



HIGH COURT BULLETIN

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

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SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
<u>Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd & Ors; Woodside Energy Ltd & Ors v Electricity Generation Corporation t/as Verve Energy</u>	Contract Law
<u>James v The Queen</u>	Criminal Law
<u>The State of Western Australia v Brown & Ors</u>	Native Title

2: Cases Reserved

Case	Title
FTZK v Minister for Immigration and Citizenship & Anor	Administrative Law
Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)	Corporations Law
Gillard v The Queen	Criminal Law
Howard v Commissioner of Taxation	Equity
NSW Registrar of Births, Deaths and Marriages v Norrie	Statutes
Thiess v Collector of Customs & Ors	Statutes

3: Original Jurisdiction

Case	Title
Pollentine & Anor v. Bleijie & Ors	Constitutional Law

4: Special Leave Granted

Case	Title
Fitzgerald v The Queen	Evidence
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Maxwell v Highway Hauliers Pty Ltd	Insurance
Minister for Immigration, Multicultural Affairs and Citizenship v SZRNY & Anor	Migration
Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 & Anor	Tort Law
Cantarella Bros Pty Ltd v Modena Trading Pty Ltd	Trade Marks

1: CASES HANDED DOWN

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

Contract Law

Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd & Ors; Woodside Energy Ltd & Ors v Electricity Generation Corporation t/as Verve Energy

[P47; P48/2013](#): [\[2014\] HCA 7](#).

Judgment delivered: 5 March 2014.

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

Catchwords:

Contract – Construction – Long term gas supply agreement – Sellers obliged to use "reasonable endeavours" to supply supplemental gas – Agreement allowed sellers to take into account all "relevant commercial, economic and operational matters" in determining whether able to supply supplemental gas – Gas explosion at plant operated by third party temporarily reduced supply of gas to market – Sellers refused to supply supplemental gas at price stipulated in agreement during period of reduced supply – Sellers offered to supply equivalent quantities of gas at higher price under separate short term agreements – Whether sellers breached obligation to use "reasonable endeavours" to supply supplemental gas.

Words and phrases – "able", "reasonable endeavours", "relevant commercial, economic and operational matters".

Appealed from WASC (CA): [2011] WASC 268; [\[2013\] WASCA 36](#).

Held: Appeal dismissed.

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Criminal Law

James v The Queen

[M102/2013](#): [\[2014\] HCA 6](#).

Judgment delivered: 5 March 2014.

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

Catchwords:

Criminal law – Appeal – Appeal against conviction – Intentionally causing serious injury – Whether failure to instruct jury as to lesser alternative verdicts occasioned substantial miscarriage of justice.

Criminal law – Role of trial judge – Whether duty to secure fair trial required instruction on any lesser alternative verdicts regardless of forensic choices of counsel.

Appealed from VSC (CA): [\[2013\] VSCA 55](#); [\[2011\] VSC 596](#).

Held: Appeal dismissed.

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Native Title

The State of Western Australia v Brown & Ors
[P49/2013](#): [\[2014\] HCA 8](#).

Judgment delivered: 12 March 2014.

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

Catchwords:

Native title – Native title rights in relation to land – Agreement made in 1964 between State of Western Australia and joint venturers to develop iron ore deposits at Mount Goldsworthy – Mineral leases for iron ore granted pursuant to agreement – Joint venturers required under agreement to give State and third parties access to land subject of mineral leases provided such access did not unduly prejudice or interfere with joint venturers' operations – Whether mineral leases granted joint venturers right of exclusive possession – Whether joint venturers' rights under mineral leases inconsistent with claimed native title rights and interests – Whether claimed native title rights and interests extinguished by actual or potential conflicting use or development of land by joint venturers subsequent to grant of mineral leases.

Words and phrases – "exclusive possession", "extinguishment", "inconsistency of rights".

Appealed from FCA (FC): (2012) 208 FCR 505; (2012) 294 ALR 223; [\[2012\] FCAFC 154](#); [\[2013\] FCAFC 18](#).

