



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2015] HCAB 7 (22 September 2015)

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
AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd	Patents
Duncan v Independent Commission Against Corruption	Statutes
Fuller-Lyons v State of New South Wales	Torts

[2: Cases Reserved](#)

Case	Title
North Australian Aboriginal Justice Agency Limited v Northern Territory of Australia	Criminal Law

The Queen v Beckett	Criminal Law
The Queen v Pham	Criminal Law
Firebird Global Master Fund II Ltd v Republic of Nauru & Anor	Foreign Judgment
Minister for Immigration and Border Protection v WZARH & Anor	Migration
Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (In Liq)	Taxation

3: Original Jurisdiction

Case	Title
Wei v Minister for Immigration and Border Protection	Migration
Kaur v Minister for Immigration and Border Protection & Ors	Migration
Plaintiff M64/2015 v Minister for Immigration and Border Protection	Migration

4: Special Leave Granted

Case	Title
Paciocco & Anor v Australia and New Zealand Banking Group Limited	Banking
CGU Insurance Limited v Blakely & Ors	Procedure
Coverdale v West Coast Council	Property
Stewart & Ors v Ackland	Torts

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the September 2015 sittings.

Constitutional Law

See also [Statutes](#) – *Duncan v Independent Commission Against Corruption*

Patents

AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd

[S54/2015](#); [S55/2015](#); [S56/2015](#): [\[2015\] HCA 30](#).

Judgment delivered: 2 September 2015.

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

Catchwords:

Intellectual property – Patents – *Patents Act* 1990 (Cth) – Inventive step – Obviousness – Patent disclosing method of treatment for hypercholesterolemia – Administration of rosuvastatin and its pharmaceutically acceptable salts at low dosage range in claims – Whether invention obvious in light of common general knowledge together with two prior art documents considered separately where another prior art document disclosed alternative compound – Whether prior art documents were ascertained, understood and regarded by person skilled in relevant art as relevant – Whether permissible to use information from other documents to determine relevance of information in prior art document – Use of prior art not within common general knowledge.

Words and phrases – "ascertained, understood and regarded as relevant", "considered separately", "inventive step", "obviousness", "person skilled in the relevant art".

Appealed from FCA (FC): (2014) 312 ALR 1; (2014) 107 IPR 177; [\[2014\] FCAFC 99](#).

Held: Appeal dismissed.

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Statutes

Duncan v Independent Commission Against Corruption

[S101/2015](#): [\[2015\] HCA 32](#).

Procedure in the High Court: Orders made on 25 May 2015 removing matter into the High Court under section 40 of the Judiciary Act 1903 (Cth).

Judgment delivered: 9 September 2015.

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

Catchwords:

Statutes – Interpretation – Amending Acts – *Independent Commission Against Corruption Act 1988* (NSW) – Meaning of corrupt conduct – Where High Court decision in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 declared meaning of "corrupt conduct" in ICAC Act – Where effect of Cunneen was to make invalid some past acts of respondent – Where Pt 13 of Sched 4 to ICAC Act inserted to validate otherwise invalid acts done by respondent before decision in Cunneen – Whether Pt 13 invalid.

Constitutional law – Validity of legislation – Retrospective amendments – Relevance of Kable principle – Relevance of Kirk principle.

Words and phrases – "corrupt conduct", "deem", "Kable principle", "legal consequences", "retrospective validity".

Held: Appeal dismissed.

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Torts

Fuller-Lyons v State of New South Wales

[S81/2015](#): [\[2015\] HCA 31](#).

Judgment delivered: 2 September 2015.

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

Catchwords:

Torts – Negligence – Personal injury – Liability – Inferential fact-finding – Where appellant suffered severe injuries when he fell from train operated by respondent – Where primary judge found appellant fell from train as consequence of respondent's negligence – Whether New South Wales Court of Appeal erred in rejecting primary judge's finding on basis of alternative hypotheses about appellant's fall, not entailing negligence by respondent, being equally open – Whether Court of Appeal erred in rejecting primary judge's finding on basis appellant failed to exclude other possible explanations for known facts – Whether Court of Appeal erred in rejecting primary judge's finding on basis appellant failed to exclude hypothesis not explored in evidence.

Words and phrases – "inferential fact-finding".

Appealed from NSWSC (CA): [\[2014\] NSWCA 424](#).

Held: Appeal allowed.

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2: CASES RESERVED

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

Constitutional Law

McCloy & Ors v State of New South Wales & Anor

S211/2014: [\[2015\] HCATrans 141](#); [\[2015\] HCATrans 142](#).

Date heard: 10 June 2015; 11 June 2015.

