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

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### Executive Summary (1 minute read)

**Mega-top Cargo Pty Ltd v Moneytech Services Pty Ltd** (NSWCA) - agency - customs - dismissal of claim for reimbursement for duties costs and tax paid in connection with entry of goods delivered to company for sale - appeal dismissed

**Belle Vue Property Pty Ltd v Piave Market Fresh Pty Ltd** (NSWSC) - possession - hardship - stay of execution of writ of possession granted on terms

**Orlanski v Spiegel (No 2)** (VSC) - trusts and trustees - discretionary trust - executor's application - determination of remaining issues and costs

**Burton v Spencer** (QSC) - succession - intestacy - entitlement to residual estate - respondent and deceased not de facto partners - letters of administration on intestacy granted to applicant

**Qld Cooper Shale Pty Ltd & Qld Cooper Energy Pty Ltd & Qld Shale Gas Pty Ltd v Minister for Natural Resources and Mines** (QSC) - administrative law - refusal of exploration permits - application for statutory orders of review dismissed

**Wright v Nixon** (QSC) - cross-vesting - trusts and trustees - bankruptcy - proceedings transferred to Federal Court of Australia

# Benchmark

## Summaries With Link (Five Minute Read)

### **Mega-top Cargo Pty Ltd v Moneytech Services Pty Ltd [2015] NSWCA 402**

Court of Appeal of New South Wales

Gleeson & Leeming JJA; Emmett AJA

Agency - customs - appellant was freight forwarder and customs agent - appellant pursuant to written agreement with respondent took delivery as agent of goods carried by air from China into Australia - whether appellant entitled to be reimbursed by respondent for import duties, freight costs and goods and services tax paid in connection with entry of goods delivered to company for sale - company wound up in insolvency and unable to pay amounts - respondent denied it was liable to reimburse appellant - primary judge dismissed appellant's claim against respondent - ss13-5, 13-15 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) - *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - ss4, 68, 165, 181 & 183 *Customs Act 1901* (Cth) - construction of letter from respondent to appellant embodying commercial terms - parties' treatment of secondary liability between themselves and company to reimburse appellant for amounts of taxes and other charges -.held: letter excluded a secondary liability between parties as to which would bear burden of taxes and charges - express terms of letter made it clear appellant required to look to company for reimbursement - appeal dismissed.

[Mega-top](#)

### **Belle Vue Property Pty Ltd v Piave Market Fresh Pty Ltd [2015] NSWSC 1880**

Supreme Court of New South Wales

Schmidt J

Possession - judgment for possession made in plaintiff's favour - writ of possession issued - writ due to be executed - applicant sought urgent stay of execution of writ of possession - whether circumstances in favour of grant of stay - hardship - foreshadowed claim for relief from forfeiture - ss56, 58, 67 & 135 *Civil Procedure Act 2005* (NSW) - *Corporations Act 2001* (Cth) - *Uniform Civil Procedure Rules 2005* (NSW) - held: Court persuaded writ should be stayed for relatively short period on hardship grounds given time of year and impact on applicant, employees, customers and third parties - stay granted.

[Belle Vue Property Pty Ltd](#)

### **Orlanski v Spiegel (No 2) [2015] VSC 709**

Supreme Court of Victoria

Ginnane J

Trusts and trustees - discretionary trust - executor's application for Court's directions - Court delivered judgment in matter - remaining issues for determination - whether certain person was guardian or appointer of family trust - costs - r54.02 *Supreme Court (General Civil Procedure) Rules 2005* (VSC) - held: person had not assumed office as guardian or appointer - cost orders made in terms sought by all parties except fourth and fifth defendants.

[Orlanski](#)

# Benchmark

## **Burton v Spencer [2015] QSC 356**

Supreme Court of Queensland

Atkinson J

Succession - intestacy - entitlement to residuary estate - deceased survived by applicant mother - respondent asserted he was surviving spouse of deceased - Court required to determine whether respondent was applicant's spouse - whether deceased and respondent were de facto partners - s 32DA *Acts Interpretation Act 1954* (Qld) - Sch 2, ss5AA & 35 *Succession Act 1981* (Qld) - rr610(1) & 610(3) *Uniform Civil Procedure Rules 1999* (Qld) - held: Court not satisfied respondent and deceased were de facto partners for continuous period of at least two years ending when deceased died - letters of administration on intestacy granted to applicant.

[Burton](#)

## **Qld Cooper Shale Pty Ltd & Qld Cooper Energy Pty Ltd & Qld Shale Gas Pty Ltd v Minister for Natural Resources and Mines [2015] QSC 360**

Supreme Court of Queensland

North J

Administrative law - three applications heard together - respondent refused applicants' applications for exploration permits under Ch 4 *Mineral Resources Act 1989* (Qld) on basis they did not meet criteria prescribed in s137(2) - applicants sought statutory orders of review - *Judicial Review Act 1991* (Qld) - *Mineral Resources Act 1989* (Qld) - *Petroleum and Gas (Production and Safety) Act 2004* (Qld) - *Petroleum Act 1923* (Qld) - whether decisions affected by error or law or irrelevant considerations - improper exercises of power - statutory interpretation - held: applicants did not make out basis to challenge decision - applications dismissed.

[Qld Cooper Shale Pty Ltd](#)

## **Wright v Nixon [2015] QSC 357**

Supreme Court of Queensland

Atkinson J

Cross-vesting - trusts - bankruptcy - applicants were mother and number of adult children - applicants sought to have first applicant's equitable interests in properties held in adult children's names recognised by a resulting trust - one child bankrupt - trustees were respondents to application - trustees claimed matter should be transferred to Federal Court under s6 *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) - s27 *Bankruptcy Act 1966* (Cth) - s39B *Judiciary Act 1903* (Cth) - held: if matter governed only by statutes there would be a genuine question whether case fell within Federal Court's exclusive jurisdiction in bankruptcy - however decisions by Supreme Courts in Victoria and New South Wales and by Federal put matters beyond dispute - paragraphs of Originating Application transferred to Federal Court of Australia.

[Wright](#)



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