HIGH COURT BULLETIN

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[2021] HCAB 10 (10 December 2021)

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

1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
Bell v The State of Tasmania	Criminal Law
George v The State of Western Australia	Criminal Law
Orreal v The Queen	Criminal Practice
Arsalan v Rixon; Nguyen v Cassim	Damages
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane	Immigration
Deputy Commissioner of Taxation v Huang	Practice and Procedure
Port of Newcastle Operations Pty Limited v Glencore Coal Assets Australia Pty Ltd & Ors	Trade Practices

3: Cases Reserved

Case	Title
Plaintiff M1/2021 v Minister for Home Affairs	Immigration
Australian Building and Construction Commissioner v Pattinson & Anor	Industrial Law
Kozarov v State of Victoria	Torts

4: Original Jurisdiction

Case	Title
Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	Administrative Law
Ruddick v Commonwealth of Australia	Constitutional Law

5: Section 40 Removal

Case	Title
Garlett v The State of Western Australia & Anor	Constitutional Law
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor v Montgomery	Constitutional Law

6: Special Leave Granted

Case	Title
O'Dea v The State of Western Australia	Criminal Law
Google LLC v Defteros	Defamation

7: Cases Not Proceeding or Vacated

2: Cases Handed Down

The following cases were handed down by the High Court of Australia during the December 2021 sittings.

Criminal Law

Bell v State of Tasmania
H2/2020: [2021] HCA 42

Judgment delivered: 8 December 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

> Criminal law – Defences – Honest and reasonable mistake of fact – Where appellant charged with supplying controlled drug to child contrary to s 14 of *Misuse of Drugs Act 2001* (Tas) – Where appellant claimed he honestly and reasonably believed child was adult – Where appellant's conduct, had his belief been true, would have constituted lesser offence of supplying controlled drug contrary to s 26 of *Misuse of Drugs Act* – Where common law principle of honest and reasonable mistake of fact operates to excuse conduct that, on believed state of facts, would be innocent – Meaning of "innocent" – Whether appellant entitled to rely on excuse of honest and reasonable mistake of fact.
>
> Words and phrases – "common law principle", "criminal responsibility", "excuse", "ground of exculpation", "honest and reasonable but mistaken belief in the existence of any state of facts", "innocent", "justification", "mistake as to age", "voluntary and intentional".
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> *Criminal Code* (Tas) – ss 13, 14.
>
> *Criminal Code Act 1924* (Tas) – s 8.

Appealed from TASSC (CCA): [2019] TASCCA 19; (2019) 279 A Crim R 553

Held: Appeal dismissed.

Return to Top

George v The State of Western Australia
P45/2020: [2021] HCATrans 212

Judgment delivered: 8 December 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon and Steward JJ

Catchwords:

Criminal law – Jury directions – Right to silence – Where applicant charged with indecently dealing with child between ages 13 and 16 years, contrary to s 321(4) of *Criminal Code* (WA) – Where prosecution adduced evidence of investigating police officer, who gave evidence of electronic record of interview in which applicant denied offences and gave alternative account, and tendered record of interview – Where applicant did not give or adduce any evidence at trial – Where applicant submitted prosecution had not proved beyond reasonable doubt all elements of offence – Where trial judge failed to warn jury that applicant's silence could not be used as evidence against him, does not constitute admission, could not be used to fill gaps in prosecution's evidence and could not be used as a make-weight in assessing whether prosecution proved case beyond reasonable doubt (Azzopardi direction) – Where majority of WA Court of Appeal held absence of Azzopardi direction not miscarriage of justice – Whether miscarriage of justice occurred because of absence of Azzopardi direction.

Appealed from WASC (CA): [2020] WASCA 139

Held: Application for special leave to appeal refused.

Return to Top

Criminal Practice

Orreal v The Queen
B25/2021: [2021] HCA 44

Judgment delivered: 16 December 2021

Coram: Kiefel CJ, Keane, Gordon, Steward, Gleeson JJ

Catchwords:

Criminal practice – Appeal – Miscarriage of justice – Application of proviso that no substantial miscarriage of justice actually occurred – Where appellant convicted of unlawfully and indecently dealing with child under age of 16 years and rape – Where evidence admitted by consent that both appellant and complainant tested positive for herpes simplex virus type 1 ("impugned evidence") – Where impugned evidence irrelevant and inadmissible – Where Court of Appeal found miscarriage of justice because trial judge failed to direct jury to disregard impugned evidence in its entirety – Where Court of

Appeal applied proviso because it concluded impugned evidence could not have impacted jury's assessment of reliability or credibility of complainant – Whether no substantial miscarriage of justice had actually occurred.

Words and phrases – "contested credibility", "jury's assessment of the reliability or credibility of the complainant", "miscarriage of justice", "natural limitations", "nature and effect of the error", "proviso", "substantial miscarriage of justice".

Criminal Code (Qld) – s 668E(1A).

Appealed from QSC (CA): [2020] QCA 95

Held: Appeal allowed.

Return to Top

Damages

Arsalan v Rixon; Nguyen v Cassim
S35/2021; S36/2021: [2021] HCA 40

Judgment delivered: 8 December 2021

Coram: Kiefel CJ, Gageler, Keane, Edelman and Steward JJ

Catchwords:

Damages – Torts – Negligence – Damage to chattels – Consequential loss – Physical inconvenience and loss of amenity of use – Where respondents owned prestige vehicles – Where prestige vehicles negligently damaged and unavailable during periods of repair – Where appellants liable for costs of repairing vehicles – Where respondents deprived of use of prestige vehicles including enjoyment of various functions – Where respondents incurred costs of hiring replacement vehicles of equivalent value to damaged vehicles – Whether costs of hiring replacement vehicles recoverable as damages – Whether respondents required to prove need for prestige replacement vehicles – Whether hiring replacement vehicles of equivalent value constitutes acts taken to mitigate loss – Whether hiring replacement vehicles of equivalent value unreasonable.

Words and phrases – "act in mitigation", "compensatory principle", "concept of need", "consequential loss", "costs incurred in mitigation", "costs of hire", "equivalent replacement vehicle", "equivalent value", "heads of damage", "loss of amenity of use ", "loss of pleasure or enjoyment", "luxury vehicle", "mitigation of loss", "negligent damage to a chattel", "physical inconvenience", "prestige

vehicle", "proof of loss", "reasonable hire costs", "replacement vehicle".

Appealed from NSWSC (CA): [2020] NSWCA 115; (2020) 92 MVR 366

Held: Appeals dismissed with costs.

