



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2014] HCAB 04 (21 May 2014)

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
<a href="#">MacarthurCook Fund Management Limited &amp; Anor v TFML Limited</a>	Corporations Law
<a href="#">Gillard v The Queen</a>	Criminal Law
<a href="#">Lee v The Queen; Lee v The Queen</a>	Criminal Law
<a href="#">Stewart &amp; Anor v Atco Controls Pty Ltd (In Liquidation)</a>	Equity
<a href="#">Sidhu v Van Dyke</a>	Equity
<a href="#">Australian Financial Services and Leasing Pty Limited v Hills Industries Limited &amp; Anor</a>	Equity
<a href="#">ADCO Constructions Pty Ltd v Goudappel and Anor</a>	Statutes

## 2: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#">Williams v Commonwealth of Australia &amp; Ors</a>	Constitutional Law
<a href="#">Plaintiff S156/2013 v Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">Plaintiff S297/2013 v Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection &amp; Anor</a>	Migration

## 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">S89/2014 Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">S4/2014 Minister for Immigration and Border Protection &amp; Anor</a>	Migration

## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Argos Pty Ltd and Ors v Simon Corbell, Minister for the Environment and Sustainable Development and Ors</a>	Administrative Law
<a href="#">Henderson v State of Queensland</a>	Criminal Law
<a href="#">Kentwell v The Queen</a>	Criminal Law
<a href="#">O'Grady v The Queen</a>	Criminal Law
<a href="#">Rhiannon Gray by her tutor Kathleen Anne Gray v Richards</a>	Damages
<a href="#">Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd</a>	Industrial Law

<a href="#">Minister for Immigration and Border Protection v SZSCA &amp; Anor</a>	Migration
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## 1: CASES HANDED DOWN

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

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### Corporations Law

*MacarthurCook Fund Management Limited & Anor v TFML Limited*  
[S39/2014](#): [\[2014\] HCA 17](#).

**Judgment delivered:** 14 May 2014.

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

**Catchwords:**

Corporations – Managed investment schemes – Unlisted unit trust – Members' rights to withdraw from scheme – Where terms of issue of units in trust provided for redemption within stipulated time period – Where units not redeemed within stipulated time period – Whether obligation to redeem units subject to requirements of Pt 5C.6 of *Corporations Act\_2001* (Cth) – Whether redemption of units constitutes withdrawal from scheme within meaning of Pt 5C.6 of *Corporations Act\_2001* (Cth).

Words and phrases – "managed investment schemes", "redemption", "withdrawal".

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

**Held:** Appeal allowed.

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### Criminal Law

*Gillard v The Queen*  
[C20/2013](#): [\[2014\] HCA 16](#).

**Judgment delivered:** 14 May 2014.

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

**Catchwords:**

Criminal law – Appeal – Appeal against conviction – Sexual offences – Sexual intercourse without consent – Act of indecency without consent – Whether jury misdirected on mental element of offences – Whether jury misdirected on mental element of offences where statute negates consent.

Statutes – Interpretation – Whether prosecution must prove accused had knowledge that consent was caused by *Crimes Act* 1900 (ACT) s 67(1) circumstance – Whether recklessness as to *Crimes Act* 1900 (ACT) s 67(1) circumstance sufficient to establish mental element of offence.

Words and phrases – "consent", "recklessness".

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

**Held:** Appeal allowed.

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*Lee v The Queen; Lee v The Queen*  
**S313; S314/2013:** [\[2014\] HCA 20](#).

**Judgment delivered:** 21 May 2014.

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

**Catchwords:**

Criminal law – Appeal against conviction – Where appellants gave evidence before New South Wales Crime Commission ("Commission") – Where non-publication direction made under s 13(9) of *New South Wales Crime Commission Act* 1985 (NSW) – Where transcripts of appellants' evidence before Commission published to members of New South Wales Police Force and officers of Director of Public Prosecutions – Whether publication of appellants' evidence before Commission meant subsequent trial differed in fundamental respect from that which our system of criminal justice seeks to provide – Whether publication of appellants' evidence before Commission gave rise to miscarriage of justice.

Words and phrases – "miscarriage of justice", "non-publication direction".

