



HIGH COURT BULLETIN

[2025] HCAB 2 (27 March 2025)

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
<i>Minister for Immigration and Multicultural Affairs & Ors v MZAPC</i>	Immigration
<i>Commonwealth of Australia v Yunupingu (on behalf of the Gumatj Clan or Estate Group) & Ors</i>	Constitutional law
<i>Bogan & Anor v The Estate of Peter John Smedley (Deceased) & Ors</i>	Practice and procedure

3: Cases Reserved

Case	Title
<i>Kain v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors</i> <i>Ernst & Young (a Firm) ABN 75 288 172 749 v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors</i> <i>Shand v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors</i>	Representative proceedings
<i>Helensburgh Coal Pty Ltd v Bartley & Ors</i>	Industrial law
<i>Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd</i>	Land valuation
<i>MJZP v Director-General of Security & Anor</i>	Constitutional law
<i>Evans & Anor v Air Canada ABN 29094769561</i>	Aviation law
<i>La Perouse Local Aboriginal Council ABN 89136607167 & Anor v Quarry Street Pty Ltd ACN 616184117 & Anor</i>	Land law

4: Original Jurisdiction

Case	Title
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5: Section 40 Removal

Case	Title
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6: Special Leave Granted

Case	Title
<i>Michael Stewart by his litigation guardian Carol Schwarzman v Metro North Hospital and Health Service (ABN 184 996 277 942)</i>	Torts
<i>Farshchi v The King</i>	Constitutional law
<i>R Lawyers v Mr Daily & Anor</i>	Contract law

7: Cases Not Proceeding or Vacated

Case	Title
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8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the March 2025 sittings.

Constitutional Law

Commonwealth of Australia v Yunupingu (on behalf of the Gumatj Clan or Estate Group) & Ors

[D5/2023](#): [\[2025\] HCA 6](#)

Date delivered: 12 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – *Constitution*, s 51(xxxi) – Acquisition of property on just terms – Extinguishment of native title – Where principal proceeding is application for compensation under *Native Title Act 1993* (Cth) for alleged effects of grants or legislative acts on native title in period after Northern Territory became territory of Commonwealth in 1911 and before enactment of *Northern Territory Self-Government Act 1978* (Cth) – Whether Full Court erred by failing to find that just terms requirement contained in s 51(xxxi) of *Constitution* does not apply to laws enacted pursuant to s 122 of *Constitution*, including *Northern Territory (Administration) Act 1910* (Cth) and Ordinances made thereunder – Whether *Wurridjal v Commonwealth* (2009) 237 CLR 309 should be re-opened – Whether Full Court erred in failing to find that, on facts set out in appellant’s statement of claim, neither vesting of property in all minerals on or below surface of land in claim area in Crown, nor grants of special mineral leases capable of amounting to acquisitions of property under s 51(xxxi) of *Constitution* because native title inherently susceptible to valid exercise of Crown’s sovereign power to grant interests in land and to appropriate to itself unalienated land for Crown purposes.

Native title – Extinguishment – Reservations of minerals – Whether Full Court erred in failing to find that reservation of "all minerals" from grant of pastoral lease "had the consequence of creating rights of ownership" in respect of minerals in Crown, such that Crown henceforth had right of exclusive possession of minerals and could bring an action for intrusion.

Appealed from FCA (FC): [\[2023\] FCAFC 75](#); (2023) 298 FCR 160; (2023) 410 ALR 231

Immigration

Minister for Immigration and Multicultural Affairs & Ors v MZAPC

[P21/2024](#): [\[2025\] HCA 5](#)

Date delivered: 5 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Immigration – Duty to remove unlawful citizen as soon as reasonably practicable – Personal and non-compellable powers of Minister – Where respondent's visa cancelled in November 2015 – Where respondent in immigration detention and exhausted all rights of review and appeal in relation to his immigration status – Where primary judge made orders restraining appellants from performing duty imposed by s 198(6) of *Migration Act 1958* (Cth) to remove respondent from Australia as soon as reasonably practicable – Where primary judge concluded following this Court's decision in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 10, serious question to be tried as to whether officers of Department had, acting beyond power, made assessments of respondent's circumstances against ministerial guidelines concerning referral of cases to Minister for personal consideration under ss 195A and 417 of Act – Where Full Court majority upheld primary judge's decision – Whether Full Court erred concluding primary judge had power to grant interlocutory injunction restraining respondent's removal from Australia.

Practice and procedure – Interlocutory injunction restraining removal from Australia – Serious question to be tried.

Appealed from FCA (FC): [\[2024\] FCAFC 34](#); (2024) 302 FCR 159

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Practice and Procedure

Bogan & Anor v The Estate of Peter John Smedley (Deceased) & Ors

[M21/2024](#): [\[2025\] HCA 7](#)

Date delivered: 12 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Practice and Procedure – Transfer of proceedings – Group costs order – Where Victoria legislated to permit costs orders calculated as percentage of judgment or settlement in representative proceedings – Where provision unique to Victoria – Where appellants commenced representative proceedings in Supreme Court of Victoria against respondents – Where fifth respondent applied to transfer proceedings to Supreme Court of NSW under s 1337H of *Corporations Act 2001* (Cth) – Where appellants applied for group costs order ("GCO") under s 33ZDA of *Supreme Court Act 1986* (Vic) – Where Supreme Court directed GCO application be determined before transfer application, and later made GCO – Where fifth respondent's first removal application to High Court dismissed – Where fifth respondent referred transfer application to Victorian Court of Appeal for provision of reasons without final orders – Where Court of Appeal held proceedings should not be transferred to Supreme Court of NSW – Where fifth respondent successfully made second removal application to High Court – Whether GCO made under s 33ZDA of *Supreme Court Act* relevant in deciding whether to transfer proceedings to another court under s 1337H(2) of *Corporations Act* – Whether GCO will remain in force if proceedings are transferred to Supreme Court of NSW – Whether Supreme Court of NSW would have power to vary or revoke GCO if proceedings transferred – Whether proceedings should be transferred to Supreme Court of NSW.

Removed into the High Court from Court of Appeal of the Supreme Court of Victoria under s 40 of the Judiciary Act 1903 (Cth) on 7 March 2024.

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3: CASES RESERVED

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

Aviation Law

Evans & Anor v Air Canada ABN 29094769561

[S138/2024](#): [\[2025\] HCATrans 18](#)

Date heard: 12 March 2025

Coram: Gageler CJ, Edelman J, Steward J, Gleeson J and Beech-Jones J

Catchwords:

Aviation law – international carriage of passengers by air – *Unification of Certain Rules of International Carriage by Air 1999* (“*Montreal Convention*”) – where appellants sought damages in Supreme Court of New South Wales for injuries allegedly suffered from turbulence on Air Canada flight from Vancouver to Australia under art 17 of Montreal Convention (incorporated into Australian law under s 9B *Civil Aviation (Carriers’ Liability) Act 1959* (Cth) – where respondent pleaded it was not liable for damages exceeding “113,100 Special Drawing Rights” in accordance with art 21 of Montreal Convention – where appellants relied on rule 105(C)(1)(a) of Air Canada’s International Tariff General Rules which stipulated there were no financial limits on compensatory damages recoverable in respect of bodily injuries – where Court of Appeal found rule 105(C)(1)(a) did not have effect of waiving defence created by art 21 – whether Court of Appeal erred in construing arts 17, 21 and 25 of Montreal Convention by treating rule 105(C)(1)(a) as form of consumer notification rather than term of contract of carriage – whether Court of Appeal erred in holding stipulation in rule 105(C)(1)(a) did not preclude financial limit under art 21(2) in cases where damages would exceed a monetary or financial amount and carrier proves no fault – whether Court of Appeal erred in not holding operation of rule 105(C)(1)(a) constitutes a stipulation for purposes of art 25 and displaced application of art 21(2) of Montreal Convention.

