



Friday, 21 September 2018

## Weekly Government Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering government

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### Executive Summary (1 minute read)

**Pipikos v Trayans** (HCA) - equity - doctrine of part performance - Court not satisfied requirement of 'unequivocal referability' should be relaxed - appeal dismissed

**Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited** (HCA) - corporations - voluntary administration - deed of company arrangement void - appeals dismissed

**Qantas Airways Limited v Ardlie** (FCAFC) - industrial law - appellant ordered to pay amounts to respondent employees in respect of underpayments - employees incorrectly classified under enterprise agreement - appeal allowed - matter remitted

**ACN 116 746 859 (formerly Palermo Seafoods Pty Ltd) v Lunapas Pty Ltd** (NSWCA) - damages - conversion - costs - challenge to rejection of items of loss - costs order varied - appeal otherwise dismissed

**Samwise Holdings Pty Ltd v Allied Distribution Finance Pty Ltd & Ors** (SASCFC) - personal property - loans and mortgages - statutory construction - priority conferred when grantor obtained possession 'as grantor', not possession simpliciter - appeal dismissed

**Allison v Tuna Tasmania Pty Ltd** (TASFC) - contract - partnership - dismissal of claim for breach of fiduciary duty under alleged arrangement - appeal dismissed

**PM v Childrens Court of the Australian Capital Territory & Ors** (ACTSC) - judicial review - plaintiff born on 29 February 2000, a leap year - plaintiff allegedly committed criminal offences

on 28 February 2018, a non-leap year - plaintiff was child, not adult, at time of alleged offences - declaration made - proceedings remitted to Children's Court

## Summaries With Link (Five Minute Read)

### **Pipikos v Trayans [2018] HCA 39**

High Court of Australia

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

Equity - doctrine of part performance - contract for sale of land - appeal concerned question whether doctrine of part performance applied where acts of part performance relied on were 'not unequivocally referable' to the 'kind of contract alleged' - whether Full Court of the Supreme Court of South Australia was correct to conclude the doctrine did not apply - whether Court should 'relax' the requirement of 'unequivocal referability' stated in *Maddison v Alderson* (1883) 8 App Cas 467 - held: Court rejected appellant's arguments - Court not satisfied to relax 'unequivocal referability' requirement in favour of 'some broader principle of equity' - appeal dismissed.

[Pipikos](#)

[From Benchmark Monday, 17 September 2018]

### **Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited [2018] HCA 38**

High Court of Australia

Kiefel CJ, Gageler, Nettle, Gordon & Edelman JJ

Corporations - voluntary administration - appeals concerned validity of deed of company arrangement (DOCA) - DOCA provided for 'moratorium on creditors' claims' - DOCA also required administrators to 'conduct further investigations' and report, within six months, to creditors 'concerning possible variations' to DOCA - Court of Appeal of the Supreme Court of Western Australia declared DOCA void, finding it contrary to object of Pt 5.3A *Corporations Act 2001* (Cth) (Corporations Act), that it 'invalidly sought to circumvent or sidestep' requirement in s39A(6), and failed to comply with 'alleged requirement' in s444A(4)(b) Corporations Act - new submission on appeal contended that DOCA was void because administrators had not formed opinions required by s438A(b) Corporations Act at relevant time - held: appeals dismissed.

[Mighty River](#)

[From Benchmark Monday, 17 September 2018]

### **Qantas Airways Limited v Ardlie [2018] FCAFC 154**

Full Court of the Federal Court of Australia

White, Perry & Charlesworth JJ

Industrial law - respondents were employed by appellant - five respondents commenced proceedings against appellant in Industrial Relations Court of South Australia (IRCSA), alleging appellant had contravened s50 *Fair Work Act 2009* (Cth) by its failure to make payments

according to terms of enterprise agreement made under the Act - Industrial Magistrate found in respondent's favour - IRCSA dissolved - South Australian Employment Tribunal (SAET) required appellant to make payments to respondents - appellant appealed - whether employees correctly classified in accordance with enterprise agreement - "working up the scale" - Constitutional validity of IRCSA's dissolution, and of provision in respect of proceedings' transfer to SAET - held: Industrial Magistrate did not determine employees' classification in manner which enterprise agreement required - Industrial Magistrate's error affected orders made by SAET - 'constitutional question' did not arise - appeal allowed.

