

Friday, 18 August 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)

Transport Accident Commission v Katanas (HCA) - accident compensation - transport accident - Court of Appeal did not depart from 'narrative test of serious injury' - appeal dismissed (I B C G)

Forrest & Forrest Pty Ltd v Wilson (HCA) - statutory interpretation - mining leases - non-compliance with requirement in s74(1)(ca)(ii) *Mining Act 1978* (WA) - requirement was condition precedent to grant of leases - appeal allowed (I B C G)

Ramsay Health Care Australia Pty Ltd v Compton (HCA) - bankruptcy - creditor's petition - primary judge refused to 'go behind' judgment - no error in Full Court of Federal Court's conclusion that there was 'substantial question' whether debt owing to appellant - Bankruptcy Court to investigate whether debt was owing - appeal dismissed (I B C G)

Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal (FCAFC) - administrative law - Minister's refusal to declare a service set aside - declaration of a service under *Competition and Consumer Act 2010* (Cth) - application for judicial review dismissed (I B C G)

Leroy v Koutavas, in the matter of Koutavas (No 2) (FCA) - bankruptcy - trusts and trustees - first respondent to transfer half interest in property to trustee in bankruptcy - trustees for sale appointed - caveat removed - orders made by consent (B)

Hornsby Shire Council v Oberlechner (NSWCA) - damages - personal injury - negligence - primary judge erred in relation to aspect of calculation of damages for future economic loss - appeal allowed in part (I B C G)

Lafferty v Waterton [No 3] (WASC) - judgments and orders - application to restrain plaintiff's husband from acting as plaintiff's counsel in proceedings - order granted (I B C G)

Summaries With Link (Five Minute Read)

Transport Accident Commission v Katanas [2017] HCA 32

High Court of Australia

Kiefel CJ; Keane, Nettle, Gordon & Edelman JJ

Accident compensation - transport accident - 'narrative test of serious injury' - Court of Appeal of Victoria allowed respondent's appeal against primary judge's refusal of leave to commence common law proceedings for psychological injury due to transport accident - appellant contended that Court of Appeal had 'trampled upon the narrative test' and erred by misunderstanding primary judge's formulation of 'possible range' - s93(17) *Transport Accident Act 1986 (Vic)* - *Humphries v Poljak* [1992] VicRp 58 - held: Court of Appeal of Victoria did not depart from narrative test - special leave not granted in respect of contention that Court of Appeal misunderstood formulation of 'possible range' - contention did not raise question of general importance - appeal dismissed.

[Transport Accident Commission](#) (I B C G)

Forrest & Forrest Pty Ltd v Wilson [2017] HCA 30

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane & Nettle JJ

Statutory interpretation - mining lease - issue on appeal was whether mining leases granted by Minister were invalid by non-compliance with provisions of *Mining Act 1978 (WA)* concerning matters preliminary to grant of lease - Court of Appeal of Western Australia rejected appellant's contention that provisions imposed conditions precedent - statutory construction - *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 - requirement in s74(1)(ca)(ii) of the Act that application for a mining lease be accompanied by a mineralisation report - held: compliance with s74(1)(ca)(ii) was condition precedent - due to non-compliance with s74(1)(ca)(ii), first respondent did not have jurisdiction to hear applications for mining leases - first respondent did not make valid report and recommendation to Minister under s75(5)(c) - report and recommendation quashed - appeal allowed.

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

Ramsay Health Care Australia Pty Ltd v Compton [2017] HCA 28

High Court of Australia

Kiefel CJ; Gageler, Keane, Nettle & Edelman JJ

Bankruptcy - creditor's petition - primary judge did not 'go behind' judgment in appellant's favour, rejecting judgment debtor's application to investigate 'whether the debt was truly owing' - both parties were represented at trial after which judgment given - no suggestion judgment obtained by fraud or collusion. - Full Court of the Federal Court found primary judge had erred in deciding not to investigate given there was material before primary judge raising 'substantial question' whether there was debt due to appellant - s52 *Bankruptcy Act 1966* (Cth) - held: Full Court correct to find there was 'substantial question' whether debt was owing to appellant - Bankruptcy Court should investigate question - appeal dismissed.

[Ramsay Health Care](#) (I B C G)

Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal [2017] FCAFC 124

Full Court of the Federal Court of Australia

Dowsett, Besanko, Middleton, Foster & Griffiths JJ

Administrative law - Australian Competition Tribunal set aside Minister's refusal to declare a service under s44H *Competition and Consumer Act 2010* (Cth) and made order declaring a service under s44K(8) - service was 'the provision of the right to access and use the shipping channels (including berths next to wharves as part of the channels) at the Port of Newcastle (Port), by virtue of which vessels may enter a Port precinct and load and unload at relevant terminals located within the Port precinct and then depart the Port precinct' - applicant sought to set aside Tribunal's decision - interpretation of 'access' in s44H(4)(a) - whether misinterpretation of decision in *Sydney Airport Corporation Ltd v Australian Competition Tribunal and Others* [2006] FCAFC 146 - whether error in relation to s44H(4)(f) - held: applicant's challenges rejected - application for judicial review dismissed.