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

Catchwords:

Constitutional Law – Operation and effect of Commonwealth Constitution – Restrictions on Commonwealth and State legislation – Rights and freedoms implied in Commonwealth Constitution – Freedom of political communication – Whether Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the *Funding Expenditure and Disclosure Act* 1981 (NSW) infringe the implied freedom of communication regarding political or governmental matters.

Statutes – Acts of Parliament – Validity of legislation – *Election Funding Expenditure and Disclosure Act* 1981 (NSW) – Where the first plaintiff was subjected to compulsory examination pursuant to s 30 of the *Independent Commission Against Corruption Act* 1988 (NSW) by the second defendant concerning the circumstances of a donation made for the benefit of persons including a candidate in connection with the 2011 New South Wales election in breach of the *Funding Expenditure and Disclosure Act* 1981 (NSW) – Where the plaintiffs claim the provisions that they purportedly breached, Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the Act infringe the implied freedom of communication regarding political or governmental matters.

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See also [Criminal Law](#): *North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia*.

Contracts

Wright Prospecting Pty Limited v Mount Bruce Mining Pty Limited & Anor; Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited & Anor

[S102/2015; S99/2015](#): [\[2015\] HCATrans 188](#); [\[2015\] HCATrans 189](#).

Dates heard: 12 August 2015; 13 August 2015.

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

Catchwords:

Contracts – General contractual principles – Construction and interpretation of contracts – Where appellant and respondents entered into written agreements which allowed for rights to particular reserves to be divided – Whether Mount Bruce Mining Pty Limited was required to pay royalties that were payable on mining activities undertaken in the Channar region – Whether a strict and narrow construction of language in a commercial agreement can account for the purposes or objects of the agreement.

Appealed from NSWSC (CA): [\[2014\] NSWCA 323](#).

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Criminal Law

North Australian Aboriginal Justice Agency Limited v Northern Territory of Australia

[M45/2015](#): [\[2015\] HCATrans 211](#); [\[2015\] HCATrans 213](#).

Date heard: 1 September 2015; 2 September 2015.

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

Catchwords:

Criminal procedure – Arrest and detention – Effecting arrest – *Police Administration Act* (NT) (“Act”) Div 4AA of Pt VII– Where Div 4AA of the Act allows for a member of the Police Force to take a person into custody for a period of up to four hours for an infringement notice offence – Where the offence in respect of which a person can be taken into custody can be an offence for which the maximum penalty is not imprisonment – Where the Act does not require a person to be brought before a justice of the peace or a Court – Whether Div 4AA is beyond the powers of the Northern Territory Assembly pursuant to s 122 of the *Constitution* and the *Northern Territory (Self-Government) Act* – Whether Div 4AA confers on the executive a power of detention which is penal or punitive in character.

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The Queen v Beckett

[S94/2015](#): [\[2015\] HCATrans 216](#).

Date heard: 4 September 2015.

Coram: French CJ, Kiefel, Bell, Keane, Nettle JJ.

Catchwords:

Criminal law – Particular offences – Offences relating to the administration of justice – Perverting the course of justice – *Crimes Act 1900 (NSW) s 319* - Where respondent was questioned about a property transfer she had stamped without receiving the duty – Where respondent obtained two bank cheques for the property and altered photocopies so that the cheques appeared to pre-date the transfer – Where respondent gave false evidence under oath – Where respondent was charged with perverting the course of justice – Whether offence only applies to conduct committed after judicial proceedings have commenced – Whether “course of justice” within the meaning of s 319 requires that the jurisdiction of a court or competent judicial tribunal has been invoked.

Appealed from NSWSC (CCA): [\[2014\] NSWCCA 305](#).

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The Queen v Pham

[M82/2015](#): [\[2015\] HCATrans 218](#).

Date heard: 9 September 2015.

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

Catchwords:

Criminal law – Sentence - Sentencing procedure – Sentencing statistics, schedules, tariffs, comparisons, etc. – Consistency for federal offences – Where respondent brought 577 grams of heroin into Australia and pleaded guilty to one charge of importing a marketable quantity of a border controlled drug – Where respondent was originally sentenced to eight years and six months imprisonment with a non-parole period of six years – Where sentence was reduced on appeal to six years imprisonment with a non-parole period of four years – Whether federal offenders should be sentenced in accordance with “current sentencing practices” of a particular State or Territory to the exclusion of sentencing practices

in other jurisdictions – Whether it is permissible to determine objective seriousness of the offending by reference to a statistical analysis of comparable cases which grades those cases by the weight of the drugs expressed as a percentage of the statutory threshold for a more serious offence.

Appealed from VSC (CA): [\[2014\] VSCA 204](#).

