



HIGH COURT BULLETIN

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A record of recent High Court of Australia cases: decided, reserved for judgment, awaiting hearing in the Court's original jurisdiction, granted special leave to appeal, refused special leave to appeal and not proceeding or vacated

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SUMMARY OF NEW ENTRIES

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<u>Achurch v The Queen</u>	Criminal Law
<u>Taylor v The Owners - Strata Plan No 11564</u>	Statutes
<u>NSW Registrar of Births, Deaths and Marriages v Norrie</u>	Statutes
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2: Cases Reserved

Case	Title
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Lee v The Queen; Lee v The Queen	Criminal Law
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3: Original Jurisdiction

Case	Title
Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor	Migration
Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor	Migration

4: Special Leave Granted

Case	Title
Versi v The Queen	Evidence
Alphapharm Pty Ltd H Lundbeck A/S & Ors	Patents
Commissioner of Taxation v MBI Properties Pty Ltd	Taxation

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the February 2014 sittings.

Constitutional Law

Attorney-General (NT) v Emmerson

D5/2013: [\[2014\] HCA 13](#).

Judgment delivered: 10 April 2014.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Constitutional law (Cth) – Judicial power of the Commonwealth – Constitution, Ch III – Section 36A of *Misuse of Drugs Act* (NT) and s 94 of *Criminal Property Forfeiture Act* (NT) effect statutory scheme for forfeiture of property – Section 36A provides that Supreme Court can declare a person to be a "drug trafficker" – Section 94(1) provides for forfeiture to Northern Territory of property subject to restraining order that is owned, effectively controlled or given away by that person – Where Director of Public Prosecutions successfully applied to Supreme Court for declaration that first respondent was a drug trafficker – Whether statutory scheme enlists Supreme Court to give effect to decisions of Executive – Whether statutory scheme compatible with independence and institutional integrity of Supreme Court as repository of federal jurisdiction.

Legislative power – Acquisition of property on just terms – Section 50(1) of *Northern Territory (Self-Government) Act 1978* (Cth) provides that power of Northern Territory Legislative Assembly does not extend to making laws with respect to acquisition of property otherwise than on just terms – Where statutory scheme provides for forfeiture to Northern Territory of property subject to restraining order that is owned, effectively controlled or given away by person declared to be a "drug trafficker" – Whether statutory scheme effects acquisition of property otherwise than on just terms.

Words and phrases – "acquisition of property", "forfeiture", "institutional integrity", "just terms", "*Kable* principle".

Appealed from NTSC (CA): (2013) 33 NTLR 1; (2013) 166 NTR 12; (2013) 275 FLR 368; [\[2013\] NTCA 04](#).

Held: Appeal allowed.

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Criminal Law

Achurch v The Queen

[M141/2013](#): [\[2014\] HCA 10](#).

Judgment delivered: 2 April 2014.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Sentence – Appellant convicted of drug crimes and sentenced – Crown successfully appealed against sentences – Court of Criminal Appeal applied reasoning held to be erroneous in *Muldock v The Queen* [2011] HCA 39; (2011) 244 CLR 120 in re-sentencing appellant – Appellant applied under s 43 of *Crimes (Sentencing Procedure) Act 1999* (NSW) for re-sentencing proceedings to be re-opened – Court of Criminal Appeal dismissed application – Where sentences imposed by re-sentencing court open at law – Whether sentences imposed "contrary to law".

Words and phrases – "contrary to law", "principle of finality".

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 117](#).

Held: Appeal dismissed.

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Statutes

Taylor v The Owners – Strata Plan No 11564 & Ors

[S179/2013](#): [\[2014\] HCA 9](#).

Judgment delivered: 2 April 2014.

Coram: French CJ, Crennan, Bell, Gageler and Keane JJ.

Catchwords:

Statutes – Statutory construction – Whether Court of Appeal erred in construction of *Civil Liability Act 2002* (NSW), s 12(2) – Whether *Civil Liability Act 2002* (NSW), s 12(2) limits awards of damages under *Compensation to Relatives Act 1897* (NSW), ss 3, 4 – Whether s 12(2) limitation applies to deceased's gross weekly earnings.

