



HIGH COURT BULLETIN

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[2015] HCAB 9 (19 November 2015)

A record of recent High Court of Australia cases: decided, reserved for judgment, awaiting hearing in the Court's original jurisdiction, granted special leave to appeal, refused special leave to appeal and not proceeding or vacated

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SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
<u>Minister for Immigration and Border Protection v WZARH & Anor</u>	Administrative Law
<u>The Queen (Cth) v Pham</u>	Criminal Law
<u>North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia</u>	Statutory Interpretation

2: Cases Reserved

Case	Title
Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors	Employment Law
Plaintiff M64/2015 v Minister for Immigration and Border Protection	Migration
Wei v Minister for Immigration and Border Protection	Migration
State of Victoria v Tatts Group Limited	Statutes
Tabcorp Holdings Limited v State of Victoria	Statutes

3: Original Jurisdiction

No new entries for November 2015.

4: Special Leave Granted

Case	Title
Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors	Administrative Law
Mok v Director of Public Prosecutions	Constitutional Law
Miller v The Queen	Criminal Law
R & Anor v The Independent Broad-based Anti-corruption Commissioner	Criminal Law
Zaburoni v The Queen	Criminal Law
Military Rehabilitation and Compensation Commission v May	Workers Compensation

1: CASES HANDED DOWN

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

Administrative Law

Minister for Immigration and Border Protection v WZARH & Anor
S85/2015: [\[2015\] HCA 40](#).

Judgment delivered: 4 November 2015.

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

Catchwords:

Administrative law – Procedural fairness – Refugee Status Assessment – Independent Merits Review ("IMR") – Where first reviewer conducted interview with first respondent but did not complete IMR – Where second reviewer completed IMR without interview but with regard to transcript and audio recording of first reviewer's interview – Where first respondent not informed of change in identity of reviewer – Where second reviewer formed adverse view of first respondent's credibility – Whether first respondent denied procedural fairness.

Words and phrases – "legitimate expectation", "opportunity to be heard", "oral hearing", "procedural fairness", "unfairness".

Appealed from FCA (FC): (2014) 142 ALD 490; (2014) 316 ALR 389; [\[2014\] FCAFC 137](#).

Held: Appeal dismissed.

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Constitutional Law

See also [Statutory Interpretation](#): *North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia*.

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Criminal Law

The Queen (Cth) v Pham

M82/2015: [\[2015\] HCA 39](#).

Judgment delivered: 4 November 2015.

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

Catchwords:

Criminal law – Sentencing – Federal offences – Consistency – Current sentencing practices – Whether sentencing courts to have regard to current sentencing practices throughout Commonwealth.

Criminal law – Appeals against sentence – Manifest excess or inadequacy – Sentencing statistics – Drug importation offences – Whether permissible to assess current sentencing practices by statistical analysis of correlation between sentence and quantity of drug imported.

Precedent – Intermediate appellate courts – Use of sentencing decisions of intermediate appellate courts.

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

Held: Appeal allowed.

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Precedent

See also [Criminal Law](#): *The Queen (Cth) v Pham*.

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Statutory Interpretation

North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia

M45/2015: [\[2015\] HCA 41](#).

Judgment delivered: 11 November 2015.

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

Catchwords:

Statutory interpretation – Div 4AA of Pt VII of *Police Administration Act* (NT) provides members of Northern Territory Police Force who arrest person without warrant in relation to infringement notice offence can detain person for up to four hours – Whether detention penal or punitive in character – Relevance of principle of legality – Relevance of principle in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1.

Constitutional law (Cth) – Separation of judicial power – Whether Legislative Assembly of Northern Territory subject to constitutional limitations which limit legislative power of Commonwealth Parliament – Interaction between s 122 and Ch III of Commonwealth Constitution.

Constitutional law (Cth) – Constitution – Ch III – Principle in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 – Whether Div 4AA of Pt VII of *Police Administration Act* (NT) conferred powers on Northern Territory executive which impaired, undermined or detracted from institutional integrity of Northern Territory courts.

Words and phrases – "infringement notice offence", "institutional integrity", "Kable principle", "penal or punitive", "separation of judicial power", "supervisory jurisdiction".

Held: Questions answered.

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2: CASES RESERVED

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

Constitutional Law

Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors

M68/2015: [\[2015\] HCATrans 255](#); [\[2015\] HCATrans 256](#).

Dates heard: 7 October 2015; 8 October 2015.

