



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Ltd - Copyright – preliminary point as to whether applicant the owner of copyright in song written about 1934 (I, B, C)

Beckley v Consumer, Trader & Tenancy Tribunal - *Consumer Credit Code* (NSW) - *Consumer, Trader & Tenancy Tribunal Act 2001* (NSW) - Tribunal had dismissed plaintiff's on basis it had no jurisdiction - declaration made that Tribunal had jurisdiction to hear application (I, B, C)

Dura (Australia) Constructions Pty Ltd v the Victorian Managed Insurance Authority & Anor - Insurance – joinder – *Victorian Civil & Administrative Tribunal Act 1998* (Vic) – application for leave to appeal from judge's decision refusing leave to appeal dismissed (I, C)

Elhan & Anor v Saykan & Ors (No 2) - *Supreme Court (General Civil Procedure) Rules 2005* (Vic) – appropriate to adopt report as to fair value of shares (B)

Websyte Corporation Pty Ltd v Virtual Map (Australia) Pty Ltd - Application for interlocutory injunction refused (B)

Alvaro v Temple - *Commercial Arbitration Act 1985* (WA) – arbitration as to nature, terms & application of 'cost-plus' building contract between builder & owners - matter remitted to arbitrator (I, B, C)

Conboy v Williams - Personal injuries – motor accidents - plaintiff in process of overtaking the defendant, & defendant in process of turning right – damages recoverable by plaintiff reduced by forty percent – judgment for plaintiff in sum of \$15,650 (I)



From the District Court of Queensland:

Hayes v Surfers Paradise Rock and Roll Café Pty Ltd & Anor - *Liquor Act 1992 (Qld)* – *Liquor Regulation 2002 (Qld)* – spiking or touting for business (B)

From the United States of America:

Kellermann v McDonough - torts – supervision - wrongful death action by parent of fourteen year old girl who died while staying overnight at home of former classmate – defendants former classmate's parents - plaintiff's daughter killed in car accident (I)

Summaries with links (5 minute read)

Friday 31 July 2009

Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Ltd [2009] FCA 799

Federal Court of Australia

Jacobson J (in Sydney)

Copyright – preliminary point as to whether applicant is the owner of copyright in “Kookaburra Sits in the Old Gum Tree,” a round written & composed in about 1934 by Ms Marion Sinclair - another well known Australian song “Down Under” composed & published in Australia in 1981 – Victorian Girl Guides not a party to proceedings – as between the parties to these proceedings, His Honour ordered that the preliminary question be answered “yes.”

[Larrikin Music Publishing](#) (I, B, C)

Beckley v Consumer, Trader & Tenancy Tribunal [2009] NSWSC 703

Supreme Court of New South Wales

Davies J

Consumer Credit Code (NSW) - *Consumer, Trader & Tenancy Tribunal Act 2001* (NSW) - Tribunal had dismissed plaintiff's on the basis it had no jurisdiction because the contract was not one to which *Consumer Credit Code* applied – held that Tribunal had erred in its ruling as to its jurisdiction – declaration made that Tribunal had jurisdiction to hear application by plaintiff against second defendant & order made that Tribunal hear plaintiff's application – an interesting review of the legislation & case law.

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

Dura (Australia) Constructions Pty Ltd v the Victorian Managed Insurance Authority & Anor [2009] VSCA 171

Court of Appeal of Victoria

Warren CJ; Nettle & Redlich JJA

Insurance – joinder – need for leave to appeal - *Victorian Civil & Administrative Tribunal Act 1998* (Vic) – VCAT Domestic Building List Practice Note - pursuant to s138 *Building Act 1993* (Vic), insurer had issued policy covering defects in construction of development – collapse of FAI - application for leave to appeal from judge's decision refusing leave to appeal dismissed – ‘interim,’ ‘interlocutory.’

[Dura \(Australia\) Constructions](#) (I, C)

Elhan & Anor v Saykan & Ors (No 2) [2009] VSC 306

Supreme Court of Victoria

Hansen J

Supreme Court (General Civil Procedure) Rules 2005 (Vic) - referral of question of fair value of shares to Associate Judge for written report – whether to adopt report – appropriate to adopt report.

[Elhan](#) (B)**Websyte Corporation Pty Ltd v Virtual Map (Australia) Pty Ltd [2009] VSC 310**

Supreme Court of Victoria

Byrne J

Interlocutory injunction – breach of confidence – idea to ensure that particular website is returned on first page of Google search – whether serious issue for trial – application refused.