Words and phrases – "claimant", "deceased", "gross weekly earnings", "loss of expectation of financial support".

Appealed from NSWSC (CA): (2013) 83 NSWLR 1; [\[2013\] NSWCA 55](#).

Held: Appeal allowed.

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NSW Registrar of Births, Deaths and Marriages v Norrie
[S273/2013](#): [\[2014\] HCA 11](#).

Judgment delivered: 2 April 2014.

Coram: French CJ, Hayne, Kiefel, Bell and Keane JJ.

Catchwords:

Statutes – Interpretation – Registrar's power to register a "change of sex" under *Births, Deaths and Marriages Registration Act 1995* (NSW) – Respondent underwent sex affirmation procedure – Respondent applied for registration of change of sex under Act – Whether Registrar has power to register change of sex to "non-specific".

Words and phrases – "change of sex".

Appealed from NSWSC (CA): [\[2013\] NSWCCA 145](#).

Held: Appeal dismissed. Respondent's applications remitted to NSW Registrar of Births, Deaths and Marriages.

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Thiess v Collector of Customs & Ors
[B57/2013](#): [\[2014\] HCA 12](#).

Judgment delivered: 2 April 2014.

Coram: French CJ, Hayne, Kiefel, Gageler and Keane JJ.

Catchwords:

Customs and excise – Recovery of sum paid to Customs as duty payable – Where appellant's customs agent transmitted incorrect information in computer import entry for imported yacht – Where customs duty overpaid due to mistaken belief as to weight of yacht – Where appellant discovered mistake outside statutorily prescribed period for recovery and sought to recover monies paid – Whether s

167(4) of *Customs Act 1901* (Cth) operates as a bar to recovery of customs duty paid where no dispute under s 167(1).

Statutes – Interpretation – Whether action available for recovery of customs duty paid outside prescribed statutory circumstances.

Words and phrases – "customs duty", "demand", "dispute", "no action shall lie for the recovery of any sum", "payment under protest".

Appealed from QSC (CA): [\[2013\] QCA 54](#).

Held: Appeal dismissed.

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2: CASES RESERVED

The following cases have been reserved or part heard by the High Court of Australia.

Administrative Law

FTZK v Minister for Immigration and Citizenship & Anor
M143/2013: [\[2014\] HCATrans 41](#).

Date heard: 11 March 2014.

Coram: French CJ, Hayne, Crennan, Bell and Gageler JJ.

Catchwords:

Administrative law – Jurisdictional error – Appellant asylum seeker accused of involvement in kidnapping-murder while in China – Appellant argued accusation motivated by appellant's religious practices – Administrative Appeals Tribunal ("AAT") found appellant's account and conduct subsequent accusation constituted "serious reasons" for considering appellant had committed a serious political crime – AAT therefore found that Refugee Convention did not apply – Whether decision of AAT took into account irrelevant considerations – Whether decision affected by jurisdictional error.

Appealed from FCA (FC): [\[2013\] FCAFC 44](#).

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Contract Law

Commonwealth Bank of Australia v Barker
A23/2013: [\[2014\] HCATrans 73](#), [\[2014\] HCATrans 74](#).

Coram: French CJ, Kiefel, Bell, Gageler and Keane JJ.

Date heard: 8 April 2014.

Catchwords:

Contract law – Employment contracts – Implied terms – Whether common law requires employment contracts contain implied term that employer will not, without reasonable cause, conduct itself in manner likely to destroy or seriously damage relationship of confidence and trust between parties – Whether, if so, to what

extent implied term requires employer to take account redundancy of employee's position prior to making decision to terminate, particularly in circumstances where express contractual right of termination on notice exists – Whether, if so, damages are available for breach.

Appealed from FCA (FC): [\[2013\] FCAFC 83](#).

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Corporations Law

Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)

M141/2013: [\[2014\] HCATrans 39](#).

Date heard: 6 March 2014.

Coram: Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Corporations law – Liquidation – Liquidator brought action against secured creditor and receiver – Liquidator indemnified by primary unsecured creditor - Sum received by liquidator through settlement with receiver but action ultimately unsuccessful against secured creditor – Settlement sum paid by liquidator to unsecured creditor – Whether liquidator entitled to equitable lien over settlement sum for remuneration, costs and expenses in priority over secured creditor.