Appealed from NSWCA: [\[2024\] NSWCA 153](#)

Civil Procedure

DZY (a pseudonym) v Trustees of the Christian Brothers

[M81/2024](#): [\[2024\] HCATrans 9](#)

Date heard: 13 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Civil procedure – limitation of actions – application to set aside deeds of settlement under s 27QE of *Limitation of Actions Act 1958* (Vic) – where appellant entered into two deeds of settlement relating to sexual abuse alleged against Christian Brothers in school run by respondent – where appellant later commenced proceedings seeking damages from respondent for economic loss caused by abuse – where respondent claimed settlements should not be set aside because it would have pleaded limitation defence and “*Ellis*” defence that unincorporated association not solvent legal entity capable of being sued (*Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565) – where primary judge allowed claim to proceed – where Court of Appeal set aside primary judge’s decision – whether majority of Court of Appeal erred in finding power in s 27QE *Limitation of Actions Act* not enlivened unless claimant establishes that limitation or *Ellis* defence had material impact on or was leading factor in decision to settle – whether Court of Appeal misapplied correctness standard of appellate review in *Warren v Coombs* (1979) 142 CLR 531.

Appealed from VSCA: [\[2024\] VSCA 73](#)

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Forestry Corporation of New South Wales v South East Forest Rescue Incorporated INC9894030

S120/2024: [\[2025\] HCATrans 8](#)

Date heard: 12 February 2025

Coram: Gageler CJ, Edelman, Steward, Jagot and Beech-Jones JJ

Catchwords:

Civil procedure – standing – where respondent environmental organisation brought civil enforcement proceedings seeking injunctive and declaratory relief against respondent in relation to certain forestry operations on basis of impact on three species of glider – where primary judge found respondent lacked standing because of no “special interest” in subject matter – where Court of Appeal set aside decision on basis that clear language required to abrogate or curtail fundamental rights – whether Court of Appeal erred in concluding that on proper construction of *Forestry Act 2012* (NSW), ss 69SB and 69ZA and *Biodiversity Conservation Act 2016* (NSW), ss 13, 14 and 13.14A private entities have standing to bring civil enforcement proceedings for alleged breach of integrated forestry operations agreement – whether there is presumption of

standing to bring proceedings for alleged breach by third party where private person or entity has “special interest” unless abrogated by statute.

Appealed from NSWCA: [\[2024\] NSWCA 113](#)

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Lendlease Corporation Limited ACN 000 226 228 & Anor v David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund & Anor

S108/2024: [\[2024\] HCATrans 76](#)

Date heard: 5 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Civil procedure – representative proceedings – notices to group members - where appellant is defendant in shareholder class action brought by respondent plaintiffs alleging misleading and deceptive conduct and breach of continuous disclosure obligations – where separate question stated for determination in New South Wales Court of Appeal – whether Court of Appeal erred in holding that Supreme Court of New South Wales does not have power in representative proceeding to approve notice to group members containing notation to effect that upon any settlement, parties or defendant will seek order that group members neither registering nor opting-out shall not be permitted without leave to seek any benefit under settlement – where Court of Appeal authority conflict with Full Federal Court authority on the question.

Appealed from NSWCA: [\[2024\] NSWCA 83](#); (2024) 114 NSWLR 81

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Competition Law

Australian Competition and Consumer Commission v J Hutchinson Pty Ltd (ACN 009 778 330) & Anor

Australian Competition and Consumer Commission v Construction, Forestry and Maritime Employees Union & Anor

B41/2024; B42/2024: [\[2024\] HCATrans 86](#)

Date heard: 5 December 2024

Coram: Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ

Catchwords:

Competition law – giving effect to arrangement or arriving at understanding containing provision preventing or hindering acquisition of services from a subcontractor – *Competition and Consumer Act 2010* (Cth) s 45E(3) – where Hutchinson construction company and head contractor on large construction project – where CFMEU a trade union for purposes of *Fair Work (Registered Organisations) Act 2009* (Cth) – where appellant alleged contravention of s 45E(3) and 45E of *Competition and Consumer Act* by first respondent making and giving effect to understanding with second respondent that it would terminate its sub-contract or cease acquiring services from third party on project – where second respondent alleged to have been knowingly concerned in or party to contravention by threatening industrial action if first respondent did not cease using third party – where primary judge found evidence established respondents entered into arrangement of understanding – where Full Federal Court allowed appeal – whether Full Court found that merely succumbing to threat of industrial action insufficient to give rise to arrangement or understanding – whether making or arriving at arrangement or understanding within meaning of s 45E(3) requires communication of assent that precedes and is distinct from conduct that gives effect or arrangement or understanding.

Appealed from FCAFC: [\[2024\] FCAFC 18](#); (2024) 302 FCR 79

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Constitutional Law

Babet & Anor v Commonwealth of Australia

Palmer v Commonwealth of Australia

[B73/2024](#); [B74/2024](#); [\[2025 HCATrans 5\]](#); [\[2025\] HCATrans 7](#)

Date heard: 7 February 2025

Orders pronounced: 12 February 2025

Questions answered

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Elections – *Commonwealth Electoral Act 1918* (Cth) – Part XI – Registration of political parties – Where United Australia Party was registered as a political party in 2018 – Where United Australia party was voluntarily deregistered by the Australian Electoral Commission under s 135(1)

of the Act in 2022 – Where s 135(3) of the Act provides that a party is ineligible for registration until after the general election next following the voluntary deregistration of that party – Validity of s 135(3) – Whether invalid on the ground that it impairs the direct choice by the people of Senators or Members of the House of Representatives, contrary to ss 7 and 24 of the *Constitution* – Whether invalid on the ground that it impermissibly discriminates against candidates of a political party that has deregistered voluntarily or a Parliamentary party that has deregistered voluntarily – Whether invalid on the ground that it infringes the implied freedom of political communication.

Cherry v State of Queensland

[B11/2024: \[2025\] HCATrans 2](#)

Date heard: 4 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – separation of powers – judicial power – where plaintiff convicted of two counts of murder in 2002 and sentenced to life imprisonment with mandatory minimum non-parole period of 20 years – where body of second victim never located – where in 2021 new provisions inserted into *Corrective Services Act 2006* (Qld) (“CSA”) to amend “no body-no parole” scheme and introducing new “restricted prisoners” regime – where President of Parole Board of Queensland may make “no co-operation” declaration under s 175L of CSA in respect of a “no body – no parole” prisoner where remains of victim not found and where Board not satisfied prisoner has given “satisfactory co-operation” – where effect of declaration is that prisoner may not apply for parole notwithstanding parole eligibility date set by sentencing judge – where under s 175E of CSA President of Parole Board can make declaration about restricted prisoner (relevantly defined as prisoner sentenced to life imprisonment for more than one conviction of murder) – where effect of declaration is that prisoner may not apply for parole other than in “exceptional circumstances parole” under s 1767 – where plaintiff subject to “no co-operation” declaration and liable for “restricted prisoner” declaration if former lapses – validity of provisions under Ch 5, Divs 1 and 2 CSA – whether ss 175L and 175E CSA invalid as enabling Queensland executive to impermissibly interfere with exercise of judicial power by State Courts contrary to principle established in *Kable v Director of Public Prosecutions* (1996) 189 CLR 51.

