



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

[1: Cases Handed Down](#)

Case	Title
<u>Kline v Official Secretary to the Governor General & Anor</u>	Administrative Law
<u>Commonwealth v The Australian Capital Territory</u>	Constitutional Law
<u>Unions NSW and Ors v State of New South Wales</u>	Constitutional Law
<u>Australian Competition and Consumer Commission v TPG Internet Pty Ltd</u>	Consumer Law
<u>Clark v Macourt</u>	Contract Law
<u>Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors</u>	Corporations Law

BCM v The Queen	Criminal Law
Reeves v The Queen	Criminal Law
Li v Chief of Army	Defence
Honourable Brendan O'Connor, Commonwealth Minister for Home Affairs and Justice v Adamas & Anor	Extradition
Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors	Intellectual Property
Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship and Ors	Migration

2: Cases Reserved

Case	Title
Woodside Energy Ltd & Ors v Electricity Generation Corporation t/as Verve Energy; Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd & Ors	Contract Law
Zirilli; & Barbaro v The Queen	Criminal Law
Smith v The State of Western Australia	Criminal Law

3: Original Jurisdiction

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

4: Special Leave Granted

Case	Title
Commonwealth Bank of Australia v Barker	Contract Law
Lee & Anor v The Queen	Criminal Law

[Sidhu v van Dyke](#)

Equity



1: CASES HANDED DOWN

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

Administrative Law

See also [Migration](#): *Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship and Ors*

Kline v Official Secretary to the Governor General & Anor
B47/2013: [\[2013\] HCA 52](#).

Judgment delivered: 6 December 2013.

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

Catchwords:

Administrative law – Freedom of information – Request for access to documents – Section 6A(1) of *Freedom of Information Act* 1982 (Cth) provided that documents held by Official Secretary to the Governor-General were excluded from disclosure unless they related to "matters of an administrative nature" – Whether documents relating to nomination of person to Order of Australia were excluded from disclosure by operation of s 6A(1).

Words and phrases – "matters of an administrative nature".

Appealed from FCA (FC): [\[2012\] FCAFC 184](#); (2012) 127 ALD 639; [\(2012\) AATA 247](#).

Held: Appeal dismissed.

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Constitutional Law

Commonwealth v The Australian Capital Territory
C13/2013: [\[2013\] HCA 55](#).

Judgment delivered: 12 December 2013.

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

Catchwords:

Constitutional law (Cth) – Powers of federal Parliament – Section 51(xxi) – Marriage – Whether s 51(xxi) confers power with respect to same sex marriage.

Territories (ACT) – Inconsistency of Commonwealth and Territory laws – *Marriage Act 1961* (Cth) defined "marriage" as "the union of a man and a woman" – *Marriage Equality (Same Sex) Act 2013* (ACT) provided for "marriage" between "2 people of the same sex" – Whether ACT Act capable of operating concurrently with Commonwealth Act under s 28(1) of *Australian Capital Territory (Self-Government) Act 1988* (Cth).

Words and phrases – "consistent ... to the extent that it is capable of operating concurrently", "marriage".

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

Held: Questions answered.

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Unions NSW and Ors v State of New South Wales
[S70/2013](#): [\[2013\] HCA 58](#).

Judgment delivered: 18 December 2013.

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

Catchwords:

Constitutional law – Implied freedom of communication on governmental and political matters – Section 96D of *Election Funding, Expenditure and Disclosures Act 1981* (NSW) ("EFED Act") prohibits political donations unless made by individual enrolled on roll of electors – Section 95G(6) of EFED Act aggregates expenditure by political party and affiliated organisations for purposes of cap on electoral communication expenditure – Whether political communication at State level can effectively burden federal implied freedom of communication – Whether ss 96D and 95G(6) effectively burden implied freedom of communication – Whether ss 96D and 95G(6) connected to legitimate end.

Words and phrases – "implied freedom of communication on governmental and political matters", "legitimate end".

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

Held: Questions answered.

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Consumer Law

Australian Competition and Consumer Commission v TPG Internet Pty Ltd

M98/2013: [\[2013\] HCA 54](#).

Judgment delivered: 12 December 2013.

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

Catchwords:

Consumer law – Misleading or deceptive conduct – Whether respondent's advertisements breached *Trade Practices Act 1974* (Cth) ("TPA") and Australian Consumer Law – Whether "dominant message" approach correct – Whether ordinary and reasonable consumer would have starting assumption that advertised internet service was bundled with telephony service – Whether consumers must consider whole of advertisement (including small print or quickly spoken detail) to correct otherwise misleading headline representations.