Equity – Equitable lien – Principled basis for liquidator's equitable lien.

Appealed from VSC (CA): [\[2013\] VSCA 132](#).

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MacarthurCook Fund Management Limited & Anor v TFML Limited

S39/2014: [\[2014\] HCATrans 71](#).

Date heard: 4 April 2014.

Coram: French CJ, Crennan, Kiefel, Bell and Gageler JJ.

Catchwords:

Corporations law – *Corporations Act 2001* (Cth) Ch 5C, Part 5C.6 – Managed investment schemes – Subscribed units held by appellant provided for redemption after 12 months - Respondent suspended

withdrawals of trust units – Whether Part 5C.6 governs all exits from managed investment scheme – Whether prohibition in s 601KA(3)(b) applies to every power of compulsory redemption of units in registered managed investment scheme – Whether concept of "withdrawal" used in Part 5C.6 requires element of volition by withdrawing member.

Appealed from NSWSC (CA): [\[2013\] NSWCA 291](#).

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Criminal Law

Gillard v The Queen

C20/2013: [\[2014\] HCATrans 43](#).

Date heard: 13 March 2014.

Coram: French CJ, Crennan, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Offences against the person – Sexual offences – Consent – Appellant convicted of sexual intercourse without consent and acts of indecency contrary to ss54 and 60 of Crimes Act 1900 (ACT) ("Act") – Absence of consent established through abuse of trust pursuant to s 67(1)(h) of Act – Whether, where absence of consent established through s 67(1)(h) mental element of offence is established through recklessness as to the circumstances – Whether knowledge required by operation of s 67(3) of Act.

Appealed from ACTSC (CA): [\[2013\] ACTCA 17](#).

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Lee & Anor v The Queen

S313; S314/2013: [\[2014\] HCATrans 69](#).

Date heard: 3 April 2014.

Coram: French CJ, Crennan, Kiefel, Bell and Keane JJ.

Catchwords:

Criminal law – Appeal against conviction – *Criminal Appeal Act 1912* (NSW) ("CAA") – Proper characterisation of "miscarriage of justice" limb of s 6(1) of CAA – Whether Court of Criminal Appeal ("CCA") erred in application of limb – Whether limb requires a causal

connection be established between an irregularity and conviction at trial – Whether onus falls on applicant to prove both miscarriage of justice and application of proviso.

Criminal law – Appeal against conviction – *New South Wales Crime Commission Act (NSW)* ("NSWCC Act") – Whether Court CCA erred in construction of ss 6, 7, 13 and 18B of NSWCC Act – Whether CCA failed to properly assess illegality or impropriety of New South Wales Crime Commission.

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 68](#).

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Equity

Australian Financial Services and Leasing Pty Limited v Hills Industries Limited & Anor

S163/2013: [\[2014\] HCATrans 13](#).

Date heard: 11 February 2014.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Equity – Restitution – "Change of position" defence – Fraudulent third party fabricated invoices for the purchase of equipment from first and second respondents and presented invoices to appellant to obtain finance for their purchase – Appellant, not knowing the invoices were fabricated and the equipment did not exist, paid first and second respondents and entered into a leaseback agreement with the third party in respect of the equipment – In response, first respondent discharged debts owed by third party and second respondent filed consent orders setting aside its default judgments and discontinued recovery against third party – Appellant commenced proceedings in restitution against first and second respondents – Trial judge found for appellant on basis that first respondent gave no consideration for monies received from appellant and first respondent had not suffered detriment arising out of a speculative change of its position after receiving those monies – Trial judge dismissed claim against second respondent – Decision in relation to first respondent reversed on appeal but affirmed in relation to second respondent – Court of Appeal held that by discharging debts owed to first respondent by third party, first respondent had given up opportunity to enforce payment of those debts – Whether defence of "change of position" in claims for money paid to third party by financier under mistake of fact extended to this situation – Whether in order to make out defence

of change of position respondents were required to point to specific and quantifiable expenditure or financial loss because of mistaken payment.

Appealed from NSWSC (CA): (2012) 295 ALR 147; [\[2012\] NSWCA 380](#).

