



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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Commonwealth Bank of Australia v Barker	Contract Law
Maxwell v Highway Hauliers Pty Ltd	Insurance
Plaintiff S4-2014 v Minister for Immigration and Border Protection	Migration

[2: Cases Reserved](#)

Case	Title
Kuczborski v The State of Queensland	Constitutional Law

Wellington Capital Limited v Australia Securities & Investments Commission & Anor	Corporations Law
Rhiannon Gray by her tutor Kathleen Anne Gray v Richards	Damages
Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd	Industrial Law

3: Original Jurisdiction

Case	Title
Queensland Nickel Pty Limited v Commonwealth of Australia	Constitutional Law

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CMB v Attorney General for New South Wales	Criminal Law
Lavin and Anor v Toppi and Ors	Equity
The State of Queensland v Tom Congoo, Layne Malthouse and John Watson on behalf of the Bar-Barrum people #4	Native Title
Commissioner of the Australian Federal Police v Zhao and Anor	Proceeds of Crime

1: CASES HANDED DOWN

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

Contract Law

Commonwealth Bank of Australia v Barker

A1/2014: [\[2014\] HCA 32](#).

Judgment: 10 September 2014.

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

Catchwords:

Contract – Employment contract – Implied terms – Employee’s position made redundant – Employer’s conduct denied employee opportunity of redeployment – Whether term of mutual trust and confidence should be implied by law in employment contracts.

Words and phrases – “duty of cooperation”, “employment contract”, “employment relationship”, “necessity”, “relational contract”, “term of mutual trust and confidence”, “terms implied by law”, “terms implied in fact”.

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

Held: Appeal allowed.

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Insurance

Maxwell v Highway Hauliers Pty Ltd

P12/2014: [\[2014\] HCA 33](#).

Judgment: 10 September 2014.

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

Catchwords:

Insurance – Statutory construction – Where contract of insurance covered accidental damage to vehicles – Where contract of insurance required drivers to obtain satisfactory driver test score – Where drivers of vehicles involved in accidents had not completed driver

tests – Where failure to complete driver test did not cause or contribute to accidents – Whether s 54(1) of *Insurance Contracts Act* 1984 (Cth) requires insurer to indemnify insured for loss caused by accidents.

Words and phrases – “act”, “claim”, “contract of insurance”, “indemnity”, “scope of cover”.

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

Held: Appeal dismissed.

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Migration

Plaintiff S4-2014 v Minister for Immigration and Border Protection & Anor

S4/2014: [\[2014\] HCA 34](#).

Judgment: 11 September 2014.

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

Catchwords:

Migration – Refugees – Minister decided to consider whether to exercise power under s 46A(2) of *Migration Act* 1958 (Cth) to permit plaintiff to apply for protection visa – Plaintiff detained while Minister’s department inquired into plaintiff’s eligibility for protection visa – Minister’s department determined plaintiff satisfied requirements for protection visa – Minister made no decision to permit or refuse to permit plaintiff to apply for protection visa – Minister exercised power under s 195A(2) to grant plaintiff temporary safe haven visa and temporary humanitarian concern visa – Temporary safe haven visa engaged bar imposed by s 91K on making valid application for protection visa – Whether grants of temporary safe haven visa and temporary humanitarian concern visa invalid – Whether decision to grant temporary safe haven visa severable from decision to grant temporary humanitarian concern visa – Whether Minister bound to permit valid application for protection visa – Whether Minister bound to determine how s 46A(2) power will be exercised.

Held: Questions answered.

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2: CASES RESERVED

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

Constitutional Law

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

[S36; S37; S38/2014](#): [\[2014\] HCATrans 119](#); [\[2014\] HCATrans 120](#).

Date heard: 10 and 11 June 2014.

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

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.

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Kuczborski v The State of Queensland

[B14/2014](#): [\[2014\] HCATrans 187](#); [\[2014\] HCATrans 188](#).

Date heard: 2 and 3 September 2014.

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

Catchwords:

Constitutional law – Limitation on State legislative power – *Vicious Lawless Association Disestablishment Act 2013* (Qld), s 7 – *Criminal Code* (Qld), ss 60A, 60B(1) and 60C – *Bail Act 1980* (Qld), s 16(3A) – Whether provisions are invalid on ground that they infringe *Kable* principle.

