



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Plaintiff M70/2011 v Minister for Immigration and Citizenship - administrative law - s198A(3) *Migration Act* 1958 (Cth) - Malaysia must provide relevant protections as a matter of legal obligation, not merely as a matter of practical reality - Minister's declaration invalid - injunctions made that the plaintiffs not be transferred to Malaysia (I, B, C)

Australian Energy Regulator v Stanwell Corporation Ltd - National Electricity Rules - application dismissed. (B, C)

Workers Compensation Nominal Insurer v Gary Luke by his Tutor Matthew Charles Luke - ss151G(1) & 151IA *Workers Compensation Act* 1987 (NSW) - funds management. (I)

Vitaz v Westform (NSW) Pty Ltd - *Workplace Injury Management & Workers Compensation Act* 1998 (NSW) - appeal dismissed. (I)

Aalders v PA Putney Finance Australia Pty Ltd (formerly Anzax Finance Australia Pty Ltd) & Ors - Contracts - questions of construction of Terms of Settlement. (I, B, C)

De Agostino v Leatch & Anor - *Transport Accident Act* 1986 (Vic) - 'serious injury' - leave to appeal refused. (I)



Candibon Pty Ltd v Minister for Planning & Anor - Torts - *Land Acquisition & Compensation Act* 1986 (Vic) - *Limitation of Actions Act* 1955 (Vic) - proceeding dismissed. (I, C)

Rodin v Voyler Pty Ltd - Contracts - real estate agents - when 'Exclusive Authority Period' in Exclusive Sale Authorities commenced to run. (I, B, C)

S E Vineyard Finance Pty Ltd (recs & mgrs apptd) v Casey - *s73 Trade Practices Act* 1974 (Cth) - prospectus for establishment of vineyard. (I, B)

Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors - Discovery of documents - electronic discovery. (I, B, C)

Thackray & Ors v Gunns Plantations Ltd & Ors (No 2) - Receivers - indemnification - receivers proposing to assign their entitlement to indemnities & liens to defendant. (B)

Seabright Insurance Company (pl./app.) v United States Airways, Inc. (def./resp.); Anthony Verdon Lujan (Intervener & app.) – United States decision - negligence - liability of independent contractor's hirer for workplace injuries to contractor's employees - summary judgment. (I)

Summaries with links (5 minute read)

Thursday 01 September 2011

Plaintiff M70/2011 v Minister for Immigration and Citizenship [2011] HCA 32

High Court of Australia

French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel, and Bell JJ

Administrative law - the plaintiffs, citizens of Afghanistan, arrived by boat on Christmas Island, without Australian visas, and claimed to be refugees - the Government sought to deal with plaintiffs under a new regime, under which the plaintiffs would be transferred to Malaysia, before assessment of their refugee claims - s198A(1) of the *Migration Act* 1958 (Cth) empowers the Government to remove an offshore entry person from Australia to another country if the Minister for Immigration has made a declaration about that country under s198A(3) - a declaration under



s198A(3) is a declaration that a specific country provides certain protections to people claiming to be refugees - the Minister had made a declaration under s198A(3) naming Malaysia as a country that provided the relevant protections - held (Heydon J dissenting): s198A(3), on its proper construction, required the Minister to be satisfied that Malaysia provided, as a matter of legal obligation, the relevant protections - s198A(3), on its proper construction, did not empower the Minister to make a declaration if the Minister is merely satisfied that Malaysia provides the relevant protections as a matter of practical reality - the Minister, in this case, had only been satisfied, and could only have been satisfied, that Malaysia provided the relevant protections as a matter of practical reality - the Minister's declaration was therefore not empowered under s198A(3), and was therefore invalid - s198A(1) therefore did not permit the transfer of the plaintiffs to Malaysia - injunctions made that the plaintiffs not be transferred to Malaysia.

[Plaintiff M70/2011](#) (I, B, C)

Australian Energy Regulator v Stanwell Corporation Ltd [2011] FCA 991

Federal Court of Australia

Dowsett J

National Electricity Rules cl. 3.8.22A - whether respondent's traders made relevant rebids "in good faith" - construction to be given to expression "material conditions & circumstances" in cl. 3.8.22A(b) - application dismissed.