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

Catchwords

Constitutional law – Where plaintiff was an “unauthorised maritime arrival” pursuant to s 5AA of the *Migration Act* 1958 (Cth) (“Act”) – Where plaintiff was taken to Nauru Regional Processing Centre (“RPC”) pursuant to s 198AD(2) of the Act – Where plaintiff was granted an RPC visa by the Nauru government which had certain restrictions and specifications - Whether plaintiff has standing to challenge whether the Commonwealth or the Minister was authorised in the past to engage in the activities relating to the creation and operation of the RPC – Whether Commonwealth or Minister were authorised to engage in acts relating to the creation and operation of the RPC pursuant to s 61 of the *Constitution*, s 198AHA of the Act, and s 32B of the *Financial Framework (Supplementary Powers) Act* 1997 (Cth) read together with reg 16 and items 417.021, 417.027, 417.029 and 417.042 of Sch 1AA *Financial Framework (Supplementary Powers) Regulations* 1997 (Cth) – Whether the restrictions imposed on the plaintiff and the specifications of her RPC visa are contrary to Article 5(1) of the *Constitution of Nauru* – Whether the statutory provisions relied upon by the Commonwealth are invalid because they are not supported by any head of Commonwealth legislative power or are contrary to Ch III of the Constitution.

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Foreign Judgments

Firebird Global Master Fund II Ltd v Republic of Nauru & Anor

S29/2015: [\[2015\] HCATrans 214](#); [\[2015\] HCATrans 215](#).

Date heard: 2 September 2015; 3 September 2015.

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

Catchwords:

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

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

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Employment Law

Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors

P38/2015: [\[2015\] HCATrans 285](#).

Date heard: 4 November 2015.

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

Catchwords:

Employment law – Employment relationship – Nature of – *Fair Work Act 2009* (Cth) s 357 - Where first respondent operated a business providing serviced apartments – Where first respondent employed two housekeepers purportedly through a contract hire company – Whether relationship was an employment relationship – Whether an employer can avoid the sham contracting provision of the *Fair Work Act* by interposing a third party into its contractual arrangements between employer and the other person.

Appealed from FCA (FC): [\[2015\] FCAFC 37](#).

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Migration

Plaintiff M64/2015 v Minister for Immigration and Border Protection
M64/2015: [\[2015\] HCATrans 287](#).

Date heard: 6 November 2015.

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

Catchwords:

Migration – Grant or refusal of visas – *Migration Act* 1958 (Cth) - Migration Regulations 1994 (Cth) - Where plaintiff is an Australian permanent resident – Where plaintiff applied for a subclass 866 (Protection) visa for his immediate family – Where delegate of defendant refused the Visa Application for plaintiff's family because plaintiff's family did not satisfy cl 202.222(2) ("clause") – Whether defendant's delegate erred by construing the clause to require him to consider Australia's capacity to take all refugee applicants without considering whether or not there were compelling reasons for giving special consideration to the visa applicants – Whether the delegate erred by having regard to irrelevant considerations – Whether delegate applied policy inconsistent with the Act and the Regulations.

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Wei v Minister for Immigration and Border Protection
S9/2015: [\[2015\] HCATrans 291](#).

Date heard: 12 November 2015.

Coram: Gageler, Keane and Nettle JJ.

Catchwords:

Migration – Visa cancellation – Where plaintiff is a Chinese national who arrived on a student visa in September 2008 – Where plaintiff commenced and completed a "Foundation Program" at Macquarie University ("University") – Where university failed to issue a Confirmation of Enrolment – Where the failure to issue the confirmation lead to the appearance that plaintiff breached the terms of visa – Where defendant's delegate cancelled plaintiff's visa on 20 March 2014 on this basis - Whether plaintiff should have been granted an extension of time for making application – Whether decision of defendant's delegate to cancel plaintiff's visa was vitiated by jurisdictional error or breach of requirements of procedural fairness.

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Procedure

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate & Ors

B36/2015: [\[2015\] HCATrans 259](#).

Date heard: 13 October 2015.

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

Catchwords:

Procedure – Civil penalty provisions – Where, in proceedings between respondent and the Construction, Forestry, Mining and Energy Union (“CFMEU”) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (“CEPU”), respondent alleged that the CFMEU and CEPU contravened the *Building and Construction Industry Improvement Act 2005* (Cth) – Where respondent sought pecuniary penalties and associated declaratory relief against the CFMEU and CEPU – Whether the High Court of Australia’s decision in *Barbaro v The Queen* affects submissions made regarding civil penalties.

Appealed from FCA(FC): [\[2015\] FCAFC 59](#).

