

Biotechnology Australia Pty Ltd v Pace (1988) 15 NSWLR 130

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Facts

- Biotechnology Australia Pty Ltd ("BTA") employed Dr Pace as a research scientist.
- BTA's letter of offer for employment provided for a salary package of \$36,000 per annum, a company car and the option to participate in the company's "senior staff equity sharing program."
- There was actually no such equity sharing scheme. Pace realised this when he began working for BTA.
- Pace eventually left BTA and sued for breach of contract.

Issues

- Was the promise of an option to participate in the equity sharing scheme capable of being part of BTA's employment contract?

Held

- The Court by majority (Kirby P and McHugh JA) held that the promise was illusory.
- The scheme was incapable of being valued by any reasonable or objective standard.
- The promise was very vague and ambiguous. This made the promise unenforceable.

Quotes

"A consideration is illusory if its payment or fulfillment depends upon an unfettered discretion vested in the promisor. Thus a promise by the Commonwealth that it will pay a subsidy "of an amount or at a rate determined by the Commonwealth from time to time" is an illusory consideration."

(McHugh JA)

Full Text

The full text is available here: <https://nswlr.com.au/view/15-NSWLR-130>