was then granted leave to serve the summons out of the jurisdiction and by substituted service. W’s appeal against this was refused. The Full Court held the orders were authorised by the Corporations Act and Rules, and an examination summons was an

originating process for FCR O.8.

Veterans’ compensation – When death war-caused

In *Collins v Repatriation Commission* [2009] FCAFC 90 (5 August 2009) a Full Court considered whether a death that occurs when it does by operation of a war-caused condition acting on a non war-caused condition is a death compensable under the Veterans’ Entitlements Act 1986 (Cth).

Corporations – Disqualification from managing corporation

In *Murdaca v ASIC* [2009] FCAFC 92 (10 August 2009) a Full Court concluded the AAT did not deny the appellant natural justice. It also considered whether in considering disqualification of a person from managing a corporation ASIC was limited to the allegations set out in the show cause notice under s206F(1)(b) of the Corporations Act 2001 or whether this notice was merely a precondition to the exercise of the power. The Court held ASIC was not constrained to the show cause notice.

Trade practices – Loss – Whether misleading conduct must be sole cause of loss

In *PE Kafka Pty Ltd v The Hermitage Hotel Pty Ltd* [2009] FCAFC 94 (13 August 2009) a Full Court restated that misleading and deceptive conduct contrary to s52 etc. of the Trade Practices Act 1974 (Cth) does not have to be the sole cause of loss to found an action for damages and summarised the method for determining damages. (