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Construction, Forestry, Mining and Energy Union & Anor v Director, Fair Work Building Industry Inspectorate & Anor

B45/2015: [\[2015\] HCATrans 259](#).

Date heard: 13 October 2015.

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

Catchwords:

Procedure – Civil penalty provisions – Where respondent alleged that appellants contravened the *Building and Construction Industry Improvement Act 2005* (Cth) – Where respondent sought pecuniary penalties and associated declaratory relief against the appellants – Whether the High Court of Australia’s decision in *Barbaro v The Queen* affects submissions made regarding civil penalties.

Appealed from FCA(FC): [\[2015\] FCAFC 59](#).

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Statutes

State of Victoria v Tatts Group Limited

M83/2015: [\[2015\] HCA Trans 290](#).

Date heard: 11 November 2015.

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

Catchwords:

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

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

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Tabcorp Holdings Limited v State of Victoria

M81/2015: [\[2015\] HCATrans 288](#); [\[2015\] HCATrans 289](#).

Date heard: 10 November 2015; 11 November 2015.

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

Catchwords:

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

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

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

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Taxation

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

[B19/2015](#); [B20/2015](#): [\[2015\] HCATrans 217](#).

Date Heard: 8 September 2015.

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

Catchwords:

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

s 254(1)(d) of the 1936 Act requires the trustee to retain out of moneys then in or coming to them in their representative capacity so much as is significant to pay the tax of the income, profits or gains or whether it only authorises and requires a trustee to retain such moneys after an assessment is made for tax on the income, profits or gains.

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

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Macoun v Commissioner of Taxation

S100/2015: [\[2015\] HCATrans 257](#).

Date heard: 9 October 2015.

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

Catchwords:

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

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

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Torts

Allen v Chadwick

A14/2015: [\[2015\] HCATrans 260](#).

Date heard: 15 October 2015.

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

Catchwords:

Torts – Negligence – Contributory negligence – *Civil Liability Act 1936* (SA) ss 47 and 49 – Where respondent was injured in a car

accident after appellant lost control of the vehicle – Where appellant was intoxicated – Where respondent was not wearing a seatbelt – Whether a reasonable person in the position of respondent would or ought to have known that appellant was intoxicated and would have relied on appellant to drive – Whether respondent had an opportunity to fasten the seatbelt.

Appealed from SASC (FC): [\[2014\] SASFC 100](#).

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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

See also [Native Title](#): *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

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Native Title

Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland

[B26/2014](#): *Special case*.

Catchwords:

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

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

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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

Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors

A18/2015: [\[2015\] HCATrans 295](#).

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

Catchwords:

Administrative law – Judicial review – Grounds of review – Delegation of power - Where first respondent entered into a deed with the Minister for State Development and third respondent to grant third respondent options to purchase 407 hectares of land owned by first respondent – Where Cabinet had made decision to enter into Deed, purportedly on behalf of first respondent - Where applicants had previously expressed interest in purchasing the property – Whether the decision of first respondent to entered into a deed granting third respondent options to purchase is amendable to judicial review – Whether a valid delegation and exercise of power under relevant legislation or executive power occurred – Whether decision to enter into deed was legally unreasonable and ultra vires in circumstances.

Appealed from SASC (FC): [\[2015\] SASCF 91](#).

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Banking

Paciocco & Anor v Australia and New Zealand Banking Group Limited

M219/2015; M220/2015: [\[2015\] HCATrans 229](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Banking and financial institutions – Consumer protection – *Australian Securities and Investments Commission Act 2001 (Cth) s 12CB* – *National Consumer Credit Protection Act 2009 (Cth) s 76* and *Fair Trading Act 1999 (Vic) s 8* – Where first appellant was

charged 26 late payment fees on two credit card accounts held with respondent – Where there was a disparity between the fee charged and the loss accrued as a consequence of late payment - Whether the terms “unconscionable”, “unfair” and “unjust”, as used in the statutory causes of action available, are intended to extend the common law in respect of standard form consumer contracts – Whether disproportion between the quantum of late payment fees and cost to respondent associated with late payment gives rise to statutory unconscionability, unjustness or unfairness if the fees were not exorbitant from respondent’s perspective.

Appealed from FCA (FC): [\[2015\] FCAFC 50](#).

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Constitutional Law

Mok v Director of Public Prosecutions (NSW)

S205/2015: [\[2015\] HCATrans 301](#).

