



HIGH COURT BULLETIN

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High Court of Australia Library
[2022] HCAB 7 (16 September 2022)

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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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Garlett v The State of Western Australia & Anor</i>	Constitutional Law
<i>Stephens v The Queen</i>	Criminal Law

3: Cases Reserved

Case	Title
<i>Awad v The Queen; Tambakakis v The Queen</i>	Criminal Law
<i>Electricity Networks Corporation Trading as Western Power v Herridge Parties & Ors</i>	Torts

4: Original Jurisdiction

Case	Title
<i>ENT19 v Minister for Home Affairs & Anor</i>	Constitutional Law
<i>Hornsby Shire Council v Commonwealth of Australia & Anor</i>	Constitutional Law

5: Section 40 Removal

6: Special Leave Granted

Case	Title
<i>Bromley v The King</i>	Criminal Law
<i>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton</i>	Immigration
<i>Young & Anor v Chief Executive Officer (Housing)</i>	Leases and Tenancies
<i>Facebook Inc v Australian Information Commissioner & Anor</i>	Practice and Procedure
<i>Disorganized Developments Pty Ltd & Ors v State of South Australia</i>	Statutes
<i>CCIG Investments Pty Ltd v Schokman</i>	Torts

7: Cases Not Proceeding or Vacated

Case	Title
<i>Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes</i>	Statutory Interpretation

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the September 2022 sittings.

Constitutional Law

Garlett v The State of Western Australia & Anor

P56/2021: [\[2022\] HCA 30](#)

Judgment: 7 September 2022

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

Catchwords:

Constitutional law (Cth) – Judicial power of Commonwealth – Jurisdiction vested in State courts – Institutional integrity of State courts – Where *High Risk Serious Offenders Act 2020* (WA) ("Act") required State court to make restriction order in relation to serious offender if satisfied that order necessary to ensure adequate protection of community against unacceptable risk that offender will commit serious offence – Where robbery specified as "serious offence" under item 34 of Subdiv 3 of Div 1 of Sch 1 to Act – Where appellant imprisoned for offences including robbery – Where State sought restriction order in relation to appellant – Whether State court acting under dictation of executive government – Whether function conferred by Act on State court incompatible with State court being repository of judicial power of Commonwealth – Whether function conferred by Act on State court compromises institutional integrity of State court.

Words and phrases – "adequate protection of the community", "dictation from the executive", "high risk serious offender", "indefinite detention", "institutional integrity", "involuntary detention", "*Kable* principle", "preventive detention", "protective purpose", "public confidence in the judicial process", "repository of federal jurisdiction", "repository of the judicial power of the Commonwealth", "restriction order", "serious offence", "unacceptable risk of harm to the community".

Constitution, Ch III.

High Risk Serious Offenders Act 2020 (WA), ss 7, 48, Sch 1, Div 1, Subdiv 3, item 34.

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

Held: The part of the appeal pending in the Court of Appeal of the Supreme Court of Western Australia removed into the High Court of Australia be dismissed.

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Criminal Law

Stephens v The Queen

S53/2022: [\[2022\] HCA 31](#)

Judgment: 7 September 2022

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

Catchwords:

Criminal law – Sexual offences against child – Presumption against retrospective operation – Where appellant pleaded not guilty on 29 November 2018 to sexual offences against complainant – Where Crown was uncertain whether alleged conduct occurred when s 81 of *Crimes Act 1900* (NSW) in force, or when s 81 repealed but s 78K in force – Where s 80AF of *Crimes Act* came into force on 1 December 2018, allowing prosecution to rely, in relation to entirety of period, on whichever offence carried lesser maximum penalty – Where Crown was granted leave after appellant's trial had commenced to amend indictment to take benefit of s 80AF – Whether s 80AF could apply after an accused's trial had commenced.

Words and phrases – "arraignment", "change in the law", "commencement of a trial", "historic sexual offences", "indictment", "presumption against retrospective operation", "reasonable expectations", "retroactive", "retrospective", "sexual offence", "textual indications".

Crimes Act 1900 (NSW), ss 78K, 80AF, 81.

Criminal Procedure Act 1986 (NSW), ss 20, 130.

Interpretation Act 1987 (NSW), ss 5, 30.

Appealed from NSWSC (CCA): [\[2021\] NSWCCA 152](#); (2021) 290 A Crim R 303

Held: Appeal allowed.

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3: CASES RESERVED

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

Constitutional Law

SDCV v Director-General of Security & Anor

S27/2022: [\[2022\] HCATrans 100](#); [\[2022\] HCATrans 102](#)

Date heard: 7 and 8 June 2022

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

Catchwords:

Constitutional law – Judicial power of Commonwealth – Ch III of *Constitution* – Validity of s 46(2) of *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") – Where appellant subject to adverse security assessment (ASA) by Australian Security Intelligence Office (ASIO) – Where appellant sought review of ASA by Administrative Appeal Tribunal ("AAT") – Where s 39A(8) of AAT Act provided ASIO Minister may certify evidence proposed to be adduced or submissions proposed to be made by Director-General of Security are of such nature that disclosure be contrary to public interest – Where s 39B(2)(a) of AAT Act provided ASIO Minister may certify disclosure of information in certificate, or disclosure of contents of document, would be contrary to public interest – Where ASIO Minister issued certificates under ss 39A(8) and 39B(2)(a) of AAT Act – Where AAT affirmed ASA decision – Where, when appealed to Federal Court, AAT obliged under s 46(1) of AAT Act to send documents before AAT to Court – Where, because certificates in force in respect of certain documents, Federal Court required by s 46(2) of AAT Act to do all things necessary to ensure matter not disclosed to person other than a member of Court – Where Federal Court determined s 46(2) of AAT Act valid and proceeded to determine appeal grounds adversely to appellant while having regard to submissions and evidence to which appellant did not have access by reason of s 46(2) – Whether s 46(2) of AAT Act denies appellant procedural fairness – Whether s 46(2) is invalid by reason of Ch III of Constitution in that it requires Federal Court to act in procedurally unfair manner – Whether decisions in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532; *Assistant Commissioner Pompano v Condon Pty Ltd* (2013) 252 CLR 38; or *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 should be qualified or overruled.

