



HIGH COURT BULLETIN

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[2013] HCAB 03 (18 April 2013)

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
SZOQQ v Minister for Immigration and Citizenship and Anor	Citizenship and Migration
Castle Constructions Pty Limited v Sahab Holdings Pty Ltd & Anor	Property
Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd & Ors	Proportionate liability

[2: Cases Reserved](#)

Case	Title
Keating v Director of Public Prosecutions (Cth)	Constitutional Law
State of NSW v Kable	Constitutional Law

Kakavas v Crown Melbourne Limited & Ors	Equity
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3: Original Jurisdiction

Case	Title
There are no new matters ready for hearing in the original jurisdiction of the High Court.	

4: Special Leave Granted

Case	Title
Construction Forestry Mining & energy Union v Mammoet Australia Pty Ltd ACN 075 483 644	Industrial Law

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April 2013 sittings.

Citizenship and Migration

SZOQQ v Minister for Immigration and Citizenship and Anor
S97/2012: [\[2013\] HCA 12](#).

Judgment delivered: 10 April 2013.

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

Catchwords:

Immigration – Refugees – Judicial review – Minister's delegate found appellant had well-founded fear of political persecution if returned to Indonesia – Minister's delegate concluded Australia owed no "protection obligations" to appellant because appellant convicted of "particularly serious crime" – Whether "protection obligations" in s 36(2)(a) of *Migration Act* 1958 (Cth) ("Act") limited to non-refoulement obligation in Art 33(1) of Convention relating to the Status of Refugees as amended by Protocol relating to the Status of Refugees – Whether s 91U of Act confines scope of Australia's "protection obligations" in s 36(2)(a) of Act – Whether Minister bound to consider if grant of visa not prevented by s 501 of Act.

Words and phrases – "non-refoulement", "particularly serious crime", "protection obligations".

Appealed from FCA (FC): [\[2011\] FCA 1237](#); (2011) 124 ALD 18; [\[2012\] FCAFC 40](#); (2012) 200 FCR 174.

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Property

Castle Constructions Pty Limited v Sahab Holdings Pty Ltd & Anor
S263/2012: [\[2013\] HCA 11](#).

Judgment delivered: 10 April 2013.

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

Catchwords:

Real property – Torrens system land – Easements – Registered proprietor of servient tenement requested Registrar-General remove easement from Register – Easement removed from Register without objection from registered proprietors of dominant tenement – Subsequent purchaser of dominant tenement requested that Registrar-General restore easement to Register – Registrar-General refused – Whether deliberate removal of easement from Register "omission" within meaning of s 42(1)(a1) of *Real Property Act* 1900 (NSW) ("Act") – Whether subsequent purchaser of dominant tenement barred from action against Registrar-General under s 12A(3) of Act for removal of easement – Whether subsequent purchaser "person who is dissatisfied" with Registrar-General's decision under s 122 of Act.

Words and phrases – "in the case of the omission", "omission", "person who is dissatisfied".

Appealed from NSW SC (CA): (2011) 15 BPR 29,627; [\[2011\] NSWCA 395](#); [\[2012\] NSWCA 42](#); [\[2012\] NSWCA 72](#).

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Proportionate Liability

Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd & Ors S270/2012: [\[2013\] HCA 10](#).

Judgment delivered: 3 April 2013.

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

Catchwords:

Proportionate liability – Loan and mortgage transaction – Fraudsters induced lender to advance monies on security of mortgage – Solicitors negligently drafted mortgage – Lender unable to recover monies advanced – Whether damage or loss the subject of lender's claim against solicitors caused or materially contributed to by fraudsters' conduct – Whether solicitors concurrent wrongdoer together with fraudsters within Pt 4 of *Civil Liability Act* 2002 (NSW).

Words and phrases – "apportionable claim", "causation", "caused or materially contributed to", "concurrent wrongdoer", "damage", "damages", "factual causation", "proportionate liability", "scope of liability".

Appealed from NSW SC (CA): [\[2012\] NSWCA 38](#).

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Words and Phrases

See also [Citizenship and Migration](#): *SZOQQ v Minister for Immigration and Citizenship and Anor*

See also [Property](#): *Castle Constructions Pty Limited v Sahab Holdings Pty Ltd & Anor*

See also [Proportionate Liability](#): *Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd & Ors*

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2: CASES RESERVED

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

Administrative Law

See also [Citizenship and Migration: Minister for Immigration and Citizenship v Li and Anor](#)

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Citizenship and Migration

Plaintiff M79 v Minister for Immigration and Citizenship
M79/2012: [\[2013\] HCA Trans 7](#).