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

Catchwords:

Constitutional law – Commonwealth places – *Service and Execution of Process Act 1992* (Cth) (‘Act’) s 89(4) – Where appellant pleaded guilty to a number of fraud offences in New South Wales – Where appellant failed to appear for sentencing – Where appellant was charged with unrelated offences in Victoria – Where appellant escaped custody whilst in an airport and was apprehended shortly after – Where appellant was charged with attempting to escape from lawful custody contrary to s 310D *Crimes Act 1900* (NSW) – Whether when applying a criminal offence provision by virtue of s 89(4) of the Act is the prosecution relieved of the burden of proving all elements of the offence – Whether s 89(4) of the Act is an offence creating provision.

Appealed from NSWSC (CA): [\[2015\] NSWCA 98](#).

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Criminal Law

The Queen v GW

C13/2015: [\[2015\] HCATrans 267](#).

Date heard: 16 October 2015 – *Special leave granted.*

Catchwords:

Criminal law – Evidence – Unsworn statements – Where respondent was found guilty of committing acts of indecency upon or in the presence of children “R” and “H” contrary to s 61(1) of the *Crimes Act 1900* (ACT) – Where R gave evidence at a pre-trial hearing but was unable to give sworn evidence due to her age – Where she gave unsworn evidence pursuant to s 13 of the *Evidence Act 2011* (ACT) – Where evidence was admitted without a warning – Where the Court of Appeal overturned the conviction on the basis that the unsworn evidence of R should not have been admitted and the trial judge failed to direct the jury regarding the unsworn evidence of R – Whether, where witnesses give unsworn evidence pursuant to s 13 of the Evidence Act, there should be a requirement that the jury be warned that there is a difference between sworn and unsworn evidence – Whether a finding by a judge that a witness is not competent to give sworn evidence pursuant to s 13(3) of the Evidence Act requires a particular formulation of the warning.

Appealed from ACTSC (CA): [2015] ACTCA 15.

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Murdoch v The Queen

D12/2015: [\[2015\] HCATrans 266](#).

Date heard: 16 October 2015 – *Special leave granted.*

Catchwords:

Criminal law – Evidence – Tendency evidence – *Evidence (National Uniform Legislation) Act* (NT) s 97 – Where applicant was found guilty of offences committed against his step grandchild – Where complainant made a complaint to family members – Where evidence was given of an incident which was not charged and occurred after the time period of the offences charged – Where several people give evidence of the complaints – Whether trial judge is required to assume that the jury will accept the evidence where considering the probative value of the tendency evidence pursuant to s 97(1)(b) of the Uniform Evidence Law – Whether hearsay evidence of a complaint, involving general allegations of sexual misconduct not linked to any particular charge is admissible as evidence of guilt of the offences charged under the Uniform Evidence Law – Whether the correct approach to assessment of “probative value” for the purposes of s 137 of the Uniform Evidence Law was made.

Appealed from NTSC (CCA): [\[2014\] NTCCA 20](#).

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Miller v The Queen

A12/2015: [\[2015\] HCATrans 296](#).

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

Catchwords:

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted with one count of murder and one count of aggravated causing of harm with two others – Where appellant was convicted on the basis of joint criminal enterprise or extended joint criminal enterprise - Where appellant was highly intoxicated – Where evidence was given that this intoxication significantly impaired appellant's decision-making – Whether appellant was too intoxicated to form the relevant intention for a conviction of murder.

Appealed from SASC (FC): [\[2015\] SASFC 53](#).

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R & Anor v The Independent Broad-based Anti-corruption Commissioner

M234/2015: [\[2015\] HCATrans 293](#).

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

Catchwords:

Criminal law – Evidence – Confessions and admissions – *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('IBAC Act') ss 115, 120, 190 - Where person 'A' was allegedly assaulted by appellants at a police station – Where Victorian Police notified the Independent Broad-based Anti-corruption Commissioner ('IBAC') – Where IBAC commenced an investigation into appellants' conduct and issued – summons to appellants requiring attendance at public examinations – Where appellants are under investigation by police in respect of criminal charges arising out of the same incident – Whether the power to examine persons conferred by the IBAC Act extends to persons who are the subject of a criminal investigation about the subject matter of that criminal investigation – Whether it is permissible to conduct compulsory examinations where IBAC may initiate a criminal prosecution for an offence in relation to any matter arising out of the IBAC investigation.

Appealed from VSC (CA): [\[2015\] VSCA 271](#).

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Zaburoni v The Queen

B17/2015: [\[2015\] HCATrans 298](#).

