



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2020] HCAB 5 (10 July 2020)

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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1: SUMMARY OF NEW ENTRIES

[2: Cases Handed Down](#)

Case	Title
<u>Nguyen v The Queen</u>	Evidence
<u>Minister for Immigration and Border Protection v CED16</u>	Immigration

[3: Cases Reserved](#)

Case	Title
<u>Private R v Cowen & Anor</u>	Constitutional Law
<u>Mondelez Australia Pty Ltd v AMWU & Ors; Minister for Jobs and Industrial Relations v AMWU & Ors</u>	Employment Law

[4: Original Jurisdiction](#)

[5: Section 40 Removal](#)

[6: Special Leave Granted](#)

Case	Title
<u><i>Minister for Immigration and Border Protection v EFX17</i></u>	Migration Law
<u><i>The Commissioner of Taxation for the Commonwealth of Australia v Travelex Limited</i></u>	Taxation

[7: Cases Not Proceeding or Vacated](#)

[8: Special Leave Refused](#)

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the June-July 2020 sittings.

Evidence

Nguyen v The Queen

D15/2019: [\[2020\] HCA 23](#)

Judgment delivered: 30 June 2020

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon, Edelman JJ

Catchwords:

Evidence – Criminal trial – Mixed statements – Where appellant interviewed by police prior to being charged – Where appellant made inculpatory and exculpatory statements during interview ("mixed statements") – Where recorded interview relevant and admissible – Where recorded interview not tendered by prosecution at trial – Whether prosecution's obligation to put case fully and fairly requires tender of records of interview containing mixed statements.

Words and phrases – "admissibility of mixed statements", "admissions", "all available, cogent and admissible evidence", "duty of fairness", "ethical practice", "fair trial", "fully and fairly", "inculpatory and exculpatory statements", "miscarriage of justice", "mixed record of interview", "mixed statement", "obligation to tender", "prosecutorial discretion", "prosecutorial duty", "record of interview", "rule of practice", "speculation by the jury", "tactical decision".

Evidence (National Uniform Legislation) Act 2011 (NT) – ss 59(1), 81, 190.

Appealed from NTSC (FC): [\[2019\] NTSC 37](#); (2019) 345 FLR 40

Held: Appeal allowed.

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Immigration

Minister for Immigration and Border Protection v CED16

S347/2019: [\[2020\] HCA 24](#)

Judgment delivered: 30 June 2020

Coram: Gageler, Keane, Nettle, Gordon, Edelman JJ

Catchwords:

Immigration – Refugees – Application for protection visa – Immigration Assessment Authority ("Authority") – Review by Authority under Pt 7AA of Migration Act 1958 (Cth) – Where delegate of Minister for Immigration and Border Protection refused to grant first respondent protection visa – Where decision referred to Authority for review – Where Authority ordinarily obliged to consider "review material" provided by Secretary of Department of Immigration and Border Protection ("Secretary") without considering "new information" – Where review material must include material considered by Secretary to be relevant to review – Where review material included identity assessment form – Where Authority notified that s 473GB applied to identity assessment form – Where notification included certificate purporting to certify that disclosure of information or matter contained in identity assessment form contrary to public interest – Where certificate invalid – Where certificate not before delegate at time of making decision under review – Whether certificate "new information" within meaning of s 473DC(1) – Whether certificate a "document" or contained "information" – Whether Authority could be inferred to have considered that certificate may have been relevant to conduct of review.

Words and phrases – "certificate", "document", "documentation or information of an evidentiary nature", "fact, subject or event", "fast track reviewable decision", "identity assessment form", "information", "new information", "notification", "procedural obligation", "protection visa", "relevant", "relevant to the conduct of the review", "review material".

Migration Act 1958 (Cth) – Pt 7AA.

Appealed from FCA: [\[2018\] FCA 1451](#); (2018) 265 FCR 115

Held: Appeal allowed.

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3: CASES RESERVED

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

Constitutional Law

Private R v Cowen & Anor

S272/2019: [\[2020\] HCATrans 90](#)

Date heard: 30 June 2020

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon, Edelman JJ

Catchwords:

Constitutional law – Where member of defence forces charged with assault occasioning bodily harm pursuant to s 24 of *Crimes Act 1900* (ACT) as purportedly applied to defence members and defence civilians by s 61(3) of *Defence Force Discipline Act 1982* (Cth) – Where person charged objected to jurisdiction of Defence Force Magistrate to hear and determine charge on basis that prosecution could not reasonably be regarded as substantially serving purpose of maintaining or enforcing service discipline – Where objection to jurisdiction dismissed – Whether writ of prohibition should issue to prohibit Defence Force Magistrate from hearing and determining charge – Whether certain provisions of *Defence Force Discipline Act 1982* (Cth), insofar as they purport to confer jurisdiction on “service tribunal” to hear and determine charge against “defence member” for offence against *Crimes Act 1900* (ACT) solely on basis of person’s status as “defence member”, are beyond Commonwealth legislative power in circumstances where alleged offence committed in Australia but not on “service land” or “service property”, where persons involved were off duty, in time of peace and civil order, and where civil courts said to be reasonably available.