Held: Appeal dismissed.

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2: CASES RESERVED

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

Administrative Law

FTZK v Minister for Immigration and Citizenship & Anor
M143/2013: [\[2014\] HCATrans 41](#).

Date heard: 11 March 2014.

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

Catchwords:

Administrative law – Jurisdictional error – Appellant asylum seeker accused of involvement in kidnapping-murder while in China – Appellant argued accusation motivated by appellant's religious practices – Administrative Appeals Tribunal ("AAT") found appellant's account and conduct subsequent accusation constituted "serious reasons" for considering appellant had committed a serious political crime – AAT therefore found that Refugee Convention did not apply – Whether decision of AAT took into account irrelevant considerations – Whether decision affected by jurisdictional error.

Appealed from FCA (FC): [\[2013\] FCAFC 44](#).

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Constitutional Law

Attorney-General for the Northern Territory & Anor v Emmerson & Anor
D5/2013: [\[2014\] HCATrans 6](#); [\[2014\] HCATrans 8](#).

Date heard: 4 and 5 February 2014.

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

Catchwords:

Constitutional law – Judicial power – Institutional integrity – *Kable* principle – Criminal Property Forfeiture Act (NT) ("CPFA"), s 94(1) and Misuse of Drugs Act (NT) ("MDA"), s 36A(3) operate to forfeit certain property of a person declared to be a drug trafficker –

Respondent convicted of various possession and supply offences – DPP obtained restraining order over all property owned or controlled by respondent under CPFA ss 41 and 44 on basis that conviction could lead to him being declared a drug trafficker under s 36A(3) MDA – Only small component of that property was derived from crime – Whether CPFA and MDA impermissibly conscript Supreme Court to the implementation of a legislative or executive purpose – Whether CPFA and MDA undermine institutional integrity of NTSC to degree incompatible with its role as repository of federal jurisdiction.

Appealed from NTSC (CA): (2013) 33 NTLR 1; (2013) 166 NTR 12; (2013) 275 FLR 368; [\[2013\] NTCA 04](#).

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Corporations Law

Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)

M141/2013: [\[2014\] HCATrans 39](#).

Date heard: 6 March 2014.

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

Catchwords:

Corporations law – Liquidation – Liquidator brought action against secured creditor and receiver – Liquidator indemnified by primary unsecured creditor - Sum received by liquidator through settlement with receiver but action ultimately unsuccessful against secured creditor – Settlement sum paid by liquidator to unsecured creditor – Whether liquidator entitled to equitable lien over settlement sum for remuneration, costs and expenses in priority over secured creditor.

Equity – Equitable lien – Principled basis for liquidator's equitable lien.

Appealed from VSC (CA): [\[2013\] VSCA 132](#).

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Criminal Law

Achurch v The Queen

S276/2013: [\[2014\] HCATrans 15](#).

Date heard: 13 February 2014.

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

Catchwords:

Criminal law – Sentencing – *Crimes (Sentencing Procedure) Act* 1999 (NSW) ("Act") – Appellant convicted of drugs offences and sentenced to non-parole period of 6 years – Crown successfully appealed against sentence and non-parole period increased to 13 years – Court of Criminal Appeal held trial judge had erred in approach to sentencing – Court of Criminal Appeal issued new sentence in line with *R v Way*; *R v Sellars*; and *R v Knight* – Two months after successful crown appeal High Court handed down judgment in *Muldrock v The Queen*, holding that *Way*, *Sellars* and *Knight* wrongly decided – Whether sentence imposed contrary to law pursuant to s 43(1)(a) of Act – Whether appropriate that s 43(1)(a) of Act be used as proxy for appeal.

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 117](#).

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Gillard v The Queen

C20/2013: [\[2014\] HCATrans 43](#).

Date heard: 13 March 2014.

