



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2013] HCAB 04 (20 May 2013)

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	9
3: Original Jurisdiction	16
4: Special Leave Granted.....	18
5: Cases Not Proceeding or Vacated.....	25
6: Special Leave Refused.....	26

SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
Minister for Immigration and Citizenship v Li and Anor	Citizenship and Migration
Weinstock & Anor v Beck & Anor	Corporations Law
Beck v Weinstock & Ors	Corporations Law
Keating v Director of Public Prosecutions (Cth)	Criminal Law
Aristocrat Technologies Australia Pty Ltd & Ors v Global Gaming Supplies Pty Ltd & Ors; Aristocrat Technologies Australia Pty Ltd & Ors v Allam & Ors	Evidence
Commissioner of Taxation v Unit Trend Services Pty Ltd	Taxation
Beckett v The State of New South Wales	Torts

Wallace v Kam	Torts
-------------------------------	-------

2: Cases Reserved

Case	Title
Agius v The Queen	Criminal Law
Lee & Anor v New South Wales Crime Commission	Criminal Law
Director of Public Prosecutions v JM	Criminal Law

3: Original Jurisdiction

Case	Title
There are no new matters ready for hearing in the original jurisdiction of the High Court.	

4: Special Leave Granted

Case	Title
Clark v Macourt	Civil Procedure
Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors	Corporations Law
Bugmy v The Queen	Criminal Law
Comcare v PVYW	Industrial Law
Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors	Statutes

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April-May 2013 sittings.

Citizenship and Migration

Minister for Immigration and Citizenship v Li and Anor
B68/2012: [\[2013\] HCA 18](#).

Judgment delivered: 8 May 2013.

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

Catchwords:

Immigration – Migration Review Tribunal – Review of decisions – Visa applicant sought review by Migration Review Tribunal ("Tribunal") of decision of Minister's delegate to refuse skilled residence visa – Section 363(1)(b) of *Migration Act* 1958 (Cth) gives Tribunal power to adjourn review of decision – Visa applicant requested Tribunal adjourn review until the outcome of a review of her skills assessment was finalised – Whether Tribunal's refusal to adjourn was unreasonable or plainly unjust.

Words and phrases – "fair and just", "fair, just, economical, informal and quick", "jurisdictional error", "unreasonable or plainly unjust", "unreasonableness", "*Wednesbury* unreasonableness".

Appealed from FCA (FC): (2012) 202 FCR 387; (2012) 127 ALD 238; (2012) 289 ALR 210; [\[2012\] FCAFC 74](#).

[Return to Top](#)

Corporations Law

Weinstock & Anor v Beck & Anor
S266/2012: [\[2013\] HCA 14](#).

Judgment delivered: 1 May 2013.

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

Catchwords:

Corporations law – Management and administration – Directors and other officers – Appointment, removal and retirement of directors – Whether director validly appointed – Whether invalid appointment was "contravention" of company's constitution under s 1322(4) of the *Corporations Act 2001* (Cth).

Words and phrases – "appointment of director", "contravention of the constitution", "invalid appointment".

Appealed from NSW SC (CA): [\[2011\] NSWSC 235](#); (2012) 87 ACSR 672, [\[2012\] NSWCA 76](#); (2012) 265 FLR 60.

[Return to Top](#)

Beck v Weinstock & Ors
S56/2012: [\[2013\] HCA 15](#).

Judgment delivered: 1 May 2013.

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

Catchwords:

Corporations law – Shares – Redeemable preference shares – Shares issued as "redeemable preference shares" – No shares over which redeemable preference shares took preference then or later issued – Whether preference shares required ordinary shares to be issued – Whether redemption of shares effective.

Words and phrases – "issued share", "ordinary share", "preference share", "redeemable".

Appealed from NSW SC (CA): [\[2011\] NSWCA 228](#); [\(2011\) 252 FLR 462](#).

[Return to Top](#)

Criminal Law

Keating v Director of Public Prosecutions (Cth)
M5/2013: [\[2013\] HCA 20](#).

Judgment delivered: 8 May 2013.

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

Catchwords:

Criminal law – Physical element of offence – Omission – Defendant charged on multiple counts of obtaining financial advantage from Commonwealth entity contrary to s 135.2(1) of *Criminal Code* (Cth) ("Code") – Defendant failed to advise Department of changes in income – Section 4.3(b) of Code provided that omission to perform act could not be physical element of Commonwealth offence unless offence committed by omission to perform act that by law there is duty to perform – Whether s 66A of *Social Security (Administration) Act 1999* (Cth) ("Administration Act") created duty for purposes of s 4.3(b) of Code prior to date on which Act inserting s 66A received Royal Assent.

