



HIGH COURT BULLETIN

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[2015] HCAB 4 (27 May 2015)

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

1: Cases Handed Down	3
2: Cases Reserved	7
3: Original Jurisdiction	15
4: Special Leave Granted.....	17
5: Cases Not Proceeding or Vacated.....	26
6: Special Leave Refused.....	27

SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
<u>Selig & Selig v Wealthsure Pty Ltd & Ors</u>	Corporations
<u>Lindsay v The Queen</u>	Criminal Law
<u>Uelese v Minister for Immigration and Border Protection</u>	Migration
<u>State of Queensland v Congoo & Ors</u>	Native Title

2: Cases Reserved

Case	Title
Police v Dunstall	Criminal Law
Filippou v The Queen	Criminal Law
Gnych & Anor v Polish Club Limited	Property
AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd	Patents

3: Original Jurisdiction

No new entries for May 2015.

4: Special Leave Granted

Case	Title
Wright Prospecting Pty Limited v Mount Bruce Mining Pty Limited & Anor; Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited & Anor	Contracts
The Queen v Beckett	Criminal law
The Queen v Pham	Criminal law
State of Victoria v Tatts Group Limited	Statutes
Tabcorp Holdings Limited v State of Victoria	Statutes
Macoun v Commissioner of Taxation	Taxation
Alcan Gove Pty Ltd v Zabic	Torts

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the May 2015 sittings.

Corporations

Selig & Selig v Wealthsure Pty Ltd & Ors
[A11/2014](#): [\[2015\] HCA 18](#).

Judgment Delivered: 13 May 2015.

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

Catchwords:

Corporations – First and second respondents provided financial advice to appellants – First and second respondents found to have contravened various provisions of *Corporations Act 2001* (Cth) ("Act") and *Australian Securities and Investments Commission Act 2001* (Cth) – Whether liability should be limited to proportion of appellants' loss, having regard to comparative responsibility of other parties – Whether application of Div 2A of Pt 7.10 of Act limited to claims based on contravention of s 1041H of Act or also applies to other causes of action.

Procedure – Costs – Costs order against non-party – Where professional indemnity insurer had conduct of respondents' defence at trial and made decision to appeal – Where insurer acting in own interests by bringing appeal – Where respondents' cover under insurance policy was capped – Whether circumstances justified costs order against insurer who was a non-party to proceedings.

Words and phrases – "apportionable claim", "proportionate liability".

Appealed from FCA (FC): (2014) 221 FCR 1; (2014) 100 ACSR 566; [\[2014\] FCAFC 64](#); (2014) 100 ACSR 566.

Held: Appeal allowed.

[Return to Top](#)

Criminal Law

Lindsay v The Queen
[A24/2014](#): [\[2015\] HCA 16](#).

Judgment Delivered: 6 May 2015.

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

Catchwords:

Criminal law – Murder – Defences – Provocation – Where male Caucasian deceased made sexual advances towards male Aboriginal appellant at appellant's home in presence of appellant's de facto wife and family – Where open to jury to find that appellant killed deceased having lost self-control following advances – Where provocation left to jury at trial and appellant convicted of murder – Where Court of Criminal Appeal ("CCA") dismissed appeal against conviction because it concluded provocation should not have been left to jury as evidence, taken at highest, could not satisfy objective limb of provocation – Whether CCA erred in so concluding – Relevance of contemporary attitudes to sexual relations.

Criminal law – Appeal – Appeal against conviction – Application of proviso – CCA dismissed appeal by applying proviso to s 353(1) of *Criminal Law Consolidation Act 1935* (SA) – Where CCA not invited to apply proviso by prosecution – Whether CCA erred in invoking and applying proviso of its own motion.

Words and phrases – "minimum powers of self-control", "ordinary person", "partial defence".

Appealed from SASC (CCA): (2014) 119 SASR 320; [\[2014\] SASCFC 56](#).

Held: Appeal allowed.

[Return to Top](#)

Migration

Uelese v Minister for Immigration and Border Protection

[S277/2014](#): [\[2015\] HCA 15](#).

Judgment Delivered: 6 May 2015.

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

Catchwords:

Migration and citizenship – Visa cancellation – Character test – Administrative Appeals Tribunal – *Migration Act 1958* (Cth), s 500(6H) precludes Tribunal from having regard to information presented orally in support of a person's case unless provided in written statement to Minister two days before Tribunal holds a hearing – Information arose regarding children during cross-

examination of witness called on behalf of appellant – Tribunal required to consider best interests of minor children in Australia – Whether Tribunal erred in its application of s 500(6H) by not considering that information – Relevance of whether information could reasonably have been anticipated by appellant.

Migration and citizenship – Visa cancellation – Character test – Administrative Appeals Tribunal – Whether *Migration Act* 1958 (Cth), s 500(6H) precludes Tribunal from adjourning hearing so that notice requirements may be met – Whether day on which Tribunal "holds a hearing" includes day on which hearing resumes.

Words and phrases – "holds a hearing", "information presented orally in support of the person's case".

Appealed from FCA (FC): [\[2013\] FCAFC 86](#).

Held: Appeal allowed.