Consumer law – Pecuniary penalties – Whether Full Court of Federal Court failed to adequately consider specific and general deterrence in reducing pecuniary penalty – Whether reduced pecuniary penalty manifestly inadequate – Whether primary judge correctly assessed number and classes of contraventions.

Words and phrases – "dominant message".

Appealed from FCA (FC): [\[2012\] FCAFC 190](#); [\[2013\] FCAFC 37](#); [\[2011\] FCA 1254](#); [\[2012\] FCA 629](#).

Held: Appeal allowed.

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Contract Law

Clark v Macourt

S95/2013: [\[2013\] HCA 56](#).

Judgment delivered: 18 December 2013.

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

Catchwords:

Contract – Damages – Vendor of business failed to deliver assets compliant with warranty – Purchaser bought compliant assets from alternative supplier – Purchaser used compliant assets in business and charged fee covering costs of buying them – Whether damages measured by reference to amount purchaser was unable to recoup in using assets in business or by reference to cost of buying compliant assets at date of breach – Whether purchaser mitigated loss by charging fee covering costs of buying compliant assets.

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

Held: Appeal allowed.

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Corporations Law

Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors
M53/2013: [\[2013\] HCA 51](#).

Judgment delivered: 4 December 2013.

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

Catchwords:

Corporations law – Winding up – Insolvency – Liquidators appointed to manager of forestry investment schemes – Liquidators sought to sell assets of manager unencumbered by schemes – Assets included land over which leases granted by manager – Whether liquidators could disclaim leases granted by manager under s 568(1) of *Corporations Act 2001* (Cth) – Whether lease "a contract" under s 568(1)(f) – Whether disclaimer of lease terminated tenant's estate or interest in land.

Words and phrases – "effect of disclaimer", "lease of land", "property of the company that consists of ... a contract", "rights, interests, liabilities and property".

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

Held: Appeal dismissed.

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Criminal Law

BCM v The Queen

B31/2013: [\[2013\] HCA 48](#).

Judgment delivered: 27 November 2013.

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

Catchwords:

Criminal law – Appeal – Appeal against conviction – Whether verdict unreasonable or unsupported having regard to evidence – Indecent dealing with child under 12 years – Inconsistencies in evidence of child complainant – Whether inconsistencies affected reliability – Whether inconsistencies went to essential features of complainant's account of offences.

Criminal law – Reasons – Whether Court of Appeal gave sufficient reasons – Whether Court of Appeal's reasons disclosed assessment of capacity of evidence to support verdict – Obligation to give reasons not discharged by observation that jury entitled to accept evidence of complainant.

Words and phrases – "unsafe and unsatisfactory", "verdict cannot be supported having regard to the evidence", "verdict is unreasonable".

Appealed from QCA (CA): [\[2012\] QCA 333](#).

Held: Appeal dismissed.

On 19 September 2013, Hayne ACJ ordered by consent that the name of the appeal be amended to *BCM v The Queen*.

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Reeves v The Queen

S44/2013: [\[2013\] HCA 57](#).

Judgment delivered: 18 December 2013.

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

Catchwords:

Criminal law – Malicious infliction of grievous bodily harm with intent – Consent to battery resulting from surgery – Whether "informed consent" was correct test – Whether patient informed in broad terms of nature of procedure – Application of *Rogers v Whitaker* [1992] HCA 58; (1992) 175 CLR 479.

Criminal law – Appeal – Appeal against conviction – Application of proviso – Whether misdirection to jury actually resulted in substantial miscarriage of justice.

Criminal law – Appeal – Prosecution appeal against sentence – Where appellate court failed to consider residual discretion.

Words and phrases – "consent to medical procedure", "proviso", "substantial miscarriage of justice", "residual discretion".

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 34](#).

Held: Special leave granted in part. Appeal allowed in part, matter remitted to the Court of Criminal Appeal of the Supreme Court of New South Wales.

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Defence

Li v Chief of Army

S162/2013: [\[2013\] HCA 49](#).

Judgment delivered: 27 November 2013.

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

Catchwords:

Defence – Military forces – Discipline – Service offences – Offence of creating a disturbance on service land – Meaning of "disturbance" – Physical and fault elements of "creating" a disturbance – Whether violence or threat of violence necessary to existence of "disturbance" – Whether "creating" a disturbance has one or two physical elements.

