

Monday, 1 June 2015

## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Hancock v Rinehart** (NSWSC) - equity - trusts and trustees - appointment of replacement trustee - delivery up of trust documents - taking of accounts - amendments to constitution of company not void (I B C)

**Yulema Pty Ltd v Simmons** (NSWSC) - contract - payment of debt pursuant to terms of collateral contract - defendants required to reimburse first plaintiff (I B)

**QBE Insurance (Australia) Ltd v Thomson** (NSWSC) - judicial review - motor accidents compensation - erroneous decision by claims assessor - matter remitted (I G)

**IAG Ltd t/as NRMA Insurance v Zahed** (NSWSC) - judicial review - motor accidents compensation - assessment of damages - error of law on face of record - assessor's decision set aside (I G)

**HBU Properties Pty Ltd v Australia and New Zealand Banking Group Ltd** (QCA) - detinue - possession - amounts unpaid under agreement for rental of motor vehicle - bank granted order for possession of vehicle - appeal dismissed (I B)

**Wattleup Road Development Co Pty Ltd v Western Australian Planning Commission** (WASCA) - administrative law - Tribunal's advisory recommendation was not a decision under s105 *State Administrative Tribunal Act 2004* (WA) - appeal incompetent (B C G)

**Watson v Gardner** (WASC) - real property - application to extend caveat dismissed (B)

## Summaries With Link (Five Minute Read)

### **Hancock v Rinehart [2015] NSWSC 646**

Supreme Court of New South Wales

Brereton J

Equity - trusts and trustees - proceedings concerning administration trust created by a deed of settlement - first defendant (Gina Rinehart) was trustee and her four children were beneficiaries - two beneficiaries sought removal of first defendant for misconduct - first defendant resigned - trust's main asset was shareholding in company - whether amendments made in 2006 to the constitution of company should be declared ineffective because first defendant's consent to them was fraud on a power - appointment of replacement trustee - access to trust documents - taking of accounts - held: not established first defendant acted in breach of trust or for improper or extraneous purpose in consenting to amendments - trust bound by amendments - Court concluded second plaintiff was to administer the trust, that first defendant deliver up trust documents - orders made for taking accounts - claim that amendments to constitution of company void was dismissed.

[Hancock](#) (I B C)

### **Yulema Pty Ltd v Simmons [2015] NSWSC 640**

Supreme Court of New South Wales

Slattery J

Contract - second plaintiff as agent for first plaintiff agreed with uncle that uncle would partly reimburse first plaintiff if it were required to pay any part of debt - plaintiffs alleged first plaintiff paid debt in May 2011 and that uncle liable to reimburse first plaintiff - uncle died in 2013 - defendants were uncle's executors - defendants disputed plaintiffs' claim - event which parties agreed would trigger uncle's payment - whether triggering event had now occurred - construction of principal written contract and collateral oral contract - held: no express or implied term in collateral agreement, as contended for by defendants, that obligation to pay was subject to settlement pursuant to terms of principal contract - debt had been satisfied in terms of collateral agreement - judgment in favour of first plaintiff.

[Yulema](#) (I B)

### **QBE Insurance (Australia) Ltd v Thomson [2015] NSWSC 650**

Supreme Court of New South Wales

RS Hulme AJA

Judicial review - motor accidents compensation - insurer sought review of decision of claims assessor of Motor Accidents Authority - insurer contended assessor failed to identify issue and make finding concerning credit, denied it procedural fairness, erred in finding in respect of video recording, and failed to take into account relevant considerations - held: assessor failed to give weight to doctor's findings - assessor failed to comply with s94(5) *Motor Accidents*

*Compensation Act 1999* and cl 18.4 Motor Accidents Authority Claims Assessment Guidelines in relation to provision of reasons - decision quashed - matter remitted.

[QBE](#) (I G)

**IAG Ltd t/as NRMA Insurance v Zahed [2015] NSWSC 657**

Supreme Court of New South Wales

RS Hulme AJ

Judicial review - motor accidents compensation - damages - claimant injured in motor vehicle collision - insurer sought to challenge claims assessor's assessment of damages as to past and future care - held: assessor failed to comply with the requirements of s94(5) *Motor Accidents Compensation Act 1999* or Guideline 18 of the Motor Accidents Authority Claims Assessment Guidelines - there was error of law on the face of the record - assessment set aside.

[IAG](#) (I G)

**HBU Properties Pty Ltd v Australia and New Zealand Banking Group Ltd [2015] QCA 95**

Supreme Court of Queensland

Holmes & Phillipides JJA; Mullins J

Detinue - possession - appellant as trustee for trust entered into rental agreement with respondent bank for hire of motor vehicle - appellant's obligations of HBU guaranteed by directors pursuant to a written guarantee and indemnity - appellant did not make the monthly payments pursuant to the rental agreement - receivers and managers appointed - bank served a notice of termination of the rental agreement and a notice demanding possession of the vehicle - appellant did not deliver up vehicle - bank sought order for possession - primary judge ordered that the bank recover possession of the vehicle - held: contention failed that bank had received sufficient funds from enforcement of securities granted to it by company which it was bound to apply to repay appellant's debt - no error by primary judge in requiring final hearing of application to proceed - provision of Code of Banking Practice relied on by appellants did not relate to proceeding - appeal dismissed.

[HBU](#) (I B)

**Wattleup Road Development Co Pty Ltd v Western Australian Planning**

**Commission [2015] WASCA 104**

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Administrative law - preliminary question - competency of appeal - appeal from recommendation made by the State Administrative Tribunal to Minister for Planning under s246(2)(b) *Planning and Development Act 2005* (WA) - whether Tribunal's recommendation was a 'decision' for purpose of s105 *State Administrative Tribunal Act 2004* (WA) - held: 'decision' in s105(1) SAT meant dispositive or operative outcome of Tribunal's exercise of its interlocutory or final statutory powers - advisory recommendation under s246(2) SAT Act applied - appeal incompetent - appeal dismissed.

[Wattleup](#) (B C G)

**Watson v Gardner [2015] WASC 192**

Supreme Court of Western Australia

Mitchell J

Real property - caveats - applicants sought extension of caveat under s138C *Transfer of Land Act 1893* - whether caveat had or may have substance - held: no arguable basis on which loan agreement or Deed of Guarantee annexed to applicants' affidavit gave applicants any interest in land - no basis for applicants to assert any proprietary interest in land - Court not satisfied applicants' claim had or may have substance - application dismissed.

[Watson](#) (B)

[Click Here to access our Benchmark Search Engine](#)