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

Catchwords:

Criminal law – Criminal liability – *Criminal Code 1899* (Qld) s 317 - Element of intent to cause a specific result – Where appellant is HIV positive – Where appellant commenced a relationship with complainant – Where appellant did not disclose HIV status – Where complainant was diagnosed with HIV after engaging in unprotected sex with appellant – Where appellant was found guilty of transmitting a serious disease with intent – Whether the element of intent to cause a specific result can be satisfied by establishing that an accused engaged in a course of conduct over a significant period time and was reckless as to the potential consequences of that conduct – Whether the element of intent can be inferred from an awareness of increased risk where conduct is engaged in frequently and over a period of time – Whether intent can be inferred from frequent conduct where the precise time at which the intent formed and the result occurred cannot be identified.

Appealed from QSC (CA): [\[2014\] QCA 77](#).

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See also [Constitutional Law](#): *Mok v Director of Public Prosecutions*.

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Equity

Fischer & Ors v Nemeske Pty Ltd & Ors

S223/2015: [\[2015\] HCATrans 262](#).

Date heard: 16 October 2015 – *Special leave granted*.

Catchwords:

Equity – Trusts and trustees – Power of Trustees – Maintenance and Advancement – Where first respondent is the trustee of the Nemes Family Trust and applicants are the “Specified Beneficiaries” –

Where in July 1994 the trust recorded an “asset revaluation reserve” in the accounts of the trust in the amount of \$3,904,300 – Where first respondent determined to make a distribution to Mr and Mrs Nemes but no money was paid out – Where, in 1995, first respondent executed a Deed of Charge in favour of the Nemes which recorded that trust was indebted to the Nemes to the sum of \$3,904,300 – Whether a trustee of an express trust validly exercise a power to “advance” or “apply” the capital or income of that trust by resolving to pay or credit an amount of money to a beneficiary of the trust, notwithstanding that the trust assets do not include, and have never included, any money – Whether an action for money had received maintainable against a trustee upon the trustee stating an account to the relevant beneficiary, notwithstanding that the trustee continued to have ongoing active duties as trustee in respect of all of the trust assets from which any liability to the relevant beneficiary would be realised.

Appealed from NSWSC (CA): [\[2015\] NSWCA 6](#).

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Professions and Trades

See also [Torts](#): *Attwells & Anor v Jackson Lalic Lawyers Pty Limited*.

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Badenach & Anor v Calvert

H12/2015: [\[2015\] HCATrans 279](#).

Date heard: 26 October 2015 – *Special leave granted*.

Catchwords:

Professions and trades – Lawyers – Duties and liabilities – Solicitors’ duties to other persons – Beneficiaries – Where first appellant acted for a testator who had terminal cancer in the preparation of a will – Where respondent was regarded as a son by testator – Where testator had an estranged daughter – Where testator did not disclose existence of estranged daughter and first appellant did not make any inquiries in this respect and did not give any advice as the effect of the *Testator’s Family Maintenance Act 1912* (Tas) on this arrangement – Whether a solicitor retained to draw a will owes a testator a duty of care which extends to inquiries as to the existence of estranged children and advice pursuant to the effect of the Act.

Torts – Negligence – Duty of care – *Civil Liability Act 2002* (Tas) -
Whether solicitor owed a duty of care to a non-client beneficiary –
Whether damages for loss of opportunity can be awarded where
opportunity is hypothetical and dependent on acts of third parties.

Appealed from TASC (FC): [\[2015\] TASFC 8](#).

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Procedure

CGU Insurance Limited v Blakeley & Ors
M221/2015: [\[2015\] HCATrans 232](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Procedure – Joinder of third parties – Where declaratory relief was sought by first respondent against appellant – Where first respondent was stranger to insurance contract between appellant and second to fifth respondents – Whether Court has jurisdiction to declare the rights and obligations of parties under a contract of insurance where declaration is sought by a third party and the parties to the contract do not intend to pursue any claim relating to their rights or obligations under the contract – Whether such a declaration would bind parties to the contract as a matter of *res judicata* or finally determine their rights and obligations pursuant to the contract – Whether Court has jurisdiction to make a declaration about the meaning of a contract at the suit of a third party on the grounds of “practical utility”.

Appealed from VSC (CA): [\[2015\] VSCA 153](#).

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Property

Coverdale v West Coast Council
H10/2015: [\[2015\] HCATrans 228](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Real Property – Rates and charges – Where the Valuer-General is required by the *Valuation of Land Act 2001* (Tas) (“VLA”) to make valuations of all

lands within a valuation district including any Crown lands that are liable to be rated – Where Macquarie Harbour is Crown land within the respondent's municipality – Whether the sea or seabed is land which the Valuer-General is required to value.

