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Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Australian Competition and Consumer Commission v Ashley & Martin Pty Ltd (FCA) - consumer law - 'Medical Treatment Program' - terms of contracts were unfair - declarations deferred - questions of relief to be determined concurrently (I B C G)

Drivas v Jakopovic (NSWCA) - wills and estates - succession - evidence - deceased had testamentary capacity when she made September 2007 Will - appeal dismissed (B)

In the matter of Acciona Infrastructure Australia Pty Limited (NSWSC) - corporations - winding up - application to set statutory demand aside on basis of genuine dispute concerning debt's existence or amount - statutory demand set aside (I B C G)

Lithgow State Mine Railway Ltd v City of Greater Lithgow Mining Museum Inc (NSWSC) - joinder - contract - specific performance - application for joinder to proceedings refused (I B C G)

In the Matter of CV Constructions Pty Ltd (In Liq) ACN 008 003 709 Prior (SASC) - corporations - winding up - applicant sought that Court regularise his appointment as liquidator and 'remedy any invalidity' in resolution's passing - order granted (B C G)

Cammarano & Ors v Powell & Anor (SASC) - corporations - Return To Work SA's provision of appellants' witness statements to respondent liquidators of company was lawful - appeal

dismissed (I B)

VB v Chief Executive Officer of the Department of Communities (WASC) - judicial review - cancellation of granddaughter's 'placement with' applicant - failure to take 'mandatory relevant consideration' into account established - relief declined on basis of futility (I B C G)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v Ashley & Martin Pty Ltd [2019] FCA 1436

Federal Court of Australia

Banks-Smith J

Consumer law - respondent supplied 'Medical Treatment Program' to customers - customers signed contract governing terms of Medical Treatment Program's provision - applicant sought declarations that clauses of contracts were void for being 'unfair terms' under ss23 & 24 Australian Consumer Law (ACL) - applicant also sought 'orders as to consumer redress' under s239 ACL - held: applicant succeeded in application - 'impugned terms' were unfair - declarations appropriate - declarations deferred - all questions concerning relief to be determined concurrently.

[Australian Competition and Consumer Commission](#) (I B C G)

Drivas v Jakopovic [2019] NSWCA 218

Court of Appeal of New South Wales

Bell ACJ; Macfarlan & McCallum JJA

Wills and estates - succession - testamentary capacity - evidence - probate granted to respondent in respect of 'September 2007 Will' - appellant contended September 2007 Will invalid due to deceased's lack of testamentary capacity - appellant sought letters of administration with 'earlier will' ("1998 Will") - primary judge found, 'largely on basis' of evidence of solicitor who arranged signing of 2007 Will, that deceased had testamentary capacity when she signed September 2007 Will - appellant appealed - whether primary judge erred in 'giving weight' to solicitor's evidence - whether erroneous failure to give 'proper weight to the medical evidence' - whether primary judge should have found that conduct of respondent 'gave rise to suspicions' concerning whether 'deceased knew and approved of' September 2007 Will - whether primary judge should have 'expressly considered' whether 'deceased knew and approved' of will's contents - whether erroneous failure properly to evaluate evidence and make 'adverse findings' concerning respondent's credit - *Connor v Blacktown District Hospital* [1971] 1 NSWLR 713 - held: appeal dismissed.

[View Decision](#) (B)

In the matter of Acciona Infrastructure Australia Pty Limited [2019] NSWSC 1156

Supreme Court of New South Wales

Rees J

Corporations - winding up - statutory demand - application, under s459G *Corporations Act 2001* (Cth) to set statutory demand aside on basis of genuine dispute concerning debt's existence or amount - *Eyota Pty Ltd v Hanave Pty Ltd* (1994) 12 ACSR 785 - construction of Supply Agreement (Services) (Wet Plant Hire) between parties - meaning of 'stand down' rates - held: statutory demand set aside.

[View Decision](#) (I B C G)

Lithgow State Mine Railway Ltd v City of Greater Lithgow Mining Museum Inc [2019] NSWSC 1131

Supreme Court of New South Wales

Darke J

Joinder - plaintiffs sought specific performance of 'alleged agreement' that defendant would transfer land 'to one or other of the plaintiffs' - Lithgow Railway Workshop Pty Ltd (LRW) claimed equitable interest land and had lodged caveat - equitable interest claimed was 'in the nature of a lease, by way of a proprietary estoppel' - LRW, by Notice of Motion, sought to be joined as defendant to proceedings - whether joinder of LRW was necessary to 'determination of all matters in dispute' - whether LRW ought to have been joined to specific performance proceedings - r6.24 *Uniform Civil Procedure Rules 2005* (NSW) - held: joinder refused.

[View Decision](#) (I B C G)

In the Matter of CV Constructions Pty Ltd (In Liq) ACN 008 003 709 Prior [2019] SASC 156

Supreme Court of South Australia

Judge Dart

Corporations - winding up - applicant appointed liquidator of company (CV Constructions) following resolution which company members passed - applicant, under s1322(4) *Corporations Act 2001* (Cth), sought that Court regularise appointment and 'remedy any invalidity' - s1322(6) *Corporations Act* - *Sheahan & Anor v Londish & Ors* [2010] NSWCA 270 - held: Court satisfied to make order sought.

[In the Matter of CV Constructions](#) (B C G)

Cammarano & Ors v Powell & Anor [2019] SASC 131

Supreme Court of South Australia

David AJ

Corporations - appellant appealed against Judge Dart's decisions that Return To Work SA's provision of appellants' witness statements to respondent liquidators of company was lawful - whether 'Authorisations' valid - if Authorisations valid, whether 'Disclosures' not "made under" the Authorisations - whether 'material non-disclosure' by respondents - whether examination summonses should be set aside - s183 *Return to Work Act 2014* (SA) - held: appeal dismissed.

[Cammarano](#) (I B)

VB v Chief Executive Officer of the Department of Communities [2019] WASC 315

Supreme Court of Western Australia

Hill J

Judicial review - applicant sought judicial review of cancellation of granddaughter's 'placement with' applicant - decision to cancel placement had been made under *Children and Community Services Act 2004 (WA)* - whether child given opportunity to participate in process of decision-making, and/or to express feelings and views - whether failure to take 'mandatory relevant consideration' into account - futility - held: failure to take mandatory relevant consideration into account established - relief declined on basis of futility.

[VB](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



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From: The Hunting of the Snark

By: Lewis Carroll

Fit the Sixth

The Barrister's Dream

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain
That the Beaver's lace-making was wrong,
Fell asleep, and in dreams saw the creature quite plain
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound.

The indictment had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done.

The Jury had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed
"Fudge!"

That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.



Benchmark

"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.

But the Judge said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being
quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,
"And then to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.



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But their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear.

https://en.wikipedia.org/wiki/Lewis_Carroll

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