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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)

**Mango Boulevard Pty Ltd v Whitton** (FCA) - bankruptcy - trustee of bankrupts' estates granted abridgment of time for provision of proposals for compositions and report to creditors

**International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea** (NSWCA) - contract - bond deed poll - consequences of valuation not being binding on parties - appeal allowed - cross-appeal and notice of contention dismissed

**Bendigo and Adelaide Bank Ltd v O'Neill** (NSWSC) - real property - possession - purported defence raised no arguable defence - defence struck out - plaintiff granted leave to move for default judgment

**Thorne v The Public Trustee** (TASSC) - succession - family provision - intestacy - daughter of deceased refused additional provision from deceased's estate

# Benchmark

## Summaries With Link (Five Minute Read)

### **Mango Boulevard Pty Ltd v Whitton [2015] FCA 1295**

Federal Court of Australia

Rangiah J

Bankruptcy - first respondent was trustee of second and third respondents' bankrupt estates - trustee sought abridgment of time under reg 4.18 *Bankruptcy Regulations 1996* (Cth) for provision of proposals for compositions and report to bankrupt estates' creditors - ss33(1)(c), 73, 74, 76B & 222 *Bankruptcy Act 1966* (Cth) - regs 4.18 & 16.01 *Bankruptcy Regulations 1996* (Cth) - delay in providing funds and income details to trustee - absence of explanation for failure to provide income details was significant - held: if time not abridged, creditors deprived of opportunity to consider bankrupts' proposals and bankrupts deprived of opportunity to have creditors consider their proposals - prejudice to creditors would be limited by giving them liberty to apply to set aside order abridging time - on balance appropriate to grant abridgment of time - orders made.

[Mango](#)

### **International Petroleum Investment Company v Independent Public Business**

#### **Corporation of Papua New Guinea [2015] NSWCA 363**

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Ward JJA

Contract - appellant (IPBC) issued Exchangeable Bonds to respondent (IPIC) - IPBC raised amount which it used to finance participation in gas project - terms and conditions of Bonds contained in Bond Deed Poll made by IPBC - Maturity Date of Bonds was 5 March 2014 - mature Bonds subject to mandatory exchange into ordinary shares in capital of company whose shares were listed on Australian Securities Exchange (ASX) - if, on Maturity Date, Principal Amount of Bonds being redeemed exceeded Current Market Value of all of the Shares, IPBC as Issuer was to pay to IPIC as Holder a Cash Settlement Amount equivalent to shortfall - conditions incorporated mechanism to determine Current Market Value of Shares - terms and conditions included procedure for parties to appoint Independent Valuer to assess market value and average of two valuations taken - IPBC issued an Alternative Valuation Notice (AVN) - parties each appointed an Independent Valuer - primary judge found AVN valid - valuation by Independent Valuer appointed by IPBC (RBC) was not binding - valuation by Independent Valuer appointed by IPIC binding - held: primary judge erred in findings as to consequence under Bond Deed of RBC valuation not being binding on parties due to manifest or proven error - appeal allowed - cross-appeal and notice of contention dismissed.

[International Petroleum](#)

### **Bendigo and Adelaide Bank Ltd v O'Neill [2015] NSWSC 1768**

Supreme Court of New South Wales

Davies J

Real property - possession - loans and mortgages - plaintiff sought possession of land and

judgment for monetary sum owing - first defendant filed defence but it was unsigned or sworn in accordance with rules - defence raised issue of failure to serve notices and issues in relation to payment of money due under loan agreement - held: Court satisfied there had been default under loan agreement and mortgage - no payments had been made to plaintiff after 9/12/14 - no arguable defence disclosed - defence struck out - plaintiff granted leave to move for default judgment.

[Bendigo](#)

## **Thorne v The Public Trustee [2015] TASSC 56**

Supreme Court of Tasmania

Holt AsJ

Succession - family provision - applicant was one of three daughters of deceased - deceased had made Will in 1979 leaving entire estate to applicant - Will not admitted to probate as revoked by operation of *Wills Act 1992* (Tas) by dissolution of marriage - three daughters were to receive one third of estate each under intestacy rules - applicant sought further provision out of deceased's estate pursuant to s3(1) *Testators Family Maintenance Act 1912* (Tas) - "left without adequate provision for (her) proper maintenance and support thereafter" - held: Court not persuaded applicant's entitlement to one-third share of estate was inadequate for proper maintenance and support - applicant failed to satisfy jurisdictional requirement with consequence there was no authority under Act to interfere with distributions which would result from intestacy - it had been deceased's intention to leave everything to applicant but Court had no authority under Act to write or re-write Will based on deceased's intentions - application dismissed.

[Thorne](#)



# Benchmark

## **Modern Love: XXII**

BY GEORGE MEREDITH

What may the woman labour to confess?  
There is about her mouth a nervous twitch.  
'Tis something to be told, or hidden:—which?  
I get a glimpse of hell in this mild guess.  
She has desires of touch, as if to feel  
That all the household things are things she knew.  
She stops before the glass. What sight in view?  
A face that seems the latest to reveal!  
For she turns from it hastily, and tossed  
Irresolute, steals shadow-like to where  
I stand; and wavering pale before me there,  
Her tears fall still as oak-leaves after frost.  
She will not speak. I will not ask.  
We are League-sundered by the silent gulf between.  
Yon burly lovers on the village green,  
Yours is a lower, and a happier star!

[GEORGE MEREDITH](#)

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