Return to Top

Immigration

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane
S34/2021: [2021] HCA 41

Judgment delivered: 8 December 2021

Coram: Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Immigration – Visas – Cancellation of visa – Revocation of cancellation – Where respondent's temporary visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where respondent made representations seeking revocation of cancellation decision under s 501CA(4) – Where representations included bare assertions about conditions in American Samoa – Where Minister decided there was not "another reason" to revoke cancellation decision under s 501CA(4)(b)(ii) – Where Minister made findings about conditions in American Samoa and Samoa – Where it was common ground no evidentiary material to support Minister's findings – Whether Minister always obliged to make findings of fact in response to representations received – Whether Minister's findings relating to hardship respondent's family would face if visa cancellation decision not revoked were open – Whether Minister entitled to rely on personal or specialised knowledge, or commonly accepted knowledge, in making findings about conditions in American Samoa and Samoa – Whether as matter of procedural fairness Minister required to disclose personal or specialised knowledge and invite submissions from applicant about that knowledge before making findings.

Words and phrases – "another reason", "bare assertions", "commonly accepted knowledge", "conditions in American Samoa or Samoa", "hardship", "Minister's personal or specialised knowledge", "no evidence", "personal knowledge", "reasons for decision", "removal to American Samoa", "representations about revocation", "specialised knowledge", "visa cancellation".

Migration Act 1958 (Cth) – ss 501, 501CA.

Appealed from FCA (FC): [2020] FCAFC 144; (2020) 278 FCR 386

Held: Appeal allowed.

Return to Top

Practice and Procedure

Deputy Commissioner of Taxation v Huang
S26/2021: [2021] HCA 43

Judgment delivered: 8 December 2021

Coram: Gageler, Keane, Gordon, Edelman and Gleeson JJ

Catchwords:

> Practice and procedure – Freezing orders – Power of Federal Court of Australia to make worldwide freezing order conferred by r 7. 32 of *Federal Court Rules 2011* (Cth) – Where appellant commenced proceedings against respondent in Federal Court – Where appellant applied to Federal Court for worldwide freezing order – Where assets located in People's Republic of China and Hong Kong – Where presently no realistic possibility of enforcement of appellant's judgment debt in each foreign jurisdiction where assets located – Where freezing order made – Whether worldwide freezing order within power of Federal Court where presently no realistic possibility of enforcement in each foreign jurisdiction.
>
> Words and phrases – "assets outside Australia", "danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied", "freezing order", "frustration or inhibition of the Court's process", "realistic possibility of enforcement", "worldwide freezing order".
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> *Federal Court Rules 2011* (Cth) – rr 7. 32, 7. 35.
>
> *Federal Court of Australia Act 1976* (Cth) – s 23.

Appealed from FCA (FC): [2020] FCAFC 141; (2020) 280 FCR 160

Held: Appeal allowed with costs.

Return to Top

Trade Practices

Port of Newcastle Operations Pty Limited v Glencore Coal Assets Australia Pty Ltd & Ors
S33/2021: [2021] HCA 39

Judgment delivered: 8 December 2021

Coram: Kiefel CJ, Gageler, Gordon, Steward and Gleeson JJ

Catchwords:

Trade practices – Competition – Access to services – Where declared service under Pt IIIA of *Competition and Consumer Act 2010* (Cth) ("Act") for provision of right to access and use certain infrastructure at Port of Newcastle ("Port") – Where operator of Port fixed navigation service charge and wharfage charge under *Ports and Maritime Administration Act 1995* (NSW) for use of certain port infrastructure – Where access dispute concerned amount of navigation service charge and wharfage charge – Whether Australian Competition Tribunal ("Tribunal") erred in determining range of circumstances in which navigation service charge payable – Whether Tribunal erred in determining amount of navigation service charge – Meaning of "access" in Pt IIIA of Act – Construction of s 44X(1)(e) of Act – Application of pricing principles in s 44ZZCA of Act. Words and phrases – "access", "access dispute", "competition", "declaration of a service", "depreciated optimised replacement cost", "essential facility", "navigation service charge", "physical use", "pricing principles", "provider", "regulated asset base", "service", "third party", "use", "user contributions".

Competition and Consumer Act 2010 (Cth) – Pt IIIA, ss 44X(1)(e), 44ZZCA.

Ports and Maritime Administration Act 1995 (NSW) – ss 48(4), 50, 51, 67.

Appealed from FCA (FC): [2020] FCAFC 145; (2020) 280 FCR 194; (2020) 382 ALR 331

Held: Appeal dismissed.

Return to Top

3: CASES RESERVED

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

Aviation

Wells Fargo Trust Company, National Association (As Owner Trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) & Ors

S60/2021: [2021] HCATrans 182

Date heard: 4 November 2021

Coram: Kiefel CJ, Gageler, Keane, Edelman and Steward JJ

Catchwords:

Aviation – Construction of art XI *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (Protocol) – Where *International Interest in Mobile Equipment (Cape Town Convention) Act 2013* (Cth) gives domestic effect to *Convention on International Interests in Mobile Equipment* (Cape Town Convention) – Where art XI(2) of Protocol provides upon occurrence of insolvency-related event, insolvency administrator or debtor shall "give possession of the aircraft object" to creditor – Where appellants owners of aircraft engines leased to first respondent and subleased to second and fourth respondents – Where third respondent appointed administrator of other respondents following insolvency-related event – Where lease imposes on lessees return obligations in respect of aircraft – Where appellants sought compliance with respondents' Art XI(2) obligations to "give possession" – Where third respondent, instead of physically redelivering engines, issued a notice under s 443B(3) of *Corporations Act 2001* (Cth) disclaiming leased engines and leaving engines still attached to aircraft operated by lessees and owned by third parties – Where primary judge held respondents failed to "give possession" of engines – Where respondents successfully appealed to Full Court Federal Court – Whether "give possession" means physical delivery of aircraft objects or merely enables creditor to exercise self-help remedy – Whether respondents failed to "give possession".

Appealed from FCA (FC): [2020] FCAFC 168; (2020) 279 FCR 518; (2020) 384 ALR 378

Return to Top

Contracts

Hobart International Airport Pty Ltd v Clarence City Council & Anor; Australia Pacific Airports (Launceston) Pty Ltd v Northern Midlands Council & Anor
H2/2021; H3/2021: [2021] HCATrans 160

Date heard: 12 October 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Contracts – Privity of contract – Declaratory relief – Where second respondent Commonwealth registered proprietor of land leased to appellants – Where first respondent Councils not party to lease – Where cl 26.2(a) of lease provides amount equivalent to council rates to be paid to first respondents in respect of leased land – Where lease contemplates that first respondents will participate in mechanism in determining amount payable – Where dispute arose between appellants and first respondents as to amounts payable – Where first respondents sought declaratory and consequential relief with respect to proper construction of cl 26.2(a) – Where primary judge held first respondents did not have standing to seek declaratory relief on basis of privity of contract – Where first respondents successfully appealed to Full Federal Court, which held doctrine of privity only prevents third parties from obtaining executory judgment to enforce terms of contract, not declaratory judgment – Whether doctrine of privity prevents third parties from seeking declaratory relief – Whether third parties have standing to seek declaratory relief in respect of contract.