[Return to Top](#)

Native Title

State of Queensland v Congoo & Ors
B39/2014: [\[2015\] HCA 17](#).

Judgment Delivered: 13 May 2015.

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

Catchwords:

Native title – Native title rights in relation to land – *National Security Act* 1939 (Cth), s 5(1)(b)(i) provided for making of regulations for securing public safety and defence of Commonwealth and for authorising taking of possession or control, on behalf of Commonwealth, of any property – *National Security (General) Regulations* 1939 (Cth), reg 54(1) provided that if it appeared to Minister of State for Army to be necessary or expedient to do so in interests of public safety, defence of Commonwealth or efficient prosecution of war, or for maintaining supplies and services essential to life of Commonwealth, Minister could, on behalf of Commonwealth, take possession of any land and give such directions as appeared necessary or expedient in connection with taking possession – Where orders were made under reg 54(1) in relation to land authorising officer to do anything in relation to land that holder of estate in fee simple in land could do and prohibiting all other persons from exercising any right of way over land or any other right relating thereto – Whether orders inconsistent with

claimed native title rights and interests – Whether clear and plain legislative intention to extinguish native title rights and interests.

Words and phrases – "clear and plain legislative intention", "exclusive possession", "extinguishment", "inconsistency of rights", "possession".

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

Held: Appeal dismissed with costs.

[Return to Top](#)

2: CASES RESERVED

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

Administrative Law

Isbester v Knox City Council
M19/2015: [\[2015\] HCATrans 79](#).

Date Heard: 14 April 2015.

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

Catchwords:

Administrative law – Procedural fairness – Where respondent’s delegate ordered pursuant to s 84P of the *Domestic Animals Act* 1994 (Vic) (“Act”) for the destruction of appellant’s dog due to an incident the year before in which the appellant’s dog bit a person – Where appellant pleaded guilty to offences under the Act relating to that incident – Where appellant claimed that she was not afforded procedural fairness at the hearing to determine whether appellant’s dog should be destroyed – Where appellant claims that there was apprehended bias because one of the panel members had previously been an accuser in appellant’s criminal prosecution for the same incident – Whether the Victorian Court of Appeal erred in failing to find that the decision was affected by apprehended bias.

Animals – Various statutory provisions – Regulation of companion animals – seizure and destruction.

Appealed from VSC (CA): [\[2014\] VSCA 214](#).

[Return to Top](#)

Animals

See also **[Administrative Law](#)**: *Isbester v Knox City Council*.

[Return to Top](#)

Criminal Law

Police v Dunstall

A5/2015: [\[2015\] HCATrans 102.](#)

Date heard: 6 May 2015.

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

Catchwords:

Criminal law – Evidence – Judicial discretion to admit or exclude evidence – Evidence unfair to admit or improperly obtained – Generally – Where the respondent was charged with driving a motor vehicle while there was present in his blood the prescribed concentration of alcohol in contravention of s 47K(5) of the *Road Traffic Act 1961* (SA) – Where the respondent was subject to a breath analysis test and two blood samples were taken – Where the blood samples were denatured and unsuitable for analysis – Where the breath analysis evidence was excluded on the basis of unfairness – Whether there is a general judicial discretion to excluded lawfully obtained, non-confessional evidence for reasons of unfairness – If there is a general judicial discretion, what amounts to unfairness to enliven the discretion.

Appealed from SASC (FC): (2014) 120 SASR 88; [\[2014\] SASFC 85.](#)

[Return to Top](#)

Filippou v The Queen

S59/2015: [\[2015\] HCATrans 104.](#)

Date heard: 12 May 2015.

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

Catchwords:

Criminal law – Appeal against conviction and sentence – s 23 *Crimes Act 1900* (NSW) – Where the appellant was convicted of murder by a judge sitting alone – Where it was not determined beyond reasonable doubt whether the appellant or one of the deceased brought the murder weapon to the scene – Whether the judge at first instance erred in the application of the test of provocation – Whether as a consequence of this error the Court of Criminal Appeal should have held this to be an error of law requiring the convictions to be quashed – Whether the Court of Criminal Appeal erred in failing to take into account matters mitigating the sentence imposed in respect of the fact that it was not reasonably possible to conclude who brought the murder weapon to the scene.

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 92](#).

[Return to Top](#)

Estoppel

Tomlinson v Ramsey Food Processing Pty Limited
S7/2015: [\[2015\] HCATrans 77](#).

Date heard: 10 April 2015.

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

Catchwords:

Estoppel – Issue estoppel – Appellant was employee at abattoir owned by respondent – Appellant was injured as result of respondent’s negligence – Appellant and others complained to Fair Work Ombudsman about abattoir’s failure to pay all wage entitlements – Fair Work Ombudsman brought proceedings in its name against respondent – Appellant separately commenced proceedings claiming damages against respondent for personal injury under *Civil Liability Act 2002* (NSW) – Appellant argued in proceedings that abattoir was relevant employer – Respondent pleaded by way of defence that appellant was issue estopped by reason of earlier proceedings on the issue of employee/employer such that respondent was appellant’s relevant employer – Whether Fair Work Ombudsman was privy of appellant employee in earlier proceedings – Whether appellant was issue estopped by earlier decision made in proceedings commenced by Fair Work Ombudsman to which appellant was not party.