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

Catchwords:

Criminal law – Offences against the person – Sexual offences – Consent – Appellant convicted of sexual intercourse without consent and acts of indecency contrary to ss54 and 60 of Crimes Act 1900 (ACT) ("Act") – Absence of consent established through abuse of trust pursuant to s 67(1)(h) of Act – Whether, where absence of consent established through s 67(1)(h) mental element of offence is established through recklessness as to the circumstances – Whether knowledge required by operation of s 67(3) of Act.

Appealed from ACTSC (CA): [\[2013\] ACTCA 17](#).

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Equity

Australian Financial Services and Leasing Pty Limited v Hills Industries Limited & Anor

S163/2013: [\[2014\] HCATrans 13](#).

Date heard: 11 February 2014.

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

Catchwords:

Equity – Restitution – "Change of position" defence – Fraudulent third party fabricated invoices for the purchase of equipment from first and second respondents and presented invoices to appellant to obtain finance for their purchase – Appellant, not knowing the invoices were fabricated and the equipment did not exist, paid first and second respondents and entered into a leaseback agreement with the third party in respect of the equipment – In response, first respondent discharged debts owed by third party and second respondent filed consent orders setting aside its default judgments and discontinued recovery against third party – Appellant commenced proceedings in restitution against first and second respondents – Trial judge found for appellant on basis that first respondent gave no consideration for monies received from appellant and first respondent had not suffered detriment arising out of a speculative change of its position after receiving those monies – Trial judge dismissed claim against second respondent – Decision in relation to first respondent reversed on appeal but affirmed in relation to second respondent – Court of Appeal held that by discharging debts owed to first respondent by third party, first respondent had given up opportunity to enforce payment of those debts – Whether defence of "change of position" in claims for money paid to third party by financier under mistake of fact extended to this situation – Whether in order to make out defence of change of position respondents were required to point to specific and quantifiable expenditure or financial loss because of mistaken payment.

Appealed from NSWSC (CA): (2012) 295 ALR 147; [\[2012\] NSWCA 380](#).

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Howard v Commissioner of Taxation

M140/2012: [\[2014\] HCATrans 42](#).

Date heard: 12 March 2014.

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

Catchwords:

Equity – Fiduciary duties – Duty to account – Whether fiduciary duty to account for gains is extinguished by circumstance that gain realised results from award to fiduciary of equitable compensation – Whether fiduciary's duty extends to bringing proceedings to protect rights in respect of which duty subsists, and to accounting for proceeds of such proceedings.

Appealed from FCA (FC): [\[2011\] FCA 1421](#); [\[2012\] FCAFC 149](#).

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See also [Corporations Law](#): *Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)*

Statutes

NSW Registrar of Births, Deaths and Marriages v Norrie
[S273/2013](#): [\[2014\] HCATrans 36](#).

Date heard: 4 March 2014.

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

Catchwords:

Statutes – Interpretation – *Births, Deaths and Marriages Registration Act 1995* (NSW) ("BDMR Act") – Respondent, born male and underwent sexual reassignment surgery, applied to register change of sex to "non-specific" – Application approved but later revoked – Whether Pt 5A of BDMR Act permits registration of a sex category other than "male" and "female" – Whether "sex" has binary meaning.

Appealed from NSWSC (CA): [\[2013\] NSWCCA 145](#).

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Taylor v The Owners – Strata Plan No 11564 & Ors
[S179/2013](#): [\[2014\] HCATrans 11](#).

Date heard: 7 February 2014.

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

Catchwords:

Statutes – Interpretation – *Civil Liability Act 2002* (NSW) ("CLA") – Appellant brought claim under *Compensation to Relatives Act 1897* (NSW) for compensation for accidental death of her husband – CLA s 12(2) directs court to disregard "excess" earnings of a high-earning "claimant" but does not refer to earnings of "deceased" – Late husband had earned in excess of three times average weekly earnings – Whether reference to "a deceased person's" earnings can be read into s 12(2) of CLA so as to disregard deceased person's earnings above statutory formula – Whether additional words can be read into a statute where ordinary meaning of text was not unreasonable or absurd.

