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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)

**Lin v Solomon** (NSWCA) - administrative law - bias - contract - evidence - primary judge refused to recuse herself for bias and awarded judgment against appellant guarantor of lessee for lessee's breach of lease - appeal allowed in one respect involving less than \$3000 - appeal allowed in part

**Afoa v McBride** (NSWCA) - negligence - appellant child injured upon ingesting 'highly corrosive substance' when drinking from glass at barbecue - respondent owner of premises not liable - appeal dismissed

**Live Group Pty Ltd and Anor v Rabbi Ulman and Ors** (NSWSC) - contempt - natural justice - Court did not have jurisdiction to intervene in Beth Din's affairs even though natural justice not afforded to second plaintiff - defendants guilty of two contempt charges

**CLK Kitchens & Joinery Pty Ltd v Mayneline Kitchens & Joinery Pty Ltd** (NSWSC) - contract - construction of business sale agreement - defendant buyer not obliged under clause of agreement to provide second plaintiff with information he requested or access generally to business's accounting records - buyer compelled to execute Expert Determination Agreement

**Jankulovska v Hayman & Ors** (VSC) - judicial review - procedural fairness - Medical Panel denied plaintiff procedural fairness by denying her the right to explain and support credibility of account - opinion quashed

**Tarangau Game Fishing Charters Pty Ltd v Eagle Yachts Pty Ltd & Anor** (QSC) - contract - sale of goods - claim arising from sale of yacht - breach of implied terms that yacht would be fit

for purpose and of merchantable quality - breach of express warranty - plaintiff buyer succeeded against both seller and manufacturer

**Cockburn v Jacobsen** (ACTSC) - negligence - collision between taxi driver carrying passengers and light pole - physical interference by passenger with driver - driver's conduct not unreasonable in the circumstances - no breach of duty by driver

## Summaries With Link (Five Minute Read)

### **Lin v Solomon [2017] NSWCA 328**

Court of Appeal of New South Wales

Meagher, Payne & White JJA

Administrative law - bias - contract - appellant was guarantor of lessee - District Court Judge refused to recuse herself due to apprehended bias and proceeded to award respondents amount for lessee's breaches of lease - appellant's cross-claim for misleading or deceptive conduct by respondents' leasing agent dismissed - alleged apprehended bias - alleged errors in admission of evidence, quantification of damages for breach of lease, and in respect of cross-claim - non-hearsay purpose - business record - *Evidence Act 1995* (NSW) - *Fair Trading Act 1987* (NSW) - held: appellant's success limited to one respect as to cost of air conditioner's removal - matter involved less than \$3000 - appellant to pay \$602,178.35 to respondents - appeal allowed in part.

[View Decision](#)

### **Afoa v McBride [2017] NSWCA 323**

Court of Appeal of New South Wales

Macfarlan & Payne JJA; Sackville AJA

Negligence - appellant child injured upon ingesting 'highly corrosive substance' when drinking from glass at barbeque - appellant by tutor claimed damages against respondent who owned premises but was not at barbeque - appellant contended that prior to barbeque, respondent had used caustic product to unblock sink in kitchen at premises, had left a glass containing product on bench, that some water was 'unwittingly put in the glass' at barbeque, that the glass was given to appellant in kitchen, that appellant left glass on table in garden and was injured when he drank from glass later - primary judge found in respondent's favour, finding that appellant did not discharge onus to prove events occurred in alleged manner - whether 'glaringly improbable' findings by primary judge - credit - *Fox v Percy* (2003) 214 CLR 118 - held: challenge to primary judgment failed - appeal dismissed.

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### **Live Group Pty Ltd and Anor v Rabbi Ulman and Ors [2017] NSWSC 1759**

Supreme Court of New South Wales

Sackar J

Contempt - natural justice - proceeding arose from 'observant Jew's refusal to answer the summons of a Rabbinic Court' - plaintiffs sought to restrain Beth Din from hearing commercial dispute between first plaintiff and company (SalesPort) and from threatening imposition of religious sanctions on second plaintiff for failure to attend Sydney Beth Din - plaintiffs claimed Sydney Beth Din had no jurisdiction to conduct arbitration proceedings and could not hear dispute due to apprehension of bias - plaintiff also alleged contempt of court due to application of 'calculated pressure' on second plaintiff - held: Court did not have jurisdiction to intervene in affairs of Beth Din, even though Court satisfied Beth Din had not afforded natural justice to second plaintiff - Beth Din's threat of sanctions was 'improper pressure' tending to interfere with administration of justice - defendants guilty of two contempt charges - Court to hear party on appropriate relief and question of penalty.

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## **CLK Kitchens & Joinery Pty Ltd v Mayneline Kitchens & Joinery Pty Ltd [2017] NSWSC 1737**

Supreme Court of New South Wales

Ward CJ in Eq

Contract - plaintiffs were seller and seller's director and shareholder - defendant was buyer - plaintiff sought relief concerning business sale agreement by which seller sold business to buyer - whether buyer obliged to provide second plaintiff and accountant with requested information, and/or should be compelled to execute Expert Determination Agreement - construction of agreement - held: buyer not obliged under clause of agreement to provide second plaintiff with information requested or access generally to business's accounting records - buyer compelled to execute Expert Determination Agreement - orders and direction.

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## **Jankulovska v Hayman & Ors [2017] VSC 752**

Supreme Court of Victoria

Judd J

Judicial review - plaintiff suffered injury arising from or in course of employment - plaintiff sought to quash opinion of Medical Panel that plaintiff did not have inability arising from injury, and that any alleged injury did not result or materially contribute to in any work incapacity - O 56 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* - credit - held: Panel denied plaintiff procedural fairness by denying her the right to explain and support her account's credibility - opinion quashed.

[Jankkulovska](#)

## **Tarangau Game Fishing Charters Pty Ltd v Eagle Yachts Pty Ltd & Anor [2017] QSC 306**

Supreme Court of Queensland

Atkinson J

Contract - sale of goods - claim arising from sale of yacht - plaintiff buyer claimed damages against first defendant seller for breach of terms implied into contract by ss19(1) & 19(2) *Sale of*

*Goods Act 1923* (NSW) and s71 *Trade Practices Act 1974* (Cth) (TPA) - second defendant was manufacturer of yacht - plaintiff claimed damages, against second defendant for breach of the warranty it gave, compensation under TPA, and damages in negligence - held: plaintiff succeeded against first defendant for breach of implied terms that yacht would be fit for purpose and of merchantable quality - plaintiff also succeeded against second defendant for breach of express warranty.

[Tarangau](#)

## **Cockburn v Jacobsen [2017] ACTSC 380**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Negligence - proceedings arising from collision of taxi with light pole - first defendant was driver - second defendant was taxi's compulsory third party insurer - plaintiffs were three passengers - passengers affected by alcohol - defendants accepted that first defendant's loss of control of taxi would constitute a breach of duty of care by him in an ordinary course of events - however defendants contended course of events was extraordinary due to passenger's physical interference with driver, and surrounding circumstances of behaviour towards driver while he was driving - defendants contended driver's driving was reasonable in the circumstances he was faced with - *Civil Law (Wrongs) Act 2002* (ACT) - held: plaintiffs did not succeed in establishing defendants' liability - first defendant did not act unreasonably in the circumstances - no breach of duty - judgment for defendants.

[Cockburn](#)

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