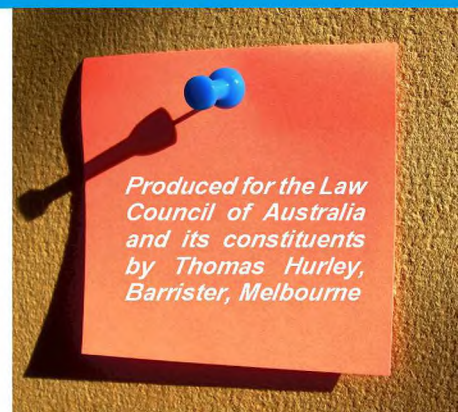


High Court judgments:

July - August 2010



BANKRUPTCY

- **Effect of termination of deed of arrangement under Part X of Bankruptcy Act on assigned actions**

In *CGU Insurance v One. Tel Ltd (In Liq)* [2010] HCA 26 (4 August 2010) the High Court in a joint judgment concluded termination of a deed under Part X of the *Bankruptcy Act* 1966 (Cth) did not mean the trustee conducting litigation under the deed could not continue the litigation relying on other powers once the deed expired. Appeal against decision of the NSW Court of Appeal allowed.

DEFAMATION

- **Defences**
- **Qualified privilege**
- **Communication by bank that it had not honoured cheque**

In *Aktas v Westpac Banking Corporation* [2010] HCA 25 (4 August 2010) the High Court allowed an appeal from the decision of the primary judge in a defamation action that communication by a banker to the holder of a cheque that it had been dishonoured was a situation of qualified privilege for the purposes of defamation law: French CJ with Gummow and Hayne JJ; contra Heydon J; Kiefel J. Appeal against decision of NSW Court of Appeal allowed.

CONSTITUTIONAL LAW

- **Mining**
- **Ownership of minerals**
- **Gold mixed with copper**

In *Cadia Holdings Pty Ltd v NSW* [2010] HCA 27 (25 August 2010) the High Court concluded the crown prerogative received in Australia

was limited to ownership of gold so that the Minister was required by s284 of the *Mining Act* 1992 (NSW) to repay royalty paid on gold intermingled with copper to the land owner: French CJ; Gummow, Hayne, Heydon, Crennan JJ jointly. Appeal allowed.

PRACTICE

- **Summary judgment**

In *Spencer v C of A* [2010] HCA 28 (1 September 2010) the High Court concluded the Federal Court had erred in summarily dismissing under the *Federal Court of Australia Act* 1976 (Cth) proceedings brought by S alleging state legislation to conserve rural vegetation was invalid as effecting acquisition of property on other than just terms contrary to *Constitution* s51(xxix). Appeal allowed.

Federal Court judgments

AUSTRALIAN CRIME COMMISSION

- **Procedure**

In *Egglishaw v ACC* [2010] FCAFC 82 (8 July 2010) a Full Court rejected a submission that a summons to appear before the ACC was invalid for requiring attendance before "an" examiner not "the" examiner. It also rejected an argument that a notice to produce was invalid for not specifying to whom the items were to be produced.

CONSTITUTIONAL LAW

- **Destruction of people smuggler's boat**

In *Tran v Commonwealth* [2010] FCAFC 80 (6 July 2010) a Full Court concluded the destruction of a "people smuggler" vessel on the instructions of the CEO of Customs under s185B (4) of the *Customs Act* 1901 (Cth) for being unseaworthy was not an acquisition of property for *Constitution* s51(xxix).

EVIDENCE

- **Spousal privilege**
- **Enquiry by Australian Crime Commission**
- **Whether spouse required to answer questions incriminating other spouse**

In *Stoddart v Boulton* [2010] FCAFC 89 (15 July 2010) a Full Court held the privilege granted to spouses by the common law not to incriminate the other spouse had not been abrogated by the requirement in s30 of the *Australian Crime Commission Act* 2002 (Cth) that a person who had been summonsed answer questions.

INDUSTRIAL LAW

- **Construction of industrial agreements**

In *CFMEU v John Holland Pty Ltd* [2010] FCAFC 90 (16 July 2010) a Full Court considered how an industrial agreement concerning a building site should be construed and whether it left room for other agreements or covered all workers on a project.

INDUSTRIAL LAW

- **"Stand down"**

In *Coal & Allied services Pty Ltd v MacPherson* [2010] FCAFC 83 (12