Appealed from NSWSC (CA): (2013) 83 NSWLR 1; [\[2013\] NSWCA 55](#).

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Thiess v Collector of Customs & Ors
B57/2013: [\[2014\] HCATrans 38](#).

Date heard: 5 March 2014.

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

Catchwords:

Statutes – Interpretation – *Customs Act 1901* (Cth) ("Act") s 167 – Appellant's customs broker paid customs duty and GST on imported yacht – Customs broker input incorrect import duty into self-assessment system as result of mistaken belief about weight of yacht – Appellant later became aware of mistake and commenced proceedings to recover monies paid – Whether s 167(4) of Act prevents action for recovery of customs duty paid due to mistake of fact where no protest under s 167(1).

Appealed from QSC (CA): [\[2013\] QCA 54](#).

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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

Pollentine & Anor v Bleijie & Ors

[B39/2013](#): *Case stated.*

Catchwords:

Constitutional law – Limitation on State legislative power – Whether s 18 of *Criminal Law Amendment Act 1945* (Cth) ("Act") is invalid on ground that it is contrary to Chapter III of the Constitution – Whether s 18 of Act infringes *Kable* principle.

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

[S266](#); [S267](#); [S268/2013](#): *Causes removed from NSWSC (CA).*

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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Williams v Commonwealth of Australia & Ors

[S154/2013](#): *Special case.*

Catchwords:

Constitutional law – Powers of Commonwealth Parliament – Commonwealth entered funding agreement with Scripture Union of Queensland for provision of chaplaincy services at State school ("Funding Agreement") – Whether Appropriation Acts authorised Funding Agreement – If not, whether s 32B of *Financial Management and Accountability Act 1997* (Cth) ("FMA Act") or Part 5AA and Schedule 1AA of *Financial Management and Accountability Regulations 1997* ("FMA Regulations") or item 9 of Schedule 1 to *Financial Framework Amendment Act* ("FFA Act") were invalid – If not, whether Funding Agreement was authorised by s 32B of FMA Act or Part 5AA and Schedule 1AA of FMA Regulations or, where applicable, item 9 of Schedule 1 to FFA Act.

Constitutional law – Executive power of Commonwealth – Expenditure – Whether Funding Agreement supported by executive power – Whether payments unlawful because not authorised by statute and beyond executive power.

Constitutional law – Standing – Plaintiff's children attended State school party to Funding Agreement – Whether plaintiff has standing to challenge validity of payments made in 2012 to service provider.

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See also [Migration](#): *Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor*

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Migration

Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor

[S297/2013](#): *Demurrer.*

Catchwords:

Migration – Refugees – Plaintiff assessed as person in respect of whom Australia owed protection obligations – Plaintiff subsequently met definition of "unauthorised maritime arrival" due to commencement of amendments to *Migration Act 1958* (Cth) – *Migration Amendment (Temporary Protection Visas) Regulation 2013* ("TPV Regulation") subsequently commenced rendering

unauthorised maritime arrivals ineligible for grant of subclass 866 permanent protection visa – Senate disallowed TPV Regulation pursuant to s 42 *Legislative Instruments Act 2003* (Cth) ("LIA") – Whether *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* (Cth) ("UMA Regulation") has same substance as TPV Regulation within meaning of s 48 LIA as regards unauthorised maritime arrivals.

Statutes – Validity of delegated legislation – Whether clause 866.222 of UMA Regulation invalid – Whether clause 866.222 inconsistent with, or repugnant to, ss 36 or 46A of *Migration Act 1958* (Cth) – Whether s 196 requires Minister to consider and decide plaintiff's application by reference to criteria excluding clause 866.222.