Criminal law – Physical element of offence – Omission – Centrelink sent notices to defendant under ss 67(2) and 68(2) of Administration Act requiring defendant to perform certain actions – Section 74 of Administration Act made it offence to refuse or fail to comply with notices in certain circumstances – Defendant did not respond to notices – Whether notices issued under ss 67(2) and 68(2) of Administration Act capable of creating duty for purposes of s 4.3(b) of Code.

Words and phrases – "engages in conduct", "obtains a financial advantage", "omission", "omission to perform an act that by law there is a duty to perform", "presumption against retrospectivity".

Removed from Magistrates' Court of Victoria.

[Return to Top](#)

Evidence

Aristocrat Technologies Australia Pty Ltd & Ors v Global Gaming Supplies Pty Ltd & Ors; Aristocrat Technologies Australia Pty Ltd & Ors v Allam & Ors

S168/2012: [\[2013\] HCA 21](#).

Dates heard: 2 May 2013.

Catchwords:

Evidence – Tendency rule – Section 97(1) of *Evidence Act 1995* (Cth) – Failure to comply with tendency rule where evidence not characterised as tendency evidence at first instance – Applicants alleged that respondents refurbished and sold machines that incorporated pirated copies of material in which applicants held copyright, thereby infringing ss 36 and 38 of *Copyright Act 1968* (Cth) – Email communications of respondents relied upon by primary judge to prove that respondents had knowledge of infringing conduct – Full Court of Federal Court held that email communications relied upon by primary judge to establish tendency

to engage in infringing conduct without compliance with s 97(1) of *Evidence Act 1995* (Cth) – Whether open to Full Court to conclude that email communications were relied upon by primary judge to establish tendency.

Words and phrases – "tendency evidence".

Appealed from FCA (FC): (2012) 95 IPR 242; [\[2012\] FCAFC 34](#).

[Return to Top](#)

Taxation

Commissioner of Taxation v Unit Trend Services Pty Ltd
B61/2012: [\[2013\] HCA 16](#).

Judgment delivered: 1 May 2013.

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

Catchwords:

Taxation – GST – Application of margin scheme – Anti-avoidance – Respondent representative member of GST group of companies – Where margin scheme applied to supply of units in property development – Where respondent engaged in "scheme" and obtained "GST benefit" – Whether s 165-5(1) of [A New Tax System \(Goods and Services Tax\) Act 1999](#) (Cth) engaged – Whether GST benefit "not attributable to" making by respondent of choice, election, application or agreement expressly provided for by the GST law.

Words and phrases – "not attributable to".

Appealed from FCA (FC): (2012) 205 FCR 29; [2012] ATC 20-342; [\[2012\] FCAFC 112](#).

[Return to Top](#)

Torts

Beckett v The State of New South Wales
S144/2012: [\[2013\] HCA 17](#).

Judgment delivered: 8 May 2013.

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

Catchwords:

Torts – Malicious prosecution – Elements – Whether proof of innocence required where proceedings terminated by entry of nolle prosequi – Whether entry of nolle prosequi terminates proceedings in favour of accused – Whether *Davis v Gell* [1924] HCA 56; (1924) 35 CLR 275 should be followed – Whether direction that no further proceedings be taken against person under s 7(2)(b) of *Director of Public Prosecutions Act 1986* (NSW) equivalent to termination by entry of nolle prosequi.

Words and phrases – "favourable termination of the prosecution", "malicious prosecution", "nolle prosequi".

Appealed from NSW SC (CA): [2012] NSWCA 114.

[Return to Top](#)

Wallace v Kam

S122/2012: [\[2013\] HCA 19](#).

Judgment delivered: 8 May 2013.

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

Catchwords:

Negligence – Causation – Medical practitioner – Where medical practitioner failed to warn patient of two distinct material risks inherent in surgical procedure – Where only one risk eventuated – Where patient would have chosen not to undergo surgical procedure if warned of both risks – Where patient would have chosen to undergo surgical procedure if warned only of risk that eventuated – Whether failure to warn of both material risks was a necessary condition of injury caused by the risk that eventuated – Whether appropriate for scope of medical practitioner's liability to extend to that injury.

Words and phrases – "but for", "factual causation", "scope of liability".

Appealed from NSW SC (CA): [2012] Aust Torts Reports 82-101, [2012] AMLC 30-032, [\[2012\] NSWCA 82](#).

