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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)

Gnych v Polish Club Ltd (HCA) - lease - breach of s92(1)(d) *Liquor Act 2007* (NSW) by failure to obtain Authority's approval for lease did not automatically render lease void and unenforceable (I B)

Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd [2015] HCA 21 (HCA) - discovery - contempt - appellant corporation amenable to order to make discovery under r29.07(2) *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - appeal dismissed (I B C)

Minister for Immigration and Border Protection v WZAPN; WZARV v Minister for Immigration and Border Protection (HCA) - migration - likelihood of period of temporary detention of person for reason mentioned in Refugees Convention was not of itself and without more a 'threat to liberty' - Minister's appeal allowed - no want of procedural fairness - claimant's appeal dismissed (G)

Australian Competition and Consumer Commission v Adata (Vic) Pty Ltd (No 3) (FCA) - consumer law - unsolicited consumer agreements - default judgment refused (I B G)

Pham v Sebie (NSWSC) - conveyancing - equity - service - purchaser's suit for specific performance - adjournment (B)

Spencer v Burton (QCA) - Wills and estates - succession - intestacy - erroneous revocation of Letters of Administration on Intestacy - appeal allowed (B)



**Volanne Pty Ltd v International Consulting and Business Management Pty Ltd (ACTCA) -
stay - contract - stay of enforcement of Master's decision granted pending appeal (I B)**

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Summaries With Link (Five Minute Read)

Gnych v Polish Club Ltd [2015] HCA 23

High Court of Australia

French CJ; Kiefel, Gageler, Keane & Nettle JJ

Lease - respondent Club leased part of licensed premises to appellants for running restaurant - Club breached s92(1) *Liquor Act 2007* (NSW) by not obtaining Authority's approval for lease - relations between parties deteriorated - Club terminated relationship and requested that appellants vacate premises - appellants sought declaration they had leasehold interest in restaurant area for five-year period pursuant to ss8 & 16 *Retail Leases Act 1994* (NSW) and injunction restraining Club from interfering with their possession - Supreme Court of New South Wales granted declaration and injunction - Court of Appeal of New South Wales allowed Club's appeal, finding that lease granted in breach of s92(1) *Liquor Act* conflicted with purpose and policy of *Liquor Act* - held: Court of Appeal erred in concluding policy or purposes of *Liquor Act* could not be served by any sanction short of holding lease void - on proper construction Club's breach of s92(1) did not automatically render lease void and unenforceable - appeal allowed.

[Gnych](#) (I B)

Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd [2015] HCA 21

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane & Nettle JJ

Discovery - contempt - Boral sought to punish appellant for contempt of Court by establishing blockade of construction site in disobedience of Court orders - Boral sought discovery of documents concerning whether appellant authorised employee to establish blockade - whether appellant corporation amenable to order under r29.07 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) to make discovery of particular documents in proceedings - appellant argued terms of r29.07 not sufficiently clear to oblige it to disadvantage itself as defendant in proceedings which were either criminal or quasi-criminal - held: appellant's argument failed because contempt proceeding against appellant was a civil proceeding to which r29.07 applied according to its tenor - appeal dismissed.

[Construction](#) (I B C)

Minister for Immigration and Border Protection v WZAPN; WZARV v Minister for Immigration and Border Protection [2015] HCA 22

High Court of Australia

French CJ; Kiefel, Bell, Gageler & Keane JJ

Migration - refugee status - threat to liberty - in each of two appeals claimant for protection visa contended he was refugee from persecution in country of nationality or former habitual residence - whether for purposes of s91R *Migration Act 1958* (Cth) likelihood of temporary detention of person for reason mentioned in *Refugees Convention* was of itself and without more a threat to liberty under s91R(2) - claimants argued likelihood of any detention was such a

threat and therefore instance of serious harm for purpose s91R(1)(b) irrespective of frequency, length or conditions of detention and its consequences for detainee - held: question whether risk of loss of liberty constituted "serious harm" under s91R required making of qualitative judgment including evaluation of nature and gravity of loss of liberty - question whether likelihood of detention in any case rose to level of serious harm instanced by s91R(2) invited consideration of circumstances and consequences of detention - likelihood of period of temporary detention of person for reason in mentioned in Refugees Convention was not of itself and without more a threat to liberty - appeal allowed - Independent Merits Reviewer's decision to reject claimant's claim to refugee status not void for want of procedural fairness Minister's appeal allowed - claimant's appeal dismissed.

[Minister](#) (G)

Australian Competition and Consumer Commission v Adata (Vic) Pty Ltd (No 3) [2015] FCA 583

Federal Court of Australia

Reeves J

Consumer law - default judgment - ACCC claimed respondents entered into unsolicited consumer agreements, as defined in Australian Consumer Law, in remote and regional communities in Northern Territory and Western Australia - Commission alleged agreements entered in breach of ss73, 76, 78, 79 & 86 ACL - services provided under agreements were preparation and lodgement of income tax returns - ACCC sought default judgment against one of two corporate respondents - held: Court not satisfied ACCC had properly and clearly pleaded each element of alleged against on corporate respondent - trial against the other two respondents imminent - for these reasons Court refused to exercise discretion to enter default judgment against corporate respondent - application dismissed.

[ACCC](#) (I B G)

Pham v Sebie [2015] NSWSC 745

Supreme Court of New South Wales

Young AJA

Conveyancing - equity - purchaser's suit for specific performance - first defendant was alleged vendor - second defendant was mortgagee for first defendant - third defendant was company which apparently lent first defendant money to purchase property - third defendant was a caveator - fourth defendant was person who filed caveat after plaintiff filed caveat to protect alleged interests and claimed to have lent money to first defendant - Registrar convinced alleged vendor evading service and ordered substituted service - alleged vendor claimed he was never served and sought adjournment to file defence and affidavits - held: second, third and fourth defendants struck out of suit - adjournment granted - costs reserved because there was live issue whether order for substituted service was justified.

[Pham](#) (B)

Spencer v Burton [2015] QCA 104

Court of Appeal of Queensland

Holmes & Gotterson JJA; A Lyons J

Wills and estates - succession - deceased died of cancer - appellant obtained Letters of Administration on Intestacy of deceased's estate on basis he was deceased's de facto partner - respondent was deceased's mother - respondent sought declaration appellant was not spouse or de facto partner and sought that Letters of Administration on Intestacy granted to him be revoked - respondent sought replacement grant of Letters of Administration on Intestacy be granted to her - primary judge made declarations and orders sought - held: appellant established that primary judge failed to come to terms with evidence and that there was an error in application of s32DA *Acts Interpretation Act* - appeal allowed - new trial with expedited hearing.

[Spencer](#) (B)

Volanne Pty Ltd v International Consulting and Business Management Pty Ltd [2015]
ACTCA 25

Court of Appeal of the Australian Capital Territory

Burns J

Contract - loan - guarantee - Master found in favour of respondents in proceedings - applicants sought stay of enforcement of Master's decision until further order of Court - prospects of success - respondents' entitlement to fruits of judgment - held: not suggested grounds of appeal not arguable - appeal not doomed to fail - only about 8 weeks until appeal heard - little prospect of respondents being unable to recover against Master's judgment if appeal unsuccessful - appellants had offered to pay further amount into interest bearing account to await outcome of appeal - stay granted on condition of payment of sum into account as agreed by parties.

[Volanne](#) (I B)

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