

## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

#### Executive Summary (1 minute read)

**Commissioner of Taxation v Gloxinia Investments (Trustee)** - *A New Tax System (Goods and Services Tax) Act 1999* (Cth) - application for declaratory relief - development of site at Double Bay - Strata Lot Leases properly characterized as a supply by way of long-term leases - appeal dismissed (B, C)

**Lanepoint Enterprises Pty Ltd (Receivers & Managers app'd) v Australian Securities & Investments Commission** - Application to wind up company - whether appropriate to determine disputed debt in course of winding-up application - factors relevant to exercise of discretion - by majority, appeal allowed (B, C)

**St Andrew's Life Insurance Pty Ltd, the application of St Andrew's Life Insurance Pty Ltd and The Colonial Mutual Life Assurance Society Ltd** - *Life Insurance Act 1995* (Cth) - proposed scheme under Part 9 for transfer & amalgamation of part of life insurance business (I, B)

**Cooperative Bulk Handling Ltd v Commissioner of Taxation** - *Income Tax Assessment Act 1997* (Cth) - application for private ruling to exempt taxpayer from income tax pursuant to s50-40 - "Australian agricultural resources" - "promoting the development of" (B)

**Huseyin v Qantas Airways Ltd & Anor** - Personal injuries - assessment of damages - plaintiff struck on head by metal roller shutter door when being processed to board a flight to Brisbane for work-related purposes - verdict in sum of \$2,169,369.56 (I)

**Permanent Custodians Ltd & Anor v King and Ors** - Professional negligence - apportionment - *Civil Liability Act 2002* (NSW) Part IV (I, B, C)

**Pfizer Australia Pty Ltd v Probiotec Pharma Pty Ltd** - Contracts - defences raised under proportionate liability provisions in Part 4 (ss 34-39) *Civil Liability Act* 2002 (NSW) & equivalent provisions of *Trade Practices Act* 1974 (Cth) - Probiotec's application for leave to amend to plead fraud against AZPA dismissed (I)

**Northey v Bega Valley Shire Council** - Estoppel - application of doctrine to public authorities - matters against which estoppel does not prevail - statutory provisions - *Dividing Fences Act* 1991 (NSW) - *Roads Act* 1993 (NSW) (I, C)

**Oates v Hawkins** - Application to strike out claims alleged to be subject of findings in previous proceedings (B)

**Sheehy v Hobbs (No 2)** - *Personal Injuries Proceedings Act* 2002 (Qld) - disclosure of documents (I, C)

**Rubin v Bank of Queensland Ltd** - Discovery & inspection of documents - plaintiff seeking disclosure of documents relating to another branch of the bank where she was not a customer (I, B)

**Dooley & Ors v Scotney & Ors** - Sale of business - application by plaintiff for interlocutory injunction - contracts containing identical covenants in restraint of trade & confidentiality obligations - "within a 500 kilometre radius..." - balance of convenience favoured the grant of an interlocutory injunction (B)

## Summaries with links (5 minute read)

Thursday 27 May 2010

### **Commissioner of Taxation v Gloxinia Investments (Trustee) [2010] FCAFC 46**

Full Court of the Federal Court of Australia

Dowsett, Kenny & Middleton JJ - Melbourne (in Sydney)

*A New Tax System (Goods and Services Tax) Act* 1999 (Cth) - application for declaratory relief - development of site at Double Bay - for decision appealed from, see 'Benchmark' B, C & IBC

Thursday 18 June 2009 & link below - whether grant of Strata Lot Leases from municipal council to developer considered to be a supply by way of "long-term leases" under s195-1 of GST Act - Strata Lot Leases properly characterized as a supply by way of long-term leases - appeal dismissed - United Kingdom, New Zealand & Australian case law considered.

[Commissioner of Taxation](#) (B, C)

[Gloxinia Investments](#) - decision 12 June 2009 investment property development - GST - applicant a company incorporated under the law of the British Virgin Isles - construction of provisions of Subdivision 40-C of Division 40 of Part 3-1 of Chapter 3 of the Act - whether an assignment of a leasehold of residential premises in an apartment building was an input taxed supply within the meaning of the Act - applicant entitled to declaration that proposed assignments of leases of units or apartments in proposed residential development at Double Bay will be input taxed & accordingly, will not be taxable supplies.

