



Friday, 6 September 2019

## Weekly Business Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Business Law

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### Executive Summary (1 minute read)

**Merck Sharp & Dohme Corporation v Wyeth LLC (FCA)** - patent - parties sought to set aside Notices to Produce served on each other - applicants excused from compliance with respondent's Notice to Produce - respondent excused from certain paragraphs of applicants' Notice to Produce

**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

**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

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

**Anglo American Metallurgical Coal Assets Pty Ltd & Anor v Middlemount South Pty Ltd (QSC)** - contract - challenge to expert determination's validity - Court satisfied determination 'final and binding' - declaration made

**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

**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

## Summaries With Link (Five Minute Read)

### **Merck Sharp & Dohme Corporation v Wyeth LLC [2019] FCA 1421**

Federal Court of Australia

Burley J

Patent - patent infringement proceedings - parties, by interlocutory applications, sought to set aside Notices to Produce which each served on the other - whether to grant 'relief from compliance' in respect of either Notice to Produce - held: applicants excused from compliance with respondent's Notice to Produce - respondent excused from certain paragraphs of applicants' Notice to Produce.

[Merck](#)

[From Benchmark Friday, 6 September 2019]

### **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](#)

[From Benchmark Friday, 6 September 2019]

### **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](#)

[From Benchmark Friday, 6 September 2019]

**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](#)

[From Benchmark Friday, 6 September 2019]

**Anglo American Metallurgical Coal Assets Pty Ltd & Anor v Middlemount South Pty Ltd [2019] QSC 21**

Supreme Court of Queensland

Jackson J

Contract - separate questions - parties in dispute concerning their rights under 'Sale and Purchase Agreement' (SPA) - proceedings concerned challenge to expert determination's validity - 'Independent Accountant's Determination' - whether Independent Accountant failed to perform task which SPA required - whether Independent Accountant acted as arbitrator - whether determination 'affected by a manifest error' under SPA - held: Court satisfied determination 'final and binding' - declaration made.

[Anglo American](#)

[From Benchmark Friday, 6 September 2019]

**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](#)

[From Benchmark Friday, 6 September 2019]

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

Supreme Court of South Australia

David AJ



# Benchmark

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](#)

[From Benchmark Friday, 6 September 2019]

# Benchmark

**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.



# Benchmark

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](https://en.wikipedia.org/wiki/Lewis_Carroll)

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