Standing – Whether plaintiff has standing to seek declaration that provisions are invalid.

Relief – Declaration – Whether relief sought by plaintiff is hypothetical.

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Corporations Law

Wellington Capital Limited v Australian Securities & Investments Commission & Anor

S275/2013: [\[2014\] HCATrans 198](#).

Date heard: 9 September 2014.

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

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](#).

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Criminal Law

Kentwell v The Queen; O'Grady v The Queen

[S113; S114/2014](#): [\[2014\] HCATrans 159](#).

Date heard: 7 August 2014.

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

Catchwords:

Criminal law – *Criminal Appeal Act 1912* (NSW) (“Act”) – *Muldrock* error established in sentencing – Appellant sought extension of time in which to seek leave to appeal against sentence under s 5(1)(c) of Act – Whether applicant for extension of time must establish that refusal of extension would result in substantial injustice – If so, whether assessment of substantial injustice can be conducted in summary fashion

Appealed from NSW (CCA): [\[2013\] NSWCCA 266](#); [\[2013\] NSWCCA 281](#).

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Damages

Rhiannon Gray by her tutor Kathleen Anne Gray v Richards

[S111/2014](#): [\[2014\] HCATrans 199](#).

Date heard: 10 September 2014.

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

Catchwords:

Damages – Appellant injured in motor vehicle accident caused by negligence of respondent – Appellant received sum plus fund management expenses to be assessed – Whether fees incurred by disabled plaintiff in management of, and income on, head of damages is compensable head of damage recoverable from negligent tortfeasor – Whether failure to allow fund management fees is inconsistent with principle of *restitutio in integrum*.

Appealed from NSWSC (CA): [\[2013\] NSWCA 402](#).

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Equity

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

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Industrial Law

Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd

B23/2014: [\[2014\] HCATrans 189](#).

Date heard: 3 September 2014.

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

Catchwords:

Industrial law – *Fair Work Act 2009* (Cth) (“Act”), ss 346 and 347 – Employee of respondent joined strikes which were protected industrial action under s 408 of Act – Employee held sign deemed offensive and contrary to respondent’s code of conduct – Employee dismissed by respondent – Whether employer can avoid liability under s 346(b) for adverse action taken against another person who has engaged in industrial activity by characterising that activity as being in breach of code of conduct policy – Whether court below bound by decisions in *Barclay* and *General Motors v Bowling*.

Appealed from FCA (FC): [\[2013\] FCAFC 132](#).

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Patents

Alphapharm Pty Ltd v H Lundbeck A/S & Ors

S97/2014: [\[2014\] HCATrans 160](#).

Date heard: 8 August 2014.

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

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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Tort Law

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor

S66/2014: [\[2014\] HCATrans 126](#).

Date heard: 18 June 2014.

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

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](#).

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Trade Marks

Cantarella Bros Pty Limited v Modena Trading Pty Ltd
S67/2014: [\[2014\] HCATrans 157](#).

Date heard: 5 August 2014.

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

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 “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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3: ORIGINAL JURISDICTION

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

Constitutional Law

See also [Migration](#): *CPCF v Minister for Immigration and Border Protection and Anor*

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Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and Ors v Queensland Rail and Anor

[B63/2013](#): *Special case.*

Catchwords:

Constitutional law – Commonwealth Constitution, ss 51(xx) and 109 – Employees who are members of ten unions previously employed by Queensland Rail Limited were transferred to Queensland Rail – Queensland Government intended to implement New Generation Rolling Stock project (“NGR project”) – Unions informed Queensland Rail of their concerns for potential impact of NGR project and sought discussions pursuant to cl 22 of Rollingstock Agreement – Queensland Rail did not consider itself bound by *Fair Work Act 2009* (Cth) (“FW Act”) but instead bound by *Industrial Relations Act 1999* (Qld) (“IR Act”) and by reason of s 691C of IR Act, considered Rollingstock Agreement of no effect – Unions informed Queensland Rail of desire to pursue negotiations for new enterprise agreement to replace Traincrew Agreement in accordance with FW Act – New enterprise agreement certified pursuant to IR Act – Whether Queensland Rail is corporation within meaning of s 51(xx) of Constitution – Whether Queensland Rail is trading corporation within meaning of s 51(xx) of Constitution – Whether FW Act applies to Queensland Rail and its employees by operation of s 109 of Constitution to exclusion of *Queensland Rail Transit Authority Act 2013* (Qld) or IR Act or both.