Application for writ of prohibition referred to Full Court on 3 March 2020.

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Criminal Law

Singh v The Queen

D16/2019: [\[2020\] HCATrans 29](#)

Date heard: 17 March 2020

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon, Edelman JJ

Catchwords:

Criminal law – Prosecutor’s duties regarding “mixed statement” records of interview containing both inculpatory and exculpatory material – Where Crown chose not to adduce applicant’s record of interview of 8 June 2017 – Whether Crown’s decision not to adduce record of interview deprived applicant of reasonable chance of acquittal – Whether prosecution ordinarily required by duty of fairness to tender “mixed statement” record of interview at trial of accused when it is admissible – Whether prosecution permitted to decline to tender “mixed statement” records of interview for purely tactical reasons.

Appealed from NTSC (CCA): [\[2019\] NTCCA 8](#); (2019) 344 FLR 137; (2019) 277 A Crim R 35

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Employment Law

Mondelez Australia Pty Ltd v AMWU & Ors; Minister for Jobs and Industrial Relations v AMWU & Ors

M160/2019; M165/2019: [\[2020\] HCATrans 97](#)

Date heard: 7 July 2020.

Coram: Kiefel CJ, Gageler, Nettle, Gordon, Edelman JJ

Catchwords:

Employment law – Where Mondelez operates food manufacturing plants – Where certain employees work in 12-hour shifts – Where entitlement to paid personal/carer’s leave under Enterprise Agreement – Where Mondelez deducts 12 hours from accrued paid personal/carer’s leave balance when such leave taken for single 12-hour shift – Whether majority of Full Court erred by holding that “day” in s 96(1) of *Fair Work Act 2009* (Cth) means “the portion of a 24 hour period that would otherwise be allotted to work” rather than an average working day calculated as employee’s average daily ordinary hours of work based on standard five-day working week – Whether Full Court erred in construing s 96(1) as entitling national system employees (other than casuals) to paid personal/carer’s leave equivalent to 10 ‘working’ days (of whatever duration would have been worked on day in question) per year of service.

Appealed from FCA (FC): [\[2019\] FCAFC 138](#); (2019) 270 FCR 513; (2019) 289 IR 29

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Tort

Lewis v The Australian Capital Territory

C14/2019: [\[2020\] HCATrans 67](#)

Date heard: 2 June 2020

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman JJ

Catchwords:

Tort – False imprisonment – Compensatory damages – Vindictory damages – Principle of inevitability – Where offender sentenced to 12 months’ imprisonment to be served by periodic detention – Where Sentence Administration Board (“Board”) cancelled periodic detention without giving offender opportunity to decide whether to attend before Board – Where offender arrested and imprisoned for 82 days – Where Board’s decision a nullity and imprisonment held to be unlawful – Where offender awarded nominal damages of \$1 – Whether offender would have been lawfully imprisoned if had not been unlawfully imprisoned and therefore not entitled to substantial compensatory damages – Whether entitled to vindictory damages.

Appealed from ACTSC (CA): [\[2019\] ACTCA 16](#)

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State of Queensland v The Estate of the Late Jennifer Leanne Masson

B63/2019: [\[2020\] HCATrans 80](#)

Date heard: 11 June 2020

Coram: Kiefel CJ, Bell, Keane, Nettle, Gordon JJ

Catchwords:

Tort – Negligence – Where appellant suffered severe asthma attack – Where ambulance officer treated appellant initially with salbutamol and later with adrenaline – Where appellant suffered hypoxic brain damage and died without regaining consciousness 13 years later – Where ambulance officer’s manual instructed officer to “consider adrenaline”, not salbutamol – Whether Court of Appeal

erred in overturning trial judge's conclusions that ambulance officer had considered administration of adrenaline in accordance with manual, and that responsible body of opinion in medical profession supported administration of salbutamol – Whether Court of Appeal erred in holding that ambulance officer immediately rejected use of adrenaline because he misunderstood guideline, and that following responsible body of medical opinion would nonetheless involve failure to take reasonable care because manual referred to adrenaline.