Constitutional law – Judicial power of Commonwealth – Requirement for a "matter" – Jurisdiction of Federal Court – Where there is no dispute between contracting parties as to interpretation of contract – Whether first respondents have rights, duties or liabilities to be established by determination of a court – Whether there is a justiciable controversy or enforceable right, duty or liability to found a "matter".

Appealed from FCA (FC): [2020] FCAFC 134; (2020) 280 FCR 265; (2020) 382 ALR 273

Return to Top

Corporations

Walton & Anor v ACN 004 410 833 Ltd (formerly Arrium Ltd) (in liquidation) & Ors
S20/2021: [2021] HCATrans 154; [2021] HCATrans 155

Date heard: 6–7 October 2021

Coram: Kiefel CJ, Gageler, Keane, Edelman and Steward JJ

Catchwords:

Corporations – Examinations relating to insolvency – Abuse of process – Where s 596A of *Corporations Act 2001* (Cth) requires court to issue examinations summons to a person about a company if "eligible applicant" applies for summons – Where "eligible applicants" include persons authorised by Australian Securities and Investments Commission ("ASIC") – Where ASIC can only authorise person if person's purpose is for benefit of corporation, its contributories or its creditors – Where appellants shareholders of respondent – Where, in 2014, respondent successfully completed capital raising for purpose of paying down debt – Where respondent entered into voluntary administration in 2016 and liquidation in 2019 – Where ASIC authorised appellants as "eligible applicants" to conduct examinations of respondent's directors and officers – Where NSW Court of Appeal found appellants' predominant purpose investigation and pursuit of shareholders' private claim against directors in relation to 2014 capital raising – Where Court of Appeal held fulfilment of that purpose would not confer benefit on corporation, creditors or contributories, and therefore offensive to purpose for which s 596A enacted and abuse of process – Whether implicit purpose of obtaining information about potential misconduct is beneficial to corporation – Whether appellants' purposes offensive or foreign to s 596A.

Appealed from NSW (CA): [2020] NSWCA 157; (2020) 383 ALR 298; (2020) 17 ABC(NS) 320

Return to Top

Equity

Stubbings v Jams 2 Pty Ltd & Ors
M13/2021: [2021] HCATrans 163

Date heard: 14 October 2021

Coram: Kiefel CJ, Keane, Gordon, Steward and Gleeson JJ

Catchwords:

Equity – Unconscionable conduct – Wilful blindness – Where appellant borrowed from respondent lenders secured only on appellant's assets – Where appellant without regular income and defaulted – Where respondents' system of asset-based lending included deliberate intention to avoid receipt of information about personal and financial circumstances of borrower or guarantor – Where certificate of independent financial advice given in respect of transaction – Where respondents brought proceedings for possession of appellant's assets – Where primary judge found respondents wilfully blind and had actual knowledge as to appellant's personal and financial circumstances – Where respondents successfully appealed to Court of Appeal, which overturned primary judge's findings as to knowledge – Whether lender's conduct unconscionable by engaging in system of asset-based lending without receipt of information about personal or financial situation of borrower, or alternatively, wilfully or recklessly failing to make such enquiries an honest and reasonable person would make – Whether Court of Appeal entitled to overturn findings of primary judge as to respondents' knowledge.

Appealed from VSC (CA): [2020] VSCA 200

Return to Top

Immigration

Plaintiff M1/2021 v Minister for Home Affairs

M1/2021: [2021] HCATrans 203

Date heard: 30 November 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Immigration – Judicial review – Non-refoulement obligations – Where plaintiff granted Refugee and Humanitarian (Class XB) Subclass 202 (Global Special Humanitarian) visa in 2006 – Where, on 19 September 2017, plaintiff convicted of unlawful assault and sentenced to 12 months' imprisonment – Where, on 27 October 2017, delegate of Minister cancelled plaintiff's visa pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where plaintiff made representations to Minister regarding possibility of refoulement if plaintiff returned to home country – Where, on 9 August 2018, delegate of Minister decided not to revoke cancellation decision pursuant to s 501CA(4) of *Migration Act* – Where, in making decision, delegate did not consider whether non-refoulement obligations owed to plaintiff because plaintiff able to apply for protection visa under *Migration Act* – Whether delegate required to consider plaintiff's

representations concerning non-refoulement obligations in making non-revocation decision pursuant to s 501CA(4) where plaintiff can apply for protection visa – If so, whether delegate failed to consider representations – If so, whether delegate failed to exercise jurisdiction under *Migration Act* or denied plaintiff procedural fairness – Whether non-revocation decision affected by jurisdictional error.

Special case referred to the Full Court on 30 March 2021.

Return to Top

Industrial Law

Australian Building and Construction Commissioner v Pattinson & Anor

M34/2021: [2021] HCATrans 211

Date heard: 7 December 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Industrial law – Civil penalties – Determination of appropriate penalty – Where s 349(1) of *Fair Work Act 2009* (Cth) provided unlawful for person to knowingly or recklessly make false or misleading representation about another person's obligation to engage in industrial activity – Where second respondent union had "no ticket no start" policy and respondents carried out policy by representing to two workers they could not work unless joined union – Where respondents admitted liability for two contraventions of s 349(1) – Where second respondent well-resourced and, since 2000, had breached pecuniary penalty provisions on more than 150 occasions, including at least 15 occasions involving "no ticket no start" policy and 7 previous contraventions of s 349(1) – Where primary judge considered statutory maximum penalty required to sufficiently deter respondents in light of previous contraventions and imposed maximum – Where respondents appealed to Full Federal Court, which held maximum penalty must only be imposed for most serious and grave contravening conduct and imposed lower penalty – Whether statutory maximum penalty must only be imposed for most serious and grave contravening conduct – Whether statutory maximum penalty can be imposed if necessary to deter contravening conduct.

Appealed from FCA (FC): [2020] FCAFC 177; (2020) 384 ALR 75; (2020) 299 IR 404

Return to Top

Construction, Forestry, Maritime, Mining and Energy Union & Anor v Personnel Contracting Pty Ltd

P5/2021: [2021] HCATrans 138

Date heard: 31 August 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Industrial law – Employee and independent contractor – Proper test for distinguishing – Labour hire agreement – Definition of "employee" – Where second appellant signed Administrative Services Agreement with respondent labour hire agency and offered work cleaning and moving materials for builder – Where contract between second appellant and respondent for work, contract between respondent and builder for labour supply, but no contract between second appellant and respondent – Where builder "controlled" second appellant – Where arrangement of casual nature included right to reject assignment – Where second appellant not integrated into respondent's business and not given uniform – Where work required personal service and second appellant not in business on own account – Where second appellant 22-year old backpacker on working holiday visa – Where express term of contract categorises relationship not employment – Where appellants allege respondent contravened various National Employment Standards and s 45 of *Fair Work Act 2009* (Cth) by not paying second appellant in accordance with relevant award – Where Standards apply only if second appellant "employee" – Where primary judge, applying multi-factorial test, found second appellant not employee – Where Full Court preferred approach second appellant employee but for authority of intermediate appellate court in *Personnel Contracting v Construction, Forestry, Mining and Energy Union* [2004] WASCA 312 decided in similar circumstances, which Full Court held not plainly wrong – Whether second appellant "employee" of respondent – Whether, in triangular labour hire agreement, control test satisfied when second appellant controlled by builder and not respondent – Whether multi-factorial test correctly applied.