Appealed from NSWSC (CA): [\[2014\] NSWCA 237](#).

[Return to Top](#)

Migration

Minister for Immigration and Border Protection v WZAPN & Anor
M17/2015: [\[2015\] HCATrans 80](#).

Date heard: 15 April 2015.

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

Catchwords:

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of persecution – Serious harm – Whether under s 91R of the *Migration Act 1958* (Cth) a refugee claimant will suffer “serious harm” if detained for a reason mentioned in the *Convention Relating to the Status of Refugees 1951* as amended by the *Protocol Relating to the Status of Refugees 1967* without any need to assess the severity of that detention - Where respondent is a stateless Faili Kurd – Where respondent claimed a fear of persecution if he was returned to Iran due to his Kurdish ethnicity and stateless personhood – Where the refugee status assessment officer concluded that the applicant was not a refugee within the meaning of the Convention – Where the officer found that whilst respondent would face arbitrary questioning and detention due to his lack of documentation this did not amount to a serious harm within the meaning of the *Migration Act 1958* (Cth) – Federal Court found that the assessment officer had erred by undertaking a qualitative assessment of the detention that was likely to occur if respondent was returned to Iran – Whether a qualitative assessment of the seriousness of the harm suffered by respondent was required pursuant to s 91R of the *Migration Act 1958* (Cth).

Appealed from FCA: [\[2014\] FCA 947](#).

[Return to Top](#)

WZARV v Minister for Immigration and Border Protection & Anor
P10/2015: [\[2015\] HCATrans 80](#).

Date heard: 15 April 2015.

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

Catchwords:

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of persecution – Serious harm – Where appellant is a Sri Lankan citizen and applied for a Refugee Status Assessment – Where appellant is of Tamil ethnicity – Where the Independent Merits Reviewer accepted that it was likely that appellant would be questioned by the Sri Lankan authorities upon his return to Sri Lanka but that questioning would not amount to a serious harm to appellant - Whether a qualitative assessment of the seriousness of the harm suffered by the appellant was required pursuant to s 91R of the *Migration Act 1958* (Cth).

Appealed from FCA: [\[2014\] FCA 894](#).

[Return to Top](#)

Patents

AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd

[S54/2015](#); [S55/2015](#); [S56/2015](#): [\[2015\] HCATrans 106](#) and [\[2015\] HCATrans 107](#).

Date heard: 13 May 2015; 14 May 2015.

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

Catchwords:

Intellectual property – Patents – Requirements for a valid patent – Novelty – Prior art information – Inventive step – Common general knowledge – ss 7(2), 7(3), 22A and 138(3)(a) of the *Patents Act* 1990 (Cth) (“Act”) – Where the applicants are the patentees and exclusive licensees of Australian Patent No 051 which relates to a method of treating high cholesterol – Whether the patent was successfully assigned to the appellants – Where there was an order for the revocation of the patent on the basis that the claimed invention lacked an inventive step pursuant to ss 7(2) and 7(3) as the invention was obvious in light of common general knowledge and available prior art information – Whether prior art information and common general knowledge can be considered together pursuant to s 7(3) of the Act – Whether when assessing whether an invention is obvious in light of common general knowledge and any s 7(3) information, can sources of prior art information that teach towards an invention as the only avenues available to a skilled person be considered in disregard of any consideration of alternative sources – Whether there can be an order for revocation pursuant to s 138(3)(a) of the Act – Whether s 22A of the Act was applicable in the current case.

Appealed from FCA (FC): (2014) 312 ALR 1; (2014) 107 IPR 177; [\[2014\] FCAFC 99](#).

[Return to Top](#)

Procedure

Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd & Ors

[M18/2015](#): [\[2015\] HCATrans 75](#).

Date heard: 8 April 2015.

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

Catchwords:

Procedure – Contempt – Disobedience of court orders – Where first to sixth respondents sought orders in the Supreme Court of Victoria that appellant be punished for contempt of Court constituted by alleged disobedience in relation to orders made by the Supreme Court of Victoria on 5 April 2013 – Where first to sixth respondents obtained orders requiring appellant to make discovery of documents in accordance with r 29.07 of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* for the purpose of proving appellant’s liability – Whether the Victorian Court of Appeal erred by refusing leave to appeal against the decision to order discovery because of the criminal nature of contempt proceedings – Whether a plaintiff in contempt proceedings can invoke court processes to compel the production of documents by a corporate defendant.

Appealed from VSC (CA): [\[2014\] VSCA 261](#).

[Return to Top](#)

Property

Gnych & Anor v Polish Club Limited
S58/2015: [\[2015\] HCATrans 101](#).

Date Heard: 5 May 2015.

Coram: French CJ, Kiefel, Gageler, Keane, Nettle JJ.

Catchwords:

Real Property – Lease of the core property of a registered club – Where the respondent is a registered club under the *Registered Club Act 1976 (NSW)* – Where the appellants operated a restaurant from the respondent’s premises – Where a dispute arose and the respondent excluded the appellants from the premises – Where the respondent argued that the lease should not be upheld due to a contravention of s 92(1)(c) of the *Liquor Act 2007 (NSW)* which provides that a licensee must not lease or sub-lease premises except with the approval of the Authority – Whether a lease granted without approval of the Authority should be considered ipso jure void – Whether the *Liquor Act* excludes the principle that where a person acquires a title by way of a transaction prohibited by statute, the Court will not deprive that person of their title unless that person has to rely upon their own illegal conduct.