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Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor
[M150/2013](#): *Demurrer.*

Catchwords:

Migration – Refugees – Plaintiff person in respect of whom Australia owed protection obligations – *Migration Amendment (Temporary Protection Visas) Regulation 2013* ("TPV Regulation") subsequently commenced rendering unauthorised maritime arrivals ineligible for grant of subclass 866 permanent protection visa – Senate disallowed TPV Regulation pursuant to s 42 *Legislative Instruments Act 2003* (Cth) ("LIA") – Whether *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* (Cth) ("UMA Regulation") has same substance as TPV Regulation within meaning of s 48 LIA as regards unauthorised maritime arrivals.

Statutes – Validity of delegated legislation – Whether clause 866.222 of UMA Regulation invalid – Whether clause 866.222 inconsistent with, or repugnant to, s 36 of *Migration Act 1958* (Cth).

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Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor
[S156/2013](#): *Stated case with questions reserved.*

Catchwords:

Migration – Refugees – Papua New Guinea ("PNG") designated a regional processing country to assess refugee claims – Plaintiff

entered Australia by sea at Christmas Island and became "unlawful non-citizen" and "unauthorised maritime arrival" – On direction of Minister, plaintiff taken to PNG for processing of refugee application ("Direction") – Whether decision of Minister to designate PNG regional processing country pursuant to s 198AB of *Migration Act 1958* (Cth) was made without power and was invalid – Whether Minister's Direction under s 198AD was invalid.

Constitutional law – Powers of Commonwealth Parliament – Whether ss 198AB and 198AD are supported by head of power in s 51 of the Constitution.

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See also [Migration](#): *Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor* and *Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor*

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4: SPECIAL LEAVE GRANTED

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

Contract Law

Commonwealth Bank of Australia v Barker

A23/2013: [\[2013\] HCATrans 325](#).

Date heard: 13 December 2013 – *Special leave granted*.

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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Corporations Law

MacarthurCook Fund Management Limited & Anor v TFML Limited

S183/2013: [\[2014\] HCATrans 26](#).

Date heard: 14 February 2014 - *Special leave granted*.

Catchwords:

Corporations law – *Corporations Act 2001* (Cth) Ch 5C, Part 5C.6 – Managed investment schemes – Subscribed units held by appellant provided for redemption after 12 months - Respondent suspended withdrawals of trust units – Whether Part 5C.6 governs all exits from managed investment scheme – Whether prohibition in s 601KA(3)(b) applies to every power of compulsory redemption of units in registered managed investment scheme – Whether concept

of "withdrawal" used in Part 5C.6 requires element of volition by withdrawing member.

Appealed from NSWSC (CA): [\[2013\] NSWCA 291](#).

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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](#).

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Criminal Law

Lee & Anor v The Queen

S101; S102/2013: [\[2013\] HCATrans 314](#).

Date heard: 13 December 2013 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against conviction – *Criminal Appeal Act 1912* (NSW) ("CAA") – Proper characterisation of "miscarriage of justice" limb of s 6(1) of CAA – Whether Court of Criminal Appeal ("CCA") erred in application of limb – Whether limb requires a causal connection be established between an irregularity and conviction at trial – Whether onus falls on applicant to prove both miscarriage of justice and application of proviso.

Criminal law – Appeal against conviction – *New South Wales Crime Commission Act* (NSW) ("NSWCC Act") – Whether Court CCA erred in construction of ss 6, 7, 13 and 18B of NSWCC Act – Whether CCA failed to properly assess illegality or impropriety of New South Wales Crime Commission.

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 68](#).

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Equity

Sidhu v van Dyke

S148/2013: [\[2013\] HCATrans 312](#).

Date heard: 13 December 2013 – *Special leave granted*.

Catchwords:

Equity – Estoppel – Equitable estoppel – Proprietary estoppel – Promises by man to woman to give her cottage property – Promise unperformed – Whether presumption of reliance should be applied.

Equity – Equitable compensation – Whether equitable compensation should be assessed by reference to detriment suffered or position plaintiff would have been in had promise been fulfilled.