Appealed from FCA (FC): [2020] FCAFC 122; (2020) 279 FCR 631; (2020) 381 ALR 457; (2020) 297 IR 269

Return to Top

NSW Commissioner of Police v Cottle & Anor

S56/2021: [2021] HCATrans 181

Date heard: 3 November 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon and Steward JJ

Catchwords:

Industrial law – Jurisdiction of Industrial Relations Commission of New South Wales (IRC) – Police – Where appellant made decision under s 72A of *Police Act 1990* (NSW) to retire first respondent police officer on medical grounds – Where first respondent applied for unfair dismissal remedy in IRC under s 84 of *Industrial Relations Act 1996* (NSW) – Where *Police Act* does not expressly provide for review by IRC for medical retirement but does for other types of removal – Where appellant successfully challenged IRC's jurisdiction, following High Court's decision in *Commissioner for Police for NSW v Eaton* (2013) 252 CLR 1 – Where Full Bench overturned decision – Where appellant successfully sought judicial review of Full Bench decision by NSW Supreme Court – Where first respondent successfully appealed to Court of Appeal – Whether IRC has jurisdiction to hear and determine unfair dismissal application filed by police office retired on medical grounds – Whether Court of Appeal applied correct statutory construction principles in interpreting two overlapping statutory schemes.

Appealed from NSW (CA): [2020] NSWCA 159; (2020) 298 IR 202

Return to Top

ZG Operations Australia Pty Ltd & Anor v Jamsek & Ors
S27/2021: [2021] HCATrans 139

Date heard: 1 September 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Industrial law – Employee and contractor – Proper test for distinguishing – Multi-factorial test – Where respondents commenced employment with appellants as truck drivers in 1980 – Where, in 1985, appellants and respondents agreed respondents would become contractors – Where respondents formed partnerships with respective wives, purchased truck from appellants and executed written contract with appellants to provide delivery services – Where respondents worked exclusively for and derived sole income from appellants for nearly forty years, and contract expressly permitted respondents to service other clients – Where respondents required to be available to work during set hours – Where impractical for respondents to work for or generate goodwill with other clients –

Where respondents required to purchase truck to retain work, display company logo on truck and wear branded clothing – Where respondents responsible for upkeep, maintenance and insurance of trucks – Where respondents paid by invoice and charged GST to appellants – Where respondents conducted partnerships as one would expect of business - Where contract terminated in 2017 – Where respondents unsuccessfully claimed in Federal Court for unpaid employee entitlements under various statutory regimes and Federal Court held respondents "contractors" – Where respondents successfully appealed to Full Court, which held respondents "employees" – Whether respondents "employees" for purposes of *Fair Work Act 2009* (Cth), *Superannuation Guarantee (Administration) Act 1992* (Cth) and "workers" for purpose of *Long Service Leave Act 1955* (NSW).

Appealed from FCA (FC): [2020] FCAFC 119; (2020) 279 FCR 114; (2020) 297 IR 210

Return to Top

Patents

H. Lundbeck A/S & Anor v Sandoz Pty Ltd; CNS Pharma Pty Ltd v Sandoz Pty Ltd

S22/2021; S23/2021: [2021] HCATrans 156

Date heard: 8 October 2021

Coram: Kiefel CJ, Gageler, Edelman, Steward and Gleeson JJ

Catchwords:

Patents – Patent extension – Contract construction – Where s 79 of *Patents Act 1990* (Cth) provides if patentee applies for extension of term of patent and patent expires before application determined and extension is granted, patentee has same rights to commence infringement proceedings during extension period as if extension had been granted when alleged infringement was done – Where appellants patentee and exclusive licensees of pharmaceutical compound – Where patent expired in 13 June 2009 – Where, on 25 June 2014, patent extension granted to 9 December 2012 – Where, from 15 June 2009 onwards, respondent supplied generic version of compound – Where, in 2007, patentee and respondent entered into Settlement Agreement, giving respondent licence to exploit patent prior to expiry – Where Agreement specified possible commencement dates of licence conditioned on whether extension granted, but did not specify end date – Where appellants commenced infringement proceedings in Federal Court on 26 June 2014 in respect of acts done during extension period – Where Federal Court held Agreement gave

licence only for two weeks prior to original expiry date (31 May 2009) until original expiry (13 June 2009) but not extension period – Where respondent successfully appealed to Full Court, which held Agreement gave licence from 31 May 2009 to extended expiry date (9 December 2012) – Whether licence applied in relation to acts occurring after patent original expiry date and before term extended – Whether, on respondent's construction, Agreement produced commercially nonsensical result – Whether exclusive licensee may commence infringement proceeding for acts done between original date of expiry and date on which term subsequently extended.

Appealed from FCA (FC): [2020] FCAFC 133; (2020) 384 ALR 35

Return to Top

Taxation

Commissioner of Taxation v Carter & Ors
S62/2021: [2021] HCATrans 189

Date heard: 9 November 2021

Coram: Gageler, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Taxation – Trust distribution – Effect of disclaimer – Where respondents default beneficiaries of trust – Where trust deed provided respondents entitled to income of trust for given tax year (ending 30 June) if trustee did not make effective determination departing from default position – Where trustee had not made effective determination as at 30 June 2014 – Where s 97(1) of *Income Tax Assessment Act 1936* (Cth) provides if beneficiary of trust is "presently entitled" to share of trust income, that share included in assessable income of beneficiary – Where, following audit, on 27 September 2015, appellant issued income tax assessments to respondents for income year ended 30 June 2014 including their share of 2014 trust income – On 30 September 2016, respondents purported to disclaim entitlement to income from trust for 2014 income year – Where Full Court of Federal Court considered themselves bound to hold general law extinguishes entitlement to trust income ab initio and held disclaimers displaced application of s 97(1) – Whether disclaimer of gift render gift void ab initio for all purposes – Whether, if beneficiary disclaims trust distribution after end of income year, beneficiary "presently entitled" to distribution for purposes of s 97(1).