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Howard v Commissioner of Taxation

M140/2012: [\[2014\] HCATrans 42](#).

Date heard: 12 March 2014.

Coram: French CJ, Hayne, Crennan, Gageler and Keane JJ.

Catchwords:

Equity – Fiduciary duties – Duty to account – Whether fiduciary duty to account for gains is extinguished by circumstance that gain realised results from award to fiduciary of equitable compensation – Whether fiduciary's duty extends to bringing proceedings to protect rights in respect of which duty subsists, and to accounting for proceeds of such proceedings.

Appealed from FCA (FC): [\[2011\] FCA 1421](#); [\[2012\] FCAFC 149](#).

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Sidhu v van Dyke

S312/2013: [\[2014\] HCATrans 68](#).

Date heard: 2 April 2014.

Coram: French CJ, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Equity – Estoppel – Equitable estoppel – Proprietary estoppel – Promises by man to woman to give her a cottage property – Promise unperformed – Whether presumption of reliance should be applied.

Equity – Equitable compensation – Whether equitable compensation should be assessed by reference to detriment suffered or position plaintiff would have been in had promise been fulfilled.

Appealed from NSWSC (CA): [\[2013\] NSWCA 198](#).

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See also [Corporations Law](#): *Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)*

Statutes

ADCO Constructions Pty Ltd v Goudappel & Anor
S201/2013: [\[2014\] HCATrans 67](#).

Date heard: 1 April 2014.

Coram: French CJ, Crennan, Kiefel, Gageler and Keane JJ.

Catchwords:

Statutes – Interpretation – *Workers Compensation Act 1987* (NSW) ("WCA"), s 66 – First respondent suffered injury in course of employment – Assessed as having a degree of whole person impairment of 6 per cent – *Workers Compensation Legislation Amendment Act 2012* (NSW), Schedule 2 amended WCA s 66 – New s 66 provided that no compensation payable unless impairment was greater than 10 per cent – Schedule 12 inserted Pt 19H into Schedule 6 WCA which provided that amendments extend to claims for compensation made before commencement of the amendment – Whether first respondent entitled to compensation.

Appealed from NSWSC (CA): [\[2013\] NSWCA 94](#).

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3: ORIGINAL JURISDICTION

The following cases are ready for hearing in the original jurisdiction of the High Court of Australia.

Constitutional Law

Pollentine & Anor v Bleijie & Ors

[B39/2013](#): *Case stated.*

Catchwords:

Constitutional law – Limitation on State legislative power – Whether a 18 of *Criminal Law Amendment Act 1945* (Cth) ("Act") is invalid on ground that it is contrary to Chapter III of the Constitution – Whether s 18 of Act infringes *Kable* principle.

Listed: 17 June 2014.

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Tajjour v State of New South Wales & Anor; Hawthorne v State of New South Wales & Anor; Forster v State of New South Wales & Anor

[S266](#); [S267](#); [S268/2013](#): *Causes removed from NSWSC (CA).*

Catchwords:

Constitutional law – Limitation on State legislative power – *Crimes Act 1900* (NSW) ("Act") s 93X – Implied freedom of association – Whether s 93X of Act impermissibly burdens implied freedom of association.

Constitutional law – Limitation on State legislative power – Implied freedom of political communication – Whether s 93X of Act impermissibly burdens implied freedom of political communication.

Constitutional law – Commonwealth executive power conferred by s 61 of the Constitution – Exercise of executive power ratifying *International Covenant on Civil and Political Rights* article 22 – Whether s 93X of Act undermines executive power of Commonwealth in circumstances where it restricts exercise of freedom of association.

Listed: 10 June 2014.

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Williams v Commonwealth of Australia & Ors

[S154/2013](#): *Special case.*

Catchwords:

Constitutional law – Powers of Commonwealth Parliament – Commonwealth entered funding agreement with Scripture Union of Queensland for provision of chaplaincy services at State school ("Funding Agreement") – Whether Appropriation Acts authorised Funding Agreement – If not, whether s 32B of *Financial Management and Accountability Act 1997* (Cth) ("FMA Act") or Part 5AA and Schedule 1AA of *Financial Management and Accountability Regulations 1997* ("FMA Regulations") or item 9 of Schedule 1 to *Financial Framework Amendment Act* ("FFA Act") were invalid – If not, whether Funding Agreement was authorised by s 32B of FMA Act or Part 5AA and Schedule 1AA of FMA Regulations or, where applicable, item 9 of Schedule 1 to FFA Act.