[Qantas](#)

[From Benchmark Tuesday, 18 September 2018]

## **ACN 116 746 859 (formerly Palermo Seafoods Pty Ltd) v Lunapas Pty Ltd [2018] NSWCA 203**

Court of Appeal of New South Wales

Basten, Meagher & Ward JJA

Damages - conversion - costs - appeal concerned challenge to rejection of items of loss and rejection of expert's evidence - loss of goodwill claim - claim in respect of value of plant and equipment - claim for "legal and corporate costs" - whether erroneous rejection of claims - r51.53 *Uniform Civil Procedure Rules 2005* (NSW) - challenge to costs orders - whether Court could address first trial's costs on remitter - whether costs of first trial should have been addressed when rehearing costs awarded - held: costs order varied - appeal otherwise dismissed.

[View Decision](#)

[From Benchmark Wednesday, 19 September 2018]

## **Samwise Holdings Pty Ltd v Allied Distribution Finance Pty Ltd & Ors [2018] SASCFC 95**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Parker & Doyle JJ

Personal property - loans and mortgages - statutory construction - primary judge found that respondent's perfected purchase money security interest under *Personal Property Securities Act 2009* (Cth) with respect to 40 motorcycles had 'priority over all other registered security interests' - appellant contended trial judge erroneously construed s62(2)(b)(i) of the Act as 'directed to possession as grantor rather than possession simpliciter' - 'the grantor' - rationales for 'conferral of super-priority' and 'requirement of timely notice' - held: no error in trial judge's construction of s62(2)(b)(i) of the Act - priority was conferred when grantor obtained possession 'from or through' security holder 'as grantor' - appeal dismissed.

[Samwise](#)

[From Benchmark Wednesday, 19 September 2018]

## **Allison v Tuna Tasmania Pty Ltd [2018] TASFC 5**

Full Court of the Supreme Court of Tasmania

Pearce & Brett JJ; Martin AJ

Contract - partnership - appellant sued second respondent and entities associated with him - appellant claimed he and second respondent 'agreed to go into a fishing business venture' - appellant claimed second respondent breached fiduciary duty to appellant under arrangement - appellant claimed equitable compensation - appellant also claimed other relief - trial judge gave judgment for respondents - appellant did not challenge finding of no partnership agreement - appellant contended trial judge erroneously failed to find "agreement for a partnership" - whether appellant should be permitted to raise case alleged agreement for partnership for the first time on appeal - whether alleged agreement established - held: appeal dismissed.

[Allison](#)

[From Benchmark Thursday, 20 September 2018]

## **PM v Childrens Court of the Australian Capital Territory & Ors [2018] ACTSC 258**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Judicial review - statutory construction - plaintiff born in leap year on 29 February 2000 - plaintiff charged with criminal offences on 28 February of 2018, a non-leap year - whether plaintiff, when she allegedly committed the offences, was 17 and thus a 'child at law', or 18 and thus an adult - proper construction of s149 *Legislation Act 2001* (ACT) - held: Court satisfied plaintiff was not yet 'at least 18 years old' at time of alleged offences because plaintiff 'had not yet reached the beginning of the anniversary of her birth' - plaintiff became 'at least' 18 on 1 March 2018 - plaintiff was child at time of alleged offences - declaration made - proceedings remitted to ACT Children's Court.

[PM](#)

[From Benchmark Friday, 21 September 2018]

# Benchmark

## Drifting Flowers of the Sea

By: Sadakichi Hartmann

Sadakichi Hartmann

Across the dunes, in the waning light,  
The rising moon pours her amber rays,  
Through the slumbrous air of the dim, brown night  
The pungent smell of the seaweed strays—  
From vast and trackless spaces  
Where wind and water meet,  
White flowers, that rise from the sleepless deep,  
Come drifting to my feet.  
They flutter the shore in a drowsy tune,  
Unfurl their bloom to the lightlorn sky,  
Allow a caress to the rising moon,  
Then fall to slumber, and fade, and die.

White flowers, a-bloom on the vagrant deep,  
Like dreams of love, rising out of sleep,  
You are the songs, I dreamt but never sung,  
Pale hopes my thoughts alone have known,  
Vain words ne'er uttered, though on the tongue,  
That winds to the sibilant seas have blown.  
In you, I see the everlasting drift of years  
That will endure all sorrows, smiles and tears;  
For when the bell of time will ring the doom  
To all the follies of the human race,  
You still will rise in fugitive bloom  
And garland the shores of ruined space.

[https://en.wikipedia.org/wiki/Sadakichi\\_Hartmann](https://en.wikipedia.org/wiki/Sadakichi_Hartmann)

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