Words and phrases – "creating a disturbance", "disturbance".

Appealed from FCA (FC): [\[2013\] FCAFC 20](#); [\(2012\) 261 FLR 226](#).

Held: Appeal allowed.

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Extradition

Commonwealth Minister for Justice v Adamas

P50/2013: [\[2013\] HCA 59](#).

Judgment delivered: 18 December 2013.

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

Catchwords:

Extradition – Surrender determination by Attorney-General or Minister – Where respondent convicted by Indonesian court in his absence and sentenced to life imprisonment – Where Minister required to be satisfied that surrender would not be "unjust, oppressive or incompatible with humanitarian considerations" within meaning of extradition treaty between Australia and Indonesia – Whether Minister's satisfaction required to be based upon "Australian standards" of fair trial.

Words and phrases – "Australian standards", "surrender determination", "unjust, oppressive or incompatible with humanitarian considerations".

Appealed from FCA (FC): [\[2012\] FCA 227](#); (2012) 291 ALR 77; [\[2013\] FCAFC 14](#); (2013) 210 FCR 364.

Held: Appeal allowed.

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Intellectual Property

Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors

S1/2013: [\[2013\] HCA 50](#).

Judgment delivered: 4 December 2013.

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

Catchwords:

Intellectual property – Patents – Patent claimed administration of pharmaceutical substance as method of preventing or treating medical condition – Whether method of medical treatment of human body is patentable invention within meaning of s 18(1)(a) of *Patents Act* 1990 (Cth) – Whether product or process is manner of manufacture within meaning of s 6 of *Statute of Monopolies* –

Whether novel therapeutic use of known substance is patentable invention.

Intellectual property – Patents – Infringement – Construction of claim – Patent claimed use of pharmaceutical substance for preventing or treating medical condition – Whether person who supplies drug and indicates use for treatment of different condition infringes patent under s 117(1) of *Patents Act 1990* (Cth).

Words and phrases – "manner of manufacture", "patentable invention".

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

Held: Appeal allowed.

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Migration

Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship and Ors

M76/2013: [\[2013\] HCA 53](#).

Judgment delivered: 12 December 2013.

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

Catchwords:

Migration – Refugees – Protection visas – Offshore entry persons – Power of Minister to permit valid application for protection visa – Plaintiff assessed to be refugee – Plaintiff subject of adverse security assessment by Australian Security Intelligence Organisation – Minister's department did not refer plaintiff's case for Minister's consideration – Minister's department acted upon invalid regulation – Whether Minister's exercise of power attended by error of law.

Migration – Unlawful non-citizens – Immigration detention pending removal from Australia – Minister's consideration of whether to permit plaintiff to make valid application for visa not completed – Not established that no realistic prospect of removal from Australia in reasonably foreseeable future – Whether appropriate to re-open *Al-Kateb v Godwin* (2004) 219 CLR 562; [2004] HCA 37 – Whether plaintiff's detention authorised.

Administrative law – Non-compellable power – Remedies – Declaration – Plaintiff has real interest in raising question of error – Whether declaration appropriate remedy.

Words and phrases – "adverse security assessment", "declaration", "error of law", "executive detention", "harmless error", "lift the bar", "real interest".

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

Held: Appeal allowed.

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Territories

See also [Constitutional Law](#): *Commonwealth v The Australian Capital Territory*

Words and Phrases

See also [Administrative Law](#): *Kline v Official Secretary to the Governor General & Anor*

See also [Constitutional Law](#): *Commonwealth v The Australian Capital Territory*

See also [Constitutional Law](#): *Unions NSW and Ors v State of New South Wales*

See also [Consumer Law](#): *Australian Competition and Consumer Commission v TPG Internet Pty Ltd*

See also [Contract Law](#): *Clark v Macourt*

See also [Corporations Law](#): *Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors*

See also [Criminal Law](#): *BCM v The Queen*

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See also [Defence](#): *Li v Chief of Army*

See also [Extradition](#): *Honourable Brendan O'Connor, Commonwealth Minister for Home Affairs and Justice v Adamas & Anor*

See also [Intellectual Property](#): *Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors*

See also [Migration](#): *Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship and Ors*

2: CASES RESERVED

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

Contract Law

Woodside Energy Ltd & Ors v Electricity Generation Corporation t/as Verve Energy; Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd & Ors

P47, P48/2013: [\[2013\] HCATrans 300](#); [\[2013\] HCATrans 301](#).