**Lanepoint Enterprises Pty Ltd (Receivers & Managers app'd) v Australian Securities & Investments Commission [2010] FCAFC 49**

Full Court of the Federal Court of Australia

North, Siopis & Buchanan JJ (in Perth)

Application by ASIC to wind up company - Westpoint Group - redevelopment of a site previously used for Regency Motel on Great Eastern Highway at Rivervale WA into a group of strata titled residential units - whether appropriate to determine disputed debt in course of winding-up application - factors relevant to exercise of discretion - for decision appealed from, see 'Benchmark' B, C & IBC & link below - by majority, Buchanan J dissenting, appeal allowed.

[Lanepoint Enterprises](#) (B, C)

[Australian Securities & Investments Commission](#) - decision 14 May 2009 - *Corporations Act* 2001 (Cth) - statutory presumption of insolvency - company had failed to discharge statutory presumption - order made that company be wound up.

**St Andrew's Life Insurance Pty Ltd, the application of St Andrew's Life Insurance Pty Ltd and The Colonial Mutual Life Assurance Society Ltd [2010] FCA 488**

Federal Court of Australia

Jacobson J (in Sydney)

*Life Insurance Act* 1995 (Cth) - proposed scheme under Part 9 for transfer & amalgamation of part of life insurance business - application under s191(5) for dispensation from requirements of s191(2)(c) - Colonial Mutual seeking dispensation from obligation to give approved summary to owners of policies issues by Colonial Mutual - factors relevant to exercise of Court's discretion - dispensation granted.

[St Andrew's Life Insurance](#) (I, B)

**Cooperative Bulk Handling Ltd v Commissioner of Taxation [2010] FCA 508**

Federal Court of Australia

Gilmour J (in Perth)

*Income Tax Assessment Act 1997* (Cth) - application for private ruling to exempt taxpayer from income tax pursuant to s50-40 - statutory interpretation - handling of wheat in bulk - whether taxpayer established for purpose of promoting the development - whether taxpayer carried on for profit or gain of its individual members - "Australian agricultural resources" - "promoting the development of" - extensive consideration of case law from Australia & United Kingdom

[Cooperative Bulk Handling](#) (B)

**Huseyin v Qantas Airways Ltd & Anor [2010] NSWSC 372**

Supreme Court of New South Wales

Fullerton J

Personal injuries - assessment of damages - liability admitted by defendants - agreed in final submissions that such damages as were awarded would be ordered against second defendant only & that second defendant would also assume liability for plaintiff's costs - plaintiff struck on head by metal roller shutter door when being processed to board a flight to Brisbane for work-related purposes - first defendant owner & occupier of premises where plaintiff injured; second defendant responsible for management & control of those premises - fibromyalgia - causation - judgment for plaintiff in sum of

\$ 2,169,369.56.

[Huseyin](#) (I)

**Permanent Custodians Ltd & Anor v King and Ors [2010] NSWSC 509**

Supreme Court of New South Wales

Schmidt J

Professional negligence - apportionment - *Civil Liability Act 2002* (NSW) Part IV - for decision 3 July 2009, see 'Benchmark' Monday 6 July 2009 & link below - late amendment - leave refused - costs - detailed analysis of United Kingdom & Australian case law.

[Permanent Custodians](#) (I, B, C)

[Permanent Custodians](#) - decision 3 July 2009 - professional negligence - solicitor's retainer - *Civil Liability Act 2002* (NSW) - for determination: cross claim brought by registered proprietor of bulk of land at Blakehurst against former solicitor/s - solicitors advising on loan or security documents - conflict of interest - lack of informed consent - failure to advise - solicitor's common practice - foreseeability - causation - damages - alleged breaches of duty established;

[Permanent Custodians](#) - decision 25 February 2010 - Permanent Custodians to be joined to the proceedings between Cross-Claimant & Fourth cross-defendant.

**Pfizer Australia Pty Ltd v Probiotec Pharma Pty Ltd [2010] NSWSC 532**

Supreme Court of New South Wales

Biscoe AJ

Contracts - plaintiff a marketer & supplier of consumer health care products; first defendant Probiotec a manufacturer of pharmaceuticals & non-prescription medicines; second defendant, AZPA Holdings Pty Ltd a supplier of ingredients for pharmaceutical manufacture - Probiotec & AZPA raising defences under proportionate liability provisions in Part 4 (ss34-39) *Civil Liability Act* 2002 (NSW) & equivalent provisions of *Trade Practices Act* 1974 (Cth) - text & case law as to whether statutory proportionate liability regime applies to a claim for breach of a strict contractual performance duty -Probiotec's application for leave to amend to plead fraud against AZPA dismissed.