Date heard: 8 February 2013.

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

Catchwords:

Citizenship and Migration – Refugees – Plaintiff 'offshore entry person' – Plaintiff made a request for a refugee status assessment – Delegate determined that Plaintiff did not meet the definition of 'refugee' in Art 1A of the Refugees Convention – Plaintiff applied for independent merits review and subsequently judicial review – Judicial review decision remains reserved – Minister intervened under s 195A of the *Migration Act* 1958 (Cth) and granted the Plaintiff a temporary safe haven visa permitting a stay of seven days and a bridging E visa permitting a stay of six months – Grant of temporary safe haven visa bars plaintiff's application for protection visa under s 91L of the *Migration Act* – Whether temporary safe haven visa validly granted – Whether plaintiff's application for a protection visa valid.

This application for an order to show cause was filed in the original jurisdiction of the High Court of Australia.

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Minister for Immigration and Citizenship v Li and Anor
B68/2012: [\[2013\] HCATrans 6](#).

Date heard: 7 February 2013.

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

Catchwords:

Citizenship and Migration – Immigration – Migration Review Tribunal ('MRT') – Procedural fairness – Right to be heard – Hearings – Respondent unsuccessfully applied for a 'Skilled Independent Overseas Student (Residence) (Class DD) Visa' – Respondent requested MRT to forbear from making review decision until final outcome of a second skills assessment by Trades Recognition Australia – Respondent sought to address procedural errors by Trades Recognition Australia – MRT made decision without second assessment – Whether MRT's refusal to adjourn denied applicant procedural fairness – Whether application doomed to failure – Whether ss 353 and 357A(3) of the *Migration Act* 1958 (Cth) impose requirements capable of supporting substantive grounds of review for jurisdictional error – *Migration Act* 1958 (Cth), ss 348, 353, 357A, 360.

Administrative law – *Wednesbury unreasonableness* – Proper test for unreasonableness in relation to adjournment – Whether failure to adjourn unreasonable.

Appealed from FCA (FC): (2012) 202 FCR 387; (2012) 127 ALD 238; (2012) 289 ALR 210; [\[2012\] FCAFC 74](#).

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Constitutional Law

See also [Statutes](#): *Maloney v The Queen*

See also [Statutes](#): *X7 v Australian Crime Commission and Anor*

Fortescue Metals Group Limited and Ors v The Commonwealth of Australia

S163/2012: [\[2013\] HCATrans 41](#); [\[2013\] HCATrans 42](#); [\[2013\] HCATrans 43](#).

Dates heard: 6, 7 & 8 March 2013.

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

Catchwords:

Constitutional law (Cth) – Powers of the Commonwealth Parliament – Constitution, s 51(ii) – Taxation – Commonwealth Parliament passed several Acts establishing a 'minerals resource rent tax' – Whether any or all of *Minerals Resource Rent Tax (Imposition-Customs) Act 2012 (Cth) s 3*, *Minerals Resources Rent Tax (Imposition-Excise) Act 2012 (Cth) s 3*, *Minerals Resource Rent Tax (Imposition-General) Act 2012 (Cth) s 3* (collectively 'the Acts') are invalid to the extent that they discriminate between the States contrary to s 51(ii) of the Constitution.

Constitutional law (Cth) – Constitution, s 99 – Prohibition on Commonwealth preference in trade, commerce or revenue – Whether any or all of the Acts give preference to one State over another.

Constitutional law (Cth) – *Melbourne Corporation* doctrine – Whether any or all of the Acts discriminate against or place a particular burden upon the operations or activities of the States, as to be beyond the legislative power of the Commonwealth.

Constitutional law (Cth) – Constitution, s 91 – Section 91 provides, inter alia, that '[n]othing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals' – Whether any or all of the Acts contravene s 91.

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

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Keating v Director of Public Prosecutions (Cth)

M5/2013: [\[2013\] HCATrans 68](#).

Date heard: 3 April 2013.

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

Catchwords:

Constitutional law – Powers of the Commonwealth Parliament – Social Security Legislation – Retrospective application of offence – Section 66A of the *Social Security (Administration) Act 1999 (Cth)* ('the Administration Act') retrospectively creates duty for applicant to inform Centrelink of income increases – Applicant charged with

three counts of obtaining financial advantage contrary to s 135(1) for failing to report increases in her income to Centrelink – Whether s 66A of the Administration Act invalid in so far as it operates retrospectively – Whether the sending or deemed receipt of a notice under s 68 of the Administration Act is sufficient to give rise to a duty under law to perform an action for the purposes of s 4.3(b) of the *Criminal Code* (Cth).

