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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)

Tarrant v Australian Securities and Investments Commission (FCAFC) - administrative law - imposition of 7-year ban on providing financial services - review refused - appeal dismissed (B G)

Haider v Hawaiian Punch Pty Ltd (FCA) - human rights - employer liable for employee's contravention of *Racial Discrimination Act 1975* (Cth) (I G)

Nominal Defendant v Mokbel (NSWCA) - motor vehicle accident - evidence - Nominal Defendant not liable - appeal allowed (I)

Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd (NSWCA) - supply and purchase agreement - no binding contract - appeal allowed in part (I B)

Glencore Queensland Ltd v Ventyx Pty Ltd (QSC) - contract - licence agreement and support agreement - calculation of incremental fees - declaration (I B)

Tim Gordon Property Group Pty Ltd v Helensvale Property Development Pty Ltd (QSC) - pleadings - application to amend statement of claim to correctly name plaintiff refused (I C)

Tasmanian Perpetual Trustees Ltd v Attorney-General (TASSC) - Wills - trusts - cy-prés scheme - limited variation to purposes specified in trust approved (B)

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Summaries with links (5 Minute Read)

Tarrant v Australian Securities and Investments Commission [2015] FCAFC 8

Full Court of the Federal Court of Australia

Rares, Yates & Griffiths JJ

Administrative law - appellant appealed from AAT's dismissal of application for review of 7-year ban from providing financial services imposed by ASIC - s1(2) *Australian Securities and Investments Commission Act 2001* (Cth) - ss50AAA, 920A, 945A, 947B, 947C, 1041E & 1041H *Corporations Act 2001* (Cth) - test for determination of sanction - *Briginshaw* standard - procedural unfairness - apprehended bias - held: grounds of appeal against AAT failed - ASIC's objections to appeal on basis of incompetency upheld in relation to questions of law - appeal dismissed.

[Tarrant](#) (B G)

Haider v Hawaiian Punch Pty Ltd [2015] FCA 37

Federal Court of Australia

Mansfield J

Human rights - racial discrimination - applicant alleged he was racially abused by respondent's employee in breach of ss9, 13 & 18C *Racial Discrimination Act 1975* (Cth) - matter brought before Human Rights Commission - matter terminated on basis mediation of complaint to Commission not going to be successful - applicant sought compensation for losses incurred due to emotional stress and apology from respondent - held: Court satisfied as to jurisdictional foundation for claim - contravening conduct proven by applicant's evidence and confirmatory material including film - respondent vicariously liable under s18E for unlawful discrimination done by an employee - declaration - compensatory damages assessed at \$9000.

[Haider](#) (I G)

Nominal Defendant v Mokbel [2015] NSWCA 3

Court of Appeal of New South Wales

Basten & Ward JJA; Adamson J

Motor vehicle accident - respondent injured when lost control of car and collided with street pole - respondent sued Nominal Defendant on basis there was unidentified vehicle and that negligent driving of vehicle had caused him to lose control of car - trial judge found in favour of respondent and assessed contributory negligence at 30% - Nominal Defendant challenged finding on liability - both parties challenged decision on contributory negligence - objective evidence - descriptive evidence - held: Court should not have been satisfied an unidentified vehicle cut across respondent's vehicle without warning, forcing him to take evasive action - appeal on liability upheld - evidence did not establish negligence on part of any other driver so no question of contributory negligence arose - cross-appeal dismissed.

[Nominal Defendant](#) (I)

Mushroom Composters Pty Ltd v IS & DE Robertson Pty Ltd [2015] NSWCA 1

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Sackville AJA

Contract - parties entered supply and purchase agreement - trial judge found parties reached consensus on price and entered binding contract for term of four years - appellant claimed parties never reached final agreement on price and thus binding four year contract never came into existence - appellant accepted contracts for first two years of four period were concluded admissions - held: dealings between parties could not be construed as agreement that overall price for four years would be fixed sum subject to term requiring negotiation for review of royalty component - parties never reached final agreement on essential term of alleged four year contract, namely price to be paid - no binding and concluded four year contract - appeal allowed in part.

[Mushroom Composters Pty Ltd](#) (I B)

Glencore Queensland Ltd v Ventyx Pty Ltd [2015] QSC 14

Supreme Court of Queensland

P McMurdo J

Contract - parties disputed interpretation of two contracts concerning use of computer software and provision of services relating to use of the software - licence agreement and support agreement - dispute concerned calculation of incremental licence fee and incremental support fee - fees calculated according to number of employees provided in employee report - purpose of quantifying fees by reference to number of employees was to provide a level of remuneration to respondent according to extent of use of and support for its software - applicant omitted to include certain employees in employee count - respondent contended employee count inaccurate - applicant sought declaratory relief - construction of contract - held: applicant entitled to declaration that, upon proper construction of agreements, employees should not be added to employee count or taken into account in employee report under clauses of agreements.

[Glencore Queensland Ltd](#) (I B)

Tim Gordon Property Group Pty Ltd v Helensvale Property Development Pty Ltd [2015] QSC 19

Supreme Court of Queensland

Douglas J

Pleadings - plaintiff sought to file and serve amended statement of claim - plaintiff sought to correctly name plaintiff pursuant to r377 *Uniform Civil Procedure Rules 1999* (Qld) - rr69& 70 - held: application not simply question of misnomer of plaintiff - plaintiff literally did not exist - effect of application was to include it as party pursuant to r69 - where there was application to include a new party, no reason to exclude requirement to support such application by an affidavit pursuant to r70 - no affidavit provided - application refused.

[Tim Gordon Property Group Pty Ltd](#) (I C)



Tasmanian Perpetual Trustees Ltd v Attorney-General [2015] TASSC 1

Supreme Court of Tasmania

Wood J

Wills - trusts - executors of testatrix's estate sought pursuant to s6 *Variation of Trusts Act 1994* (Tas) that trust created by Will and regarded as charitable trust be varied - applicant contended trust's original purposes had become impracticable and impossible to carry out - cy-prés scheme - charitable purpose - proposed scheme and spirit of the gift - held: Court satisfied that a limited variation to purposes specified in trust should be approved.

[Tasmanian Perpetual Trustees Ltd](#) (B)

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