[Pfizer Australia](#) (I)

**Northey v Bega Valley Shire Council [2010] NSWSC 527**

Supreme Court of New South Wales

Brereton J

Estoppel - application of doctrine to public authorities - road authorities - plaintiff rural property owner and her husband erected fence on Tantawangalo Mountain Road reserve - two Council workers erected the gates & fittings - letter to landowners from Council requesting removal of unauthorised fencing - estoppel in pais - equitable estoppel - matters against which estoppel does not prevail - statutory provisions - *Dividing Fences Act* 1991 (NSW) - *Roads Act* 1993 (NSW) - where by statute Council can consent to erection of structures on a public road but consent is revocable at any time & for any reason - consent cannot be made irrevocable by estoppel - authority of defendant's agent - within reasonable limits, those to whom a party entrusts conduct of negotiations must be treated as having the authority, which, within the course of the negotiations, they purport to exercise - proceedings dismissed - detailed consideration of text & case law from the United Kingdom, New Zealand & Australia.

[Northey](#) (I, C)

**Oates v Hawkins [2010] NSWSC 491**

Supreme Court of New South Wales

Bergin CJ in Eq

Application to strike out claims alleged to be subject of findings in previous proceedings - application to strike out plaintiff's Further Amended Statement of Claim - plaintiff making claims against defendants alleging fraudulent conduct in relation to transactions involving Matrix Group Ltd & FSA International Inc - res judicata - whether plaintiff entitled to bring a claim under s1324 *Corporations Act* 2001 (Cth) - some paragraphs struck out; leave to replead in some cases.

[Oates](#) (B)

**Sheehy v Hobbs (No 2) [2010] QSC 171**

Supreme Court of Queensland

McMeekin J

*Personal Injuries Proceedings Act* 2002 (Qld) - disclosure - where applicant has remedied non-compliance with the Act - whether applicant ought to disclose any information provided by engineer retained to examine subject stairway - obligation to ensure minimisation of potential prejudice to respondent - order for disclosure made.

[Sheehy](#) (I, C)

[Sheehy](#) - decision 9 April 2010: - see 'Benchmark' I & IBC Wednesday 14 April 2010 & link below - *Personal Injuries Proceedings Act* 2002 (Qld) - incomplete quadriplegia as well as other significant injuries- application pursuant to s18(1)(c) - explanation for delay - applicant had failed to provide notice of her claim to respondents within nine months of occurrence of her injury - fall down stairs - incomplete quadriplegia - applicant with limited education & no knowledge of legal matters - legal advice sought in time - person without means - whether significant prejudice to respondents - case law considered as to what constitutes a reasonable excuse for delay- declaration made that applicant had remedied non-compliance in Notice of Claim.

**Rubin v Bank of Queensland Ltd [2010] QSC 175**

Supreme Court of Queensland

Daubney J

Discovery & inspection of documents - disclosure - plaintiff alleging representations made by defendant bank regarding an investment strategy - Storm Financial Ltd - Challenger Fund - plaintiff alleging breach of contract; negligent misrepresentation & seeking relief under various statutes; equitable compensation or an account of profits - plaintiff seeking disclosure of documents relating to another branch of the bank where she was not a customer - whether these



documents directly relevant to an allegation in issue in the pleadings and should therefore be disclosed - case law from the United Kingdom & Australia considered.

[Rubin](#) (I, B)

**Dooley & Ors v Scotney & Ors [2010] QSC 179**

Supreme Court of Queensland

Wilson J

Sale of business - application by plaintiff for interlocutory injunction - first & second plaintiffs & first defendant set up industrial cleaning business based in Townsville - defendants sold their interests in the business to plaintiffs - sale effected by two agreements; a share sale contract & a unit sale contract - contracts contained identical covenants in restraint of trade & confidentiality obligations - restraint is "within a 500 kilometre radius of the City of Townsville for a period of five years or the maximum permitted by law" - validity of restraint not for final determination on application - balance of convenience favoured the grant of an interlocutory injunction.

[Dooley](#) (B)