[Return to Top](#)

Words and Phrases

See also [Citizenship and Migration](#): *Minister for Immigration and Citizenship v Li and Anor*

See also [Corporations Law](#): *Weinstock & Anor v Beck & Anor*

See also [Corporations Law](#): *Beck v Weinstock & Ors*

See also [Criminal Law](#): *Keating v Director of Public Prosecutions (Cth)*

See also [Evidence](#): *Aristocrat Technologies Australia Pty Ltd & Ors v Global Gaming Supplies Pty Ltd & Ors*; *Aristocrat Technologies Australia Pty Ltd & Ors v Allam & Ors*

See also [Taxation](#): *Commissioner of Taxation v Unit Trend Services Pty Ltd*

See also [Torts](#): *Beckett v The State of NSW*

See also [Torts](#): *Wallace v Kam*

[Return to Top](#)

2: CASES RESERVED

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

Citizenship and Migration

Plaintiff M79 v Minister for Immigration and Citizenship
M79/2012: [\[2013\] HCATrans 7](#).

Date heard: 8 February 2013.

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

Catchwords:

Citizenship and Migration – Refugees – Plaintiff 'offshore entry person' – Plaintiff made a request for a refugee status assessment – Delegate determined that Plaintiff did not meet the definition of 'refugee' in Art 1A of the Refugees Convention – Plaintiff applied for independent merits review and subsequently judicial review – Judicial review decision remains reserved – Minister intervened under s 195A of the *Migration Act* 1958 (Cth) and granted the Plaintiff a temporary safe haven visa permitting a stay of seven days and a bridging E visa permitting a stay of six months – Grant of temporary safe haven visa bars plaintiff's application for protection visa under s 91L of the *Migration Act* – Whether temporary safe haven visa validly granted – Whether plaintiff's application for a protection visa valid.

This application for an order to show cause was filed in the original jurisdiction of the High Court of Australia.

[Return to Top](#)

Constitutional Law

See also [Statutes](#): *Maloney v The Queen*

See also [Statutes](#): *X7 v Australian Crime Commission and Anor*

See also [Criminal Law](#): *Lee & Anor v New South Wales Crime Commission*

Fortescue Metals Group Limited and Ors v The Commonwealth of Australia

S163/2012: [\[2013\] HCATrans 41](#); [\[2013\] HCATrans 42](#); [\[2013\] HCATrans 43](#).

Dates heard: 6, 7 & 8 March 2013.

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

Catchwords:

Constitutional law (Cth) – Powers of the Commonwealth Parliament – Constitution, s 51(ii) – Taxation – Commonwealth Parliament passed several Acts establishing a 'minerals resource rent tax' – Whether any or all of *Minerals Resource Rent Tax (Imposition-Customs) Act 2012 (Cth) s 3*, *Minerals Resources Rent Tax (Imposition-Excise) Act 2012 (Cth) s 3*, *Minerals Resource Rent Tax (Imposition-General) Act 2012 (Cth) s 3* (collectively 'the Acts') are invalid to the extent that they discriminate between the States contrary to s 51(ii) of the Constitution.

Constitutional law (Cth) – Constitution, s 99 – Prohibition on Commonwealth preference in trade, commerce or revenue – Whether any or all of the Acts give preference to one State over another.

Constitutional law (Cth) – *Melbourne Corporation* doctrine – Whether any or all of the Acts discriminate against or place a particular burden upon the operations or activities of the States, as to be beyond the legislative power of the Commonwealth.

Constitutional law (Cth) – Constitution, s 91 – Section 91 provides, inter alia, that '[n]othing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals' – Whether any or all of the Acts contravene s 91.

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

[Return to Top](#)

State of NSW v Kable

S233/2012: [\[2013\] HCATrans 71](#).

Date heard: 9 April.

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

Catchwords:

Constitutional law – Judicial power – Respondent detained pursuant to order of Supreme Court on application of Director of Public Prosecutions – Proceedings pursuant to purported State legislation – Legislation subsequently held invalid – Respondent sought damages from the appellant for false imprisonment – Whether orders of Supreme Court valid until set aside – Whether the orders of a State Supreme Court exercising federal jurisdiction in resolving the constitutionality of a State Act and exercising powers pursuant to that Act are deprived of the character of judicial orders by reason of the subsequent invalidity of the State Act.

Torts – False imprisonment – Defences – Lawful authority – Respondent held under order of Supreme Court that was subsequently set aside – Whether persons acting to obey orders of a State Supreme Court, which were valid on their face, have defence of lawful authority to tortious liability at common law.

Appealed from NSW SC (CA): [\[2012\] NSWCA 243](#).