[Australian Energy Regulator](#) (B, C)

Workers Compensation Nominal Insurer v Gary Luke by his Tutor Matthew Charles Luke [2011] NSWCA 251

Court of Appeal of New South Wales

McCull & Campbell JJA & Handley AJA

ss151G(1) & 151IA *Workers Compensation Act* 1987 (NSW) - respondent injured in 2004 while working as roof tiler for uninsured employer - appeal from District Court decision awarding damages for funds management to respondent.

[Workers](#) (I)

[Luke](#) - decision District Court of New South Wales 18 June 2010 - award for costs of fund management \$108,280 - costs - interest - judgment for plaintiff in sum of \$538,483.10;

[Luke](#) - decision District Court of New South Wales 17 February 2010 reported at 10 DCLR (NSW) 170 - liability not in issue - plaintiff's residual income earning capacity - at par 41, a finding that s151G *Workers Compensation Act* 1987 extends also to damages for loss of capacity to manage a fund.

**Vitaz v Westform (NSW) Pty Ltd [2011] NSWCA 254**

Court of Appeal of New South Wales

McCull & Basten JJA & Handley AJA

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - injury to back & left shoulder when lifting heavy material - application of statutory scheme to appeals - appeal dismissed.

[Vitaz \(I\)](#)

[Vitaz](#) - decision 22 June 2010: see 'Benchmark' I & IBC Thursday 24 June 2010 - *Workplace Injury Management & Workers Compensation Act 1998 (NSW)* - plaintiff seeking prerogative relief with respect to decisions by Approved Medical Specialist & Appeal Panel - whether error of law or jurisdictional error by approved medical specialist in approach to s323 of Act - whether failure by approved medical specialist to give reasons - whether denial of procedural fairness - whether error of law or jurisdictional error by Appeal Panel - no error established - proceedings dismissed - extensive consideration of Australian case law.

Aalders v PA Putney Finance Australia Pty Ltd (formerly Anzax Finance Australia Pty Ltd) & Ors [2011] NSWSC 756

Supreme Court of New South Wales

Ward J

Contracts - separate determination of questions of construction of Terms of Settlement - whether obligation to pay sum of money was a dependent or independent obligation - construction of option to purchase "each" of a number of vehicles - best endeavours clause not amenable to specific performance - claim under indemnity partially upheld - judgment for plaintiff in claim under s73 *Civil Procedure Act 2005 (NSW)* - extensive consideration of United Kingdom & Australian case law.

[Aalders \(I, B, C\)](#)

De Agostino v Leatch & Anor [2011] VSCA 249

Court of Appeal of Victoria

Mandie & Tate JJA & Macaulay AJA

Transport Accident Act 1986 (Vic) - whether increased pain & suffering consequences of 2003 accident sufficient to meet the threshold of a 'serious injury' - leave to appeal refused.

[De Agostino \(I\)](#)

[De Agostino](#) - [De Agostino v Leatch](#) [2009] VCC 1560 - decision County Court of Victoria 30 November 2009 - serious injury application - accident on 9 March 2003 plaintiff's fourth transport accident - three previous accidents occurred on 21 September 1988, 10 August 1992 & 28 November 1993 - aggravation of a pre-existing cervical spine



condition - s93(4)(d) *Transport Accident Act 1986* (Vic) - leave to bring proceedings to recover damages with respect to transport accident on 9 March 2003 not granted.

Candibon Pty Ltd v Minister for Planning & Anor [2011] VSC 415

Supreme Court of Victoria

Emerton J

Torts - *Land Acquisition & Compensation Act 1986* (Vic) - sale in 1998 of parcel of rural land just south of the township of Pakenham on eastern outskirts of Melbourne to Minister for Planning - plaintiff was the owner of the land, which formed part of a grazing property - plaintiff seeking to set aside sale, or to receive an accounting &/or compensation for having sold the land to the Minister - claim in deceit dismissed - *Limitation of Actions Act 1955* (Vic) - claim in negligence statute-barred - claim for relief for unconscionable conduct failed - question of whether plaintiff would have been entitled to damages on basis of 'true value' of the land as opposed to market value considered - proceeding dismissed.