Special case referred to Full Court on 27 September 2024

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CZA19 v Commonwealth of Australia & Anor

[M66/2024: \[2024\] HCATrans 81](#)

Date heard: 14 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – whether limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 applies to non-citizen detained under ss 189(1) and 196(1) of *Migration Act 1958* (Cth) for purpose of considering whether to grant the person a visa where no real prospect of removal if person not granted a visa – where first respondent taken into immigration detention in December 2018 – where first respondent applied for protection visa and was refused by delegate – where AAT set aside delegate’s decision and remitted to delegate with direction that substantial grounds for believing first respondent would suffer significant harm if removed to Poland – where following decision in *NZYQ* first respondent sought habeas corpus and mandamus in Federal Court seeking consideration of visa and declaratory relief regarding lawfulness of detention – where separate question referred for determination in Federal Court – where visa refused by applicant released on bridging visa – whether detention unlawful between November 2022 and release.

Removed into the High Court from Federal Court of Australia under s 40 of the Judiciary Act 1903 (Cth).

DBD24 v Minister for Immigration and Multicultural Affairs & Anor
[P34/2024: \[2024\] HCATrans 81](#)

Date heard: 14 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 – where plaintiff arrived in Australia without valid visa and detained in immigration detention between 23 June 2023 and 1 October 2024 – where plaintiff applied for safe haven enterprise visa and was refused by delegate of first respondent – where on 18 December 2023 Administrative Appeals Tribunal remitted refusal and directed that substantial grounds for believing applicant at risk of significant harm if returned to Vietnam – where Tribunal’s decision a “protection finding” under s 197C(3)(b) of *Migration Act 1958* (Cth) - where plaintiff granted protection visa and released from immigration detention on 1 October 2024 – whether

constitutional limitation exceeded where alien has applied for visa and visa being considered in circumstance that visa applicant could not be removed in any event because of extant 'protection finding' under s 197C(3)(b) of *Migration Act* or where consideration of visa application takes unreasonably long time.

Special case referred to Full Court on 5 November 2024.

MJZP v Director-General of Security & Anor

[S142/2023](#): [\[2024\] HCATrans 92](#); [\[2024\] HCATrans 93](#); [\[2025\] HCATrans 17](#)

Date heard: 12 and 13 December 2024; 11 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial power of Commonwealth – Procedural fairness – Where plaintiff company is carriage service provider within meaning of *Telecommunications Act 1997* (Cth) – Where in June 2021 Australian Security Intelligence Organisation ("ASIO") furnished to Minister for Home Affairs adverse security assessment in respect of plaintiff in connection with s 315A of *Telecommunications Act* – Where plaintiff applied to Administrative Appeals Tribunal ("Tribunal") for review of adverse security assessment – Where Minister made various certifications under *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") that disclosure of certain documents and evidence contrary to public interest – Where Tribunal provided open reasons to plaintiff and first defendant, and closed reasons only to first defendant – Where plaintiff appealed to Federal Court of Australia – Where s 46(1) of AAT Act requires Tribunal to send to Federal Court all documents before Tribunal in connexion with proceeding, including documents subject to certificates issued by Minister – Where s 46(2) of AAT Act requires Federal Court to ensure matter subject to certificates not disclosed to any person other than member of Federal Court for purposes of appeal – Whether s 46(2) substantially impairs institutional integrity of Federal Court – Whether s 46(2) requires Federal Court to exercise Commonwealth judicial power in manner inconsistent with nature of that power – Whether s 46(2) invalid on basis it infringes Ch III of *Constitution*.

Special case referred to the Full Court on 4 June 2024.

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Ravbar & Anor v Commonwealth of Australia & Ors

[S113/2024](#): [\[2024\] HCATrans 90](#); [\[2024\] HCATrans 91](#)

Date heard: 10 and 11 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – invalidity – implied freedom of political communication – acquisition of property on just terms – where first and second plaintiffs office bearers of Construction and General Division (“C&G Division”) of the Construction, Forestry, Mining and Energy Union – where s 333A(1) of *Fair Work (Registered Organisations) Act 2009* (Cth) (“FWRO Act”) provides C&G Division and each of its branches placed into administration from earliest time that both a legislative instrument made under s 333B(1) and appointment of administrator under s 323C in force – where s 323B(1) empowers Minister to determine scheme for administration of C&G Division and branches if satisfied in public interest – whether *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) (“Administration Act”) and provisions it inserted into *Fair Work (Registered Organisations) Act 2009* and *Fair Work Act 2009* (Cth) sufficiently connected to head of power in s 51 Constitution – whether impugned provisions infringe implied freedom of political communication – whether *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* invalid as unsupported by s 323B FWRO Act as partially disapplied or otherwise read down as to not infringe implied freedom of political communication – whether s 323B FWRO Act and Administration Act purport to confer judicial power of Commonwealth on Minister and thereby inconsistent with Ch III of Constitution – whether ss 323K(1) and 323M FWRO Act effect acquisition of property otherwise than on just terms contrary to s 51(xxxi) of Constitution.

Special case referred to Full Court on 18 October 2024

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State of New South Wales v Wojciechowska & Ors

[S39/2024](#); [\[2025\] HCATrans 3](#); [\[2025\] HCATrans 4](#)

Date heard: 5 and 6 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial Power of Commonwealth – Where first respondent resided in Tasmania – Where first respondent commenced various proceedings in New South Wales Civil and Administrative Tribunal (“Tribunal”) against third and fourth respondents, emanations of State of New South Wales – Where first respondent sought review of various decisions and conduct under *Government Information (Public Access) Act 2009* (NSW) (“GIPA Act”) and *Privacy and Personal Information Protection Act 1998* (NSW) (“PIIP Act”) –

Where claim included claim for damages under s 52(2)(a) PPIP Act – Where first respondent challenged jurisdiction of Tribunal on basis functions performed by Tribunal when determining administrative review applications under GIPA Act and PPIP Act involved exercise of judicial power – Where Court of Appeal held determining administrative review under GIPA Act did not involve exercise of judicial power – Where Court of Appeal held determination of application for damages under s 55(2)(a) of PPIP Act brought by out-of-state resident would involve Tribunal exercising judicial power of Commonwealth – Whether *Burns v Corbett* (2018) 265 CLR 304 applies to exercise of non-judicial power – Whether Court of Appeal erred in holding Tribunal, when performing at instance of out-of-State resident claiming damages review of public sector agency conduct under Pt 5 of PPIP Act and *Administrative Decisions Review Act 1997* (NSW) exercises Commonwealth judicial power.

Courts – State tribunals – Jurisdiction.

