

# High Court

judgments:

May 2010



## EXTRADITION

- **extradition objection**
- **political opinion**
- **whether person to be extradited would suffer prejudice by reason of political opinion**

In *Republic of Croatia v Snedden* [2010] HCA 14 (19 May 2010) the High Court concluded that the circumstance that S had served in the Serbian Army and was thus ineligible for favourable treatment as a returned soldier of the Croatian Army in the courts of Croatia did not mean he would suffer any detriment on extradition to Croatia by reason of his political views within s7(c) of the *Extradition Act* 1988 (Cth). The Court concluded the evidence did not show that Croatian courts applied military service as a mitigating factor by reason of political opinions: French CJ; Gummow J with Hayne, Crennan, Kiefel and Bell JJ jointly; sim Heydon J. Appeal against contrary decision of the Full Court of the Federal Court allowed.

## TRADE MARKS

- **“use” and “non-use” of a trade mark”**

In *E & J Gallo Winery v Lion Nathan*

*Australia Pty Ltd* [2010] HCA 15 (19 May 2010) the High Court considered what was necessary to constitute “use” of a trade mark. It concluded there was evidence that the appellant had used its trade mark in the relevant time and allowed an appeal from the contrary conclusion of the Full Court of the Federal Court: French CJ, Gummow, Crennan, Bell JJ jointly; Heydon J sim. Appeal allowed; matter remitted to primary judge for assessment of damages.

## Federal Court judgments:

### CONTRACT

- **terms**
- **agency agreement for travel agents**
- **unilateral variation by airline**

In *Leonie’s Travel Pty Ltd v Qantas Airways Ltd* [2010] FCAFC 37 (4 May 2010) L was a travel agent who purchased tickets

from airlines including QANTAS as regulated by the International Air Transport Association (IATA) rules incorporated into the agency agreement. A Full Court concluded the terms of the agreement did not permit the airline to unilaterally change the basis on which commission was calculated to disregard that part of the cost of each ticket that represented a government levy on fuel. The Court observed that international agreements such as those created by IATA should be construed where possible uniformly across the world. It differed from the primary judge and found the English decision of *Association of British Travel Agents Ltd v British Airways* [2000] 2 All ER (Comm) 204 was not distinguishable and applied it. Appeal allowed.

### CONTRACT

- **construction**
- **breach of fiduciary duty by party to contract**

In *Bacnet Pty Ltd v Lift Capital Partners Pty Ltd* [2010] FCAFC 36 (4 May 2010) a Full Court considered when promises in an agreement were concurrent or independent. It also restated that



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