[Return to Top](#)

Criminal Law

Agius v The Queen

S254/2012: [\[2013\] HCATrans 92](#).

Date heard: 30 April 2013.

Catchwords:

Criminal law – Conspiracy – In 2001 the *Crimes Act 1914* (NSW) s 29D dealing with the offence of conspiracy was repealed and replaced with the *Criminal Code Act 1995* (Cth) s 135 – Whether proof of conspiracy under the *Criminal Code Act 1995* (Cth) requires evidence of an agreement entered into after the Code began operation on 24 May 2001 – Whether the *Criminal Code Act 1995* (Cth) can apply retrospectively to an agreement entered into before 24 May 2001 – Whether physical element of conduct constituted by a conspiracy can be “a state of affairs”.

Appealed from NSW (CA): [\[2011\] NSWCCA 119](#).

[Return to Top](#)

Lee & Anor v New South Wales Crime Commission

S292/2012: [\[2013\] HCATrans 93](#).

Date heard: 1 May 2013.

Catchwords:

Criminal law – Recovery of proceeds of crime – Examination orders – Whether examination would interfere with the administration of justice in criminal proceedings – Whether examination order may be made where criminal charges pending against examinee – Whether procedural protections available to prevent abuse of power – *Criminal Assets Recovery Act 1990* (NSW), ss 13A, 31D, 63.

Constitutional law – Ch III of the Constitution – Separation of judicial powers – Functions incompatible with institutional integrity of State Supreme Court – Validity of s 31D of *Criminal Assets Recovery Act 1990* (NSW) – Whether requiring a State Supreme Court to make an examination order without regard to the capacity of that order to prejudice the fair trial of the person is incompatible with Ch III.

Statutes – *Criminal Assets Recovery Act 1990* (NSW) ss 13A, 31D, 63 – Examination orders – Whether power to order examination limited by general law principles relating to a fair trial.

Appealed from NSW (CA): [\[2012\] NSWCA 276](#).

[Return to Top](#)

Director of Public Prosecutions (Cth) v JM

M73/2012: [\[2013\] HCATrans 95](#); [\[2013\] HCATrans 96](#).

Dates heard: 7 & 8 May 2013.

Catchwords:

Criminal law – Market manipulation – *Corporations Act 2001* (Cth), s 1041A – Transaction alleged to have or likely to have effect of creating artificial price for shares on ASX – Meaning of 'artificial price' in s 1041 of the *Corporations Act* – Whether meaning of 'artificial price' informed by equivalent US jurisprudential conceptions of 'cornering' and 'squeezing'.

Appealed from Vic SC (CA): (2012) 90 ACSR 96; [\[2012\] VSCA 21](#).

[Return to Top](#)

Equity

Kakavas v Crown Melbourne Limited & Ors

M117/2012: [\[2013\] HCATrans 69](#); [\[2013\] HCATrans 70](#).

Dates heard: 4 & 5 April 2013.

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

Catchwords:

Equity – Unconscionable dealing – Appellant gambled at first respondent's casino over extended period of time – Appellant alleged to suffer from psychiatric condition known as "pathological gambling" – Appellant also subject to "interstate exclusion order" for purposes of *Casino Control Act 1991* (Vic) at all relevant times – Whether series of gambling transactions between appellant and first respondent affected by unconscionable dealing – Whether first respondent liable for unconscionable dealing in circumstances where its officers did not bring to mind matters known to them which placed the appellant at a special disadvantage – What constitutes constructive notice of a special disadvantage in a claim of unconscionable dealing against a corporate person – Whether 'equality of bargaining position' test for determining whether person under 'special disadvantage'.

Trade practices – Unconscionable conduct – Gambling transactions – Section 51AA for the *Trade Practices Act 1974* (Cth) – Whether gambling transactions involved a contravention of s 51AA of the *Trade Practices Act*.

Appealed from Vic SC (CA): [\[2012\] VSCA 95](#).

[Return to Top](#)

Native Title

Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia & Ors

B58/2012: [\[2013\] HCATrans 15](#).

Date heard: 12 February 2013.

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

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title claim over maritime area – Native title right to take fish and other aquatic life for commercial purposes – Whether native title rights extinguished by fisheries legislation prohibited, in the absence of a licence, taking of such resources for commercial purposes – Whether rights to take resources from an

area constitute native title rights or interests within the meaning of s 223(1) of the *Native Title Act* 1993 (Cth) where those rights are held under traditional laws and customs on the basis of a 'reciprocal relationship' with a holder of 'occupation based' native title rights.

Appealed from FCA (FC): (2012) 289 ALR 400, [\[2012\] FCAFC 25](#).