Appealed from FCA (FC): [\[2021\] FCAFC 51](#); (2021) 284 FCR 357; (2021) 389 ALR 372; (2021) 173 ALD 450

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Criminal Law

Awad v The Queen; Tambakakis v The Queen
M44/2022; M45/2022: [\[2022\] HCATrans 153](#)

Date heard: 13 September 2022

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

Catchwords:

Criminal law – Jury directions – *Jury Directions Act 2015* (Vic) – Where s 44J(b) of *Jury Directions Act* prohibited trial judge from directing jury that accused gave evidence because: (i) guilty person who gives evidence more likely to be believed; and (ii) innocent person can do nothing more than give evidence – Where appellants arraigned before jury panel, both pleading not guilty to one charge alleging commission of offence of attempt to possess commercial quantity of unlawfully imported border controlled drug – Where Crown's case was appellants in joint possession of drugs for period – Where Tambakakis gave sworn evidence – Where trial judge gave jury direction regarding Tambakakis' evidence that Court of Appeal held contrary to s 44J of *Jury Directions Act* – Where Court of Appeal held, despite direction contrary to s 44J of *Jury Directions Act*, direction did not result in substantial miscarriage of justice for either appellant – Whether, given impugned direction prohibited by s 44J of *Jury Directions Act*, substantial miscarriage of justice occurred.

Appealed from VSC (CA): [\[2021\] VSCA 285](#); (2021) 291 A Crim R 303

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Equity

Bosanac v Commissioner of Taxation & Anor
P9/2022: [\[2022\] HCATrans 133](#)

Date heard: 16 August 2022

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

Catchwords:

Equity – Presumption of advancement – Beneficial ownership – Matrimonial home – Where Mr and Ms Bosanac ("Bosanacs") married in 1998 – Where Ms Bosanac offered to purchase matrimonial home for \$4.5 million ("Property") – Where Bosanacs applied for two joint loans to purchase Property – Where Property transferred into sole name of Ms Bosanac – Where Commissioner applied for declaration that Ms Bosanac held 50% of her interest in Property on trust for Mr Bosanac – Where primary judge held presumption of advancement not rebutted – Where Full Court relied on fact Mr Bosanac borrowed money with Ms Bosanac to purchase Property to found rebuttal of presumption of advancement – Where Full Court relied on statement in *The Trustees of the Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 at [71] that where husband and wife purchase matrimonial home, each contributing to purchase price and title is taken by one spouse, it be inferred each spouse intended to have one-half interest, regardless of amounts contributed – Whether rebuttal of presumption of advancement, applying to purchase by spouses of matrimonial home, can be founded on same facts giving rise to presumption of advancement – Whether, in considering whether presumption of advancement rebutted, court should consider spouses' intentions or any joint intention – Proper approach to rebuttal of presumption of advancement.

Appealed from FCA (FC): [\[2021\] FCAFC 158](#)

Appealed from FCA (FC): [\[2022\] FCAFC 5](#)

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Evidence

TL v The Queen

S61/2022: [\[2022\] HCATrans 134](#)

Date heard: 17 August 2022

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

Catchwords:

Evidence – Tendency evidence – Proof of identity – Where appellant convicted of murder of partner's child – Where blunt force trauma to abdomen cause of death – Where, 10 days prior, child suffered burns after appellant placed child in hot water – Where evidence of burns admitted as tendency evidence pursuant to s 97 of *Evidence Act 1995* (NSW) to prove appellant's tendency to "deliberately inflict physical harm on child" – Where appellant convicted and appealed against conviction on grounds including that tendency evidence should not have been admitted – Where appellant

relied on statement in *Hughes v The Queen* (2017) 263 CLR 388 concerning requirement for "close similarity" between tendency alleged and offence charged – Where Court of Criminal Appeal held requirement for "close similarity" should arise when tendency evidence only or predominant evidence that goes to identity – Whether, where tendency evidence adduced to prove identity of offender for known offence, probative value of tendency evidence will depend upon close similarity between conduct evidencing tendency and offence – Proper approach to principle articulated in *Hughes*.

Appealed from NSW (CCA): [\[2020\] NSWCCA 265](#)

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Insurance

Allianz Australia Insurance Limited v Delor Vue Apartments CTS
39788

S42/2022: [\[2022\] HCATrans 126](#); [\[2022\] HCATrans 127](#)

Date heard: 10 and 11 August 2022

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

Catchwords:

Insurance – Insurance contracts – Indemnity – Election – Estoppel – Waiver – Duty of utmost good faith – Where s 28(3) of *Insurance Contracts Act 1984* (Cth) enables insurer to reduce liability in respect of claim where, relevantly, insured breached duty of disclosure – Where insured notified claim under insurance policy following cyclone damage – Where insurer agreed to indemnify despite non-disclosure of prior defects – Where insurer took steps consistent with providing indemnity – Where insurer emailed insured stating, despite non-disclosure, claim would be honoured – Where insurer subsequently sought to disclaim liability on basis of non-disclosure – Where majority of Full Court of Federal Court of Australia dismissed appeal, holding insurer had elected not to raise defence under s 28(3) – Whether insurer elected not to raise defence under s 28(3) – Whether, if doctrine of election did not apply, insurer waived entitlement to raise defence under s 28(3) – Whether insurer estopped from raising defence under s 28(3) – Whether insured suffered detriment – Whether insurer breached duty of utmost good faith and, if so, whether insured suffered loss justifying relief.