[Websyte Corporation](#) (B)**Alvaro v Temple [2009] WASC 205**

Supreme Court of Western Australia

Murphy J

Commercial Arbitration Act 1985 (WA) – construction of residential premises in Hamilton Hill - arbitration as to nature, terms & application of 'cost-plus' building contract between builder & owners - setting aside an arbitrator's award – remitter – interim award set aside in part - application for leave to appeal & appeal allowed - matter remitted to arbitrator for reconsideration including provision of reasons - an interesting judgment with detailed analysis of UK & Australian case law.

[Alvaro](#) (I, B, C)**Conboy v Williams [2009] TASSC 53**

Supreme Court of Tasmania

Holt AsJ

Personal injuries – motor accidents - plaintiff was in the process of overtaking the defendant, & defendant was in the process of turning right into Powers Road from Channel Highway - defendant's right-hand indicator was not working – His Honour rejected the plaintiff's evidence that defendant's left-hand indicator lights were activated – finding that plaintiff decided to overtake in circumstances where it was unsafe to do so – damages recoverable by plaintiff reduced by forty percent – judgment for plaintiff in sum of \$15,650.

[Conboy](#) (I)

From the District Court of Queensland...

Hayes v Surfers Paradise Rock and Roll Café Pty Ltd & Anor [2009] QDC 214

District Court of Queensland
Newton DCJ

*Liquor Act 1992 (Qld) – Liquor Regulation 2002 (Qld) – spuiing or touting for business – “touting” was not defined in the Act or regulation – costs - appeals by the various parties either against convictions under *Liquor Act 1992 (Qld)*, or dismissal of other counts – investigator & policeman had observed employee of nightclub handing out cards in Surfers Paradise – in relation to a different charge, a charge under s168A, use of online source amounted to denial of natural justice, where parties not afforded opportunity of considering & making submissions on information derived from online source.*

[Hayes](#) (B)

From the United States of America...

Kellermann v McDonough, no. 081718

Supreme Court of Virginia

Opinion by Chief Justice Leroy R Hassell Snr

Koontz J with whom Kinser J joined (concurring in part & dissenting in part); Kinser J (concurring in part & dissenting in part at p.29)

Torts – supervision - wrongful death action by parent of fourteen year old girl who died while staying overnight at home of former classmate – defendants the parents of the former classmate - after attending cinema, the two girls got into car driven by seventeen year old boy – plaintiff’s daughter killed in car accident - defendants filed demurrer contending they owed no duties in tort to deceased – primary court ultimately sustained the demurrer & dismissed the complaint – the purpose of a demurrer - whether adults who agree to supervise & care for a child owe a duty to exercise reasonable care in that supervision & care – judgment affirmed in part & reversed in part – case remanded for a trial on plaintiff’s claims of assumption of a duty against defendant mother & breach of common law tort duty of supervision & care against both defendants – a lengthy, interesting decision with detailed consideration of US case law including as to special relationships.

[Kellermann](#) (I)

An Artist whose creativity was not defeated by Tragedy

Richard Dadd

(1 August 1817 – 7 January 1886)

English painter, he showed early promise - ‘Come unto these Yellow Sands’ was the last picture he exhibited before insanity changed his life & career – in 1842, he joined a group travelling to the



Middle East, where it was noticed he was becoming delusional – on his return, while convalescing in the country, he stabbed & killed his father – the rest of his life was spent in Bethlehem Royal Hospital then Broadmoor – the Bethlehem governor, Dr. William Charles Hood, encouraged him to resume painting & saw that he had the materials to do so : Dadd produced two of the finest Victorian fairy pictures ‘Contradiction : Oberon & Titania’ (1854-8) & ‘The Fairy Feller’s Masterstroke’ (1855-64) : neither painting was exhibited until the 1930s - ‘The Fairy Feller’ passed into the collection of the poet Siegfried Sassoon, who donated it to the Tate Gallery in 1963 in memory of three brothers with whom he’d served in the First World War, Julian, Edmund & Stephen Dadd, the great-nephews of Richard Dadd.

[Richard Dadd - Wikipedia, the free encyclopedia](#)

[Richard Dadd. Come Unto These Yellow Sands \(1842\)](#)

[Tate Collection | The Fairy Feller's Master-Stroke by Richard Dadd](#)

Key: (I) Insurance, (B) Banking, (C) Construction