[Candibon](#) (I, C)

Rodin v Voyler Pty Ltd [2011] VSC 414

Supreme Court of Victoria

Emerton J

Contracts - appeal from a decision of Magistrates' Court concerning claim brought by respondent real estate agent against appellant property developer for monies owing - seven contracts entitled 'Exclusive Sale Authority' pursuant to which respondent engaged by appellant to sell seven units on her behalf in return for commission - issue as to when 'Exclusive Authority Period' in Exclusive Sale Authorities commenced to run - s47A *Estate Agents Act 1980* (Vic) - Magistrate correct in holding that Exclusive Authority Period commenced on the date of signing rather than on date of grant of Certificates of Occupancy.

[Rodin](#) (I, B, C)

S E Vineyard Finance Pty Ltd (recs & mgrs apptd) v Casey [2011] VSC 403

Supreme Court of Victoria

Habersberger J

s73 *Trade Practices Act 1974* (Cth) - appeals from Magistrates' Court - whether there were misleading & deceptive representations in prospectus for establishment of vineyard - whether claims outside limitation period - whether fiduciary relationship existed - whether breach of



fiduciary duty - equitable damages - constructive trust - extensive consideration of United Kingdom, Australian & New Zealand case law.

[S E Vineyard](#) (I, B)

Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors [2011] VSC 401

Supreme Court of Victoria

Zammit AsJ

Discovery of documents - electronic discovery - claim in negligence - *Wrongs Act* 1958 (Vic) - plaintiff the named representative in group proceeding - Kilmore East-Kinglake bushfire - pleaded allegations against SPI broadly concern decisions made in relation to design, construction, operation & maintenance of assets of an electricity distribution network established more than forty years ago - "State Parties" third, fourth & fifth defendants: Secretary to Department of Sustainability & Environment (DSE), Country Fire Authority (CFA) & State of Victoria - State Parties & plaintiff's applications for discovery allowed - application by second defendant's Utilities Services Corporation Limited [t/a Utility Asset Management ("UAM")] dismissed.

[Matthews](#) (I, B, C)

Thackray & Ors v Gunns Plantations Ltd & Ors (No 2) [2011] VSC 417

Supreme Court of Victoria

Davies J

Receivers - indemnification - receivers proposing to assign their entitlement to indemnities & liens to defendant - rights to an indemnity secured by a lien arising from salvage principles are assignable - declarations sought with respect to assignment made.

[Thackray](#) (B)

[Thackray](#) - decision 11 August 2011: see 'Benchmark' B & IBC Wednesday 17 August 2011 - receivers - application by receivers to establish their entitlement to be indemnified out of scheme property of ten managed investment schemes, secured by equitable lien upon the lienable property, for their remuneration for work performed, & expenses reasonably incurred, in taking steps for the care, protection, preservation & realisation of the assets & property of the 1997 to 2006 schemes - "salvage" principle - equitable allowance principle in [Re Berkeley Applegate \(Investment Consultants\) Ltd \(No. 1\)](#) (1989) Ch. 32 applied - prima facie claim for an indemnity with respect to the remuneration, costs and expenses referable to each scheme established;

[Universal Distributing](#) - decision High Court of Australia 14 February 1933



From the United States ...

Seabright Insurance Company (pl./app.) v U.S. Airways, Inc. (def./resp.); Anthony Verdon Lujan (Intervener & app.), S182508

Supreme Court of California

Cantil-Sakauye CJ, Kennard , Baxter , Chin , Corrigan , Johnson & Werdegar JJ

Negligence - duty of care - liability of independent contractor's hirer for workplace injuries to contractor's employees - whether United States Airways could & did delegate to independent contractor any duty it owed to independent contractor's employees to comply with safety requirements - San Francisco International Airport the actual owner of conveyor to move luggage, but defendant/respondent United States Airways uses it under a permit & has responsibility for maintenance - United States Airways hired independent contractor to maintain & repair conveyor; airline neither directed nor had its employee's participate - conveyor lacked certain safety guards required by applicable regulations - Anthony Verdon Lujan, an employee of independent contractor injured when his arm got caught in moving parts of conveyor - independent contractor's workers' compensation insurer paid benefits, then sued United States Airways - United States Airways sought summary judgment - Court of Appeal had erred in reversing the trial court's grant of summary judgment for defendant.

[Seabright \(I\)](#)

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