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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)

**New South Wales v Robinson** (HCA) - power of arrest without warrant - police officer did not have power under s99 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) to arrest a person without a warrant if they 'had not formed the intention to charge the arrested person' - appeal dismissed (I B C G)

**BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall** (HCA) - representative proceedings - s33ZF *Federal Court of Australia Act 1976* (Cth) & s183 *Civil Procedure Act 2005* (NSW) did not empower courts to make common fund order - appeals allowed (B C I G)

**Scott v Hunter New England Local Health District** (NSWSC) - medical negligence - plaintiff sought leave to serve 'notice to answer interrogatories' to first defendant and that first defendant be ordered 'to provide verified answers' - plaintiff also sought leave 'to file and serve a proposed amended statement of claim' - application granted (I)

**Amelia Bullard by her tutor NSW Trustee & Guardian v State of NSW** (NSWSC) - approval of settlement - negligence - Court satisfied to approve settlement of proceedings (I B)

**Davis v Ryan, State Coroner** (QCA) - judicial review - applicant sought extension of time to seek leave to appeal against District Court judge's refusal of his application for order for inquest into wife's death - leave to appeal refused (I B C G)

**Nominal Defendant v Garside & Ors** (QCA) - negligence - first respondent motorcyclist injured by object that fell from back of truck 'travelling ahead of him' - no error in trial judge's finding that truck driver's negligence caused accident - appeal dismissed (I)

**Re Centennial Mining Ltd (Subject to Deed of Company Arrangement); Ex Parte Tucker** (WASC) - corporations - deed administrators sought leave 'to transfer all of the issued shares in the company' and ancillary order concerning share transfer's mechanics - application granted (B)

## Summaries With Link (Five Minute Read)

### **New South Wales v Robinson [2019] HCA 46**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Power of arrest without warrant - appeal concerned power of a police officer to arrest a person without a warrant under s99 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA Act) - question was whether a police officer had power to arrest a person without a warrant if they 'had not formed the intention to charge the arrested person' - *Bales v Parmeter* [1935] NSWStRp 8 - s352 *Crimes Act 1900* (NSW) - held: police officer did not have power to arrest a person without a warrant under s99 LEPRA Act if they 'had not formed the intention to charge the arrested person' - appeal dismissed.

[New South Wales](#) (I B C G)

### **BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall [2019] HCA 45**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Representative proceedings - appeals concerned two representative proceedings, each of which involved a litigation funder - question was whether Federal Court of Australia and the Supreme Court of New South Wales were empowered by s33ZF *Federal Court of Australia Act 1976* (Cth) 9 & s183 *Civil Procedure Act 2005* (NSW) to make "common fund order" - statutory construction - whether provisions empowered 'relevant court' to make common fund order at proceedings' conclusion and, if so, whether common fund order 'could be made at the start of proceedings' - held: provisions did not empower making of common fund order - appeals allowed.

[BMW Australia](#) (B C I G)

### **Scott v Hunter New England Local Health District [2019] NSWSC 1676**

Supreme Court of New South Wales

Harrison AsJ

Medical negligence - plaintiff sought leave to serve 'notice to answer interrogatories' to first

defendant, and that first defendant be ordered 'to provide verified answers' - plaintiff also sought leave 'to file and serve a proposed amended statement of claim' against first defendant - ss64 & 65 *Civil Procedure Act 2005* (NSW) - rr22.1 & 31.36 *Uniform Civil Procedure Rules 2005* (NSW) - held: application granted.

[View Decision](#) (I)

## **Amelia Bullard by her tutor NSW Trustee & Guardian v State of NSW [2019] NSWSC 1668**

Supreme Court of New South Wales

Button J

Approval of settlement - negligence - application for Court's approval of claim's settlement - whether settlement beneficial to plaintiff's interests - settlement sum's proportion to 'total claim' - whether Court satisfied plaintiff would receive care she needed 'for the rest of her life' - tutor's involvement in 'settlement process' and contentment with outcome - 'confidential advice' of plaintiff's counsel to Court - management of funds for plaintiff's benefit by New South Wales Trustee & Guardian - s75 *Civil Procedure Act 2005* (NSW) - held: Court satisfied to approve settlement of proceedings.

[View Decision](#) (I B)

## **Davis v Ryan, State Coroner [2019] QCA 282**

Court of Appeal of Queensland

Holmes CJ, Gotterson JA & Flanagan J

Judicial review - applicant sought extension of time to seek leave to appeal against District Court judge's refusal of his application for order for inquest into wife's death - whether 'reasonable argument' of 'House v The King error' by District Court judge in not being satisfied an inquest was in public interest - whether irrelevant consideration taken into account - whether failure to take relevant consideration into account - s118(3) *District Court of Queensland Act 1967* (Qld) - held: appeal had no prospect of success - leave to appeal refused.

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

## **Nominal Defendant v Garside & Ors [2019] QCA 270**

Court of Appeal of Queensland

Philippides & McMurdo JJA; Applegarth J

Negligence - first respondent motorcyclist injured by object that fell from back of truck 'travelling ahead of him' - first respondent claimed accident caused by truck driver's negligence - first respondent claimed truck was operated by 'waste removal company' (company) - first to third defendants were truck drivers operated by company - fourth defendant was compulsory third party insurer of company's trucks - first to fourth defendants denied a company truck was involved - alternatively first respondent claimed truck or insurer 'could not be identified' with result appellant liable for driver's negligence - trial judge found company truck not involved, that truck unidentified and negligence of the driver of truck caused injury to first respondent - trial judge gave judgment for first respondent entitled to judgment against appellant - appellant appealed - whether trial judge erred in finding truck driver negligent - held: no error in trial



judge's decision - appeal dismissed.

[Nominal Defendant](#) (I)

**Re Centennial Mining Ltd (Subject to Deed of Company Arrangement); Ex Parte Tucker [2019] WASC 441**

Supreme Court of Western Australia

Vaughan J

Corporations - plaintiffs were deed administrators of company - plaintiffs sought leave 'to transfer all of the issued shares in the company' and ancillary order concerning share transfer's mechanics - ss444GA(1)(b) & 447A *Corporations Act 2001* (Cth) - principles in *Re Black Oak Minerals Ltd (Subject to a Deed of Company Arrangement) (in liq)* [2019] FCA 293 - 'key consideration' of whether Court satisfied that transfer 'would not 'unfairly prejudice' the interests of members of the company' - whether 'members' shares' had 'residual value' held: application granted.

[Re Centennial Mining](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## **April Midnight**

**By:** Arthur Symons

Side by side through the streets at midnight,  
Roaming together,  
Through the tumultuous night of London,  
In the miraculous April weather.

Roaming together under the gaslight,  
Day's work over,  
How the Spring calls to us, here in the city,  
Calls to the heart from the heart of a lover!

Cool to the wind blows, fresh in our faces,  
Cleansing, entrancing,  
After the heat and the fumes and the footlights,  
Where you dance and I watch your dancing.

Good it is to be here together,  
Good to be roaming,  
Even in London, even at midnight,  
Lover-like in a lover's gloaming.

You the dancer and I the dreamer,  
Children together,  
Wandering lost in the night of London,  
In the miraculous April weather.

[https://en.wikipedia.org/wiki/Arthur\\_Symons](https://en.wikipedia.org/wiki/Arthur_Symons)

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