Removed from Magistrates' Court of Victoria.

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State of NSW v Kable

S233/2012: [\[2013\] HCATrans 71](#).

Date heard: 9 April.

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

Catchwords:

Constitutional law – Judicial power – Respondent detained pursuant to order of Supreme Court on application of Director of Public Prosecutions – Proceedings pursuant to purported State legislation – Legislation subsequently held invalid – Respondent sought damages from the appellant for false imprisonment – Whether orders of Supreme Court valid until set aside – Whether the orders of a State Supreme Court exercising federal jurisdiction in resolving the constitutionality of a State Act and exercising powers pursuant to that Act are deprived of the character of judicial orders by reason of the subsequent invalidity of the State Act.

Torts – False imprisonment – Defences – Lawful authority – Respondent held under order of Supreme Court that was subsequently set aside – Whether persons acting to obey orders of a State Supreme Court, which were valid on their face, have defence of lawful authority to tortious liability at common law.

Appealed from NSW SC (CA): [\[2012\] NSWCA 243](#).

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Corporations Law

Beck v Weinstock & Ors; Weinstock & Anor v Beck & Anor

S56/2012;S266/2012: [\[2012\] HCATrans 283](#); [\[2012\] HCATrans 284](#); [\[2012\] HCATrans 285](#).

Dates heard: 14 & 15 November 2012.

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

Catchwords:

Corporations law – Redeemable preference shares – Validity of issue – Rights attaching to shares – Eight C class shares were allotted in the third respondent ("the Company") – No other shares in the Company over which the C class shares conferred any priority or preference were ever issued – Directors of the Company resolved to redeem the eight C class shares for a nominal amount – Whether other shares, over which preference is enjoyed, must exist for redeemable preference shares to be valid – Whether eight C class shares in the Company were redeemable preference shares for the purposes of the *Corporations Act* 2001 (Cth) notwithstanding that there were never any other shares issued in the Company by reference to which the C class shares conferred preference.

Corporations law – Management and administration – Directors and other officers – Appointment removal and retirement of directors – Power of court to rectify corporate act which is taken in contravention of corporate constitution – Section 1322(4) of the *Corporations Act* 2001 (Cth) confers on a court power to make an order that any "act, matter or thing purporting to be have been done" either under the *Corporations Act*, or "in relation to a corporation" is not invalid by reason of any "contravention of a provision of [the *Corporations Act*] or a provision of the constitution of a corporation" – Whether purported act contravening constitution by person never validly appointed to office is a "contravention" that can be cured by s 1322(4) – Scope of power conferred by s 1322(4) of the *Corporations Act* 2001.

Appealed from NSW SC (CA): (2011) 252 FLR 462, [\[2011\] NSWCA 228](#); (2012) 87 ACSR 672, [\[2012\] NSWCA 76](#).

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Equity

Kakavas v Crown Melbourne Limited & Ors

M117/2012: [\[2013\] HCATrans 69](#); [\[2013\] HCATrans 70](#).

Dates heard: 4 & 5 April 2013.

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

Catchwords:

Equity – Unconscionable dealing – Appellant gambled at first respondent's casino over extended period of time – Appellant alleged to suffer from psychiatric condition known as "pathological gambling" – Appellant also subject to "interstate exclusion order" for purposes of *Casino Control Act 1991* (Vic) at all relevant times – Whether series of gambling transactions between appellant and first respondent affected by unconscionable dealing – Whether first respondent liable for unconscionable dealing in circumstances where its officers did not bring to mind matters known to them which placed the appellant at a special disadvantage – What constitutes constructive notice of a special disadvantage in a claim of unconscionable dealing against a corporate person – Whether 'equality of bargaining position' test for determining whether person under 'special disadvantage'.

Trade practices – Unconscionable conduct – Gambling transactions – Section 51AA for the *Trade Practices Act 1974* (Cth) – Whether gambling transactions involved a contravention of s 51AA of the *Trade Practices Act*.

Appealed from Vic SC (CA): [\[2012\] VSCA 95](#).

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Native Title

Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia & Ors
B58/2012: [\[2013\] HCATrans 15](#).

Date heard: 12 February 2013.