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Queensland Nickel Pty Limited v Commonwealth of Australia

[B25/2013](#): *Special case.*

Catchwords:

Constitutional law – Preference between States – Commonwealth Constitution, s 99 – *Clean Energy Act 2011* (Cth) (“Act”) – *Clean Energy Regulations 2011* (Cth) (“Regulations”) – Plaintiff operates nickel and cobalt refinery in Queensland and was “liable entity” for purposes of s 20(3) of Act – Despite repeal of Act, its operation was preserved insofar as it related to liability of liable entities to pay unit shortfall charges for years beginning on 1 July 2012 and 1 July 2013 by items 323(1) and 324(3) of Schedule 1, Part 3 of *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth) – In carrying out operational activities, there are differences with respect to level of covered emissions per unit of production produced by plaintiff and other similar refineries in Western Australia – Whether Divisions 48 of Part 3 of Schedule 1 to Regulations invalid in its application to plaintiff on ground that it gave preference to one State over another contrary to s 99 of Constitution – Whether impugned provisions should be read down so as to avoid contravening s 99 of Constitution – Whether, upon their proper construction, impugned provisions imposed upon plaintiff any liability for any “unit shortfall charge” in respect of production of nickel.

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Migration

CPCF v Minister for Immigration and Border Protection and Anor
[S169/2014](#): *Special case.*

Catchwords:

Migration – Power to detain – *Maritime Powers Act 2013* (Cth) (“Act”) – Plaintiff, along with 156 other persons, was passenger on Indian vessel bound for Christmas Island – Plaintiff claimed refugee status within meaning of Art 1 of Convention relating to the Status of Refugees and that he was person in respect of whom Australia owed non-refoulement obligations – Indian vessel was intercepted in Australia’s contiguous zone – Maritime officers implemented decision of National Security Committee of Cabinet to return Indian vessel to India – Whether s 72(4) of Act authorised maritime officers to prevent plaintiff from entering Australia or detain plaintiff for purpose of taking him to India – Whether power under Act was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

Constitutional law – Executive power – Whether non-statutory executive power of Commonwealth authorised Commonwealth officers to prevent plaintiff from entering Australia or detain plaintiff for purposes of taking him to India – Whether non-statutory

executive power was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

Listed: 14 and 15 October 2014.

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4: SPECIAL LEAVE GRANTED

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

Administrative Law

Argos Pty Ltd and Ors v Simon Corbell, Minister for the Environment and Sustainable Development and Ors

C3/2014: [\[2014\] HCATrans 101](#).

Date heard: 16 May 2014 – *Special leave granted*.

Catchwords:

Administrative law – *Administrative Decisions (Judicial Review) Act 1989* (Cth) (“Act”), s 5(1) – Application made to review decision of Minister to approve development application – Appellants adduced evidence to effect that approval would cause loss of trade – Whether corporate appellants have standing to bring application – Whether economic interests will suffice to establish that party is “person aggrieved” for purposes of s 5(1) of Act.

Appealed from ACTSC (CA): [\[2013\] ACTCA 51](#).

Listed: 10 October 2014.

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Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd

S225/2014: [\[2014\] HCATrans 170](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Administrative law – Powers of Australian Communications and Media Authority (“ACMA”) – Respondent held commercial radio broadcasting licence under *Broadcasting Services Act 1992* (Cth) (“BSA”) – Respondent recorded and broadcast conversation for radio segment – ACMA investigated segment under s 170 of BSA – Investigation concerned whether respondent breached licence condition contained in cl 8(1)(g), Sch 2 of BSA which is engaged where offence is committed against another law – ACMA’s preliminary investigation report found that respondent contravened s

11(1) of *Surveillance Devices Act 2007* (NSW) – Whether ACMA can only make administrative finding of commission of offence once conviction is recorded by criminal court – Whether ACMA is required to defer enforcement action until after criminal process has concluded – Whether ACMA is bound conclusively in its administrative findings by the outcome of such criminal process.

