

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commissioner of Taxation v White - Income Tax - employee incentive share trust plan - "income" - appeal allowed - cross-appeal dismissed (B)

Rafferty v Time 2000 West Pty Ltd (No 4) - ss51AD, 75B(1)(c) & 87 *Trade Practices Act 1974* (Cth) - Franchising Code of Conduct, the Schedule to the *Trade Practices (Industry Codes-Franchising) Regulations 1998* (Cth) - circumstances in which a person may be guilty of misleading or deceptive conduct in the absence of a positive representation - "knowingly concerned in" - "party to" (I, B, C)

Gorczynski v W&FT Osmo Pty Ltd - Insurance - joinder - statutory charge on insurance money - appeal dismissed (I, C)

Modena Imports Pty Ltd (in liq), In the matter of; Leveraged Capital Pty Ltd (R&M app) (in liq) v Modena Imports Pty Ltd (in liq) - *Corporations Act 2001* (Cth) - whether liquidation should be terminated & Deed of Company Arrangement given effect (B)

American International Assurance Company (Australia) Ltd v Skewes - Salary continuance insurance policy - "dispute or claim related to a personal injury" - held that jurisdiction not excluded - appeal dismissed (I)

Logan as tutor for Logan v Logan - Personal injuries - motor accident - infant - assessment of damages (I)

Cazazure Pty Ltd v Murrumbidgee Estate Developments - Negligence - contracts - trade practices - development & subdivision - whether defendants made representations &, if so, whether representations misleading or deceptive - judgment for defendants - judgment for first defendant/cross-claimant against plaintiff/cross-defendant - "in a timely manner notwithstanding delays" (I, B, C)

Summaries with links (5 minute read)

Friday 16 July 2010

Commissioner of Taxation v White [2010] FCA 730

Federal Court of Australia

Gordon J (in Melbourne)

Income Tax Assessment Act 1936 (Cth) - *Income Tax Assessment Act 1997* (Cth) - whether error of law by Administrative Appeals Tribunal - tooling engineering business - employee incentive share trust plan - "income" - appeal allowed - cross-appeal dismissed.

[White](#) (B)

Rafferty v Time 2000 West Pty Ltd (No 4) [2010] FCA 725

Federal Court of Australia

Besanko J (in Adelaide)

ss51AD & 87 *Trade Practices Act 1974* (Cth) - business venture involving sale of Modular Accommodation Units - Heads of Agreement ('HOA') - Joint Venture & Shareholders' Agreement - Rights Agreement ('RA') - Franchising Code of Conduct, the Schedule to the *Trade Practices (Industry Codes-Franchising) Regulations 1998* (Cth) - construction of policies & procedures provision in HOA & RA - *Fair Trading Act 1999* (Vic) - circumstances in which a person may be guilty of misleading or deceptive conduct in the absence of a positive representation - level of involvement required in order to establish that a party was "knowingly concerned in" or "party to" a contravention within s75B(1)(c) - comprehensive review of legislation & case law.

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

Gorczynski v W&FT Osmo Pty Ltd [2010] NSWCA 163

Court of Appeal of New South Wales

Giles, Tobias & McColl JJA

Insurance - joinder - for decision appealed from, see 'Benchmark' I & IBC Tuesday 28 July 2009 & link below - statutory charge on insurance money - applicant had sought leave to commence proceedings against insurer to enforce charge - primary judge had dismissed application for leave - s6 *Law Reform (Miscellaneous Provisions) Act 1946* - applicant's claim against insured statute-barred - appeal dismissed.

[Gorczynski \(I, C\)](#)

[Gorczynski](#) - decision 24 July 2009 - professional indemnity insurance - interpretation of s6(4) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) & s54(1) *Insurance Contracts Act 1984* (Cth) - application to join insurance company as a party to proceedings - plaintiff owner of Annandale property - a neighbour had engaged defendant to prepare reports & certificates in relation to building work for submission to Council - default judgment entered in District Court - matter stood over for assessment of damages - matter transferred to Supreme Court - defendant insured had failed, during any period of cover, to notify insurance company of any fact or circumstance that might give rise to a claim against it - claim not within policy - no application of s54(1) *Insurance Contracts Act 1984* - application dismissed - very detailed analysis of legislation - detailed consideration of text & case law including *FAI General Insurance Co Ltd v Australian Hospital Care Pty Ltd* (2001) 204 CLR 641.

[FAI Insurance](#) - High Court decision 27 June 2001

Modena Imports Pty Ltd (in liq), In the matter of; Leveraged Capital Pty Ltd (R&M app) (in liq) v Modena Imports Pty Ltd (in liq) [2010] NSWSC 739

Supreme Court of New South Wales

Palmer J

Corporations Act 2001 (Cth) - whether liquidation should be terminated & Deed of Company Arrangement given effect - termination of liquidation would be contrary to public interest & commercial morality.

[Modena Imports](#) (B)

American International Assurance Company (Australia) Ltd v Skewes [2010] VSC 307

Supreme Court of Victoria

Cavanough J

Salary continuance insurance policy - jurisdiction of Victorian Civil & Administrative Tribunal under Fair Trading Act 1999 (Vic) - whether disability claim under policy excluded as a "dispute or claim related to a personal injury" - held that jurisdiction not excluded - appeal dismissed.

[American International Assurance Company \(Australia\)](#) (I)

In the District Court of New South Wales...

Logan as tutor for Logan v Logan [2010] NSWDC 128

District Court of New South Wales

Sidis DCJ

Personal injuries - motor accident - infant - liability admitted - assessment of damages - future income earning capacity - judgment for plaintiff in sum of \$362,525.

[Logan as tutor for Logan \(I\)](#)

Cazazure Pty Ltd v Murrumbidgee Estate Developments [2010] NSWDC 142

District Court of New South Wales

Gibson DCJ

Negligence - contracts - *Fair Trading Act 1984 (NSW)* - *Trade Practices Act 1974 (Cth)* - "turnkey" development & subdivision at Griffith - whether oral promises to complete development by a specific date were made &, if so, whether they formed part of contract - consideration of liability in tort where contractual arrangement exists between private parties in commercial context - whether defendants made representations &, if so, whether representations misleading or deceptive - judgment for defendants - judgment for first defendant/cross-claimant against plaintiff/cross-defendant in sum of \$70,881.04, together with pre- & post-judgment interest - "in a timely manner notwithstanding delays" - interesting & detailed consideration of U.K. & Australian case law.

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

In the news...

Superannuation - The Cooper Review

Review into the governance, efficiency, structure & operation of Australia's superannuation system.

[Government releases Cooper Review into superannuation - All News...](#) (B)

Building & Construction - Livable Housing Design standards

The voluntary Livable Housing Design guidelines - aspirational target that all new homes will be built to disability-friendly Livable Housing Design standards by 2020.

[Promoting livable housing design in Australia - The Hon Bill...](#) (C)

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