Appealed from NSWSC (CA): [\[2023\] NSWCA 191](#); (2023) 379 FLR 256

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Criminal law

The King v Ryan Churchill (a pseudonym)

M94/2024: [\[2025\] HCATrans 10](#)

Date heard: 14 February 2025

Coram: Gageler CJ, Gordon, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – evidence – hearsay – *Evidence Act 1996* (Vic) – where appellant convicted of two counts of incest – evidence given of complainant’s representation to another person of having been sexually assaulted – where evidence led that complainant distressed when making representation – where Court of Appeal allowed appeal and held trial judge should have warned jury that evidence of such distress “generally carried little weight” – whether Court of Appeal erred in holding such direction should have been given – whether Court of Appeal erred in finding substantial miscarriage of justice because trial judge did not specifically direct jury they could not use evidence of distress unless first finding link between distress and alleged offending.

Appealed from VSCA: [\[2024\] VSCA 151](#)

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The King v ZT

[S38/2024: \[2024\] HCATrans 82](#)

Date heard: 15 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – Appeal against conviction – Unreasonable verdict – Joint criminal enterprise – Where respondent found guilty at trial of party to murder – Where case against him founded upon series of admissions made as to involvement in killing – Where respondent's accounts numerous and inconsistent – Where respondent successfully appealed conviction to Court of Criminal Appeal on ground jury's verdict unreasonable – Where Court of Criminal Appeal majority found admissions not sufficiently reliable to establish guilt beyond reasonable doubt – Whether Court of Criminal Appeal majority erred in concluding jury enjoyed no relevant or significant advantage over appellate court – Whether Court of Criminal Appeal majority erred in its application of test in *M v The Queen* (1994) 181 CLR 487.

Appealed from NSWSC (CCA): [\[2023\] NSWCCA 241](#)

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Criminal Practice

Brawn v The King

[A20/2024: \[2024\] HCATrans 85](#)

Date heard: 4 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal practice – appeal – miscarriage of justice – prosecution duty of disclosure – where appellant found guilty of one count of maintaining sexual relationship with child – where defence case was that complainant lied about identity of abuser – where, after trial, prosecution disclosed that appellant's father had been charged with six counts of unlawful sexual intercourse with different child – whether Court or Appeal erred in finding that breach of duty of disclosure did not lead to miscarriage of justice for purpose of s 158(1)(c) *Criminal Procedure Act 1921* (SA) because appellant would not have conducted trial differently – whether Court of Appeal erred in finding appellant

conceded that non-disclosure did deprive him of opportunity to adduce evidence relating to father – proper approach to ‘miscarriage of justice’ for purposes of s 158(1)(c) *Criminal Procedure Act*.

Appealed from SASCA: [\[2022\] SASCA 96](#); (2022) 141 SASR 465

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Evidence

MDP v The King

[B72/2023](#): [\[2024\] HCATrans 84](#)

Date heard: 3 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Evidence – Propensity evidence – Miscarriage of justice – Where appellant convicted of various child sexual assault and domestic violence offences against former partner’s daughter – Where evidence included evidence from complainant’s sister that appellant smacked complainant on bottom – Where trial judge directed jury if they accepted bottom slapping evidence was true, and that it displayed sexual interest of appellant in complainant beyond reasonable doubt, they could use it to reason that it was more likely that offences occurred – Where Court of Appeal found bottom slapping evidence did not meet test for admissibility of propensity evidence – Where Court of appeal found evidence admissible under s 132B of *Evidence Act 1977* (Qld) ("evidence of domestic violence") – Whether Court of Appeal erred holding that no miscarriage of justice occurred when evidence inadmissible as propensity evidence was nonetheless left to jury to be used as propensity evidence.

Appealed from QLDSC (CA): [\[2023\] QCA 134](#)

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Immigration

FEL17 v Minister for Immigration, Citizenship and Multicultural Affairs

[S107/2024](#): [\[2024\] HCATrans 87](#)

Date heard: 6 December 2024

Coram: Gageler CJ, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Immigration – protection visas – invalid application – where appellant applied for protection visa and was refused by delegate – where AAT affirmed delegate’s decision – where Assistant Minister for Immigration and Border Protection exercised power under s 417(1) *Migration Act 1958* (Cth) to substitute “another decision” for Tribunal’s decision and granted appellate a three month visitor visa with no further stay condition – where appellate subsequently made second application for protection visa – where delegate found application invalid under s 48A – whether majority of Full Federal Court erred in finding application invalid and barred by s 48A.

Appealed from FCA (FC): [\[2023\] FCAFC 153](#)

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Industrial Law

Helensburgh Coal Pty Ltd v Bartley & Ors

S119/2024: [\[2025\] HCA Trans 15](#)

Date heard: 6 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ

Catchwords:

Industrial law – unfair dismissal – genuine redundancy – redeployment – *Fair Work Act 2009* (Cth), ss 385(b), 389(2) – where s 385(d) provides applicant for unfair dismissal remedy must demonstrate dismissal not case of genuine redundancy – where s 389(2) provides no genuine redundancy if reasonable in all the circumstances to redeploy employee within employer’s enterprise – where respondent scaled back mining operations and terminated respondents’ employment – whether Full Federal Court erred in construing s389(2) as authorising Fair Work Commission to inquire into whether employer could have made alternative changes to enterprise (including by terminating other operational or staffing arrangements) so as to make position available to otherwise redundant employee – whether determination of genuine redundancy discretionary decision reviewable only for *House v King* error.

Appealed from FCAFC: [\[2024\] FCAFC 45](#); (2024) 302 FCR 589

Land Law

La Perouse Local Aboriginal Council ABN 89136607167 & Anor v Quarry Street Pty Ltd ACN 616184117 & Anor

S121/2024: [\[2025\] HCATrans 20](#)

Date heard: 13 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward and Jagot JJ

Catchwords:

Land law – indigenous land rights – *Aboriginal Land Rights Act 1983* (NSW), s 36 – claimable Crown land – where second respondent Minister proved in part an Aboriginal land claim in relation to Crown Land in Paddington – where first respondent lessee of site described as “Paddington Bowling Club” but site fallen into disuse other than “oral sublease” over small portion of land – where land subject to reservation of Crown land under s 87 *Crown Lands Act 1989* (NSW) for use as community and sporting club facilities and tourist facilities and services – where first respondent unsuccessfully sought judicial review of Minister’s decision to approve claim – where Court of Appeal allowed appeal – where Court of Appeal found land being “used” for purposes of s 36(1) of *Aboriginal Land Rights Act* such that land was not “claimable Crown land” – whether Court of Appeal erred in finding Minister required to find land was “claimable Crown land” – whether concept of “use” in s 36(1)(b) requires examination of activities on claimed land as opposed to away from or in relation to claimed land – whether definition of “land” in s 4(1) has result that “use” of “any estate or interest” in respect of land either individually or cumulatively will satisfy s 36(1)(b) – whether leasing of land by Crown a “use” within s 36(1)(b).

Appealed from NSWCA: [\[2024\] NSWCA 107](#)

Land Valuation

Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd

M96/2024: [\[2025\] HCATrans 16](#)

Date heard: 7 March 2025

Coram: Gageler CJ, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Land valuation – assessment of land value under *Valuation of Land Act 1960* (Vic) – where respondent owner of land subject to heritage-related planning restrictions – where house built in 1897 on land – where respondent successfully objected to valuations in Victorian Civil and Administrative Tribunal

– where valuation required assumption that improvements had not been made
– where improvements defined in s 2(1) of *Valuation of Land Act* as “all work actually done or material used on and for the benefit of the land, but only in so far as the effect of the work done or material used increases the value of the land” – proper time for assessment of improvements – whether Court of Appeal erred in construing defining of “improvement” as requiring that effect of work done or material used increased value of land at time that work actually done or material used.