Constitutional law – Judicial power – Whether ACMA’s conclusion of breach of licence condition involves exercise of judicial power reserved to Ch III courts.

Appealed from FCA (FC): [\[2014\] FCAFC 22](#).

Listed: 11 November 2014.

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Constitutional Law

See also [Administrative Law](#): *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

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Corporations Law

Grant Samuel Corporate Finance Pty Limited v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors; JP Morgan Chase Bank National Association & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors
S228/2014: [\[2014\] HCA Trans 167](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Corporations law – Insolvency – Voidable transactions – *Corporations Act 2001* (Cth) (“Act”), s 588FF(3) – Under s 588FF(3)(b), court made order extending time for first respondent to bring proceedings under s 588(1) of Act against second respondent – After expiry of period within which any application under 588FF(3)(b) was able to be made, further court order was made under r 36.16(2)(b) of *Uniform Civil Procedure Rules 2005* (NSW) (“UCPR”) varying original

extension order – Effect of variation order was to extend period within which any s 588(1) application had to be brought by further six months – Whether r 36.16(2)(b) of UCPR permits further extension of three year period specified in s 588FF(3)(a) of Act by order varying earlier valid extension in circumstances where the application for such variation is made on a date after the expiry of original three year period.

Appealed from NSWSC (CA): [\[2014\] NSWCA 31](#).

Listed: 12 November 2014.

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Criminal Law

Henderson v State of Queensland

B22/2014: [\[2014\] HCATrans 102](#).

Date heard: 16 May 2014 – *Special leave granted*.

Catchwords:

Criminal law – Procedure – Confiscation of proceeds of crime – *Criminal Proceeds Confiscation Act 2002* (Qld) (“Act”), Part VI – Police seized sum of money over which appellant claimed ownership – Police applied for forfeiture order and appellant applied for exclusion order – Whether prosecuting authority succeeds in circumstances where possessor of property cannot prove title of those who previously possessed item – Whether common law applies in determination of title under Act.

Appealed from SCQ (CA): [\[2013\] QCA 82](#).

Listed: 16 October 2014.

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CMB v Attorney General for New South Wales

S98/2014: [\[2014\] HCATrans 206](#).

Date heard: 12 September 2014 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – Appeal against sentence – *Criminal Appeal Act 1912* (NSW) (“CAA”), s 5D – *Crimes (Sentencing Procedure) Act 1999* (NSW) (“CSPA”), s 23 – Appellant sexually

assaulted daughter and charged – Director of Public Prosecutions (DPP) successfully applied to have charges remitted to Local Court for referral to pre-trial diversion program – During program appellant revealed other offences committed against daughter – Appellant charged with further counts of aggravated sexual and indecent assault – At hearing appellant pleaded guilty to four counts of aggravated sexual assault and one count of aggravated indecent assault – Appellant sentenced to good behaviour bonds with requirement that appellant complete program – Attorney-General for New South Wales filed notice of appeal pursuant to s 5D of CAA – Court of Criminal Appeal allowed appeal and re-sentenced appellant to five years and six months' imprisonment – Whether Court of Criminal Appeal erred in not exercising its residual discretion to decline to interfere under s 5D of CAA – Whether Court of Criminal Appeal erred in holding that the onus lay upon appellant contrary to authority and limited purpose of Crown appeals – Whether Court of Criminal Appeal erred in its application of both s 23 of CSPA and principle in *R v Ellis* in determining what leniency should be afforded to appellant.

Appealed from NSWSC (CCA): [\[2014\] NSWCCA 5](#).

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Equity

Korda and Ors v Australian Executor Trustees (SA) Limited

M82/2014: [\[2014\] HCATrans 175](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Equity – Trusts – Investment scheme – Investors invited to invest in timber plantation – Different operating companies undertook cultivation, milling and sale of timber – According to Trust Deed, trustee was to hold proceeds of timber sales for investors – Operating companies were liquidated before sale proceeds were paid to trustee – Whether commercial necessity mandated imputation of unstated trust over timber proceeds before payment to trustee.

