



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2016] HCAB 1 (17 February 2016)

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="#">Plaintiff M68/2015 v Minister for Immigration and Border Protection &amp; Ors</a>	Constitutional Law
<a href="#">CGU Insurance Limited v Blakeley &amp; Ors</a>	Procedure

### [2: Cases Reserved](#)

Case	Title
<a href="#">R &amp; Anor v Independent Broad-Based Anti-Corruption Commissioner</a>	Criminal Law
<a href="#">IMM v The Queen</a>	Criminal Law
<a href="#">Paciocco &amp; Anor v Australia and New Zealand Banking Group Limited</a>	Banking
<a href="#">Zaburoni v The Queen</a>	Criminal Law

<a href="#">Alqudsi v The Queen</a>	Constitutional Law
<a href="#">Mok v Director of Public Prosecutors (NSW)</a>	Criminal Law

### 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">Cunningham &amp; Ors v Commonwealth of Australia &amp; Anor</a>	Constitutional Law

### 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Presley v The Director of Public Prosecutions for the State of South Australia</a>	Criminal Law
<a href="#">Smith v The Queen</a>	Criminal Law
<a href="#">Hall v Hall</a>	Family Law

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the February 2016 sittings.

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## Constitutional Law

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

[M68/2015](#): [\[2016\] HCA 1](#)

**Dates heard:** 7 October 2015; 8 October 2015.

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

### Catchwords

Migration – Regional processing – Where plaintiff was "unauthorised maritime arrival" upon entry into Australian migration zone – Where plaintiff was removed to regional processing centre on Nauru pursuant to s 198AD of Migration Act 1958 (Cth) – Where Commonwealth entered into arrangement in relation to regional processing functions – Whether plaintiff was detained by Commonwealth at Nauru Regional Processing Centre – Whether principles in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 apply.

Constitutional law (Cth) – Executive power of Commonwealth – Whether conduct of Commonwealth authorised by s 61 of Constitution – Whether conduct of Commonwealth authorised by s 198AHA of Migration Act.

Constitutional law (Cth) – Legislative power of Commonwealth – Whether s 198AHA of Migration Act is a law with respect to aliens – Whether s 198AHA of Migration Act is a valid law of Commonwealth.

Procedure – Standing – Whether plaintiff has standing to challenge lawfulness of conduct of Commonwealth with respect to plaintiff's past detention.

Private international law – Act of State doctrine – Where plaintiff's detention imposed by laws of Nauru – Whether Australian court should pronounce on constitutional validity of legislation of another country.

Words and phrases – "aliens power", "constraints upon the plaintiff's liberty", "control", "detention", "effective control",

"memorandum of understanding", "non-statutory executive power", "regional processing country", "regional processing functions".

**Held:** Questions answered.

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## Procedure

*CGU Insurance Limited v Blakeley & Ors*

**M221/2015:** [\[2016\] HCA 2](#)

**Date heard:** 9 December 2015.

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

**Catchwords:**

Procedure – Joinder of third parties – Where liquidators of company brought action in Supreme Court of Victoria against company directors for order under s 588M(2) of Corporations Act 2001 (Cth) – Where liquidators sought to join third party insurer after directors' claim for professional indemnity rejected – Where directors not in position to challenge denial of liability under contract of insurance – Whether Supreme Court had jurisdiction to join third party insurer and grant declaratory relief in relation to private insurance contract between directors and third party insurer.

Jurisdiction – Federal jurisdiction – Meaning of matter – Meaning of justiciable controversy.

Words and phrases – "declaratory relief", "federal jurisdiction", "joinder", "justiciable controversy", "matter", "privity", "real interest".

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

**Held:** Appeal dismissed.

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## Migration

See also [Constitutional Law](#): *Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors*.

## 2: CASES RESERVED

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

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### Banking

*Paciocco & Anor v Australia and New Zealand Banking Group Limited*

[M219/2015](#); [M220/2015](#): [\[2016\] HCATrans 9](#); [\[2016\] HCATrans 10](#).

**Date heard:** 4 February 2016; 5 February 2016.

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

**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

*Alqudsi v The Queen*

[S279/2015](#): [\[2016\] HCATrans 13](#).

**Date heard:** 10 February 2016.

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

**Catchwords:**

Constitutional law – Trial by jury for Commonwealth indictable offences – Whether s 80 of the Constitution can be read to permit a state Parliament to pass a statute allowing for a trial to be by a judge alone where the prosecution and accused agree or the accused seeks that outcome and the Court considers it in the interest of justice – Whether such a position would be consistent with *Brown v The Queen*.

Orders made on 10 February 2016 dismissing motion. Written reasons of the Court to be published at a future date.

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## Criminal Law

*The Queen v GW*

**C13/2015:** [\[2015\] HCATrans 325](#).

**Date heard:** 10 December 2015.

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

**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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*IMM v The Queen*

[D12/2015](#): [2016 HCATrans 8](#).