Appealed from VSCA: [\[2024\] VSCA 157](#)

Native Title

Stuart & Ors v State of South Australia & Ors
A1/2024: [\[2024\] HCATrans 77](#); [\[2024\] HCATrans 78](#)

Date heard: 6 and 7 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Native title – Extinguishment – Proper construction of “native title” in s 223(1) *Native Title Act 1993* (Cth) (“NTA”) – Overlapping claims – Where appellants together comprise applicant in native title determination under s 61 of NTA made on behalf of Arabana people in March 2013 over area in vicinity of township of Oodnadatta in South Australia – Where over subsequent five years different claim group, Walka Wani people, made two claims concerning same area (“overlap area”) – Where in January 1998 Arabana made claim over area abutting overlap area, resulting in consent determination in 2012 in favour of Arabana in *Dodd v State of South Australia* [2012] FCA 519 (“*Dodd*”) – Where overlap area omitted from 1998 claim area because Arabana believed different accommodation of their rights in overlap area would be made by state government – Where primary judge dismissed Arabana claim and made determination of native title in favour of Walka Wani – Where appellants unsuccessfully appealed orders dismissing Arabana Claim to Full Court – Whether Full Court majority erred by not finding trial judge failed to correctly construe and apply definition of “native title” in s 223(1) when dismissing Arabana’s native title determination application – Whether Full Court erred by treating all aspects of determination in *Dodd* as being geographically specific.

Appealed from FCA (FC): [\[2023\] FCAFC 131](#); (2023) 299 FCR 507; (2023) 412 ALR 407

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Representative proceedings

Kain v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors

Ernst & Young (a Firm) ABN 75 288 172 749 v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors

Shand v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors

[S146/2024; S144/2024; S143/2024](#); [\[2025\] HCATrans 13](#); [\[2025\] HCATrans 14](#)

Date heard: 4 and 5 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Representative proceedings – common fund orders – open class securities action – application for approval of notice to group members prior to opt-out – where question reserved for Full Federal Court under s 25(6) of *Federal Court of Australia Act 1976* (Cth) whether under Pt IVA of Act Court has power upon settlement or judgment of representative proceeding to make common fund order for distribution of funds to solicitor otherwise than as payment for costs and disbursements incurred in conduct of proceeding – whether Full Court erred in answer question in affirmative.

Appealed from FCAFC: [\[2024\] FCAFC 89](#); (2024) 304 FCR 395

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4: ORIGINAL JURISDICTION

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

Constitutional Law

Government of the Russian Federation v Commonwealth of Australia

[C9/2023](#)

Catchwords:

Constitutional law – heads of power – acquisition of property – where plaintiff held lease granted by defendant in 2008 over parcel of land (“land”) in Australian Capital Territory – where in 1990 National Capital Plan took effect under s 21(2) of *Australian Capital Territory (Planning and Land Management) Act 1908* (Cth) (“PLM Act”) - where land fell in designated area under s 10(1) of PLM Act – where land is ‘national land’ under s 27(1) PLM Act – where lease limited use to diplomatic consular or official purpose of Government of Russian Federation – where limited work undertaken on land – where in 2023 *Home Affairs Act 2023* (Cth) (“HAA”) came into effect – where plaintiff’s lease terminated under s 5 of HAA – where defendant maintains lease terminated on basis of national security – whether HAA invalid on ground that not supported by head of Commonwealth power – whether if HAA otherwise valid operation of HAA results of acquisition of property from plaintiff under s 51(xxix) *Constitution* requirement payment of reasonable compensation under s 6(1) HAA.

Special case referred to Full Court on 18 December 2024

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Stott v The Commonwealth of Australia & Anor

[M60/2024](#)

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where *Land Tax Act 2005* (Vic) imposes land tax on taxable land payable by owner – where second defendant assessed taxable land under *Taxation Administration Act 1997* (Vic) – where *State Taxation Acts Amendment Act 2015* (Vic) created higher rate of land tax for “absentee owner” – where plaintiff ordinarily resident in New Zealand and “absentee owner” – where Australia and New Zealand signed Convention for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe

Benefits and the Prevention of Fiscal Evasion (“Convention”) – where Convention given legislative force in *International Tax Agreements Act 1953* (Cth) – where art 24(1) of Convention provides nationals of contracting State shall not be subjected to “any taxation ... which is more burdensome than the taxation... to which national of the other State in the same circumstances, in particular with respect to residence, are or may be subjected” – where plaintiff commenced representative proceedings in Federal Court seeking restitution of difference between absentee owner rate and ordinary rate – where proceedings remain on foot – where on 8 April 2024 *Treasury Laws (Amendment Foreign Investment) Act 2024* (Cth) commenced – where on 4 December 2024 ss 42 and 54 of *State Taxation Further Amendment Act 2024* (Vic) commenced – whether prior to commencement of *Treasury Laws (Amendment Foreign Investment) Act* s109 of Constitution invalidates ss 7, 8, 25, 104B and cl 4.1-4.5 of Sch 1 to the *Land Tax Act 2005* to extent of inconsistency of art 24(1) of Convention – if so, whether s 5(3) of *International Taxation Agreements Act 1953* valid or effective to remove inconsistency – whether s 5(3) invalid on ground law is with respect of acquisition of property from a person otherwise than on just terms within meaning of s 51(xxxi) Constitution – whether s 106A *Land Tax Act 2005* invalid or inoperative on plaintiff by force of art 24(1) and s 109 Constitution.

Special case referred to Full Court on 18 December 2024.

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CD & Anor v Commonwealth of Australia [A2/2025](#)

Catchwords:

Constitutional law – *Surveillance Legislation (Confirmation of Application) Act 2024* (Cth) (“the Confirmation Act”) – Admissibility of evidence of communications obtained through encrypted application ANOM installed on mobile devices – *Telecommunications (Interception and Access) Act 1979* (Cth) – Whether unlawful interception - Where the Confirmation Act operates retrospectively to confirm that: (a) information or records obtained by the AFP under specified warrants in connection with the operation were not intercepted while passing over a telecommunications system; and (b) information obtained in reliance on those warrants was obtained under the *Surveillance Devices Act 2004* (Cth) or the *Crimes Act 1914* (Cth) – Whether the Confirmation Act is invalid in whole or in part because it is an impermissible exercise by the Parliament of the judicial power of the Commonwealth – Whether the Confirmation Act is invalid in whole or in part because it impermissibly interferes with and undermines the institutional integrity of courts vested with federal jurisdiction.

Special case referred to Full Court on 18 March 2025.

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5: SECTION 40 REMOVAL

The following cases have been removed into the High Court of Australia under s 40 of the *Judiciary Act 1903* (Cth).