Appealed from NSWSC (CA): (2015) 17 BPR 33; [\[2014\] NSWCA 321](#).

[Return to Top](#)

Taxation

Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia

M35/2014: [\[2015\] HCATrans 76](#).

Date heard: 9 April 2015.

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

Catchwords:

Taxation – Income Tax – *Income Tax Assessment Act* 1997 (Cth) (“ITAA”) – Appellant paid three imposts to State of Victoria under s 163AA(1) of *Electricity Industry Act* 1993 (Vic) on purchase of transmission licence – Whether three imposts deductible pursuant to s 8-1 of ITAA – Whether observations of Fullagar J in *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* were qualified by Court’s decision in *Cliffs International Inc v FCT* – Whether practical and business advantage secured by payment of compulsory exaction to State can be capital in nature.

Appealed from FCA (FC): (2014) 22 FCR 355; [\[2014\] FCAFC 36](#).

Note: *Ausnet Transmission Group Pty Ltd* formally *SPI Powernet Pty Ltd*.

[Return to Top](#)

Torts

King v Philcox

A26/2014: [\[2015\] HCATrans 50](#) and [\[2015\] HCATrans 51](#).

Date heard: 10 and 11 March 2015.

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

Catchwords:

Tort law – Negligence – Duty of care – Mental harm – Respondent’s brother (victim) was passenger in car driven by appellant which was involved in collision killing victim – Respondent drove past the accident scene five times, each time unaware that victim was his brother – Respondent later developed psychiatric illness upon

realising scene of accident was where victim died – Whether appellant owes duty of care to sibling of victim to avoid causing mental harm caused by learning about death of victim in motor accident – Whether existence of duty of care determined solely by reference to s 33(1), *Civil Liability Act 1936 (SA)* (“CLA”) – Whether respondent’s psychiatric illness reasonably foreseeable – Whether respondent was “present at the scene of the accident when the accident occurred” as required by s 51(1)(a) of CLA.

Appealed from SASC (FC): (2014) 119 SASR 71; [\[2014\] SASCFC 38](#); (2014) MVR 356.

[Return to Top](#)

3: ORIGINAL JURISDICTION

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

Constitutional Law

See also **Native Title**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

See also **Statutes**: *McCloy & Ors v State of New South Wales & Anor*

[Return to Top](#)

Native Title

Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland

B26/2014: *Special case.*

Catchwords:

Native title – Indigenous Land Use Agreement (“ILUA”) – *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) (“Principal Act”) – *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* (Qld) (“Amendment Act”) – Amendment Act allowed for renewal of four mining leases for periods longer than those provided in Principal Act – Amendment Act replaced environmental authority provisions in Principal Act with new s 17 which no longer applied conditions to two mining leases – ILUA registered as area agreement under ss 24CA to 24CL of *Native Title Act 1993* (Cth) (“NTA”) – Whether ILUA binds defendant not to enact ss 9 and 12 of Amendment Act.

Constitutional law – Inconsistency – Commonwealth Constitution, s 109 – Whether Amendment Act is invalid under s 109 of Constitution by reason of inconsistency between Amendment Act and ss 24EA and 87 of NTA.

[Return to Top](#)

Statutes

McCloy & Ors v State of New South Wales & Anor

[S211/2014](#): *Special case.*

Catchwords:

Statutes – Acts of Parliament – Validity of legislation – *Election Funding Expenditure and Disclosure Act 1981 (NSW)* – Where the first plaintiff was subjected to compulsory examination pursuant to s 30 of the *Independent Commissioner Against Corruption Act 1988 (NSW)* by the second defendant concerning the circumstances of a donation made for the benefit of persons including a candidate in connection with the 2011 New South Wales election in breach of the *Funding Expenditure and Disclosure Act 1981 (NSW)* – Where the plaintiffs claim the provisions that they purportedly breached, Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the Act infringe the implied freedom of communication regarding political or governmental matters.

Constitutional Law – Operation and Effect of Commonwealth Constitution – Restrictions on Commonwealth and State Legislation – Rights and freedoms implied in Commonwealth Constitution – Freedom of Political Communication – Whether Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the *Funding Expenditure and Disclosure Act 1981 (NSW)* infringe the implied freedom of communication regarding political or governmental matters.

Listed: 10 June 2015.

[Return to Top](#)

4: SPECIAL LEAVE GRANTED

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

Constitutional Law

See also **Procedure**: *PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors*.

[Return to Top](#)

Contracts

Wright Prospecting Pty Limited v Mount Bruce Mining Pty Limited & Anor; Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited & Anor

S3/2015; S4/2015: [\[2015\] HCATrans 108](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Contracts – General contractual principles – Construction and interpretation of contracts – Where appellant and respondents entered into written agreements which allowed for rights to particular reserves to be divided – Whether Mount Bruce Mining Pty Limited was required to pay royalties that were payable on mining activities undertaken in the Channar region – Whether a strict and narrow construction of language in a commercial agreement can account for the purposes or objects of the agreement.

