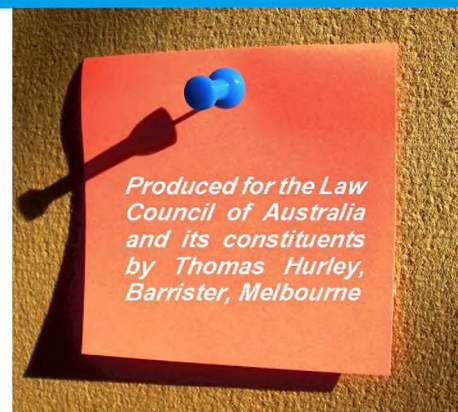


High Court judgments:

July - August 2010



BANKRUPTCY

- **Effect of termination of deed of arrangement under Part X of Bankruptcy Act on assigned actions**

In *CGU Insurance v One. Tel Ltd (In Liq)* [2010] HCA 26 (4 August 2010) the High Court in a joint judgment concluded termination of a deed under Part X of the *Bankruptcy Act* 1966 (Cth) did not mean the trustee conducting litigation under the deed could not continue the litigation relying on other powers once the deed expired. Appeal against decision of the NSW Court of Appeal allowed.

DEFAMATION

- **Defences**
- **Qualified privilege**
- **Communication by bank that it had not honoured cheque**

In *Aktas v Westpac Banking Corporation* [2010] HCA 25 (4 August 2010) the High Court allowed an appeal from the decision of the primary judge in a defamation action that communication by a banker to the holder of a cheque that it had been dishonoured was a situation of qualified privilege for the purposes of defamation law: French CJ with Gummow and Hayne JJ; contra Heydon J; Kiefel J. Appeal against decision of NSW Court of Appeal allowed.

CONSTITUTIONAL LAW

- **Mining**
- **Ownership of minerals**
- **Gold mixed with copper**

In *Cadia Holdings Pty Ltd v NSW* [2010] HCA 27 (25 August 2010) the High Court concluded the crown prerogative received in Australia

was limited to ownership of gold so that the Minister was required by s284 of the *Mining Act* 1992 (NSW) to repay royalty paid on gold intermingled with copper to the land owner: French CJ; Gummow, Hayne, Heydon, Crennan JJ jointly. Appeal allowed.

PRACTICE

- **Summary judgment**

In *Spencer v C of A* [2010] HCA 28 (1 September 2010) the High Court concluded the Federal Court had erred in summarily dismissing under the *Federal Court of Australia Act* 1976 (Cth) proceedings brought by S alleging state legislation to conserve rural vegetation was invalid as effecting acquisition of property on other than just terms contrary to *Constitution* s51(xxix). Appeal allowed.

Federal Court judgments

AUSTRALIAN CRIME COMMISSION

- **Procedure**

In *Egglisshaw v ACC* [2010] FCAFC 82 (8 July 2010) a Full Court rejected a submission that a summons to appear before the ACC was invalid for requiring attendance before "an" examiner not "the" examiner. It also rejected an argument that a notice to produce was invalid for not specifying to whom the items were to be produced.

CONSTITUTIONAL LAW

- **Destruction of people smuggler's boat**

In *Tran v Commonwealth* [2010] FCAFC 80 (6 July 2010) a Full Court concluded the destruction of a "people smuggler" vessel on the instructions of the CEO of Customs under s185B (4) of the *Customs Act* 1901 (Cth) for being unseaworthy was not an acquisition of property for *Constitution* s51(xxxix).

EVIDENCE

- **Spousal privilege**
- **Enquiry by Australian Crime Commission**
- **Whether spouse required to answer questions incriminating other spouse**

In *Stoddart v Boulton* [2010] FCAFC 89 (15 July 2010) a Full Court held the privilege granted to spouses by the common law not to incriminate the other spouse had not been abrogated by the requirement in s30 of the *Australian Crime Commission Act* 2002 (Cth) that a person who had been summonsed answer questions.