[Port of Newcastle](#) (I B C G)

Leroy v Koutavas, in the matter of Koutavas (No 2) [2017] FCA 912

Federal Court of Australia

Robertson J

Bankruptcy - applicant was bankrupt's trustee in bankruptcy - applicant claimed declarations of right against first respondent, who was bankrupt's former wife - declarations sought in respect of bankrupt's interest in residential property - applicant also sought appointment of trustees for sale, and removal of caveat which first respondent's parents (second and third respondents) lodged on property's title - following death of second respondent Court ordered continuance of proceeding in absence of person representing deceased - ss7(1), 66F & 66G *Conveyancing Act 1919* (NSW) - s74MA *Real Property Act 1900* (NSW) - s79 *Judiciary Act 1903* (Cth) - held: first respondent was property's registered proprietor - first respondent was subject of consent orders that she transfer half interest to trustee in bankruptcy - two trustees for sale appointed - order of priority granted in terms sought - caveat removed on basis second and third respondents had no interest in property - orders made by consent.

[Leroy](#) (B)

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Hornsby Shire Council v Oberlechner [2017] NSWCA 205

Court of Appeal of New South Wales

Macfarlan, Gleeson & Leeming JJA

Damages - personal injury - negligence - respondent pedestrian fell onto 'unfenced culvert' on side of road in Shire - appeal and cross-appeal concerning component of damages primary judge ordered - primary judge's rejection of appellant's statutory defences under ss43A, 45 & 46 *Civil Liability Act 2002* (NSW) and findings of breach of duty and causation under ss5B & 5D not challenged - appellant contended damages should not have been awarded for past or future economic loss, or that calculation of past and future economic loss was erroneous - whether in calculating past economic loss primary judge erred in 'taking male Average Weekly Earnings as a starting point' - whether error in relation to income tax - held: appeal allowed in one respect of aspect of calculation of future economic loss - leave to cross-appeal refused.

[Hornsby Shire Council](#) (I B C G)

Lafferty v Waterton [No 3] [2017] WASC 230

Supreme Court of Western Australia

Allanson J

Judgments and orders - application to restrain counsel from acting - succession - family provision - third defendant sought to restrain plaintiff's counsel, who was plaintiff's husband, from acting in proceedings - principles applicable to 'restraining a practitioner' - pt IV *Administration and Probate Act 1958* (Vic) - rr32 & 33(2) *Legal Profession Conduct Rules 2010* (WA) - counsel's relationship to plaintiff - whether it would be difficult for practitioner to maintain professional independence - importance of practitioner's financial affairs to issues - practitioner's 'direct participation in events which are part of the facts in issue' - held: application granted - order made to restrain counsel from acting.

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

CRIMINAL

Executive Summary

Day v R (NSWCCA) - criminal law - sexual intercourse without consent - applicant sentenced to 5 years and 9 months in prison - appeal against conviction and sentence dismissed

R v Lean (SASCFC) - criminal law - deception - sentence appeal - 47 counts of deception and one count of attempted deception - sentencing judge ordered suspension of sentence and that sentence was to be served on home detention - sentence was manifestly inadequate - appeal allowed



Summaries With Link

Day v R [2017] NSWCCA 192

Court of Criminal Appeal of New South Wales

Johnson, Rothman & Lonergan JJ

Criminal law - applicant sought to appeal against conviction and sentence on charge of sexual intercourse without consent contrary to s611 *Crimes Act 1900* (NSW) - applicant sentenced to 5 years 9 months in prison with three year non - parole period - applicant contended jury's verdict was unreasonable and could not be supported by evidence, that sentence was manifestly excessive, and that there was miscarriage of justice in that jury not directed to consider whether prosecution had disproved applicant 'had an honest and reasonable, but mistaken belief' - intoxication - whether jury properly directed - ss.61HA & 428D *Crimes Act 1900* (NSW) - held: grounds of appeal in respect of conviction failed - open to jury to be satisfied beyond reasonable doubt that applicant had sexual intercourse without consent knowing there was no consent - no error in directions - miscarriage of justice not established - sentence was open - appeal dismissed.

[Day](#)

R v Lean [2017] SASCFC 101

Full Court of the Supreme Court of South Australia

Stanley, Nicholson & Hinton JJ

Criminal law - deception - jury found respondent guilty of 47 counts of deception and one count of attempted deception - respondent sentenced to six years and eight months in prison with three year non-parole period - sentencing judge ordered suspension of sentence and that sentence was to be served on home detention - Director of Public Prosecutions contended sentence was manifestly inadequate and that offending's gravity rendered order for home detention so unsuitable it would 'undermine public confidence in the administration of justice' - ss139 & 270A *Criminal Law Consolidation Act 1935* (SA) - ss10(1)(n), 18A, 33BB, 33BC & 38 *Criminal Law (Sentencing) Act 1988* (SA) - held: sentence imposed was manifestly inadequate - Court to hear further on appropriate sentence - appeal allowed.

[Lean](#)



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The Wine of Love

By [James Thomson \(Bysshe Vanolis\)](#)

The wine of Love is music,
And the feast of Love is song:
And when Love sits down to the banquet,
Love sits long:

Sits long and ariseth drunken,
But not with the feast and the wine;
He reeleth with his own heart,
That great rich Vine.

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