



HIGH COURT BULLETIN

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[2014] HCAB 06 (25 August 2014)

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

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Case	Title
Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd	Administrative Law
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Korda and Ors v Australian Executor Trustees (SA) Limited	Equity
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5. Cases Not Proceeding or Vacated

Case	Title
Plaintiff S89/2014 v Minister for Immigration and Border Protection & Anor	Migration

1: CASES HANDED DOWN

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

Constitutional Law

Pollentine & Anor v Bleijie & Ors

B39/2013: [\[2014\] HCA 30](#).

Judgment delivered: 14 August 2014.

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

Catchwords:

Constitutional law – Constitution, Ch III – Institutional integrity of State courts – Section 18(1) of *Criminal Law Amendment Act* 1945 (Q) allowed trial judge to direct two or more medical practitioners to inquire as to mental condition of person found guilty of offence of sexual nature committed upon or in relation to child – Where medical practitioners report that offender is incapable of exercising proper control over offender's sexual instincts, s 18(3) allowed trial judge to declare offender to be so incapable and to direct offender to be detained in institution during Her Majesty's pleasure – Section 18(5) required offender to be detained and not to be released until Governor in Council satisfied on report of two legally qualified medical practitioners that it is expedient to release offender – Plaintiffs found guilty of committing sexual offences against children – Plaintiffs declared to be incapable of exercising proper control over sexual instincts – Plaintiffs detained in institution at Her Majesty's pleasure – Whether s 18 repugnant to or incompatible with institutional integrity of State courts.

Words and phrases – “during Her Majesty's pleasure”, “expedient to release”, “institutional integrity”, “is incapable of exercising proper control over ... sexual instincts”.

Held: Questions answered.

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Criminal Law

Fitzgerald v The Queen

A9/2014: [\[2014\] HCA 28](#).

Judgment delivered: 13 August 2014.

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

Catchwords:

Criminal law – Evidence – DNA evidence – Where appellant's DNA obtained from object found at crime scene – Whether DNA evidence sufficient to establish beyond reasonable doubt appellant's presence at, and participation in, crime committed.

Words and phrases – “DNA evidence”, “joint enterprise”, “primary transfer”, “secondary transfer”.

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

Held: Appeal allowed.

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Evidence

Honeysett v R

S57/2014: [\[2014\] HCA 29](#).

Judgment delivered: 13 August 2014.

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

Catchwords:

Evidence – Admissibility – Opinion evidence – Section 79(1) of *Evidence Act 1995 (NSW)* exception for evidence of opinion based wholly or substantially on specialised knowledge based on training, study or experience – Prosecution adduced evidence of anatomist regarding physical characteristics common to persons depicted in images – Whether opinion based wholly or substantially on specialised knowledge.

Words and phrases – “opinion rule”, “specialised knowledge”, “training, study or experience”, “wholly or substantially”.

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

Held: Appeal allowed.

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Versi v The Queen

S296/2013: [\[2014\] HCATrans 163](#).

Special leave application heard: 14 August 2014.

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

Catchwords:

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

Application for special leave to appeal from NSW (CCA): [\[2013\] NSWCCA 206](#).

Held: Special leave refused.

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2: CASES RESERVED

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

Constitutional Law

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

S36; S37; S38/2014: [\[2014\] HCATrans 119](#); [\[2014\] HCATrans 120](#).

Date heard: 10 and 11 June 2014.

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

Catchwords:

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

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

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

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Contract Law

Commonwealth Bank of Australia v Barker

A1/2014: [\[2014\] HCATrans 73](#), [\[2014\] HCATrans 74](#).

Date heard: 8 and 9 April 2014.

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

Catchwords:

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

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

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Criminal Law

Kentwell v The Queen; O’Grady v The Queen

S113; S114/2014: [\[2014\] HCATrans 159](#).

Date heard: 7 August 2014.

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

Catchwords:

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

Appealed from NSW (CCA): [\[2013\] NSWCCA 266](#); [\[2013\] NSWCCA 281](#).

