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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)

**Coolbrew Pty Ltd v Westpac Banking Corporation** (NSWCA) - equity - trusts - declaration that bank held funds on trust for company refused - appeal dismissed

**New South Wales Land and Housing Corporation v Diab** (NSWCA) - administrative law - residential tenancy - retrospective cancellation of rental rebates - appeal dismissed

**Juvesconi Investments Pty Ltd v Sanasi** (NSWSC) - real property - defective caveats claiming equitable interest in land removed

**Pike v Pike** (QSC) - succession - sole beneficiary of Will convicted of manslaughter of testator - forfeiture rule applied - estate distributed to applicant

## Summaries With Link (Five Minute Read)

### **Coolbrew Pty Ltd v Westpac Banking Corporation [2015] NSWCA 135**

Court of Appeal of New South Wales

Leeming JA, Bergin CJ in Eq & Sackville AJA

Equity - trusts - primary judge dismissed appellant's summons seeking declaration that certain funds placed on term deposit with first respondent bank in third party's name were held by bank on trust for appellant - primary judge not satisfied on evidence trust made out - s58(3)(b) *Bankruptcy Act 1966* - held: primary judge correct to conclude appellant had not discharged its onus of showing parties intended third party to hold deposit on trust for appellant - appeal dismissed.

[Coolbrew](#)

### **New South Wales Land and Housing Corporation v Diab [2015] NSWCA 133**

Court of Appeal of New South Wales

Beazley P; Macfarlan & Leeming JJA

Administrative law - New South Wales Land and Housing Corporation sought leave to appeal against decision of Appeal Panel of New South Wales Civil and Administrative Tribunal relating to residential tenancy of respondent who lived in public housing - Tribunal rejected Corporation's contention that it and Department granted respondent rental rebates on basis of incorrect information he supplied and that it was entitled to treat rental rebates as arrears of rent and terminate lease for non-payment - held: Appeal Panel correct to find tenancy agreement varied by Corporation granting rental rebates and respondent paying rent at rebated rates - termination for breach of residential tenancy agreement would not affect efficacy of variations made to tenancy agreement in past - retrospective cancellation of tenant's rental rebates under s57 *Housing Act 2001* did not convert amounts of rebates into arrears of rent - Corporation unable to invoke provisions allowing it to terminate tenancy agreement for breach due to failure to pay rent during periods - appeal dismissed.

[NewSouthWales](#)

### **Juvesconi Investments Pty Ltd v Sanasi [2015] NSWSC 611**

Supreme Court of New South Wales

Darke J

Real property - caveats - plaintiff sought that defendant withdraw caveats recently lodged over lots - caveats each claimed an equitable interest in the land - s74MA *Real Property Act 1900* - held: defendant would not be granted an interlocutory injunction against plaintiff to protect claimed interests - caveats were defective in that they failed to give required particulars of nature of interests claimed - caveats should be removed.

[Juvesconi](#)

### **Pike v Pike [2015] QSC 134**

Supreme Court of Queensland



Atkinson J

Succession - respondent executor and sole beneficiary of deceased's Will was convicted of manslaughter of deceased who was his mother - applicant was deceased's other son - applicant sought distribution of estate in his favour pursuant to substitutional clause of Will - whether or not provision in Will of deceased which left estate absolutely to respondent had failed to take effect with result whole estate left to applicant - held: applicant had proved respondent killed deceased and that killing was unlawful - forfeiture rule applied - provision in Will leaving whole of estate to respondent failed because he had been criminally responsible for testator's death - estate of deceased to be distributed to applicant.

[Pike](#)

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