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

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Executive Summary (1 minute read)

In the Matter of Jesse Colin Corner (SASC) - Wills and estates - making of Will by mother of severely disabled proposed testator authorised

Austin v Verini (WASC) - insurance policy - balcony collapse - exclusion clause - insurer liable to indemnify owner builder for injuries suffered by plaintiffs

Blenkinsop v Blenkinsop Nominees Pty Ltd as Trustee of the Blenkinsop Family Trust (WASC) - summary judgment - trusts and trustees - limitation issue requiring determination - summary judgment refused

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Summaries With Link (Five Minute Read)

In the Matter of Jesse Colin Corner [2015] SASC 100

Supreme Court of South Australia

Bampton J

Wills and estates - mother of proposed testator who was severely physically and intellectually disabled sought order pursuant to s7 *Wills Act 1936* (SA) authorising making of Will - held: proposed testator lacked testamentary capacity - terms of Will proposed by proposed testator's litigation guardian reflected likely intentions of proposed testator - reasonable to authorise making of Will.

[Corner](#)

Austin v Verini [2015] WASC 258

Supreme Court of Western Australia

Allanson J

Insurance contract - exclusion clause - personal legal liability cover - preliminary question - balcony collapsed at house while owners holding party - plaintiffs standing on balcony when it collapsed and suffered injury - house built by defendant - plaintiffs sued defendant - defendant issued third party notice against insurer claiming indemnity against plaintiffs' claims under policy - insurer contended exclusion clause applied - exclusion clause stated insurer did not insure against liability for personal injury caused by or arising out of breach of insured's duty as owner or occupier of building which was not insured by insurer at time of occurrence that caused injury - parties agreed insurer did not insure defendant against loss or damage to house or contents at time of balcony collapse - whether third party liable to indemnify defendant - whether liability of defendant for breach of duty was breach as owner - whether ownership integral to duty of care - construction of policy - ss4 & 4A(1)(c) *Builders' Registration Act 1939* (WA) - held: both parties accepted defendant had duty of care to plaintiffs and breached that duty - Court satisfied duty was not a duty 'as the owner' - insurer liable to indemnify defendant - defendant entitled to orders sought in third party statement of claim.

[Austin](#)

Blenkinsop v Blenkinsop Nominees Pty Ltd as Trustee of the Blenkinsop Family Trust [2015] WASC 254

Supreme Court of Western Australia

Allanson J

Summary judgment - plaintiff brought claim against companies which were trustees of two family trust - plaintiff was beneficiary of trusts and director of trustee companies - plaintiff brought claim as creditor of trusts - plaintiff claimed companies were indebted to her - plaintiff sought summary judgment on part of claim - defendants asserted plaintiff faced with a significant hurdle because her claim brought outside limitation period in s38 *Limitation Act 1935* (WA) (1935 Act) - held: plaintiff mistakenly relied on s59 *Limitation Act 2005* (WA) in response to limitation point - plaintiff might still maintain her action if debt acknowledged for the purposes



of s44 of 1935 Act but there were complicating issues - in circumstances where issue not squarely addressed by plaintiff required determination, summary judgment should not be given.

[Blenkinsop](#)

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