

COMPULSORY ACQUISITION

- **Compensation**
- **Relevant matters**
- **Increase in value of adjoining land by reason of the works**

In *Springfield Land Corporation (No 2) Pty Ltd v Queensland* [2011] HCA15 (11 May 2011) the High Court considered a landowner whose land was acquired in Queensland for road works was to be compensated. The Court considered how the amount was to be assessed where it accounted for the increase in value of the adjoining land by reason of the works where the adjoining land was owned by the acquiring authority. Appeal dismissed.

COMPETITION LAW

- **Provision of services**
- **Implied term services to be provided with reasonable skill**
- **Australian tourist travelling in Europe on ticket**

purchased in Sydney injured in bus

- **Whether state law limiting liability applied by Trade Practices Act**

In *Insight Vacations v Young* [2011] HCA 16(11 May 2011) the High Court considered how s74(2A) of the *Trade Practices Act* 1974 (Cth) operated. The Court considered whether this provision operated to pick up s5N of the *Civil Liability Act* (NSW) which enabled liability to be limited or excluded for breach of implied warranties in supply of recreational service. The High Court concluded that the state provision was not picked up by reason of ss68A and 68B of the *Trade Practices Act* [26]. The Court also concluded that while the proper law of the contract for travel in Europe was NSW law, the contract was to be performed in Europe: French CJ, Gummow, Hayne, Kiefel, Bell JJ jointly. Appeal by travel agent against conclusion of NSW Court of Appeal

that it was liable for damages for personal injury dismissed.

CRIMINAL LAW

- **Securities crimes**
- **Creating false market in securities**
- **Defence that purpose of trades was not to create false market**

In *Braysich v Q* [2011] HCA 14 (11 May 2011) the High Court was divided on when a trial judge was required to leave to a jury a defence to the charge in s998(1) of the *Corporations Act* 2001 (Cth) of trading in securities to create a false market that the trades had an innocent purpose. The Court considered who bore the onus of proving the charge or negating the defence and whether the giving of character evidence for the accused required the matter to be considered by the jury. Appeal allowed: French CJ with Crennan and Kiefel JJ; contra Heydon with Bell JJ. ●

Federal Court judgments

COMPETITION LAW

- **Third party access to mining infrastructure facilities**

In *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2011] FCAFC 58(4 May 2011) a Full Court considered the operation of Part IIIA of the *Competition and Consumer Act* 2010 (Cth) (formerly the *Trade Practices Act* 1974 (Cth)) in relation to applications by Fortescue Metals Pty Ltd and its subsidiaries for declarations under that Act affecting access to ore railways in the Pilbara owned and operated by BHP Pty Ltd and Rio Tinto Ltd. The Court considered the nature of the appeal to the Federal Court given by s44H of the *Competition and Consumer Act*,

the nature of the decision made by the National [AUSTRALIAN] Competition Tribunal as a specialist tribunal, the criterion in s44H(4) by which the application to it was to be determined and whether the NCC [ACT] had denied procedural fairness. Appeal by Rio Tinto allowed; appeal by Fortescue refused.

MIGRATION

- **Whether failure of MRT to call witnesses**
- **Credibility findings made before assessing evidence in its reasons [SHIFT “in its reasons” to after “findings made”?]**
- **Whether jurisdictional error**

In *Chen v MIC* [2011] FCAFC 56(21 April 2011) a Full Court dismissed an appeal where it was contended the Migration Review Tribunal had committed a jurisdictional error by not calling witnesses as requested and assessing credibility before assessing the evidence in question.

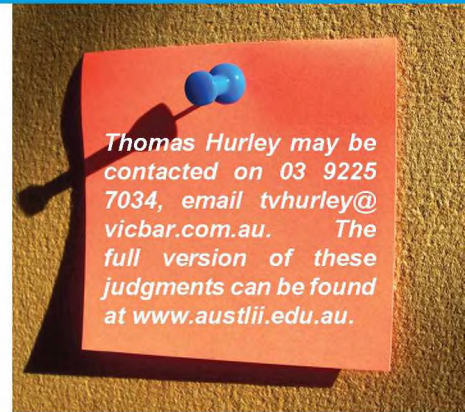
DAMAGES

- **Loss of opportunity**

In *Castel Electronics Pty Ltd v Toshiba Singapore Pte Ltd* [2011] FCAFC 55(20 April 2011) a Full Court considered whether the trial judge erred by failing to consider as an element of damages the loss of the chance of the applicant to pursue a distributorship agreement as a result of sale of defective

Federal Court

judgments:
April - May 2011



goods and the effect this had on the purchasing business.

INSURANCE

• *Duty of disclosure*

In *Sagacious Legal Pty Ltd v Westfarmers [WESFARMERS] General Insurance Ltd* [2011] FCAFC 53(13 April 2011) a Full Court considered whether an insured had failed to disclose a driver's licence cancellation and had thereby breached any general duty of disclosure or s28(3) of the *Insurance Act 1984* (Cth).

COSTS

• *Power to award costs against a non-party*

In *MG Corrosion Consultants Pty Ltd v Vinciguerra (No 2)* [2011] FCAFC 48(4 April 2011) a Full Court reviewed authority as to when s242 of the *Corporations Act 2001* (Cth) authorised a person standing behind a corporation in litigation to be ordered to pay the costs of a party opposing the corporation.

ADMINISTRATIVE LAW

- *Discretionary decision*
- *Unreasonableness*
- *Difference between House*

v Kerror and Wednesbury unreasonableness

In *Coal & Allied Mining Services Pty Ltd v Lawler* [2011] FCAFC 54(19 April 2011) a Full Court concluded the Full Bench of Fair Work Australia did not err when granting leave to appeal under ss400 and 604(2) of the *Fair Work Act 2009* (Cth) because it accepted the dismissal in question was manifestly harsh. The Full Court rejected a submission that in assessing the "public interest" for s604(2) of the *Fair Work Act* the Full Bench had misunderstood its role. The Full Court observed the observations of Mason CJ in *Minister for Aboriginal Affairs v Peko-Wallsend* [1986] HCA 40 concerning *Wednesbury* unreasonableness were made [WHEN?] reviewing an administrative decision, not one of a body required to act in a judicial manner as was Fair Work Australia. The Full Court found the Full Bench had not made a jurisdictional error. Application for constitutional writ dismissed.

Private international law

- *Immunity of airline owned by foreign state*

In *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* [2011] FCAFC 52(19 April 2011) a Full Court dismissed an appeal from the conclusion of the primary judge that Garuda Airlines and Malaysian Airline Systems Berhad were not protected by the *Foreign States Immunities Act 1986* (Cth) from proceedings alleging price fixing in contravention of s45 of the *Trade Practices Act 1974* (Cth). Leave to appeal granted but appeal dismissed.

Constitutional law

- *Inconsistency*
- *Whether commonwealth laws regulating low flying crop dusting aircraft cover [COVERING? or OVER?] field to exclude state OH&S laws*

In *Heli-Aust Pty Ltd v Cahill* [2011] FCAFC 62(11 May 2011) a Full Court concluded commonwealth air safety provisions were comprehensive and exclusive and excluded rather than supplemented NSW occupational health and safety legislation. ●

Robing Room Lockers

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