Appealed from TASC (FC): [\[2015\] TASFC 1](#).

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Moreton Bay Regional Council v Mekpine Pty Ltd

S161/2015: [\[2015\] HCATrans 270](#).

Date heard: 16 October 2015 – *Special leave granted*.

Catchwords:

Property law – Crown Lands – Where respondent entered into a retail shop lease within the meaning of the *Retail Shop Leases Act 1994* (Qld) in respect of Lot 6 on RP 809722 ('Lot 6') – Where the Retail Shopping Centre that Lot 6 was part of expanded to include Lot 1 on RP 847798 ('Old Lot 1') and this Lot was amalgamated by registration of a plan of survey and existing interests under the *Land Title Act 1994* (Qld) to create a new Lot 1 – Where applicant resumed part of the new Lot 1 under the provision of the *Acquisition of Land Act 1967* (Qld) – Where respondent brought a claim for compensation pursuant to the ALA on the basis that, at the date of resumption, respondent had an interest in the resumed land for the purposes of section 12(5) of the ALA – Whether the creation of a new lot has the effect of varying a lease over just one of the existing allotments – Whether the provisions of the Retail Shop Leases Act which include a definition of "common areas" of a retail shopping centre, operate to vary a retail shop lease to include areas defined by the Retail Shop Leases Act as "common areas" or otherwise create an interest in the "common areas" defined by the Retail Shop Leases Act.

Appealed from QSC (CA): [\[2014\] QCA 317](#).

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Torts

Attwells & Anor v Jackson Lalic Lawyers Pty Limited

S161/2015: [\[2015\] HCATrans 176](#).

Date heard: 7 August 2015 – *Special leave granted*

Catchwords:

Torts – Negligence – Defences – Advocates’ immunity – Scope – Where respondent gave advice to appellants to agree to a terms of settlement – Where the terms of settlement caused the appellants to accept liability significant higher than they would have otherwise been liable for if they had not defended the proceedings– Whether advocates’ immunity applies – Whether the advice falls with the boundaries of advocates’ immunity – Whether immunity is attracted in respect of final outcomes not the subject of a judicial determination on the merits.

Appealed from NSWSC (CA): [\[2014\] NSWCA 335](#).

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Stewart & Ors v Ackland

C12/2015: [\[2015\] HCATrans 226](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Torts – Negligence – Personal injury – *Civil Liability Act 2002* (NSW) ('Act') ss 5L and 5F - Where respondent was injured while attempting to perform a backward somersault on a jumping pillow at an amusement park operated by appellant – Where there was no signs prohibiting backward somersaults or other inverted manoeuvres – Whether s 5L of the Act requires that the extent of the harm suffered by the plaintiff to be objectively obvious to a reasonable person in the position of the plaintiff – Whether and to what extent the principle of personal autonomy applies so as to limit the scope of an occupier’s duty of care in respect of recreation activities.

Appealed from ACTSC (CA): [\[2015\] ACTCA 1](#).

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Robinson Helicopter Company Incorporated v McDermott & Ors

B61/2015: [\[2015\] HCATrans 274](#).

Date heard: 16 October 2015 – *Special leave granted*.

Catchwords:

Torts – Negligence – Where first respondent was a passenger in a Robinson R 22 helicopter which was manufactured by the appellant– Where helicopter crashed, killing the pilot and seriously injuring first respondent – Where it was a failure in the forward

flexplate of the helicopter which caused it to crash – Whether appellant is liable for the failures of the helicopter – Whether a manufacturer of goods is to be held liable under ss 75AD and AE of the *Trade Practices Act 1974* (Cth) or in negligence by reason of the maintenance manual calling for a technician to verify the parts without specifying the particular method to do so – Whether appellant should have been held liable without consideration of whether the negligence or breach of the Trade Practices Act was causative of any loss.

Appealed from QSC (CA): [\[2014\] QCA 357](#).

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See also [Professions and Trades](#): *Badenach & Anor v Calvert*.

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Workers Compensation

Military Rehabilitation and Compensation Commission v May
S144/2015: [\[2015\] HCATrans 302](#).