Appealed from NSWSC (CA): [\[2013\] NSWCA 198](#).

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

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Evidence

Fitzgerald v The Queen

A28/2013: [\[2014\] HCATrans 48](#).

Date heard: 14 March 2014 – *Special leave granted on limited grounds*.

Catchwords:

Evidence – Identification evidence – DNA evidence – Whether DNA evidence alone is sufficient to establish both presence and participation for purpose of joint enterprise liability in circumstances where no eye witnesses to crimes identified Appellant's presence – Whether reasonable to convict Appellant of murder in circumstances where expert gave evidence that "secondary transfer" of DNA was possible but that scientific understanding of "secondary transfer" was limited.

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

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Honeysett v R

S265/2013: [\[2014\] HCATrans 57](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Evidence – Opinion evidence – *Evidence Act 1995* (NSW) s 79 – Evidence given of comparisons of CCTV images of offender and images of Appellant in which common anatomical features identified – Whether "face mapping" and "body mapping" constitute "specialised knowledge" within meaning of s 79 – Whether s 79 requires expert to disclose assumptions and methodology – Whether s 79 requires methodology to be demonstrated as reliable – Whether witness qualified as an *ad hoc* expert.

Words and phrases – "specialised knowledge".

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

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Insurance

Maxwell v Highway Hauliers Pty Ltd

P31/2013: [\[2014\] HCATrans 51](#).

Date heard: 14 March 2014 – *Special leave granted*.

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

Minister for Immigration, Multicultural Affairs and Citizenship v SZRNY & Anor

S190/2013: [\[2014\] HCATrans 54](#).

Date heard: 14 March 2014 – *Special leave granted*.

Catchwords:

Migration – *Migration Act 1958* (Cth) ("Act") s 5(9) – First Respondent applied for protection visa which was refused by delegate – First Respondent successfully applied for judicial review – Reconstituted Tribunal affirmed delegate's decision and notified First Respondent – Complementary protection criterion contained in *Migration Amendment (Complementary Protection) Act 2011* (Cth) commenced before First Respondent received Tribunal's decision and applied to applications for protection visas that were not "finally determined within s 5(9) of Act – First Respondent's application for judicial review upheld on basis that Tribunal made jurisdictional error by failing to consider complementary protection criterion in s 36(2)(aa) and/or failing to invite First Respondent to appear before the Tribunal pursuant to s 425 – Whether a visa application is

"finally determined" when the Tribunal records its decision under s 430(1) of Act or when the Tribunal sends copies of its decision externally or when the review applicant and Secretary have been given notice of decision.

Words and phrases – "finally determined".

Appealed from FCA (FC): [\[2013\] FCAFC 104](#).

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Statutes

ADCO Constructions Pty Ltd v Goudappel & Anor
S201/2013: [\[2013\] HCATrans 250](#).

Date heard: 11 October 2013 – *Special leave granted*.

Catchwords:

Statutes – Interpretation – *Workers Compensation Act 1987* (NSW) ("WCA"), s 66 – First respondent suffered injury in course of employment – Assessed as having a degree of whole person impairment of 6 per cent – *Workers Compensation Legislation Amendment Act 2012* (NSW), Schedule 2 amended WCA s 66 – New s 66 provided that no compensation payable unless impairment was greater than 10 per cent – Schedule 12 inserted Pt 19H into Schedule 6 WCA which provided that amendments extend to claims for compensation made before commencement of the amendment – Whether first respondent entitled to compensation.

Appealed from NSWSC (CA): [\[2013\] NSWCA 94](#).

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Tort Law

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor
S198/2013: [\[2014\] HCATrans 52](#).

Date heard: 14 March 2014 – *Special leave granted*.

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
S202/2013: [\[2014\] HCATrans 53](#).

Date heard: 14 March 2014 – *Special leave granted*.