Constitutional law – Executive power of Commonwealth – Expenditure – Whether Funding Agreement supported by executive power – Whether payments unlawful because not authorised by statute and beyond executive power.

Constitutional law – Standing – Plaintiff's children attended State school party to Funding Agreement – Whether plaintiff has standing to challenge validity of payments made in 2012 to service provider.

Listed: 6 May 2014.

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See also **[Migration](#)**: *Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor*

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Migration

Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor

[S297/2013](#): *Special case.*

Catchwords:

Migration – Refugees – *Migration Act 1958* (Cth) ("Act"), s 85 – Plaintiff arrived in Australia as unauthorised maritime arrival –

Plaintiff assessed as person in respect of whom Australia owed protection obligations – Minister made a determination pursuant to s 85 of Act to limit number of protection visas that may be granted in financial year – Whether Minister's determination is invalid – Whether class of visas to which s 85 applied includes class created by s 36 of Act – Whether determination was made in accordance with s 85 of Act – Whether determination was made for improper purpose.

Listed: 14 May 2014.

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Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor

[M150/2013](#): *Special case.*

Catchwords:

Migration – Refugees – *Migration Act 1958* (Cth) ("Act"), ss 36 and 85 – Plaintiff person in respect of whom Australia owed protection obligations – Minister made a determination pursuant to s 85 of Act to limit number of protection visas that may be granted in financial year – Whether Minister's determination was made *ultra vires* power conferred by s 85 of Act – Whether class of visas to which s 85 applied includes class created by s 36 of Act.

Listed: 14 May 2014.

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Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor

[S156/2013](#): *Stated case with questions reserved.*

Catchwords:

Migration – Refugees – Papua New Guinea ("PNG") designated a regional processing country to assess refugee claims – Plaintiff entered Australia by sea at Christmas Island and became "unlawful non-citizen" and "unauthorised maritime arrival" – On direction of Minister, plaintiff taken to PNG for processing of refugee application ("Direction") – Whether decision of Minister to designate PNG regional processing country pursuant to s 198AB of *Migration Act 1958* (Cth) was made without power and was invalid – Whether Minister's Direction under s 198AD was invalid.

Constitutional law – Powers of Commonwealth Parliament – Whether ss 198AB and 198AD are supported by head of power in s 51 of the Constitution.

Listed: 9 May 2014.

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Statutes

See also **Migration**: *Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor* and *Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor*

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4: SPECIAL LEAVE GRANTED

The following cases have been granted special leave to appeal to the High Court of Australia.

Corporations Law

Wellington Capital Limited v Australian Securities & Investments Commission & Anor

[S275/2013](#): [\[2013\] HCATrans 281](#).

Date heard: 8 November 2013 – *Special leave granted on limited grounds.*

Catchwords:

Corporations law – *Corporations Act 2001* (Cth) ("Act") – Appellant responsible entity of registered scheme sold portion of managed investment scheme to listed company in return for entire issued share capital of that company – Appellant then distributed *in specie* to unit holders of fund in proportion to their holdings – Whether appellant was permitted to make an *in specie* distribution of shares to unit holders – Whether appellant's power to make distributions of income or capital in cash only limited general trustee powers outlined in Fund's constitution – Whether question must be approached through prism of trust law.

Corporations law – Membership – Whether unit holders had consented to becoming members of relevant corporation pursuant to s 231 of Act by virtue of shares being transferred to them.

Equity – Equitable remedies – Whether Full Court erred in exercising discretion to grant purely declaratory relief.

Appealed from FCA (FC): [\[2013\] FCAFC 52](#).

Listed: 13 May 2014.

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Equity

See also [Corporations Law](#): *Wellington Capital Limited v Australian Securities & Investments Commission & Anor*

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Evidence

Fitzgerald v The Queen

[A9/2014](#): [\[2014\] HCATrans 48](#).