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

**Held:** Appeal allowed.

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## Equity

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

**M141/2013:** [\[2014\] HCA 15](#).

**Judgment delivered:** 7 May 2014.

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

**Catchwords:**

Equity – Equitable charges and liens – Liquidator's equitable lien for costs, expenses and remuneration – Where asset realised by liquidator's efforts in pursuing litigation – Where litigation involved unsuccessful attack on interest of secured creditor – Where liquidator acting with propriety and in course of his duties – Whether liquidator entitled to equitable lien over asset in priority to secured creditor.

Words and phrases – "come in to the winding up", "costs and expenses of realisation", "equitable lien", "*Universal Distributing* principle".

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

**Held:** Appeal allowed.

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*Sidhu v van Dyke*

**S312/2013:** [\[2014\] HCA 19](#).

**Judgment delivered:** 16 May 2014.

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

**Catchwords:**

Estoppel – Equitable estoppel – Proprietary estoppel – Where promisor made representations to give property to promisee – Whether promisee acted to her detriment in reliance on promisor's representations – Whether onus of proof on promisee to prove reliance on promisor's representations.

Equity – Relief – Whether relief measured by reference to value of representations.

Words and phrases – "presumption of reliance".

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

**Held:** Appeal dismissed.

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

**S163/2013:** [\[2014\] HCA 14](#).

**Judgment delivered:** 7 May 2014.

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

**Catchwords:**

Restitution – Payments made under mistake of fact – Defence of change of position – Where appellant made mistaken payments to respondents as result of fraud committed by third party – Where respondents applied payments to discharge third party's debts, ceased pursuing recovery of debts and continued to trade with third party – Whether retention of monies inequitable in all the circumstances.

Words and phrases – "change of position", "detriment", "detrimental reliance", "disenrichment", "unjust enrichment".

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

**Held:** Appeal dismissed.

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## Statutes

*ADCO Constructions Pty Ltd v Goudappel & Anor*

**S201/2013:** [\[2014\] HCA 18](#).

**Judgment delivered:** 16 May 2014.

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

**Catchwords:**

Workers compensation – Permanent impairment compensation – Injured worker claimed compensation – Subsequent specific claim for permanent impairment compensation under s 66 of *Workers Compensation Act 1987* (NSW) ("WCA") – Amendments to WCA limited entitlement to permanent impairment compensation – Savings and transitional provisions of amending Act protected worker's entitlement – Employer claimed protection displaced by transitional regulation made pursuant to amending Act – Whether transitional regulation extinguished worker's entitlement – Whether transitional regulation valid.

Statutory interpretation – Retrospectivity – Henry VIII clause – Savings and transitional provisions.

Words and phrases – "accrued rights", "Henry VIII clause", "permanent impairment compensation", "retrospectivity", "savings and transitional provisions".

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

**Held:** Appeal allowed.

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## 2: CASES RESERVED

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

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### Administrative Law

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

**Date heard:** 11 March 2014.

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

**Catchwords:**

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

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

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### Constitutional Law

*Williams v Commonwealth of Australia & Ors*  
[S154/2013](#): [\[2014\] HCA 92](#); [\[2014\] HCA 93](#); [\[2014\] HCA 94](#); [\[2014\] HCA 95](#).

**Date heard:** 6, 7, 8 and 9 May 2014.

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

**Catchwords:**

Constitutional law – Powers of Commonwealth Parliament – Commonwealth entered funding agreement with Scripture Union of Queensland for provision of chaplaincy services at State school ("Funding Agreement") – Whether Appropriation Acts authorised

Funding Agreement – If not, whether s 32B of *Financial Management and Accountability Act 1997* (Cth) ("FMA Act") or Part 5AA and Schedule 1AA of *Financial Management and Accountability Regulations 1997* ("FMA Regulations") or item 9 of Schedule 1 to *Financial Framework Amendment Act* ("FFA Act") were invalid – If not, whether Funding Agreement was authorised by s 32B of FMA Act or Part 5AA and Schedule 1AA of FMA Regulations or, where applicable, item 9 of Schedule 1 to FFA Act.

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

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

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

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## Contract Law

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

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

**Date heard:** 8 April 2014.

**Catchwords:**

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

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

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## Equity

*Howard v Commissioner of Taxation*

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

**Date heard:** 12 March 2014.

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

**Catchwords:**

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

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

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## Migration

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

[S297/2013](#):

**Date heard:** 14 and 15 May 2014.

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

**Catchwords:**

Migration – Refugees – *Migration Act 1958* (Cth) ("Act"), s 85 – Plaintiff arrived in Australia as unauthorised maritime arrival – Plaintiff assessed as person in respect of whom Australia owed protection obligations – Minister made a determination pursuant to s 85 of Act to limit number of protection visas that may be granted in financial year – Whether Minister's determination is invalid – Whether class of visas to which s 85 applied includes class created by s 36 of Act – Whether determination was made in accordance with s 85 of Act – Whether determination was made for improper purpose.

