



HIGH COURT BULLETIN

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[2014] HCAB 05 (30 June 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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Case	Title
Tajjour; Hawthorne; Forster v State of New South Wales	Constitutional Law
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3: Original Jurisdiction

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Kuczborski v The State of Queensland	Constitutional Law

4: Special Leave Granted

Case	Title
Cassegrain v Gerard Cassegrain & Co Pty Ltd	Property Law
Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon & Anor	Tort Law

1: CASES HANDED DOWN

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

Administrative Law

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

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

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Constitutional Law

Williams v Commonwealth of Australia & Ors
[S154/2013](#): [\[2014\] HCA 23](#).

Judgment delivered: 19 June 2014.

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

Catchwords:

Constitutional law (Cth) – Powers of Commonwealth Parliament – Commonwealth entered into funding agreement with private service provider for provision of chaplaincy services at state school – Funding agreement made under National School Chaplaincy and Student Welfare Program – Commonwealth paid money under funding agreement – Section 32B of *Financial Management and Accountability Act* 1997 (Cth) empowered Commonwealth to make, vary or administer arrangements, for purposes of specified programs, under which public money payable by Commonwealth – National School Chaplaincy and Student Welfare Program specified program for purposes of s 32B – Whether s 32B in its relevant operation supported by s 51(xx), (xxiiiA) or (xxxix) of Constitution.

Constitutional law (Cth) – Executive power of Commonwealth – Executive power to spend and contract – Whether entry into and expenditure under funding agreement supported by executive power of Commonwealth.

Constitutional law (Cth) – Reopening of previous decisions.

Words and phrases – “appropriation”, “benefits to students”, “executive power of the Commonwealth”.

Held: Questions answered.

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Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor

S156/2013: [\[2014\] HCA 22](#).

Judgment delivered: 18 June 2014.

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

Catchwords:

Constitutional law (Cth) – Legislative power of Commonwealth – Constitution, s 51(xix) – Aliens power – Section 198AB of *Migration Act* 1958 (Cth) provides that Minister may designate country as regional processing country – Section 198AD(2) provides that unauthorised maritime arrival (“UMA”) must, as soon as reasonably practicable, be taken from Australia to regional processing country – Section 198AD(5) provides that, if there are two or more regional processing countries, Minister must, in writing, direct an officer to take UMA, or class of UMAs, to regional processing country specified in direction – Whether ss 198AB and 198AD laws with respect to aliens – Whether ss 198AB and 198AD valid.

Administrative law – Judicial review of administrative decisions – Where Minister designated country as regional processing country under power conferred by s 198AB of *Migration Act* 1958 (Cth) – Where only condition for exercise of power is that Minister thinks it is in national interest to do so – Whether Minister was obliged to, but did not, take into account other relevant considerations – Whether designation valid.

Administrative law – Judicial review of administrative decisions – Where Minister made direction under s 198AD(5) of *Migration Act* 1958 (Cth) – Whether direction uncertain or vague – Whether direction valid.

Words and phrases – “aliens power”, “national interest”, “proportionality”, “reasonably appropriate and adapted”, “relevant considerations”, “with respect to”.

Held: Questions answered.

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Migration

FTZK v Minister for Immigration and Citizenship & Anor

[M143/2013](#): [\[2014\] HCA 26](#).

Judgment delivered: 27 June 2014.

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

Catchwords:

Migration – Refugees – Application for protection visa – Whether Australia had protection obligations towards appellant – Exclusion from Refugees Convention – Art 1F(b) – Serious reasons for considering that appellant had committed serious non-political crimes prior to admission – Protection visa refused on basis of Art 1F(b) – Review by Administrative Appeals Tribunal – Whether open to Tribunal to apply exclusion – Whether Tribunal fell into jurisdictional error – Whether Tribunal misconstrued test – Whether evidence logically probative of serious reasons for considering appellant had committed serious non-political crimes.