Appealed from QSC (CA): [\[2019\] QCA 80](#)

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Trade Practices

Berry & Anor v CCL Secure Pty Ltd

S315/2019: [\[2020\] HCATrans 69](#)

Date heard: 3 June 2020

Coram: Bell, Gageler, Keane, Nettle, Edelman JJ

Catchwords:

Trade practices – Misleading and deceptive conduct and fraud – Measuring damages – Where misleading, deceptive and fraudulent conduct used to obtain signature terminating Agency Agreement – Whether damages to be assessed pursuant to s 82 of *Trade Practices Act 1974* (Cth) – Whether person guilty of misleading and deceptive conduct and fraud cannot be heard to say that lawful means were available for inflicting same harm – Whether, for purposes of reducing damages, respondent failed to discharge onus of proving possibility or probability of lawful means being used to end Agency Agreement.

Appealed from FCA (FC): [\[2019\] FCAFC 81](#)

Appealed from FCA (FC): [\[2019\] FCAFC 92](#)

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4: ORIGINAL JURISDICTION

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

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5: SECTION 40 REMOVAL

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

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6: SPECIAL LEAVE GRANTED

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

Administrative Law

CXXXVIII v Commonwealth of Australia & Ors

A30/2019: [\[2019\] HCATrans 206](#)

Date heard: 18 October 2019 – *Special leave granted.*

Catchwords:

Administrative law – Criminal investigation – Where summonses and notices to produce issued pursuant to determinations made by Board of Australian Criminal Intelligence Commission under *Australian Crime Commission Act 2002* (Cth) (“Act”) – Whether first and second determinations validly made within scope of power in s 7C of Act – Whether second summons to appear before Examiner and second notice to produce validly issued pursuant to determinations – Whether second notice to attend and produce valid and not in excess of power in s 21A of Act – Whether Board of Commission can validly make determination which creates as a “special investigation” an “investigation” yet to be identified or undertaken.

Appealed from FCA (FC): [\[2019\] FCAFC 54](#); (2019) 266 FCR 339; (2019) 366 ALR 436; (2019) 164 ALD 33

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Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v AAM17 & Anor

P23/2020: [\[2020\] HCATrans 66](#)

Date heard: 29 May 2020 – *Special leave granted.*

Catchwords:

Administrative law – Procedural fairness – Where first respondent unsuccessfully applied for protection visa and where Administrative Appeals Tribunal affirmed refusal decision – Where first respondent sought judicial review of Tribunal’s decision in Federal Circuit Court (“FCC”) – Where first respondent appeared in person before FCC with assistance of translator – Where at conclusion of hearing FCC made orders dismissing application and gave ex tempore reasons –

Where reasons for judgment published two months later after first respondent had instituted appeal to Federal Court – Where Federal Court allowed appeal on basis that first respondent denied procedural fairness by FCC and that there had therefore been no real exercise of judicial power in the circumstances – Where Federal Court considered that FCC’s review of Tribunal’s decision otherwise unaffected by error warranting appellate attention – Whether requirement of procedural fairness, either generally or in relation to courts, includes duty to provide reasons – If yes, whether such requirement extends to requiring reasons to be provided in particular manner and/or time – What is appropriate form of order for court conducting appeal by way of rehearing to make in circumstances where appellate court finds court below denied appellant procedural fairness and also considers decision under appeal correct.

Appealed from FCA: [\[2019\] FCA 1951](#)

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Northern Land Council & Anor v Quall & Anor

D21/2019: [\[2019\] HCATrans 232](#)

Date heard: 15 November 2019 – *Special leave granted.*

Catchwords:

Administrative law – Delegation of statutory functions and powers – Administrative necessity – Statutory interpretation – Where proceedings at first instance challenged certification of application to register Kenbi Indigenous Land Use Agreement on ground that it had been done without “delegated authority” – Where Full Court held Pt 11 of *Native Title Act 1993* (Cth) evinced intention that certification functions could not be delegated – Whether Northern Land Council had power to delegate its certification functions under s 203BE(1)(b) of *Native Title Act 1993* (Cth) to its Chief Executive Officer.

Appealed from FCA (FC): [\[2019\] FCAFC 77](#); (2019) 268 FCR 228; (2019) 367 ALR 216; (2019) 164 ALD 63

Appealed from FCA (FC): [\[2019\] FCAFC 101](#)

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Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd & Ors

B34/2020: [\[2020\] HCATrans 73](#)

Date heard: 5 June 2020 – *Special leave granted on limited grounds.*

Catchwords:

