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

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### Executive Summary (1 minute read)

**Cavric v Willoughby City Council** (NSWCA) - highways - negligence - customer injured in shopping centre - car park did not constitute a public road - appeal allowed

**Heyday5 Pty Ltd v Cockram Constructions NSW Pty Ltd** (NSWSC) - interlocutory injunction restraining defendants from calling on performance bond granted

**Santos Offshore Pty Ltd v Apache Oil Australia Pty Ltd** (WASC) - contract - joint venture - notice issued pursuant to clause of joint venture agreement invalid - declaration

**Moran v Atrum Coal NL** (WASC) - injunction - confidential information - extension of injunction refused

## Summaries With Link (Five Minute Read)

### **Cavric v Willoughby City Council [2015] NSWCA 182**

Court of Appeal of New South Wales

Basten, Meagher & Emmett JJA

Highways - negligence - real property - appellant wheeling trolley laden with shopping and child - front wheel on trolley hit "pothole" - trolley tilted - appellant injured when she fell seeking to stop trolley overturning - appellant sued Council for negligent maintenance of car park - trial judge dismissed claim on basis car park was public road by operation of s249(1) *Roads Act 1993* with result Council protected by s45 *Civil Liability Act 2002* - if car park did not constitute public road appeal must be upheld - statutory scheme - continued operation of common law - whether conveyance effected dedication of a road - evidence of public use - 'is evidence that the place is or forms part of a public road' - held: trial judge misunderstood s249(1) as providing freestanding test as to whether place was public road - s249 was no more than an evidentiary provision describing evidence which was admissible to prove a place was or formed part of that public road - s249 was subject to constraint imposed by s178 *Conveyancing Act 1919* - in circumstances where there was no other evidence besides public use, trial judge should have found status of place where accident occurred as a public road was not established - appeal allowed.

[Cavric](#)

### **Heyday5 Pty Ltd v Cockram Constructions NSW Pty Ltd [2015] NSWSC 884**

Supreme Court of New South Wales

Stevenson J

Injunction - plaintiff subcontracted by defendants in relation to project - plaintiff sought to restrain first and second defendants from calling on performance bond - final relief sought by plaintiff was that defendants "return" bond on basis they were bound to release it on achievement of practical completion of the sub-contract - held: Court satisfied there was serious question to be tried whether there had been Practical Completion and plaintiff now entitled to return of bond - strong prima facie case for relief - balance of convenience was in plaintiff's favour - interlocutory injunction granted.

[Heyday5](#)

### **Santos Offshore Pty Ltd v Apache Oil Australia Pty Ltd [2015] WASC 242**

Supreme Court of Western Australia

Pritchard J

Contract - joint venture - dispute concerning validity of notice issued by defendants pursuant to clause of joint venture for exploitation of petroleum production licence - plaintiff claimed some terms and conditions did not comply with requirements of clause with result notices or challenged conditions invalid - plaintiff sought declarations of invalidity and orders for specific performance requiring defendants to serve notice which complied with clause's requirements - right of pre-emption - held: challenged conditions failed to comply with clause's requirements -



notices invalid - Court not persuaded it was appropriate case for orders for specific performance  
- declaration granted.

[Santos](#)

**Moran v Atrium Coal NL [No 4] [2015] WASC 241**

Supreme Court of Western Australia

Mitchell J

Injunction - confidential information - plaintiffs sought extension of injunction restraining defendant from disclosing information concerning loan agreements and securities plaintiffs entered, secured by securities in defendant - held: obligation to notify market operator of the information had arisen under s674 *Corporations Act 2001* - Court not satisfied injunction sought by plaintiffs would not require defendant to contravene s674 - inappropriate to grant injunction - extension of injunction refused.

[Moran](#)

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