

Friday, 27 March 2015

Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Donoghue v Commissioner of Taxation (FCA) - income tax - assessments made with benefit of material provided by third party without permission - material subject to legal professional privilege - assessments quashed

Douglas v James (NSWSC) - wills and estates - appointer for capital protected trust did not have power to remove and appoint trustees

A v C (SASC) - judicial review - preliminary issue - meaning of *contractor* and *public officer* under *Independent Commissioner Against Corruption Act 2012* (SA)

Commissioner of Highways v M & B Farmer Nominees Pty Ltd; Commissioner of Highways v Farmer No 2 Pty Ltd (SASC) - compulsory acquisition of land - companies entitled to interest on difference between total compensation and amount paid into Court

Summaries with links (5 Minute Read)

Donoghue v Commissioner of Taxation [2015] FCA 235

Federal Court of Australia

Logan J

Income tax - legal professional privilege - applicant sought orders that assessments, which exposed him to multi-million dollar liability to Commonwealth, were invalid - audit and assessments made with benefit of material concerning applicant and other entities provided by

third party without permission - held: third party working to or for legal firm with which applicant had retainer - material concerned subject to legal professional privilege - Commissioner had no right under ss166 or 263 *Income Tax Assessment Act 1936* (Cth) to use material subject to legal professional privilege - auditor acted in wilful disregard of applicant's right to claim legal professional privilege in respect of material - Commissioner's process of assessment affected by conscious maladministration - assessments quashed.

[Donaghue](#)

Douglas v James [2015] NSWSC 299

Supreme Court of New South Wales

McDougall J

Wills and estates - proceedings concerning complex testamentary trusts created by deceased's Will - whether first defendant as "Appointor" for "Capital Protected Trust" (CPT) had power to remove and appoint trustees of CPT - construction of Will - held: first defendant did not have power to remove plaintiffs as trustees and appoint others in their place - rectification of Will refused - plaintiffs entitled to declaratory relief sought - cross-summons failed.

[Douglas](#)

A v C [2015] SASC 35

Supreme Court of South Australia

Blue J

Judicial review - contract - A and B sought relief in relation to investigation by Independent Commissioner Against Corruption under *Independent Commissioner Against Corruption Act 2012* (SA) - preliminary issue - whether A was *public officer* performing work as *contractor* for public authority or Crown under the Act - held: A entered into contract Crown governing A's appointment as Board member - contract renewed or extended thereafter counterparty to contract was Crown - *contractor* extended to person who performed work as member of government board pursuant to contract with Crown - A was contractor and thereby public officer within meaning of Act.

[AvC](#)

Commissioner of Highways v M & B Farmer Nominees Pty Ltd; Commissioner of Highways v Farmer No 2 Pty Ltd [2015] SASC 40

Supreme Court of South Australia

Blue J

Real property - compulsory acquisition of land - Commissioner of Highways compulsorily acquired land from companies - Commissioner offered compensation and paid sum into Court - parties agreed companies entitled to compensation in greater sum and transfer of surplus land - parties disagreed whether companies entitled to interest on the difference between total compensation and amount paid into Court - s33 *Land Acquisition Act 1969* (SA) - held: on proper construction, interest was payable under s33 on difference between total compensation, whether in form cash or otherwise, and amount paid into Court.

[Commissioner](#)



Old Wine

by Margaret Widdemer

If I could lift

My heart but high enough

My heart could fill with love:

But ah, my heart

Too still and heavy stays

Too brimming with old days.

[Margaret Widdemer](#)

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