Appealed from FCA (FC): [2020] FCAFC 150; (2020) 279 FCR 83; (2020) 112 ATR 493

Return to Top

Torts

Kozarov v State of Victoria
M36/2021: [2021] HCATrans 204

Date heard: 2 December 2021

Coram: Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Torts – Negligence – Causation – Where appellant worked in Serious Sex Offenders Unit (SSOU) of Office of Public Prosecutions (OPP) – Where work in SSOU required appellant to deal with confronting material of graphic sexual nature – Where, on 11 August 2011, appellant took sick leave for symptoms consistent with post-traumatic stress disorder (PTSD) but was not diagnosed and returned to work on 29 August 2011 – Where, on return, appellant was involved in dispute with manager and stated she did not wish to be rotated to different unit within OPP – Where, on 9 February 2012, appellant emailed manager requesting she be rotated out of SSOU due to effect of SSOU work on her health, but request was not actioned – Where primary judge held respondent was put on notice as to risks to appellant's health in August 2011 – Where primary judge made inference that timely welfare enquiry by respondent would have revealed appellant's PTSD and, if appellant had been made aware of her condition, she would have consented to be rotated out of SSOU – Where primary judge held respondent failed to discharge duty of care in August 2011 by not making welfare enquiry and not rotating appellant out of SSOU – Where Court of Appeal overturned primary judge's inference that appellant would have consented to be rotated out and held that appellant's own actions in not consenting to be rotated out caused injury rather than respondent's actions – Where Court of Appeal did not address primary judge's finding that return to work after February 2012 caused appellant injury – Where Court of Appeal allowed respondent's appeal – Whether open to Court of Appeal to overturn primary judge's finding that if duty of care had been discharged in August 2011, appellant would have consented to be rotated out of SSOU – Whether Court of Appeal erred in failing to consider injury caused by return to work after February 2012.

Appealed from VSC (CA): [2020] VSCA 301; (2020) 301 IR 446

Appealed from VSC (CA): [2020] VSCA 316

Return to Top

Tapp v Australian Bushmen's Campdraft & Rodeo Association Limited
S63/2021: [2021] HCATrans 190

Date heard: 10 November 2021

Coram: Kiefel CJ, Keane, Gordon, Edelman and Gleeson JJ

Catchwords:

Torts – Negligence – Breach of duty – Obvious risk – Where appellant injured in competition conducted by respondent when horse she was riding slipped and fell – Where appellant contended cause of fall was deterioration in ground surface and respondent negligent in failing to plough ground at site of event, failing to stop competition, or failing to warn competitors when ground became unsafe – Where prior to appellant's participation, there had already been 7 falls – Where trial judge held no breach of duty of care established – Where majority of Court of Appeal held appellant failed to establish cause of fall was ground surface deterioration and therefore failed to establish respondent breached duty – Where majority of Court of Appeal held even if breach established, s 5L of *Civil Liability Act 2002* (NSW) applied to exclude respondent's liability as injury suffered was manifestation of "obvious risk" – Whether Court of Appeal's approach to evidence of ground surface deterioration did not afford appellant rehearing – Proper approach to identification of "obvious risk".

Appealed from NSWSC (CA): [2020] NSWCA 263

Return to Top

4: ORIGINAL JURISDICTION

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

Administrative Law

Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor

S135/2021: [2021] HCATrans 214

Catchwords:

Administrative law – Judicial review – Writ of certiorari – Writ of mandamus – Where plaintiff holder of visa cancelled by Minister pursuant to s 501(3)(b) of *Migration Act 1958* (Cth) – Where plaintiff applied for extension of time, pursuant to s 477A(2) of *Migration Act*, seeking review of Minister's decision – Where application for extension of time was refused by judge of Federal Court of Australia – Whether judge erred in assessing, in respect of plaintiff's proposed second ground of review of Minister's decision, whether plaintiff's claim had reasonable prospects of success so as to justify extension of time pursuant to s 477A(2) of the *Migration Act* – Proper test for extension of time.

Application for constitutional writs referred to the Full Court on 9 December 2021.

Return to Top

Constitutional Law

Delil Alexander (by his litigation guardian Berivan Alexander) v Minister for Home Affairs & Anor

S103/2021: [2021] HCATrans 159

Catchwords:

Constitutional law – Legislative power – Citizenship – Cessation of Australian citizenship – Where s 36B of *Australian Citizenship Act 2007* (Cth) provided Minister may make determination person ceases to be Australian citizen if Minister satisfied person dual citizen and person engaged in terrorist activities – Where plaintiff Australian citizen by birth and also Turkish citizen – Where, in 2013, plaintiff entered Al Raqqa Province of Syria – Where Al Raqqa province declared area for purposes of terrorism offences – Where, in 2018,

plaintiff arrested and incarcerated by Syrian Government – Where plaintiff found guilty of terrorism offences against Syrian Penal Code on basis of evidence allegedly procured by torture – Where Australian Security and Intelligence Organisation advised Minister plaintiff likely engaged in foreign incursions and recruitment by remaining in declared area – Where, on 2 July 2021, Minister determined plaintiff ceased to be Australian citizen under s 36B – Where plaintiff pardoned under Syrian law, but remains in indefinite detention because no lawful right to be in Syria, cannot be removed to Turkey because citizenship under different name, and cannot be removed to Australia because of citizenship cessation – Whether s 36B within scope of aliens power in s 51(xix) of *Constitution*, defence power in s 51(vi) of *Constitution*, external affairs power in s 51(xxix) of *Constitution* or implied nationhood power – Whether implied constitutional limitation on legislative power preventing "people of Commonwealth" from being deprived of their status as such – Whether constitutionally prescribed system of representative government incompatible with s 36B, which operates to permanently disenfranchise Australian citizens – Whether s 36B impermissibly disqualifies plaintiff from eligibility to sit as member of Parliament, contrary to ss 34 and 44 of *Constitution* – Whether s 36B punitive and unlawful exercise of judicial power by Parliament – Whether s 36B within legislative competence of Commonwealth Parliament.

Special case referred to the Full Court on 26 October 2021.

Return to Top

Farm Transparency International Ltd & Anor v State of New South Wales

S83/2021: [2021] HCATrans 151

Catchwords:

Constitutional law – Implied freedom of political communication – Where s 7 of *Surveillance Devices Act 2007* (NSW) prohibited installation, use and maintenance of listening devices to record private conversations – Where s 8 prohibited installation, use and maintenance of optical surveillance devices on premises without owner or occupier's consent – Where s 11 created offence to communicate or publish material recorded in contravention of ss 7 or 8 – Where s 12 created offence to possess material knowing it had been recorded in contravention of ss 7 or 8 – Where plaintiffs published photographs and recordings of animal agricultural practices in New South Wales in contravention of ss 11 and 12 and intends to continue to engage in such activity – Whether ss 11 and 12 impermissibly burden implied freedom of communication – If so, whether ss 11 and 12 severable in respect of operation on political communication.

Special case referred to the Full Court on 27 September 2021.

