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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Royal Commission into Trade Union Governance and Corruption - Commissioner Heydon's reasons for ruling on disqualification applications - applications dismissed (I B C G)

Australian Competition & Consumer Commission v Dateline Imports Pty Ltd (FCAFC) - consumer law - trade practices - misleading or deceptive conduct - false representations - reasonable grounds - appeal allowed in part (I B G)

The Prothonotary of the Supreme Court of New South Wales v Dimitriou (NSWCA) - legal practitioners - professional misconduct - respondent's name removed from roll - declaration and orders (I)

Sommerville v Sommerville (NSWSC) - equity - father did not induce son to hold assumption he would receive house after parents' death - summons dismissed (B)

Serene Hotels Pty Ltd v Epping Hotels Pty Ltd (VSCA) - leases and tenancies - no error in Valuer's methodology - appeal dismissed (B)

AJH Lawyers v Mathieson Nominees Pty Ltd (VSCA) - costs - solicitors' costs - application for reconsideration of costs order of judicial registrar - nature of jurisdiction of costs judge - leave to appeal granted - appeal dismissed (I)

Commissioner of Highways v Farmer No 2 Pty Ltd; Commissioner of Highways v M & B Farmer Nominees Pty Ltd (SASCFC) - compulsory acquisition of land - interest not payable on

non-monetary compensation - appeals allowed (I B C)

Keadly Pty Ltd (SASC) - equity - trusts and trustees - mistake in trust deeds - trust deeds rectified (B)

Summaries With Link (Five Minute Read)

Royal Commission into Trade Union Governance and Corruption

Reasons for Ruling on Disqualification Applications

Commissioner Heydon

Royal Commission - bias - four groups of persons sought disqualification on ground of apprehended bias - applications centred on an agreement to deliver Sixth Annual Sir Garfield Barwick Address, an event organised by Lawyer's Branch and Legal Policy Branch of NSW Division of Liberal Party of Australia (agreement) - applicants contended agreement might cause fair-minded lay observer reasonably to apprehend Commissioner might not bring impartial mind to resolution of questions in course of Commission's inquiries - two main submissions: 'Liberal Party Event' submission and 'Liberal Party fundraiser' submission - Commissioner rejected 'Liberal Party Event' submission for three reasons: 'no apprehension of bias from non-political speech', 'no logical connection between any predisposition and the issues' and 'no reason to find incapacity to deal with issues impartially' - Commissioner rejected 'Liberal Party fundraiser' submission for three reasons: 'no apprehension of intention to raise funds or generate support', 'no logical connection between any predisposition and the issues' and 'no reason to find incapacity to deal with issues' - Commissioner concluded it was not the case that fair-minded lay observer might apprehend Commissioner might not bring impartial mind to resolution of questions - applications dismissed.

[RoyalCommission](#) (I B C G)

Australian Competition & Consumer Commission v Dateline Imports Pty Ltd [2015]

FCAFC 114

Full Court of the Federal Court of Australia

Gilmour, McKerracher & Gleeson JJ

Consumer law - trade practices - first respondent published representations concerning hair-straightening product that it imported for sale - principal representation was product did not contain formaldehyde - primary judge concluded appellant ACCC had not proved formaldehyde representations contravened ss52(1) & 53(a) *Trade Practices Act 1974* (Cth) - claim that respondent's managing director was knowingly involved in alleged contraventions necessarily failed - ACCC appealed against primary judge's conclusions - respondent sought to affirm dismissal on grounds other than those that primary judge relied on and cross-appealed from finding it contravened s52(1) by making representation in letter that ban on sale of product in Ireland would be overturned and that it had no reasonable grounds to make representation - s140 *Evidence Act 1995* (Cth) - held: ACCC's challenge to primary judge's findings concerning

effective life of product succeeded - primary judge ought to have found respondent breached s52(1) by making representations to effect that it had reasonable grounds to make each of certain representations - even assuming ACCC did not establish representations false, it did not follow that at time of making representation respondent and managing director had reasonable grounds to make it - appeal allowed in part - Notice of Contention dismissed - cross-appeals dismissed.

[ACCC](#) (I B G)

The Prothonotary of the Supreme Court of New South Wales v Dimitriou [2015] NSWCA 258

Court of Appeal of New South Wales

Beazley P; Meagher & Leeming JJA

Legal practitioners - professional misconduct - Prothonotary sought order that respondent's name be removed from roll of persons admitted as lawyers maintained by Court under s32 *Legal Profession Act 2004* (NSW) - Prothonotary also sought declarations respondent guilty of professional misconduct, not of good fame and character and not fit and proper person to remain on roll - respondent consented to relief sought and costs order against him - ss178A, 300(2), 192E(1)(b) & 253(b)(ii) *Crimes Act 1900* (NSW) - s4 *Legal Profession Act 1987* (NSW) - ss32, 254, 255, 274, 497, 548, 625 & 630 *Legal Profession Act 2004* (NSW) - s22 *Legal Profession Uniform Law* (NSW) - held: respondent guilty of serious professional misconduct involving gross dishonesty - conduct revealed deficiencies of character demonstrating present unfitness to practise - conduct and ensuing convictions also reflected on respondent's standing, general reputation and fame and also made him unfit to practise.