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

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title claim over maritime area – Native title right to take fish and other aquatic life for commercial purposes – Whether native title rights extinguished by fisheries legislation prohibited, in the absence of a licence, taking of such resources for commercial purposes – Whether rights to take resources from an area constitute native title rights or interests within the meaning of s 223(1) of the *Native Title Act 1993* (Cth) where those rights are held under traditional laws and customs on the basis of a 'reciprocal relationship' with a holder of 'occupation based' native title rights.

Appealed from FCA (FC): (2012) 289 ALR 400, [\[2012\] FCAFC 25](#).

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Statutes

Maloney v The Queen

B57/2012: [\[2012\] HCATrans 342](#); [\[2012\] HCATrans 343](#).

Dates heard: 11 & 12 December 2012.

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

Catchwords:

Statutes – Interpretation – Racial discrimination – The community area of the Palm Island Shire Council declared a 'restricted area' pursuant to s 147G of the *Liquor Act* 1992 (Q) – Appellant convicted of possessing liquor in the Palm Island restricted area pursuant to s 168B(1) of the *Liquor Act* – Whether liquor restrictions contravene s 10 of the *Racial Discrimination Act* 1975 (Cth) – Whether liquor restrictions valid as special measure within the meaning of s 8 of the *Racial Discrimination Act*.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Whether State law inconsistent with Commonwealth law and invalid to extent of inconsistency.

Appealed from Qld SC (CA): (2012) 262 FLR 172; [\[2012\] OCA 105](#).

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X7 v Australian Crime Commission and Anor

S100/2012: [\[2012\] HCATrans 280](#).

Date heard: 7 November 2012.

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

Catchwords:

Statutes – *Australian Crime Commission Act* 2002 (Cth) ('ACC Act') – ACC examiner required plaintiff to attend before examiner to give evidence – Before examination, plaintiff charged with offences – Plaintiff subsequently interviewed by ACC examiner – Whether authorisation of examination by ACCC Board authorised questioning of plaintiff on the subject of charged offences – Whether Div 2 of Pt II of the ACC Act empowers ACC examiner to examination of person

charged where examination concerns the subject matter of the offence.

Constitutional law – Judicial power of Commonwealth – Constitution, Ch III – Whether Div 2 of Pt II of the ACC Act invalid to the extent that it is contrary to Ch III of the Constitution.

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

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Taxation

Commissioner of Taxation v Unit Trend Services Pty Ltd
B61/2012: [\[2013\] HCATrans 46](#).

Date heard: 14 March 2013.

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

Catchwords:

Taxation – Goods and services tax – Anti-avoidance – Anti-avoidance provisions in Div 165 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) enable Commissioner of Taxation to negate GST benefit derived from a scheme – Provisions do not apply if GST benefit attributable to the making of a "choice, election, application or agreement expressly provided for by the GST law" – Where property development scheme involved a combination of several choices provided for by GST law – Whether GST benefit attributable to choice or to scheme – Meaning of s 165-5(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Appealed from FCA (FC): (2012) 205 FCR 29; [2012] ATC 20-342; [\[2012\] FCAFC 112](#).

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Trade Practices

See also [Equity](#): *Kakavas v Crown Melbourne Limited & Ors*

Torts

See also [Constitutional Law](#): *State of NSW v Kable*

Beckett v The State of New South Wales

S144/2012: [\[2013\] HCATrans 4](#).

Date heard: 5 February 2013.

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

Catchwords:

Torts – Malicious Prosecution – Elements of action – Applicant convicted of multiple charges – Applicant subsequently acquitted of one charge and remaining convictions quashed and new trial ordered – Prosecution decided not to proceed with outstanding charges – Applicant brought action for malicious prosecution – Whether plaintiff must prove innocence – Whether *nolle prosequi* filed with court or whether alternative characterisation appropriate – Whether *Davis v Gell* (1924) 35 CLR 275 should be overruled.

Appealed from NSW SC (CA): [2012] NSWCA 114.

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Wallace v Kam

S122/2012: [\[2013\] HCATrans 45](#).

Date heard: 13 March 2013.

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

Catchwords:

Torts – Negligence – Causation – Medical practitioner – Failure to warn – Duty to warn patient of material risks inherent in applicant's proposed back surgery – Multiple material risks – Applicant suffered nerve damage on account of one of several risks materialising – Applicant argued that he would not have undergone surgery if told of all risks – Whether failure to warn of material risks that did not eventuate causally connected to damage – *Civil Liability Act 2002* (NSW), s 5D.