Return to Top

Ruddick v Commonwealth of Australia

S151/2021: [2021] HCATrans 171; [2021] HCATrans 202

Catchwords:

Constitutional law – Implied freedom of political communication – Where ss 7 and 24 of *Constitution* contain words "directly chosen by the people" – Where plaintiff was registered member of registered political party – Where sections were inserted into or amended Part XI the *Commonwealth Electoral Act 1918* (Cth) by ss 7, 9, 11 and 14 of *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Cth) ("provisions") – Where Part XI of *Commonwealth Electoral Act* provided for registration of political parties – Where provisions required new political party to accompany application for registration with written consent of first-registered political party where names or logos of new and first-registered parties had word in common – Where provisions enabled first-registered party to object to continued use by subsequent party of name or logo – Whether provisions are contrary to ss 7 and 24 of *Constitution* – Whether provisions are contrary to implied freedom of political communication.

Special case referred to the Full Court on 1 December 2021.

Return to Top

5: SECTION 40 REMOVAL

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

Constitutional Law

Garlett v The State of Western Australia & Anor
P56/2021: [2021] HCATrans 221

Part of the cause removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 21 December 2021.

Catchwords:

> Constitutional law – Chapter III – Where appellant was sentenced to imprisonment after pleading guilty to two charges – Where appellant's previous offending included robbery – Where appellant referred to State Solicitor's Office to consider whether application should be made under s 35 of *High Risk Serious Offenders Act 2020* (WA) (HRSO Act), which provided for State to apply for restriction order in relation to "serious offender under custodial sentence who is not a serious offender under restriction" – Where application was made for restriction order under s 48 of HRSO Act – Where appellant argued parts of HRSO Act were incompatible with Chapter III of *Constitution* – Whether provisions of HRSO Act contravene any requirement of Chapter III as they apply to serious offender under custodial sentence who has been convicted of robbery, referred to in item 34 of Schedule 1 Division 1 of HRSO Act.

Removed from the Court of Appeal of the Supreme Court of Western Australia.

Return to Top

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor v Montgomery
S192/2021: [2021] HCATrans 201

Removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 29 November 2021.

Catchwords:

> Constitutional law – Aliens power – Immigration detention – Indigenous Australians – Where applicant born in and citizen of New Zealand and not Australian citizen – Where applicant's parents and

ancestors not Aboriginal Australian or Torres Strait Islanders – Where applicant granted visa to live in Australia in 1997 – Where Mununjali people Indigenous society existing in Australia since prior to 1788 – Where applicant identifies as member of Mununjali people, recognised by Mununjali elders and by Mununjali traditional law and customs as such – Where, in 2018, applicant's visa cancelled – Where in 2019, applicant taken into immigration detention – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court held Aboriginal Australian who satisfies tripartite test identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 beyond reach of aliens power in s 51(xix) of *Constitution* – Where applicant commenced proceedings in Federal Court of Australia, relevantly seeking declaration not alien within meaning of s 51(xix) following *Love/Thoms* – Whether decision in *Love/Thoms* should be overturned – Whether applicant satisfies tripartite test despite not being biologically descended from Indigenous people – Whether applicant alien.

Courts – Jurisdiction – Appeal from single judge of Federal Court of Australia – Habeas corpus – Competent court – Where appellate jurisdiction of Federal Court defined by s 24(1)(a) of *Federal Court of Australia Act 1976* (Cth) – Where cause removed was appeal to Full Court of Federal Court from orders of single judge – Where single judge exercised original jurisdiction, relevantly issuing writ of habeas corpus – Whether appeal lies from order for issue of writ of habeas corpus.

Removed from the Federal Court of Australia.

Return to Top

Thoms v Commonwealth of Australia

B56/2021: [2021] HCATrans 157

Removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 11 October 2021.

Catchwords:

Constitutional law – Aliens power – Immigration detention – Wrongful imprisonment – Where applicant held in immigration detention pursuant to s 189 of *Migration Act 1958* (Cth) – Where officers who detained applicant suspected he was unlawful non-citizen because not Australian citizen and did not have visa – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court declared applicant not alien for purposes of s 51(xix) of *Constitution*, and applicant was released from immigration detention – Where applicant's claim remitted to Federal Court of Australia, where applicant sought declaration detention unlawful and not supported by s 189 of *Migration Act*, and damages for wrongful

imprisonment – Where Federal Court ordered question of whether detention unlawful be determined separately – Whether within scope of aliens power for s 189 of *Migration Act* to validly authorise immigration detention of persons who are subjectively suspected to be unlawful non-citizen, even if person later found not alien – Whether applicant's detention unlawful.

Removed from the Federal Court of Australia.

Return to Top

6: Special Leave Granted

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

Administrative Law

Nathanson v Minister for Home Affairs & Anor
M73/2021: [2021] HCATrans 170

Date heard: 15 October 2021 – *Special leave granted.*

Catchwords:

> Administrative law – Jurisdictional error – Procedural fairness – Materiality – Where appellant's visa cancelled by delegate on character grounds – Where, after delegate's decision but before Tribunal review, Minister issued new direction, which relevantly included as additional factor violent crimes against women or children viewed "very seriously, regardless of sentence imposed" – Where appellant not put on notice prior to Tribunal hearing that past incidents of alleged domestic violence would be taken into account, despite not having been charged or convicted of any crimes – Where appellant not given opportunity to call further evidence nor make further submissions on domestic violence issue – Where appellant applied for judicial review of Tribunal decision – Where Minister conceded Tribunal denied procedural fairness and majority of Full Federal Court dismissed application on basis appellant failed to show realistic possibility of different outcome – Whether Full Federal Court applied correct test of materiality – Whether appellant's denial of procedural fairness material and constituted jurisdictional error.

Appealed from FCA (FC): [2020] FCAFC 172; (2020) 281 FCR 23

Return to Top

Constitutional Law

Citta Hobart Pty Ltd & Anor v Cawthorn
H7/2021: [2021] HCATrans 126

Date heard: 13 August 2021 – *Special leave granted on conditions*

Catchwords:

Constitutional law – Federal jurisdiction – Jurisdiction of State Tribunal – Inconsistency between Commonwealth and State laws – Discrimination – Disability Discrimination – Where respondent complained to Tasmania Anti-Discrimination Tribunal on basis appellants' building development constituted disability discrimination under *Anti-Discrimination Act 1998* (Tas) – Where appellants pleaded in defence inconsistency with *Disability Discrimination Act 1992* (Cth) pursuant to s 109 of *Constitution* – Where Tribunal dismissed complaint for lack of jurisdiction because determination of s 109 defence exercise of federal jurisdiction – Where Full Court allowed appeal on basis s 109 defence would not succeed – Whether Full Court applied correct test as to jurisdiction of State Tribunal – Whether *Anti-Discrimination Act 1998* (Tas) inconsistent with *Disability Discrimination Act 1992* (Cth).