Constitutional Law

G Global 120E T2 Pty Ltd as trustee for the G Global 120E AUT v Commissioner of State Revenue

G Global 180Q Pty Ltd as trustee for the G Global 180Q AUT v Commissioner of State Revenue

[B48/2024](#); [B49/2024](#); [B50/2024](#)

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance (“German Agreement”) given legislative force under s 5(1) *International Tax Agreements Act 1953* (Cth) (“ITAA”) – where first respondent imposed foreign land tax surcharge under s 32(1)(b)(ii) of *Land Tax Act 2010* (Qld) (“LTA”) on basis that first respondent a foreign company or trustee of foreign trust – where first respondent contended this had effect of imposing more burdensome taxation on enterprise carried on by resident of Australia the capital of which partly owned by resident(s) of Germany than on other similar enterprises carried on by Australian resident contrary to art 24(4) of German Agreement - validity of *Treasury Laws Amendment (Foreign Investment) Act 2024* (Cth) which inserted s 5(3) into ITAA which provides that operation of a provision of a bilateral tax agreement provided for in s 5(1) “is subject to anything inconsistent with the provision contained in a law of the Commonwealth, or of a State or Territory, that imposed a tax other than an Australian tax, unless expressly provided otherwise in that law” – where s 5(3) expressed to operate with retrospective effect – whether prior to commencement of the *Treasury Laws Amendment (Foreign Investment) Act 2024*, s 32(1)(b)(ii) of LTA invalid in application to appellants, by force of s 109 of the Constitution by reason of its inconsistency with s 5(1) of ITAA – if so, whether 5(3) of the International Tax Agreements Act 1953 (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act*), in so far as it operates by reference to provision contained in a law of a State, supported by head of Commonwealth legislative power – if so whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*), when read with cl 2 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*, effective to remove inconsistency between s 32(1)(b)(ii)

of the LTA and s 5(1) of ITAA and any consequent invalidity – if so, whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*) when read with cl 2 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024* invalid (in whole or in part) because it effected an acquisition of the property of appellants otherwise than on just terms within meaning of s 51(xxxi) of the Constitution.

Proceedings removed into the High Court from Supreme Court of Queensland under s 40 of the Judiciary Act 1903 (Cth); special case referred to Full Court on 19 December 2024.

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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

Plaintiff M19A/2024 & Ors v Minister for Immigration, Citizenship & Multicultural Affairs

[M92/2024](#)

Catchwords:

Administrative law – visa cancellation – unreasonableness – where first three appellants granted permanent protection visas in 2011 – where delegate of respondent sent notice to first appellant under s 116 of *Migration Act 1958* (Cth) of intention to consider cancellation of visa – where first appellant did not receive notification because of change of address – where respondent proceeded to cancellation of visa in 2019 – where first appellant did not receive notification and only discovered cancellation in June 2021 – where no review available in Administrative Appeals Tribunal – where appellants sought constitutional or other writ in original jurisdiction of High Court – where application dismissed by primary judge (Gordon J) – whether appeal lies of right from judgment of primary judge or whether leave to appeal required – whether primary judge erred in failing to find cancellation decision legally unreasonable and/or in breach of s 120 *Migration Act* where delegate found failure to respond to notice of intention to consider cancellation was “behaviour towards the Department” that weighed in favour of cancellation – whether primary judge erred in failing to find cancellation legally unreasonable because of failure by delegate to consider best interests of children – whether primary judge erred in failing to find delegate failed to consider legal consequences of cancellation decision on second and third appellants.

Appealed from single Justice High Court: [\[2024\] HCASJ 39](#)

Aviation Law

Evans & Anor v Air Canada ABN 29094769561

[S138/2024](#): [\[2024\] HCASL 270](#)

Date determined: 10 October 2024 – *Special leave granted*

Catchwords:

Aviation law – international carriage of passengers by air – *Unification of Certain Rules of International Carriage by Air 1999* (“*Montreal Convention*”) – where appellants sought damages in Supreme Court of New South Wales for injuries allegedly suffered from turbulence on Air Canada flight from Vancouver to Australia under art 17 of Montreal Convention (incorporated into Australian law under s 9B *Civil Aviation (Carriers’ Liability) Act 1959* (Cth) – where respondent pleaded it was not liable for damages exceeding “113,100 Special Drawing Rights” in accordance with art 21 of Montreal Convention – where appellants relied on rule 105(C)(1)(a) of Air Canada’s International Tariff General Rules which stipulated there were no financial limits on compensatory damages recoverable in respect of bodily injuries – where Court of Appeal found rule 105(C)(1)(a) did not have effect of waiving defence created by art 21 – whether Court of Appeal erred in construing arts 17, 21 and 25 of Montreal Convention by treating rule 105(C)(1)(a) as form of consumer notification rather than term of contract of carriage – whether Court of Appeal erred in holding stipulation in rule 105(C)(1)(a) did not preclude financial limit under art 21(2) in cases where damages would exceed a monetary or financial amount and carrier proves no fault – whether Court of Appeal erred in not holding operation of rule 105(C)(1)(a) constitutes a stipulation for purposes of art 25 and displaced application of art 21(2) of Montreal Convention.

Appealed from NSWCA: [\[2024\] NSWCA 153](#)

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Constitutional Law

Farshchi v The King

M20/2025: [\[2025\] HCADisp 41](#)

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Constitutional law – Inconsistency – Criminal law – Appeal – Conviction – Where appellant charged with causing a person to remain in forced labour and conducting a business involving forced labour – *Criminal Code Act 1995* (Cth) – ss 270.6A(1) and (2) – Trial – *Jury Directions Act 2015* (Vic) – s 64(1)(e) – Where trial judge directed the jury as to the meaning of the phrase “beyond reasonable doubt” – Whether trial judge erred by directing the jury that a reasonable doubt is not an unrealistic possibility – Whether direction diminishes the criminal standard of proof – Whether direction inconsistent with s 13.2 of the *Criminal Code* (Cth) and s 80 of the *Constitution* – Whether s 64(1)(e) is thereby not picked up by s 68(1) of the *Judiciary Act 1903* (Cth) to apply to trials conducted in federal jurisdiction.

Appealed from VSCA: [\[2024\] VSCA 235](#)

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Contract Law

R Lawyers v Mr Daily & Anor

[A8/2025](#): [\[2025\] HCADisp 48](#)

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Contract law – Negligence – Where parties to a marriage entered into a binding financial agreement – Where the purpose of the agreement was to agree in advance how the parties’ existing and after-acquired property would be divided in the event of their later separation – Where advice of solicitors for one party in relation to the preparation and negotiation of agreement was inadequate – Where, following the parties’ separation, the financial agreement was found to be unenforceable – Whether the party’s contract claim against former solicitors was statute barred – Time when a negligently drawn contract first sees damage sustained – Whether loss and damage was sustained by the party upon entry into the defective contract or a later date – Where primary judge found that no loss or damage was sustained by the party until, at the earliest, the date of separation, such that the party’s claim against his former solicitors was not statute barred – Where through a solicitor’s negligence in the drafting and preparation of a contract a client fails to secure contractual protection against a contingent loss or liability – Whether actionable damage is sustained immediately at the time of the entry into the contract or only upon the occurrence of the contingency.

Appealed from FedCFamC1A: [\[2024\] FedCFamC1A 185](#)

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Criminal Law

The King v Batak

[S148/2024](#): [\[2024\] HCASL 304](#)

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Criminal law – complicity – accessorial liability – whether common law principles of complicity apply to offence of murder under s 18(1)(a) *Crimes Act 1900* (NSW) – whether Court of Criminal Appeal erred in concluding it was error of law to permit constructive law to be left to jury on basis of accessorial liability – whether accessory before the fact to constructive murder an offence known to law in New South Wales – if so, whether mental element differs depending on whether act causing death coincides with physical elements of foundational offence of whether a distinct act.