[Return to Top](#)

Statutes

See also [Criminal Law](#): *Lee & Anor v New South Wales Crime Commission*

Maloney v The Queen

B57/2012: [\[2012\] HCATrans 342](#); [\[2012\] HCATrans 343](#).

Dates heard: 11 & 12 December 2012.

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

Catchwords:

Statutes – Interpretation – Racial discrimination – The community area of the Palm Island Shire Council declared a 'restricted area' pursuant to s 147G of the *Liquor Act* 1992 (Q) – Appellant convicted of possessing liquor in the Palm Island restricted area pursuant to s 168B(1) of the *Liquor Act* – Whether liquor restrictions contravene s 10 of the *Racial Discrimination Act* 1975 (Cth) – Whether liquor restrictions valid as special measure within the meaning of s 8 of the *Racial Discrimination Act*.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Whether State law inconsistent with Commonwealth law and invalid to extent of inconsistency.

Appealed from Qld SC (CA): (2012) 262 FLR 172; [\[2012\] QCA 105](#).

[Return to Top](#)

X7 v Australian Crime Commission and Anor

S100/2012: [\[2012\] HCATrans 280](#).

Date heard: 7 November 2012.

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

Catchwords:

Statutes – *Australian Crime Commission Act 2002 (Cth)* ('ACC Act')
– ACC examiner required plaintiff to attend before examiner to give evidence – Before examination, plaintiff charged with offences – Plaintiff subsequently interviewed by ACC examiner – Whether authorisation of examination by ACCC Board authorised questioning of plaintiff on the subject of charged offences – Whether Div 2 of Pt II of the ACC Act empowers ACC examiner to examination of person charged where examination concerns the subject matter of the offence.

Constitutional law – Judicial power of Commonwealth – Constitution, Ch III – Whether Div 2 of Pt II of the ACC Act invalid to the extent that it is contrary to Ch III of the Constitution.

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

[Return to Top](#)

Trade Practices

See also [Equity](#): *Kakavas v Crown Melbourne Limited & Ors*

Torts

See also [Constitutional Law](#): *State of NSW v Kable*

3: ORIGINAL JURISDICTION

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

Administrative Law

See also [Citizenship and Migration: Plaintiff S138 v Director-General of Security and Ors](#)

Citizenship and Migration

Plaintiff S138 v Director-General of Security and Ors
S138/2012: *Special case.*

Catchwords:

Citizenship and migration – Migration – Refugees – Protection visas – Plaintiff found to be a refugee but refused protection visa due to adverse security assessment by Australian Security Intelligence Organisation – Department relied on public interest criterion 4002 which requires that applicant not be assessed by ASIO to be a risk to security – In Plaintiff M47 v Director-General of Security public interest criterion 4002 found to be beyond power conferred by s 31(3) of the Migration Act 1958 (Cth) – Whether the Secretary made an error of law by relying on public interest criterion 4002.

Citizenship and migration – Mandatory detention – Plaintiff held in detention as unlawful non-citizen – No third country currently available to receive plaintiff – Whether ss 189 and 196 of Act authorise plaintiff's detention.

Administrative law – Procedural fairness – Adverse security assessment – ASIO interviewed plaintiff – Plaintiff did not meet requirements for protection visa – Plaintiff never informed of the reasons why or nature of apparent risk he poses to security – Whether Director-General failed to accord plaintiff procedural fairness.

Constitutional law – Whether ss 189, 196 and 198 of Act are beyond the legislative power of the Commonwealth.

This special case was filed in the original jurisdiction of the High Court of Australia.

[Return to Top](#)

Constitutional Law

See also [Citizenship and Migration: Plaintiff S138 v Director-General of Security and Ors](#)

4: SPECIAL LEAVE GRANTED

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

Administrative Law

See also [Statutes](#): *Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors*

Civil Procedure

Clark v Macourt
S9/2013: [\[2013\] HCATrans 112](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Civil Procedure – Damages – Assisted reproductive technology practice – Damages for breach of various warranties contained in the Deed relating to donor sperm – Proper categorisation of the contract – Whether the trial judge erred in not concluding that the respondent had fully mitigated her loss – Whether the respondent avoided the loss she otherwise would have sustained by having to replace the non-compliant sperm by charging her patients for the cost of replacement sperm.

Civil Procedure – Costs – Whether the respondent would have been entitled to indemnity costs if the award of damages was upheld in her favour.

Appealed from NSW (CA): [\[2011\] NSWSC 1276](#); [\[2012\] NSWCA 367](#).

