

Benchmark

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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)

Mighty River International Ltd v Mesa Minerals Ltd (FCA) - corporations - application to inspect company books and records granted (I B)

Abu-Mahmoud v Consolidated Lawyers Pty Ltd (NSWSC) - professional negligence - negligence by solicitor in provision of advice causing loss to client - no contributory negligence - judgment for client (I)

In the Estate of the Late Fry (NSWSC) - Wills and estates - succession - unsigned and undated documents not intended to operate as Will - probate granted - summons otherwise dismissed (B)

Re Estate of McDermott; Application of Ahmad (NSWSC) - succession - family provision relief granted on case proved and in absence of contradictor (B)

Erratt v Grills (NSWSC) - real property - dividing fences - trespass - dispute concerning management of boundary between two rural properties - declarations proposed - summons otherwise dismissed (B)

Financial Securities Pty Ltd v Gold Coast City Council (QSC) - local government - refusal to invoke procedure under s236 *Local Government Regulation 2012* to facilitate sale of land - declaratory relief refused (B C)

Peulen v Agius (QSC) - real property - statutory right of user in form of easement imposed on

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lot (B C)

Summaries With Link (Five Minute Read)

Mighty River International Ltd v Mesa Minerals Ltd [2015] FCA 462

Federal Court of Australia

Barker J

Corporations - applicant sought to inspect company books and records under s247A

Corporations Act 2001 - s6 *Civil Dispute Resolution Act 2011* - ss232, 237, 247A, 247A(1),

247A(2) & 461 *Corporations Act 2001* - whether applicant impermissibly involving itself in company's management - held: Court satisfied in all circumstances that applicant was acting in good faith and that inspection was to be for proper purpose - Court persuaded access to required documents should be permitted by making order.

[Mighty](#) (I B)

Abu-Mahmoud v Consolidated Lawyers Pty Ltd [2015] NSWSC 547

Supreme Court of New South Wales

Garling J

Professional negligence - solicitors' duties - plaintiff client was property developer - plaintiff claimed solicitor was negligent in advising him to take certain steps in relation to property he owned and intended to develop - plaintiff claimed he entered into restructure scheme on solicitor's advice with consequence his property empire crumbled, he became liable in significant sum to bank, and lost equity which he owned in properties - held: restructure advice given in circumstances amounting to breach of duty - plaintiff established losses caused by implementation of advice - no contributory negligence established - judgment for plaintiff in amount to be calculated.

[Abu-Mahmoud](#) (I)

In the Estate of the Late Fry [2015] NSWSC 598

Supreme Court of New South Wales

Bergin CJ in Eq

Wills and estates - succession - plaintiff executor of deceased's estate sought declarations that deceased intended his copy of Will with notations on it to be Codicil to Will, and that document entitled "Guide" be Codicil to his Will - held: Court not satisfied either copy of Will with notations or Guide was brought into existence with intention that either would be or operate as deceased's Will - probate granted - summons otherwise dismissed.

[Fry](#) (B)

Re Estate of McDermott; Application of Ahmad [2015] NSWSC 595

Supreme Court of New South Wales

Lindsay J

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Succession - deceased died intestate - plaintiff daughter of deceased's former wife sought family provision order under Ch 3 *Succession Act 2006* (NSW) - summons named no defendant - proceedings served on likely contraditors - ss57(1), 59 & 60 - held: plaintiff was person in favour of whom grant of relief should be made - evidence established that plaintiff not only had a familial claim on deceased's estate but had been left with substantial need for assistance - family provision relief granted on case proved and in absence of contradictor.

[McDermott](#) (B)

Erratt v Grills [2015] NSWSC 594

Supreme Court of New South Wales

Lindsay J

Real property - dividing fences - trespass - dispute concerning management of boundary between two rural properties - plaintiff claimed entitlement to exclusive occupation and use of land owned by defendants in freehold title on her side of their dividing fence - plaintiff claimed that by venturing on her side of the fence had committed trespass - plaintiff claimed injunctive relief and damages - s14 *Dividing Fences Act 1991 NSW* (NSW) - characterisation and exposition of arrangement governing parties' dividing fence - *Landale v Menzies* 9 CLR 89 - held: defendants substantially successful in opposing relief claimed by plaintiff - declarations proposed - summons otherwise dismissed.

[Erratt](#) (B)

Financial Securities Pty Ltd v Gold Coast City Council [2015] QSC 130

Supreme Court of Queensland

Daubney J

Local government - applicant owned land it intended to develop as shopping centre -Council owned lots adjoining applicant's land - Council has resolved to dispose of lots which applicant wish to buy - applicant wanted Council to invoke procedure provided for under s236 *Local Government Regulation 2012* to facilitate sale - applicant sought declaratory relief which it argued would have practical effect of overcoming Council's refusal to invoke the process - held: there was no present, factually-based controversy or dispute between parties concerning actions taken by Council under s236 - provisions of s 236 had not been invoked - declaration sought would at best be answer to hypothetical question - application dismissed.

[Financial](#) (B C)

Peulen v Agius [2015] QSC 137

Supreme Court of Queensland

Carmody CJ

Real property - easements - applicants sought order under s180 *Property Law Act 1974* granting statutory right of user in respect of land owned by respondents - applicants sought right of access over land over which driveway extended connecting applicants' dwelling and road - applicants willing to pay compensation to respondents for encumbrance on servient land - respondents resisted application on basis alternative access existed or sought compensation - held: Court satisfied there was "real chance" that application to Council for approval of

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easement would be successful - imposition of statutory right of user was essential to effective and productive use of lot - Court satisfied applicants' proposed use of lot was consistent with public interest - respondents had unreasonably refused offer of compensation by applicants - statutory right of user in form of easement imposed - compensation quantified.

[Peulen \(B C\)](#)

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