Appealed from NSWSC (CA): [\[2014\] NSWCA 323](#).

[Return to Top](#)

See also **Statutes**: *State of Victoria v Tatts Group Limited and Tabcorp Holdings Ltd v State of Victoria*

[Return to Top](#)

Criminal Law

The Queen v Beckett

S11/2015: [\[2015\] HCATrans 113](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Criminal law – Particular offences – Offences relating to the administration of justice – Perverting the course of justice – *Crimes Act 1900 (NSW) s 319* - Where respondent was questioned about a property transfer she had stamped without receiving the duty – Where respondent obtained two bank cheques for the property and altered photocopies so that the cheques appeared to pre-date the transfer – Where respondent gave false evidence under oath – Where respondent was charged with perverting the course of justice – Whether offence to pervert the course of justice only applies to conduct committed after judicial proceedings have commenced – Whether course of justice within the meaning of s 319 requires that the jurisdiction of a court or competent judicial tribunal has been invoked.

Appealed from NSWSC (CCA): [\[2014\] NSWCCA 305](#).

[Return to Top](#)

The Queen v Pham

M101/2014: [\[2015\] HCATrans 121](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Criminal law – Sentence- Sentencing procedure – Sentencing statistics, schedules, tariffs, comparisons, etc. – Consistency for federal offences – Where respondent brought 577 grams of heroin into Australia and pleaded guilty to one charge of importing a marketable quantity of a border controlled drug – Where respondent was originally sentenced to eight years and six months imprisonment with a non-parole period of six years – Where sentence was reduced on appeal to six years imprisonment with a non-parole period of four years – Whether federal offenders should be sentenced in accordance with “current sentencing practices” of a particular State or Territory to the exclusion of sentencing practices in other jurisdictions – Whether it is permissible to determine objective seriousness of the offending by reference to a statistical analysis of comparable cases which grades those cases by the weight of the drugs expressed as a percentage of the statutory threshold for a more serious offence.

Appealed from VSC (CA): [\[2014\] VSCA 204](#).

[Return to Top](#)

Foreign Judgments

Firebird Global Master Fund II Ltd v Republic of Nauru & Anor
S29/2015: [\[2015\] HCATrans 15](#).

Date heard: 13 February 2015 - *Special leave granted*.

Catchwords:

Recognition, effect and enforcement of foreign judgments – Enforcement of foreign judgments – Foreign States immunity – Where appellant is the holder of bonds issued by an entity which was guaranteed by the government of Nauru – where the bond issuer and guarantor defaulted – Where appellant recovered a judgment in Japan equivalent to 31 million Australian dollars – Whether s 9 of the *Foreign States Immunities Act* 1985 (Cth) renders first respondent immune to an application to the Court for an order for the registration of the foreign judgment under s 6 of the *Foreign Judgments Act* 1991 (Cth).

Appealed from NSWSC (CA): (2014) 316 ALR 497; (2014) 289 FLR 398; [\[2014\] NSWCA 360](#).

[Return to Top](#)

Juries

Smith v The Queen
B18/2015: [\[2015\] HCATrans 84](#).

Date Heard: 17 April 2015 – *Special leave granted*.

Catchwords:

Jury – Verdicts and findings – Majority verdict – s 59A *Jury Act* 1995 (Q) - Where the appellant was convicted of one count of rape on a majority verdict – Where the jury had disclosed its voting pattern to the judge before the judge exercised the discretionary power pursuant to s 59A – Where the judge did not disclose the voting pattern to counsel – Whether a trial judge can elect not to disclose a jury communication which discloses the numerical state of its deliberations and still exercise further discretions concerning the jury in the trial.

Appealed from QSC (CA): [\[2014\] QCA 277](#).

Listed: 12 June 2015.

[Return to Top](#)

Migration

Minister for Immigration and Border Protection v WZARH & Anor
S85/2015: [\[2015\] HCA Trans 92](#).

Date Heard: 15 April 2015 – *Special leave granted*.

Catchwords:

Migration – Refugee and humanitarian visas – Procedural fairness – Where a department officer determined that respondent was not a refugee – Where respondent sought a review of this decision – Where the respondent was interviewed by merits reviewer – Where merits reviewer told respondent that they would be the person to determine the application – Where the merits reviewer was unable to conclude the review and the review was concluded by another reviewer – Whether there is a breach of procedural fairness where alternate reviewer makes a decision based on the documentary materials, submissions and an audio recording of the interview but does not inform the applicant of the change in decision-making, ask for submissions on how to proceed, or allow for an additional face-to-face interview.

Appealed from FCA (FC): [\[2014\] FCAFC 137](#).

[Return to Top](#)

Patents

D’Arcy v Myriad Genetics & Anor
S28/2015: [\[2015\] HCATrans 12](#).

Date Heard: 13 February 2015 – *Special leave granted*.

Catchwords:

Intellectual property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act* 1990 (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 -3 of Australian Patent No 686004 claimed a patentable invention

being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of manufacture for the purposes of s 18(1)(a) of the *Patents Act* 1990 (Cth).