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*Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor*  
[M150/2013](#):

**Date heard:** 14 and 15 May 2014.

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

**Catchwords:**

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

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

**Date heard:** 9 and 13 May 2014.

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

**Catchwords:**

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

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

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## Statutes

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

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## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

*Pollentine & Anor v Bleijie & Ors*

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

**Catchwords:**

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

**Listed:** 17 June 2014.

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

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

**Catchwords:**

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

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

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

**Listed:** 10 June 2014.

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# Migration

## *Plaintiff S89/2014 v Minister for Immigration and Border Protection & Anor*

**S89/2014:** *Demurrer.*

### **Catchwords:**

Migration – Refugees – Plaintiff was unlawful non-citizen upon entry in Australia – By reason of amendments to *Migration Act 1958* (Cth) ("Act"), plaintiff became unauthorised maritime arrival within meaning of s 5AA(1) of Act – *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* (Cth) ("UMA Regulation") subsequently made which introduced new clause 866.222 in Schedule 2 of *Migration Regulations 1994* (Cth) – UMA Regulation included additional criteria for grant of protection visa which plaintiff did not satisfy – Plaintiff refused protection visa because additional criteria were not met – UMA Regulation later disallowed – Whether clause 866.222 of Schedule 2 of Regulations was, during its period of purported operation, invalid or of no effect.

**Listed:** 12 August 2014.

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## *Plaintiff S4/2014 v Minister for Immigration and Border Protection & Anor*

**S4/2014:** *Special case.*

### **Catchwords:**

Migration – Refugees – Plaintiff was unlawful non-citizen upon entry in Australia – By reason of amendments to *Migration Act 1958* (Cth) ("Act"), plaintiff became unauthorised maritime arrival within meaning of s 5AA(1) of Act – Without notice, Minister granted plaintiff Temporary Safe Haven (TSH) visa and Temporary Humanitarian Concern (THC) visa – Plaintiff applied for protection visa – Minister did not consider application for protection visa valid – Whether the grant of TSH and THC visas were invalid – If so, whether Minister is bound to determine that s 46A(1) of Act does not apply to plaintiff's application for protection visa.

**Listed:** 13 August 2014.

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## 4: SPECIAL LEAVE GRANTED

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

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### Administrative Law

*Argos Pty Ltd and Ors v Simon Corbell, Minister for the Environment and Sustainable Development and Ors*  
C22/2013: [\[2014\] HCATrans 101](#).

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

**Catchwords:**

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

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

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### Corporations Law

*Wellington Capital Limited v Australian Securities & Investments Commission & Anor*  
S275/2013: [\[2013\] HCATrans 281](#).

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

**Catchwords:**

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

outlined in Fund's constitution – Whether question must be approached through prism of trust law.

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

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

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

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## Criminal Law

*Henderson v State of Queensland*

**B28/2013:** [\[2014\] HCATrans 102](#).

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

**Catchwords:**

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

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

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*Kentwell v The Queen*

**S13/2014:** [\[2014\] HCATrans 113](#).

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

**Catchwords:**

Criminal law – *Criminal Appeal Act 1912* (NSW) ("Act") – *Muldock* error established in sentencing – Appellant sought extension of time in which to seek leave to appeal against sentence under s 5(1)(c) of Act – Whether applicant for extension of time must establish that refusal of extension would result in substantial injustice – If so,

whether assessment of substantial injustice can be conducted in summary fashion

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

**Listed:** 14 August 2014.

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*O'Grady v The Queen*

**S14/2014:** [\[2014\] HCATrans 113](#).

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

**Catchwords:**

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

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

**Listed:** 14 August 2014.

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## Damages

*Rhiannon Gray by her tutor Kathleen Anne Gray v Richards*

**S311/2013:** [\[2014\] HCATrans 109](#).

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

**Catchwords:**

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

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

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## Equity

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

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## Evidence

*Fitzgerald v The Queen*

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

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

**Catchwords:**

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

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

**Listed:** 19 June 2014.

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*Honeysett v R*

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

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

**Catchwords:**

Evidence – Opinion evidence – *Evidence Act 1995* (NSW) s 79 – Evidence given of comparisons of CCTV images of offender and images of Appellant in which common anatomical features identified – Whether "face mapping" and "body mapping" constitute "specialised knowledge" within meaning of s 79 – Whether s 79

requires expert to disclose assumptions and methodology –  
Whether s 79 requires methodology to be demonstrated as reliable  
– Whether witness qualified as an *ad hoc* expert.