Appealed from NSWCCA: [\[2024\] NSWCCA 66](#)

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Elections

Laming v Electoral Commissioner of the Australian Electoral Commission

B75/2024: [\[2024\] HCASL 330](#)

Date determined: 5 December 2024 – *Special leave granted on limited grounds*

Catchwords:

Elections – electoral matter – *Commonwealth Electoral Act 1918* (Cth), s 321D(5) – where appellate contravened s 321D(5) by communicating electoral matter without disclosing prescribed details by posting on particular Facebook page – where primary judge found single act of publication of publication of post constituted single breach of s 321D(5) irrespective of how many times post viewed – where Full Federal Court allowed appeal – whether Full Court erred in finding s 321D(5) breached on each occasion person viewed post rather than finding contravention when appellant caused post to be published – meaning of “communicated to a person” in s 321D(1).

Appealed from FCAFC: [\[2024\] FCAFC 109](#); (2024) 304 FCR 561

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Immigration

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

M112/2024: [\[2024\] HCASL 326](#)

Date determined: 5 December 2024 – *Special leave granted*

Catchwords:

Immigration – Ministerial Directions under s 499 of *Migration Act 1958* (Cth) – visa cancellation – point in time of application of Direction - where Ministerial Direction 65 applied at time of delegate’s decision refusing to revoke cancellation of appellant’s visa – whether Full Court erred in failing to find Administrative Appeals Tribunal erred in applying later Ministerial Direction 90 in conducting review – whether appellant had accrued right for Direction 65 to be applied for purposes of s 7(2)(c) *Acts Interpretation Act 1901* (Cth).

Appealed from FCAFC: [\[2024\] FCAFC 119](#); (2024) 305 FCR 26

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Statutes

CD & Anor v Director of Public Prosecutions (SA) & Anor
[A24/2024: \[2024\] HCASL 297](#)

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Telecommunications (Interception and Access) Act 1979* (Cth) (“the Act”) – admissibility of evidence obtained communications obtained through encrypted application “ANOM” installed on mobile devices – where appellants charged with participating in criminal organisation and firearms offences – where prosecution seeks to lead evidence of communications obtained through “ANOM” application – where “ANOM” operated such that when mobile device user pressed ‘send’ on text message separate second message created in ANOM application with copy of message and additional data and sent via XMPP server to an “iBot” server which then re-transmitted to servers accessible by Australian Federal Police – whether AFP’s conduct in obtaining evidence of ANOM communications involved interception of communication passing over telecommunications system contrary to s7(1) of Act and thereby inadmissible – where Court of Appeal found use of ANOM application and platform did not involve interception of communication – where s 5F of Act provides communication taken to start passing over telecommunications system when sent or transmitted by person send communication and taken to continue to pass over system until accessible to intended recipient – whether Court of Appeal erred in failing to find under s 5F(a) of Act that having composed text message and pressing ‘send’ on mobile device connected to telecommunications system start of process for sending message over that system – whether Court of Appeal erred in failing to find covert copying of text message and covert transmission of message upon pressing ‘send’ unlawful interception – whether Court of Appeal erred in

construction of term “intended recipient” by finding “iBot” server intended recipient under ss 5F(b) and 5GH of Act.

Appealed from SASCA: [\[2024\] SASCA 82](#)

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Palmanova Pty Ltd v Commonwealth of Australia

[S47/2024](#): [\[2024\] HCASL 294](#)

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Protection of Movable Cultural Heritage Act 1986* (Cth) (“the Act”) – where Bolivian artefact purchased by applicant from US gallery in 2020 seized upon entry into Australia under Act – whether artefact exported from Bolivia to US prior to 1960 – where artefact seized upon entry into Australia under s 14 of Act – whether artefact liable for forfeiture – temporal operation of Act - whether majority of Full Federal Court erred in interpretation of s 14(1) of Act by concluding Act not limited in application to protected object of foreign country exported from that country after date of commencement of Act (1 July 1987) – whether majority erred in concluding unnecessary to consider extrinsic material in construction of s 14.

Appealed from FCAFC: [\[2024\] FCAFC 90](#); (2024) FCR 163

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Taxation

Commissioner of Taxation v PepsiCo, Inc

Commissioner of Taxation v Stokely-Van Camp, Inc

Commissioner of Taxation v PepsiCo, Inc

Commissioner of Taxation v PepsiCo, Inc

Commissioner of Taxation v Stokely-Van Camp, Inc

Commissioner of Taxation v Stokely-Van Camp, Inc

[M98/2024](#): [\[2024\] HCASL 298](#); [M99/2024](#): [\[2024\] HCASL 299](#); [M100/2024](#): [\[2024\] HCASL 300](#); [M101/2024](#): [\[2024\] HCASL 301](#); [M102/2024](#): [\[2024\] HCASL 302](#); [M103/2024](#): [\[2024\] HCASL 303](#)

Date determined: 7 November 2024 – *Special leave granted*

Taxation – royalty withholding tax – diverted profits tax – where non-resident taxpayer entered into exclusive bottling agreements (“EBAs”) with Australian

company (SAPL) for bottling and sale of PepsiCo branded beverages – where EBAs included licence of taxpayers’ trademarks and other intellectual property but did not provide for royalty – whether Full Federal Court ought to have found payments made under EBAs included “royalty” paid “as consideration for” use of or right to use intellectual property licensed to SAPL within meaning of s 6(1) *Income Tax Assessment Act 1936* (Cth) (“ITAA”) – whether Full Court ought to have found royalty component of EBA was income “derived” by and “paid to” PepsiCo under s 128(2B) ITAA and thereby withholding tax payable under s 128B(5A) – whether if no royalty withholding tax payable Full Court ought to have found liability for diverted profits tax for purposes of ss 177J and 177P ITAA.

Appealed from FCAFC: [\[2024\] FCAFC 86](#); (2024) 303 FCR 1

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Torts

Hunt Leather Pty Ltd ACN 000745960 & Anor v Transport for NSW
Hunt Leather Pty Ltd ABN 46000745960 & Ors v Transport for NSW

[S135/2024](#); [S136/2024](#); [\[2025\] HCADisp 12](#)

Date determined: 6 February 2025 – *Special leave granted*

Catchwords:

TORTS – nuisance – private nuisance – appellants claimed their properties were affected by construction of Sydney Light Rail – whether interference with enjoyment of appellants’ property substantial and unreasonable – whether failure by appellants to establish a failure to take reasonable care determinative – whether respondent bore onus of establishing that it took reasonable care – whether respondent failed to take reasonable care – significance to cause of action in nuisance of taking reasonable care – whether use of road for construction purposes exceptional – whether interference with reasonable enjoyment inevitable – whether delay in construction attributable to discovery of unknown utilities – whether damages should include a “recovery period” – whether s 43A of *Civil Liability Act 2002* (NSW) applicable – damages – pure economic loss – funded litigation – funding agreement included commission to funder – whether commission recoverable as component of damages

Appealed from NSWCA: [\[2024\] NSWCA 227](#)

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Michael Stewart by his litigation guardian Carol Schwarzman v. Metro North Hospital and Health Service (ABN 184 996 277 942)
[B10/2025: \[2025\] HCADisp 35](#)

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Torts - Assessment of damages- Cost of future care – Location – Where the appellant suffered personal injuries arising from his treatment as a patient at a hospital operated by the respondent – Where, at trial, the respondent admitted duty, breach and causation – Where the assessment of damages for the injuries was at issue – Where the primary judge awarded damages in the sum of \$2,190,505.48, before management fees to the appellant – Where the basis of the primary judge’s award of damages was to provide enhanced care and therapy while the appellant resided at a care facility – Where the appellant sought significantly higher damages, on the basis the appellant has communicated a desire to live independently, rather than in a care facility – Whether the primary judge erred in assessing damages.