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Foreign Judgments

Firebird Global Master Fund II Ltd v Republic of Nauru & Anor
S29/2015: [\[2015\] HCATrans 214](#); [\[2015\] HCATrans 215](#).

Date heard: 2 September 2015; 3 September 2015.

Coram: French CJ, Kiefel, Gageler, Nettle and Gordon JJ.

Catchwords:

Foreign judgments - Recognition, effect and enforcement of foreign judgments – Enforcement of foreign judgments – Foreign States immunity – Where appellant is the holder of bonds issued by an entity which was guaranteed by the government of Nauru – Where the bond issuer and guarantor defaulted – Where appellant recovered a judgment in Japan equivalent to 31 million Australian dollars – Whether s 9 of the *Foreign States Immunities Act* 1985 (Cth) renders first respondent immune to an application to the Court for an order for the registration of the foreign judgment under s 6 of the *Foreign Judgments Act* 1991 (Cth).

Appealed from NSWSC (CA): (2014) 316 ALR 497; (2014) 289 FLR 398; [\[2014\] NSWCA 360](#).

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Migration

Minister for Immigration and Border Protection v WZARH & Anor
S85/2015: [\[2015\] HCATrans 219](#).

Date Heard: 10 September 2015.

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

Catchwords:

Migration – Refugee and humanitarian visas – Procedural fairness – Where a department officer determined that respondent was not a refugee – Where respondent sought a review of this decision – Where respondent was interviewed by merits reviewer – Where merits reviewer told respondent that they would be the person to determine the application – Where merits reviewer was unable to conclude the review and the review was concluded by another reviewer – Whether there is a breach of procedural fairness where alternate reviewer makes a decision based on the documentary materials, submissions and an audio recording of the interview but does not inform applicant of the change in decision-making, ask for submissions on how to proceed, or allow for an additional face-to-face interview.

Appealed from FCA (FC): (2014) 142 ALD 490; (2014) 316 ALR 389; [\[2014\] FCAFC 137](#).

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Patents

D’Arcy v Myriad Genetics & Anor

S28/2015: [\[2015\] HCATrans 146](#); [\[2015\] HCATrans 147](#).

Date Heard: 16 June 2015; 17 June 2015.

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

Catchwords:

Intellectual property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act* 1990 (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 - 3 of Australian Patent No 686004 claimed a patentable invention being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of manufacture for the purposes of s 18(1)(a) of the *Patents Act* 1990 (Cth).

Appealed from FCA (FC): (2014) 224 FCR 479; (2014) 313 ALR 627; (2014) 107 IPR 478; [\[2014\] FCAFC 115](#).

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Procedure

PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors
P14/2015: [\[2015\] HCATrans 181](#); [\[2015\] HCATrans 184](#).

Date heard: 10 August 2015; 11 August 2015.

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

Catchwords:

Procedure – Judgments and orders – Freezing orders – Jurisdiction of the Supreme Court to make freezing orders – Order 52A *Rules of the Supreme Court of Western Australia* 1971 (WA) (“Rules”) – Where first respondent commenced proceedings against appellant in the High Court of Singapore – Where no decision has been handed down by the High Court of Singapore in respect of the matter – Where first respondent commenced proceedings in Western Australia against appellant for an order to freeze the appellant’s assets in Western Australia – Where no other proceedings aside from the application for freezing orders have been commenced or will be commenced unless first respondent is successful in its action in the High Court of Singapore – Whether order 52A of the Rules is inconsistent with Pt 2 of the *Foreign Judgments Act* 1991 (Cth) (“Act”) for the purpose of s 109 of the *Constitution* in circumstances where no substantive proceedings apart from the application for the freezing order have been or are to be commenced – Whether order 52A is *ultra vires* pursuant to s 17 of the Act – Whether freezing orders with respect to a prospective foreign judgment are within the inherent or implied jurisdiction of Australian superior courts.

Appealed from WASC (CA): (2014) 288 FLR 299; [\[2014\] WASCA 178](#).

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Taxation

Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (In Liq)
B19/2015: [\[2015\] HCATrans 217](#).

Date Heard: 8 September 2015.