Appealed from FCA (FC): (2014) 224 FCR 479; (2014) 313 ALR 627; (2014) 107 IPR 478; [\[2014\] FCAFC 115](#).

Listed: 16 June 2015.

[Return to Top](#)

Procedure

PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors
P14/2015: [\[2015\] HCATrans 57](#).

Date heard: 13 March 2015 – *Special leave granted*.

Catchwords:

Procedure – Judgments and orders – Freezing orders – Jurisdiction of the Supreme Court to make freezing orders – Order 52A *Rules of the Supreme Court of Western Australia* 1971 (WA) ('Rules') – Where the first respondent commenced proceedings against the appellant in the High Court of Singapore – Where no decision has been handed down by the High Court of Singapore in respect of the matter – Where the first respondent commenced proceedings in Western Australia against the appellant for an order to freeze the appellant's assets in Western Australia – Where no other proceedings aside from the application for freezing orders have been commenced or will be commenced unless the first respondent is successful in its action in the High Court of Singapore – Whether order 52A of the Rules is inconsistent with Pt 2 of the *Foreign Judgments Act* 1991 (Cth) ('Act') for the purpose of s 109 of the *Constitution* in circumstances where no substantive proceedings apart from the application for the freezing order have been or are to be commenced – Whether order 52A is *ultra vires* pursuant to s 17 of the Act – Whether freezing orders with respect to a prospective foreign judgment are within the inherent or implied jurisdiction of Australian superior courts.

Appealed from WASC (CA): (2014) 288 FLR 299; [\[2014\] WASCA 178](#).

[Return to Top](#)

Statutes

State of Victoria v Tatts Group Limited

M143/2014: [\[2015\] HCA Trans 117](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Statutory interpretation – *Gambling Regulation Act 2003 (Vic)* ss 1.3, 3.4.33 and Pt 4 of Ch 3– Gaming operator licenses – Where the regime changed and the ability to issue gaming operator’s licenses was abolished – Where respondent’s license expired – Whether respondent entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a related entity – Whether when construing a contractual promise in an agreement between a government and private party which expressly requires the subsequent enactment of that promise in legislation can this agreement to afford the promise statutory force be relevant to ascertaining the intentions of the parties with respect to the meaning of the promise – Whether the contractual promise survives the agreed enactment of legislation embodying the same – Whether the contractual promise continues to have operation after the enactment of the statutory right if that statutory right is legislatively nullified – Whether a prior contractual promise can survive the enactment of legislation which has the purpose and effect of nullifying the parallel statutory right.

Appealed from VSC (CA): [\[2014\] VSCA 311](#).

[Return to Top](#)

Tabcorp Holdings Limited v State of Victoria

M1/2015: [\[2015\] HCA Trans 117](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Statutory interpretation – *Gambling Regulation Act 2003 (Vic)* s 4.3.21 – Gaming operator licenses – Where the regime changed and the ability to issue gaming operator’s licenses was abolished – Where appellant’s license expired – Whether appellant is entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a related entity – Whether words “new licenses” in s 4.3.12(1) of the *Gambling Regulation Act 2003* should be construed to have their ordinary meaning.

Contracts – General contractual principles – Whether respondent’s failure to seek to secure appellant’s right to repayment of a breach of the duty of good faith and reasonable dealing.

Appealed from VSC (CA): [\[2014\] VSCA 312](#).

[Return to Top](#)

Taxation

Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (In Liq)

B19/2015: [\[2015\] HCATrans 82](#).

Date Heard: 17 April 2015 – *Special leave granted*.

Catchwords:

Taxes and duties – Income tax and related legislation – *Income Tax Assessment Act 1936* (Cth) ss 6 and 254 – Where administrators were appointed to Australia Building Systems under Pt 5.3A of the *Corporations Act 2001* (Cth) – Where it was resolved that Australian Building Systems would be wound up and the respondents in B49/2014 were appointed liquidators – Where the liquidators caused Australian Building Systems to enter into a contract for sale of a property which gave rise to a capital gains tax event pursuant to s 104-10 of the *Income Tax Assessment Act 1997* (Cth) – Whether under the 1936 Act a trustee is subject to the requirements and authorisations in s 254 only in relation to income, profits or gains for which they are assessable to tax under Part III Div 6 of the 1936 Act – Whether a trustee is subject to authorisations and requirements in s 254 of the 1936 Act only in relation to income, profits or gains for which they have liability to tax under some other provision of the Act or whether ancillary liabilities are created by s 254 – Whether, following the receipt of money in a representative capacity by a trustee but prior to an assessment for tax, the retention authorisation and requirement in s 254(1)(d) of the 1936 Act requires the trustee to retain out of moneys then in or coming to them in their representative capacity so much as is significant to pay the tax of the income, profits or gains or whether it only authorises and requires a trustee to retain such moneys after an assessment is made for tax on the income, profits or gains.

Appealed from FCA (FC): [\[2014\] FCAFC 133](#).