Words and phrases – "specialised knowledge".

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

**Listed:** 12 June 2014.

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*Versi v The Queen*

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

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

**Catchwords:**

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

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

**Listed:** 7 August 2014.

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## Industrial Law

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

**B6/2014:** [\[2014\] HCATrans 105](#).

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

**Catchwords:**

Industrial law – *Fair Work Act 2009* (Cth) ("Act"), ss 346 and 347 – Employee of respondent joined strikes which were protected

industrial action under s 408 of Act – Employee held sign deemed offensive and contrary to respondent's code of conduct – Employee dismissed by respondent – Whether employer can avoid liability under s 346(b) for adverse action taken against another person who has engaged in industrial activity by characterising that activity as being in breach of code of conduct policy – Whether court below bound by decisions in *Barclay* and *General Motors v Bowling*.

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

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## Insurance

*Maxwell v Highway Hauliers Pty Ltd*  
**P12/2014:** [\[2014\] HCATrans 51](#).

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

**Catchwords:**

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

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

**Listed:** 6 August 2014.

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## Migration

*Minister for Immigration and Border Protection v SZSCA & Anor*  
**S3/2014:** [\[2014\] HCATrans 111](#).

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

**Catchwords:**

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

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

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

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

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

**Catchwords:**

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

Words and phrases – "finally determined".

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

**Listed:** 13 June 2014.

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## Patents

*Alphapharm Pty Ltd v H Lundbeck A/S & Ors*  
S300/2013: [\[2014\] HCATrans 79](#).

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

**Catchwords:**

Patents – *Patents Act 1990* (Cth) ("Act"), s 223(2)(a) – First respondent patentee applied to Commissioner of Patents to extend term of its patent under s 70(1) of Act – Commissioner of Patents granted extension of term – Extension of term later revoked and removed from Register according to orders of Full Federal Court – First respondent applied to Commissioner of Patents for extension of time within which to file second application to extend term of patent – Commissioner of Patents granted extension of time – Decision appealed to Administrative Appeals Tribunal ("AAT") which affirmed Commissioner's decision to grant extension of time – Whether s 223(2)(a) of Act conferred power on Commissioner of Patents to extend time for seeking an extension of term of patent under s 70(1) of Act – Whether exercise of discretion to extend time was manifestly unreasonable in circumstances where the applicant for extension failed to apply promptly for extension – Whether appellant had to demonstrate significant and specific prejudice or hardship to disentitle first respondent to extension – Whether AAT failed to take into account relevant considerations and took into account irrelevant considerations.

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

**Listed:** 8 August 2014.

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## Taxation

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

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

**Catchwords:**

Taxation – *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("Act"), s 135-5 – Third party owner of estate in fee simple granted lease to tenant for ten year term – Third party sold reversion to respondent who received rent after sale – Declaration

made by Full Federal Court that there was no supply by respondent to tenant – Commissioner of Taxation assessed respondent on basis that s 135-5 applied – Respondent objected on ground that there was no supply – Whether there was "continuing supply" after sale of reversion of lease to respondent – Whether respondent had "increasing adjustment" under s 135-5 of Act.

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

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## Tort Law

*Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor*

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

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

### Catchwords:

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

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

**Listed:** 18 June 2014.

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## Trade Marks

*Cantarella Bros Pty Limited v Modena Trading Pty Ltd*

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

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

### Catchwords:

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

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

**Listed:** 5 August 2014.

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# **5: CASES NOT PROCEEDING OR VACATED**

