

**AUSTRALIAN LAW REPORTS**  
**341 PART 2**

**TABLE OF CASES REPORTED**

- Bondelmonte v Bondelmonte  
(HCA — Full Court) (2017) 341.179

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Commissioner of Taxation v AP Energy Investments Pty Ltd  
(FCA — McKerracher J) (2016) 341.265

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Deputy Commissioner of Taxation v Hawkins  
(FCA — Pagone J) (2016) 341.255

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Equititrust Ltd (in liq) (rec apptd)(recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)  
(FCA — Markovic J) (2016) 341.301

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Gore v Australian Securities and Investments Commission  
(FCAFC — Full Court) (2017) 341.189

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Re Application of the Attorney-General for New South Wales dated 4 April 2014 (NSWCCA — Full Court) (2014) 341.340

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

- Sydney Recycling Park Pty Ltd v Cardinal Group Pty Ltd (in liq) (NSWCA — Full Court) (2016) 341.313

[LexisNexis AU \(former platform\)](#) | [Lexis Advance \(current platform\)](#)

## CUMULATIVE TABLE OF CASES REPORTED

### Australian Law Reports

Bennett v Strauss (NSWCA — Full Court) (2016) **341.141**

**Bondelmonte v Bondelmonte** (HCA — Full Court) (2017) **341.179**

Carter v Caason Investments Pty Ltd (VSCA — Full Court) (2016) **341.154**

Commissioner of State Revenue v ACN 005 057 349 Pty Ltd (HCA — Full Court) (2017) **341.46**

**Commissioner of Taxation v AP Energy Investments Pty Ltd** (FCA — McKerracher J) (2016) **341.265**

**Deputy Commissioner of Taxation v Hawkins** (FCA — Pagone J) (2016) **341.255**

**Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)** (FCA — Markovic J) (2016) **341.301**

Ferguson v Ayres (in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq)) (Matter No B55/2016) (HCA— Full Court) (2017) **341.18**

Firmware Technologies Inc v Asia Platinum Group Ltd (WASCA — Full Court) (2016) **341.166**

**Gore v Australian Securities and Investments Commission** (FCAFC — Full Court) (2017) **341.189**

Minister for Immigration and Border Protection v Le (FCAFC — Full Court) (2016) **341.112**

Palmer v Ayres (in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq)) (Matter No B52/2016) (HCA— Full Court) (2017) **341.18**

*(Continues on p ii of cover)*

Cases in **bold** reported in this Part

ISSN 0310-0014

PRINT POST APPROVED

PP255003/00716

© LexisNexis 2017

**CUMULATIVE TABLE OF CASES REPORTED** — *continued*

- Re Application of the Attorney-General for New South Wales dated 4 April 2014** (NSWCCA — Full Court) (2014) **341.340**
- Re Questions referred to the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918 (Cth) concerning Senator Rodney Norman Culleton (No 2) (HCA — Full Court) (2017) **341.1**
- Sydney Recycling Park Pty Ltd v Cardinal Group Pty Ltd (in liq)** (NSWCA — Full Court) (2016) **341.313**
- Western Australian Planning Commission v Leith (Matter No P48/2016) (HCA — Full Court) (2017) **341.70**
- Western Australian Planning Commission v Southregal Pty Ltd (Matter No P47/2016) (HCA — Full Court) (2017) **341.70**
- Woodgate (the trustee of the property of Jennings (a bankrupt)) v Northop Hall Pty Ltd (ACN 119 559 438) (in its own right and in its capacity as trustee for the Broad Oak Trust) (FCA — Rares J) (2016) **341.132**

## CASES JUDICIALLY CONSIDERED IN THIS PART

- Australian Competition and Consumer Commission v ABB Transmission and Distributors Ltd (No 3) [2002] FCA 609, followed 341.255
- CDJ v VAJ (No 1) (1998) 197 CLR 172; 157 ALR 686; 23 Fam LR 755; [1998] HCA 67, considered 341.179
- Commissioner of Taxation v Resource Capital Fund III LP (2014) 225 FCR 290; [2014] FCAFC 37, applied and explained 341.265  
—v Resource Capital Fund III LP (No 2) [2014] FCAFC 54, considered 341.265
- Farrow Mortgage Services Pty Ltd (in liq) v Webb (1996) 39 NSWLR 601; 132 FLR 466; 14 ACLC 1240, considered 341.301
- Gronow v Gronow (1979) 144 CLR 513; 29 ALR 129; 5 Fam LR 719, considered 341.179
- Haritos v Commissioner of Taxation (2015) 233 FCR 315; 322 ALR 254; 147 ALD 265; [2015] FCAFC 92, applied 341.265
- Hewson (in their personal capacity and in their capacity as trustees of the Hewson Superannuation Fund) v Gothard (as recs and mgrs of Allco Finance Group Ltd (recs and mgrs apptd) (in liq)) (2014) 222 FCR 59; 308 ALR 556; 98 ACSR 313; [2014] FCA 320, distinguished 341.255
- House v R (1936) 55 CLR 499, applied 341.179
- Oldham v Capgemini Australia Pty Ltd (2015) 241 FCR 397; [2015] FCA 1149, considered 341.255
- Osland v Secretary to the Department of Justice (2010) 241 CLR 320; 267 ALR 231; 116 ALD 1; [2010] HCA 24, considered 341.265
- Pioneer Concrete (NSW) Pty Ltd v Webb (1995) 18 ACSR 418, considered 341.301
- R v Davis (1995) 57 FCR 512, applied 341.255
- Re Binqld Finances Pty Ltd (in liq) (2015) 107 ACSR 163; [2015] FCA 718, considered 341.301
- Repatriation Commission v O'Brien (1985) 155 CLR 422; 58 ALR 119; 7 ALN N127, considered 341.265
- Seven Network Ltd v News Ltd (No 9) (2005) 148 FCR 1; 225 ALR 256; [2005] FCA 1394, considered 341.255
- X7 v Australian Crime Commission (2013) 248 CLR 92; 298 ALR 570; [2013] HCA 29, applied 341.340