Appealed from FCA (FC): [\[2021\] FCAFC 121](#); (2021) 287 FCR 388; (2021) 396 ALR 27; (2021) 153 ACSR 522

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Representative Proceedings

BHP Group Limited v Impiombato & Anor

M12/2022: [\[2022\] HCATrans 124](#)

Date heard: 9 August 2022

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

Catchwords:

Representative proceedings – Shareholder class action – Non-resident shareholders – Pt IVA *Federal Court of Australia Act 1976* (Cth) ("FCA Act") – Presumption against extraterritoriality – Dual listed company structure – Where claims brought on behalf of non-resident shareholders of BHP Group Limited (Australian company) and BHP Group Plc (United Kingdom company) – Where claims brought in Federal Court of Australia under Pt IVA concerning representative proceedings – Whether Pt IVA of FCA Act applies to claims brought on behalf of non-resident group members – Whether presumption against extraterritorial operation of legislation applies to Pt IVA of FCA Act – Whether Part IVA of FCA Act confers on Federal Court jurisdiction or power to determine claims of group members outside territory.

Appealed from FCA (FC): [\[2021\] FCAFC 93](#); (2021) 286 FCR 625; (2021) 151 ACSR 634

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Torts

Electricity Networks Corporation Trading as Western Power v Herridge Parties & Ors

P5/2022: [\[2022\] HCATrans 145](#); [\[2022\] HCATrans 147](#); [\[2022\] HCATrans 148](#)

Date heard: 6-8 September 2022

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

Catchwords:

Torts – Negligence – Duty of care – Breach of duty – Statutory authority – Where Western Power ("WP") statutory authority established under *Electricity Corporations Act 2005* (WA) with

functions including management, provision and improvement of electricity transmission and distribution services in South West Interconnected System ("SWIS") – Where service cable owned by WP ran from WP's termination pole into mains connection box secured adjacent to top of point of attachment pole ("PA pole") on Mrs Campbell's property – Where PA pole owned by Mrs Campbell – Where electricity passed from wires of WP's service cable to wires of Mrs Campbell's consumer mains cable – Where WP had systems for regular inspection of WP's network assets, but did not regularly inspect or maintain consumer-owned PA poles – Where WP engaged Thiess to replace WP's network poles in Parkerville area, including termination pole, but inspection did not comply with industry standards or Thiess' contractual obligations – Where PA pole fell causing electrical arcing, igniting dry vegetation around base of pole – Where resulting fire spread, becoming Parkerville bushfire, and causing property damage – Where primary judge found WP owed duty to take reasonable care to inspect PA pole to ascertain whether safe and fit condition for supply of electricity before and when undertaking works on pole, but duty discharged by engaging Thiess – Where trial judge apportioned liability for losses 70% as to Thiess and 30% as to Mrs Campbell, and dismissed claims against WP – Where Court of Appeal formulated duty as one owed to persons in vicinity of SWIS to take reasonable care to avoid or minimise risk of injury, and loss to property, from ignition and spread of fire in connection with delivery of electricity through distribution system – Where Court of Appeal held WP had breached duty by failing to have system in place to respond to risk of harm and apportioned liability for losses 50% as to WP, 35% as to Thiess and 15% as to Mrs Campbell – Whether WP, as statutory authority with defined duties, owes common law duty to take reasonable care to avoid fire, discharge of which would oblige WP to exercise discretionary statutory powers in relation to property not owned or controlled by WP – Whether duty of care asserted inconsistent with statute – Proper test for inconsistency between common law duty and statutory scheme which regulates statutory authority.

Appealed from WASC (CA): [\[2021\] WASCA 111](#); (2021) 15 ARLR 1

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4: ORIGINAL JURISDICTION

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

Constitutional law

ENT19 v Minister for Home Affairs & Anor
[S102/2022](#)

Catchwords:

Constitutional law – Review of administrative decisions – Application for constitutional writs – Where plaintiff pleaded guilty to people smuggling and sentenced to imprisonment – Where, during sentencing, sentencing judge considered issue of general deterrence – Where plaintiff applied for Safe Haven Enterprise Visa ("SHEV") – Where Minister refused application for SHEV pursuant to s 65 of *Migration Act 1958* (Cth), not being satisfied grant of visa in "national interest", being criterion set out in cl 790.227 of Sch 2 of *Migration Regulations 1994* (Cth) ("Decision") – Whether Decision made for punitive purpose or inflicts punishment – Whether acting in "national interest" permits Executive to act for punitive purpose or in way amounting to punishment.

Administrative law – Jurisdictional error – Procedural fairness – Where Minister took account of media coverage of plaintiff's conviction as part of reason why grant of SHEV not in national interest – Whether Minister failed to consider relevant consideration – Whether Minister proceeded on incorrect understanding of law.

Application for constitutional or other writ referred to the Full Court on 5 September 2022.

Hornsby Shire Council v Commonwealth of Australia & Anor
[S202/2021](#)

Catchwords:

Constitutional law – Taxation – Section 55 of *Constitution* – Laws imposing taxation only to deal with imposition of taxation – Where Commonwealth makes grants of financial assistance for local government purposes to States under s 9 of *Local Government (Financial Assistance) Act 1995* (Cth) – Where grants made on conditions specified in s 15 of *Local Government (Financial Assistance) Act* – Where conditions in s 15 amended by items 16, 17 and 18 of Sch 1 to *Local Government (Financial Assistance)*

Amendment Act 2000 (Cth) to include conditions that, if local government failed to pay Commonwealth GST payments, then: (1) State required to withhold amount allocated to local government and pay amount to Commonwealth (s 15(aa)); and, if Commonwealth Minister tells State Treasurer that Commonwealth Minister satisfied State failed to withhold and pay amount, State to repay Commonwealth amount determined by Commonwealth Minister (s 15(c)) – Whether items 16, 17 or 18 of Sch 1 to *Local Government (Financial Assistance) Amendment Act* contrary to s 55 of *Constitution*.