Administrative law – Apprehended bias – Relief – Jurisdiction of inferior courts – Where first respondent applied for two mining leases and to amend existing environmental authority – Where appellant lodged objections to applications – Where Land Court of Queensland rejected applications – Where first respondent sought judicial review of Land Court’s decision, urging grounds that included apprehended bias and errors in relation to groundwater issues – Where Queensland Supreme Court rejected bias grounds but accepted groundwater grounds and remitted issues relating to groundwater to Land Court for redetermination, holding that Land Court bound by original findings and conclusions on questions other than groundwater issues – Where appellant appealed against remittal orders and first respondent cross-appealed on apprehended bias issue – Where Land Court, differently constituted, proceeded with hearing in accordance with remittal orders despite pending appeal, and recommended that applications should be approved – Where Court of Appeal subsequently dismissed appeal on groundwater issues but allowed cross-appeal on apprehended bias – Where despite allowing cross-appeal and making declaration that Land Court’s original decision affected by want of procedural fairness, Court of Appeal did not set aside remittal orders – Whether in circumstances where reviewing court concludes decision of inferior court affected by reasonable apprehension of bias, reviewing court can refuse to set aside decision below and order new trial either at all, in the absence of exceptional circumstances, or on the basis of futility – Whether order of superior court requiring inferior court to proceed in certain way can augment jurisdiction of inferior court so as to validate decision of inferior court that would otherwise be nullity.

Appealed from QSC (CA): [\[2019\] QCA 184](#)

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Civil Procedure

Wigmans v AMP Limited & Ors

S67/2020: [\[2020\] HCATrans 52](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Civil procedure – Representative proceedings – Where multiple representative proceedings on foot against respondent in single forum – Where each plaintiff sought stay of proceedings commenced by other plaintiffs – Where primary judge applied

multifactorial analysis to determine which proceeding should progress – Where NSW Court of Appeal dismissed appeal from primary judge’s decision – Whether Pt 10 of *Civil Procedure Act 2005* (NSW) authorised approach taken by primary judge – Whether permissible for court faced with multiple open class actions conducted on basis of different funding models and with different incentives, disincentives and risk profiles to assume, without findings in evidence, that different proceedings equally likely to achieve possible settlement or judgment outcome within range of possible outcomes.

Appealed from NSWSC (CA): [\[2019\] NSWCA 243](#); (2019) 373 ALR 323

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Corporations

Westpac Securities Administration Ltd & Anor v Australian Securities and Investments Commission

S69/2020: [\[2020\] HCATrans 57](#)

Date heard: 24 April 2020 – *Special leave granted.*

Catchwords:

Corporations – Financial product advice – *Corporations Act 2001* (Cth) s 766B(3)(b) – Distinction between personal advice and general advice – Where bank customers received letters or emails highlighting benefits of consolidating superannuation and offering to conduct free search to identify superannuation accounts that customers may have held with other providers – Where representative of bank then called customers, providing them with any relevant search results and offering to roll over superannuation accounts into their account with bank – Where Full Court of Federal Court held that bank provided financial product advice (within meaning of s 766B(1) of *Corporations Act*) to customers – Whether that financial product advice was personal advice – Whether objective limb of definition of “personal advice” in s 766B(3)(b) depends on whether reasonable person might expect that advice provider had *in fact* considered recipient’s personal circumstances or that advice provider *should* have considered those circumstances – Whether consideration of recipient’s personal circumstances (within meaning of s 766B(3)(b)) requires advice provider to engage with and evaluate those circumstances in formulating advice – Extent to which a recipient’s “objectives, financial situation and needs” must be considered by advice provider for advice to be personal advice.

Appealed from FCA (FC): [\[2019\] FCAFC 187](#); (2019) 373 ALR 455; (2019) 141 ACSR 1

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Criminal Law

Bell v The Queen

H2/2020: [\[2020\] HCATrans 77](#)

Date determined: 5 June 2020 – *Special leave granted.*

Catchwords:

Criminal law – Defences – Honest and reasonable mistake – Where applicant charged with one count of rape and one count of supply of controlled drug to child – Where trial judge left defence of honest and reasonable mistake as to age in relation to rape charge – Where counsel for applicant requested similar direction in respect of supply charge – Where trial judge refused to make such direction on basis that defence of honest and reasonable mistake as to age would not relieve applicant of criminal responsibility with respect to supply charge – Where jury convicted applicant of supply charge but could not reach verdict on rape or alternative charge of sexual intercourse with person under age of 17 – Where at retrial of sexual offence jury found applicant not guilty of rape but convicted on alternative charge – Where Court of Criminal Appeal upheld trial judge’s decision that defence of honest and reasonable mistake as to age not available in relation to supply charge – Whether defence of honest and reasonable mistake of fact only available where its successful use would lead to defendant not being guilty of any crime.

Appealed from QCA: [\[2019\] TASCCA 19](#)

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GBF v The Queen

B18/2020: [\[2020\] HCATrans 47](#)

Date determined: 15 April 2020 – *Special leave granted.*

Catchwords:

Criminal law – Right to silence – Presumption of innocence – Where trial judge said to jury that lack of sworn evidence from appellant contradicting complainant’s evidence might “make it easier” to assess complainant’s credibility – Where appellant subsequently

convicted – Where Queensland Court of Appeal held that trial judge’s statement was error but did not occasion miscarriage of justice where no redirection sought and where other contrary directions given – Whether statement to jury that undermines right to silence and presumption of innocence can be held to not amount to miscarriage of justice.