## STATUTES, RULES, ETC CITED IN THIS PART

### COMMONWEALTH

Administrative Appeals Tribunal Act 1974	
s 44 . . . . .	341.265
Australian Securities and Investments Commission Act 2001	
s 12 DA . . . . .	341.189
s 68(3)(b) . . . . .	341.189
Corporations Act 2001	
s 705 . . . . .	341.189
s 706 . . . . .	341.189
s 707 . . . . .	341.189
s 708 . . . . .	341.189
s 708A . . . . .	341.189
s 708AA . . . . .	341.189
s 727 . . . . .	341.189
s 1041H . . . . .	341.189
s 1308A . . . . .	341.189
s 1311 . . . . .	341.189
s 1324 . . . . .	341.189
Criminal Code	
s 3.1 . . . . .	341.189
s 3.2 . . . . .	341.189
s 4.1 . . . . .	341.189
s 4.2 . . . . .	341.189
s 4.3 . . . . .	341.189
s 5.1 . . . . .	341.189
s 5.4 . . . . .	341.189
s 5.6 . . . . .	341.189

s 9.1 . . . . .	341.189
s 11. 6 . . . . .	341.189
s 16.4 . . . . .	341.189
Family Law Act 1975	
s 60CA . . . . .	341.179
s 60CC . . . . .	341.179
s 60CD . . . . .	341.179
s 60CE . . . . .	341.179
s 64C . . . . .	341.179
s 65C . . . . .	341.179
s 65D . . . . .	341.179
s 68L . . . . .	341.179
s 68LA . . . . .	341.179
Federal Court Rules 2011	
r 2.32 . . . . .	341.255
Income Tax Assessment Act 1997	
s 40-730 . . . . .	341.265
s 102-5 . . . . .	341.265
s 108-5 . . . . .	341.265
s 855A . . . . .	341.265
s 855-5 . . . . .	341.265
s 855-10 . . . . .	341.265
s 855-15 . . . . .	341.265
s 855-30 . . . . .	341.265

### NEW SOUTH WALES

Children and Young Persons (Care and Protection) Act 1998	
s 29 . . . . .	341.340

## INDEX OF CASES IN THIS PART

### ADMINISTRATIVE LAW

**Appeal** — From Administrative Appeals Tribunal to Federal Court — Appeal on question of law only — Rationale for limitation on appeal: *Commissioner of Taxation v AP Energy Investments Pty Ltd* 341 ALR 265

### CORPORATIONS

**Offences** — Accessorial liability — Prohibition on offering securities under s 727(1) and (2) without disclosure document being lodged if disclosure required under Pt 6D.2 — Whether alleged accessory without actual knowledge that offer required disclosure capable of being found to be knowingly concerned in principal's contraventions of s 727(1) and (2) — Elements of accessory's contravention of s 727(1) and (2) — Whether necessary for party alleging contravention to prove that no exemption from requirement of disclosure applies to the offer of securities: *Gore v Australian Securities and Investments Commission* 341 ALR 189

**Offences** — Accessorial liability — Where civil and criminal penalties apply to offences under s 727 — Where offence of contravening s 727(1) and (2) created by s 1311(1) — Where s 1308A applied provisions of the Criminal Code (Cth) to offences under the Act — Whether Pt 2.4 of the Criminal Code (Cth) required proof of physical and fault elements in respect of contravention of s 727(1) and (2) — Proof of physical and fault elements under the Criminal Code (Cth) necessary to establish accessory's contravention of s 727(1) and (2): *Gore v Australian Securities and Investments Commission* 341 ALR 189

**Offences** — Accessorial liability for misleading or deceptive conduct under s 1041H of the Corporations Act 2001 and s 12DA of the Australian Securities and Investments Commission Act 2001 — Elements of an accessory's contravention of ss 12DA and 1041H — Whether accessory had actual knowledge that disclosure document made representation that was misleading or deceptive or likely to mislead or deceive: *Gore v Australian Securities and Investments Commission* 341 ALR 189