Date heard: 4 & 5 December 2013.

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

Catchwords:

Contract law – Proper construction of contractual terms – Breach of obligation under contract – Verve a statutory corporation which supplied electricity to South Western Australia – Verve obtained gas from Woodside and third party pursuant to Gas Supply Agreement (“Agreement”) – Clause 3.3 of the Agreement obliged Woodside to use reasonable endeavours to supply supplemental gas having regard to all relevant commercial, economic and operational matters – Third party’s plant shut down following fire – Woodside declined to supply supplemental gas but offered to supply same gas under separate short term agreement at higher price – Whether Woodside in breach of clause 3.3 of the Agreement.

Contract law – Voidable contract – Unjust enrichment – Restitution – Economic duress – Whether short term agreement voidable for economic duress – Whether restitution available where short term agreement not rescinded.

Appealed from WASC (CA): [2011] WASC 268; [\[2013\] WASCA 36](#).

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Criminal Law

James v The Queen

M102/2013: [\[2013\] HCATrans 266](#).

Date heard: 7 November 2013.

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

Catchwords:

Criminal law – Alternative verdicts – Appellant convicted of intentionally causing serious injury – On Appeal appellant contended that trial judge’s failure to leave to jury possible alternative verdict of intentionally causing injury (as opposed to serious injury) constituted miscarriage of justice – Court of Appeal rejected contention – Defence counsel had chosen not to leave alternative verdict open for forensic reasons – Whether Court of Appeal erred in holding that trial judge not bound to leave the alternative verdict open for consideration by jury – Whether Court of Appeal erred in holding that trial judge’s duty to leave to jury for its consideration lesser alternative verdicts, that are realistically, or fairly and practically open, does not transcend forensic decision of trial counsel.

Appealed from VSC (CA): [\[2013\] VSCA 55](#); [\[2011\] VSC 596](#).

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Zirilli; & Barbaro v The Queen

M1, M3/2013: [\[2013\] HCATrans 296](#).

Date heard: 27 November 2013.

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

Catchwords:

Criminal law – Sentencing – Crown submission on sentencing range – Appellants convicted of conspiracy to traffic in commercial quantity of controlled drug and sentenced to 26 years imprisonment – Trial judge refused to hear prosecution’s submission on appropriate sentencing range and imposed sentences higher than the range the prosecutor would have proposed – Whether trial judge erred in refusing to hear the prosecution’s submission on sentencing range – Whether refusal to hear prosecutions’ submission on sentencing range constitutes a denial of procedural fairness – Whether prosecution’s submission on sentencing range was a relevant consideration in sentencing – Whether *R v MacNeil-Brown* (2008) 20 VR 677 is good law.

Appealed from VSC (CA): [\[2012\] VSCA 288](#); [\[2012\] VSC 47](#).

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Smith v The State of Western Australia

P51/2013: [\[2013\] HCATrans 298](#).

Date heard: 29 November 2013.

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

Catchwords:

Criminal law – Jury deliberations – Exclusionary rule – Applicant convicted on two counts of indecent dealing with a girl under 13 years – Envelope found in jury room indicating that at least one juror had been physically coerced by another juror into joining in the guilty verdict – Whether juror’s note fell outside, or within an exception to, the exclusionary rule – Whether exclusionary rule extends to prohibiting inquiry into criminal activity – Whether juror’s note, or failure by trial judge to conduct contemporaneous inquiry into its contents, gives rise to a real and sensible risk to the safety of jury’s verdict to constitute a miscarriage of justice.

Appealed from WASC (CCA): [2013] WASCA 7.

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3: ORIGINAL JURISDICTION

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

4: SPECIAL LEAVE GRANTED

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

Administrative Law

FTZK v Minister for Immigration and Citizenship & Anor
M143/2013: [\[2013\] HCATrans 270](#).

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

Catchwords:

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

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

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Constitutional Law

See also **Statutes**: *NSW Registrar of Births, Deaths and Marriages v Norrie*

Attorney-General for the Northern Territory & Anor v Emmerson & Anor
D5/2013: [\[2013\] HCATrans 244](#).

Date heard: 11 October 2013 – *Special leave granted*.