Appealed from QCA: [\[2019\] QCA 4](#)

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Peniamina v The Queen

B32/2020: [\[2020\] HCATrans 75](#)

Date determined: 5 June 2020 – *Special leave granted.*

Catchwords:

Criminal law – Defences – Provocation – *Criminal Code* (Qld) s 304 – Where applicant charged with murdering his wife – Where applicant pleaded not guilty to murder but guilty to manslaughter on basis of provocation – Where applicant bore onus of proving provocation – Where jury convicted applicant of murder – Where Court of Appeal held by majority that jury had not been misdirected as to provocation and dismissed applicant’s appeal against conviction – Whether operation of s 304(3)(c) confined to provocative conduct identified by applicant as causing loss of self-control, or whether jury may also consider other conduct.

Appealed from QCA: [\[2019\] QCA 273](#)

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The Queen v Abdirahman-Khalif

A5/2020: [\[2020\] HCATrans 38](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Criminal law – Terrorism – Where respondent charged with offence of membership of terrorist organisation contrary to s 102.3(1) of *Criminal Code* (Cth) – Where respondent convicted at trial – Where respondent successfully appealed against conviction – Whether prosecution must adduce evidence of terrorist organisation’s admission practices in order to prove that accused person has taken steps to become member of that organisation – Whether majority of CCA erred in construing “organisation” for purposes of Div 102 of *Criminal Code* (Cth).

Appealed from SASC (CCA): [\[2019\] SASFC 133](#)

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Evidence

Roy v O'Neill

D2/2020: [\[2020\] HCATrans 43](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Evidence – Admissibility of evidence obtained in course of “pro-active” policing of compliance with Domestic Violence Order – Whether common law recognises implied licence permitting all people, including police, to attend upon unobstructed private property as far as front door and to knock on front door for purpose of lawful communication, such licence only being excluded where attendee otherwise has unlawful purpose – How to ascertain existence and scope of any implied licence at common law in favour of person who attends on unobstructed private property only so far as front door – Nature of relationship between common law doctrines of implied licence and police powers to prevent breach of peace.

Appealed from NTSC (CA): [\[2019\] NTCA 8](#); (2019) 345 FLR 29

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Family Law

Clayton v Bant

B21/2020: [\[2020\] HCATrans 50](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Family law – Foreign divorce – *Res judicata* – Where respondent obtained fault-based divorce from Dubai court with orders that appellant repay him marriage dowry – Where appellant sought orders in Australia concerning property interests and spousal maintenance under *Family Law Act 1975* (Cth) – Whether foreign divorce precluded prosecution of those proceedings on basis that

Dubai court finally determined relevant causes of action between the parties.

Appealed from FamCA (FC): [\[2019\] FamCAFC 200](#); (2019) 60 Fam LR 152

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Hsiao v Fazarri

M137/2019: [\[2019\] HCATrans 196](#)

Date determined: 10 October 2019 – *Special leave granted.*

Catchwords:

Family law – Property proceedings – Order under s 79 of *Family Law Act 1975* (Cth) – Where agreement between parties intended to apply to property settlement proceedings but does not fall within Pt VIIIA or Div 4 of Pt VIIIAB of Act – Whether circumstances in which additional 40% legal interest in property obtained and Deed of Gift were distractions in disposition of Full Court appeal – Whether admission of further evidence would have produced different result in Full Court and would not be against interests of justice – Whether trial judge failed to take Deed of Gift into account in making property settlement order – Whether finding of contributions failed to take into account legal interest in property prior to marriage.

Appealed from FamCA (FC): [\[2019\] FamCAFC 37](#)

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Intellectual Property

Calidad Pty Ltd & Ors v Seiko Epson Corporation & Anor

S329/2019: [\[2019\] HCATrans 225](#)

Date heard: 15 November 2019 – *Special leave granted.*

Catchwords:

Intellectual property – Patents – Implied licence – Where Calidad imports and sells printer cartridges modified by third party – Where Seiko Epson claims its two patents infringed by Calidad's conduct – Whether Full Court erred in finding infringement – Whether modifications made to printer cartridges resulted in making of "new" printer cartridges embodying invention as claimed in claim 1 of each patent – Whether Full Court erred in failing to have regard

to substance of invention claimed in claim 1 of each patent or to direct attention to whether modifications constituted material changes to claimed features of invention – Whether conduct was within scope of any implied licence arising upon unrestricted first sale by patentee of printer cartridges or otherwise involved permissible repair or modification of those printer cartridges – Whether patentee’s rights under s 13 of *Patents Act 1990* (Cth) exhausted in respect of printer cartridges at time of first sale.