[Return to Top](#)

Macoun v Commissioner of Taxation
S1/2015: [\[2015\] HCATrans 112](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Income Tax – Appeal from the Administrative Appeals Tribunal – *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) cl 8 - *International Organisations (Privileges and Immunities) Act 1963* (Cth) Sch 4 Pt 1 – *Income Tax Assessment Act 1997* (Cth) s 6-20 - Where the appellant received pension payments from a foreign retirement plan – Where appellant was no longer employed by a Specialised Agency exempt from income tax pursuant to cl 8 of the *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) – Whether appellant’s pension payments are exempt from income tax.

Appealed from FCA (FC): [\[2014\] FCAFC 162](#).

[Return to Top](#)

Torts

Correy Fuller-Lyons by his tutor Nita Lyons v State of New South Wales

S81/2015: [\[2015\] HCATrans 96](#).

Date Heard: 17 April 2015 – *Special leave granted*.

Catchwords:

Torts - Negligence – Where appellant was injured after falling from a moving train which was operated by respondent – Where trial judge found that appellant had fallen from the doors of the train as a consequence of the respondent’s negligence – Where the Court of Appeal reversed this finding based on the possibility of other hypothetical occurrences – Whether the Court of Appeal was entitled to reject the findings of the trial judge based on these other possibilities.

Appealed from NSWSC (CA): [\[2014\] NSWCA 424](#).

Listed: 18 June 2015.

[Return to Top](#)

Alcan Gove Pty Ltd v Zabic
D4/2015: [\[2015\] HCATrans 110](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Torts – Negligence – Essentials of action for negligence – Damage – *Workers Rehabilitation and Compensation Act 1986* (NT) (“Act”) ss 52, 189(1)- Where respondent was employed by appellant between 1974 – 1977 and regularly removed and replaced insulation products which contained asbestos – Where between November 2013 and January 2014 respondent began to experience chest pains and breathlessness which were found to be symptoms of malignant mesothelioma – Where respondent brought an action for common law damages arising out of appellant’s negligence – Where s 52 of the Act abolished common law damages claims against employers for injuries or diseases arising after 1 January 1987 – Whether, when dealing with an injury or a disease of insidious onset, when has sufficient damage been suffered to give rise to a cause of action – Whether liability for a negligently-inflicted mesothelioma arise at the time the asbestos was inhaled or does it arise when the symptoms become apparent.

Appealed from NTSC (CA): [\[2015\] NTCA 2](#).

[Return to Top](#)

5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 6 May 2015

No.	Applicant	Respondent	Court appealed from	Result
1.	Nelson	Commissioner of Taxation (B1/2015)	Full Court of the Federal Court of Australia [2014] FCAFC 163	Application dismissed [2015] HCASL 58
2.	Booyesen	The Queen (M130/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 150	Application dismissed [2015] HCASL 59
3.	MZZSH	Minister for Immigration and Border Protection & Anor (M134/2014)	Federal Court of Australia [2014] FCA 1292	Application dismissed [2015] HCASL 60
4.	MZZWB & Anor	Minister for Immigration and Border Protection & Anor (M135/2014)	Federal Circuit Court [2014] FCA 1346	Application dismissed [2015] HCASL 61
5.	MZZYX & Ors	Minister for Immigration and Border Protection & Anor (M136/2014)	Federal Court of Australia [2014] FCA 1342	Application dismissed [2015] HCASL 62
6.	Kumar & Anor	Minister for Immigration and Border Protection & Anor (M138/2014)	Federal Court of Australia [2014] FCA 1336	Application dismissed [2015] HCASL 63
7.	Pham	Tran (M142/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 313	Application dismissed [2015] HCASL 64
8.	Matsoukatidou & Anor	Commonwealth Bank of Australia (M2/2015)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 307	Application dismissed [2015] HCASL 65
9.	S	D (P2/2015)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 224	Application dismissed [2015] HCASL 66
10.	Zhai	Juan (S318/2014)	Full Court of the Family Court of Australia	Application dismissed [2015] HCASL 67
11.	SZTKA	Minister for Immigration and Border Protection & Anor (S320/2014)	Federal Court of Australia [2014] FCA 1302	Application dismissed [2015] HCASL 68
12.	SZTHC & Ors	Minister for Immigration and Border Protection & Anor (S325/2014)	Federal Court of Australia [2014] FCA 1302	Application dismissed [2015] HCASL 69
13.	Enmore	Smoothe (B45/2014; B47/2014)	Full Court of the Family Court of Australia	Application dismissed with costs [2015] HCASL 70
14.	AZACK	Minister for Immigration and Border Protection & Anor (A17/2014)	Federal Court of Australia [2014] FCA 762	Application dismissed with costs [2015] HCASL 71

6: Special Leave Refused

15.	Palmer & Anor	City of Gosnells (P23/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 102	Application dismissed with costs [2015] HCASL 72
16.	Young	Hones & Ors (S275/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 337	Application dismissed with costs [2015] HCASL 73
17.	Davis & Anor	Gosford City Council (S287/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 343	Application dismissed with costs [2015] HCASL 74
18.	Stratton Finance Pty Limited	Webb (S323/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 110; [2014] FCAFC 161	Application dismissed with costs [2015] HCASL 75
19.	Hampton	The Queen (S270/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 131	Application dismissed with costs [2015] HCASL 76
20.	Reaves	The Queen (P33/2014)	Supreme Court of Western Australia (Court of Criminal Appeal) [2004] WASCA 106	Application dismissed with costs [2015] HCASL 77