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 likelihood that other traders in relevant goods would wish to make honest use of words for sake of "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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5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Canberra: 6 March 2014

(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Redmond	Redmond & Anor (B59/2013; B60/2013)	Full Court of the Family Court of Australia	Application Dismissed [2014] HCASL 22
2.	Redman	Redman (C21/2013)	Full Court of the Family Court of Australia	Application Dismissed [2014] HCASL 23
3.	Re Lei	(M124/2013)	High Court of Australia [2013] HCATrans 197	Application Dismissed [2014] HCASL 24
4.	Townley	The Queen (M139/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2014] HCASL 25
5.	Lucas	Chief Commissioner's Office (M142/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2014] HCASL 26
6.	Slaveski	Rotstein & Associates Pty Ltd Trading as Rotstein Commercial Lawyers (M146/2013)	Federal Court of Australia [2013] FCA 1184	Application Dismissed [2014] HCASL 27
7.	Re Cameron	(P54/2013)	High Court of Australia [2013] HCATrans 173	Application Dismissed [2014] HCASL 28
8.	SZSLE	Minister for Immigration and Border Protection & Anor (S277/2013)	Federal Court of Australia [2013] FCA 1161	Application Dismissed [2014] HCASL 29
9.	SZRSZ & Ors	Minister for Immigration and Border Protection & Anor (S284/2013)	Federal Court of Australia [2013] FCA 1171	Application Dismissed [2014] HCASL 30
10.	SZSJM	Minister for Immigration and Border Protection & Anor (S299/2013)	Federal Court of Australia [2013] FCA 1260	Application Dismissed [2014] HCASL 31
11.	SZSQY	Minister for Immigration and Border Protection & Anor (S305/2013)	Federal Court of Australia [2013] FCA 1288	Application Dismissed [2014] HCASL 32

12.	Luck	The Deputy Registrar (RM) of the High Court of Australia - Melbourne Office of the Registry & Ors (M104/2013)	High Court of Australia [2013] HCATrans 166	Application Dismissed [2014] HCASL 33
13.	Luck	University of Southern Queensland & Anor (M105/2013)	High Court of Australia [2013] HCATrans 163	Application Dismissed [2014] HCASL 34
14.	Luck	Principal Officer of Victoria Police & Anor (M106/2013; M107/2013)	High Court of Australia [2013] HCATrans 164	Application Dismissed [2014] HCASL 35
15.	Luck	Principal Officer of Department of Justice & Anor (M108/2013)	High Court of Australia [2013] HCATrans 165	Application Dismissed [2014] HCASL 36
16.	Kingdom of Saudi Arabia & Anor	Australian International Islamic College Board Inc IA 30976 (B33/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 129	Application Dismissed with Costs [2014] HCASL 37
17.	BZAAH & Anor	Minister for Immigration and Citizenship & Anor (B43/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 72	Application Dismissed with Costs [2014] HCASL 38
18.	Briggs	The Queen (B40/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 110	Application Dismissed [2014] HCASL 39
19.	Dunrobin	The Queen (B42/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 175	Application Dismissed [2014] HCASL 40
20.	Alwis	The Queen (B44/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 308	Application Dismissed [2014] HCASL 41