Appealed from NSW SC (CA): [2012] Aust Torts Reports 82-101, [2012] AMLC 30-032, [\[2012\] NSWCA 82](#).

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3: ORIGINAL JURISDICTION

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

Administrative Law

See also [Citizenship and Migration: Plaintiff S138 v Director-General of Security and Ors](#)

Citizenship and Migration

Plaintiff S138 v Director-General of Security and Ors
S138/2012: *Special case.*

Catchwords:

Citizenship and migration – Migration – Refugees – Protection visas – Plaintiff found to be a refugee but refused protection visa due to adverse security assessment by Australian Security Intelligence Organisation – Department relied on public interest criterion 4002 which requires that applicant not be assessed by ASIO to be a risk to security – In Plaintiff M47 v Director-General of Security public interest criterion 4002 found to be beyond power conferred by s 31(3) of the Migration Act 1958 (Cth) – Whether the Secretary made an error of law by relying on public interest criterion 4002.

Citizenship and migration – Mandatory detention – Plaintiff held in detention as unlawful non-citizen – No third country currently available to receive plaintiff – Whether ss 189 and 196 of Act authorise plaintiff's detention.

Administrative law – Procedural fairness – Adverse security assessment – ASIO interviewed plaintiff – Plaintiff did not meet requirements for protection visa – Plaintiff never informed of the reasons why or nature of apparent risk he poses to security – Whether Director-General failed to accord plaintiff procedural fairness.

Constitutional law – Whether ss 189, 196 and 198 of Act are beyond the legislative power of the Commonwealth.

This special case was filed in the original jurisdiction of the High Court of Australia.

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Constitutional Law

See also [Citizenship and Migration: Plaintiff S138 v Director-General of Security and Ors](#)

4: SPECIAL LEAVE GRANTED

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

Constitutional Law

See also [Criminal Law](#): *Jason Lee (aka Do Young Lee) & Anor v New South Wales Crime Commission*

Criminal Law

Agius v The Queen
S254/2012: [\[2013\] HCATrans 30](#).

Date heard: 15 February 2013 – *Special leave granted*.

Catchwords:

Criminal law – Conspiracy – In 2001 the *Crimes Act 1914* (NSW) s 29D dealing with the offence of conspiracy was repealed and replaced with the *Criminal Code Act 1995* (Cth) s 135 – Whether proof of conspiracy under the *Criminal Code Act 1995* (Cth) requires evidence of an agreement entered into after the Code began operation on 24 May 2001 – Whether the *Criminal Code Act 1995* (Cth) can apply retrospectively to an agreement entered into before 24 May 2001 – Whether physical element of conduct constituted by a conspiracy can be “a state of affairs”.

Appealed from NSW (CA): [\[2011\] NSWCCA 119](#).

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Jason Lee (aka Do Young Lee) & Anor v New South Wales Crime Commission
S292/2012: [\[2013\] HCATrans 27](#).

Date heard: 15 February 2013 – *Special leave granted*.

Catchwords:

Criminal law – Recovery of proceeds of crime – Examination orders – Whether examination would interfere with the administration of justice in criminal proceedings – Whether examination order may be made where criminal charges pending against examinee – Whether procedural protections available to prevent abuse of power – *Criminal Assets Recovery Act 1990* (NSW), ss 13A, 31D, 63.

Constitutional law – Ch III of the Constitution – Separation of judicial powers – Functions incompatible with institutional integrity of State Supreme Court – Validity of s 31D of *Criminal Assets Recovery Act 1990* (NSW) – Whether requiring a State Supreme Court to make an examination order without regard to the capacity of that order to prejudice the fair trial of the person is incompatible with Ch III.

Statutes – *Criminal Assets Recovery Act 1990* (NSW) ss 13A, 31D, 63 – Examination orders – Whether power to order examination limited by general law principles relating to a fair trial.

Appealed from NSW (CA): [\[2012\] NSWCA 276](#).

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Director of Public Prosecutions (Cth) v JM

M73/2012: [\[2012\] HCATrans 347](#).

Date heard: 14 December 2012 – *Referred to Full Court*

Catchwords:

Criminal law – Market manipulation – *Corporations Act 2001* (Cth), s 1041A – Transaction alleged to have or likely to have effect of creating artificial price for shares on ASX – Meaning of 'artificial price' in s 1041 of the *Corporations Act* – Whether meaning of 'artificial price' informed by equivalent US jurisprudential conceptions of 'cornering' and 'squeezing'.