Constitutional law – Taxation – Sections 114 of *Constitution* – Prohibition on Commonwealth taxes imposed on property of State – Where Commonwealth provides grants of financial assistance to States under *Federal Finance Relations Act 2009* (Cth), including revenue assistance by way of goods and services tax ("GST") – Where Commonwealth provides grants of financial assistance for local government purposes to States under *Local Government (Financial Assistance) Act* – Where *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) introduced to give effect to agreement between Commonwealth and States regarding GST whereby Commonwealth paid States GST revenue and States assumed responsibility for payment of financial assistance to local governments – Where plaintiff purchased vehicle, with purchase amount including GST, and subsequently sold vehicle through auction with GST deducted – Where plaintiff, under protest, reported amount of notional GST relating to sale of vehicle in Business Activity Statement, being form for GST returns lodged with Australian Taxation Officer – Whether provisions of *Local Government (Financial Assistance) Act*, *Federal Financial Relations Act* and of *Intergovernmental Agreement Implementation (GST) Act* impose tax on property belonging to plaintiff, contrary to s 114 of *Constitution* – Proper approach to relief.

Special case referred to the Full Court on 5 September 2022.

Vanderstock & Anor v State of Victoria

[M61/2021](#)

Catchwords:

Constitutional law – Duties of excise – Section 90 of *Constitution* – Exclusive power of Commonwealth Parliament – Where *Zero and Low Emission Vehicle Distance-based Charge Act 2021* (Vic) ("ZLEV Act") defines "ZLEV" to mean any of following not excluded vehicles: (a) electric vehicle; (b) hydrogen vehicle; and (c) plug-in hybrid electric vehicle – Where s 7(1) of ZLEV Act requires registered operator of ZLEV to pay charge for use of ZLEV on specified roads – Whether s 7(1) of ZLEV Act invalid as imposing duty of excise within meaning of s 90 of *Constitution*.

Special case referred to the Full Court on 2 June 2022.

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5: SECTION 40 REMOVAL

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

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6: SPECIAL LEAVE GRANTED

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

Administrative Law

Stanley v Director of Public Prosecutions (NSW) Anor
S126/2022: [\[2022\] HCATrans 139](#)

Date heard: 19 August 2022 – *Special leave granted*

Catchwords:

Administrative law – Judicial review – Jurisdictional error – Where District Court's exercise of sentencing discretion governed by *Crimes (Sentencing Procedure) Act 1999* (NSW) ("CSP") – Where s 7 of CSP provides court that sentenced offender to imprisonment may make intensive correction order ("ICO") – Where, when considering making ICO, Part 5 of CSP applies, including s 66 which provides "[c]ommunity safety must be paramount consideration" when sentencing court is deciding whether to make ICO – Where s 66(2) requires sentencing court to assess whether making order or serving sentence more likely to address offender's risk of reoffending – Whether failure to comply with s 66(2) of CSP constitutes jurisdictional error – Whether statutory requirement that matter be considered is jurisdictional/mandatory if power being exercised is part of sentencing process undertaken by court – Whether statutory requirement that matter be considered is not jurisdictional if failure to comply cannot be characterised as fundamentally misconceiving sentencing function – Whether "complex" consequences of finding criminal sentence invalid weigh significantly against finding statutory requirement intended to be jurisdictional/mandatory.

Appealed from NSW (CA): [\[2021\] NSWCA 337](#); (2021) 107 NSWLR 1; (2021) 398 ALR 355

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Constitutional Law

Attorney-General (Cth) v Huynh & Ors
S78/2022: [\[2022\] HCATrans 91](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial power – Post-appeal application for inquiry into conviction – State courts – Supervisory jurisdiction – Where s 68(1) of *Judiciary Act 1903* (Cth) provided State laws with respect to procedures apply to persons charged with Commonwealth offences where jurisdiction conferred on courts of that State – Where s 68(2) conferred jurisdiction on State courts with respect to criminal proceedings – Where, following conviction for offences against laws of Commonwealth and unsuccessful appeal, Mr Huynh applied to NSW Supreme Court under Pt 7, Div 3 of *Crimes (Appeal and Review) Act 2001* (NSW) ("Appeal and Review Act") for review of conviction and sentence – Where NSW Supreme Court judge dismissed application and Mr Huynh sought judicial review of decision – Whether post-appeal inquiry and review procedures in Pt 7, Div 3 of Appeal and Review Act available in relation to conviction or sentence for Commonwealth offence heard in NSW court – Whether power exercised by judge under s 79 of Pt 7, Div 3 of Appeal and Review Act, to consider applications for inquiry into conviction made under s 78, judicial or administrative in nature – Whether ss 78-79 of Appeal and Review Act apply as federal law pursuant to s 68(1) of *Judiciary Act* in relation to conviction.

Appealed from NSW (CA): [\[2021\] NSWCA 297](#); (2021) 107 NSWLR 75; (2021) 396 ALR 422

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Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Ors; DCM20 v Secretary of Department of Home Affairs & Anor

M32/2022; S81/2022: [\[2022\] HCATrans 89](#); [\[2022\] HCATrans 90](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial review – Non-statutory executive action – Sections 61 and 64 of *Constitution* – Where s 351(1) of *Migration Act 1958* (Cth) ("Act") provided if Minister thinks it in public interest, Minister may substitute decision of Administrative Appeals Tribunal under s 349 of Act for decision more favourable to applicant – Where s 351(3) and s 351(7) provided power under s 351(1) be exercised by Minister personally and Minister under no duty to consider whether to exercise power – Where Minister issued guidelines in relation to power conferred by s 351 setting out circumstances in which Department of Home Affairs should refer requests – Where Departmental officers concluded requests for intervention failed to satisfy criteria for referral in guidelines – Whether decision of Departmental officer not to refer to request for Minister to exercise

power conferred by s 351(1) amenable to judicial review – Whether decision of Departmental officer affected by legal unreasonableness – Whether remedies available.