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## 6: SPECIAL LEAVE REFUSED

### Canberra: 13 May 2014

(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Markan	Bar Association of Queensland (B1/2014; B2/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 379	Applications Dismissed <a href="#">[2014] HCASL 80</a>
2.	Goodhew	Rachinger & Anor (B3/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 348	Application Dismissed <a href="#">[2014] HCASL 81</a>
3.	McDonnell	The Queen (B8/2014)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 280	Application Dismissed <a href="#">[2014] HCASL 82</a>
4.	MZZIV	Minister for Immigration and Border Protection & Anor (M144/2013)	Federal Court of Australia [2013] FCA 1203	Application Dismissed <a href="#">[2014] HCASL 83</a>
5.	Patel & Anor	Minister for Immigration and Border Protection & Anor (M145/2013)	Federal Court of Australia [2013] FCA 1181	Application Dismissed <a href="#">[2014] HCASL 84</a>
6.	Fard	Minister for Immigration and Border Protection (M147/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 126	Application Dismissed <a href="#">[2014] HCASL 85</a>
7.	Haque	State of Victoria & Ors (M148/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 332	Application Dismissed <a href="#">[2014] HCASL 86</a>
8.	MZZHE	Minister for Immigration and Border Protection & Anor (M151/2013)	Federal Court of Australia [2013] FCA1403	Application Dismissed <a href="#">[2014] HCASL 87</a>
9.	SZRXP	Minister for Immigration and Border Protection & Anor (S295/2013)	Federal Court of Australia [2013] FCA 1200	Application Dismissed <a href="#">[2014] HCASL 88</a>
10.	SZSIU	Minister for Immigration and Border Protection & Anor (S303/2013)	Federal Court of Australia [2013] FCA 1222	Application Dismissed <a href="#">[2014] HCASL 89</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
11.	SZQRM & Ors	Minister for Immigration and Border Protection & Anor (S316/2013)	Federal Court of Australia [2013] FCA 1297	Application Dismissed <a href="#">[2014] HCASL 90</a>
12.	Firth	Director of Public Prosecutions & Anor (S2/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 403	Application Dismissed <a href="#">[2014] HCASL 91</a>
13.	Kudrynski & Anor	Wollongong City Council (S7/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 461	Application Dismissed <a href="#">[2014] HCASL 92</a>
14.	Mahony	Queensland Building Services Authority (B64/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 323	Application Dismissed with Costs <a href="#">[2014] HCASL 93</a>
15.	Kozak	Kaufman (C16/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2013] ACTCA 30	Application Dismissed with Costs <a href="#">[2014] HCASL 94</a>
16.	Papas & Anor	Grave & Anor (S197/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 308	Application Dismissed with Costs <a href="#">[2014] HCASL 96</a>
17.	Australian Winch & Haulage Pty Ltd	Collins & Anor (S204/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 327	Application Dismissed with Costs <a href="#">[2014] HCASL 98</a>
18.	Parkin	Sykes & Anor (S133/2013)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 95</a>
19.	X & Ors	The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children) (S203/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 320	Application Dismissed <a href="#">[2014] HCASL 97</a>
20.	Kelly	The State of Western Australia (P39/2013)	Supreme Court of Western Australia (Court of Criminal Appeal) [2013] WASCA 114	Application Dismissed <a href="#">[2014] HCASL 99</a>

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## Sydney: 16 May 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Kaddour	The Queen (S281/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 243	Special leave refused <a href="#">[2014] HCATrans 112</a>
2.	Empire Waste Pty Limited & Anor	District Court of New South Wales & Anor (S301/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 394	Discontinued
3.	Groundstroem	The Queen (S310/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 237	Special leave refused <a href="#">[2014] HCATrans 114</a>
4.	Australian Native Landscapes Pty Ltd	Inspector Nathan McDonald & Anor (S315/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 395	Discontinued
5.	SZRMQ	Minister for Immigration and Border Protection & Anor (S1/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 142	Special leave refused with costs <a href="#">[2014] HCATrans 110</a>
6.	Baggs	Waratah Engineering Pty Ltd (S6/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 427	Special leave refused with costs <a href="#">[2014] HCATrans 108</a>
7.	Dierickx & Anor	HP Mercantile Pty Limited & Anor (S19/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 479	Special leave refused with costs <a href="#">[2014] HCATrans 107</a>

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**Canberra: 16 May 2014**

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Forsythe	The Queen (B65/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 314	Special leave refused <a href="#">[2014] HCATrans 103</a>
2.	Menk	The Queen (B4/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 367	Special leave refused <a href="#">[2014] HCATrans 104</a>
3.	Agripower Australia Limited	J&D Rigging Pty Ltd & Ors (B7/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 406	Special leave refused with costs <a href="#">[2014] HCATrans 106</a>

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