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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)

Carlene Randall v City of Canada Bay Council (No 4) (NSWSC) - judgments and orders - application to set aside judgments and orders made against company refused - amended statement of claim dismissed (I B)

Miller v Ryan; Payne v Ryan (NSWSC) - succession - family provision - application by nieces of testator - nieces failed to establish they were eligible persons - summons dismissed (B)

IDP Education Ltd v Lejburg Pty Ltd (VSC) - consumer law - misleading or deceptive conduct - promotional material on website - website to be removed and not republished - declarations and injunctions (I B)

KWS Capital Pty Ltd v Love (WASCA) - loans and mortgages - contract - finance broker entitled to fee from respondent for procuring conditional finance agreement - appeal allowed (I B)

Range Resources Ltd v Lind Asset Management LLC (WASCA) - corporations - statutory demand - sale of shares in appellant - no genuine dispute about amount of debt - off-setting claim not made - appeal dismissed (I B C)

Australian Executor Trustees Ltd v Attorney General (WA) (WASC) - trusts and trustees - judicial advice - trustee of charitable trust justified to enter proposed settlement deed containing certain clauses (B)

Scald Pty Ltd v Turner Developments Pty Ltd (ACTSC) - application for account refused on basis there remained a preliminary question to be decided in proceedings (I B C)

Summaries With Link (Five Minute Read)

Carlene Randall v City of Canada Bay Council (No 4) [2015] NSWSC 1759

Supreme Court of New South Wales

Kunc J

Judgments and orders - corporations - plaintiff sought to set aside judgments and orders made against company in 2009 subsequently varied in 2010 in Court of Appeal - plaintiff and husband were shareholders and directors of company - plaintiff contended proceedings were tainted by misrepresentation made to both Courts by Council - plaintiff also sought reinstatement of company - held: plaintiff had standing under r36.15 *Uniform Civil Procedure Rules 2005* (NSW) and Court's inherent jurisdiction to bring proceedings - no fraudulent misrepresentations by Council - no basis to reinstate company under s601AH(2) *Corporations Act 2001* (Cth) - none of plaintiff's arguments succeeded - even if plaintiff's arguments were correct they would not justify Court granting the relief sought - amended statement of claim dismissed.

[Carlene](#) (I B)

Miller v Ryan; Payne v Ryan [2015] NSWSC 1713

Supreme Court of New South Wales

Young AJA

Succession - family provision - two applications under *Succession Act 2006* (NSW) for provision out of deceased's estate - plaintiffs were two of testator's nieces - plaintiffs claimed they were eligible persons under s57(1)(e) because each was person at particular time wholly or partly dependent on testator or at some time member of household of which testator was member - held: plaintiffs established they were members of same household as testator - insufficient evidence to establish any dependence on testator - plaintiff did not establish they were eligible persons - no factors warranting making of application - summons dismissed.

[Miller](#) (B)

IDP Education Ltd v Lejburg Pty Ltd [2015] VSC 650

Supreme Court of Victoria

Judd J

Consumer law - allegation of misleading or deceptive promotional material - defendants established and operated website - plaintiffs alleged statements on website involved conduct in contravention of ss18, 29(1)(g) & 29(1)(f) *Australian Consumer Law* and that second defendant director of first defendant company guilty of same contraventions as company by operation of s12 *Australian Consumer Law and Fair Trading Act 2012* (Vic) - held: not disputed publication by defendants of website was in trade or commerce - website's central themes and dominant messages false or misleading - plaintiffs established strong case of contraventions of ss18, &

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29(1)(f) & (g). - second defendant as well as first defendant contravened provisions - plaintiffs entitled to declarations and injunctions under s232 *Australian Consumer Law* and s202 *Australian Consumer Law and Fair Trading Act* - website to be removed as a whole and not republished - parties to be heard on claim for damages and costs.

[IDP](#) (I B)

KWS Capital Pty Ltd v Love [2015] WASCA 237

Court of Appeal of Western Australia

McLure P, Murphy JA & Beech J

Loans and mortgages - finance broker - contract concerning fees payable by proposed borrower to agent in business of arranging provision of loans - appellant was finance broker who claimed entitlement to fee from respondent for procuring conditional financing agreement for respondent. - trial judge dismissed appellant's claim for structuring fee on basis it wasn't payable until advance made by company from whom finance offer procured - trial judge found it would be an uncommercial construction to be found liable to pay structuring fee irrespective whether advance made - contractual construction - common intention - held (by majority): approval of finance on terms and conditions in offer triggered the respondent's liability to pay structuring fee - appeal allowed.

[KWS](#) (I B)

Range Resources Ltd v Lind Asset Management LLC [2015] WASCA 233

Court of Appeal of Western Australia

Newnes & Murphy JJA; Corboy J

Corporations - statutory demand - respondent advanced funds to appellant pursuant to a Varied Funding Agreement (VFA) - default occurred - respondent served demand on appellant under s459E *Corporations Act 2001* (Cth) - appellant contended respondent sold shares in appellant issued and delivered as security for advances and that there was genuine dispute about amount of debt claimed - held: Master correct to hold there was no genuine dispute about amount of debt - any claim by appellant regarding sale of shares could only be off-setting claim - however appellant did not contend it had an off-setting claim - appeal dismissed.

[Range](#) (I B C)

Australian Executor Trustees Ltd v Attorney General (WA) [2015] WASC 439

Supreme Court of Western Australia

Martin CJ

Trusts and trustees - judicial advice - plaintiff trustee of charitable trust sought directions pursuant to s92 *Trustees Act 1962* (WA) that it was justified executing a deed of settlement containing certain clauses - s21 *Charitable Trusts Act 1962* (WA) - s601WBG *Corporations Act 2001* (Cth) - *Native Title Act 1993* (Cth) - s11 *Property Law Act 1969* (WA) - O58 r2 *Rules of the Supreme Court 1971* (WA) - s63 *Trustee Act 1925* (NSW) - s92 *Trustees Act 1962* (WA) - held: Court concluded it was appropriate for trustee to enter proposed settlement deed insofar as it contained the certain provisions - all parties to proceedings supported relief sought - Court unable to identify persons or parties with interest in proceedings not represented or should have



been joined - directions given.

[Australian Executor Trustees Ltd](#) (B)

Scald Pty Ltd v Turner Developments Pty Ltd [2015] ACTSC 270

Supreme Court of the Australian Capital Territory

Burns J

Application for account - dispute between companies and persons involved in joint venture for development of units - plaintiff and other defendants were lenders to first defendant - apartments sold and insufficient funds to fully repay lenders' interest - correctness of repayments are in issue - substantial balance held by solicitors in trust account - plaintiff claimed right to an account - rr2721, 2722 *Court Procedures Rules 2006* (ACT) - what constitutes a preliminary question - held: a preliminary question went to a party's right to recover "in whole or in part", and must be resolved in order for court appointed referee to determine what was due to each party - there remained a preliminary question to be decided - Court not prepared to order account be taken - once preliminary question decided, Court might reconsider making proposed orders - application refused.

[Scald](#) (I B C)

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