Catchwords:

Taxes and duties – Income tax and related legislation – *Income Tax Assessment Act 1936* (Cth) ss 6 and 254 – Where administrators were appointed to Australia Building Systems under Pt 5.3A of the *Corporations Act 2001* (Cth) – Where it was resolved that Australian Building Systems would be wound up and the respondents in B49/2014 were appointed liquidators – Where the liquidators caused Australian Building Systems to enter into a contract for sale of a property which gave rise to a capital gains tax event pursuant to s 104-10 of the *Income Tax Assessment Act 1997* (Cth) – Whether under the 1936 Act a trustee is subject to the requirements and authorisations in s 254 only in relation to income, profits or gains for which they are assessable to tax under Part III Div 6 of the 1936 Act – Whether a trustee is subject to authorisations and requirements in s 254 of the 1936 Act only in relation to income, profits or gains for which they have liability to tax under some other provision of the Act or whether ancillary liabilities are created by s 254 – Whether, following the receipt of money in a representative capacity by a trustee but prior to an assessment for tax, the retention authorisation and requirement in s 254(1)(d) of the 1936 Act requires the trustee to retain out of moneys then in or coming to them in their representative capacity so much as is significant to pay the tax of the income, profits or gains or whether it only authorises and requires a trustee to retain such moneys after an assessment is made for tax on the income, profits or gains.

Appealed from FCA (FC): [\[2014\] FCAFC 133](#).

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Torts

Alcan Gove Pty Ltd v Zabic
D5/2015: [\[2015\] HCATrans 169](#).

Date heard: 4 August 2015.

Orders pronounced: 12 August 2015 – *Appeal dismissed with costs*.

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

Catchwords:

Torts – Negligence – Essentials of action for negligence – Damage – *Return to Work Act 1986* (NT) (“Act”) ss 52, 189(1)- Where respondent was employed by appellant between 1974 – 1977 and regularly removed and replaced insulation products which contained asbestos – Where between November 2013 and January 2014

respondent began to experience chest pains and breathlessness which were found to be symptoms of malignant mesothelioma – Where respondent brought an action for common law damages arising out of appellant’s negligence – Where s 52 of the Act abolished common law damages claims against employers for injuries or diseases arising after 1 January 1987 – When dealing with an injury or a disease of insidious onset, when has sufficient damage been suffered to give rise to a cause of action – Whether liability for negligently-inflicted mesothelioma arise at the time the asbestos was inhaled or does it arise when the symptoms become apparent.

Appealed from NTSC (CA): [\[2015\] NTCA 2](#).

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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

Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors

[M68/2015](#): *Special case.*

Catchwords

Constitutional law – Where plaintiff was an “unauthorised maritime arrival” pursuant to s 5AA of the *Migration Act* 1958 (Cth) (“Act”) – Where plaintiff was taken to Nauru Regional Processing Centre (“RPC”) pursuant to s 198AD(2) of the Act – Where plaintiff was granted an RPC visa by the Nauru government which had certain restrictions and specifications - Whether plaintiff has standing to challenge whether the Commonwealth or the Minister was authorised in the past to engage in the activities relating to the creation and operation of the RPC – Whether Commonwealth or Minister were authorised to engage in acts relating to the creation and operation of the RPC pursuant to s 61 of the *Constitution*, s 198AHA of the Act, and s 32B of the *Financial Framework (Supplementary Powers) Act* 1997 (Cth) read together with reg 16 and items 417.021, 417.027, 417.029 and 417.042 of Sch 1AA *Financial Framework (Supplementary Powers) Regulations* 1997 (Cth) – Whether the restrictions imposed on the plaintiff and the specifications of her RPC visa are contrary to Article 5(1) of the *Constitution of Nauru* – Whether the statutory provisions relied upon by the Commonwealth are invalid because they are not supported by any head of Commonwealth legislative power or are contrary to Ch III of the *Constitution*.

Listed: 7 and 8 October 2015.

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See also **[Native Title](#)**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

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Migration

Wei v Minister for Immigration and Border Protection

S9/2015: *Application to show cause.*

Catchwords:

Migration – Visa cancellation – Where plaintiff is a Chinese national who arrived on a student visa in September 2008 – Where plaintiff commenced and completed a “Foundation Program” at Macquarie University (“University”) – Where university failed to issue a Confirmation of Enrolment – Where the failure to issue the confirmation lead to the appearance that plaintiff breached the terms of visa – Where defendant’s delegate cancelled plaintiff’s visa on 20 March 2014 on this basis - Whether plaintiff should have been granted an extension of time for making application – Whether decision of defendant’s delegate to cancel plaintiff’s visa was vitiated by jurisdictional error or breach of requirements of procedural fairness.

Listed: 12 November 2015.

Kaur v Minister for Immigration and Border Protection & Ors

P6/2015: *Application to show cause.*

Catchwords:

Migration – Grant or refusal of visas – Where plaintiff applied for a visa on the basis of a de facto relationship - Where plaintiff’s visa application was refused – Where plaintiff contends that defendant’s delegate failed to exercise jurisdiction by making an incorrect finding on a critical fact in finding that in the 12 months prior to the application the parties to the relationship did not have a mutual commitment to a shared life together – Whether defendant’s delegate failed to provide procedural fairness to plaintiff by failing to identify to plaintiff the specific issues of fact which delegate regarded as critical to the decision and provide an opportunity to plaintiff provide relevant evidence – Whether defendant’s delegate made a jurisdictional error by failing to comply with s 57(2) of *Migration Act 1958* (Cth).