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Insurance

Maxwell v Highway Hauliers Pty Ltd

P12/2014: [\[2014\] HCATrans 158](#).

Date heard: 6 August 2014.

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

Catchwords:

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

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

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Migration

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

S4/2014: [\[2014\] HCATrans 162](#).

Date heard: 13 August 2014.

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

Catchwords:

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

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Patents

Alphapharm Pty Ltd v H Lundbeck A/S & Ors
S97/2014: [\[2014\] HCATrans 160](#).

Date heard: 8 August 2014.

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

Catchwords:

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

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

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Tort Law

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor
S66/2014: [\[2014\] HCATrans 126](#).

Date heard: 18 June 2014.

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

Catchwords:

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

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

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Trade Marks

Cantarella Bros Pty Limited v Modena Trading Pty Ltd
S67/2014: [\[2014\] HCATrans 157](#).

Date heard: 5 August 2014.

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

Catchwords:

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

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

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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 [Migration](#): *CPCF v Minister for Immigration and Border Protection and Anor*

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Kuczborski v The State of Queensland

[B14/2014](#): *Special case.*

Catchwords:

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

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

Relief – Declaration – Whether relief sought by plaintiff is hypothetical.

Listed: 2 and 3 September 2014.

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Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and Ors v Queensland Rail and Anor

[B63/2013](#): *Special case.*

Catchwords:

Constitutional law – Commonwealth Constitution, ss 51(xx) and 109 – Employees who are members of ten unions previously employed by Queensland Rail Limited were transferred to Queensland Rail – Queensland Government intended to implement New Generation Rolling Stock project (“NGR project”) – Unions informed Queensland

Rail of their concerns for potential impact of NGR project and sought discussions pursuant to cl 22 of Rollingstock Agreement – Queensland Rail did not consider itself bound by *Fair Work Act 2009* (Cth) (“FW Act”) but instead bound by *Industrial Relations Act 1999* (Qld) (“IR Act”) and by reason of s 691C of IR Act, considered Rollingstock Agreement of no effect – Unions informed Queensland Rail of desire to pursue negotiations for new enterprise agreement to replace Traincrew Agreement in accordance with FW Act – New enterprise agreement certified pursuant to IR Act – Whether Queensland Rail is corporation within meaning of s 51(xx) of Constitution – Whether Queensland Rail is trading corporation within meaning of s 51(xx) of Constitution – Whether FW Act applies to Queensland Rail and its employees by operation of s 109 of Constitution to exclusion of *Queensland Rail Transit Authority Act 2013* (Qld) or IR Act or both.

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Migration

CPCF v Minister for Immigration and Border Protection and Anor
[S169/2014](#): *Special case.*

Catchwords:

Migration – Power to detain – *Maritime Powers Act 2013* (Cth) (“Act”) – Plaintiff, along with 156 other persons, was passenger on Indian vessel bound for Christmas Island – Plaintiff claimed refugee status within meaning of Art 1 of Convention relating to the Status of Refugees and that he was person in respect of whom Australia owed non-refoulement obligations – Indian vessel was intercepted in Australia’s contiguous zone – Maritime officers implemented decision of National Security Committee of Cabinet to return Indian vessel to India – Whether s 72(4) of Act authorised maritime officers to prevent plaintiff from entering Australia or detain plaintiff for purpose of taking him to India – Whether power under Act was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

Constitutional law – Executive power – Whether non-statutory executive power of Commonwealth authorised Commonwealth officers to prevent plaintiff from entering Australia or detain plaintiff for purposes of taking him to India – Whether non-statutory executive power was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

Listed: 14 and 15 October 2014.

4: SPECIAL LEAVE GRANTED

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

Administrative Law

Argos Pty Ltd and Ors v Simon Corbell, Minister for the Environment and Sustainable Development and Ors

C3/2014: [\[2014\] HCATrans 101](#).

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

Catchwords:

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

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

Listed: 10 October 2014.