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

Catchwords:

Workers Compensation – Injury – *Safety, Rehabilitation and Compensation Act 1988* (Cth) (Act) – Where respondent enlisted in the Royal Australian Air Force in 1998 – Where respondent lodged a claim under the Act for rehabilitation and compensation in for “low immunity, fatigue, illnesses and dizziness” that respondent claimed was caused by vaccinations he received in the course of his employment in 1998 – Where no specific condition or cause of symptoms was diagnosed – Whether respondent’s symptoms amount to an “injury” as defined by the Act – Whether an ‘injury’ as defined by the Act requires a sudden or identifiable physiological change or disturbance of the normal physiological state in an employee – Whether the Act contemplates no more than a physiological change or disturbance of the normal physiological state in the employee.

Appealed from FCA (FC): [\[2015\] FCAFC 93](#).

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5: CASES NOT PROCEEDING OR VACATED

Damages

Fernando by his tutor Ley v Commonwealth of Australia & Anor
[P37/2015](#): [\[2015\] HCATrans 286](#).

Date heard: 5 November 2015 – *Special leave revoked*.

Catchwords:

Torts – False imprisonment – Where appellant’s visa was cancelled by Acting Minister – Where appellant was held in immigration detention for 1203 days – Where consent orders were made to quash decision of Acting Minister to cancel the visa – Whether a tortfeasor is permitted to escape liability to pay more than nominal damages if a lawful means could have been chosen by the tortfeasor to inflict the same loss and damage on the victim.

Appealed from FCA (FC): [\[2014\] FCAFC 181](#).

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6: SPECIAL LEAVE REFUSED

Publication of Reasons: 4 November 2015

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Redmond	Stolz & Anor (B29/2015 & B31/2015)	Family Court Australia	of Applications dismissed [2015] HCASL 175
2.	Reihana	Davern & Anor (B34/2015)	Supreme Court Queensland (Court of Appeal) [2015] QCA 42	of Application dismissed [2015] HCASL 176
3.	Jones	Invion Limited (Formerly CBio Limited) ACN 094 730 417 & Ors (B37/2015)	Supreme Court Queensland (Court of Appeal) [2015] QCA 100	of Application dismissed [2015] HCASL 177
	Greig	Invion Limited (Formerly CBio Limited) ACN 094 730 417 & Ors (B38/2015)	Supreme Court Queensland (Court of Appeal) [2015] QCA 100	of Application dismissed [2015] HCASL 177
	Yeates	Invion Limited (Formerly CBio Limited) ACN 094 730 417 & Ors (B39/2015)	Supreme Court Queensland (Court of Appeal) [2015] QCA 100	of Application dismissed [2015] HCASL 177
4.	Dupois	Queensland Television Ltd & Ors (B52/2015)	Supreme Court Queensland (Court of Appeal) [2015] QCA 160	of Application dismissed [2015] HCASL 178
5.	MZAEJ	Minister for Immigration and Border Protection & Anor (M113/2015)	Federal Court Australia [2015] FCA 523	of Application dismissed [2015] HCASL 179
6.	Pancious	Searle (M127/2015 & M129/2015)	Family Court Australia	of Applications dismissed [2015] HCASL 180
7.	Pancious	Searle & Anor (M128/2015)	Family Court Australia	of Application dismissed [2015] HCASL 180
8.	Barkla	Bush (P27/2015)	Supreme Court Western Australia (Court of Appeal) [2015] WASCA 120	of Application dismissed [2015] HCASL 181
9.	Sims	Suda Ltd (P28/2015)	Supreme Court Western Australia (Court of Appeal) [2015] WASCA 105	of Application dismissed [2015] HCASL 182
10.	Singh	Minister for Immigration and Border Protection & Anor	Federal Court Australia No media neutral	of Application dismissed [2015] HCASL 183

		(S116/2015)	citation	
11.	SZTHH	Minister for Immigration and Border Protection & Anor (S124/2015)	Federal Court of Australia [2015] FCA 520	Application dismissed [2015] HCASL 184
12.	SZTMI & Ors	Minister for Immigration and Border Protection & Anor (S127/2015)	Federal Court of Australia [2015] FCA 566	Application dismissed [2015] HCASL 185
13.	SZTQL	Minister for Immigration and Border Protection & Anor (S130/2015)	Federal Court of Australia [2015] FCA 548	Application dismissed [2015] HCASL 186
14.	B	The Queen (S135/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 103	Application dismissed [2015] HCASL 187
15.	Mao	AMP Superannuation Fund & Ors (S137/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 178	Application dismissed [2015] HCASL 188
16.	McCarthy	National Australia Bank Limited (S150/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 230	Application dismissed [2015] HCASL 189
17.	National Transport Insurance (a Firm)	Hammersley & Anor (H5/2015)	Full Court of the Supreme Court of Tasmania [2015] TASFC 5	Application dismissed with costs [2015] HCASL 190
18.	Watkins	Repatriation Commission (M26/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 10	Application dismissed with costs [2015] HCASL 191
19.	Alaee	Eptec Pty Limited (S47/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 390	Application dismissed with costs [2015] HCASL 192
20.	Bryan Stark (pseudonym)	The Queen (M16/2015)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 34	Application dismissed [2015] HCASL 193