Date heard: 14 March 2014 – *Special leave granted on limited grounds*.

Catchwords:

Evidence – Identification evidence – DNA evidence – Whether DNA evidence alone is sufficient to establish both presence and participation for purpose of joint enterprise liability in circumstances where no eye witnesses to crimes identified Appellant's presence – Whether reasonable to convict Appellant of murder in circumstances where expert gave evidence that "secondary transfer" of DNA was possible but that scientific understanding of "secondary transfer" was limited.

Appealed from SASC (CCA): [\[2013\] SASCF 82](#).

Listed: 19 June 2014.

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Honeysett v R

[S57/2014](#): [\[2014\] HCATrans 57](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Evidence – Opinion evidence – *Evidence Act 1995* (NSW) s 79 – Evidence given of comparisons of CCTV images of offender and images of Appellant in which common anatomical features identified – Whether "face mapping" and "body mapping" constitute "specialised knowledge" within meaning of s 79 – Whether s 79 requires expert to disclose assumptions and methodology – Whether s 79 requires methodology to be demonstrated as reliable – Whether witness qualified as an *ad hoc* expert.

Words and phrases – "specialised knowledge".

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 135](#).

Listed: 12 June 2014.

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Versi v The Queen

S296/2013: [\[2014\] HCATrans 81](#).

Date heard: 11 April 2014 – *Application referred to Full Court.*

Catchwords:

Evidence – Admissibility – *Evidence Act 1995 (NSW)* ss 98(1), 137 or 101(2) – Complainant gave evidence admitted in relation to one count of indecency on person under 16 years of age – Whether evidence inadmissible on basis that it did not have significant probative value or that probative value was outweighed by danger of unfair prejudice to applicant or that probative value did not substantially outweigh prejudicial effect on applicant – Whether admitted evidence treated improperly by being given undue weight and being used to support finding of guilt on count for which it was not admitted – Whether there was miscarriage of justice.

Appealed from NSW (CCA): [\[2013\] NSWCCA 206](#).

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Insurance

Maxwell v Highway Hauliers Pty Ltd

P12/2014: [\[2014\] HCATrans 51](#).

Date heard: 14 March 2014 – *Special leave granted.*

Catchwords:

Insurance – *Insurance Contracts Act 1984 (Cth)* s 54 – Insurance contract covered accidental damage to Respondent's trucks and trailers – Claims made by Respondent for damage to vehicles being driven by drivers who had not satisfactorily completed driver test as required by insurance contract – Failure to complete test did not cause or contribute to loss – Whether Respondent's failure to comply with insurance contract constituted inherent restriction or limitation upon the scope of cover provided by Appellant – Whether Appellant obliged to indemnify Respondent by reason of s 54(1) – Whether court below erroneously considered interpretative approach taken in *Johnson v Triple C*.

Appealed from WASC (CA): [\[2013\] WASCA 115](#).

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Migration

Minister for Immigration, Multicultural Affairs and Citizenship v SZRNY & Anor

[S65/2014](#): [\[2014\] HCATrans 54](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Migration – *Migration Act 1958* (Cth) ("Act") s 5(9) – First Respondent applied for protection visa which was refused by delegate – First Respondent successfully applied for judicial review – Reconstituted Tribunal affirmed delegate's decision and notified First Respondent – Complementary protection criterion contained in *Migration Amendment (Complementary Protection) Act 2011* (Cth) commenced before First Respondent received Tribunal's decision and applied to applications for protection visas that were not "finally determined within s 5(9) of Act – First Respondent's application for judicial review upheld on basis that Tribunal made jurisdictional error by failing to consider complementary protection criterion in s 36(2)(aa) and/or failing to invite First Respondent to appear before the Tribunal pursuant to s 425 – Whether a visa application is "finally determined" when the Tribunal records its decision under s 430(1) of Act or when the Tribunal sends copies of its decision externally or when the review applicant and Secretary have been given notice of decision.

Words and phrases – "finally determined".

Appealed from FCA (FC): [\[2013\] FCAFC 104](#).

Listed: 13 June 2014.

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Patents

Alphapharm Pty Ltd v H Lundbeck A/S & Ors

[S300/2013](#): [\[2014\] HCATrans 79](#).