[Prothonotary](#) (I)

Sommerville v Sommerville [2015] NSWSC 1247

Supreme Court of New South Wales

Slattery J

Equity - plaintiff was son of defendant father - son alleged he helped construct parents' house in response to expectation he would receive house after their deaths - defendant needed to sell house - father denied he created any such expectation in son - son sought relief that father held property on trust for him, that it was charged in his favour, or that father estopped from dealing with property 'contrary to the assumed state of affairs' - held: son unable to establish promissory estoppel case or proprietary estoppel case - son unable to show he held assumption or expectation that property would become his property after father's death because of his work on property or that father induced him to hold any such assumption or expectation - summons dismissed.

[Sommerville](#) (B)

Serene Hotels Pty Ltd v Epping Hotels Pty Ltd [2015] VSCA 228

Court of Appeal of Victoria

Weinberg & Tate JJA; Robson AJA

Leases and tenancies - retail leases - appellant tenant leased premises from respondent

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landlord - trial judge held valuer's methodology for purpose of determining current market rent of premises was consistent with *Retail Leases Act 2003* (Vic) - whether methodology inconsistent with prescription under Act that premises were to be treated as if they were 'unoccupied' and value of tenant's fixtures and fittings not to be taken into account - 'profits method' - earnings-based approach - EBIDTAR - s37(2) - tenant challenged use by the valuer of an unadjusted EBIDTAR methodology - held: trial judge correct to conclude valuer's methodology was consistent with s37(2) - contention rejected that trial judge did not identify numerous criticisms tenant made of landlord's submissions.

[Serene](#) (B)

AJH Lawyers v Mathieson Nominees Pty Ltd [2015] VSCA 227

Court of Appeal of Victoria

Hansen & McLeish JJA; Robson AJA

Costs - respondents entered into written costs agreement with applicant for legal services to liquidator of company - first respondent was creditor of company - respondents were 'third party payers' under *Legal Profession Act 2004* (Vic) - applicant rendered three bills of costs - first respondent served summons for taxation of bills of costs - judicial registrar ordered applicant to pay first respondent amount and 50% of costs - applicant sought reconsideration of decision of judicial registrar by filing notice of application for reconsideration - applicant sought order wholly 'disallowing' first respondent's costs and 'allowing' its own costs - notice ineffective under r63.56.2 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) but properly treated as application for review by costs judge - application was dismissed by costs judge - trial judge dismissed appeal - applicant sought leave to appeal - applicant contended trial judge erred in holding review was not required to be conducted as a hearing de novo and costs judge correct to require error to be shown - applicant also contended trial judge wrong to hold that due to way it conducted review before cost judge, applicant not entitled to contend review required to be hearing de novo - applicant also claimed it was denied procedural fairness - held: applicant failed to provide persuasive reasons why costs order should not have been made - there had been genuine issue raised about nature of jurisdiction of costs judge under s17HA *Supreme Court Act 1986* (Vic) - leave to appeal granted - appeal dismissed.

[AJH](#) (I)

Commissioner of Highways v Farmer No 2 Pty Ltd; Commissioner of Highways v M & B Farmer Nominees Pty Ltd [2015] SASFC 121

Full Court of the Supreme Court of South Australia

Gray, Kelly & Nicholson JJ

Real property - compulsory acquisition of land - appellant compulsorily acquired respondents' land - part of land surplus to appellant's requirements - parties agreed on monetary compensation and provision of non-monetary compensation namely transfer of surplus land to back to respondents - parties disputed whether interest payable on non-monetary compensation - Commissioner submitted trial judge erred in finding s33 *Land Acquisition Act 1969* (SA) created entitlement to interest on non-monetary compensation - ss10, 11, 12, 12B, 15, 16, 17, 22B, 23, 23A, 23C, 24, 25, 26, 27, 28 & 33 - held: interest not payable on non-monetary



compensation provided in respect of compulsory acquisition of land - appeals allowed.

[Commissioner](#) (I B C)

Keadly Pty Ltd [2015] SASC 124

Supreme Court of South Australia

Bampton J

Equity - trusts and trustees - trustees of three family trusts and settlor of trusts sought to rectify trust deeds establishing trusts - trustees and settlor sought to amend definition of beneficiaries in each of deeds - mistake in trust deeds - 'convincing proof' - held: trusts deeds did not express settlor's true intention - trust deeds rectified to remove references to beneficiaries other than those provided for in s71CC *Stamp Duties Act 1923* (SA) - specific reference to beneficiaries as defined in s71CC inserted.

[Keadly](#) (B)

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