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(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Moon & Anor	Secure Funding Pty Ltd & Ors (B52/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 86	Application Dismissed [2014] HCASL 42
2.	SZSCM & Anor	Minister for Immigration Multicultural Affairs and Citizenship & Anor (B66/2013)	Federal Court of Australia [2013] FCA 1165	Application Dismissed [2014] HCASL 43
3.	Karam	Aloe & Co Pty Ltd (M92/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2014] HCASL 44
4.	Sengoz	The Queen (M132/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2014] HCASL 45
5.	Slaveska	Elenchevski (M135/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 283	Application Dismissed [2014] HCASL 46
6.	Matthews	The Queen (S169/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 187	Application Dismissed [2014] HCASL 47
7.	SZRNE	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S172/2013)	Federal Court of Australia [2013] FCA 817	Application Dismissed [2014] HCASL 48
8.	Haykal	Krawiec & Anor (S175/2013)	Full Court of the Family Court of Australia	Application Dismissed [2014] HCASL 49
9.	Haq	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S186/2013)	Federal Court of Australia [2013] FCA 880	Application Dismissed [2014] HCASL 50
10.	SZRTN	Minister for Immigration and Border Protection & Anor (S206/2013)	Federal Court of Australia [2013] FCA 1156	Application Dismissed [2014] HCASL 51
11.	SZRTY	Minister for Immigration and Border Protection & Anor (S280/2013)	Federal Court of Australia [2013] FCA 1170	Application Dismissed [2014] HCASL 52
12.	SZSHZ	Minister for Immigration and Border Protection & Anor (S289/2013)	Federal Court of Australia [2013] FCA 1179	Application Dismissed [2014] HCASL 53

13.	SZRTJ	Minister for Immigration and Border Protection & Anor (S291/2013)	Federal Court of Australia [2013] FCA 1174	Application Dismissed [2014] HCASL 54
14.	Lux Distributors Pty Ltd	Australian Competition and Consumer Commission (M122/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 90	Application Dismissed with Costs [2014] HCASL 55
15.	Mohamed	Mohamed (S83/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 65	Application Dismissed with Costs [2014] HCASL 56
16.	SZQNJ	Minister for Immigration and Citizenship & Anor (S91/2013)	Federal Court of Australia [2013] FCA 346	Application Dismissed with Costs [2014] HCASL 57
17.	Galea & Ors	Farrugia & Ors (S134/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 164	Application Dismissed with Costs [2014] HCASL 58
18.	Mulcahy	Cooper (S141/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 160	Application Dismissed with Costs [2014] HCASL 59

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Canberra: 14 March 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Christian	Sawka (P32/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 147	Special leave refused [2014] HCATrans 50
2.	BHP Billiton Limited	Hamilton & Anor (A26/2013)	Full Court of the Supreme Court of South Australia [2013] SASCFC 75	Special leave refused with costs [2014] HCATrans 45
3.	Greenhill International Pty Ltd	Commonwealth Bank of Australia (A27/2013)	Full Court of the Supreme Court of South Australia [2013] SASCFC 76	Special leave refused with costs [2014] HCATrans 46
4.	Bonython- Wright	The Queen (A29/2013)	Full Court of the Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCFC 87	Special leave refused [2014] HCATrans 47
5.	Sumner	The Queen (A30/2013)	Full Court of the Supreme Court of South Australia (Court of Criminal Appeal) [2013] SASCFC 82	Special leave refused [2014] HCATrans 48
6.	The Queen	Nona (C18/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2013] ACTCA 39	Special leave refused [2014] HCATrans 44
7.	Nona	The Queen (C19/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2013] ACTCA 39	Special leave refused [2014] HCATrans 44
8.	Yara Australia Pty Ltd	Oswal & Ors (P45/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 187	Special leave refused with costs [2014] HCATrans 49

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Sydney: 14 March 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Morrison	Sarkis (S184/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 281	Special leave refused with costs [2014] HCATrans 58
2.	Administration and Marketing Solutions Pty Limited & Anor	Bardsley-Smith & Ors (S185/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 200	Special leave refused with costs [2014] HCATrans 59
3.	Moore & Anor	Chubb Insurance Company of Australia Limited & Ors (S188/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 212	Stood over
4.	Peter Clarke as trustee for the Clarke Family Trust & Ors	Chubb Insurance Company of Australia Limited & Ors (S189/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 212	Stood over
5.	Bindaree Beef Pty Limited	Australian Meat Industry Employees' Union (on behalf of Anthony Terrance Riley) & Anor (S192/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 305	Special leave refused with costs [2014] HCATrans 55
6.	Donald	The Queen (S16/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 238 [2013] NSWCCA 290	Special leave refused [2014] HCATrans 56

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