[Return to Top](#)

Corporations Law

Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors
M99/2012: [\[2013\] HCATrans 106](#).

Date heard: 10 May 2013 – *Special leave granted.*

Catchwords:

Corporations law – Liquidation – Liquidator of lessor disclaims lease agreement under s 568(1) of *Corporations Act 2001* (Cth) – Whether disclaimer extinguishes leasehold interest – Whether leasehold interest survives termination of the lease agreement.

Appealed from VSC (CA): [\[2012\] VSC 29](#); [\[2012\] VSCA 202](#).

[Return to Top](#)

Criminal Law

Nguyen v The Queen

M94/2012: [\[2013\] HCATrans 57](#).

Date heard: 15 March 2013 – *Special leave granted.*

Catchwords:

Criminal law – Murder – Attempted murder – Jury directions – Accused found guilty by complicity with another – Whether alternative verdict of manslaughter sufficiently left to jury on the charge of murder – Whether failure by trial judge to direct jury as to alternative verdict caused a substantial miscarriage of justice.

Appealed from VSC (CA): [\[2010\] VSCA 23](#).

[Return to Top](#)

Pantazis; Issa; & Elias v The Queen & Anor

M80, M81, M82/2012: [\[2013\] HCATrans 51](#).

Date heard: 15 March 2013 – *Special leave granted.*

Catchwords:

Criminal law – Sentencing – Most appropriate offence – *Liang & Li* principle – Maximum penalty for the offence of attempting to pervert the course of justice at common law is prescribed by section 320 of the *Crimes Act 1958* (Vic) at 25 years imprisonment – Under section 43 of the *Crimes Act 1914* (Cth) maximum penalty at relevant time was five years imprisonment – Whether Court of Appeal erred in failing to have regard to the lighter sentence.

Appealed from VSC (CA): [\[2012\] VSCA 160](#).

[Return to Top](#)

Bugmy v The Queen

S16/2013: [\[2013\] HCATrans 111](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – *Fernando* considerations – Whether court of appeal erred by failing to consider the question of manifest inadequacy and the exercise of residual discretion when increasing sentence – Whether court of appeal erred by holding that the weight to be given to the *Fernando* considerations is diminished over the passage of time – Whether mental illness relevant in sentencing – Whether discretion of sentencing judge had miscarried by virtue of his assessment of the objective seriousness of the offence.

Appealed from NSW CCA: [\[2012\] NSWCCA 223](#).

[Return to Top](#)

Equity

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

Westpac Banking Corporation & Ors v Bell Group Ltd (In Liq) & Ors

P29/2012: [\[2013\] HCATrans 49](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Equity – fiduciary duty – Judicial review – Whether courts can intervene to review the exercise of powers by directors on the basis of a lack of reasonable grounds for decision.

Equity – Fiduciary duty – Breach – Remedies – Equitable compensation versus account of profits – Whether compound interest should be utilised for restitutionary purposes – If so, whether the appropriate measure of compound interest can be

determined – Whether on appeal the measure of compound interest was “grossly excessive” or a simple disgorgement of profits.

Equity – Fiduciary duty – *Barnes v Addy* – Particularisation of breach of fiduciary duty by directors – Whether recipient liability is available against a person who enters an executory transaction with a company involving a balance of rights and obligations that are performed on both sides before any act of avoidance – Whether accessorial liability requires a dishonest and fraudulent design by the trustee.

Appealed from WASC (CA): [\[2012\] WASCA 157](#).

[Return to Top](#)

Industrial Law

Construction Forestry Mining & Energy Union v MAMMOET Australia Pty Ltd ACN 075 483 644
P27/2012: [\[2013\] HCATrans 79](#).

Date heard: 12 April 2013 – *Special leave granted*.

Catchwords:

Industrial law – *Fair Work Act 2009* (Cth) – Whether provision of accommodation constituted payment with the meaning of s 470(1) of the *Fair Work Act* – Whether the removal of accommodation constituted adverse action.

Words and phrases – “payment”

Appealed from FC: [\[2012\] FCA 850](#).

[Return to Top](#)

Comcare v PVYW
S8/2013: [\[2013\] HCATrans 114](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Industrial law – Workers compensation – Proper interpretation of the principles established in *Hatzimanolis v ANI Corporation Limited* – Employee injured during an overnight stay in a motel room booked by her employer – Injuries were sustained in an interval or interlude within an overall period or episode of work – Whether it is

sufficient that the injuries were sustained by the employee at a place the employer induced or encouraged her to be – Whether circumstances surrounding such an injury are relevant to assessment.