Appealed from FCA (FC): [\[2019\] FCAFC 115](#); (2019) 270 FCR 572; (2019) 370 ALR 563; (2019) 142 IPR 381

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Migration Law

ABT17 v Minister for Immigration and Border Protection & Anor
M140/2019: [\[2019\] HCATrans 207](#)

Date heard: 18 October 2019 – *Special leave granted on limited grounds.*

Catchwords:

Migration law – Protection visa – Where delegate accepted as plausible that applicant had been sexually tortured – Where such claim not accepted by Immigration Assessment Authority (“IAA”) – Whether IAA decision tainted by jurisdictional error due to failure to exercise discretion under s 473DC of *Migration Act 1958* (Cth) to invite applicant to give new information in form of interview – Whether failure of IAA to exercise its s 473DC discretion was material to decision and constituted jurisdictional error.

Appealed from FCA: [\[2019\] FCA 613](#)

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Applicant S270/2019 v Minister for Immigration and Border Protection
S47/2020: [\[2020\] HCATrans 44](#)

Date heard: 20 March 2020 – *Special leave granted on limited grounds.*

Catchwords:

Migration law – Non-refoulement – Where appellant’s visa was cancelled on character grounds pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where appellant sought to have cancellation decision revoked pursuant to s 501CA(4) of Act – Whether Minister

for Immigration and Border Protection, when determining whether to exercise power under s 501CA(4) to revoke decision to cancel visa made pursuant to s 501(3A), must consider whether person seeking revocation is owed non-refoulement obligations by Australia.

Appealed from FCA (FC).

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AUS17 v Minister for Immigration and Border Protection & Anor
S71/2020: [\[2020\] HCATrans 55](#)

Date heard: 24 April 2020 – *Special leave granted on limited ground.*

Catchwords:

Migration law – *Migration Act 1958* (Cth) s 473DD – Circumstances in which Immigration Assessment Authority (“IAA”) can consider new information when reviewing a fast track reviewable decision – Where appellant applied for Safe Haven Enterprise Visa and application refused by Minister’s delegate – Where appellant’s representative supplied IAA with further materials including letter of support by third party written after date of delegate’s decision – Where IAA considered that new information in letter could have been provided to the delegate, and so concluded, on basis of s 473DD(b)(i), that exceptional circumstances did not exist such that it could consider new information in letter – Whether failure to satisfy condition in s 473DD(b)(i) sufficient basis for IAA to conclude exceptional circumstances did not exist within meaning of s 473DD(a) where s 473DD(b)(ii) satisfied.

Appealed from FCA: [\[2019\] FCA 1686](#); (2019) 167 ALD 313

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DVO16 v Minister for Immigration and Border Protection & Anor
S66/2020: [\[2020\] HCATrans 51](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Migration law – Fast track review process – *Migration Act 1958* (Cth) Pt 7AA – Where appellant applied for temporary protection visa – Where Minister’s delegate conducted interview with appellant – Where translation errors and omissions occurred in interview – Where Minister’s delegate refused application – Where, relying on material obtained in interview, Immigration Assessment Authority

("IAA") reviewed delegate's decision – Where IAA affirmed delegate's decision – Whether, in circumstances where material translation error occurred in delegate's interview and IAA relies on material obtained in interview in reviewing delegate's decision under Pt 7AA, IAA needs to have actual or constructive knowledge of translation error for jurisdictional error to arise.

Appealed from FCA (FC): [\[2019\] FCAFC 157](#)

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Minister for Immigration and Border Protection v EFX17

B4/2020: [\[2020\] HCATrans 93](#)

Date heard: 3 July 2020 – *Special leave granted on limited grounds.*

Catchwords:

Migration law – Visa cancellation – Character test – *Migration Act 1958* (Cth) ss 496, 501, 501CA – Notice of cancellation – Where Minister's delegate made decision under s 501(3A) to cancel respondent's protection visa while respondent serving sentence of imprisonment – Where pursuant to duties in s 501CA(3) Minister caused to be given to respondent written notice containing notification of cancellation decision, relevant information as to reason for decision, and invitation to make representations about revocation of cancellation decision – Where notice given to respondent by officer of Queensland Corrective Services – Where respondent commenced proceedings in Federal Circuit Court challenging validity of notice – Where Circuit Court dismissed challenge – Where appeal to Full Court of Federal Court allowed by majority – Whether Minister, in performing duties under s 501CA(3), must have regard to matters relating to former visa holder's capacity, including literacy, capacity to understand English, mental capacity and health, and facilities available to them in custody – Whether fulfilment of duties in s 501CA(3) dependent on former visa holder's ability to comprehend notice, particulars, and invitation to make representations – Whether valid performance of duties in s 501CA(3) conditional on person performing them holding delegated authority under s 496(1) or whether s 497 applicable.