Listed: 6 October 2015.

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Plaintiff M64/2015 v Minister for Immigration and Border Protection

M64/2015: *Special case*

Catchwords:

Migration – Grant or refusal of visas – *Migration Act* 1958 (Cth) - *Migration Regulations* 1994 (Cth) - Where plaintiff is an Australian permanent resident – Where plaintiff applied for a subclass 866 (Protection) visa for his immediate family – Where delegate of defendant refused the Visa Application for plaintiff's mother because plaintiff's mother did not satisfy cl 202.222(2) ("clause") – Whether defendant's delegate erred by construing the clause to require him to consider Australia's capacity to take all refugee applicants without considering whether or not there were compelling reasons for giving special consideration to the visa applicants – Whether the delegate erred by having regard to irrelevant considerations – Whether delegate applied policy inconsistent with the Act and the Regulations.

Listed: 6 November 2015.

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See also [Constitutional Law](#): *M68/15 v Minister for Immigration and Border Protection & Ors*

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Native Title

Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland

[B26/2014](#): *Special case.*

Catchwords:

Native title – Indigenous Land Use Agreement ("ILUA") – *North Stradbroke Island Protection and Sustainability Act* 2011 (Qld) ("Principal Act") – *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act* 2013 (Qld) ("Amendment Act") – Amendment Act allowed for renewal of four mining leases for periods longer than those provided in Principal Act – Amendment Act replaced environmental authority provisions in Principal Act with new s 17 which no longer applied conditions to two mining leases – ILUA registered as area agreement under ss 24CA to 24CL of *Native Title Act* 1993 (Cth) ("NTA") – Whether ILUA binds defendant not to enact ss 9 and 12 of Amendment Act.

Constitutional law – Inconsistency – Commonwealth Constitution, s 109 – Whether Amendment Act is invalid under s 109 of

Constitution by reason of inconsistency between Amendment Act and ss 24EA and 87 of NTA.

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4: SPECIAL LEAVE GRANTED

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

Banking

Paciocco v Australia and New Zealand Banking Group Limited
M62/2015: [\[2015\] HCATrans 229](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Banking and financial institutions – Consumer protection – *Australian Securities and Investments Commission Act 2001* (Cth) s 12CB – *National Consumer Credit Protection Act 2009* (Cth) s 76 and *Fair Trading Act 1999* (Vic) s 8 – Where first appellant was charged 26 late payment fees on two credit card accounts held with respondent – Where there was a disparity between the fee charged and the loss accrued as a consequence of late payment – Whether the terms “unconscionable”, “unfair” and “unjust”, as used in the statutory causes of action available, are intended to extend the common law in respect of standard form consumer contracts – Whether disproportion between the quantum of late payment fees and cost to the respondent associated with late payment gives rise to statutory unconscionability, unjustness or unfairness if the fees were not exorbitant from respondent’s perspective.

Appealed from FCA (FC): [\[2015\] FCAFC 50](#).

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Contracts

See also **Statutes:** *State of Victoria v Tatts Group Limited* and *Tabcorp Holdings Ltd v State of Victoria*.

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Employment Law

Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors
P38/2015: [\[2015\] HCATrans 193](#).

Date heard: 14 August 2015 – *Special leave granted.*

Catchwords:

Employment law – Employment relationship – Nature of – *Fair Work Act 2009* (Cth) s 357 - Where first respondent operated a business providing serviced apartments – Where first respondent employed two housekeepers purportedly through a contract hire company – Whether relationship was an employment relationship – Whether an employer can avoid the sham contracting provision of the *Fair Work Act* by interposing a third party into its contractual arrangements between employer and the other person.

Appealed from FCA (FC): [\[2015\] FCAFC 37](#).

Listed: 4 November 2015.

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Migration

See also **Torts:** *Fernando by his tutor Ley v Commonwealth of Australia & Anor*

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Procedure

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate & Ors

B36/2015: [\[2015\] HCATrans 149](#).

Date decided: 18 June 2015 - *Special leave granted on the papers.*

Catchwords:

Procedure – Civil penalty provisions – Where, in proceedings between respondent and the Construction, Forestry, Mining and Energy Union (“CFMEU”) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (“CEPU”), respondent alleged that the CFMEU and CEPU contravened the *Building and Construction Industry Improvement Act 2005* (Cth) – Where respondent sought pecuniary penalties and associated declaratory relief against the CFMEU and CEPU – Whether the High Court of Australia’s decision

in *Barbaro v The Queen* affects submissions made regarding civil penalties.