[Return to Top](#)

Publication of Reasons: 13 May 2015

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	In the matter of an application by Philip Damian Burke for leave to appeal (A2/2015)		High Court of Australia [2015] HCATrans 186	Application dismissed [2015] HCASL 78
2.	Bonney	Compass Group (Australia) Pty Ltd (P9/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 6	Application dismissed [2015] HCASL 79
3.	MZZVL & Anor	Minister for Immigration and Border Protection & Anor (M131/2014)	Federal Court of Australia [2014] FCA 1299	Application dismissed [2015] HCASL 80
4.	MZZUC & Anor	Minister for Immigration and Border Protection & Anor (M132/2014)	Federal Court of Australia [2014] FCA 1347	Application dismissed [2015] HCASL 81
5.	Slaveski	Rotstein & Associates Pty Ltd (M141/2014)	Federal Court of Australia [2014] FCA 1094	Application dismissed [2015] HCASL 82
6.	Pancious	Searle (M14/2015)	Family Court of Australia (no media neutral citation)	Application dismissed [2015] HCASL 83
7.	SZTFP	Minister for Immigration and Border Protection & Anor (S304/2014)	Federal Court of Australia [2014] FCA 1236	Application dismissed [2015] HCASL 84
8.	SZTEX	Minister for Immigration and Border Protection & Anor (S317/2014)	Federal Court of Australia [2014] FCA 1269	Application dismissed [2015] HCASL 85
9.	SZTLD & Ors	Minister for Immigration and Border Protection & Anor (S327/2014)	Federal Court of Australia [2014] FCA 1273	Application dismissed [2015] HCASL 86
10.	Whitby	Zeller & Anor (S5/2015)	Family Court of Australia (no media neutral citation)	Application dismissed [2015] HCASL 87
11.	SZTHT	Minister for Immigration and Border Protection & Anor (S36/2015)	Federal Court of Australia [2015] FCA 100	Application dismissed [2015] HCASL 88
12.	Bae	Minister for Immigration and Border Protection & Anor (S37/2015)	Federal Court of Australia [2015] FCA 45	Application dismissed [2015] HCASL 89
13.	SZTQG	Minister for Immigration and Border Protection & Anor (S41/2015)	Federal Court of Australia [2015] FCA 99	Application dismissed [2015] HCASL 90
14.	SZTND	Minister for Immigration and Border Protection & Anor (S42/2015)	Federal Court of Australia [2015] FCA 115	Application dismissed [2015] HCASL 91
15.	SZTKN	Minister for Immigration and Border Protection & Anor (S43/2015)	Federal Court of Australia [2015] FCA 212	Application dismissed [2015] HCASL 92

6: Special Leave Refused

16.	SZTLX	Minister for Immigration and Border Protection & Anor (S46/2015)	Federal Court of Australia [2015] FCA 215	Application dismissed [2015] Hcasl 93
17.	AB	State of New South Wales & Anor (S2/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 416	Application dismissed with costs [2015] Hcasl 94
18.	Scriven	Sargent (Dept of Environment & Resource Management) (B29/2014)	Supreme Court of Queensland [2014] QCA 133	Application dismissed with costs [2015] Hcasl 95
19.	Singh	The Queen (B43/2014)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 130	Application dismissed [2015] Hcasl 96

[Return to Top](#)

15 May 2015: Melbourne

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Pasinis	The Queen (M55/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 97	Application dismissed [2015] HCATrans 118
2.	Sneddon	Minister for Justice for the Commonwealth of Australia & Anor (M6/2015)	Full Court of the Federal Court of Australia [2014] FCAFC 156	Application dismissed [2015] HCATrans 120
3.	Construction, Forestry, Mining & Energy Union	Boral Resources (Vic) Pty Ltd & Ors (M8/2015)	Supreme Court of Victoria [2014] VSCA 348	Application dismissed with costs [2015] HCATrans 122
4.	Lee & Anor	Commonwealth of Australia & Anor (M9/2015)	Full Court of the Federal Court of Australia [2014] FCAFC 174	Application dismissed with costs [2015] HCATrans 123
5.	Melbourne City Investments Pty Ltd	Treasury Wine Estates Limited (M10/2015)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 351	Application dismissed with costs [2015] HCATrans 116
6.	Franze	The Queen (M13/2015)	Supreme Court of Victoria (Court of Appeal)	Application dismissed [2015] HCATrans 119

[Return to Top](#)

15 May 2015: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Born Brands Pty Ltd & Ors	Nine Network Australia & Ors (S294/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 369	Application dismissed with costs [2015] HCATrans 111
2.	X7	The Queen (S313/2014)	Supreme Court of New South Wales (Court of Criminal Appeal)	Application dismissed [2015] HCATrans 109
3.	Montero	Minister for Immigration and Border Protection & Anor (S10/2015)	Full Court of the Federal Court of Australia [2014] FCCA 170	Application dismissed with costs [2015] HCATrans 114
4.	Beckett	The Queen (S11/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 305	Application dismissed [2015] HCATrans 113

[Return to Top](#)