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Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd

S84/2014: [\[2014\] HCATrans 170](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Administrative law – Powers of Australian Communications and Media Authority (“ACMA”) – Respondent held commercial radio broadcasting licence under *Broadcasting Services Act 1992* (Cth) (“BSA”) – Respondent recorded and broadcast conversation for radio segment – ACMA investigated segment under s 170 of BSA – Investigation concerned whether respondent breached licence condition contained in cl 8(1)(g), Sch 2 of BSA which is engaged where offence is committed against another law – ACMA’s preliminary investigation report found that respondent contravened s

11(1) of *Surveillance Devices Act 2007* (NSW) – Whether ACMA can only make administrative finding of commission of offence once conviction is recorded by criminal court – Whether ACMA is required to defer enforcement action until after criminal process has concluded – Whether ACMA is bound conclusively in its administrative findings by the outcome of such criminal process.

Constitutional law – Judicial power – Whether ACMA’s conclusion of breach of licence condition involves exercise of judicial power reserved to Ch III courts.

Appealed from FCA (FC): [\[2014\] FCAFC 22](#).

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Constitutional Law

See also [Administrative Law](#): *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

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Corporations Law

Wellington Capital Limited v Australian Securities & Investments Commission & Anor

S275/2013: [\[2013\] HCATrans 281](#).

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

Catchwords:

Corporations law – *Corporations Act 2001* (Cth) (“Act”) – Appellant responsible entity of registered scheme sold portion of managed investment scheme to listed company in return for entire issued share capital of that company – Appellant then distributed *in specie* to unit holders of fund in proportion to their holdings – Whether appellant was permitted to make an *in specie* distribution of shares to unit holders – Whether appellant’s power to make distributions of income or capital in cash only limited general trustee powers outlined in Fund’s constitution – Whether question must be approached through prism of trust law.

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

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

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

Listed: 9 September 2014.

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Grant Samuel Corporate Finance Pty Limited v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors; JP Morgan Chase Bank National Association & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors
S64/2014; S69/2014: [\[2014\] HCA Trans 167](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Corporations law – Insolvency – Voidable transactions – *Corporations Act 2001* (Cth) (“Act”), s 588FF(3) – Under s 588FF(3)(b), court made order extending time for first respondent to bring proceedings under s 588(1) of Act against second respondent – After expiry of period within which any application under 588FF(3)(b) was able to be made, further court order was made under r 36.16(2)(b) of *Uniform Civil Procedure Rules 2005* (NSW) (“UCPR”) varying original extension order – Effect of variation order was to extend period within which any s 588(1) application had to be brought by further six months – Whether r 36.16(2)(b) of UCPR permits further extension of three year period specified in s 588FF(3)(a) of Act by order varying earlier valid extension in circumstances where the application for such variation is made on a date after the expiry of original three year period.

Appealed from NSWSC (CA): [\[2014\] NSWCA 31](#).

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Criminal Law

Henderson v State of Queensland
B22/2014: [\[2014\] HCATrans 102](#).

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

Catchwords:

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

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

Listed: 16 October 2014.

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Damages

Rhiannon Gray by her tutor Kathleen Anne Gray v Richards

S111/2014: [\[2014\] HCATrans 109](#).

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

Catchwords:

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

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

Listed: 10 September 2014.

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Equity

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

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Korda and Ors v Australian Executor Trustees (SA) Limited
M37/2014: [\[2014\] HCATrans 175](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Equity – Trusts – Investment scheme – Investors invited to invest in timber plantation – Different operating companies undertook cultivation, milling and sale of timber – According to Trust Deed, trustee was to hold proceeds of timber sales for investors – Operating companies were liquidated before sale proceeds were paid to trustee – Whether commercial necessity mandated imputation of unstated trust over timber proceeds before payment to trustee.

Appealed from VSC (CA): [\[2014\] VSCA 65](#).

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Industrial Law

Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd
B23/2014: [\[2014\] HCATrans 105](#).