Appealed from FCA(FC): [\[2015\] FCAFC 59](#).

Listed: 13 October 2015 and 14 October 2015.

This matter is to be heard with *Construction, Forestry, Mining and Energy Union & Anor v Director, Fair Work Building Industry Inspectorate & Anor*.

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Construction, Forestry, Mining and Energy Union & Anor v Director, Fair Work Building Industry Inspectorate & Anor
B45/2015: [\[2015\] HCATrans 171](#).

Date heard: 6 August 2015 – *Special leave granted on the papers*.

Catchwords:

Procedure – Civil penalty provisions – Where respondent alleged that appellants contravened the *Building and Construction Industry Improvement Act 2005 (Cth)* – Where respondent sought pecuniary penalties and associated declaratory relief against the appellants– Whether the High Court of Australia’s decision in *Barbaro v The Queen* affects submissions made regarding civil penalties.

Appealed from FCA(FC): [\[2015\] FCAFC 59](#).

Listed: 13 October 2015 and 14 October 2015.

This matter is to be heard with *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate & Anor*.

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CGU Insurance Limited v Blakely & Ors
M118/2015: [\[2015\] HCATrans 232](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Procedure – Joinder of third parties – Where declaratory relief was sought by first respondent against appellant – Where first respondent was stranger to insurance contract between appellant and second to fifth respondents – Whether Court has jurisdiction to declare the rights and obligations of parties under a contract of insurance where declaration is sought by a third party and the

parties to the contract do not intend to pursue any claim relating to their rights or obligations under the contract – Whether such a declaration would bind parties to the contract as a matter of *res judicata* or finally determine their rights and obligations pursuant to the contract – Whether Court has jurisdiction to make a declaration about the meaning of a contract at the suit of a third party on the grounds of “practical utility”.

Appealed from VSC (CA): [\[2015\] VSCA 153](#).

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Property

Coverdale v West Coast Council
H1/2015: [\[2015\] HCATrans 228](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Real Property – Rates and charges – Where the Valuer-General is required by the *Valuation of Land Act 2001* (Tas) (“VLA”) to make valuations of all lands within a valuation district including any Crown lands that are liable to be rated – Where Macquarie Harbour is Crown land within the respondent’s municipality – Whether the sea or seabed is land which the Valuer-General is required to value.

Appealed from TASC (FC): [\[2015\] TASFC 1](#).

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Statutes

State of Victoria v Tatts Group Limited
M83/2015: [\[2015\] HCA Trans 117](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Statutory interpretation – *Gambling Regulation Act 2003* (Vic) ss 1.3, 3.4.33 and Pt 4 of Ch 3– Gaming operator licences – Where the regime changed and the ability to issue gaming operator’s licences was abolished – Where respondent’s licence expired – Whether respondent entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a

related entity – Whether when construing a contractual promise in an agreement between a government and private party which expressly requires the subsequent enactment of that promise in legislation can this agreement to afford the promise statutory force be relevant to ascertaining the intentions of the parties with respect to the meaning of the promise – Whether the contractual promise survives the agreed enactment of legislation embodying the same – Whether the contractual promise continues to have operation after the enactment of the statutory right if that statutory right is legislatively nullified – Whether a prior contractual promise can survive the enactment of legislation which has the purpose and effect of nullifying the parallel statutory right.

Appealed from VSC (CA): [\[2014\] VSCA 311](#).

Listed: 10 November 2015 and 11 November 2015.

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Tabcorp Holdings Limited v State of Victoria

M81/2015: [\[2015\] HCATrans 117](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Statutory interpretation – *Gambling Regulation Act 2003* (Vic) s 4.3.21 – Gaming operator licences – Where the regime changed and the ability to issue gaming operator’s licences was abolished – Where appellant’s licence expired – Whether appellant is entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a related entity – Whether words “new licences” in s 4.3.12(1) of the *Gambling Regulation Act 2003* should be construed to have their ordinary meaning.

Contracts – General contractual principles – Whether respondent’s failure to seek to secure appellant’s right to repayment of a breach of the duty of good faith and reasonable dealing.

Appealed from VSC (CA): [\[2014\] VSCA 312](#).

Listed: 10 November 2015 and 11 November 2015.

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Taxation

Macoun v Commissioner of Taxation

S100/2015: [\[2015\] HCATrans 112](#).

Date heard: 15 May 2015 – *Special leave granted*.