Catchwords:

Constitutional law – Judicial power – Institutional integrity – *Kable* principle – Criminal Property Forfeiture Act (NT) (“CPFA”), s 94(1)

and Misuse of Drugs Act (NT) ("MDA"), s 36A(3) operate to forfeit certain property of a person declared to be a drug trafficker – Respondent convicted of various possession and supply offences – DPP obtained restraining order over all property owned or controlled by respondent under CPFA ss 41 and 44 on basis that conviction could lead to him being declared a drug trafficker under s 36A(3) MDA – Only a small component of that property was derived from crime – Whether the CPFA and MDA impermissibly conscript the Supreme Court to the implementation of a legislative or executive purpose – Whether CPFA and MDA undermine institutional integrity of NTSC in a degree incompatible with its role as a repository of federal jurisdiction.

Appealed from NTSC (CA): (2012) 32 NTLR 180; [\[2013\] NTCA 04](#).

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Contract Law

Commonwealth Bank of Australia v Barker

A23/2013: [\[2013\] HCATrans 325](#).

Date heard: 13 December 2013 – *Special leave granted*.

Catchwords:

Contract law – Employment contracts – Implied terms – Whether common law requires employment contracts contain implied term that employer will not, without reasonable cause, conduct itself in manner likely to destroy or seriously damage relationship of confidence and trust between parties – Whether, if so, to what extent implied term requires employer to take account redundancy of employee's position prior to making decision to terminate, particularly in circumstances where express contractual right of termination on notice exists – Whether, if so, damages are available for breach.

Appealed from FCA (FC): [\[2012\] FCA 942](#); [\[2013\] FCAFC 83](#).

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Corporations Law

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

M141/2013: [\[2013\] HCATrans 267](#).

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

Catchwords:

Corporations law – Liquidation – Appellant brought action against secured creditor and receiver claiming equitable lien for remuneration, costs and expenses – Action settled with receiver and sum recovered in litigation – Whether liquidator entitled to priority over secured creditor.

Equity – Equitable lien – Whether unconscientious for secured creditor to assert priority.

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

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Wellington Capital Limited v Australian Securities & Investments Commission & Anor

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

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

Catchwords:

Corporations Law – *Corporations Act 2001* (Cth) (“the 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 the 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

Achurch v The Queen

[S276/2013](#): [\[2013\] HCATrans 278](#).

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

Catchwords:

Criminal law – Sentencing – *Crimes (Sentencing Procedure) Act 1999* (NSW) (“the Act”) – Appellant convicted of drugs offences in 2008 sentenced to non-parole period of 6 years – Crown appeal against sentence successful and non-parole period increased to 13 years – Court of Criminal Appeal held trial judge had erred in approach to sentencing – Court of Criminal Appeal issued new sentence in line with *R v Way*; *R v Sellars*; and *R v Knight* – Two months after successful crown appeal High Court handed down judgment holding that *Way*; *Sellars*; and *Knight* wrongly decided – Whether sentence imposed contrary to law per s 43(1)(a) of the Act – Whether appropriate that s 43(1)(a) be used as proxy for an appeal.

Appealed from NSWSC (CCA): [\[2011\] NSWCCA 186](#); [\[2013\] NSWCCA 117](#).

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Gillard v The Queen

[C20/2013](#): [\[2013\] HCATrans 285](#).

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

Catchwords:

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

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

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Milne v The Queen

S278, S279/2013: [\[2013\] HCATrans 279](#).

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

Catchwords:

Criminal law – *Criminal Code* (Cth) (“the Code”) – Construction – Appellant dealt with shares through offshore entity to avoid Capital Gains Tax – Appellant convicted of money laundering contrary to s 400.3(1) and defrauding the Commonwealth contrary to s 135.1 of the Code – Section 400.3(1) required that appellant have intention that shares would be used in commission of offence under s 135.1(1) – Shares disposed of before offence committed – Whether shares are an instrument of crime for purpose of the Code.

Appealed from NSWSC (CCA): [\[2012\] NSWCCA 24](#).

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Lee & Anor v The Queen

S101, S102/2013: [\[2013\] HCATrans 314](#).

Date heard: 13 December 2013 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against conviction – *Criminal Appeal Act 1912* (NSW) (“CAA”) – Proper characterisation of “miscarriage of justice” limb of s 6(1) of CAA – Whether Court of Criminal Appeal (“CCA”) erred in application of limb – Whether limb requires a causal connection be established between an irregularity and conviction at trial – Whether onus falls on applicant to prove both miscarriage of justice and application of proviso.

