

Friday, 14 July 2017

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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Henson et al v Santander Consumer USA Inc** (SCOTUS) - statutory interpretation - debt collection - definition of 'debt collector' under Fair Debt Collection Practices Act - company could collect debts which it purchased for own account - affirmed (I B C G)

**Janferie Maeve Almond v Bruce James Read** (NZSC) - judgments and orders - procedure - notice of appeal filed one day late - extension of time refused on basis appeal was hopeless - appeal allowed (I B C G)

**Fuller JR, in the matter of Alford v Alford** (FCA) - bankruptcy - jurisdiction - creditor's petition allowed - sequestration order made (I B C G)

**Dominice v Allianz Australia Insurance Ltd** (NSWCA) - traffic law - administrative law - permanent impairment - dismissal of challenge to proper officer's referral of application for review of permanent impairment assessment to a review panel - appeal dismissed (I B C G)

**In the matter of Cardinal Project Services Pty Ltd** (NSWSC) - corporations - winding up - creditor of company sought review of remuneration of company's liquidators - remuneration was reasonable - application dismissed (I B C G)

**Tina Marie Carter v Elizabeth Margaret Law** (NSWSC) - wills and estates - succession - dispute concerning ownership of jewellery - executors to pay plaintiff sum of \$30,000 (B)

**RCR Tomlinson Ltd v Russell** (WASCA) - equity - rectification - employment contract - rectification of provisions regulating circumstances in which retirement benefit payable - no error in fact-finding or reasoning process - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Henson et al v Santander Consumer USA Inc Docket No 16-349**

Supreme Court of the United States

Coram: Roberts CJ, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan and Gorsuch JJ

Statutory interpretation - debt collection - petitioners contended lender loaned money to them, that they defaulted on loans and that respondent purchased the defaulted loans from lender - petitioners contended respondent then sought to collect in ways violating *The Fair Debt Collection Practices Act* - 'regularly collects or attempts to collect... debts owed or due... another' - whether respondent qualified as a debt collector - held: company could collect debts purchased for own account without triggering disputed statutory definition - decision of Court of Appeals affirmed.

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

### **Janferie Maeve Almond v Bruce James Read [2017] NZSC 80**

New Zealand Supreme Court

William Young, Glazebrook, Arnold, O'Regan and Ellen France JJ

Judgments and orders - procedure - contract - property - Court found in respondents' favour in proceedings - notice of appeal filed in Court of Appeal one day late due to miscalculation of 20 day period - Court of Appeal refused to extend time on basis appeal was hopeless - principles in respect of applications for extension of time to appeal - r29A *Court of Appeal (Civil) Rules 2005* (NZSC) - interests of justice - held: Court accepted that proposed appeal's merits may be relevant to exercise of discretion to extend time - present case was not one in which it could be said with certainty that appeal could not succeed - appeal allowed - extension of time granted.

[Janferie Maeve Almond](#) (I B C G)

### **Fuller JR, in the matter of Alford v Alford [2017] FCA 782**

Federal Court of Australia

Perry J

Bankruptcy - applicant creditor in United States sought sequestration order under s43 *Bankruptcy Act 1966* (Cth) against debtor's estate, contending debtor owed him judgment debt - debtor did not dispute liability in respect of judgment but challenged Court's jurisdiction to make sequestration order - alternatively, debtor challenged bankruptcy notice's validity on basis it was served without leave outside Australia, failed to specify correct address and was confusing and misleading - held: Court had jurisdiction to make sequestration order - no merit in

challenge to bankruptcy notice's validity - creditor's petition allowed - sequestration order made.

[Fuller JR](#) (I B C G)

## **Dominice v Allianz Australia Insurance Ltd [2017] NSWCA 171**

Court of Appeal of New South Wales

Basten & Simpson JJA; Emmett AJA

Traffic law - administrative law - appellant injured in motor vehicle accident - appellant claimed damages from other car's driver - respondent was defendant's insurer - appeal concerned assessment of degree of permanent impairment - claim was referred for medical assessment under Ch 3 *Motor Accidents Compensation Act 1999* (NSW) - respondent sought review of initial assessment of whole person impairment of 18% - appellant sought to challenge proper officer's referral of respondent's application to a review panel - primary judge dismissed application - ss44, 57, 59, 60, 61, 63, 65 & 131 *Motor Accidents Compensation Act* - s17; Sch 4 cl 4 *State Insurance and Care Governance Act 2015* (NSW) - ss69, 75 & 101 *Supreme Court Act 1970* (NSW) - held: no error identified in primary judge's decision - appeal dismissed.

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

## **In the matter of Cardinal Project Services Pty Ltd [2017] NSWSC 920**

Supreme Court of New South Wales

Brereton J

Corporations - winding up - plaintiff was creditor in liquidation of company (Cardinal Project Services) - defendants were liquidators of Cardinal Project Services - plaintiff sought review of liquidators' remuneration under s504 *Corporations Act 2001* (Cth) - held: liquidators did not establish proceedings were abuse of process - remuneration was not unreasonable - no warrant for review - application dismissed.