INDUSTRIAL LAW

- **Construction of industrial agreements**

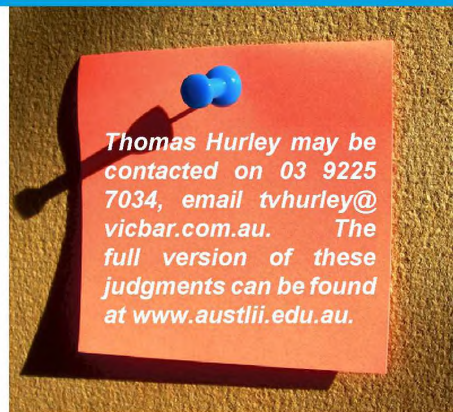
In *CFMEU v John Holland Pty Ltd* [2010] FCAFC 90 (16 July 2010) a Full Court considered how an industrial agreement concerning a building site should be construed and whether it left room for other agreements or covered all workers on a project.

INDUSTRIAL LAW

- **"Stand down"**

In *Coal & Allied services Pty Ltd v MacPherson* [2010] FCAFC 83 (12

Federal Court judgments: July - August 2010



July 2010) a Full Court concluded that the introduction of a new roster at an open cut mine did not constitute "standing down" of workers in breach of the *Workplace Relations Act 1996* (Cth).

WORKERS COMPENSATION (CTH)

- **Benefits**
- **Calculation of "normal weekly earnings" for a period where employment would have terminated**

In *John Holland Group Pty Ltd v Robertson* [2010] FCAFC 88 (15 July 2010) a Full Court considered the operation of s8(10) of the *SRC Act 1988* (Cth) in calculating normal weekly earnings for an injured worker whose employment would have ended in the period.

TAX

- **Luxury car tax**
- **Whether "stretched" Hummer a "car"**

In *Dreamtech International Pty Ltd v C of T* [2010] FCAFC103

(25 August 2010) a Full Court considered whether it would receive on appeal evidence that had been available at earlier times. The Court concluded the AAT had not erred in concluding a stretched Hummer was not a "limousine" and thus not a "car" for the *A New Tax System (Luxury Car Tax) Act 1999* (Cth).

FEDERAL COURT

- **Costs**
- **Award of costs certificate to unsuccessful respondent**

In *MIAC v SZNVW (No 3)* [2010] FCAFC 102 (24 August 2010) a Full Court ordered the unsuccessful respondent in a significant decision under the *Migration Act 1958* (Cth) be awarded a certificate under the *Federal Proceedings (Costs) Act 1981* (Cth).

TRADE PRACTICES

- **Pleading**
- **Competition law**

In *Auskay International Manufacturing and Trade Pty Ltd v Qantas Airways Ltd* [2010]

FCAFC 96 (12 August 2010) a Full Court reviewed how a lessening of competition in an Australian market was to be identified and pleaded.

CORPORATIONS

- **When Product Disclosure Statement required**

In *Keynes v Rural Directions Pty Ltd* [2010] FCAFC 100 (13 August 2010) a Full Court considered whether Ch 7 of the *Corporations Act 2009* (Cth) required a Product Disclosure Statement be issued in relation to contracts for the sale and purchase of grain.

MIGRATION

- **"Right to reside"**

In *SZMWQ v MIAC* [2010] FCAFC 97 (6 August 2010) a Full Court concluded a person had a "right to reside" in a country even though not entitled to participate in the country's social welfare system. The court concluded there was no error in concluding that a gypsy of Czech citizenship was entitled to reside in Czechoslovakia. ●

Manager, Regulatory Services & Professional Standards (temporary)

The Law Society Northern Territory (LSNT) is seeking to appoint a temporary Manager, Regulatory Services & Professional Standards to carry out regulatory functions under the Legal Profession Act.

This is a unique opportunity to make an important and meaningful contribution to the legal profession and the general community. You will be responsible overseeing staff members operating in the trust accounting, licensing and continuing education areas, as well as conducting complaint investigations, providing advice on professional standards and ethics, and working closely with a Committee in handling complaints and ethical queries received by the Society.

Admission to a Supreme Court of Australia is essential and ideally you will have approximately five years legal experience, some litigation experience and a good track record in practice. The role calls for acute sensitivity and excellent communication skills. Full time or part time employment will be considered. An attractive salary up to NTPS P4 level will be offered to the right person. For a job description or to lodge a written application please contact Ms Barbara Bradshaw on ph: 08 89815104 or e-mail bbradshaw@lawsocnt.asn.au