Date heard: 11 April 2014 – *Special leave granted*.

Catchwords:

Patents – *Patents Act 1990* (Cth) ("Act"), s 223(2)(a) – First respondent patentee applied to Commissioner of Patents to extend

term of its patent under s 70(1) of Act – Commissioner of Patents granted extension of term – Extension of term later revoked and removed from Register according to orders of Full Federal Court – First respondent applied to Commissioner of Patents for extension of time within which to file second application to extend term of patent – Commissioner of Patents granted extension of time – Decision appealed to Administrative Appeals Tribunal ("AAT") which affirmed Commissioner's decision to grant extension of time – Whether s 223(2)(a) of Act conferred power on Commissioner of Patents to extend time for seeking an extension of term of patent under s 70(1) of Act – Whether exercise of discretion to extend time was manifestly unreasonable in circumstances where the applicant for extension failed to apply promptly for extension – Whether appellant had to demonstrate significant and specific prejudice or hardship to disentitle first respondent to extension – Whether AAT failed to take into account relevant considerations and took into account irrelevant considerations.

Appealed from FCA (FC): [\[2013\] FCAFC 129](#).

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Taxation

Commissioner of Taxation v MBI Properties Pty Ltd
S269/2013: [\[2014\] HCATrans 76](#).

Date heard: 11 April 2014 – *Special leave granted*.

Catchwords:

Taxation – *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("Act"), s 135-5 – Third party owner of estate in fee simple granted lease to tenant for ten year term – Third party sold reversion to respondent who received rent after sale – Declaration made by Full Federal Court that there was no supply by respondent to tenant – Commissioner of Taxation assessed respondent on basis that s 135-5 applied – Respondent objected on ground that there was no supply – Whether there was "continuing supply" after sale of reversion of lease to respondent – Whether respondent had "increasing adjustment" under s 135-5 of Act.

Appealed from FCA (FC): [\[2103\] FCAFC 112](#).

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Tort Law

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor

[S66/2014](#): [\[2014\] HCATrans 52](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Torts – Negligence – Pure economic loss – Builder and developer of commercial premises bargained detailed contract in which developer was protected against liability for defective design and construction – Whether developer was concurrently owed duty of care by builder to exercise reasonable care in construction of building to avoid pure economic loss due to latent defects – Whether relationship between builder and developer disclosed vulnerability on part of developer – Whether successor in title was owed duty of care by builder to avoid pure economic loss due to latent defects.

Appealed from NSWSC (CA): [\[2013\] NSWCA 317](#).

Listed: 18 June 2014.

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Trade Marks

Cantarella Bros Pty Limited v Modena Trading Pty Ltd

[S67/2014](#): [\[2014\] HCATrans 53](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Trade marks – *Trade Marks Act 1995* (Cth) s 41(3) – Trade marks registered in relation to coffee products – Whether Italian words "oro" and "cinque stelle" inherently adapted to distinguish the goods of the registered owner – Whether likelihood that other traders in relevant goods would wish to make honest use of words for sake of "signification which they ordinarily possess" references ordinary signification as understood by members of public or, alternatively, references ordinary signification as understood by traders – Whether the principle is applied differently to foreign language words that do not have commonly understood meaning in Australia.

Appealed from FCA (FC): [\[2013\] FCAFC 110](#).

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5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Canberra: 2 April 2014