Appealed from TASSC (FC): [2020] TASFC 15; (2020) 387 ALR 356

Return to Top

Criminal Law

Bell v The Queen
A30/2021: [2021] HCATrans 132

Date heard: 13 August 2021 – *Special leave granted*

Catchwords:

Criminal law – Procedure – Stay of proceedings – Powers of Independent Commissioner Against Corruption (ICAC) – Where, in 2014, ICAC commenced investigation into appellant – Where, in 2017, ICAC forwarded matter to Director of Public Prosecutions (DPP) and provided evidentiary material gathered in course of investigation – Where DPP decided to prosecute appellant – Where ICAC officers assisted DPP to prepare for trial – Where appellant applied for permanent stay – Where District Court dismissed application and Full Court dismissed appeal – Whether *Independent Commissioner Against Corruption Act 2012* (SA) authorised ICAC to refer matter, provide evidentiary material and otherwise assist DPP in prosecution – Whether ICAC conduct abuse of process justifying permanent stay.

Appealed from SASC (FC): [2020] SASCFC 116; (2020) 286 A Crim R 501

Return to Top

Hoang v The Queen
S146 to S149/2021: [2021] HCATrans 148

Date heard: 10 September 2021 – *Special leave granted*

Catchwords:

Criminal law – Juror misconduct – Juror conducting own inquiries – Mandatory discharge – Where s 53A of *Jury Act 1977* (NSW) required mandatory discharge of juror if juror engaged in misconduct – Where s 68C provided juror must not make own inquiries "for purpose of obtaining information" about matters relevant to trial – Where appellant charged with 12 offences – Where jury commenced deliberations and, on 5 November 2015, jury sent note to trial judge stating agreement reached on 8 counts – Where, on evening of 5 November, juror conducted internet search for personal reasons only on matter related to trial – Where jury continued deliberating on 6 November until jury foreperson notified trial judge of juror's actions – Where trial judge took verdicts on 10 counts before discharging juror pursuant to s 53A – Where remaining jurors continued deliberating and gave verdict on remaining 2 counts – Where appellant appealed on basis trial judge failed to discharge juror prior to taking of first 10 counts – Where Court of Criminal Appeal held no juror misconduct and dismissed appeal – Whether inquiries made "for purpose of obtaining information" in s 68C includes juror making inquiries for solely personal reasons – If so, whether juror should have been discharged prior to taking of first 10 counts – If so, whether verdicts on any counts valid.

Appealed from NSWSC (CCA): [2018] NSWCCA 166; (2018) 98 NSWLR 406; (2020) 273 A Crim R 501

Return to Top

O'Dea v The State of Western Australia

P53/2021: [2021] HCATrans 210

Date heard: 3 December 2021 – *Special leave granted on limited grounds*

Catchwords:

Criminal law – Joint liability – Acting in concert – Where appellant and co-accused stood trial on one count of doing grievous bodily harm with intent to do grievous bodily harm contrary to s 294(1) of the *Criminal Code* (WA) – Where appellant and co-accused alleged jointly criminally responsible – Where trial judge gave jury handout, relevantly describing circumstances in which two accused may be criminally responsible as "joint principals" under s 7(a) of Code – Where appellant was convicted but co-accused discharged with jury unable to reach verdict – Where Court of Appeal held criminal responsibility under s 7(a) of Code extended to cases where several persons are "acting in concert" – Whether appellant and co-accused

can be criminally liable as joint principals in circumstances where the acts of co-accused were not proved unlawful – Whether trial judge was required to direct jury that "acting in concert" requires two accused to have reached an understanding or arrangement amounting to agreement to commit crime.

Appealed from WASC (CA): [2021] WASCA 61; (2021) 288 A Crim R 451

Return to Top

Defamation

Google LLC v Defteros
M86/2021: [2021] HCATrans 216

Date heard: 10 December 2021 – *Special leave granted on conditions*

Catchwords:

Defamation – Publication – Qualified privilege defence – Common law qualified privilege – Statutory qualified privilege – Where respondent alleged that certain webpages were published by appellant and were defamatory – Where two webpages consisted of set of search results displayed on website www.google.com.au in response to search of respondent's name and hyperlinked article, included in search results, entitled "Underworld loses valued friend at court" (Web Matter) – Where appellant alleged it was for "common convenience and welfare of society" for appellant to return search results that hyperlinked articles published by reputable sources – Where appellant claimed material was matter of considerable public interest such that recipients had necessary interest in material for purposes of s 30(1) of *Defamation Act 2005* (Vic) – Whether appellant published Web Matter – Whether common law qualified privilege defence applies – Whether the statutory qualified privilege defence in s 30(1) applies.

Appealed from VSC (CA): [2021] VSCA 167

Return to Top

Family Law

Fairbairn v Radecki
S179/2021: [2021] HCATrans 166

Date heard: 15 October 2021 – *Special leave granted on conditions*

Catchwords:

Family law – De-facto relationship – Breakdown – Proper test for determination of breakdown of de-facto relationship – Where s 90SM of *Family Law Act 1975* (Cth) provided, in property settlement proceedings after breakdown of de-facto relationship, court may make order altering interest of parties to de-facto relationship in property – Where, in 2005 or 2006, appellant and respondent entered into de-facto relationship – Where basis of relationship living together on domestic basis with clear understanding as to separation of each other's financial affairs and property interests – Where, in 2015, appellant began to suffer from rapid cognitive decline – Where appellant incapable of managing own affairs and, in 2018, New South Wales Trustee & Guardian appointed to act for appellant – Where Public Guardian placed appellant into aged care facility – Where respondent did not provide financial support for appellant, continued to reside in appellant's property and prevented Trustee from selling appellant's property – Where Trustee commenced proceedings against respondent in Federal Circuit Court seeking order for property settlement pursuant to s 90SM, claiming appellant and respondent's de-facto relationship had broken down – Where primary judge declared de-facto relationship had broken down no later than 25 May 2018 – Where respondent successfully appealed to Full Family Court – Whether basis of appellant and respondent's de-facto relationship no longer existed – Whether de-facto relationship had broken down.

Appealed from FamCA (FC): [2020] FamCAFC 307

Return to Top

Superannuation

Hill v Zuda Pty Ltd as Trustee for The Holly Superannuation Fund & Ors

P48/2021: [2021] HCATrans 199

Date heard: 12 November 2021– *Special leave granted*

Catchwords:

Superannuation – Self-managed superannuation fund ("SMSF") – Binding death benefit nomination – Where reg 6.17A(4), (6) and (7) of *Superannuation Industry (Supervision) Regulations 1994* (Cth), provided for requirements for validity of binding death benefit requirement in respect of superannuation funds – Where reg 6.17A authorised by multiple provisions, relevantly, ss 31, 55A and 59 of *Superannuation Industry (Supervision) Act 1993* (Cth) – Where applicant child and dependant of deceased person – Where deceased person established SMSF with deceased person's partner as sole

members – Where cl 5 and 6 of SMSF trust deed made binding death benefit nomination, requiring trustee to distribute whole of deceased member's balance to surviving member – Where applicant argued cl 5 and 6 of deed did not constitute valid binding death benefit notification due to non-compliance with reg 6.17A(6) and (7) of Regulations and claimed portion of deceased person's account – Where claim dismissed and appeal to WA Court of Appeal dismissed – Whether reg 6.17A(4), (6) and (7) of Regulations apply to SMSF.