Appealed from FCA (FC): [\[2021\] FCAFC 213](#); (2021) 288 FCR 23

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Vunilagi v The Queen & Anor
C13/2022: [\[2022\] HCATrans 113](#)

Date heard: 17 June 2022 – *Special leave granted*

Catchwords:

Constitutional law – Powers of courts – Powers of Legislative Assembly of Australian Capital Territory – Trial by jury – Where appellant arrested and committed to trial – Where, following COVID-19 outbreak, *Supreme Court Act 1933* (ACT) amended by *COVID-19 Emergency Response Act 2020* (ACT) to include s 68BA which provided, relevantly, Court may order trial by judge alone – Where appellant advised Chief Justice proposed making order pursuant to s 68BA – Where appellant and first respondent opposed making of order – Where s 68BA repealed, but continued to apply to appellant by operation of s 116 and 117 of *Supreme Court Act* – Where Chief Justice ordered appellant's trial to proceed by judge alone – Where appellant found guilty – Whether s 68BA contravened limitation deriving from *Kable v Director of Public Prosecutions* (NSW) (1996) 198 CLR 511 – Whether s 68BA inconsistent with requirement in s 80 of *Constitution* that trial on indictment of any offence against law of Commonwealth be by jury.

Appealed from ACTSC (CA): [\[2021\] ACTCA 12](#); (2021) 17 ACTLR 72; (2021) 362 FLR 385

Contracts

Laundy Hotels (Quarry) Pty Limited v Dyco Hotels Pty Limited atf The Parras Family Trust & Ors
S125/2022: [\[2022\] HCATrans 136](#)

Date heard: 19 August 2022 – *Special leave granted*

Catchwords:

Contracts – Construction – Interpretation – Termination – Frustration – Supervening illegality – Covid-19 – Public Health Order – Where settlement of goodwill, plant and equipment under contract for sale

of hotel and associated business agreed to take place on 30 March 2020 – Where cl 50.1 of contract required vendor to carry on business in usual and ordinary course as regards its nature, scope and manner and repair and maintain assets in same manner as at date of contract and use reasonable endeavours to ensure all items on inventory in good repair and in proper working order – Where *Public Health (Covid-19 Places of Social Gathering) Order 2020* (NSW), made pursuant to *Public Health Act 2010* (NSW), came into effect on 23 March 2020 and prohibited opening of pubs except for sale of food and beverages to be consumed off premises – Where purchasers asserted contract had been frustrated – Whether supervening illegality pursuant to Public Health Order suspended parties' obligations to seek completion of contract – Whether Public Health Order amounted to doctrine of temporary suspension of obligations inconsistent with approach to resolving questions of supervening illegality.

Appealed from NSW (CA): [\[2021\] NSWCA 332](#); (2021) 396 ALR 340

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Copyright

Realestate.com.au Pty Ltd v Hardingham & Ors; RP Data Pty Limited v Hardingham & Ors
S57/2022; S58/2022: [\[2022\] HCATrans 64](#)

Date heard: 12 April 2022 – *Special leave granted*

Catchwords:

Copyright – Informal oral agreements – Inferred term – Implied term – Where Hardingham professional photographer and sole director of Real Estate Marketing Australia Pty Ltd ("REMA") – Where REMA commissioned by agencies to take photographs and prepare floor plans of properties for use on platforms concerning marketing of properties for sale or lease – Where retainer of Hardingham and REMA by agencies oral, informal and said nothing of copyright in photographs and floorplans – Where Hardingham entered into "deed of licence" with REMA by which Hardingham granted REMA exclusive licence of copyright subsisting in works originated by him – Where photographs and floor plans provided to each agency were uploaded to appellant's platform – Where appellant's terms and conditions provided that agency granted licence to appellant to use and adapt content provided by agency – Where s 15 of *Copyright Act 1968* (Cth) provided "act shall be deemed to have been done with licence of copyright owner if doing of act was authorized by a licence binding copyright owner" – Whether, in informal agreement under which owner of copyright in works intends to grant another person licence

to use works, including right to grant sub-licence to third party, it is necessary for licensor and licensee to know precise terms of grant by sub-licence – Whether, for purposes of engaging s 15 of *Copyright Act*, it is necessary to show what licence binding on owner allowed, and whether infringer acted consistently with licence.

Appealed from FCA (FC): [\[2021\] FCAFC 148](#); (2021) 395 ALR 644; (2021) 162 IPR 1

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Corporations Law

Bryant & Ors as Liquidators of Gunns Limited and Auspine Limited v Badenoch Integrated Logging Pty Ltd

A10/2022: [\[2022\] HCATrans 42](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Corporations law – Voidable transactions – Unfair preferences – "Peak indebtedness" rule – Interpretation of s 588FA of *Corporations Act 2001* (Cth) – Where, pursuant to s 588FA(1), transaction an unfair preference given by company to creditor if company and creditor are parties to transaction and, as a result of transaction, creditor receives more than creditor would have were creditor to prove for debt in winding up – Where s 588FA(3)(c) provided s 588FA(1) applies to all transactions forming part of relationship as if single transaction where, relevantly, transaction an integral part of a continuing business relationship – Where Full Court set aside primary judge's finding that liquidators entitled to choose point of peak indebtedness during statutory period in endeavouring to show, from that point, preferential payment under s 588FA(1) – Whether, by enacting s 588FA(3)(c), Parliament intended to abrogate liquidator's right to choose any point during statutory period, including point of peak indebtedness, to show point from which preferential payment under s 588FA(1) – Proper point for single transaction under s 588FA(3)(c) – Whether continuing business relationship will cease if operative and mutual purpose of inducing further support is subordinated to predominant purpose of recovering past indebtedness.