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

Catchwords:

Industrial law – *Fair Work Act 2009* (Cth) (“Act”), ss 346 and 347 – Employee of respondent joined strikes which were protected industrial action under s 408 of Act – Employee held sign deemed offensive and contrary to respondent's code of conduct – Employee dismissed by respondent – Whether employer can avoid liability under s 346(b) for adverse action taken against another person who has engaged in industrial activity by characterising that activity as being in breach of code of conduct policy – Whether court below bound by decisions in *Barclay* and *General Motors v Bowling*.

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

Listed: 3 and 4 September 2014.

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Migration

Minister for Immigration and Border Protection v SZSCA & Anor
[S109/2014](#): [\[2014\] HCATrans 111](#).

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

Catchwords:

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

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

Listed: 9 October 2014.

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Property Law

Cassegrain v Gerard Cassegrain & Co Pty Ltd
[S141/2014](#): [\[2014\] HCATrans 138](#).

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

Catchwords:

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

appellant's interest as sole registered proprietor of land was defeasible pursuant to section 118(1)(d) of Act.

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

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Stamp Duty

Commissioner of State Revenue v Lend Lease Development Pty Ltd; Commissioner of State Revenue v Lend Lease Real Estate Investments Limited; Commissioner of State Revenue v Lend Lease IMT 2 (HP) Pty Ltd

M114/2013 – M118/2013; M120/2013; M119/2013; M121/2013: [\[2014\] HCATrans 185](#).

Date heard: 15 August 2014 – *Special leave granted*.

Catchwords:

Stamp duty – Consideration for dutiable transaction – Identification of consideration for dutiable transactions in circumstances where purchaser of dutiable property promises to make series of different payments at different times and where promises are contained in multiple instruments – Seven parcels of land were transferred according to multiple instruments – Whether consideration for dutiable transaction should be identified by instruments which effect dutiable transaction and consideration expressed in each instrument and/or by asking whether given instrument is correct instrument – Whether s 20 of *Duties Act 2000* (Vic) should be construed as limited to promises if and insofar as they moved transfer of dutiable property in condition it was at time of transfer.

Appealed from VSC (CA): [\[2013\] VSCA 207](#).

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Taxation

Commissioner of Taxation v MBI Properties Pty Ltd
S90/2014: [\[2014\] HCATrans 76](#).

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

Catchwords:

Taxation – *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“Act”), s 135-5 – Third party owner of estate in fee simple granted lease to tenant for ten year term – Third party sold reversion to respondent who received rent after sale – Declaration made by Full Federal Court that there was no supply by respondent to tenant – Commissioner of Taxation assessed respondent on basis that s 135-5 applied – Respondent objected on ground that there was no supply – Whether there was “continuing supply” after sale of reversion of lease to respondent – Whether respondent had “increasing adjustment” under s 135-5 of Act.

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

Listed: 11 September 2014.

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Tort Law

Hunter and New England Local Health District v McKenna; Hunter and New England Local Health District v Simon & Anor
S142; S143/2014: [\[2014\] HCATrans 137](#).

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

Catchwords:

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

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

Listed: 8 October 2014.

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5: CASES NOT PROCEEDING OR VACATED

Migration

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

S89/2014: *Demurrer – Hearing vacated and proceeding dismissed by consent.*

Catchwords:

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

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6: SPECIAL LEAVE REFUSED

Publication of Reasons: 6 August 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Kedem	Johnsons Lawyers (A6/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 3	Application Dismissed [2014] HCASL 117
2.	Maddison	The Queen (B11/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 132	Application Dismissed [2014] HCASL 118
3.	Markan	Bar Association of Queensland (B13/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 34	Application Dismissed [2014] HCASL 119
4.	Markan	Crime and Misconduct Commission (B17/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 60	Application Dismissed [2014] HCASL 120
5.	MZZJR	Minister for Immigration and Border Protection & Anor (M16/2014)	Federal Court of Australia [2014] FCA 118	Application Dismissed [2014] HCASL 121
6.	Pengelly & Anor	Serpentine Jarrahdale Shire (P7/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 5	Application Dismissed [2014] HCASL 122
7.	Hickey	The State of Western Australia (P8/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 32	Application Dismissed [2014] HCASL 123
8.	SZSRZ	Minister for Immigration and Border Protection & Anor (S46/2014)	Federal Court of Australia [2014] FCA 106	Application Dismissed [2014] HCASL 124
9.	SZSLN	Minister for Immigration and Border Protection & Anor (S47/2014)	Federal Court of Australia [2014] FCA104	Application Dismissed [2014] HCASL 125
10.	SZSGA	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S48/2014)	Federal Court of Australia [2013] FCA 774	Application Dismissed [2014] HCASL 126