Appealed from VSC (CA): [\[2014\] VSCA 65](#).

Listed: 6 and 7 November 2014.

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Lavin and Anor v Toppi and Ors
S115/2014: [\[2014\] HCATrans 207](#).

Date heard: 12 September 2014 – *Special leave granted*.

Catchwords:

Equity – Contribution between co-sureties – Appellants paid lesser amount, pursuant to guarantee, than respondents who were co-sureties – Creditor Bank granted appellants covenant not to sue – NSW Court of Appeal held that contribution in equity was available to respondents – Whether creditor’s covenant not to sue has effect upon rights of contribution which arise between co-sureties – Whether co-surety, having obtained covenant not to sue, shares with other co-sureties co-ordinate liabilities of the same nature and extent so as to give rise to right to contribution as between co-sureties.

Appealed from NSWSC (CA): [\[2014\] NSWCA 160](#).

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Migration

Minister for Immigration and Border Protection v SZSCA & Anor
S109/2014: [\[2014\] HCATrans 111](#).

Date heard: 16 May 2014 – *Special leave granted*.

Catchwords:

Migration – Respondent applied for protection visa – Taliban threatened respondent because of imputed political support for foreign organisations and Afghan government – Imputation based upon respondent’s occupation transporting building materials – Whether a person may be found not to meet the definition of “refugee” in circumstances where that person could avoid persecution by changing occupation – Whether reasonable for person to change occupation.

Appealed from FCA (FC): [\[2013\] FCAFC 155](#).

Listed: 9 October 2014.

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Native Title

The State of Queensland v Tom Congoo, Layne Malthouse and John Watson on behalf of the Bar-Barrum people #4

B15/2014: [\[2014\] HCATrans 190](#).

Date heard: 4 September 2014 – *Special leave granted*.

Catchwords:

Native title – Extinguishment – *National Security Act 1939* (Cth) (“NSA”), s 5(1) – *National Security (General) Regulations*, reg 54 – NSA enacted shortly after Australia’s entry into World War II authorising Governor-General to make regulations for securing public safety and defence of Commonwealth – Between 1943 and 1945 five orders were made under reg 54 over land over which native title determination sought – Whether orders made under reg 54 have effect of extinguishing all native title rights and interests on land – Whether reg 54 enabled Commonwealth to take possession of land simply by making orders purporting to take possession of land.

Appealed from FCA (FC): [\[2014\] FCAFC 9](#).

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Proceeds of Crime

Commissioner of the Australian Federal Police v Zhao and Anor

M65/2014: [\[2014\] HCATrans 202](#).

Date heard: 12 September 2014.

Catchwords:

Proceeds of crime – Practice and procedure – Application for stay of civil forfeiture proceedings under *Proceeds of Crime Act 2002* (Cth) (“POCA”) – Second respondent, who was charged with offence yet to be heard and determined, and first respondent, his wife, were granted stay of forfeiture proceedings against their restrained property by the Victorian Court of Appeal (“VCA”) – Whether VCA erred by not applying test of whether there was a real risk to administration of justice – Whether principles in *Lee v The NSW Crime Commission* and *Lee v The Queen* required VCA to take particular approach to stay of *in rem* civil forfeiture proceedings – Whether VCA failed to pay regard to distinction between compulsory examination under POCA of person charged with offence and nature of *in rem* civil forfeiture trial when it attached determinative significance to POCA’s abrogation of privilege against self-

incrimination in respect of former but not latter – Whether VCA erred by granting a stay for forfeiture of property owned solely by first respondent to first respondent who had not been charged with offence on basis that any evidence she gave could expose risk of her evidence being used against second respondent in criminal proceedings.

Appealed from VSC (CA): [\[2014\] VSCA 137](#).

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Property Law

Cassegrain v Gerard Cassegrain & Co Pty Ltd

S141/2014: [\[2014\] HCATrans 138](#).

Date heard: 20 June 2014 – *Special leave granted*.