Appealed from FCA (FC): [\[2021\] FCAFC 64](#); (2021) 284 FCR 590; (2021) 152 ACSR 361

Appealed from FCA (FC): [\[2021\] FCAFC 111](#)

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Metal Manufacturers Pty Limited v Gavin Morton as Liquidator of MJ Woodman Electrical Contractors Pty Ltd (in Liquidation) & Anor
B19/2022: [\[2022\] HCATrans 88](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Corporations law – Insolvency – Liquidators – Set-off – Unfair preferences – Mutuality – Where s 533C(1) of *Corporations Act 2001* (Cth) provided, relevantly, where mutual credits, mutual debts or other mutual dealings between insolvent company being wound up and person who wants debt or claim admitted against company: (a) account to be taken of what due in respect of mutual dealings; and (b) sum due from one party to be set off against any sum due from other party; and (c) only balance of account admissible to proof against company – Where ss 588FA, 588FE and 588FF of *Corporations Act* provide for recovery of unfair preferences – Where creditor received payments during relation back period of \$190,000 – Where quantum of creditor’s alleged set-off admitted to be \$194,727.23 – Whether statutory set-off under s 553C(1) of *Corporations Act* available to creditor against liquidator in answer to claim for recovery of unfair preference under ss 588FA, 588FE and 588FF of *Corporations Act* – Proper approach to mutuality in s 533C.

Appealed from FCA (FC): [\[2021\] FCAFC 228](#); (2021) 402 ALR 387; (2021) 159 ACSR 115; (2021) 18 ABC(NS) 257

Appealed from FCA (FC): [\[2022\] FCAFC 1](#)

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Courts and Judges

QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M53/2022: [\[2022\] HCATrans 130](#)

Date heard: 12 August 2022 – *Special leave granted*

Catchwords:

Courts and judges – Bias – Reasonable apprehension of bias – Disqualification – Where, prior to appointment, judge as Commonwealth Director of Public Prosecutions: (a) instituted and carried on successful prosecution of QYFM on indictment, and (b) appeared to successfully oppose appeal by QYFM against conviction

– Where QYFM brought challenge to Minister’s decision not to revoke cancellation of QYFM’s visa – Where application for disqualification brought against judge on basis of apprehended bias – Where judge heard application alone, refused to disqualify himself and sat on Full Court appeal challenging primary judge's decision dismissing application for judicial review of Administrative Appeals Tribunal's decision to affirm cancellation of QYFM's visa – Whether application for disqualification of single member of Full Court on basis of apprehended bias should be decided by single judge alone or by Full Court – Whether judgment of Full Court liable to be set aside if single judge affected by apprehended bias.

Constitutional Law – Chapter III – Judicature of Commonwealth – Impartiality of judiciary – Bias – Reasonable apprehension of bias – Proper application of test in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

Appealed from FCA (FC): [\[2021\] FCAFC 166](#); (2021) 287 FCR 328

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Criminal Law

BA v The Queen

S101/2022: [\[2022\] HCATrans 111](#)

Date heard: 17 June 2022 – *Special leave granted*

Catchwords:

Criminal law – Breaking and entering – Legal right to enter – Meaning of "breaks" – Where s 112 of *Crimes Act 1900* (NSW) provides person who breaks and enters any dwelling-house or other building and commits any serious indictable offence guilty of offence – Where appellant and complainant resided together in apartment occupied pursuant to residential tenancy where both named as lessees – Where relationship broke down and appellant moved out taking most of possessions – Where, when appellant remained co-tenant, appellant entered apartment by breaking down locked door and assaulted complainant – Where appellant charged with offence against s 112 of *Crimes Act* – Whether person with legal right to enter building capable of being guilty of breaking and entering building for purposes of s 112 of *Crimes Act* – Whether co-tenant can revoke second co-tenant's permission to enter leased dwelling-house with result that, despite enjoying right of entry under lease, second co-tenant may be guilty of breaking and entering – Whether permission of occupant without legal entitlement to occupy be determinative of whether person with legal right of immediate possession breaks into building for purposes of s 112 of *Crimes Act*.

Appealed from NSW (CCA): [\[2021\] NSWCCA 191](#); (2021) 105 NSWLR 307; (2021) 291 A Crim R 514

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Bromley v The King

A40/2021: [\[2022\] HCATrans 158](#)

Date heard: 16 September 2022 – *Special leave referred to Full Court for consideration as on appeal on limited grounds*

Catchwords:

Criminal law – Second or subsequent appeal – Further evidence – Where applicant and co-accused convicted of murder – Where, at trial, prosecution led evidence from eyewitness who suffered from schizoaffective disorder – Where applicant and co-accused appealed against convictions, including on ground that eyewitness's evidence unsafe, but appeals dismissed and subsequent petitions for mercy refused – Where applicant sought to appeal pursuant to s 353A of *Criminal Law Consolidation Act 1935 (SA)* – Where s 353A empowers Full Court to hear second or subsequent appeal against conviction by person convicted on information if Court satisfied there "fresh and compelling evidence" that should, in "interests of justice", be considered on appeal – Where applicant adduced expert evidence concerning reliability of eyewitness in light of mental illness – Where Court of Appeal refused application, holding new evidence not "fresh" or "compelling", and not in "interests of justice" to consider new evidence – Whether new evidence "compelling" – Whether in "interests of justice" to consider applicant's evidence.