Administrative law – Judicial review – Grounds of review – Jurisdictional error – Refugees Convention – Art 1F(b) – Whether Tribunal fell into jurisdictional error – Whether Tribunal misconstrued test – Whether evidence logically probative of serious reasons for considering appellant had committed serious non-political crimes.

Words and phrases – “jurisdictional error”, “serious non-political crime”, “serious reasons for considering”, “standard of proof”.

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

Held: Appeal allowed.

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

[S297/2013](#): [\[2014\] HCA 24](#).

Judgment delivered: 20 June 2014.

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

Catchwords:

Migration – Refugees – Protection visas – Power of Minister under s 85 of *Migration Act 1958* (Cth) to determine maximum number of

visas of specified class granted in specified financial year, in circumstances where s 65A imposed time limit in which protection visa applications must be decided – Minister signed instrument limiting number of protection visas granted in current financial year – Plaintiff's protection visa application not determined by Minister pursuant to that determination – Whether power under s 85 extended to protection visas – Whether instrument valid.

Words and phrases – “harmonious construction”, “implied repeal”, “leading provision”, “legislative instrument”, “subordinate provision”.

Held: Questions answered.

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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: [\[2014\] HCA 25](#).

Judgment delivered: 20 June 2014.

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

Catchwords:

Migration – Refugees – Protection visas – Power of Minister under s 85 of *Migration Act* 1958 (Cth) to determine maximum number of visas of specified class granted in specified financial year, in circumstances where s 65A imposed time limit in which protection visa applications must be decided – Minister signed instrument limiting number of protection visas granted in current financial year – Plaintiff's protection visa application not determined by Minister pursuant to that determination – Whether power under s 85 extended to protection visas – Whether instrument valid.

Words and phrases – “harmonious construction”, “implied repeal”, “leading provision”, “legislative instrument”, “subordinate provision”.

Held: Questions answered.

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Minister for Immigration, Multicultural Affairs and Citizenship v SZRNY & Anor
S65/2014: [\[2014\] HCATrans 122](#).

Date heard: 13 June 2014.

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

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](#).

Held: Special leave revoked.

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Taxation

Howard v Commissioner of Taxation

M140/2012: [\[2014\] HCA 21](#).

Judgment delivered: 11 June 2014

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

Catchwords:

Taxation – Income tax – Taxpayer a member of joint venture – Taxpayer proposed involvement of company of which he was director in business opportunity arising from joint venture – Breach of fiduciary duty by joint venturers – Joint venture failed and opportunity lost – Taxpayer awarded equitable compensation for loss of joint venture opportunity – Commissioner included compensation in taxpayer's assessable income – Whether taxpayer

held compensation on constructive trust for company – Whether compensation assessable income.

Assignment – Where litigation agreement between company and directors assigned to company any award to directors of damages arising out of relevant proceedings – Whether agreement assignment of proceeds of action or assignment of rights under judgment obtained in action – Whether agreement assignment of present property for value or assignment of future income.

Words and phrases – “assignment of future income”, “conflict of duties”, “conflict of duty and interest”, “fiduciary duty”, “unauthorised gain or profit”.

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

Held: Appeal dismissed.

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2: CASES RESERVED

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

Constitutional Law

Pollentine & Anor v Bleijie & Ors

[B39/2013](#); [\[2014\] HCATrans 124](#).

Date heard: 17 June 2014.

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

Catchwords:

Constitutional law – Limitation on State legislative power – Whether s 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.

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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](#)**: [\[2014\] HCATrans 119](#); [\[2014\] HCATrans 120](#).

Date heard: 10 and 11 June 2014.

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

Catchwords:

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

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

Constitutional law – Commonwealth executive power conferred by s 61 of the Constitution – Exercise of executive power ratifying *International Covenant on Civil and Political Rights* article 22 –

Whether s 93X of Act undermines executive power of Commonwealth in circumstances where it restricts exercise of freedom of association.

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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 and 9 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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Evidence

Honeysett v R

S57/2014: [\[2014\] HCATrans 121](#).

Date heard: 12 June 2014.

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

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](#).