Appealed from FCA (FC): (2012) 291 ALR 302; [\[2012\] FCA 395](#); [\[2012\] FCAFC 181](#).

[Return to Top](#)

Intellectual Property

Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors
S219/2012: [\[2012\] HCATrans 357](#).

Date heard: 14 December 2012 – *Special leave granted*.

Catchwords:

Intellectual Property – Patents – Patent claimed administration of pharmaceutical drug as method of preventing or treating particular condition – Administration of drug for different purpose than that specified in patent had effect of preventing or treating condition referred to in patent – Whether methods of treating human body patentable inventions within the meaning of s 18(1)(a) of the *Patents Act 1900* (Cth) – Whether second or subsequent medical uses of previously known products patentable inventions.

Intellectual Property – Patents – Infringement – Patent claims use of compound for treatment of a specified disease – Whether a person who supplies the compound and indicates its use for treatment of a different disease infringes the patent under s 177(1) of the *Patents Act 1990* (Cth).

Appealed from FCA (FC): (2012) 204 FCR 494; (2012) 290 ALR 1; (2012) 96 IPR 185; [\[2012\] FCAFC 102](#).

[Return to Top](#)

Legal Practitioners

Legal Services Board v Gillespie-Jones
M46/2012: [\[2013\] HCATrans 53](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Legal Practitioners – Fidelity fund – Moneys paid to solicitor to be paid into trust account and used for express purpose of paying counsel’s fees – Moneys used by solicitor for own purpose – Whether counsel entitled to claim against Fund – Whether claim barred by lack of costs agreement.

Equity – Trusts and trustees – *Quistclose* trust – Whether moneys paid to solicitor for purpose of paying counsel’s fees held on *Quistclose* trust.

Words and phrases – “Actual pecuniary loss” – “Interests” – “For or on behalf of”.

Appealed from VSC (CA): [\[2012\] VSCA 68](#).

[Return to Top](#)

Native Title

Karpany & Anor v Dietman

A18/2012: [\[2012\] HCATrans 210](#).

Date heard: 7 September 2012 – *Referred to Full Court*

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title right to take fish – Applicants convicted of possession of an aquatic resource contrary to s 72(2)(c) Fisheries Management Act 2007 (SA) – Whether native title rights to take fish extinguished by virtue of s 29 of the Fisheries Act 1971 (SA) – Whether s 72(2)(c) Fisheries Management Act 2007 (SA) inoperative due to inconsistency with s 221 of the *Native Title Act* 1993 (Cth).

Appealed from SA SC (FC): (2012) 112 SASR 51; (2012) 262 FLR 292; [\[2012\] SASCF 53](#).

[Return to Top](#)

Trade Practices

See also **Equity:** *Aristocrat Technologies Australia Pty Ltd and Ors v Global Gaming Supplies Pty Ltd and Ors*

Statutes

Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors
M107/2012: [\[2013\] HCATrans 105](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Statutes – Whether by virtue of s 68(4) of the *Accident Compensation Act 1985* (“ACA”) a court is bound to accept medical panel opinions – Whether function exercised by medical panel under s 68 ACA is quasi-adjudicative/investigative – Appropriate content of right to reasons under s 68(2).

Administrative Law – Judicial review – Certiorari – Error of law on face of record – Whether failure to give adequate reasons constituted an error of law on the face of the record.

Appealed from VSC (CA): [\[2011\] VSC 285](#); [\[2012\] VSCA 259](#).

[Return to Top](#)

Words and Phrases

See also [Industrial Law](#): *Construction Forestry Mining & Energy Union v Mammoet Australia Pty Ltd ACN 075 483 644*

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

5: CASES NOT PROCEEDING OR VACATED

The following cases in the High Court of Australia are not proceeding or have been vacated since *High Court Bulletin* 3 [2013] HCAB 3.

6: SPECIAL LEAVE REFUSED

Canberra: 2 May 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Li	Edith Cowan University (P33/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 210	Application Dismissed [2013] HCASL 57.

[Return to Top](#)

Canberra: 8 May 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Gavare	The Queen (A29/2012)	Supreme Court of South Australia (Court of Criminal Appeal) [2012] SASCFC 52	Application Dismissed [2013] HCASL 58.
Sluggett	Commonwealth of Australia (A33/2012)	Federal Court of Australia [2012] FCA 963	Application Dismissed [2013] HCASL 59.
Ferdinands	Minister for Defence (A35/2012)	High Court of Australia [2012] HCATrans 266	Application Dismissed [2013] HCASL 60.
Ettridge	Workcover Corporation (A1/2013)	Full Court of the Supreme Court of South Australia [2012] SASCFC 148	Application Dismissed [2013] HCASL 61.
Verrall	The Queen (B8/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 310	Application Dismissed [2013] HCASL 62.
Burdon	The Queen (C3/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2012] ACTCA 54	Application Dismissed [2013] HCASL 63.
Lei	Minister for Immigration and Citizenship (M106/2012)	High Court of Australia [2012] HCA Trans 269	Application Dismissed [2013] HCASL 64.
Goode	Di Donato & Anor (M112/2012)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 65.
Shaw	The Attorney-General for the State of Victoria (M114/2012)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 66.