Appealed from SASC (FC): [\[2018\] SASCF 41](#)

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Mitchell v The Queen; Rigney v The Queen; Carver v The Queen; Tenhoopen v The Queen

A14/2022; A15/2022; A16/2022, A17/2022: [\[2022\] HCATrans 112](#)

Date heard: 17 June 2022 (A14/2022; A15/2022; A16/2022) – *Special leave granted*

Date determined: 18 August 2022 (A17/2022) – *Special leave application referred to the Full Court*

Catchwords:

Criminal law – Ancillary liability – Extended joint criminal enterprise – Statutory charges – Where appellants and others entered into agreement to steal amount of cannabis from grow-house and, in furtherance of agreement, one or more of group members inflicted one or more blows to head of person guarding grow-house who died of injuries – Where appellants charged for contravening s 12A *Criminal Law Consolidation Act 1935* (SA) ("CCA") and convicted of murder – Where s 12A of CCA provided person who commits intentional act of violence while acting in course or furtherance of major indictable offence punishable by imprisonment for 10 years or more, and thus causes death of another, guilty of murder – Whether principles of joint criminal enterprise apply to statutory charge under s 12A of CCA – Whether, for secondary participant to be guilty of common law murder according to principles of extended joint criminal enterprise, secondary participant must contemplate that co-participant might do act that might cause death of person – Whether, for secondary participant to be guilty of offence against s 12A of CCA, secondary participant must contemplate that co-participant might commit intentional act of violence causing death of person – Whether, for secondary participant to be guilty of offence against s 12A of CCA, sufficient that secondary participant contemplates any act of violence rather than contemplates possibility of death caused by violence.

Appealed from SASC (CCA): [\[2021\] SASCA 74](#); (2021) 139 SASR 305; (2021) 290 A Crim R 384

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Immigration

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton

B13/2022: [\[2022\] HCATrans 160](#)

Date heard: 16 September 2022 – *Special leave granted on condition*

Catchwords:

Immigration – Visa cancellation decision under s 501(3A) of *Migration Act 1958* (Cth) – Substantial criminal record – Where respondent's visa mandatorily cancelled following conviction for assaults occasioning bodily harm and for other offences, for which respondent sentenced to concurrent periods of imprisonment – Where respondent sought revocation of cancellation decision – Where Minister, in considering whether "another reason" why cancellation decision be revoked (s 501CA(4)(b)(ii)), took into account respondent's criminal history, including convictions which Queensland Court ordered that there be "no conviction" – Where s

184(2) of *Youth Justice Act 1992* (QLD) ("YJA") provides, in relation to recording of convictions against child, finding of guilt without recording conviction *not* taken to be conviction for any purpose – Where s 85ZR(2) of *Crimes Act 1914* (Cth) ("CA") provides where, under State law person to be taken to never been convicted of offence under law of State, person shall be taken in corresponding circumstances or for corresponding purpose, by any Commonwealth authority, never to have been convicted of offence – Whether, on proper construction of s 184(2) of YJA, s 85ZR(2) of CA engaged – Whether Minister took into account irrelevant consideration.

Administrative law – Judicial review – Jurisdictional error – Irrelevant consideration – Materiality – Whether consideration of irrelevant consideration material.

Appealed from FCA (FC): [\[2022\] FCAFC 23](#); (2022) 288 FCR 10

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Intellectual Property

Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor; Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor

S79/2022; S80/2022: [\[2022\] HCATrans 94](#)

Date heard: 13 May 2022 – *Special leave granted*

Catchwords:

Intellectual property – Trade marks – Infringement claim – Section 120 of *Trade Marks Act 1995* (Cth) – Where respondents authorised user and owner of registered trade mark for word "BOTOX" – Where respondents claimed appellants used brand name "PROTOX" as trade mark and "PROTOX" deceptively similar to BOTOX trade mark, constituting infringement under s 120(1) of *Trade Marks Act* – Where respondents claimed appellants used phrase "instant Botox® alternative" as trade mark, which constituted infringement of BOTOX trade mark – Whether appellant infringed BOTOX trade mark by using "instant Botox® alternative" or "PROTOX" – Whether phrase "instant Botox® alternative" deceptively similar to "BOTOX" within meaning of s 120(1) of *Trade Marks Act* – Whether appellants' use of phrase "instant Botox® alternative" attracts defences under s 122(1)(b)(i) and (d) of *Trade Marks Act* regarding use in good faith and use not infringing exclusive right of registered owner.

Consumer law – Misleading or deceptive conduct – Where respondent claimed appellants' statement "instant Botox® alternative" constituted representation appellants' Inhibox product would give

same results as BOTOX products in contravention of s 18 or s 29(1)(a) of *Australian Consumer Law* ("ACL"), being Schedule 2 to *Competition and Consumer Act 2010* (Cth), or Inhibox would achieve or had same performance characteristics, uses and/or benefits as Botox in contravention of s 18 or 29(1)(g) of ACL – Whether appellants' made misleading or false representations contrary to ss 18, 29(1)(a) and 29(1)(g) of ACL.

Appealed from FCA (FC): [\[2021\] FCAFC 163](#); (2021) 286 FCR 259; (2021) 393 ALR 595; (2021) 162 IPR 52

Appealed from FCA (FC): [\[2021\] FCAFC 180](#)

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Leases and Tenancies

Young & Anor v Chief Executive Officer (Housing)

D2/2022: [\[2022\] HCATrans 159](#)

Date heard: 16 September 2022 – *Special leave granted*

Catchwords:

Leases and tenancies – Residential tenancies – Damages for distress and disappointment – Where Ms Young leased home from respondent – Where home without front door in doorframe for 68 months – Where appellants commenced proceedings in Northern Territory Civil and Administrative Tribunal ("Tribunal") seeking compensation under s 122(1) of *Residential Tenancies Act 1999* (NT) ("RTA") for breach of landlord's obligations to repair premises (s 57 of RTA), to provide reasonably secure home (s 49 RTA) or, alternatively, to ensure premises "habitable" (s 48 of RTA) – Where Tribunal found landlord failed to comply with obligation of repair (s 57) and awarded \$100 compensation – Where Supreme Court set aside Tribunal's decision, holding failure to install door fundamental breach of respondent's obligation to provide reasonably secure premises, and awarded \$10,200 compensation for resulting disappointment and distress for period of 68 months – Where Court of Appeal allowed appeal, determining only compensation for disappointment and distress resulting from physical inconvenience recoverable – Whether to recover damages for emotional disturbance or "mental distress" claim brought under s 122 of RTA it necessary to apply principles of remoteness and foreseeability – Whether claim for compensation for emotional disturbance of "mental distress" able to be founded on breach of s 49.