Catchwords:

Income Tax – Appeal from the Administrative Appeals Tribunal – *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) cl 8 - *International Organisations (Privileges and Immunities) Act 1963* (Cth) Sch 4 Pt 1 – *Income Tax Assessment Act 1997* (Cth) s 6-20 - Where the appellant received pension payments from a foreign retirement plan – Where appellant was no longer employed by a Specialised Agency exempt from income tax pursuant to cl 8 of the *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) – Whether appellant’s pension payments are exempt from income tax.

Appealed from FCA (FC): [\[2014\] FCAFC 162](#).

Listed: 9 October 2015.

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Torts

Allen v Chadwick

A14/2015: [\[2015\] HCATrans 154](#).

Date heard: 19 June 2015 – *Special leave granted*.

Catchwords:

Torts – Negligence – Contributory negligence – *Civil Liability Act 1936* (SA) ss 47 and 49 – Where respondent was injured in a car accident after appellant lost control of the vehicle – Where appellant was intoxicated – Where respondent was not wearing a seatbelt – Whether a reasonable person in the position of respondent would or ought to have known that appellant was intoxicated and would have relied on appellant to drive – Whether respondent had an opportunity to fasten the seatbelt – Whether damages should include or exclude GST.

Appealed from SASC (FC): [\[2014\] SASCF 100](#).

Listed: 15 October 2015.

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Attwells & Anor v Jackson Lalic Lawyers Pty Limited
S161/2015: [\[2015\] HCATrans 176](#).

Date heard: 7 August 2015 – *Special leave granted*

Catchwords:

Torts – Negligence – Defences – Advocates’ immunity – Scope – Where respondent gave advice to appellants to agree to a terms of settlement – Where the terms of settlement caused the appellants to accept liability significant higher than they would have otherwise been liable for if they had not defended the proceedings– Whether advocates’ immunity applies – Whether the advice falls with the boundaries of advocates’ immunity – Whether immunity is attracted in respect of final outcomes not the subject of a judicial determination on the merits.

Appealed from NSWSC (CA): [\[2014\] NSWCA 335](#).

Listed: 3 November 2015.

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Fernando by his tutor Ley v Commonwealth of Australian & Anor
P37/2015: [\[2015\] HCATrans 190](#).

Date heard: 14 August 2015 – *Special leave granted*.

Catchwords:

Torts – False imprisonment – Where appellant’s visa was cancelled by Acting Minister – Where appellant was held in immigration detention for 1203 days – Where consent orders were made to quash decision of Acting Minister to cancel the visa – Whether a tortfeasor is permitted to escape liability to pay more than nominal damages if a lawful means could have been chosen by the tortfeasor to inflict the same loss and damage on the victim – Whether, after a determination of liability, an intermediate court of appeal remits a matter for assessment of damages whether the remittee court is bound in reaching its determination by the reasons as well as the orders of the remitting court.

Appealed from FCA (FC): [\[2014\] FCAFC 181](#).

Listed: 5 November 2015.

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Stewart & Ors v Ackland
C3/2015: [\[2015\] HCATrans 226](#).

Date heard: 11 September 2015 – *Special leave granted*.

Catchwords:

Torts – Negligence – Personal injury – *Civil Liability Act 2002* (NSW) ('Act') ss 5L and 5F - Where respondent was injured while attempting to perform a backward somersault on a jumping pillow at an amusement park operated by appellant – Where there was no signs prohibiting backward somersaults or other inverted manoeuvres – Whether s 5L of the Act requires that the extent of the harm suffered by the plaintiff to be objectively obvious to a reasonable person in the position of the plaintiff – Whether and to what extent the principle of personal autonomy applies so as to limit the scope of an occupier's duty of care in respect of recreation activities.

Appealed from ACTSC (CA): [\[2015\] ACTCA 1](#).

5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 3 September 2015

No.	Applicant	Respondent	Court appealed from	Result
1.	BZAEZ	Minister for Immigration and Border Protection & Anor (S13/2015)	Federal Court of Australia [2015] FCA 625	Application dismissed [2015] HCASL 135
2.	Luck	University of Southern Queensland & Anor (M116/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 135	Application dismissed [2015] HCASL 136
3.	Werden	The Queen (M58/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 72	Application dismissed [2015] HCASL 137
4.	Phillips	Southage Pty Ltd (M60/2015)	Federal Court of Australia [2015] FCA 332	Application dismissed [2015] HCASL 138
5.	MZAAM	Minister for Immigration and Border Protection & Anor (M66/2015)	Federal Court of Australia [2015] FCA 437	Application dismissed [2015] HCASL 139
6.	Cremona	Administrative Appeals Tribunal & Anor (M89/2015)	Full Court of Federal Court of Australia [2015] FCAFC 72	Application dismissed [2015] HCASL 140
7.	SZTSI	Minister for Immigration and Border Protection & Anor	Federal Court of Australia [2014] FCA 1225	Application dismissed [2015] HCASL 141
8.	Dickens	Dickens (S83/2015 & S84/2015)	Family Court of Australia	Applications dismissed [2015] HCASL 142
9.	Mulder	Commonwealth Director of Public Prosecutions (S87/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 92	Application dismissed [2015] HCASL 143
10.	Mulder	Commonwealth Director of Public Prosecutions (S88/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 92	Application dismissed [2015] HCASL 143
11.	SZRSJ	Minister for Immigration and Border Protection & Anor (S104/2015)	Federal Court of Australia [2015] FCA 457	Application dismissed [2015] HCASL 144
12.	SZTPF	Minister for Immigration and Border Protection & Anor (S106/2015)	Federal Court of Australia [2015] FCA 445	Application dismissed [2015] HCASL 145