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

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

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Equity

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

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

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

S163/2013: [\[2013\] HCATrans 191](#).

Date heard: 16 August 2013 – *Special leave granted*.

Catchwords:

Equity – Restitution – “Change of position” defence – AFSL paid money to Hills and another company to enable a third party to purchase certain equipment from Hills and the other company and then lease that equipment to the third party – The third party fabricated documents and contrary to AFSL’s belief no equipment was acquired – AFSL commenced proceedings in restitution against Hills and the other company – Trial Judge found for AFSL on basis that Hills gave no consideration for monies received from AFSL and Hills had not suffered detriment arising out of a speculative change of its position after receiving those monies – Decision reversed on appeal – Court of Appeal held that by discharging debts owed to Hills by the third party Hills had given up opportunity to enforce payment of those debts – Whether defence of “change of position” in claims for money paid to third party by financier under mistake of fact extends to this situation – Whether in order to make out defence of change of position defendant is required to point to specific and quantifiable expenditure or financial loss because of mistaken payment.

Appealed from NSWSC (CA): [\[2011\] NSWSC 267](#); [\[2012\] NSWCA 380](#).

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Howard v Commissioner of Taxation

M140/2012: [\[2013\] HCATrans 269](#).

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

Catchwords:

Equity – Fiduciary duties – Duty to account – Extinguishment of duty to account – Extent of duty to account – Whether fiduciary duty to account for gains is extinguished by circumstance that gain realised results from award to fiduciary of equitable compensation –

Whether fiduciary's duty extends to bringing proceedings to protect rights in respect of which duty subsists, and to accounting for proceeds of such proceedings.

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

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Sidhu v van Dyke

S148/2013: [\[2013\] HCATrans 312](#).

Date heard: 13 December 2013 – *Special leave granted*.

Catchwords:

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

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

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

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Native Title

The State of Western Australia v Brown & Ors

P49/2013: [\[2013\] HCATrans 223](#).

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

Catchwords:

Native title – Extinguishment – Mining leases – Respondents hold non-exclusive native title rights in relation to areas subject of mining leases – Whether those leases confer a right of exclusive possession extinguishing native title rights – Whether the exercise of the rights under the leases prevent the exercise of native title rights.

Appealed from FCA (FC): [\[2010\] FCA 498](#); [\[2012\] FCAFC 154](#); [\[2013\] FCAFC 18](#).

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Statutes

Taylor v The Owners – Strata Plan No 11564 & Ors
[S179/2013](#): [\[2013\] HCATrans 206](#).

Date heard: 6 September 2013 – *Special leave granted*.

Catchwords:

Statutes – Interpretation – *Civil Liability Act 2002* (NSW) (“the CLA Act”) – Appellant brought claim under the *Compensation to Relatives Act 1897* (NSW) for compensation for accidental death of her husband – Section 12(2) of the CLA Act directs the court to disregard “excess” earnings of a high-earning “claimant” but does not refer to earnings of the “deceased” – Late husband had earned substantially in excess of three times average weekly earnings – Whether a reference to “a deceased person’s” earnings can be read into section 12(2) of the CLA Act so as to disregard the deceased person’s earnings above the statutory formula – Whether additional words can be read into a statute where ordinary meaning of the text is not unreasonable or absurd.

Appealed from NSWSC (CA): [\[2012\] NSWSC 842](#); [\[2013\] NSWCA 55](#).

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ADCO Constructions Pty Ltd v Goudappel & Anor
[S201/2013](#): [\[2013\] HCATrans 250](#).

Date heard: 11 October 2013 – *Special leave granted*.

Catchwords:

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

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

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Thiess v Collector of Customs & Ors
B57/2013: [\[2013\] HCATrans 239](#).

Date heard: 11 October 2013 – *Special leave granted*.

Catchwords:

Statutes – Interpretation – *Customs Act 1901* (Cth) (“the Act”) s 167 – Appellant’s customs broker paid customs duty and GST on imported yacht – Customs broker input incorrect import duty into self-assessment system as result of mistaken belief about weight of yacht – Appellant later became aware of mistake and commenced proceedings to recover monies paid – Whether s 167(4) of the Act prevents action for recovery of customs duty paid due to mistake of fact where no protest under s 167(1).

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

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NSW Registrar of Births, Deaths and Marriages v Norrie
S273/2013: [\[2013\] HCATrans 283](#).