Catchwords:

Property law – Indefeasibility of title – Fraud exception – *Real Property Act 1900* (NSW) (“Act”), ss 42 and 118 – Appellant’s husband (Mr Cassegrain) was director of respondent company and acted fraudulently by utilising credit balance in company loan account to purchase property – Property was transferred from respondent company to Mr Cassegrain and appellant – Mr Cassegrain later transferred his interest in property to appellant for nominal consideration – Whether Mr Cassegrain was appellant’s agent in relation to giving instructions for execution of Real Property Act transfers and lodgement of registration of transfers – Whether the appellant’s title was defeasible because Mr Cassegrain acted as the appellant’s agent – Whether appellant’s title was defeasible because Mr Cassegrain and the appellant were joint tenants – Whether because of Mr Cassegrain’s conduct, the appellant’s interest as sole registered proprietor of land was defeasible pursuant to section 118(1)(d) of Act.

Appealed from NSWSC (CA): [\[2013\] NSWCA 453](#).

Listed: 13 November 2014.

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Stamp Duty

Commissioner of State Revenue v Lend Lease Development Pty Ltd; Commissioner of State Revenue v Lend Lease Real Estate Investments Limited; Commissioner of State Revenue v Lend Lease IMT 2 (HP) Pty Ltd

[M74/2014 – M81/2014](#): [\[2014\] HCATrans 185](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Stamp duty – Consideration for dutiable transaction – Identification of consideration for dutiable transactions in circumstances where purchaser of dutiable property promises to make series of different payments at different times and where promises are contained in multiple instruments – Seven parcels of land were transferred according to multiple instruments – Whether consideration for dutiable transaction should be identified by instruments which effect dutiable transaction and consideration expressed in each instrument and/or by asking whether given instrument is correct instrument – Whether s 20 of *Duties Act 2000* (Vic) should be construed as limited to promises if and insofar as they moved transfer of dutiable property in condition it was at time of transfer.

Appealed from VSC (CA): [\[2013\] VSCA 207](#).

Listed: 4 and 5 November 2014.

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Taxation

Commissioner of Taxation v MBI Properties Pty Ltd

[S90/2014](#): [\[2014\] HCATrans 200](#).

Date heard: 11 September 2014 (part heard) – *Hearing adjourned to a date to be fixed*.

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

Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon & Anor
S142; S143/2014: [\[2014\] HCATrans 137](#).

Date heard: 20 June 2014 – *Special leave granted*.

Catchwords:

Tort law – Negligence – *Civil Liability Act 2002* (NSW) (“CLA”), ss 5B, 5D(1), 5O(1), 43(1) and 43A – Person detained as mentally ill person under *Mental Health Act 1990* (NSW) and discharged next day into care of friend – Person had psychotic episode and killed friend – Family of deceased claimed damages for mental harm due to shock of learning of death – Whether health authorities owe a duty of care to third parties in exercise of statutory powers to detain and discharge mentally ill patients – Whether it is appropriate for health authority’s scope of liability to extend to patient’s unlawful action in killing the respondents’ relative – Whether professional service provided must have conformed to “a practice” that was in existence at time it was provided – Whether a finding of common law negligence can give rise to liability that is “based on a breach of statutory duty” – Whether s 43A of CLA provides a defence to health authority.

Appealed from NSWSC (CA): [\[2013\] NSWCA 476](#).

Listed: 8 October 2014.