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11.	SZSQN	Minister for Immigration and Border Protection & Anor (S50/2014)	Federal Court of Australia [2014] FCA 214	Application Dismissed [2014] HCASL 127
12.	SZSTL	Minister for Immigration and Border Protection & Anor (S51/2014)	Federal Court of Australia [2014] FCA 48	Application Dismissed [2014] HCASL 128
13.	SZSIS	Minister for Immigration and Border Protection & Anor (S54/2014)	Federal Court of Australia [2014] FCA 146	Application Dismissed [2014] HCASL 129
14.	SZSHM & Anor	Minister for Immigration and Border Protection & Anor (S54/2014)	Federal Court of Australia [2014] FCA 213	Application Dismissed [2014] HCASL 130
15.	Filmana Pty Ltd & Ors	Tynan & Anor (B55/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 256	Application Dismissed With Costs [2014] HCASL 131
16.	Weaver	Endeavour Foundation (B5/2014)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 371	Application Dismissed With Costs [2014] HCASL 132
17.	Acer Forester Pty Ltd	Complete Crane Hire (NT) Pty Ltd & Ors (D7/2013)	Supreme Court of the Northern Territory (Court of Appeal) [2013] NTCA 11	Application Dismissed With Costs [2014] HCASL 133
18.	Shoalhaven City Council	Humphries (S308/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 390	Application Dismissed With Costs [2014] HCASL 134
19.	Dover	Lewkovitz (S8/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 452	Application Dismissed With Costs [2014] HCASL 135
20.	Main	The Queen (B58/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 80	Application Dismissed [2014] HCASL 136

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Enjam	Minister for Immigration and Border Protection & Anor (M17/2014)	Federal Court of Australia [2014] FCA 189	Application Dismissed [2014] HCASL 137
2.	MZYYQ	Minister for Immigration and Border Protection & Anor (M18/2014)	Federal Court of Australia [2014] FCA 166	Application Dismissed [2014] HCASL 138
3.	MZZPL	Minister for Immigration and Border Protection & Anor (M21/2014)	Federal Court of Australia [2014] FCA 110	Application Dismissed [2014] HCASL 139
4.	Rolfe	Investec Bank (Australia) Ltd (M26/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 38	Application Dismissed [2014] HCASL 140
5.	Carey	Commissioner for Consumer Protection (P5/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 7	Application Dismissed [2014] HCASL 141
6.	Naroth	Innovative Hair Loss Solutions Pty Ltd & Ors (P14/2014)	Federal Court of Australia [2014] FCA 276	Application Dismissed [2014] HCASL 142
7.	Visscher	Teekay Shipping (Australia) Pty Ltd (S44/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 5 [2014] FCAFC 19 [2014] FCAFC 31	Application Dismissed [2014] HCASL 143
8.	Visscher	Teekay Shipping (Australia) Pty Ltd (S93/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 31	Application Dismissed [2014] HCASL 143
9.	Haddad	Chief Commissioner of State Revenue (S53/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 23	Application Dismissed [2014] HCASL 144
10.	SZSRM	Minister for Immigration and Border Protection & Anor (S56/2014)	Federal Court of Australia [2014] FCA 221	Application Dismissed [2014] HCASL 145
11.	Land Enviro Corp Pty Ltd & Ors	HTT Huntley Heritage Pty Ltd (in its own and as Trustee of the Huntley Trust) & Ors (S58/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 34	Application Dismissed [2014] HCASL 146
12.	SZSSO	Minister for Immigration and Border Protection & Anor (S72/2014)	Federal Court of Australia [2014] FCA 192	Application Dismissed [2014] HCASL 147