6: Special Leave Refused

13.	SZTNL	Minister for Immigration and Border Protection & Anor (S111/2015)	Federal Court of Australia [2015] FCA 463	Application dismissed [2015] HCASL 146
14.	SZUFG & Ors	Minister for Immigration and Border Protection & Anor (S112/2015)	Federal Court of Australia [2015] FCA 448	Application dismissed [2015] HCASL 147
15.	Battison	Battison & Anor (S49/2015)	Full Court of the Family Court of Australia	Application dismissed with costs [2015] HCASL 148
16.	Steer	The Queen (S35/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCA 338	Application dismissed [2015] HCASL 149
17.	Guild Insurance Limited	Hepburn (S322/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 400	Application dismissed with costs [2015] HCASL 150
18.	Prodduturi	Minister for Immigration and Border Protection & Anor (S24/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 5	Application dismissed with costs [2015] HCASL 151
19.	Southern Cross Autoglass Pty Ltd & Ors	Protector Glass Industries Pty Ltd (S44/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 16	Application dismissed with costs [2015] HCASL 152
20.	Ngurampaa Limited	Brewarrina Shire Council (S77/2015)	Supreme Court of New South Wales	Application dismissed with costs [2015] HCASL 153
21.	MZZUO	Minister for Immigration and Border Protection & Anor (M137/2014)	Federal Court of Australia [2014] FCA 1267	Application dismissed [2015] HCASL 154

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11 September 2015: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Sarks	Cassegrain & Ors (S64/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 38	Application dismissed with costs [2015] HCATrans 223
2.	Cassegrain	Cassegrain & Ors (S65/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 38	Application dismissed with costs [2015] HCATrans 223
3.	CGU Insurance Limited	June Davies as Legal Personal Representative of the estate of the late Eric James Davies & Anor (S32/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 5	Application dismissed with costs [2015] HCATrans 225
4.	Allianz Australia Insurance Limtied	Wade Alfred Pomfret & Anor (S34/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 4	Application dismissed with costs [2015] HCATrans 225
5.	Smith	The Queen (S61/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 316	Application dismissed [2015] HCATrans 222
6.	McGrouther & Anor	Commissioner of Taxation (S68/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 34	Application dismissed with costs [2015] HCATrans 221
7.	Jea Holdings (Aust) Pty Ltd	Registrar General of NSW & Anor (S76/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 74	Application dismissed with costs [2015] HCATrans 224
8.	Pernice	Jingalong Pty Limited & Anor (S40/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 7	Application dismissed with costs [2015] HCATrans 227
9.	Generic Health Pty Ltd	Otsuka Pharmaceutical Co., Ltd & Ors (S157/2015)	Federal Court of Australia [2015] FCA 848	Application dismissed with costs [2015] HCATrans 220

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11 September 2015: Melbourne

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Di Cioccio	Official Trustee in Bankruptcy (as Trustee of the Bankrupt Estate of Marc Edward Di Cioccio) (M46/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 30	Application dismissed with costs [2015] HCATrans 230
2.	Falkingham	Peninsula Kingswood Country Golf Club Ltd (CAN 004 208 075) (M31/2015) (M44/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 16 [2015] VSCA 30	Application dismissed with costs [2015] HCATrans 231
3.	Quail	The Queen (M24/2015)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 336	Application dismissed [2015] HCATrans 233
4.	Little (a Pseudonym)	The Queen (M67/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 62	Application dismissed [2015] HCATrans 234
5.	Ausnet Transmission Group Pty Ltd	Commissioner of Taxation ((M84/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 60	Discontinued
6.	Rowley Super Fund Pty Ltd	Australasian Annuities Pty Ltd (in liquidation) (M29/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 9	Application dismissed with costs [2015] HCATrans 235
7.	Kheir	The Queen (M65/2015)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 200	Application dismissed [2015] HCATrans 236

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