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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)

Roads and Maritime Services v Grant (NSWCA) - negligence - Authority not liable for motorcyclist's injuries in collision with pedestrian barrier - appeal allowed (I C)

Coolbrew Pty Ltd v Westpac Banking Corporation (NSWCA) - equity - trusts - declaration that bank held funds on trust for company refused - appeal dismissed (B)

New South Wales Land and Housing Corporation v Diab (NSWCA) - administrative law - residential tenancy - retrospective cancellation of rental rebates - appeal dismissed (B G)

TB v State of New South Wales and Quinn; DC v State of New South Wales and Quinn (NSWSC) - negligence - victims of sexual abuse - breach of duty by Department was not necessary condition of harm (I)

Juvesconi Investments Pty Ltd v Sanasi (NSWSC) - real property - defective caveats claiming equitable interest in land removed (B)

Barrow v Bolt (VSCA) - defamation - claim arising from email correspondence forwarded to Australian Press Council dismissed - leave to appeal refused (I)

Pike v Pike (QSC) - succession - sole beneficiary of Will convicted of manslaughter of testator - forfeiture rule applied - estate distributed to applicant (B)

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Summaries With Link (Five Minute Read)

Roads and Maritime Services v Grant [2015] NSWCA 138

Court of Appeal of New South Wales

McColl, Basten & Emmett JJA

Negligence - respondent motorcyclist injured when motorcycle collided with pedestrian barrier erected on median strip in centre of intersection - primary judge found Authority breached duty and that its breach caused respondent's injuries - primary judge also found it would be just and equitable to reduce damages by 30% for contributory negligence - Authority appealed - held: Authority not liable for alleged breach because statutory immunity in s43A *Civil Liability Act 2002* engaged - respondent did not establish mechanism of accident was as he contended - appeal allowed.

[Roads](#) (I C)

Coolbrew Pty Ltd v Westpac Banking Corporation [2015] NSWCA 135

Court of Appeal of New South Wales

Leeming JA, Bergin CJ in Eq & Sackville AJA

Equity - trusts - primary judge dismissed appellant's summons seeking declaration that certain funds placed on term deposit with first respondent bank in third party's name were held by bank on trust for appellant - primary judge not satisfied on evidence trust made out - s58(3)(b) *Bankruptcy Act 1966* - held: primary judge correct to conclude appellant had not discharged its onus of showing parties intended third party to hold deposit on trust for appellant - appeal dismissed.

[Coolbrew](#) (B)

New South Wales Land and Housing Corporation v Diab [2015] NSWCA 133

Court of Appeal of New South Wales

Beazley P; Macfarlan & Leeming JJA

Administrative law - New South Wales Land and Housing Corporation sought leave to appeal against decision of Appeal Panel of New South Wales Civil and Administrative Tribunal relating to residential tenancy of respondent who lived in public housing - Tribunal rejected Corporation's contention that it and Department granted respondent rental rebates on basis of incorrect information he supplied and that it was entitled to treat rental rebates as arrears of rent and terminate lease for non-payment - held: Appeal Panel correct to find tenancy agreement varied by Corporation granting rental rebates and respondent paying rent at rebated rates - termination for breach of residential tenancy agreement would not affect efficacy of variations made to tenancy agreement in past - retrospective cancellation of tenant's rental rebates under s57 *Housing Act 2001* did not convert amounts of rebates into arrears of rent - Corporation unable to invoke provisions allowing it to terminate tenancy agreement for breach due to failure to pay rent during periods - appeal dismissed.

[NewSouthWales](#) (B G)

TB v State of New South Wales and Quinn; DC v State of New South Wales and Quinn [2015] NSWSC 575

Supreme Court of New South Wales
Campbell J

Negligence - plaintiffs were victims of sexual abuse by stepfather - plaintiffs claimed damages from State and officer for personal injury and mental harm caused by continuation of sexual and physical abuse by stepfather after Department notified of their ill-treatment - held: Department owed plaintiffs duty actionable under law of negligence to use reasonable care in exercise of its powers conferred by s148B *Child Welfare Act 1939* (NSW) - officer owed no duty in exercise of powers under s148B as powers not conferred on her - Department breached its duty of care by omitting to notify New South Wales Police Child Mistreatment Unit of serious physical and sexual abuse suffered by plaintiffs - Department's breach was not necessary condition of harm suffered by plaintiffs - judgment for defendants.

[TB](#) (I)

Juvesconi Investments Pty Ltd v Sanasi [2015] NSWSC 611

Supreme Court of New South Wales
Darke J

Real property - caveats - plaintiff sought that defendant withdraw caveats recently lodged over lots - caveats each claimed an equitable interest in the land - s74MA *Real Property Act 1900* - held: defendant would not be granted an interlocutory injunction against plaintiff to protect claimed interests - caveats were defective in that they failed to give required particulars of nature of interests claimed - caveats should be removed.

[Juvesconi](#) (B)

Barrow v Bolt [2015] VSCA 107

Court of Appeal of Victoria
Ashley, Kaye & McLeish JJA

Defamation - applicant made complaint concerning first respondent to Australian Press Council - respondents invited to respond - claim arising from email from first respondent to second respondent which was forwarded to Australian Press Council - trial judge dismissed applicant's claim - applicant sought leave to appeal - s33 *Defamation Act 2005* - triviality defence - malice - applicant sought leave to appeal - held: leave to appeal refused in respect of trial judge's conclusions on issue of malice, and conclusion that applicant failed to establish first defendant knew of falsity of certain statement - trial judge correct to conclude respondents had established circumstances of publication were such that applicant unlikely to suffer harm to reputation as result of publications - leave to appeal refused.

[Barrow](#) (I)

Pike v Pike [2015] QSC 134

Supreme Court of Queensland
Atkinson J

Succession - respondent executor and sole beneficiary of deceased's Will was convicted of



manslaughter of deceased who was his mother - applicant was deceased's other son - applicant sought distribution of estate in his favour pursuant to substitutional clause of Will - whether or not provision in Will of deceased which left estate absolutely to respondent had failed to take effect with result whole estate left to applicant - held: applicant had proved respondent killed deceased and that killing was unlawful - forfeiture rule applied - provision in Will leaving whole of estate to respondent failed because he had been criminally responsible for testator's death - estate of deceased to be distributed to applicant.

[Pike](#) (B)

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