

# Federal Court

## judgments:

January - March 2010



### INCOME TAX

- **Whether misappropriated money included in assessable income**

In *Lean v C of T* [2010] FCAFC 1; 28 Jan 2010 a Full Court concluded that a taxpayer was not entitled to a deduction for money that was received on his behalf in Hong Kong, placed for investment and misappropriated because in the circumstances the money was never part of his assessable income.

### AUSTRALIAN CRIME COMMISSION

- **When interests of subject must be considered in issuing notice for examination**
- **Health records of children**
- **Duty to enquire**

In *C Incorporated v ACC* [2010] FCAFC 4; 29 Jan 2010 a primary judge set aside a notice under the *ACC Act 2002 (Cth)* to an Aboriginal health service to produce medical records of child patients to the ACC but affirmed it in relation to adult patients. Both the service and the ACC appealed. The Full Court allowed the appeal by the ACC. It concluded the ACC examiner who issued the notice had not been shown to have failed to take account the effect of compliance on health records or the cost of compliance on the service. Consideration as to whether the examiner was under any duty to enquire or whether that duty had been discharged.

### NATIVE TITLE

- **Application by non-claimant for order that Native Title does not exist**

In *Worimi v Worimi Local Aboriginal Land Council* [2010] FCAFC 3; 2 Feb 2010 a Full Court considered what evidence was required to prove that no native title rights existed to land at time of application for an order to this effect.

### CONSTITUTIONAL LAW

- **Judicial power**
- **Matters not justiciable**
- **Act of state doctrine**
- **Whether legality acts of foreign officials in their country can be determined in Australian court**

In *Habib v C of A* [2010] FCAFC 12; 25 Feb 2010 H sought damages for the involvement of Australian officials in his torture in Pakistan, Egypt and Guantanamo Bay. He alleged the presence or conduct of the officials abetted and condoned his torture by foreign nationals. The respondents submitted the claim was not justiciable as it would require an Australian Court to determine whether agents of other countries had acted unlawfully in their countries before the Australian officials could be complicit and this was contrary to the American "act of state doctrine". The court concluded that the act of state doctrine was not applicable and the claims were justiciable.

### ADMIRALTY

- **When claim "in rem" allowable - when owners are identical**

In *The ship "Gem of Safaga" v Euroceania (UK) Ltd* [2010] FCAFC

14; 26 Feb 2010 a Full Court allowed an appeal against a finding that owners of the claimed ship ("Gem of Safarga") and the surrogate ones ("JBU Onyx" and "JBU Opal") were the same so the owners were relevant persons for s 19(a) of the *Admiralty Act 1988 (Cth)* and an action in rem allowed.

### AUSTRALIAN CRIME COMMISSION

- **Failure to distinguish between special operation and special investigation**

In *CG v Australian Crime Commission* [2010] FCAFC 15; 26 Feb 2010 a Full Court allowed an appeal where the ACC examiner who issued the summons for examination appeared to have misunderstood whether he was issuing it to advance a special operation or a special investigation under the *Australian Crime Commission Act 2002 (Cth)*.

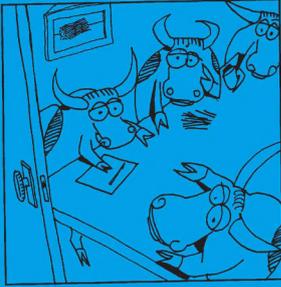
### EQUITY

- **Confidentiality**
- **Deed defining confidential information**
- **Whether common law concepts excluded**

In *Optus Networks Pty Ltd v Telstra Corporation Ltd* [2010] FCAFC 21; 4 Mar 2010 a Full Court concluded that an equitable duty of confidence can arise where there is a contractual duty of confidence and the primary judge had erred in concluding the specification of the confidential information in a deed between the parties excluded common law obligations.

### CORPORATIONS

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## Chief Who?

A Territory barrister recently made a telephone call to the Northern Territory Government switch board and asked to be put through to the Associate to the Chief Justice of the Supreme Court ... only for the operator to ask "and who is the Chief Justice, do you know his name?"... said barrister had a good giggle!

## You be the Judge!

Citizens arrest took on a new twist recently when a middle aged tourist to the Northern Territory claimed to be a judge in a frantic attempt to prevent another tourist from being hit over the head with an enormous rock. The businessman's cry of "stop what you're doing, I'm a judge" had the desired affect with the startled perpetrator who promptly dropped the rock and fled the scene.

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## NOTICEBOARD

### Federal Court judgments: January - March 2010

- **Director's duties**
- **Payment of bonus**

In *Ralph v Diakyne Pty Ltd* [2010] FCAFC 18; 4 Mar 2010 a Full Court dismissed an appeal from the findings of the primary judge that payment of a bonus was not authorised by the service contract and the decision was a breach of the duties imposed by ss 180, 181 and 182 of the *Corporations Act 2001 (Cth)*.

#### INDUSTRIAL LAW

- **Jurisdiction of Industrial Court of NSW**
- **Whether employer was a "constitutional corporation"**

#### or "trading corporation"

In *Bankstown Handicapped Children's Centre Assn Inc v Hillman* [2010] FCAFC 11; 25 Feb 2010 H sought from the NSW Industrial Relations Court, inter alia, a declaration that his contract of employment was unfair. The employer contended it was a constitutional corporation and the NSWIR Court had no jurisdiction. The NSWIR Court held it had jurisdiction and the employer appealed to the Federal Court. The Full Court of the Federal Court held s 853(1) of the *Workplace Relations Act 1966 (Cth)* gave it jurisdiction to hear the appeal.

The Full Court considered the activities of the employer in detail and its relationship to the State Government Department of Child Services ("DOCS") in the provision of child care services. The Full Court concluded the employer was in a commercial relationship with DOCS in providing services rather than part of the State providing welfare services. The Full Court held the employer was thus a constitutional corporation at the time H commenced the proceedings and the NSWIR Court had no jurisdiction. Appeal allowed. (