

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Tuesday 18 December 2007

Edington v Superannuation Complaints Tribunal [2007] FCA 1989

Federal Court of Australia

Collier J (at Brisbane)

Superannuation - appeal from decision of Superannuation Complaints Tribunal in which Tribunal affirmed decision of the second respondent Board of Trustees of State Public Sector Superannuation scheme - decision of Board was that although applicant had been assessed as being totally & permanently disabled after a workplace incident in 2002, no insurance benefit was payable because the total & permanent disablement was on account of his pre-existing medical condition, namely schizophrenia - Tribunal required by s37(6) Superannuation (Resolution of Complaints) Act 1993 to affirm a relevant decision of a Trustee if satisfied decision was fair & reasonable in the circumstances - principles & case law as to fairness and reasonableness in this context - "unfair" - "unreasonable" - application dismissed. [Edington](#) (I,B)

Hawthorn Glen Pty Ltd (ACN 004 061 214) v Aconex Pty Ltd (ACN 091 376 091) (No 1) [2007] FCA 2010

Federal Court of Australia

Goldberg J (at Melbourne)

Evidence - application to re-open case & recall witnesses - commercial litigation - offer under Facility Agreement - whether rule in Browne v Dunn complied with - discretion of trial judge - application refused. [Hawthorn Glen](#) (B)

Commonwealth of Australia v Griffiths & Anor [2007] NSWCA 370

Court of Appeal of New South Wales

Mason P, Beazley JA & Young CJ in Eq

Negligence – duty of care - witness immunity – analyst’s certificate issued for criminal prosecution - first respondent, convicted in District Court of criminal offence - charge of knowingly take part in manufacture of prohibited drug - he successfully appealed to Court of Criminal Appeal - verdict of acquittal entered - basis for acquittal was that analyst had manipulated testing of substance – analyst appointed by Minister under statute - whether analyst protected by principle of witness immunity - vicarious liability – immunity of wrongdoer – employer seeking to rely on immunity of employee – whether immunity extends to protect a person who is otherwise vicariously liable - whether trial judge erred in finding arguable case that duty of care existed – trade practices – certificate issued in trade or commerce - summary judgment – inappropriate where real question to be tried – detailed consideration of case law as to witness immunity in judgment of Beazley JA. [Commonwealth of Australia](#) (I)

Antonio Magnou v Australian Wool Testing Authority Ltd [2007] NSWCA 357

Court of Appeal of New South Wales

Tobias, McColl JJA & Handley AJA

Negligence - unsafe system of work - damages - appellant worked for the respondent as a wool classer in dusty conditions appellant developed industrial asthma & had to give up his job – case law considered as to compensation for loss of earning capacity – at first instance, failure to consider a substantial body of relevant evidence - inadequate reasons - appeal allowed - cross-appeal dismissed - verdict & judgment of primary judge set aside except as to liability – order for new trial limited to damages. [Antonio Magnou](#) (I)

Commonwealth Custodial Services Ltd v Valuer General [2007] NSWCA 365

Court of Appeal of New South Wales

Spigelman CJ, Santow & Tobias JJA

Valuation of Land – methods of valuation – valuation made by Valuer General of land occupied by Commonwealth Bank Building on Martin Place, sometimes known as “the Moneybox” - where land subject to heritage restrictions – Valuation of Land Act 1916 - thorough consideration of case law & legislation in judgment of Tobias JA – an interesting case. [Commonwealth Custodial Services](#) (I,B,C)

Caladine v The Commissioner, New South Wales Health Care Complaints Commission [2007] NSWCA 362

Court of Appeal of New South Wales

Beazley, Giles JJA & Hislop J

Unrepresented litigant – obligations of court or tribunal to unrepresented litigant – unrepresented litigant should understand proceedings & receive a fair trial – complaints against appellant medical practitioner - appeal from decision of Medical Tribunal – appeal against exercise of discretion – case law & principles considered regarding error in exercising discretion - court will not intervene unless miscarriage of justice also demonstrated – whether error has been demonstrated - case law considered as to power of Tribunal to award costs under Medical Practice Act – appeal dismissed. [Caladine](#) (I)

