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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)

**Caltex Australia Petroleum Pty Ltd v Troost (No 2)** (NSWCA) - costs - guarantee and indemnity - appellant not entitled to indemnity costs in proceedings (I B)

**In the Estate of the late Ronald Robert Irvine; Evans v Gibbs** (NSWSC) - Wills and estates - deceased intended informal document to form his Will - declaration (B)

**McCosker v Motor Accidents Authority of New South Wales** (NSWSC) - judicial review - erroneous characterisation of reports as *additional relevant information* - decision of proper officer declared invalid (I G)

**Blue Concept Pty Ltd v Farnan** (VSC) - real property - covenant precluded construction of multi-apartment development (B C)

**Ralph Lauren 57 Pty Ltd v Conley** (QSC) - corporations - winding up - statutory demands set aside (B)

**Hayes v Hayes** (QSC) - succession - deceased did not have interest in property at time of death - declaratory relief (B)

**Broznic v The Federal Capital Press Pty Ltd t/as The Canberra Times (ACTCA)** - negligence - appellant injured by fire door on company's premises – company not liable (I)

## Summaries With Link (Five Minute Read)

### **Caltex Australia Petroleum Pty Ltd v Troost (No 2) [2015] NSWCA 103**

Court of Appeal of New South Wales

Meagher, Barrett & Emmett JJA

Costs - indemnity costs - guarantee and indemnity - Court allowed appeal in proceedings giving verdict and judgment for Caltex - Court concluded respondent should pay Caltex's costs of proceedings in District Court and on appeal - Caltex sought indemnity costs on basis of respondent's failure to accept offer of compromise - alternatively Caltex sought to rely on indemnity as entitling it to indemnity costs - respondent contended there should be no order as to costs of District Court proceedings because Caltex was unsuccessful on issue whether it was entitled to recover under guarantee as distinct from indemnity - s160 *Evidence Act 1995* (NSW) - r51.9 *Uniform Civil Procedure Rules 2005* (NSW) - held: failure to accept offer and terms of indemnity were not bases for indemnity costs order - ultimately Caltex completely successful against respondent - no basis to depart from usual rule that costs should follow event in District Court.

[Caltex](#) (I B)

### **In the Estate of the late Ronald Robert Irvine; Evans v Gibbs [2015] NSWSC 432**

Supreme Court of New South Wales

Stevenson J

Wills and estates - deceased died in 2013 - deceased made Will in 1994 - in 2012 deceased wrote over five pages in red covered notebook (Informal Will) - whether for purposes of s8 *Succession Act 2006* (NSW) deceased intended informal Will to be his Will thus revoking 1994 Will - held: Court comfortably satisfied deceased intended Informal Will would operate *without more* as his Will - declaration made.

[Irvine](#) (B)

### **McCosker v Motor Accidents Authority of New South Wales [2015] NSWSC 434**

Supreme Court of New South Wales

Button J

Judicial review - plaintiff sought judicial review of decision of proper officer of Motor Accidents Authority to refer matter for further medical assessment pursuant to s62 *Motor Accidents Compensation Act 1999* (NSW) - whether proper officer misinterpreted and misapplied *additional relevant information* contained in s62(1)(a) of the Act - held: not open to proper officer to characterise reports of doctor and chiropractor as being *additional relevant information* - proper officer's determination founded on significant error of law with regard to s62(1)(a) - decision declared invalid.

[McCosker](#) (I G)

### **Blue Concept Pty Ltd v Farnan [2015] VSC 125**

Supreme Court of Victoria

McDonald J

Real property - restrictive covenant - plaintiff property developer was registered proprietor of land - plaintiff wished to erect multi-apartment development on land - defendants opposed development - plaintiff sought declaration that obligations created by covenant expired prior to it becoming registered proprietor - s84 *Property Law Act 1958* (Vic) - held: obligations created by covenant continued to bind plaintiff - amendments to covenant were in lieu of those created by original covenant - amended covenant precluded construction of multi-apartment development - application dismissed.

[Blue](#) (B C)

## **Ralph Lauren 57 Pty Ltd v Conley [2015] QSC 90**

Supreme Court of Queensland

Douglas J

Corporations - winding up - applicant sought to set aside 14 statutory demands pursuant to s459G *Corporations Act 2001* (Cth) - applicant contended there was genuine dispute as to each "debt", that there was "some other reason" to set aside demands and that demands not effectively served - statutory demand procedure - effect of parallel proceedings in Family Court of Australia - held: Court satisfied there was genuine dispute about nature of debt claimed and whether it was payable immediately - not appropriate to deal with matter when Family Court of Australia likely to be required to deal with factual issues sought to be debated - statutory demands set aside.

[RalphLauren](#) (B)

## **Hayes v Hayes [2015] QSC 88**

Supreme Court of Queensland

Boddice J

Succession - plaintiff claimed provision from estate of deceased father pursuant to s41 of *Succession Act 1981* (Qld) - plaintiff also sought declaration that at date of death father had interest in real property - separate determination of claim for declaratory relief - plaintiff submitted that money paid by parents for construction of house on the second defendant sister's property were advanced by way of loan and consequently, father had equitable interest in the property - equitable considerations arising from advancing of funds by parent to child - characterisation of parents' payments - held: Court satisfied funds advanced to second defendant for construction of house and its ongoing costs were gift subject to common endeavour - property owned by the second defendant, legally and beneficially, in its entirety - conclusion consistent with terms of the deceased's Wills - declaratory relief refused.

[Hayes](#) (B)

## **Broznic v The Federal Capital Press Pty Ltd t/as The Canberra Times [2015] ACTCA 8**

Court of Appeal of the Australian Capital Territory

Burns & Gilmour JJ; Cowdroy AJ

Negligence - appellant cleaning supervisor injured while entering premises of company when struck by fire door being opened by company's employee - plaintiff settled claim against



employer in relation to injuries suffered in door incident and previous work injury - plaintiff alleged company negligent by not installing door with window through which persons approaching the door might be viewed - Master found no breach of duty by company - appellant appealed - held: Master correctly applied test for negligence in s 42 *Civil Law (Wrongs) Act 2002* (ACT) - mere fact that risk of injury present on company's premises not sufficient to render company liable - there was absence of evidence to justify conclusion company could have, or should have, taken measures to avoid risk of injury when risk was not significant on evidence - appeal dismissed.

[Brozinic \(I\)](#)

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