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Fitzgerald v The Queen

A9/2014: [\[2014\] HCATrans 127](#).

Date heard: 19 June 2014 – *Appeal allowed*.

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

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](#).

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Tort Law

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor

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

Date heard: 18 June 2014.

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

Catchwords:

Torts – Negligence – Pure economic loss – Builder and developer of commercial premises bargained detailed contract in which developer was protected against liability for defective design and

construction – Whether developer was concurrently owed duty of care by builder to exercise reasonable care in construction of building to avoid pure economic loss due to latent defects – Whether relationship between builder and developer disclosed vulnerability on part of developer – Whether successor in title was owed duty of care by builder to avoid pure economic loss due to latent defects.

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

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3: ORIGINAL JURISDICTION

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

Constitutional Law

Kuczborski v The State of Queensland

B14/2014: *Special case.*

Catchwords:

Constitutional law – Limitation on State legislative power – *Vicious Lawless Association Disestablishment Act 2013* (Qld), s 7 – *Criminal Code* (Qld), ss 60A, 60B(1) and 60C – *Bail Act 1980* (Qld), s 16(3A) – *Corrective Services Act 2006* (Qld), ss 12(1B), 13(1B), 41(1)(c), 65A, 267A, 344AA, 350A – *Police Powers and Responsibilities Act 2000* (Qld), ss 29(1A), 32, 40(2A) – *Liquor Act 1992* (Qld), ss 173EB and 173EC – Whether provisions are invalid on ground that they infringe an implied freedom of association.

Constitutional law – Limitation on State legislative power – *Criminal Code* (Qld), ss 60A, 60B(1) and 60C – *Corrective Services Act 2006* (Qld), ss 12(1B), 13(1B), 41(1)(c), 65A, 267A, 344AA, 350A – *Police Powers and Responsibilities Act 2000* (Qld), ss 29(1A), 32, 40(2A) – *Liquor Act 1992* (Qld), ss 173EB and 173EC – Whether provisions are invalid on ground that they infringe implied freedom of communication on government and political matters.

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

Constitutional law – Limitation on State legislative power – *Vicious Lawless Association Disestablishment Act 2013* (Qld), s 7 – *Criminal Code* (Qld), s 60A – *Liquor Act 1992* (Qld), ss 173EB and 173EC – Whether provisions are invalid under s 109 of Constitution because inconsistent with *Trade Marks Act 1995* (Cth) or *Copyright Act 1986* (Cth).

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

Remedies – Whether relief sought by plaintiff is hypothetical.

Listed: 2, 3 and 4 September 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.

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

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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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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Property Law

Cassegrain v Gerard Cassegrain & Co Pty Ltd
S10/2014: [\[2014\] HCATrans 138](#).

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

Catchwords:

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

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

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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

Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon & Anor
S21; S22/2014: [\[2014\] HCATrans 137](#).

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

Catchwords:

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

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

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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 “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

6: SPECIAL LEAVE REFUSED

Canberra: 19 June 2014

(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Kaur & Anor	Minister for Immigration and Border Protection & Anor (M3/2014)	Federal Court of Australia [2013] FCA 1333	Application Dismissed [2014] HCASL 100
2.	MZZFI	Minister for Immigration and Border Protection & Anor (M5/2014)	Federal Court of Australia [2013] FCA 1337	Application Dismissed [2014] HCASL 101
3.	Lund	Davies (P1/2014)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 268	Application Dismissed [2014] HCASL 102
4.	Li	Edith Cowan University (P3/2014)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 277	Application Dismissed [2014] HCASL 103
5.	Samootin	Shea & Ors (S195/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 312	Application Dismissed [2014] HCASL 104
6.	Robinson	Legal Aid New South Wales & Ors (S12/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 468	Application Dismissed [2014] HCASL 105
7.	"V V"	District Court of NSW & Ors (S20/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 469	Application Dismissed [2014] HCASL 106
8.	Salahuddin	Minister for Immigration and Border Protection & Anor (S28/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 141	Application Dismissed [2014] HCASL 107
9.	Trad	Harbour Radio Pty Limited (S30/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 477	Application Dismissed [2014] HCASL 108
10.	Stankovic	van der Velde & Ors (S34/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 57	Application Dismissed [2014] HCASL 109
11.	SZRPT	Minister for Immigration and Border Protection & Anor (S40/2014)	Federal Court of Australia [2014] FCA 24	Application Dismissed [2014] HCASL 110

