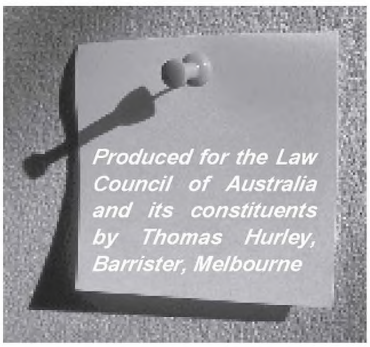
High Court judgments:

May 2010



EXTRADITION

- ***extradition objection***
- ***political opinion***
- ***whether person to be extradited would suffer prejudice by reason of political opinion***

In *Republic of Croatia v Snedden* [2010] HCA 14 (19 May 2010) the High Court concluded that the circumstance that S had served in the Serbian Army and was thus ineligible for favourable treatment as a returned soldier of the Croatian Army in the courts of Croatia did not mean he would suffer any detriment on extradition to Croatia by reason of his political views within s7(c) of the *Extradition Act* 1988 (Cth). The Court concluded the evidence did not show that Croatian courts applied military service as a mitigating factor by reason of political opinions: French CJ; Gummow J with Hayne, Crennan, Kiefel and Bell JJ jointly; sim Heydon J. Appeal against contrary decision of the Full Court of the Federal Court allowed.

TRADE MARKS

- ***"use" and "non-use" of a trade mark"***

In *E& J Gallo Winery v Lion Nathan Australia Pty Ltd* [2010] HCA 15 (19 May 2010) the High Court considered what was necessary to constitute "use" of a trade mark. It concluded there was evidence that the appellant had used its trade mark in the relevant time and allowed an appeal from the contrary conclusion of the Full Court of the Federal Court: French CJ, Gummow, Crennan, Bell JJ jointly; Heydon J sim. Appeal allowed; matter remitted to primary judge for assessment of damages.

Federal Court judgments:

CONTRACT

- ***terms***
- ***agency agreement for travel agents***
- ***unilateral variation by airline***

In *Leonie's Travel Pty Ltd v Qantas Airways Ltd* [2010] FCAFC 37 (4 May 2010) L was a travel agent who purchased tickets from airlines including QANTAS as regulated by the International Air Transport Association (IATA) rules incorporated into the agency agreement. A Full Court concluded the terms of the agreement did not permit the airline to unilaterally change the basis on which commission was calculated to disregard that part of the cost of each ticket that represented a government levy on fuel. The Court observed that international agreements such as those created by IATA should be construed where possible uniformly across the world. It differed from the primary judge and found the English decision of *Association of British Travel Agents Ltd v British Airways* [2000] 2 All ER (Comm) 204 was not distinguishable and applied it. Appeal allowed.

CONTRACT

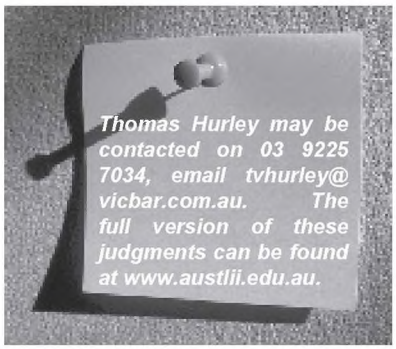
- ***construction***
- ***breach of fiduciary duty by party to contract***

In *Bacnet Pty Ltd v Lift Capital Partners Pty Ltd* [2010] FCAFC 36 (4 May 2010) a Full Court considered when promises in an agreement were concurrent or independent. It also restated that

Federal Court

judgments:

May 2010



the consequences of any breach of fiduciary duty by a party to a contract were considered first under the contract rather than by reference to remedies available against fiduciaries. The Court rejected a submission that it was unconscionable for a party to rely on contractual remedies.

MIGRATION

- ***tribunals***
- ***hearing***
- ***whether RRT failed to appreciate applicant was upset and denied him a fair hearing***

In *MIC v SZNVW* [2010] FCAFC 41 (10 May 2010) a Full Court allowed an appeal by the Minister for Immigration against the decision of the Federal Magistrates Court. That court had concluded on evidence not before the RRT that the RRT had failed to take into account the fact that the respondent was upset at the time of the hearing and thus denied him the hearing required by s425 of the *Migration Act* 1958 (Cth). The Full Court concluded the decision of the Federal Court in *MIMA v SCAR* [2003] FCAFC 126 was distinguishable. Consideration by Perram J of the status of a history recorded in the report of a clinical psychologist as evidence (by virtue of s60(1) of the *Evidence Act* 1995 (Cth)) that the patient suffered the symptoms absent a limiting order under s136. Appeal by Minister allowed.

MIGRATION

- ***failure to respond to letter under s359A***
- ***whether time may be extended under s359B(4) after it has passed.***

In *Hasran v MIC* [2010] FCAFC 40 (5 May 2010) a Full Court concluded the failure of a visa holder to reply to a letter from the MRT under s359A of the *Migration Act* 1958 (Cth) triggered the cascading operation of ss359C(2), 360(2)(c) and 360(5), which triggered s363A which removed any discretion in the Migration Review Tribunal to conduct a hearing. The Full Court also held that the power given by s359B(4) to extend the time for reply to a letter under ss359A could not be exercised after the time for reply had passed.

INDUSTRIAL LAW

- ***penalties***
- ***assessment of penalty***
- ***whether single course of conduct or several offences***

In *CFMEU v Cahill* [2010] FCAFC 39 (18 May 2010) a Full Court concluded (by majority) that actions of a union organiser in procuring over two or three days the stoppage of work on a building site constituted several offences rather than one course of conduct and how penalty for such conduct was to be fixed.

AAT

- ***appeals on question of law***
- ***point not raised before AAT***
- ***whether AAT can make an error of law in not addressing a point not raised before it***

In *Culley v ASIC* [2010] FCAFC 43 (19 May 2010) a Full Court considered whether the AAT could make an error of law in not addressing a point that was not a jurisdictional point and that was not raised before it but raised for the first time in the Federal Court.

THOMAS HURLEY is a Victorian barrister, ph 9225 7034, email tvhurley@vicbar.com.au. The full version of these judgments can be found at **www.austlii.edu.au**.