(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Coppens	Water Wise Design Pty Ltd (B62/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 145	Application Dismissed [2014] HCASL 60
2.	BZADQ	Minister for Immigration and Border Protection & Anor (B68/2013)	Federal Court of Australia [2013] FCA 1392	Application Dismissed [2014] HCASL 61
3.	Phillips	Southage Pty Ltd (M100/2013; M101/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2014] HCASL 62
4.	Borra	Minister for Immigration and Border Protection & Anor (M149/2013)	Federal Court of Australia [2013] FCA 1215	Application Dismissed [2014] HCASL 63
5.	SZRSN	Minister for Immigration and Citizenship & Anor (S194/2013)	High Court of Australia [2013] HCATrans 227	Application Dismissed [2014] HCASL 64
6.	Gazi	Minister for Immigration and Border Protection & Anor (S271/2013)	Federal Court of Australia [2013] FCA 1094	Application Dismissed [2014] HCASL 65
7.	Sharpe	Hargraves Secured Investments Limited (S274/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 288	Application Dismissed [2014] HCASL 66
8.	Margan	NSW Director of Public Prosecutions & Anor (S285/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 367	Application Dismissed [2014] HCASL 67
9.	SZRPL	Minister for Immigration and Border Protection & Anor (S286/2013)	Federal Court of Australia [2013] FCA 1198	Application Dismissed [2014] HCASL 68
10.	SZSNM	Minister for Immigration and Border Protection & Anor (S287/2013)	Federal Court of Australia [2013] FCA 1209	Application Dismissed [2014] HCASL 69
11.	Guo	Minister for Immigration and Citizenship (S290/2013)	High Court of Australia [2013] HCATrans 290	Application Dismissed [2014] HCASL 70

12.	SZSDE	Minister for Immigration and Border Protection & Anor (S292/2013)	Federal Court of Australia [2013] FCA 1339	Application Dismissed [2014] HCASL 71
13.	SZSTK	Minister for Immigration and Border Protection & Anor (S302/2013)	Federal Court of Australia [2013] FCA 1266	Application Dismissed [2014] HCASL 72
14.	SZSSJ	Minister for Immigration and Border Protection & Anor (S304/2013)	Federal Court of Australia [2013] FCA 1223	Application Dismissed [2014] HCASL 73
15.	Lo Castro	The Queen (D6/2013)	Supreme Court of the Northern Territory (Court of Criminal Appeal) [2013] NTCCA 15	Application Dismissed [2014] HCASL 74
16.	Hills	Pioneer Studios Pty Limited (S310/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 324	Application Dismissed with Costs [2014] HCASL 75
17.	SZRMN	Minister for Immigration and Citizenship & Anor (S140/2013)	Federal Court of Australia [2013] FCA 541	Application Dismissed with Costs [2014] HCASL 76
18.	Day	Ocean Beach Hotel Shellharbour Pty Ltd & Anor (S165/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 250	Application Dismissed with Costs [2014] HCASL 77
19.	Meneghello	Coles Supermarkets Australia Pty Limited (S173/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 264	Application Dismissed with Costs [2014] HCASL 78
20.	Thoo	The Owners-Strata Plan No 50276 & Ors (S178/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 270	Application Dismissed with Costs [2014] HCASL 79

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Sydney: 11 April 2014

No.	Applicant	Respondent	Court appealed from	Result
1.	Despot	Registrar General of New South Wales & Ors (S196/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 313	Special leave refused with costs [2014] HCATrans 77
2.	Tamara King by her next friend Kevin King	Sydney West Local Health District (S199/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 162	Special leave refused with costs [2014] HCATrans 78
3.	Giourtalis	The Queen (S207/2013-S263/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 216	Special leave refused [2014] HCATrans 80
4.	Isbester	The Queen (S282/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 230	Special leave refused [2014] HCATrans 83
5.	Coulter	The Queen (S283/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 175	Special leave refused [2014] HCATrans 82

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Melbourne: 11 April 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Tunja	The Queen (M93/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 174	Special leave refused [2014] HCATrans 89
2.	Ludekens & Anor	Commissioner of Taxation (M129/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 100	Special leave refused with costs [2014] HCATrans 86
3.	Aways	The Queen (M133/2013; M134/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 276	Special leave refused [2014] HCATrans 87
4.	El Sayed	The Queen (M136/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 276	Special leave refused [2014] HCATrans 87
5.	Woodcroft-Brown	Timbercorp Securities Limited (In Liquidation) & Ors (M138/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 284	Special leave refused with costs [2014] HCATrans 85
6.	Ta	Thompson & Anor (M2/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 344	Special leave refused with costs [2014] HCATrans 88
7.	Apache Northwest Pty Ltd & Anor	Alcoa of Australia Limited & Anor (P52/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 213	Special leave refused with costs [2014] HCATrans 84
8.	Apache Energy Limited	Alcoa of Australia Limited & Ors (P53/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 213	Special leave refused with costs [2014] HCATrans 84

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