**Date heard:** 3 February 2016

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

**Catchwords:**

Criminal law – Evidence – Tendency evidence – *Evidence (National Uniform Legislation) Act* (NT) (“Uniform Evidence Law”) s 97 – Where appellant 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 when 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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*R & Anor v The Independent Broad-based Anti-corruption Commissioner*

[M246/2015](#): [\[2016\] HCATrans 7](#).

**Date heard:** 2 February 2016

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

**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*

**B69/2015:** [\[2016\] HCATrans 12](#).

**Date heard:** 9 February 2016.

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

**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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*Mok v Director of Public Prosecutions (NSW)*

[S246/2015](#): [\[2016\] HCATrans 14](#).

**Date heard:** 11 February 2016.

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

**Catchwords:**

Criminal 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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## Equity

*Fischer & Ors v Nemeske Pty Ltd & Ors*

[S223/2015](#): [\[2015\] HCATrans 321](#).

**Date heard:** 2 December 2015.

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

**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 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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## Property

*Moreton Bay Regional Council v Mekpine Pty Ltd*  
**B60/2015:** [\[2015\] HCATrans 323](#).

**Date heard:** 8 December 2015.

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

**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 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 appellant resumed part of the new Lot 1 under the provision of the *Acquisition of Land Act* 1967 (Qld) (“ALA”) – 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 s 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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## 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](#): [\[2015\] HCA Trans 288](#); [\[2015\] HCA Trans 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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## 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

*Cunningham & Ors v Commonwealth of Australia & Anor*

[S140/2015](#): *Writ of Summons*

#### Catchwords:

Constitution – s 51(xxxi) – *Remuneration and Other Legislation Amendment Act 2011 (Cth) – Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012 (Cth)* – Acquisition of property on just terms – Where applicants are former members of the House of Representatives – Where applicants occupied positions as Ministers of State or where officeholders of the Parliament or of a House of Parliament – Where Parliament reduced the ‘retiring allowance’ of past members – Where Parliament restricted the number of return trips per year using the ‘Gold Pass’.

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

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### Migration

*The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor*

[S136/2015](#): *Special case.*

#### Catchwords:

Migration – Categories of visas – *Migration Act 1958 (Cth)* (“Act”) – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime - Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

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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.

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### Administrative Law

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

[A29/2015](#): [\[2015\] 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 appellants 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 amenable 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 the circumstances.

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

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### Criminal Law

*Miller v The Queen*

[A28/2015](#): [\[2015\] 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 of 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):** [\[2015\] SASCF 53](#).

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### *Betts v The Queen*

**S281/2015:** [\[2015\] HCATrans 328](#).

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

**Catchwords:**

Criminal law – Sentencing – Where Court of Criminal Appeal found  
that the sentencing judge made errors in the sentencing of  
appellant – Where Court of Appeal considered the matter afresh –  
Whether Court of Appeal erred by failing to consider new evidence  
when exercising the sentencing discretion afresh.

**Appealed from NSWSC (CCA):** [\[2015\] NSWCCA 39](#).

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### *Nguyen v The Queen*

**S271/2015:** [\[2015\] HCATrans 330](#).

**Date heard:** 11 December 2015 – *Special leave granted on limited  
grounds*.

**Catchwords:**

Criminal law – Sentencing – Objective seriousness of offending –  
Whether sentencing judge appropriately considered the objective  
seriousness of the offending – Whether the principle in *The Queen v  
De Simoni* prohibits a sentencing judge from having regard to the  
absence of a fact which would render an offender guilty of a more  
serious offence where that fact is not an element of the more  
serious offence.

**Appealed from NSWSC (CCA):** [\[2013\] NSWCCA 195](#).

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*Presley v The Director of Public Prosecutions for the State of South Australia*

A17/2015: [\[2016\] HCATrans 17](#).

**Date Heard:** 12 February 2016 – *Referred to the Full Court.*

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted of one count of murder – Where appellant plead guilty to one count of aggravated causing of harm with intent to cause harm – 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):** [\[2015\] SASCF 53](#).

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*Smith v The Queen*

A22/2015: [\[2016\] HCATrans 16](#).

**Date Heard:** 12 February 2016 – *Referred to the Full Court.*

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted of 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):** [\[2015\] SASCF 53](#).

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## Equity

*Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor*

**M235/2015:** [\[2015\] HCATrans 335](#).

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

**Catchwords:**

Equity – Promissory estoppel – Where respondent operated restaurants at appellant’s complex - Where the appellant made representations to the respondent that if certain refurbishments were made respondent would be “looked after” when it came time to renew the lease for the premises – Whether an ambiguous representation is capable of founding a promissory estoppel – Whether a promissory estoppel can be found to exist by proving the making and the resiling from a representation made.