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5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 11 September 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	BCP	The Queen (B19/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 383	Application dismissed [2014] HCASL 157
2.	Niall	Mangrove Housing Association (B20/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 58	Application dismissed [2014] HCASL 158
3.	Munro	The Queen (C2/2014)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2014] ACTCA 11	Application dismissed [2014] HCASL 178
4.	ACN 074 971 109 Pty Ltd (as Trustee of the Argot Unit Trust)	National Mutual Life Association of Australasia Limited (ACN 004 020 437) (M1/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 241	Application dismissed with costs [2014] HCASL 172
5.	Chava	Minister for Immigration and Border Protection & Anor (M30/2014)	Federal Court of Australia [2014] FCA 313	Application dismissed [2014] HCASL 159
6.	Devon	Capital Finance Australia Limited (M39/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 73	Application dismissed [2014] HCASL 160
7.	Hadiyoal & Anor	Minister for Immigration and Border Protection & Anor (M43/2014)	Federal Court of Australia [2014] FCA 459	Application dismissed [2014] HCASL 161
8.	Elwin	Robinson (P15/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 46	Application dismissed [2014] HCASL 162
9.	Re: Solar (P18/2014)		High Court of Australia [2014] HCATrans 90	Application dismissed [2014] HCASL 163
10.	Glew	Attorney General of Western Australia (P19/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 93	Application dismissed [2014] HCASL 164
11.	WZARX	Minister for Immigration and Border Protection & Anor (P22/2014)	Federal Court of Australia [2014] FCA 423	Application dismissed [2014] HCASL 165

6: Special Leave Refused

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Navazi	New South Wales Land and Housing Corporation (S5/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 431	Application dismissed with costs [2014] HCASL 173
13.	Church	James Herbert Mason as executor of the Estate of the late Marjorie Elaine Mason (S29/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 481	Application dismissed with costs [2014] HCASL 174
14.	Frenmast Pty Limited	Australia & New Zealand Banking Group Limited (S41/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 459	Application dismissed with costs [2014] HCASL 175
15.	Karamihos & Anor	Bendigo and Adelaide Bank Limited (S49/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 17	Application dismissed with costs [2014] HCASL 176
16.	Wienand	The Queen (S59/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 202	Application dismissed [2014] HCASL 177
17.	Tov-Lev & Ors	Lowbeer (S79/2014)	Federal Court of Australia [2014] FCA 379	Application dismissed [2014] HCASL 166
18.	Seidler	Carroll & O'Dea & Ors (S80/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 48	Application dismissed [2014] HCASL 167
19.	Seidler	Carroll & O'Dea & Ors (S81/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 48	Application dismissed [2014] HCASL 167
20.	SCVG	KLD & Anor (S88/2014)	Family Court of Australia	Application dismissed [2014] HCASL 168
21.	Kaur & Ors	Minister for Immigration and Border Protection & Anor (S91/2014)	Federal Court of Australia [2014] FCA 281	Application dismissed [2014] HCASL 169
22.	SZSEY	Minister for Immigration and Border Protection & Anor (S92/2014)	Federal Court of Australia [2014] FCA 266	Application dismissed [2014] HCASL 170
23.	Neale	Ancher Mortlock and Woolley Pty Ltd (S94/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 72	Application dismissed [2014] HCASL 171

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Brisbane: 4 September 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	EDC	Crime and Misconduct Commission (B37/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 152	Special leave refused [2014] HCATrans 192
2.	WSX	Crime and Misconduct Commission (B38/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 152	Special leave refused [2014] HCATrans 192
3.	Hamcor Pty Ltd & Anor	Marsh Pty Ltd & Anor (B56/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 262	Special leave refused with costs [2014] HCATrans 193
4.	Janissen	The Queen (B61/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 279	Special leave refused [2014] HCATrans 194
5.	HBJ	The Queen (B10/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 2	Special leave refused [2014] HCATrans 195
6.	Hill	The Queen (B27/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 107	Special leave refused [2014] HCATrans 191
7.	Young	The Queen (B28/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 107	Special leave refused [2014] HCATrans 191

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Sydney: 12 September 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Malouf	Prince (S43/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA12	Special leave refused with costs [2014] HCATrans 203
2.	Ratcliff	The Queen & Anor (S32/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 259	Special leave refused [2014] HCATrans 204
3.	Buckman	The Queen & Anor (S33/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 258	Special leave refused [2014] HCATrans 204
4.	PD	The Queen (S70/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 4	Special leave refused [2014] HCATrans 209
5.	Milat	The Queen (S100/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 29	Special leave refused [2014] HCATrans 205
6.	Frost & Anor	Bovaird & Ors (S77/2014)	Federal Court of Australia (Full Court) [2014] FCAFC 20	Special leave refused with costs [2014] HCATrans 208
7.	Gedeon	The Queen (S101/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 257	Special leave refused [2014] HCATans 210

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