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

Catchwords:

Statutes – Interpretation – *Births, Deaths and Marriages Registration Act 1995* (NSW) (“the BDMR Act”) – Whether Pt 5A of BDMR Act includes category other than “male” and “female” – Respondent, born male and underwent sexual reassignment surgery, applied to register change of sex to “non-specific” – Application approved but later revoked – Court of Appeal allowed respondent’s appeal subject to evidence whether “non-specific” fell within meaning of “sex” – Whether “sex” has binary meaning – Extent to which Court may permissibly have regard to extrinsic materials.

Constitutional law – *Sex Discrimination Act 1984* (Cth) (“the SDA”) – Whether statutory construction favoured by the appellant would place the appellant in breach of s 22 of the SDA.

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

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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* 9 [2013] HCAB 09 (20 November 2013).

Admiralty Law

The Ship Go Star v Daebo International Shipping Co Ltd
[P46/2013](#): [\[2013\] HCATrans 295](#).

Date heard: 26 November 2013.

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

Catchwords:

Admiralty law – Choice of law – Tort – Proper *lex loci delicti* in action *in rem* against ship and action *in personam* against owners for inducing breach of contract – Trial judge found Chinese law applied and dismissed claim on basis that no such tort exists in China – Full Federal Court found Singaporean law applied – In absence of evidence as to Singaporean law applied Australian law and found tortious interference – Whether the proper *lex loci delicti* is the place of the inducement or the place of the breach.

Appealed from FCA (FC): [\[2011\] FCA 1015](#); [\[2012\] FCAFC 156](#); [\[2012\] FCAFC 175](#).

On 26 November 2013 special leave to appeal was revoked.

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6: SPECIAL LEAVE REFUSED

Canberra: 3 December 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Candy	McPhail & Anor (B35/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 138	Application dismissed [2013] HCASL 176.
Marin	Salmon & Anor (B36/2013)	Full Court of the Family Court of Australia	Application dismissed [2013] HCASL 177.
Underwood	The Queen (M49/2013)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 270	Application dismissed [2013] HCASL 178.
Shaw	ANZ Executors and Trustee Company Limited (as Trustees of the Estate of John William Shaw, Deceased) (M63/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed [2013] HCASL 179.
McWhinney	Melbourne Health (M79/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 162	Application dismissed [2013] HCASL 180.
Slaveski	Attorney-General for the State of Victoria (M80/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 165	Application dismissed [2013] HCASL 181.
Rankilor	Circuit Travel Pty Ltd (P36/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 148	Application dismissed [2013] HCASL 182.
Kumeroa	United Group Limited (P42/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 183	Application dismissed [2013] HCASL 183.
SZRQT & Anor	Minister for Immigration and Citizenship & Anor (S117/2013)	Federal Court of Australia [2013] FCA 540	Application dismissed [2013] HCASL 184.
Ziha	The Queen (S119/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 27	Application dismissed [2013] HCASL 185.
Reid-Frost	Industrial Relations Commission of NSW & Anor (S135/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 161	Application dismissed [2013] HCASL 186.
Nasr	Etihad Airways PJSC & Anor (S138/2013)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 70	Application dismissed [2013] HCASL 187.

Viscariello	The Legal Practitioners Conduct Board (A16/2013)	Full Court of the Supreme Court of South Australia [2013] SASCFC 27	Application dismissed with Costs [2013] HCASL 188.
Viscariello	The Legal Practitioners Conduct Board (A19/2013)	Full Court of the Supreme Court of South Australia [2013] SASCFC 37	Application dismissed with Costs [2013] HCASL 188.
Neil	Legal Profession Complaints Committee & Anor (P26/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 150	Application dismissed with Costs [2013] HCASL 189.
Ekerawari	Harbour Radio Pty Ltd & Anor (S69/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 54	Application dismissed with Costs [2013] HCASL 190.
SAS Realty Developments Pty Ltd & Anor	Kerr (S77/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 56	Application dismissed with Costs [2013] HCASL 191.
O'Bryan	The State of Western Australia (P13/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 1	Application dismissed [2013] HCASL 192.
MacLeod	The Queen (S105/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 108	Application dismissed [2013] HCASL 193.