**Offences** — Injunction ordered under s 1324(1) of the Corporations Act 2001 after finding that accessory knowingly concerned in principal's contravention of s 727(1) and (2) — Whether purpose of injunction under s 1324(1) protective or punitive — Where principal contraveners received lesser penalties than accessory — Whether principle of parity in sentencing or imposing penalty correctly applied — Whether primary judge erred in exercise of discretion in setting length of injunction restraining accessory from engaging in lawful conduct: *Gore v Australian Securities and Investments Commission* 341 ALR 189

**Winding up** — Voidable transactions — Section 588FF(1) of the Corporations Act 2001 (Cth) empowers court to make orders in respect of voidable transactions upon the application of a company's liquidator — Section 588FF(3) imposes time limit for bringing of application — Whether time limit in s 588FF(3) applies in relation to each individual transaction that the liquidator seeks to impugn — Application for orders pursuant to s 588FF(1) of the Corporations Act in respect of voidable transactions — Procedural conduct of matters left to state law — Whether Civil Procedure Act 2005 (NSW) — Sections 64 and 65 "picked up" by s 79 of the Judiciary Act 1903 (Cth) — Whether s 588FF(3) "otherwise provides" such that powers of amendment under Civil Procedure Act not "picked up": *Sydney Recycling Park Pty Ltd v Cardinal Group Pty Ltd (in liq)* 341 ALR 313

### CRIMINAL LAW

**Criminal procedure** — Trial for murder of child — Production of reports made to Department of Family and Community Services relating to child — Whether production of reports precluded by s 29 of the Children and Young Persons (Care and Protection) Act 1998 (NSW): *Re Application of the Attorney-General for New South Wales dated 4 April 2014* 341 ALR 340

### EVIDENCE

**Admissibility** — Transcript of examination under s 19 — Where transcript not admissible in criminal proceeding or proceeding for imposition of a penalty — Where examinee claimed privilege against self incrimination or exposure to a penalty in examination — Whether application for injunctions pursuant to s 1324(1) of Corporations Act 2001 to prevent examinee from engaging in lawful conduct by which she previously had earned livelihood was proceeding for the imposition of a penalty for the purposes of s 68(3)(b): *Gore v Australian Securities and Investments Commission* 341 ALR 189

(Continues on p viii of cover)

INDEX — continued

EVIDENCE — continued

**Privilege** — Legal professional privilege — Joint privilege — Common interest privilege — Written legal advice given to company and provided to its directors — Claim by director of privilege with respect to advice — Advice not concerned with duties of directors as directors — Claim unmaintainable: *Equititrust Ltd (in liq) (rec apptd)((recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)* 341 ALR 301

FAMILY LAW

**Custody** — Interim orders — Judicial discretion — Views expressed by child — Proper approach to child's views by judge exercising discretion: *Bondelmonte v Bondelmonte* 341 ALR 179

PRACTICE AND PROCEDURE

**Applications** — Inspection of documents — Inspection by strangers to suit — Documents relied upon by applicant in ex parte proceedings — No orders prohibiting or restricting publication of documents sought by respondent subsequently — Documents used and deployed in open court — Documents amenable to inspection: *Deputy Commissioner of Taxation v Hawkins* 341 ALR 255

TAXATION AND REVENUE

**Capital gains tax** — Foreign residents — Disregarding capital gain — Taxable Australian real property — Principal asset test — Proper approach to principal asset test — Proper approach to valuation methodology with respect to assets — Meaning of “mining information” asset: *Commissioner of Taxation v AP Energy Investments Pty Ltd* 341 ALR 265

WORDS AND PHRASES

“**best interests of the child**”: *Bondelmonte v Bondelmonte* 341 ALR 179

“**common interest privilege**”: *Equititrust Ltd (in liq) (rec apptd)((recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)* 341 ALR 301

“**impermissible forensic advantage**”: *Deputy Commissioner of Taxation v Hawkins* 341 ALR 255

“**joint privilege**”: *Equititrust Ltd (in liq) (rec apptd)((recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)* 341 ALR 301

“**judicial discretion**”: *Bondelmonte v Bondelmonte* 341 ALR 179

“**legal professional privilege**”: *Equititrust Ltd (in liq) (rec apptd)((recs and mgrs apptd) (in its capacity as responsible entity of the Equititrust Income Fund) (ACN 061 383 944) v Equititrust Ltd (in liq) (rec apptd) (recs and mgrs apptd) (in its own capacity) (ACN 061 383 944)* 341 ALR 301

“**non-taxable Australian real property**”: *Commissioner of Taxation v AP Energy Investments Pty Ltd* 341 ALR 265

“**open court**”: *Deputy Commissioner of Taxation v Hawkins* 341 ALR 255

“**parenting orders**”: *Bondelmonte v Bondelmonte* 341 ALR 179

“**principal asset test**”: *Commissioner of Taxation v AP Energy Investments Pty Ltd* 341 ALR 265

“**taxable Australian real property**”: *Commissioner of Taxation v AP Energy Investments Pty Ltd* 341 ALR 265

“**views expressed by the child**”: *Bondelmonte v Bondelmonte* 341 ALR 179