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## Insurance, Banking, Construction & Government

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

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## Executive Summary (1 minute read)

**Taras Nominees Pty Ltd as Trustee for the Burnley Street Trust v Commissioner of Taxation** (FCAFC) - capital gains tax - transfer of land by trust deed and joint venture was taxable disposal - appeal dismissed (B C G)

**Zheng v Wallace** (NSWSC) - motor vehicle collision - injured driver failed to give way - driver of oncoming prime mover failed to sound horn - driver of prime mover liable - contributory negligence 80% (I)

**Naumovski v Naumovski**(NSWSC) - real property - arguable case for proprietary interest in property - extension of operation of caveat (B)

**Gluyas v Canby** (VSC) - defamation - undefended trial - internet publications - damages (I)

**Green and Carter In Their Capacities as Joint Executors of the Estate of the late Nancarrow v Nanacarrow**(WASC) - wills - interpretation of testatrix's will - mutually exclusive bequests of interest in lot - directions (B)

**Wilson v Ferguson** (WASC) - equity - breach of confidence by publication of explicit images of ex-partner - injunction - compensation (I)

**Zabic v Alcan Gove Pty Ltd** (NTSC) - negligence - mesothelioma caused by exposure to asbestos - employer negligent - claim statute-barred (I)

## Summaries with links (5 minute read)

### **Taras Nominees Pty Ltd as Trustee for the Burnley Street Trust v Commissioner of Taxation [2015] FCAFC 4**

Full Court of the Federal Court of Australia

Perram, Robertson & Pagone JJ

Taxation - capital gains tax - appellant owner of land entered joint venture agreement with neighbours to rezone and develop land - appellant transferred title to land by deed to company to act as trustee of land and nominee of joint venture - primary judge upheld Commissioner's assessment decision that taxable disposal occurred when appellant entered trust deed and joint venture - Part 3-1 *Income Tax Assessment Act 1997* (Cth) - held: transfer of land to trustee was *settlement* of land and not excluded from CGT Event E1 by s104-55(5) because appellant was not sole beneficiary of trust pursuant to which trustee held land - there was change of ownership by transfer of land to trustee - primary judge correct to include amount of development costs in valuation of land for purposes of calculating taxable capital gain - appeal dismissed.

[Taras Nominees Pty Ltd as Trustee for the Burnley Street Trust](#) (B C G)

### **Zheng v Wallace [2015] NSWSC 3**

Supreme Court of New South Wales

Price J

Negligence - motor vehicle accident - contributory negligence - plaintiff driver injured in collision at intersection with prime mover driven by defendant - plaintiff obliged to give way to prime mover - plaintiff claimed driver of prime mover negligent in failing to moderate operation of prime mover after motor vehicle moved into intersection - ss5B, 5C, 5K *Civil Liability Act 2002* (WA) - *Motor Vehicle (Third Party Insurance) Act 1943* (WA) - held: defendant breached duty of care to plaintiff by failing to sound prime mover's horn to alert plaintiff to his oncoming vehicle - reasonable driver in plaintiff's position would not have proceeded onto highway and would have remained at give way line - plaintiff grossly negligent by proceeding onto highway - plaintiff's very high degree of departure from standard of care prime reason for collision - contributory negligence 80% - judgment for plaintiff.

[Zheng](#) (I)

### **Naumovski v Naumovski [2015] NSWSC 2**

Supreme Court of New South Wales

Black J

Real property - caveat - plaintiff sought order that defendant transfer property to her or declaration that defendant held property on trust for her - plaintiff sought extension of operation of caveat - ss74J & 74K *Real Property Act 1900* (NSW) - held: plaintiff's evidence sufficient to establish arguable case for proprietary interest in property by equitable or proprietary estoppel - balance of

convenience favoured extension of caveat - if caveat not extended plaintiff not protected against sale of property - extension of caveat granted.

[Naumovski](#) (B)

## **Gluyas v Canby [2015] VSC 11**

Supreme Court of Victoria

J Forrest J

Defamation - undefended trial - plaintiff alleged defendant defamed him in series of internet blogs - defendant was resident of United States - held: Court satisfied publications made by defendant - imputations defamatory of plaintiff - plaintiff entitled to award of damages to vindicate reputation and standing - evidence established only few people had seen publications but Court conscious there might be grapevine effect - claim for economic loss for 'mental harm' dismissed as it was not raised in statement of claim.

[Gluyas](#) (I)

## **Green and Carter In Their Capacities as Joint Executors of the Estate of the late Nancarrow v Nanacarrow [2015] WASC 18**

Supreme Court of Western Australia

Le Miere J

Wills - plaintiffs were executors of estate - defendants were testatrix's children - executors sought directions in respect of interpretation of testatrix's will - clause of will containing mutually exclusive bequests of testatrix's interest in lot - whether, at date of death, settlement under sale contract had been completed - whether option under option deed exercised - testamentary intention - misdescription of property - s45 *Administration Act 1903* (WA) - held: clause of will reflected a valid gift of land which was formerly part of lot to second defendant.

[Green and Carter In Their Capacities as Joint Executors](#) (B)

## **Wilson v Ferguson [2015] WASC 15**

Supreme Court of Western Australia

Mitchell J

Equity - breach of confidence - parties were formerly in romantic relationship - plaintiff alleged defendant posted photographs and video on Facebook depicting explicit images of her as result of her decision to terminate relationship - plaintiff claimed injunction restraining defendant from further publication of photographs and videos and damages - s25(1) *Supreme Court Act 1935* (WA) - O34 r2 & O34 r4 *Rules of the Supreme Court 1971* (WA) - held: Court satisfied publication occurred in breach of equitable obligation of confidence owed by defendant to plaintiff to maintain confidentiality of images - injunction granted prohibiting further publication of images - plaintiff granted equitable compensation including for the humiliation, anxiety and distress which resulted from the publication.

[Wilson](#) (I)



## **Zabic v Alcan Gove Pty Ltd [2015] NTSC 1**

Supreme Court of the Northern Territory

Barr J

Negligence - limitations - plaintiff dying of mesothelioma recently acquired after long latency period - plaintiff claimed damages for employer's negligence - ss44, 44(2) & 44(7)(a) *Limitation Act 1981* (NT) - ss3(1), 52, 189 & 189(1) *Workers Rehabilitation and Compensation Act 1986* (NT) (WRCA) - employer contended plaintiff's action was barred by s52 WRCA and not preserved by 189(1) WRCA because cause of action did not arise before 1 January 1987, the commencement date of s189 - held: Court satisfied plaintiff's mesothelioma caused by unprotected exposure to asbestos dust and fibres during time he worked for employer - Court satisfied plaintiff's mesothelioma caused by negligence of employer - however, damage not sustained until onset of mesothelioma - plaintiff had not suffered damage prior to 1 January 1987 - cause of action in negligence for contracting malignant mesothelioma did not arise before that date - plaintiff's claim for damages against employer after malignant mesothelioma developed was statute-barred and could not succeed.

[Zabic](#) (I)

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