Appealed from SCQCA: [\[2024\] QCA 225](#)

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7: CASES NOT PROCEEDING OR VACATED

8: SPECIAL LEAVE REFUSED

Publication of Reasons: 6 March 2025

No.	Applicant	Respondent	Court appealed from	Result
1.	Harradine	The State of South Australia (A22/2024)	Supreme Court of South Australia (Court of Appeal) [2024] SASCA 123	Special leave refused [2025] HCADisp 16
2.	Groom	Police (A25/2024)	Full Court of the Supreme Court of South Australia [2017] SASFC 161	Special leave refused [2025] HCADisp 17
3.	Wood	The Registrar for the Supreme Court of Queensland (B64/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 196	Special leave refused [2025] HCADisp 18
4.	Connor	Commissioner of Police (B76/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 217	Special leave refused [2025] HCADisp 19
5.	Peers	Fletcher & Anor (M115/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 275	Special leave refused [2025] HCADisp 20
6.	Volkov	The King (B63/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 87	Special leave refused [2025] HCADisp 21
7.	JNMK	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (P38/2024)	Federal Court of Australia [2024] FCA 829	Special leave refused [2025] HCADisp 22
8.	In the matter of an application by Kellan John Reynolds for leave to appeal (P3/2025)		High Court of Australia [2024] HCASJ 43	Leave refused [2025] HCADisp 23
9.	Shapkin	Director of Public Prosecutions & Anor (S151/2024)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 263	Special leave refused [2025] HCADisp 24
10.	Mahommed	Westpac Banking Corporation Limited (ACN 007 457 141) & Ors (S152/2024)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 267	Special leave refused [2025] HCADisp 25
11.	Kaur	Royal Melbourne Institute of Technology (M107/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 264	Special leave refused [2025] HCADisp 26
12.	HVD	The State of Western Australia (P39/2024)	Supreme Court of Western Australia (Court of Appeal) [2024] WASCA 118	Special leave refused [2025] HCADisp 27

8: Special Leave Refused

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
13.	Twomey	Que 5 Pty Ltd ACN 109 339 924 & Anor (P40/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 30	Special leave refused [2025] HCADisp 28
14.	Desai	Desai (S139/2024)	Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave refused [2025] HCADisp 29
15.	Arjunan & Anor	Neighbourhood Association D.P. No 285853 (NHA DP 285853) ABN 24002854739 (S5/2025)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 329	Special leave refused [2025] HCADisp 30
16.	BEK	BEL (B56/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 154	Special leave refused with costs [2025] HCADisp 31
17.	Schulz	The King (B65/2024)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 150	Special leave refused [2025] HCADisp 32
18.	Wikeley	Kea Investments Ltd (B66/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 201	Special leave refused with costs [2025] HCADisp 33
19.	The Attorney-General for the State of Queensland	Robinson (B69/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 206	Special leave refused with costs [2025] HCADisp 34
20.	Michael Stewart by his litigation guardian Carol Schwarzman	Metro North Hospital and Health Service (ABN 184 996 277 942) (B71/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 225	Special leave granted [2025] HCADisp 35
21.	Motor Accidents (Compensation) Commission	Motor Accidents Insurance Board (D3/2024)	Supreme Court of the Northern Territory (Court of Appeal) [2024] NTCA 5	Special leave refused with costs [2025] HCADisp 36
22.	Davey	State of Tasmania (H4/2024)	Supreme Court of Tasmania (Court of Criminal Appeal) [2024] TASSCA 11	Special leave refused [2025] HCADisp 37
23.	Dar-Alawda (Wendel Street) Community Centre Inc	Merri-Bek City Council (M89/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 214	Special leave refused with costs [2025] HCADisp 38
24.	XD	Director of Proceedings on behalf of the Health Ombudsman (B70/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 215	Special leave refused with costs [2025] HCADisp 39
25.	Ierardo	The Director of Public Prosecutions (M91/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 181	Special leave refused [2025] HCADisp 40
26.	Farshchi	The King (M93/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 235	Special leave granted [2025] HCADisp 41

8: Special Leave Refused

No.	Applicant	Respondent	Court appealed from	Result
27.	Qube Ports Pty Ltd (ACN 123 021 492)	Construction, Forestry and Maritime Employees Union & Anor (M95/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 132	Special leave refused with costs [2025] HCADisp 42
28.	Elijah Falco – a pseudonym	The Commonwealth Director of Public Prosecutions (M104/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 247	Special leave refused [2025] HCADisp 43
29.	Julian Crowder (a pseudonym)	The King (M105/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 211	Special leave refused [2025] HCADisp 44
30.	Bayer Intellectual Property GmbH & Anor	Sandoz AG & Anor (M106/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 135	Special leave refused with costs [2025] HCADisp 45
31.	Imad	Director General of Security & Anor (M109/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 138	Special leave refused with costs [2025] HCADisp 46
32.	Kelly	The State of Western Australia (P35/2024)	Supreme Court of Western Australia (Court of Appeal) [2024] WASCA 116	Special leave refused [2025] HCADisp 47
33.	R Lawyers	Daily & Anor (A23/2024)	Full Court of the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave granted [2025] HCADisp 48
34.	Goldsmith & Anor	Resolution Life Australasia Limited (formerly AMP Life Ltd) ACN 079 300 379 (B67/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 184	Special leave refused with costs [2025] HCADisp 49
35.	Goldsmith & Anor	AMP Life Ltd (B68/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 184	Special leave refused with costs [2025] HCADisp 50
36.	Alumina and Bauxite Company Ltd & Ors	Queensland Alumina Ltd & Ors (M111/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 142	Special leave refused with costs [2025] HCADisp 51
37.	Caporaso Pty Ltd as trustee for the Diversity Trust (ACN 612 176 020)	Mercato Centrale Australia Pty Ltd (ACN 627 469 818) (M113/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 156	Special leave refused with costs [2025] HCADisp 52
38.	Arizabaleta	The King (S133/2024)	Supreme Court of New South Wales (Court of Criminal Appeal) [2023] NSWCCA 217	Special leave refused [2025] HCADisp 53
39.	Drummond & Anor	Gordian Runoff Limited ACN 052 179 647 (S140/2024)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 239	Special leave refused with costs [2025] HCADisp 54
40.	Rossi	Qantas Airways Limited (S161/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 144	Special leave refused with costs [2025] HCADisp 55

8: Special Leave Refused

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
41.	Vamadevan	The King (S3/2025)	Supreme Court of New South Wales (Court of Criminal Appeal) [2024] NSWCCA 223	Special leave refused [2025] HCADisp 56