Courts – Comity – Intermediate appellate courts – Where WA Court of Appeal held principle of comity required it to follow decision of SA Full Court in *Cantor Management Services Pty Ltd v Booth* [2017] SASCFC 122 – Where SA Full Court held reg 6.17A did not apply to SMSF because s 59 of Act did not apply to SMSF but did not consider ss 33 or 55A – Whether intermediate appellate court bound to follow decision of other intermediate appellate court where no consideration of relevant aspect of legislation.

Appealed from WASC (CA): [2021] WASCA 59

Return to Top

7: Cases Not Proceeding or Vacated

Return to Top

8: SPECIAL LEAVE REFUSED

Publication of Reasons: 2 December 2021 (Canberra by video link)

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
1.	Zhang	Yan & Anor (M58/2021)	Federal Court of Australia [2021] FCA 905	Application dismissed [2021] HCASL 228
2.	Mohareb	Kelso & Ors (S145/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 213	Application dismissed [2021] HCASL 229
3.	Hassan	Sydney Local Health District trading as Royal Prince Alfred Hospital / trading as Institute of Rheumatology and Orthopaedics & Ors (S150/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 122	Application dismissed [2021] HCASL 230
4.	Hassan	Sydney Local Health District trading as Royal Prince Alfred Hospital / trading as Institute of Rheumatology and Orthopaedics (S152/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 97	Application dismissed [2021] HCASL 230
5.	RC	The Queen (S169/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2020] NSWCCA 76	Application dismissed [2021] HCASL 231
6.	Gold Valley Iron Ore Pty Ltd	FE Accommodation Pty Ltd & Anor (D4/2021)	Supreme Court of the Northern Territory (Court of Appeal) [2021] NTCA 2	Application dismissed with costs [2021] HCASL 232
7.	KMT	The State of Western Australia (P19/2021)	Supreme Court of Western Australia (Court of Appeal) [2018] WASCA 49	Application dismissed [2021] HCASL 233
8.	Apple Inc & Anor	Epic Games, Inc & Anor (S113/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 338	Application dismissed with costs [2021] HCASL 234
9.	Wraydeh	Nationwide News Pty. Limited (S117/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 153	Application dismissed with costs [2021] HCASL 235

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
10.	Wraydeh	Fairfax Media Publications Pty Limited (S118/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 153	Application dismissed with costs [2021] HCASL 235

3 December 2021: Canberra and by video link

No.	*Applicant*	*Respondent*	*Court appealed from*	*Results*
1.	The Queen	Kirkland (A19/2021)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 14	Application refused [2021] HCATrans 205
2.	TT Line Company Pty Ltd	Burrows (H5/2021)	Supreme Court of Tasmania (Full Court) [2021] TASFC 3	Application refused with costs [2021] HCATrans 206
3.	Sidoti & Anor	Hardy (S90/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 105	Application refused with costs [2021] HCATrans 207
4.	Davidson	Official Receiver & Anor (M40/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 73	Application refused with costs [2021] HCATrans 208
5.	Commissioner for Consumer Affairs	Pitt (A21/2021)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 24	Application refused with costs [2021] HCATrans 209

Publication of Reasons: 9 December 2021 (Canberra by video link)

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
1.	Asad	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (A31/2021)	High Court of Australia (Unreported)	Application dismissed [2021] HCASL 236
2.	Naisby	Naisby (B54/2021)	Family Court of Australia	Application dismissed [2021] HCASL 237
3.	Beling	Fiona Ruth McLeay as Victorian Legal Services Commissioner (M64/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 256	Application dismissed [2021] HCASL 238
4.	Beling	Victorian Legal Services Commissioner (M65/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 257	Application dismissed [2021] HCASL 239
5.	Frugtniet	Secretary Department of Social Services & Anor (M55/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 127	Application dismissed [2021] HCASL 240
6.	Stern	City of Adelaide (A32/2021)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA	Application dismissed [2021] HCASL 241
7.	In the matter of an application by Trevor Kingsley Ferdinands for leave to appeal (A35/2021)		High Court of Australia (Unreported)	Application dismissed [2021] HCASL 242
8.	DKN20	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (M60/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 97	Application dismissed [2021] HCASL 243
9.	EFQ (a pseudonym)	Medical Council of New South Wales (S153/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 167	Application dismissed [2021] HCASL 244
10.	Anderson & Anor	Stonnington City Council (M102/2020)	Supreme Court of Victoria (Court of Appeal) [2020] VSCA 229	Application dismissed [2021] HCASL 254
11.	Binningup Nominees Pty Limited	Mirvac (WA) Pty Limited & Anor (P39/2021)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 130	Application dismissed with costs [2021] HCASL 245

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
12.	SZQKE	Minister for Immigration and Border Protection & Anor (S121/2021)	Federal Court of Australia [2021] FCA 833	Application dismissed with costs [2021] HCASL 246
13.	PDP Capital Pty Ltd & Anor	Grasshopper Ventures Pty Ltd (S122/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 128	Application dismissed with costs [2021] HCASL 247
14.	FNV17 & Ors	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S143/2021)	Federal Court of Australia [2021] FCA 535	Application dismissed with costs [2021] HCASL 248
15.	Roohizadegan	TechnologyOne Limited & Anor (M56/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 137	Application dismissed with costs [2021] HCASL 249
16.	Fisher	The Queen (S115/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 91	Application dismissed [2021] HCASL 250
17.	Advanced Holdings Pty Ltd as Trustee of the Demian Trust & Anor	Commissioner of Taxation (S123/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 135	Application dismissed with costs [2021] HCASL 251
18.	Harris	Water NSW (S126/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 184	Application dismissed [2021] HCASL 252
19.	Harris	Water NSW (S127/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 184	Application dismissed [2021] HCASL 253

10 December 2021: Canberra and by video link

No.	*Applicant*	*Respondent*	*Court appealed from*	*Results*
1.	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	CBW20 & Ors (S74/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 63	Application refused with costs [2021] HCATrans 217
2.	Friends of Leadbeater's Possum Inc	VicForests (M37/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 66	Application refused with costs [2021] HCATrans 215
3.	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	Parata & Anor (M28/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 46	Application refused with costs [2021] HCATrans 218
4.	Will	The Queen (C8/2021)	Australian Capital Territory Court of Appeal (Full Court) [2021] ACTCA 14	Application refused [2021] HCATrans 219