

BETWEEN:

**STEVEN JAMES LEWIS**  
Appellant

and

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**THE AUSTRALIAN CAPITAL TERRITORY**  
Respondent

**APPELLANT'S OUTLINE OF ORAL SUBMISSIONS**

**PART I: PUBLICATION**

1. This outline is in a form suitable for publication on the internet.

**PART II: OUTLINE OF ORAL SUBMISSIONS**

**The appellant is entitled to be compensated for infringement of his right not to be imprisoned otherwise than in accordance with law**

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2. The appellant's right not to be imprisoned otherwise than in accordance with law was infringed (**Reply [8]–[11]**).

3. *Plenty v Dillon* supports the availability of substantial compensatory damages for infringement of proprietary rights (**AS [27]–[30]; Reply [12]**).

*Plenty v Dillon* (1991) 171 CLR 635 at 645, 654–655

4. Cases concerning occupiers of land and owners of goods deny recourse to a counterfactual analysis. Substantial damages go to compensate for infringement of the plaintiff's proprietary rights (**AS [35]; Reply [7]**).

*Inverugie Investments Ltd v Hackett* [1995] 1 WLR 713 at 717–718

See also *Bunnings Group Ltd v CHEP Australia Ltd* (2011) 82 NSWLR 420

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5. This approach applies to false imprisonment: substantial damages go to compensate for infringement of the plaintiff's right to personal liberty (**AS [32]–[34], [39]–[41], [46]; Reply [5]–[6], [14]**).

- (a) The law attributes a high intrinsic value to the right to personal liberty.

- (b) Striking adverse consequences follow on the contrary view.

*Parker v Chief Constable of Essex Police* [2019] 1 WLR 2238

*Christie v Leachinsky* [1947] AC 573

- (c) The reasoning in *Lumba* is unpersuasive.

*Lumba* [2012] 1 AC 245 at [91]–[95], [254], [343]–[345]

6. *CPCF* does not stand against the appellant’s position (AS [18]–[23]; Reply [2]–[3]).

*CPCF* (2015) 255 CLR 514 at [153]–[157], [324]–[325], [510]–[512]

**A defendant that unlawfully imprisons a plaintiff cannot refer to the “alternative cause” of lawful imprisonment by the defendant**

- 10 7. The contention accepted by the courts below involves a posited “alternative cause” of the appellant’s imprisonment (AS [42]; Reply [15]).

Hart and Honoré, *Causation in the Law* (2nd ed, 1985) at 249

8. The way the law deals with alternative causes is not uniform (AS [43]–[44]).

- (a) Where a defendant converts a plaintiff’s goods, it is irrelevant that if the defendant had not done so a third party would have done so.

*Kuwait Airways v Iraqi Airways* [2002] 2 AC 883 at [82], [129]

- (b) This is not an approach limited to multiple wrongdoers.

*Anderson v Minneapolis, St P & S M Ry Co*, 179 NW 45 at 49 (1920)

- (c) Alternative causes may not be able to be relied upon in the criminal context.

- 20 (d) Claims for consequential economic loss may be different, because the compensation goes for a lost economic opportunity.

9. The way the law deals with causation involves normative and policy considerations (AS [36], [45]).

*Chappel v Hart* (1998) 195 CLR 232 at [62]

10. It would be discordant with other aspects of the law for a defendant to be able to escape being required to compensate a plaintiff for unlawful imprisonment which the defendant has actually inflicted by contending that, had the defendant not done so, the defendant would lawfully have imprisoned the plaintiff.

**The appellant should be awarded non-compensatory vindictory damages**

11. The law should recognise a head of non-compensatory vindictory damages (AS [48]–[51]; Reply [16]–[18]).

- (a) Vindication has long been recognised as a function of general damages.  
(b) Vindication is a function of non-compensatory exemplary damages.

10 *New South Wales v Ibbett* (2006) 229 CLR 638 at [40]

- (c) Vindictory damages have been accepted in other jurisdictions.

*Rees* [2004] 1 AC 309 at [8], [17]–[19], [123]–[124], [148]

*Lumba* [2012] 1 AC 245 at [176]–[180], [195], [214]–[217]

12. The criticisms of vindictory damages are overstated (AS [52]).  
13. The reasons given by the Court of Appeal (CAB 113 [67]–[68]) for not awarding vindictory damages (if available) should be rejected (AS [53]).

**Relief**

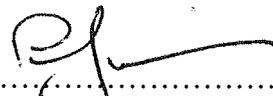
14. The primary judge's notional award of \$100,000 (CAB 62 [388]) has not been challenged (AS [47]).

- 20 15. The appellant should have his costs at trial and in the Court of Appeal (Reply [19]).

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