[In the matter of Cardinal Project Services](#) (I B C G)

## **Tina Marie Carter v Elizabeth Margaret Law [2017] NSWSC 919**

Supreme Court of New South Wales

Emmett AJA

Wills and estates - succession - plaintiff sought that defendants pay her \$30,000 - relief sought in connection with administration of estate - defendants were executors of deceased's estate - dispute concerned ownership and value of jewellery which belonged, at one stage, to Testatrix - plaintiff sought that defendants pay her amount of jewellery's value - defendants contended jewellery entrusted to plaintiff by Testatrix - defendants had administered and distributed estate on basis plaintiff retained estate's property of \$30,000 value - plaintiff contended certain jewellery of value of \$6,685 was gift to her from Testatrix - defendants disputed any jewellery was a gift - held: no evidence any jewellery owned by Testatrix was in plaintiff's possession - evidence did not establish any jewellery in plaintiff's possession was subject of Testatrix's gift - defendants to pay plaintiff sum of \$30,000.

[Tina Marie Carter](#) (B)

## **RCR Tomlinson Ltd v Russell [2017] WASCA 129**

Court of Appeal of Western Australia

Buss P; Murphy & Beech JJA

Equity - rectification - appellant employer and respondent employee were parties to employment contract - appellant appealed against primary judge's decision to rectify provisions regulating circumstances in which retirement benefit payable by appellant to respondent - appellant contended fact-finding process at trial was erroneous - common intention - 'requirement of clear and convincing proof' - held: appellant failed to establish error in findings of fact - open to primary judge to conclude contract did not reflect parties' intentions - primary judge's reasoning cogent - no error in reasoning - appeal dismissed.

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

## CRIMINAL

### Executive Summary

**R v Phan** (SASCFC) - criminal law - knowingly take part in the sale of heroin - interpreter's evidence concerning voice in intercepted telephone calls was admissible - no error in judge's directions - verdicts not unreasonable or insupportable - appeal dismissed

**R v Wyatt (No 2)** (ACTSC) - criminal law - causing damage to building by explosive - possession of a drug of dependence - Court satisfied to allow offender to be released on bail to attend a residential course - bail granted

### Summaries With Link

## **R v Phan [2017] SASCFC 70**

Full Court of the Supreme Court of South Australia

Kelly, Nicholson & Hinton JJ

Criminal law - appellant appealed against conviction on one count of knowingly take part in the sale of heroin contrary to s32(1)(d) *Controlled Substances Act 1984* (SA) - appellant challenged acceptance of evidence of Vietnamese interpreter, concerning voice of male in intercepted telephone calls - appellant contended evidence was of an 'opinion that was not wholly or substantially based on specialist knowledge' - appellant also contended that interpreter usurped jury's function - appellant contended in alternative that judge's directions were inadequate - appellant also contended jury's verdict was unsafe and unsatisfactory - admissibility of evidence of voice comparison - assistance to jury due to 'sheer volume' of intercepts - held: interpreter's evidence was admissible to assist jury due to 'sheer volume' of



intercepts - no error in judge's directions - jury's verdicts not unreasonable or insupportable - appeal dismissed.

[Phan](#)

**R v Wyatt (No 2) [2017] ACTSC 151**

Supreme Court of the Australian Capital Territory

Robinson AJ

Criminal law - offender pleaded guilty to two counts of causing damage to building by explosive - offender also sought that Court deal with summary offence possession of a drug of dependence - s309 *Crimes Act 1900* (ACT) - ss33(1)(l), 35(1)(w) & 36(3) *Crimes (Sentencing) Act 2005* (ACT) - held: Court impressed by offender's honesty and 'sincerity in wishing to live a better and productive life' - offender had had a 'very difficult beginning' to life through no fault of his own - Court satisfied to allow offender to be released on bail to attend a residential course in order to give opportunity for offender to demonstrate capacity for intensive rehabilitation regime - bail granted.

[Wyatt](#)



# Benchmark

## **Bell-Birds**

by [Henry Kendall](#)

By channels of coolness the echoes are calling,  
And down the dim gorges I hear the creek falling:  
It lives in the mountain where moss and the sedges  
Touch with their beauty the banks and the ledges.  
Through breaks of the cedar and sycamore bowers  
Struggles the light that is love to the flowers;  
And, softer than slumber, and sweeter than singing,  
The notes of the bell-birds are running and ringing.

The silver-voiced bell birds, the darlings of daytime!  
They sing in September their songs of the May-time;  
When shadows wax strong, and the thunder bolts hurtle,  
They hide with their fear in the leaves of the myrtle;  
When rain and the sunbeams shine mingled together,  
They start up like fairies that follow fair weather;  
And straightway the hues of their feathers unfolden  
Are the green and the purple, the blue and the golden.

October, the maiden of bright yellow tresses,  
Loiters for love in these cool wildernesses;  
Loiters, knee-deep, in the grasses, to listen,  
Where dripping rocks gleam and the leafy pools glisten:  
Then is the time when the water-moons splendid  
Break with their gold, and are scattered or blended  
Over the creeks, till the woodlands have warning  
Of songs of the bell-bird and wings of the Morning.

Welcome as waters unkissed by the summers  
Are the voices of bell-birds to the thirsty far-comers.  
When fiery December sets foot in the forest,  
And the need of the wayfarer presses the sorest,  
Pent in the ridges for ever and ever  
The bell-birds direct him to spring and to river,  
With ring and with ripple, like runnels who torrents  
Are toned by the pebbles and the leaves in the currents.

Often I sit, looking back to a childhood,  
Mixt with the sights and the sounds of the wildwood,  
Longing for power and the sweetness to fashion,  
Lyrics with beats like the heart-beats of Passion; -



# Benchmark

Songs interwoven of lights and of laughters  
Borrowed from bell-birds in far forest-rafters;  
So I might keep in the city and alleys  
The beauty and strength of the deep mountain valleys:  
Charming to slumber the pain of my losses  
With glimpses of creeks and a vision of mosses.

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