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Publication of Reasons: 11 November 2015

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	In the matter of an application by Andrew Scott Roberts (H6/2015)		Supreme Court of Tasmania No media neutral citation	Application dismissed [2015] HCASL 194
2.	In the matter of an application by James William Durston (H7/2015)		Supreme Court of Tasmania No media neutral citation	Application dismissed [2015] HCASL 195
3.	Duffy & Anor	Wesfarmers Limited (formerly Westralian Farmers Co-operative Limited) (P32/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 125	Application dismissed [2015] HCASL 196
4.	MZAAV	Minister for Immigration and Border Protection & Anor (M191/2015)	Federal Court of Australia [2015] FCA 469	Application dismissed [2015] HCASL 197
5.	Reznitsky	District Court of New South Wales & Anor (S151/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 194	Application dismissed [2015] HCASL 198
6.	Kwon	O'Neill (S141/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 111	Application dismissed [2015] HCASL 199
7.	SZTSY	Minister for Immigration and Border Protection & Anor (S147/2015)	Federal Court of Australia [2015] FCA 715	Application dismissed [2015] HCASL 200
8.	SZUOY	Minister for Immigration and Border Protection & Anor (S155/2015)	Federal Court of Australia [2015] FCA 769	Application dismissed [2015] HCASL 201
9.	SZUIB	Minister for Immigration and Border Protection & Anor (S159/2015)	Federal Court of Australia [2015] FCA 933	Application dismissed [2015] HCASL 202
10.	SZTJL	Minister for Immigration and Border Protection & Anor (S170/2015)	Federal Court of Australia [2015] FCA 836	Application dismissed [2015] HCASL 203
11.	SZUHQ	Minister for Immigration and Border Protection & Anor (S175/2015)	Federal Court of Australia [2015] FCA 869	Application dismissed [2015] HCASL 204

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	SZUZG & Anor	Minister for Immigration and Border Protection & Anor (S176/2015)	Federal Court of Australia [2015] FCA 858	Application dismissed [2015] HCASL 205
13.	SZUNN	Minister for Immigration and Border Protection & Anor (S185/2015)	Federal Court of Australia [2015] FCA 955	Application dismissed [2015] HCASL 206
14.	Luck	Principal Officer of Peninsula Health & Anor (M55/2012 & M56/2012)	Applications for removal	Applications dismissed [2015] HCASL 207
15.	Luck	James (M30/2012)	Application for removal	Applications dismissed with costs [2015] HCASL 208
	Luck	Delaney (M32/2012)	Application for removal	
16.	Luck	Coroner Spanos & Ors (M58/2012)	Application for removal	Application dismissed with costs [2015] HCASL 209
17.	Rahman	Blair & Ors (S31/2015)	Application for removal	Application dismissed with costs [2015] HCASL 210
18.	Abed	State of New South Wales & Ors (S70/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 419 [2015] NSWCA 47	Application dismissed with costs [2015] HCASL 211
19.	PAR	The Queen (B44/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 248	Application dismissed [2015] HCASL 212

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13 November 2015: Canberra

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Pelly	The (A8/2015)	Queen Full Court of the Supreme Court of South Australia (Court of Criminal Appeal) [2015] SASCFC 25	Special leave refused [2015] HCATrans 294.
2.	Innes	Commonwealth of Australia (C8/2015)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2015] ACTCA 33	Special leave refused with costs [2015] HCATrans 292.
3.	Cayzer	Minister for Immigration and Border Protection & Anor (H8/2015)	Application for Removal	Application for removal refused with costs [2015] HCATrans 297.

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13 November 2015: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>		<i>Court appealed from</i>	<i>Result</i>
1.	Sanofi-Aventis & Ors	Apotex (S326/2014)	Pty Ltd	Full Court of the Federal Court of Australia [2009] FCAFC 134	Special leave refused with costs [2015] HCATrans 300
2.	Halac	The Queen (S128/2015)		Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 121	Special leave refused [2015] HCATrans 299

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