Appealed from FCA (FC): [\[2019\] FCAFC 230](#); (2019) 374 ALR 272; (2019) 167 ALD 225

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Minister for Home Affairs & Ors v DMA18 as Litigation Guardian for DLZ18 & Anor; Minister for Home Affairs & Anor v Marie Theresa Arthur as Litigation Representative for BXD18; Minister

for Home Affairs & Anor v FRX17 as Litigation Representative for FRM17; Minister for Home Affairs & Anor v DJA18 as Litigation Representative for DIZ18

[M27/2020; M28/2020; M29/2020; M30/2020](#): [\[2020\] HCATrans 39](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Migration law – Regional processing – Jurisdiction of Federal Court of Australia – Where respondents commenced proceedings against Commonwealth – Where s 494AB of *Migration Act 1958* (Cth) barred certain proceedings relating to “transitory persons” from being instituted or continued in any court other than High Court – Whether proceedings were, for purposes of s 494AB(1)(ca), proceedings “relating to the performance or exercise of a function” under s 198AHA(2) in relation to a transitory person – Whether proceedings were, for purposes of s 494AB(1)(a), proceedings relating to exercise of powers under s 198B of Act – Whether proceedings were, for purposes of s 494AB(1)(d), proceedings relating to removal of a transitory person from Australia under the Act.

Appealed from FCA (FC): [\[2019\] FCAFC 148](#); (2019) 271 FCR 254

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Minister for Home Affairs v DUA16 & Anor; Minister for Home Affairs v CHK16 & Anor

[M57/2020; M58/2020](#): [\[2020\] HCATrans 64](#)

Date heard: 29 May 2020 – *Special leave granted.*

Catchwords:

Migration law – Third party fraud – Where migration agent (“Agent”) acting for each of respondents provided “submissions” to Immigration Assessment Authority (“IAA”) on their behalf – Where “submissions” pro forma and contained information that did not relate to respondents – Where there was no evidence that respondents had asked Agent to make particular “submissions” to IAA, nor evidence that either respondent wanted to provide “new information” to IAA – Where Full Court of Federal Court held that Agent engaged in fraudulent conduct and dismissed appeal from decision of Federal Circuit Court to quash IAA’s decisions in respondents’ cases on ground that they were stultified by Agent’s fraud – Whether Agent’s fraudulent conduct in how respondents’ cases put to IAA stultified, disabled, or subverted IAA’s review of Minister’s delegate’s decision – Status and significance of

“submissions” in assessing effect of fraudulent conduct on IAA’s review processes.

Appealed from FCA (FC): [\[2019\] FCAFC 221](#)

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Minister for Immigration and Border Protection v Makasa
S103/2020: [\[2020\] HCATrans 81](#)

Date determined: 12 June 2020 – *Special leave granted.*

Catchwords:

Migration law – Visa cancellation – Character test – Substantial criminal record – Where Minister’s delegate cancelled respondent’s visa on character grounds – Where Administrative Appeals Tribunal (“AAT”) set aside delegate’s decision and decided not to cancel visa – Where Minister subsequently personally purported to cancel respondent’s visa – Whether the Minister can re-exercise discretion conferred by s 501(2) of *Migration Act 1958* (Cth) to cancel person’s visa where AAT has previously set aside Minister’s delegate’s earlier decision to cancel visa under s 501(2) – If yes, whether Minister can rely on same offences (going to whether person has substantial criminal record for purposes of character test) to enliven discretion in s 501(2) as AAT relied upon when reviewing delegate’s decision.

Appealed from FCA (FC): [\[2020\] FCAFC 22](#); (2020) 376 ALR 191

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Private International Law

Mackellar Mining Equipment Pty Ltd and Dramatic Investments Pty Ltd t/as Partnership 818 & Anor v Thornton & Ors
B56/2019: [\[2019\] HCATrans 188](#)

Date heard: 13 September 2019 – *Special leave granted.*

Catchwords:

Private international law – Restraint of foreign proceedings – Where plane crash in Queensland killed two pilots and 13 passengers – Where respondents, relatives of deceased, commenced proceedings against appellants in Missouri in May 2008 – Where appellants brought application in March 2017 in Queensland Supreme Court for permanent anti-suit injunction in respect of Missouri proceedings –

Whether complete relief was available in Queensland proceedings and nothing additional could be gained in Missouri proceedings – Whether continuation of Missouri proceeding, after all foreign parties removed, was vexatious or oppressive or otherwise unconscionable within *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345.