Appealed from Vic SC (CA): (2012) 90 ACSR 96; [\[2012\] VSCA 21](#).

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Nguyen v The Queen

M94/2012: [\[2013\] HCATrans 57](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Criminal law – Murder – Attempted murder – Jury directions – Accused found guilty by complicity with another – Whether alternative verdict of manslaughter sufficiently left to jury on the charge of murder – Whether failure by trial judge to direct jury as to alternative verdict caused a substantial miscarriage of justice.

Appealed from VSC (CA): [\[2010\] VSCA 23](#).

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Pantazis; Issa; & Elias v The Queen & Anor
M80, M81, M82/2012: [\[2013\] HCATrans 51](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – Most appropriate offence – *Liang & Li* principle – Maximum penalty for the offence of attempting to pervert the course of justice at common law is prescribed by section 320 of the *Crimes Act* 1958 (Vic) at 25 years imprisonment – Under section 43 of the *Crimes Act* 1914 (Cth) maximum penalty at relevant time was five years imprisonment – Whether Court of Appeal erred in failing to have regard to the lighter sentence.

Appealed from VSC (CA): [\[2012\] VSCA 160](#).

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Equity

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

Westpac Banking Corporation & Ors v Bell Group Ltd (In Liq) & Ors
P29/2012: [\[2013\] HCATrans 49](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Equity – fiduciary duty – Judicial review – Whether courts can intervene to review the exercise of powers by directors on the basis of a lack of reasonable grounds for decision.

Equity – Fiduciary duty – Breach – Remedies – Equitable compensation versus account of profits – Whether compound interest should be utilised for restitutionary purposes – If so, whether the appropriate measure of compound interest can be determined – Whether on appeal the measure of compound interest was “grossly excessive” or a simple disgorgement of profits.

Equity – Fiduciary duty – *Barnes v Addy* – Particularisation of breach of fiduciary duty by directors – Whether recipient liability is available against a person who enters an executory transaction with a company involving a balance of rights and obligations that are performed on both sides before any act of avoidance – Whether accessorial liability requires a dishonest and fraudulent design by the trustee.

Appealed from WASC (CA): [\[2012\] WASCA 157](#).

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Evidence

Aristocrat Technologies Australia Pty Ltd and Ors v Global Gaming Supplies Pty Ltd and Ors

S168/2012: [\[2012\] HCATrans 296](#).

Date heard: 16 November 2012 – *Referred to Full Court*

Catchwords:

Evidence – Tendency evidence – *Evidence Act* 1995 (Cth), s 97 – Applicants engaged in business of manufacturing and selling electronic gaming machines – Applicants alleged that the respondents infringed copyright under s 38 of the *Copyright Act* 1968 (Cth) by selling counterfeited gaming machines – Infringement of copyright in circumstances where respondent 'knew, or ought reasonably to have known, the making of the article constituted an infringement of copyright' – Email chain that demonstrated that the respondents had a tendency to engage in infringing transactions – Whether emails inadmissible tendency evidence – Whether the limitation on tendency evidence in s 97 of the *Evidence Act* 1995 applies to evidence of a person's awareness or state of mind about that person's own prior activities where the issue is the person's knowledge or reasons to believe under s 38 of the *Copyright Act* 1968 (Cth).

Intellectual Property – Copyright – *Copyright Act 1968* (Cth), s 38 – Infringement – Infringement by dealing – Whether respondents infringed applicants' copyright.

Appealed from FCA (FC): (2012) 95 IPR 242; [\[2012\] FCAFC 34](#).

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Industrial Law

Construction Forestry Mining & Energy Union v Mammoet Australia Pty Ltd ACN 075 483 644
P27/2012: [\[2013\] HCATrans 79](#).

Date heard: 12 April 2013 – *Special leave granted*.

Catchwords:

Industrial law – *Fair Work Act 2009* (Cth) – Whether provision of accommodation constituted payment with the meaning of s 470(1) of the *Fair Work Act* – Whether the removal of accommodation constituted adverse action.

Words and phrases – “payment”

Appealed from FC: [\[2012\] FCA 850](#).

Intellectual Property

See also **Evidence:** *Aristocrat Technologies Australia Pty Ltd and Ors v Global Gaming Supplies Pty Ltd and Ors*

Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors
S219/2012: [\[2012\] HCATrans 357](#).

Date heard: 14 December 2012 – *Special leave granted*.