6: Special Leave Refused

12.	SZSHI	Minister for Immigration and Border Protection & Anor (S42/2014)	Federal Court of Australia [2014] FCA 102	Application Dismissed [2014] HCASL 111
13.	SZSQZ	Minister for Immigration and Border Protection & Anor (S45/2014)	Federal Court of Australia [2014] FCA 49	Application Dismissed [2014] HCASL 112
14.	Casley	Australian Broadcasting Corporation (M123/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 182	Application Dismissed with Costs [2014] HCASL 113
15.	Barlaw Pty Ltd trading as Barrak Lawyers	Nicholas Crouch as Trustee of the Estate of Mark Anthony Bartolo (S200/2013)	Federal Court of Australia [2013] FCA 961	Application Dismissed with Costs [2014] HCASL 114
16.	Minogue	David Jonathan Rudd t/as Rudd & Co Construction Pty Ltd & Anor (S272/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 345	Application Dismissed with Costs [2014] HCASL 115
17.	SZSHK	Minister for Immigration and Border Protection & Anor (S293/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 125	Application Dismissed with Costs [2014] HCASL 116

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Sydney: 20 June 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Commonwealth of Australia	Vero Insurance Limited (S309/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 152	Special leave refused with costs [2014] HCATrans 136
2.	Wallace	Stelzer & Anor (S317/2013)	Full Court of the Family Court of Australia	Special leave refused with costs [2014] HCATrans 135
3.	Cassegrain	Gerard Cassegrain & Co Pty Ltd & Ors (S9/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 454	Special leave refused with costs [2014] HCATrans 138
4.	Orcher	Bowcliff Pty Ltd trading as The Bridge Hotel Rozelle & Ors (S17/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 478	Special leave refused with costs [2014] HCATrans 139
5.	Orcher	QBE Insurance (Australia) Limited & Ors (S18/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 478	Special leave refused with costs [2014] HCATrans 139
6.	Chen	The Queen (S23/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 224	Special leave refused [2014] HCATrans 140
7.	Wenkart	Warren Pantzer-Former Trustee of the Estate of Thomas Richard Wenkart & Anor (S25/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 81 [2013] FCAFC 136 [2013] FCAFC 162	Special leave refused with costs [2014] HCATrans 141
8.	Gales Holdings Pty Limited	Tweed Shire Council (S26/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 382	Special leave refused with costs [2014] HCATrans 142

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Canberra: 20 June 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Dastagir	The Queen (A32/2013)	Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCFC 109	Special leave refused [2014] HCATrans 130
2.	A	The Corruption and Crime Commissioner & Ors (P60/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 288	Special leave refused [2014] HCATrans 132
3.	BFG	The Queen (A3/2014)	Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCFC 24	Special leave refused [2014] HCATrans 131
4.	Rocky Castle Finance Pty Ltd	Taylor (A4/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 1	Special leave refused with costs [2014] HCATrans 128
5.	Rocky Castle Finance Pty Ltd	Gillen (A5/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 1	Special leave refused with costs [2014] HCATrans 128
6.	Johnson	Leader Computers Pty Ltd (A7/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 14	Special leave refused with costs [2014] HCATrans 129
7.	Johnson	Synnex Australia Pty Ltd (A8/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 14	Special leave refused with costs [2014] HCATrans 129
8.	Pool	The State of Western Australia (P2/2014)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 274	Special leave refused [2014] HCATrans 133
9.	O'Donovan	Western Australian Alcohol and Drug Authority (P4/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 4	Special leave refused with costs [2014] HCATrans 134

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