

Friday, 10 July 2015

## Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Cavric v Willoughby City Council** (NSWCA) - highways - negligence - customer injured in shopping centre - car park did not constitute a public road - appeal allowed

**Laing O'Rourke Australia Construction Pty Ltd v Samsung C & T Corporation** (WASC) - construction contract - adjudicator misapprehended nature of function - determinations invalid and quashed

### Summaries With Link (Five Minute Read)

#### **Cavric v Willoughby City Council [2015] NSWCA 182**

Court of Appeal of New South Wales

Basten, Meagher & Emmett JJA

Highways - negligence - real property - appellant wheeling trolley laden with shopping and child - front wheel on trolley hit "pothole" - trolley tilted - appellant injured when she fell seeking to stop trolley overturning - appellant sued Council for negligent maintenance of car park - trial judge dismissed claim on basis car park was public road by operation of s249(1) *Roads Act 1993* with result Council protected by s45 *Civil Liability Act 2002* - if car park did not constitute public road appeal must be upheld - statutory scheme - continued operation of common law - whether conveyance effected dedication of a road - evidence of public use - 'is evidence that the place is or forms part of a public road' - held: trial judge misunderstood s249(1) as providing freestanding test as to whether place was public road - s249 was no more than an evidentiary provision describing evidence which was admissible to prove a place was or formed part of that



public road - s249 was subject to constraint imposed by s178 *Conveyancing Act 1919* - in circumstances where there was no other evidence besides public use, trial judge should have found status of place where accident occurred as a public road was not established - appeal allowed.

[Cavric](#)

[From Benchmark Tuesday, 7 July 2015]

**Laing O'Rourke Australia Construction Pty Ltd v Samsung C & T Corporation [2015]**  
**WASC 237**

Supreme Court of Western Australia

Mitchell J

Construction contract - parties entered into a Subcontract - Samsung terminated subcontract for convenience - parties entered into an 'Interim Deed' which provided Samsung make payments to Laing O'Rourke - one payment made under Interim Deed - adjudicator appointed under *Construction Contracts Act 2004 (WA)* determined Samsung must pay Laing O'Rourke amount - Samsung sought to quash determinations for jurisdictional error - held: adjudicator committed jurisdictional error by failing to resolve payment disputes by reference to terms of Subcontract before him - adjudicator misapprehended nature of his function - determinations not authorised by Act and invalid - leave to enforce the determinations refused.

[Laing](#)

[From Benchmark Wednesday, 8 July 2015]



# Benchmark

**From: Auguries of Innocence**

By William Blake

To see a World in a Grain of Sand  
And a Heaven in a Wild Flower  
Hold Infinity in the palm of your hand  
And Eternity in an hour

[William Blake](#)

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