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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)

Australian Competition and Consumer Commission v Chaste Corporation Pty Ltd (No 7) (FCA) - contempt - Court had jurisdiction to order early release of person imprisoned for contempt - countervailing circumstances warranting early release - application for early release granted subject to conditions (I B C G)

Comité Interprofessionnel du Vin de Champagne v Powell (FCA) - consumer law - reference to, use and promotion of sparkling wines - conduct in relation to use of social media likely to mislead or deceive in contravention of s18 Australian Consumer Law (I B)

Magjarraj v Firth (NSWCA) - professional negligence - elements of claim against solicitor not established - appeal dismissed (I)

Moira Shire Council v Sidebottom Group Pty Ltd (VSC) - enforcement order - storage of materials and use of and for recycling materials in contravention of planning scheme - extension of time for compliance with order granted (I C)

Nolan v Nolan (QCA) - equity - trusts and trustees - farming enterprise was common endeavour - constructive trust imposed - primary judge erred in apportionment of assets and awarding interest - appeal allowed (B C)

Mineral Resources Engineering Services Pty Ltd as T'ee for Meakin Investment Trust v Commonwealth Bank of Australia; Hay v Commonwealth Bank of Australia (No 2) (QCA) - pleadings - unconscionable conduct - pleadings deficient - paragraphs of further amended

statement of claim struck out (I B C)

Woodley v Woodley (WASC) - caveats - caveats were not caveats pursuant to s138A *Transfer of Land Act 1893* (WA) - power to extend caveats did not arise - extension of caveats refused - injunction (B)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v Chaste Corporation Pty Ltd (No 7) [2015] FCA 1103

Federal Court of Australia

Logan J

Contempt - fourth respondent presently serving term of imprisonment for contempt of Court - fourth defendant sought early release from prison - whether and in what circumstances Court may order early release of person imprisoned for contempt - not in public interest to disclose particular circumstances of case - part of hearing conducted in camera - s14(1) *Contempt of Court Act 1981* (UK) - s16 *Crimes Act 1914* (Cth) - ss23, 31, 31(1) *Federal Court of Australia Act 1976* (Cth) - s24 *Judiciary Act 1903* (Cth) - s53 *Sentencing Act 1989* (NSW) - held: :Court had jurisdiction to order early release - there were countervailing considerations, required to remain confidential, which warranted fourth defendant's early release from prison subject to continued contingency of his being required to serve 18 month balance of original three year imprisonment term

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

Comité Interprofessionnel du Vin de Champagne v Powell [2015] FCA 1110

Federal Court of Australia

Beach J

Consumer law - applicant represented interests of growers, producers, negociants and merchants of Champagne wines - respondent provided wine education services and promoted herself and wines under title and alter ego 'Champagne Jayne' - applicant contended respondent engaged in misleading or deceptive conduct and made false representations in contravention of ss18 & 29 *Australian Consumer Law* and had advertised wines under false or misleading description in contravention of ss40C & 40E *Australian Grape and Wine Authority Act 2013* (Cth) - held: applicant succeeded in limited aspects - Court rejected claim respondent engaged in misleading or deceptive conduct by representing she was affiliated with Champagne sector except in relation to use of title "ambassador" - Court accepted applicant engaged in misleading or deceptive conduct in relation to use of social media - Court rejected claims of contravention of ss40C & 40E - parties to be given opportunity to address form of declarations and injunctions (if any) to be made to accord with contraventions - applicant to file and serve proposed minutes of order.

[Comité](#) (I B)

Magjarraj v Firth [2015] NSWCA 326

Court of Appeal of New South Wales
Basten, Ward & Gleeson JJA

Professional negligence - solicitor acted for appellant in proceedings against insurer who rejected his claim under policy - proceedings summarily dismissed - solicitor sued appellant for recovery of fees - appellant cross-claimed for damages for alleged professional negligence alleging solicitor failed properly to advise him and to follow instructions - primary judge found appellant failed to prove elements of professional negligence claim and that defence of advocate's immunity would have defeated claim - held no error in primary judge's conclusion that appellant did not establish professional negligence or suffered loss - appeal dismissed.

[Magjarraj \(I\)](#)

Moira Shire Council v Sidebottom Group Pty Ltd [2015] VSC 577

Supreme Court of Victoria
Zammit J

Enforcement order - Council sought order pursuant to r66.05 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) for enforcement of order made by Victorian Civil and Administrative Tribunal in relation to storage of materials and use of land for recycling materials in contravention of planning scheme - not disputed there had been substantial non-compliance by respondents - deadlines for compliance had passed - financial limitations of first respondent - constraints of tyre recycling market - truck capacity limitations - fire risk - held: breaches were serious and ongoing and posed serious fire safety issues - it was incumbent on first respondent to explore ways to comply with enforcement order - in circumstances Court provided first respondent with greater period of time to comply with enforcement order than that sought by Council.

[Moira Shire Council](#) (I C)

Nolan v Nolan [2015] QCA 199

Court of Appeal of Queensland
Gotterson & Morrison JJA; Boddice J

Equity - trusts and trustees - primary Judge found appellants and respondent carried on farming enterprise as common endeavour and that constructive trust could be imposed in respect of its assets - respondent awarded sum representing 25% net sum of assets to be paid by applicants - primary judge further ordered interest on sum and payment of respondent's costs on indemnity basis - no challenge to findings parties conducted farming enterprise as common endeavour - issue concerned findings as to what constituted appropriate division of property, entitlement to interest and costs - unconscionability - apportionment - held: primary judge erred in findings as to appropriate apportionment - respondent's contribution to common endeavour is to be reflected by awarding sum equivalent to 17.5% of net assets of enterprise - primary judge failed to have regard to competing factors in relation to interest - respondent declined award of interest on sum before entry of judgment - question of costs required to be addressed afresh - appeal allowed - cross-appeal dismissed.

[Nolan](#) (B C)

Mineral Resources Engineering Services Pty Ltd as T'ee for Meakin Investment Trust v Commonwealth Bank of Australia; Hay v Commonwealth Bank of Australia (No 2) [2015]

QSC 288

Supreme Court of Queensland

P McMurdo J

Pleadings - Court previously struck out part of statement of claim in proceedings and allowed other parts to stand - present judgment dealt with more recent versions of statements of claim - defendant sought to strike out some part of pleadings relating to complaints defendant engaged in unconscionable conduct in equity and contravention ss12CA or 12CB *Australian Securities and Investments Commission Act 2001* (Cth) or ss51AA, 51AB, or 51AC *Trade Practices Act 1974* (Cth) - held: pleadings were deficient - paragraphs of further amended statement of claim struck out.

[Mineral Resources](#) (I B C)

Woodley v Woodley [2015] WASC 392

Supreme Court of Western Australia

Tottle J

Caveats - plaintiff sought extension of operation of two caveats lodged against real property registered in defendant's name - ss138A, 138B, 138C & 138D *Transfer of Land Act 1893* (WA) - held: caveats were not s138A caveats - procedure set out in ss138B & 138C did not apply - Court not satisfied notices issued by Landgate purportedly under s138B warning of lapse of caveats were validly issued - power to make orders under s138C did not arise - Court not prepared to make orders extending operation of caveats - caveats should remain registered against properties' titles until they were dealt with properly under Act - application adjourned - Registrar of Titles joined as second defendant - injunction granted restraining removal of caveats.

[Woodley](#) (B)

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