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13.	Yao	Minister for Immigration and Border Protection (S74/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 17	Application Dismissed [2014] HCASL 148
14.	SZSRV & Anor	Minister for Immigration and Border Protection & Anor (S75/2014)	Federal Court of Australia [2014] FCA 220	Application Dismissed [2014] HCASL 149
15.	Potter	Fair Work Ombudsman (S76/2014)	Federal Court of Australia [2014] FCA 187	Application Dismissed [2014] HCASL 150
16.	Khan	Minister for Immigration and Border Protection & Anor (S85/2014)	Federal Court of Australia [2014] FCA 168	Application Dismissed [2014] HCASL 151
17.	SZSTT	Minister for Immigration and Border Protection & Anor (S86/2014)	Federal Court of Australia [2014] FCA 270	Application Dismissed [2014] HCASL 152
18.	Brennan	Kangaroo Island Council (A2/2014)	Full Court of the Supreme Court of South Australia [2013] SASCF 151	Application Dismissed with Costs [2014] HCASL 153
19.	SZQJH	Minister for Immigration and Border Protection & Anor (S306/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 147	Application Dismissed with Costs [2014] HCASL 154
20.	Soteriou	The Queen (A31/2013)	Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCF 114	Application Dismissed [2014] HCASL 155
21.	MAG	The Queen (A33/2013)	Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCF 39	Application Dismissed [2014] HCASL 156

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Sydney: 15 August 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Lane	The Queen (S35/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 317	Special leave refused [2014] HCATrans 171
2.	Kilcran	Peter James Gothard and Steven John Sherman as Receivers and Managers of Allco Finance Group Limited (In Liquidation) (S52/2014)	Federal Court of Australia [2014] FCAFC 6	Special leave refused with costs [2014] HCATrans 168
3.	Rio Tinto Shipping Pty Ltd	CSL Australia Pty Ltd & Anor (S60/2014)	Federal Court of Australia [2014] FCAFC 10	Special leave refused with costs [2014] HCATrans 166
4.	Rio Tinto Shipping Pty Ltd	CSL Australia Pty Limited & Anor (S61/2014)	Federal Court of Australia [2014] FCAFC 10	Special leave refused with costs [2014] HCATrans 166
5.	Minister for Infrastructure and Transport	CSL Australia Pty Ltd & Anor (S62/2014)	Federal Court of Australia [2014] FCAFC 10	Special leave refused with costs [2014] HCATrans 166
6.	Minister for Infrastructure and Transport	CSL Australia Pty Limited & Anor (S63/2014)	Federal Court of Australia [2013] FCAFC 10	Special leave refused with costs [2014] HCATrans 166
7.	Chemical Trustee Limited	Deputy Commissioner of Taxation (S82/2014)	Federal Court of Australia [2014] FCAFC 27	Special leave refused with costs [2014] HCATrans 169

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Melbourne: 15 August 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Obeid	Urban Renewal Authority (formerly Victorian Urban Development Authority) (M6/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 371	Special leave refused with costs [2014] HCATrans 177
2.	Director of Public Prosecutions (Cth)	Karabegovic (M9/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 380	Special leave refused with costs [2014] HCATrans 179
3.	Construction, Forestry, Mining and Energy Union	State of Victoria (M10/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 160	Special leave refused with costs [2014] HCATrans 173
4.	Siegwerk Australia Pty Ltd (In Liquidation)	Nuplex Industries (Aust) Pty Ltd (M11/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 130	Special leave refused with costs [2014] HCATrans 180
5.	Hunter	The Queen (M22/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 385	Special leave refused [2014] HCATrans 181
6.	Love	Roads Corporation (M23/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 30	Special leave refused with costs [2014] HCATrans 174
7.	Efandis	The Queen (M27/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 42	Special leave refused [2014] HCATrans 182
8.	Darling	Commissioner of Taxation & Anor (M34/2014)	Full Court of the Family Court of Australia	Special leave refused with costs [2014] HCATrans 178

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