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Melbourne: 13 December 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Ilea	Workcover Corporation (A24/2013)	Full Court of the Supreme Court of South Australia (no media neutral citation)	Application dismissed [2013] HCASL 194.
Pascarl	Oxley (B46/2013)	Full Court of the Family Court of Australia	Application dismissed [2013] HCASL 195.
Hudson	The Queen (M77/2013)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 332	Application dismissed [2013] HCASL 196.
MZYYS	Minister for Immigration and Citizenship & Anor (M78/2013)	Federal Court of Australia [2013] FCA 301	Application dismissed [2013] HCASL 197.
Ho	Greater Dandenong City Council (M84/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 168	Application dismissed [2013] HCASL 198.
Re Smart	(M95/2013)	High Court of Australia [2013] HCATrans 195	Application dismissed [2013] HCASL 199.
Ascic	Bedworth	Supreme Court of Western Australia (Court of Appeal)	Application dismissed

	(P43/2013)	[2013] WASCA 174	[2013] HCASL 200.
WZARI	Minister for Immigration and Multicultural Affairs and Citizenship & Anor (P44/2013)	Federal Court of Australia [2013] FCA 788	Application dismissed [2013] HCASL 201.
Collins	Attorney General in and for the State of New South Wales (S153/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 208	Application dismissed [2013] HCASL 202.
SZRUM	Minister for Immigration Multicultural Affairs and Citizenship & Anor (S158/2013)	Federal Court of Australia [2013] FCA 814	Application dismissed [2013] HCASL 203.
Nweke	Minister for Immigration, Multicultural Affairs and Citizenship (S159/2013)	Federal Court of Australia [2013] FCAFC 79	Application dismissed [2013] HCASL 204.
Re Samootin	(S164/2013)	High Court of Australia [2013] HCATrans 196	Application dismissed [2013] HCASL 205.
SZRUY & Anor	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S166/2013)	Federal Court of Australia [2013] FCA 806	Application dismissed [2013] HCASL 206.
Tobey	Rezek & Anor (C11/2013)	Full Court of the Family Court of Australia	Application dismissed with Costs [2013] HCASL 207.
Merton & Anor	Bank of Queensland Ltd (S108/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 115	Application dismissed with Costs [2013] HCASL 208.
George	Fletcher as trustee for the Bankrupt Estate of Lauren Kay George & Ors (B67/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 148	Application dismissed with Costs [2013] HCASL 209.
Boland	Hoffmann & Ors (S131/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 158	Application dismissed with Costs [2013] HCASL 210.
Segal	Barel (S136/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 148	Application dismissed with Costs [2013] HCASL 211.
Australian Postal Corporation	Wooby (S142/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 183	Application dismissed with Costs [2013] HCASL 212.

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Melbourne: 13 December 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Mustac	The Queen (A13/2013)	Full Court of the Supreme Court of South Australia [2013] SASCFC 21	Application dismissed [2013] HCATrans 326.
Galaxy Homes Pty Ltd as trustee of the Galaxy Homes Unit Trust	National Mutual Life Association of Australasia Ltd (A18/2013)	Supreme Court of South Australia [2013] SASCFC 34	Application dismissed with costs [2013] HCATrans 327.
Marzilli	The Queen & Ors (A20/2013)	Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASFC 50	Application dismissed [2013] HCATrans 324.
Colquhoun	Capitol Radiology Pty Ltd & Ors (M36/2013; M37/2013; M39/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 58	Application dismissed with costs [2013] HCATrans 320.
Georgiou	Capitol Radiology Pty Ltd & Ors (M38/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 58	Application dismissed with costs [2013] HCATrans 320.
Minister for Immigration and Citizenship	SZQRB (M51/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 33	Application dismissed with costs [2013] HCATrans 323.
Mokbel	The Queen & Anor (M64/2013; M90/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 118	Application dismissed [2013] HCATrans 321.
BSJ	The Queen (M94/2013)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 93	Application dismissed [2013] HCATrans 322.
D'Amico	Director of Public Prosecutions (M111/2013)	Application for Removal	Application for Removal refused [2013] HCATrans 319.

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Sydney: 13 December 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
BJS	The Queen (S120/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 123	Application dismissed [2013] HCATrans 318.

Hall	The Queen (S121/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 47	Application dismissed [2013] HCATrans 316.
Hadid	Schwartz (S124/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 89	Application dismissed with costs [2013] HCATrans 313.
Minister for Immigration and Citizenship	SZGIZ (S137/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 71	Application dismissed with costs [2013] HCATrans 315.
D'Amore	Independent Commission Against Corruption (S143/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 187	Application dismissed with costs [2013] HCATrans 317.

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