Catchwords:

Intellectual Property – Patents – Patent claimed administration of pharmaceutical drug as method of preventing or treating particular condition – Administration of drug for different purpose than that specified in patent had effect of preventing or treating condition

referred to in patent – Whether methods of treating human body patentable inventions within the meaning of s 18(1)(a) of the *Patents Act 1900* (Cth) – Whether second or subsequent medical uses of previously known products patentable inventions.

Intellectual Property – Patents – Infringement – Patent claims use of compound for treatment of a specified disease – Whether a person who supplies the compound and indicates its use for treatment of a different disease infringes the patent under s 177(1) of the *Patents Act 1990* (Cth).

Appealed from FCA (FC): (2012) 204 FCR 494; (2012) 290 ALR 1; (2012) 96 IPR 185; [\[2012\] FCAFC 102](#).

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Legal Practitioners

Legal Services Board v Gillespie-Jones
M46/2012: [\[2013\] HCATrans 53](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Legal Practitioners – Fidelity fund – Moneys paid to solicitor to be paid into trust account and used for express purpose of paying counsel's fees – Moneys used by solicitor for own purpose – Whether counsel entitled to claim against Fund – Whether claim barred by lack of costs agreement.

Equity – Trusts and trustees – *Quistclose* trust – Whether moneys paid to solicitor for purpose of paying counsel's fees held on *Quistclose* trust.

Words and phrases – “Actual pecuniary loss” – “Interests” – “For or on behalf of”.

Appealed from VSC (CA): [\[2012\] VSCA 68](#).

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Native Title

Karpany & Anor v Dietman
A18/2012: [\[2012\] HCATrans 210](#).

Date heard: 7 September 2012 –*Referred to Full Court*

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title right to take fish – Applicants convicted of possession of an aquatic resource contrary to s 72(2)(c) Fisheries Management Act 2007 (SA) – Whether native title rights to take fish extinguished by virtue of s 29 of the Fisheries Act 1971 (SA) – Whether s 72(2)(c) Fisheries Management Act 2007 (SA) inoperative due to inconsistency with s 221 of the *Native Title Act* 1993 (Cth).

Appealed from SA SC (FC): (2012) 112 SASR 51; (2012) 262 FLR 292; [\[2012\] SASCFC 53](#).

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Trade Practices

See also [Equity](#): *Aristocrat Technologies Australia Pty Ltd and Ors v Global Gaming Supplies Pty Ltd and Ors*

Words and Phrases

See also [Industrial Law](#): *Construction Forestry Mining & Energy Union v Mammoet Australia Pty Ltd ACN 075 483 644*

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

5: CASES NOT PROCEEDING OR VACATED

The following cases in the High Court of Australia are not proceeding or have been vacated since *High Court Bulletin 2* [2013] HCAB 2.

6: SPECIAL LEAVE REFUSED

Canberra: 10 April 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court Appealed From</i>	<i>Result</i>
Lee	Brisbane City Council (B65/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 284	Application Dismissed [2013] HCASL 37.
West & Ors	Blackgrove & Anor (B74/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 321	Application Dismissed [2013] HCASL 38.
Whittaker	Child Support Registrar (B77/2012)	Full Court of the Family Court of Australia	Application Dismissed [2013] HCASL 39.
Alam	Minister for Immigration and Citizenship & Anor (D8/2012)	Federal Court of Australia [2012] FCA 1371	Application Dismissed [2013] HCASL 40.
MZYKV	Minister for Immigration and Citizenship & Anor (M97/2012)	Federal Court of Australia [2012] FCA 947	Application Dismissed [2013] HCASL 41.
Vasiliou & Anor	Marchesi (M100/2012)	Supreme Court of Victoria (Court of Appeal) (No Media Neutral Citation)	Application Dismissed [2013] HCASL 42.
Mulholland	Australian Electoral Commission & Anor (M101/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 136	Application Dismissed [2013] HCASL 43.
Mytton - Watson & Anor	Commonwealth Bank Of Australia (P40/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 232	Application Dismissed [2013] HCASL 44.
Nyoni	Patterson & Anor (P41/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 171	Application Dismissed [2013] HCASL 45.
Nyoni	Registrar Pharmaceutical Council of Western Australia (P1/2013)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 225	Application Dismissed [2013] HCASL 46.
Rix	Mahony & Anor (S327/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 332	Application Dismissed [2013] HCASL 47.
SZQZU	Minister for Immigration and Citizenship & Anor (S342/2012)	Federal Court of Australia [2012] FCA 1409	Application Dismissed [2013] HCASL 48.