Appealed from QSC (CA): [\[2019\] QCA 77](#); (2019) 367 ALR 171

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Real Property

Deguisa & Anor v Lynn & Ors

A4/2020: [\[2020\] HCATrans 37](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Real property – Torrens title – Restrictive covenants – Where appellants registered proprietors of Lot 3 and have planning development approval to demolish house on Lot 3, subdivide lot, and build two single story dwellings – Where respondents executors of estate of Mrs Fielder who was party to original Memorandum of Encumbrance containing restrictive covenants subject of proceedings – Where third respondent owns two properties near Lot 3 – Where respondents contended that Lot 3 and 53 other lots were created from earlier subdivision and sold in accordance with building scheme such that restrictive covenants are enforceable to prevent appellants from developing Lot 3 as they wish to – Whether there exists “governing principle” to effect that what is “notified” to prospective purchaser by vendor’s certificate of title is everything that would have come to their knowledge if prudent conveyancer had made such searches as ought reasonably to have been made based on what appears on certificate of title – Whether approach taken by majority of Full Court of Supreme Court of South Australia in decision under appeal to ascertaining whether subsequent purchaser of Torrens system land is bound by restrictive covenant conflicts with approach taken in *Burke v Yurilla* (1991) 56 SASR 382 – Whether purchaser of land under Torrens system obliged to search other titles for evidence of land being subject of building scheme if note is made on encumbrance form that the “encumbrance forms portion of a common building scheme” but where land or lots involved in building scheme not indicated.

Appealed from SASC (FC): [\[2019\] SASFC 107](#)

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Taxation

*The Commissioner of Taxation for the Commonwealth of Australia
v Travelex Limited*

S116/2020: [\[2020\] HCATrans 89](#)

Date determined: 25 June 2020 – *Special leave granted.*

Catchwords:

Taxation – Overpayments – Interest – Where supplies which were GST-free wrongly included in Business Activity Statement – Where on 28 June 2012 Commissioner allocated credit of \$149,020 to respondent’s Running Balance Account (“RBA”) and recorded “effective date” of allocation as 16 December 2009 – Whether Commissioner’s actions on 28 June 2012, even if made in error and unreflective of any entitlement under a taxation law on part of respondent, created obligation on part of Commissioner to refund “RBA surplus” within meaning of Pt IIB of *Taxation Administration Act 1953* (Cth) and entitlement on part of respondent to interest under *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth).

Appealed from FCA (FC): [\[2020\] FCAFC 10](#)

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 25 June 2020 (Sydney)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	BPI17	Minister for Immigration and Border Protection & Anor (M24/2020)	Federal Court of Australia [2020] FCA 252	Application dismissed [2020] HCASL 148
2.	Eshow	Zaia (S20/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 10	Application dismissed [2020] HCASL 149
3.	Mohamed	Minister for Immigration and Border Protection & Anor (S29/2020)	Federal Court of Australia [2020] FCA 158	Application dismissed [2020] HCASL 150
4.	SZSCU	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S40/2020)	Federal Court of Australia [2020] FCA 232	Application dismissed [2020] HCASL 151
5.	Malik	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S44/2020)	Federal Court of Australia [2020] FCA 253	Application dismissed [2020] HCASL 152
6.	Australia Pacific LNG Pty Limited & Ors	The Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport (B11/2020)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 15	Application dismissed with costs [2020] HCASL 153

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3 July 2020: Sydney (and by video-link)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Zheng & Anor	Commissioner of the Australian Federal Police & Anor (A2/2020)	Full Court of the Supreme Court of South Australia [2018] SASCFC 157	Application dismissed with costs [2020] HCATrans 91
2.	Melrob Investments Pty Ltd & Ors	Blong Ume Nominees Pty Ltd & Ors (A1/2020)	Full Court of the Supreme Court of South Australia [2019] SASCFC 151	Application dismissed with costs [2020] HCATrans 92
3.	Racing Queensland Board	Commissioner of Taxation (B5/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 224	Application dismissed with costs [2020] HCATrans 94
4.	Scone Race Club Limited	Commissioner of Taxation (S2/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 225	Application dismissed with costs [2020] HCATrans 95
5.	Phillips	Small & Ors (S301/2019)	Supreme Court of New South Wales (Court of Appeal) [2019] NSWCA 222 [2019] NSWCA 268	Application dismissed with costs [2020] HCATrans 96

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Publication of Reasons: 8 July 2020 (Melbourne)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Comptroller-General of Customs	Alstom Transport Australia Pty Ltd (S53/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 43	Application dismissed with costs [2020] HCASL 154
2.	Singh	Minister for Home Affairs & Anor (B12/2020)	Federal Court of Australia [2020] FCA 203	Application dismissed [2020] HCASL 155

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