Slaveski	Rotstein & Associates Pty Ltd (M118/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 291	Application Dismissed [2013] HCASL 67.
MZYWJ	Minister for Immigration and Citizenship & Anor (M2/2013)	Federal Court of Australia [2012] FCA 1384	Application Dismissed [2013] HCASL 68.
Bahonko	Casey City Council (M7/2013)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 310	Application Dismissed [2013] HCASL 69.
Wright	McMurphy (P5/2013)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 257	Application Dismissed [2013] HCASL 70.
Yousaf	Director of Public Prosecutions (NSW) Sydney (S355/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCCA 397	Application Dismissed [2013] HCASL 71.
SZNHJ	Minister for Immigration and Citizenship & Anor (S357/2012)	Federal Court of Australia [2012] FCA 1349	Application Dismissed [2013] HCASL 72.
HZAAF	Minister for Immigration and Citizenship & Anor (H5/2012)	Federal Court of Australia [2012] FCA 1301	Application Dismissed [2013] HCASL 73.
AZABM	Minister for Immigration and Citizenship & Anor (A25/2012)	Federal Court of Australia [2012] FCA 860	Application Dismissed with Costs [2013] HCASL 74.
Bains	Minister for Immigration and Citizenship & Anor (M69/2012)	Federal Court of Australia [2012] FCA 649	Application Dismissed with Costs [2013] HCASL 75.
Ipex ITG Pty Ltd (Receivers and Managers appointed) & Ors	Melbourne Water Corporation (M91/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 169	Application Dismissed with Costs [2013] HCASL 76.
Ipex ITG Pty Ltd (Receivers and Managers Appointed) & Anor	State of Victoria (M98/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 201	Application Dismissed with Costs [2013] HCASL 77.

[Return to Top](#)

Sydney: 10 May 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
SZQSX & Ors	Minister for Immigration and Citizenship & Anor	Federal Court of Australia [2012] FCA 616	Application Dismissed with costs [2013]

	(S185/2012)		HCATrans 113.
Grant & Anor	YYH Holdings Pty Limited & Anor (S343/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 360	Application Dismissed with costs [2013] HCATrans 115.
Michael Aubrey (AKA Albury)	The Queen (S2/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 254	Application Dismissed [2013] HCATrans 110.
Joffe	The Queen (S6/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 277	Application Dismissed [2013] HCATrans 109.
The Commissioner of Police	Ross & Anor (S13/2013)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 439	Application Dismissed with costs [2013] HCATrans 116.
Stromer	The Queen (S14/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 277	Application Dismissed [2013] HCATrans 109.

[Return to Top](#)

Melbourne: 10 May 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Greenhatch	Commissioner of Taxation of the Commonwealth of Australia (M65/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 84	Application Dismissed with costs [2013] HCATrans 104.
Rossi	The Queen (M102/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 228	Application Dismissed [2013] HCATrans 107.
Efax Pty Ltd	Georges & Ors (M104/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 140	Application Dismissed with costs [2013] HCATrans 100.
Caruso	The Queen (M109/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 138	Application Dismissed [2013] HCATrans 103.
Minister for Immigration and Citizenship	MZYYL & Anor (M110/2012)	Notice of Discontinuance filed on 29/04/13	
Factory 5 Pty Ltd (in Liquidation)	State of Victoria (M111/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 150	Application Dismissed with costs [2013] HCATrans 102.
Sent	Commissioner of Taxation	Full Court of the Federal Court of Australia	Application Dismissed with costs [2013]

	(M8/2013)	[2012] FCAFC 187	HCATrans 108.
Commonwealth of Australia & Anor	Prior (M12/2013)	Full Court of the Federal Court of Australia [2012] FCAFC 192	Application Dismissed with costs [2013] HCATrans 101.
Commonwealth of Australia	Nojin & Anor (M13/2013)	Full Court of the Federal Court of Australia [2012] FCAFC 192	Application Dismissed with costs [2013] HCATrans 101.

[Return to Top](#)
