



Quiz

A consideration of Jetobee Pty Ltd (in liquidation) v Smith & Young Pty Ltd (No 3) [2015] NSWSC 1526

1. What was the plaintiff, Jetobee Pty Ltd, seeking in *Jetobee Pty Ltd (in liquidation) v Smith & Young Pty Ltd (No 3) [2015] NSWSC 1526*?
 - a. Declarations against Smith & Young Pty Ltd for payment of the principal on Smith & Young's facility and for a transfer of mortgage on real property that was used to secure the facility.
 - b. Injunctive relief to prevent the director leaving the country.
 - c. Disqualification of the director as a result of his breach of director's duties.
 - d. Compensatory damages against the director in his personal capacity.
2. What was the relevance of *Briginshaw v Briginshaw* (1938) 60 CLR 336 and s 140 of the *Evidence Act 1995* (NSW)?
 - a. The case determined that the *Briginshaw* standard is not imputed into s 140.
 - b. The high standard of proof required under both tests ultimately meant the plaintiff was unable to succeed in its claims.
 - c. Required that the plaintiff provide more evidence than normal in order to discharge the onus of proof given the seriousness of alleging concoction.
 - d. A criminal burden of proof applied in this matter because of allegations of white collar crimes.

3. Why were adverse credit findings made against the common director of Jetobee and Smith & Young?
 - a. He concocted the agreement in question.
 - b. He admitted to providing misleading statements in separate family court proceedings and in relation to securing financing from a bank.
 - c. He refused to be cross-examined.
 - d. He did not fill out an application for motor vehicle insurance to the best of his knowledge.
4. What did the judge determine to do with the evidence provided by the director?
 - a. The judge stated he would not accept evidence provided by the director unless it was also independently corroborated.
 - b. The judge accepted any information which only the director could know.
 - c. The judge only accepted the evidence after making clear to the director that he would be subject to perjury charges where he misled the court.
 - d. The judge ruled the evidence was inadmissible irrespective of whether other sources corroborated the evidence.
5. Why did the judge find that the agreement was concocted?
 - a. The purported arrangement was commercially unreasonable.
 - b. 3 primary reasons: (1) discrepancies in fax confirmations; (2) accountant said she received no fax; and (3) director's subsequent inconsistent conduct.
 - c. Adverse credit findings.
 - d. The defendant, Smith & Young, advanced no arguments to counter the plaintiff's contention that the agreement was concocted.

Answers:

1. a 2. c 3. b 4. a 5. b