**Appealed from VSC (CA):** [\[2014\] VSCA 353](#).

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## Family

*Hall v Hall*

**A20/2015:** [\[2016\] HCATrans 23](#)

**Date Heard:** 12 February 2016 – *Special Leave Granted*

**Catchwords:**

Family – Spousal maintenance – Appeal from an interlocutory order – Where primary judge made order that respondent husband pay spousal maintenance on the basis that applicant wife was ‘unable to support herself adequately’ under s 72(1) *Family Law Act* 1975 (Cth) – Where applicant wife’s deceased father’s will contains ‘wish’ that the applicant wife receives annual payment of \$150,000 net of income tax until such time as she receives a payment of \$16.5 million – Whether voluntary payment is a ‘financial resource’ under the *Family Law Act* 1975 (Cth).

**Appealed from FamCA (FC):** [\[2015\] FamCAFC 154](#)

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## Professions and Trades

*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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See also **Torts:** *Attwells & Anor v Jackson Lalic Lawyers Pty Limited.*

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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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## 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 significantly higher than they would have otherwise been liable for if they had not defended the proceedings – Whether advocates' immunity applies – Whether the advice falls within 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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*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*  
**S243/2015:** [\[2015\] 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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*Deal v Kodakkathanath*  
**M252/2015:** [\[2015\] HCATrans 333](#).

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

### Catchwords:

Workers' compensation – Accident compensation – *Occupational Health and Safety Regulations 2007* (Vic) r 3.1.2 ("regulations") – Where appellant fell off a step ladder whilst attempting to remove large displays from a wall and suffered a knee injury – Whether "associated with" in the phrase "associated with a hazardous manual handling task affecting an employee" requires a close connection between the manual handling task and the anticipated risk – Whether injury is the kind that the regulations are designed to prevent – Whether regulations should be interpreted to apply to an injury occasioned by the stresses or forces involved in the activity.

**Appealed from VSC (CA): [\[2015\] VSCA 191](#).**

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# 5: CASES NOT PROCEEDING OR VACATED

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## Migration

*The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor*

**S136/2015:** [\[2015\] HCATrans 341](#). *Special case.*

**Date Heard:** 14 December 2015 – 10 February 2016 hearing vacated.

**Catchwords:**

Migration – Categories of visas – *Migration Act 1958* (Cth) (“Act”) – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime - Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

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## 6: SPECIAL LEAVE REFUSED

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### 12 February 2016: Canberra

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Brennan-Kuss & Ors	Dietman (A13/2015)	Full Court of Supreme Court of South Australia [2015] SASCFC 73	Application dismissed with costs <a href="#">[2016] HCATrans 18</a>
2.	Martin	The Queen (C11/2015)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2015] ACTCA 38	Application dismissed <a href="#">[2016] HCATrans 15</a>
3.	LFG	The State of Western Australia (P24/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 88	Application dismissed <a href="#">[2016] HCATrans 20</a>
4.	Staskos	Johnson (P25/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 32	Application dismissed <a href="#">[2016] HCATrans 25</a>
5.	Dunn	The Queen (P29/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 126	Application dismissed <a href="#">[2016] HCATrans 19</a>
6.	Poland	The State of Western Australia (P33/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 136	Application dismissed <a href="#">[2016] HCATrans 24</a>
7.	Lowe Pty Ltd & Anor	Belgravia Nominees Pty Ltd (P36/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 143	Application dismissed with costs <a href="#">[2016] HCATrans 21</a>
8.	Marsh & Anor	Baxter (P44/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 169	Application dismissed with costs <a href="#">[2016] HCATrans 22</a>

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## 12 February 2016: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Hills	Pioneer Studios Pty Limited (S163/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 222	Application dismissed with costs <a href="#">[2016] HCATrans 27</a>
2.	Lin	The Queen (S167/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 204	Application dismissed <a href="#">[2016] HCATrans 30</a>
3.	Gall	The Queen (S168/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 152	Application dismissed <a href="#">[2016] HCATrans 28</a>
4.	OC	The Queen (S178/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 212	Application dismissed <a href="#">[2016] HCATrans 26</a>
5.	Waller & Anor	James (S182/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 232	Application dismissed with costs <a href="#">[2016] HCATrans 31</a>
6.	Binetter	BCI Finances Pty Limited & Ors (S184/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 122	Application dismissed with costs <a href="#">[2016] HCATrans 33</a>
7.	O'Connor	The Queen (S195/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 53	Application dismissed <a href="#">[2016] HCATrans 29</a>
8.	Sgro	Australian Associated Motor Insurers Limited (S209/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 262	Application dismissed with costs <a href="#">[2016] HCATrans 34</a>
9.	Alqudsi	Commonwealth of Australia (S259/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 351	Application dismissed with costs <a href="#">[2016] HCATrans 32</a>
10.	Alqudsi	The Queen (S260/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCA 351	Application dismissed <a href="#">[2016] HCATrans 32</a>

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