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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

He v Yeung (NSWCA) - loan agreement - self-represented litigant - proposed appeal with amount in issue of less than \$100,000 - leave to appeal refused

Cornwell v Channel Seven Sydney Pty Ltd (NSWSC) - pleadings - defamation - defences - contextual truth - certain imputations incapable of arising and struck out

Matthew Chaina v Graham Douglas Bates and each of the partners of Mallesons Stephen Jacques, as it was known at the relevant time, listed in the revised schedule A in the amended statement of claim (NSWSC) - professional negligence - solicitors' duties - separate determination of duty and breach ordered

McCloy v Latham (NSWSC) - administrative law - bias - order restraining Independent Commission Against Corruption from continuing with investigation refused

Pearson v Martin (VSC) - administrative law - equal opportunity - substantial reason for termination of teacher's employment was his lawful sexual activity with former student - appeal dismissed

Hanks v Johnston (VSC) - pleadings - defamation - defences - honest opinion - paragraphs of defence struck out

Boothby v Commonwealth Bank of Australia (QCA) - possession - failure to pay security for costs of appeal against judgment in bank's favour - appeal dismissed

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Summaries With Link (Five Minute Read)

He v Yeung [2015] NSWCA 392

Court of Appeal of New South Wales

Beazley P, Meagher JA & Bergin CJ in Eq

Loan agreement - self-represented litigant - respondent loaned money to applicant and husband for applicant's purchase of residential property - primary judge held applicant was indebted to respondent in amount of \$248,279.45 - amount in issue on applicant's appeal less than \$100,000 - applicant require leave to appeal - held: no matter of general principle or public importance in application - no prospect that if leave were granted proposed appeal could succeed - leave to appeal refused.

[He](#)

Cornwell v Channel Seven Sydney Pty Ltd [2015] NSWSC 1673

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - defences - contextual truth - action arising out of broadcast of news segment concerning plaintiff's conduct as director of a company - plaintiff objected to defence - s26 *Defamation Act 2005* (NSW) - held: certain contextual imputations incapable of arising and struck out - defendant to be heard on whether they should be able to replead imputations - certain imputations to go to the jury.

[Cornwell](#)

Matthew Chaina v Graham Douglas Bates and each of the partners of Mallesons Stephen Jacques, as it was known at the relevant time, listed in the revised schedule A in the amended statement of claim [2015] NSWSC 1867

Supreme Court of New South Wales

Hidden J

Professional negligence - solicitors' duties - proceedings for professional negligence against partners of law firm - partners sought order pursuant to r28.2 *Uniform Civil Procedure Rules 2005* (NSW) for separate determination of issues of duty and breach on basis of delay which had occurred and was likely to continue before proceedings finalised - *Civil Liability Act 2002* (NSW) - held: Court satisfied it was appropriate to order separate determination of issues of duty and breach - orders made.

[Matthew Chaina](#)

McCloy v Latham [2015] NSWSC 1879

Supreme Court of New South Wales

McDougall J

Administrative law - bias - plaintiff sought to restrain second defendant Independent Commission Against Corruption from continuing with or reporting on investigation on basis there were reasonable grounds for apprehending Commissioner might not bring open mind to

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resolution of question of findings in respect of plaintiff - *Civil Procedure Act 2005* (NSW) - *Court Suppression and Non-Publication Orders Act 2010* (NSW) - *Election Funding, Expenditure and Disclosures Act 1981* (NSW) - *Independent Commission Against Corruption Act 1988* (NSW) - *Independent Commission Against Corruption Amendment Act 2015* (NSW) - *Police Integrity Commission Act 1996* (NSW) - held: plaintiff's arguments as to bias failed - plaintiff treated with scrupulous fairness by Commissioner - summons dismissed.

[McCloy](#)

Pearson v Martin [2015] VSC 696

Supreme Court of Victoria

Garde J

Administrative law - equal opportunity - College terminated defendant teacher's employment - defendant filed application with Victorian Civil and Administrative Tribunal - defendant alleged College discriminated against him contrary to s18(b) *Equal Opportunity Act 2010* (Vic) because substantial reason for dismissal was his sexual activity with former student of College - College claimed sexual activity was not a substantial reason for termination of employment - Tribunal found sexual activity was substantial reason for termination of employment and that principal treated defendant unfavourably due to attribute of lawful sexual activity - Tribunal awarded compensation - College contended Tribunal erred in determining whether circumstances fell within relevant statutory description and in making an adverse finding as to principal's credibility - held: College's grounds of appeal in relation to finding of discrimination and claim for past economic loss failed - appeal dismissed.

[Pearson](#)

Hanks v Johnston [2015] VSC 570

Supreme Court of Victoria

John Dixon J

Pleadings - defamation - defences - plaintiff was president of school parents' association - defendant was principal of school - action arising out of letter sent to parents - plaintiff sought to strike out paragraphs of defence that pleaded a defence of honest opinion under s31 *Defamation Act 2005* (Vic) - whether opinion based on proper material that appeared or was referenced in publication or otherwise notorious - held: certain paragraphs of defence struck out pursuant to r23.02 on basis defence not disclosed.

[Hanks](#)

Boothby v Commonwealth Bank of Australia [2015] QCA 251

Court of Appeal of Queensland

McMurdo P, Morrison JA & Jackson J

Possession - security for costs - Court ordered judgment for possession of land in respondent's favour and ordered appellant to pay sum to respondent - appellant orders stay of judgment, transfer of proceeding to "Federal Bankruptcy Court or the Federal Circuit Court" for "the High Court to interpret the conflict of state statute, which is inconsistent with the Constitution and federal statute in their operation" and judicial review - Court ordered appellant to pay security



for costs - appellant did not pay - respondent sought that appeal be dismissed - whether appeal should be dismissed for noncompliance security order or adjourned to see whether appellant might provide security - held: no serious question that proceeding in District Court or judgment of District Court went beyond jurisdiction - Court had no power to transfer matter to Federal Circuit Court or High Court - District Court judgment not amenable to judicial review- no prospects of success on appeal - appeal dismissed.

[Boothby](#)

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