Wilson v GIO General Ltd [2007] NSWSC 1445

Supreme Court of New South Wales

Harrison AsJ

Summary dismissal - appeal from magistrate's decision – payment of workers compensation insurance cover - in an interesting judgment, Her Honour reviews the history of jury trials in civil matters – detailed consideration of case law & related legislation including Second Reading Speech. [Wilson](#) (I)

Moyston Court Fisheries Ltd v Malios & Ors [2007] VSC 518

Supreme Court of Victoria

Forrest J

Accident compensation – *certiorari* - employer sought review of decision of Medical Panel – worker cleaned fish, shelled abalone & was required to move abalone and fish - alleged by worker that as a result of his work he contracted a skin condition of his right arm which ultimately resulted in rashes, itching, skin irritation & by 2007, the development of a number of scars on the arm - whether failure to consider relevant matters – whether failure to provide adequate reasons - decision of Medical Panel quashed. [Moyston Court Fisheries](#) (I)

Samson Capital Pty Ltd v Westpac Private Equity Pty Ltd [2007] VSC 453

Supreme Court of Victoria

Hargrave J

Costs – defendant engaging interstate solicitors as principal solicitors in the proceeding – basis upon which interstate solicitors' costs allowable – Supreme Court (General Civil Procedure) Rules 2005. [Samson Capital](#) (I,B,C)

Gordon v Norwegian Capricorn Line (Australia) Pty Ltd [2007] VSC 517

Supreme Court of Victoria

Forrest J

Limitation of actions – torts – Limitations Act (NSW) – plaintiff now aged fifty-three, suffered serious heart attack in 2000 whilst passenger on cruise ship operated by defendant - plaintiff's primary allegation against the defendant: that he was not provided with thrombolytic medication to treat the heart attack directly after it occurred, as none was available on the ship - this would, it is alleged, have alleviated his condition - delay of solicitors in bringing claim – relevance of cause of action against former solicitors – detailed consideration of case law – plaintiff's application for extension of time dismissed. [Gordon](#) (I)

Francis v Bunnett [2007] VSC 527

Supreme Court of Victoria

Lasry J

Advocate's immunity – allegations of negligence & breach of retainer – proceedings settled without hearing – public policy – finality – collateral challenge - Supreme Court (General Civil Procedure) Rules 2005 – thorough examination of case law. [Francis](#) (I,B,C)

Gold Coast City Council v Fawkes P/L & Ors [2007] QCA 444

Court of Appeal of Queensland

de Jersey CJ, Jerrard & Holmes JJA

Environment & planning - Integrated Planning Act 1997 (Qld) [“the IPA”] – application for development permit application for a material change of use - erection of additional storeys to an existing five storey building, in respect of land at Albatross Avenue, Mermaid Beach - whether application was “properly made” – case law & legislation considered. [Gold Coast City Council](#) (C)

Lade & Co Pty Ltd & Ors v. Black [2007] QSC 385

Supreme Court of Queensland

de Jersey CJ

Trespass by animals - damages - plaintiffs claimed compensatory & exemplary damages for cattle trespass & negligence in 2002 & 2005 - cattle caused damage to plaintiffs' sugar cane fields – defendant neighbour denied cattle belonged to him – proceeding dismissed. [Lade](#) (I)

Molyneux v Guy [2007] ACTSC 99

Supreme Court of the Australian Capital Territory

Higgins CJ

Damages– personal injury – motor vehicle accident – liability admitted – plaintiff motorcycle rider aged twenty-nine at time of accident - compound

fracture to tibia & fibula of right leg – injury to neck, upper back, right shoulder scapula region – post-traumatic stress disorder – depression - judgment for plaintiff in sum of \$486,769.39. [Molyneux](#) (I)

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