

BETWEEN:

STEVEN JAMES LEWIS
Appellant

and

10

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]

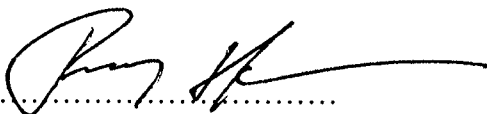
Lumba [2012] 1 AC 245 at [176]–[180], [195], [214]–[217]

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]).

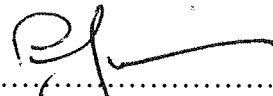
Relief

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]).

Dated: 2 June 2020



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