Clark	The Queen (S346/2012)	Supreme Court of New South Wales (Court of Criminal Appeal) [2008] NSWCCA 122	Application Dismissed [2013] HCASL 49.
SZQUH	Minister for Immigration and Citizenship & Anor (S347/2012)	Federal Court of Australia [2012] FCA 1265	Application Dismissed [2013] HCASL 50.
SZRHD	Minister for Immigration and Citizenship & Anor (S349/2012)	Federal Court of Australia [2012] FCA 1364	Application Dismissed [2013] HCASL 51.
SZREB & Ors	Minister for Immigration and Citizenship & Anor (S350/2012)	Federal Court of Australia [2012] FCA 1366	Application Dismissed [2013] HCASL 52.
SZQUQ	Minister for Immigration and Citizenship & Anor (S356/2012)	Federal Court of Australia [2012] FCA 1381	Application Dismissed [2013] HCASL 53.
Wright	The Queen (B48/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 212	Application Dismissed [2013] HCASL 54.
Dick	A.L. Powell Holdings Pty Ltd & Ors (B56/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 254	Application Dismissed with Costs [2013] HCASL 55.

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Canberra: 11 April 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court Appealed From</i>	<i>Result</i>
Underwood	Queensland Department of Communities (B38/2012)	High Court of Australia Special Leave Disposition [2012] HCASL 179; Supreme Court of Queensland (Court of Appeal) [2012] QCA 158	Application Dismissed [2013] HCASL 56.

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Sydney: 12 April 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Gillies	Downer EDI Ltd (S326/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 333	Special leave dismissed with costs [2013] HCATrans 81.

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Bathurst Regional Council as Trustee for the Bathurst City Council Crown Reserve Trust	Thompson (S330/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 340	Special leave dismissed with costs [2013] HCATrans 82.
Raumakita	The Queen (S344/2012)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 126	Special leave dismissed [2013] HCATrans 83.
Gray	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (S348/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 158	Discontinued

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Canberra: 12 April 2013 (by video link to Adelaide and Perth)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
AMP Life Ltd	Commissioner of State Taxation (A25/2011)	Full Court of the Supreme Court of South Australia [2011] SASCFC 106	Special leave dismissed with costs [2013] HCATrans 74.
ANZ Life Assurance Ltd	Commissioner of State Taxation (A26/2011)	Full Court of the Supreme Court of South Australia [2011] SASCFC 106	Special leave dismissed with costs [2013] HCATrans 74.
ING Life Limited	Commissioner of State Taxation (A27/2011)	Full Court of the Supreme Court of South Australia [2011] SASCFC 106	Special leave dismissed with costs [2013] HCATrans 74.
National Mutual Life Association of Australasia Ltd	Commissioner of State Taxation (A28/2011)	Full Court of the Supreme Court of South Australia [2011] SASCFC 106	Special leave dismissed with costs [2013] HCATrans 74.
RJM	The Police (A19/2012)	Supreme Court of South Australia (Court of Criminal Appeal) [2012] SASCFC 58	Special leave dismissed [2013] HCATrans 75.
Maldorky Iron Pty Ltd	South Australian Native Title Services Ltd (A20/2012)	Full Court of the Supreme Court of South Australia [2012] SASCFC 63	Discontinued
Drummond	The Queen (A23/2012)	Supreme Court of South Australia (Court of Criminal Appeal) [2102] SASCFC 87	Special leave dismissed [2013] HCATrans 76.
Newton	The Queen (A24/2012)	Supreme Court of South Australia	Special leave

		(Court of Criminal Appeal) [2012] SASCFC 37	dismissed [2013] HCATrans 73 .
Holmdahl	Australian Electoral Commission & Anor (A34/2012)	Full Court of the Supreme Court of South Australia [2012] SASCFC 110	Special leave dismissed [2013] HCATrans 72 .
Christou	Demandem Holdings Pty Ltd & Anor (P24/2012)	Federal Court of Australia [2012] FCA 695	Special leave dismissed with costs [2013] HCATrans 78 .
Perkovic	The Queen (P31/2012)	Supreme Court of Western Australia (Court of Criminal Appeal) (no media neutral citation)	Special leave dismissed [2013] HCATrans 77 .
Allen	Corruption and Crime Commission of Western Australia (P42/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 242	Special leave dismissed with costs [2013] HCATrans 80 .

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