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

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Executive Summary (1 minute read)

Yuan v Xie (NSWSC) - loans and mortgages - lender had equitable charge over funds paid into Court by mortgagee - plaintiff entitled to payment of funds out of Court (B)

Philip v JPM Developments Pty Ltd (NSWSC) - judgments and orders - declaratory and injunctive orders - costs order against non-party (I B C)

Haque v State of Victoria (VSCA) - false imprisonment - defamation - no real prospects of success on appeal - leave to appeal refused (I)

Haritos v Commissioner of Taxation (VSCA) - declaratory relief - pleadings - beneficial ownership of shares in company - appeal dismissed (I B)

Mules v Ferguson (QCA) - damages - appellant successful on appeal - interest on damages payable from date of judgment in Court of Appeal, not from date of judgment at first instance (I)

Allsop v Henderson (QSC) - succession - family provision order in favour of son of deceased (B)

TJ King v Qld Building and Construction Commission (QSC) - judicial review - power to require rectification - 'building work' - multiple directions - consequential damage (C G)

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Summaries With Link (Five Minute Read)

Yuan v Xie [2015] NSWSC 492

Supreme Court of New South Wales

Stevenson J

Loans and mortgages - equitable charge - payment out of Court - plaintiff claimed to have equitable charge over property owned by first defendant - claim arose from document called 'Loan Agreement' pursuant to which plaintiff agreed to lend amount to second defendant - first defendant signed document as 'guarantor' - there was amount outstanding - mortgagee took possession of property and exercised power of sale - net proceeds paid into court - plaintiff sought order pursuant to r55.11 *Uniform Civil Procedure Rules 2005* that money be paid out to her on basis she held equitable charge at value of outstanding debt - held: Court satisfied document bespoke intention by first defendant to charge property as security - plaintiff had established primary entitlement and its basis to money paid into Court - Court also satisfied plaintiff had interest in very funds paid into Court - unregistered security interest over property retained force after sale of property and converted to equitable charge - money to be paid out to plaintiff.

[Yuan](#) (B)

Philip v JPM Developments Pty Ltd [2015] NSWSC 495

Supreme Court of New South Wales

Sackar J

Judgments and orders - costs against non-party - Court gave judgment in proceedings - parties submitted proposed declaratory and injunctive orders - plaintiff also claimed sole director and shareholder of defendant be responsible for costs of litigation in event defendant was unable to pay - defendant accepted that as unsuccessful party it should pay costs on ordinary basis - s98(1) *Civil Procedure Act 2005* - held: proposed orders too broad and did not reflect way in which case conducted and decided - form of orders restricted - Court satisfied in circumstances that director should be responsible for costs of proceedings if defendant unable to pay

[Philip](#) (I B C)

Haque v State of Victoria [2015] VSCA 83

Court of Appeal of Victoria

Osborn & Beach JJA

False imprisonment - defamation - applicant sued State alleging causes of action in assault, battery, false imprisonment and defamation - County Court dismissed proceeding and entered judgment for State - applicant sought leave to appeal - held: no error in primary judge's acceptance of constable's evidence that he told applicant he was being arrested pursuant to outstanding warrant - no error in conclusions that arrest warrant valid and outstanding and that arrest neither wrongful nor unlawful - ss461(1) & 461(2) *Crimes Act 1958* did not operate to make arrest unlawful - no error in conclusion it was reasonable for police to place applicant in handcuffs - no error in dismissal of defamation claim or in fact-finding analysis - grounds of

appeal without merit - Court not satisfied appeal had real prospect of success - leave to appeal refused.

[Haque](#) (I)

Haritos v Commissioner of Taxation [2015] VSCA 79

Court of Appeal of Victoria

Osborn, Ferguson & Kaye JJA

Declaratory relief - pleadings - primary judge granted Commissioner declaration that fourth defendant was beneficial owner of shares in company - primary judge also made further declaration that purported declarations of trust made by appellants with respect to the shares were void, invalid and of no effect - appellants contended trial judge failed to properly take into account evidence of an accountant in respect of first declaration - held: Court not persuaded primary judge relevantly disregarded evidence in issue, nor that it established error in conclusions - primary judge did not err in refusing leave to further amend defence - appeal dismissed.

[Haritos](#) (I B)

Mules v Ferguson [2015] QCA 77

Court of Appeal of Queensland

M McMurdo P, Applegarth & Boddice JJ

Damages - interest on judgment sum - Court allowed appellant's appeal - Court entered judgment for appellant in amount of damages assessed by trial judge "together with interests thereon" - appellant contended interest payable on entire judgment sum calculated from date of judgment at first instance - ss58(3) & 59(2) *Civil Proceedings Act 2011* - held: appellant had failed at first instance - appellant had received benefit of substantial award of damages as consequence of successful appeal - nothing in respondent's conduct or appellant's circumstances justified judgment operating from date of initial determination such that respondent would suffer consequence of having to pay significant additional sum of interest - interest should only be payable from date on which judgment in appellant's favour pronounced in Court of Appeal.

[Mules](#) (I)

Allsop v Henderson [2015] QSC 105

Supreme Court of Queensland

Atkinson J

Succession - family provision - deceased died in 20102 - deceased survived by wife of second marriage and two sons, one of which was applicant only child of first marriage - other son was only child of second marriage - provision made for applicant in Will but majority of estate left to wife and other son - applicant sought further provision under s 41(1) *Succession Act 1981* - held: Court satisfied adequate provision had not been made for applicant - provision order made.

[Allsop](#) (B)



TJ King v Qld Building and Construction Commission [2015] QSC 79

Supreme Court of Queensland

Dalton J

Judicial review - applicant had relocated a house - applicant directed by respondent to rectify works associated with relocation on two occasions - applicant submitted work carried out was not 'building work' under *Queensland Building Services Authority Act 1991* (Qld), and that respondent's discretion to give direction pursuant to s72 could only be exercised once - whether power to rectify consequential damage caused by carrying out building work should be implied under s72 - held: work pursuant to contract with house owner was building work - respondent had power to issue second direction - where no power to order rectification of consequential damage specifically given by legislation, respondent did not have power to order rectification of consequential damage.

[TJKing](#) (C G)

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