Appealed from NT (CA): [\[2022\] NTCA 1](#)

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Practice and Procedure

Facebook Inc v Australian Information Commissioner & Anor
S28/2022: [\[2022\] HCATrans 157](#)

Date heard: 16 September 2022 – *Special leave granted*

Catchwords:

Practice and procedure – Service out of jurisdiction – Rule 10.43 of *Federal Court Rules 2011* (Cth) – Where Australian Information Commissioner commenced proceedings against appellant alleging events surrounding installation of application known as "This Is Your Digital Life" and Facebook-Cambridge Analytica scandal involved contraventions of *Privacy Act 1998* (Cth) – Where Commissioner successful in establishing *prima facie* case on application to serve appellant out of jurisdiction – Where appellant conditionally appeared and sought to set aside service – Where primary judge and Full Court refused to set aside service – Whether *prima facie* case appellant "carr[ied] on business in Australia" within meaning of 5B(3)(b) of *Privacy Act* – Whether *prima facie* case appellant "collected... personal information in Australia" within meaning of s 5B(3)(c) of *Privacy Act*.

Appealed from FCA (FC): [\[2022\] FCAFC 9](#); (2022) 402 ALR 445

Private International Law

Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. & Anor
S43/2022: [\[2022\] HCATrans 39](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Private international law – Foreign state immunity – Interaction between s 9 of *Foreign States Immunities Act 1985* (Cth) ("Immunities Act") and *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* ("ICSID Convention") – Where proceedings commenced in Federal Court for recognition of award of International Centre for Settlement of Investment Disputes ("ICSID") under s 35(4) of *International Arbitration Act 1974* (Cth) ("Arbitration Act") – Where Kingdom of Spain asserted sovereign immunity – Where s 9 of Immunities Act

provided that foreign state immune from jurisdiction of courts of Australia in proceeding – Where s 10 of Immunities Act provided foreign state not immune in proceeding in which it submitted to jurisdiction whether by agreement or otherwise – Where Art 54(1) provided each Contracting State shall recognize award rendered pursuant to ICSID Convention as binding – Where Art 54(2) of ICSID Convention referred to recognition or enforcement of award – Whether, by Art 54 of ICSID Convention, Kingdom of Spain agreed to submit itself to jurisdiction within meaning of s 10 of Immunities Act – Whether ICSID Convention excludes claims for foreign state immunity in proceedings for recognition and enforcement of an award – Proper meaning of "recognition" and "enforcement" in Art 54.

Appealed from FCA (FC): [\[2021\] FCAFC 112](#); (2021) 392 ALR 443; (2021) 153 ACSR 59

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Statutes

Disorganized Developments Pty Ltd & Ors v State of South Australia
A7/2022: [\[2022\] HCATrans 149](#)

Date heard: 9 September 2022 – *Special leave granted*

Catchwords:

Statutes – Interpretation – Invalidity – Where s 83GD(1) in Pt 3B, Div 2 of *Criminal Law Consolidation Act 1935* (SA) ("CLCA") provides person who participant in criminal organisation and enters, or attempts to enter, "prescribed place" commits offence – Where s 83GA(1) defines "prescribed place" as place declared by regulation, but s 83GA(2) requires regulation under subsection (1) to "only relate to ... 1 place" – Where appellants became registered proprietors of land ("Cowirra Land") – Where Pt 3B, Div2 of CLCA inserted by *Statutes Amendment (Serious and Organised Crime) Act 2015* (SA) ("Amending Act") – Where s 13 of Amending Act provided *Criminal Law Consolidation (Criminal Organisations) Regulations 2015* ("CLCR") (set out in Sch 1) be regulations under CLCA – Where cl 3 of Sch 1 of Amending Act declared places to be prescribed places, but not Cowirra Land – Where Governor in Council subsequently made *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) Variation Regulations 2020* ("Cowirra (No.1) Regulations") and *Criminal Law Consolidation (Criminal Organisations) (Prescribed Place – Cowirra) (No 2) Variation Regulations 2020* ("Cowirra (No.2) Regulations") – Where Cowirra (No.1) Regulations and Cowirra (No.2) Regulations sought to vary r 3 of CLCR to add Cowirra Land as prescribed place – Whether r 3 of

CLCR beyond power conferred by s 83GA(2) of CLCA – Whether Cowirra (No.1) Regulations and Cowirra (No.2) Regulations invalid because of absence of procedural fairness accorded – Whether, if Cowirra (No.1) Regulations and Cowirra (No.2) Regulations valid, s 83GD of CLCA applies to owner of land declared to be "prescribed place", director of corporation which is owner of land or any person authorised to access land.

Appealed from SASC (CA): [\[2022\] SASCA 6](#)

Torts

CCIG Investments Pty Ltd v Schokman

B16/2022: [\[2022\] HCATrans 156](#)

Date heard: 16 September 2022 – *Special leave granted on limited grounds*

Catchwords:

Torts – Vicarious liability – Scope of employment – Opportunity or occasion for commission of tort – Where respondent asleep in appellant's staff accommodation when another employee urinated on face – Where trial judge concluded event exacerbated respondent's pre-existing conditions of narcolepsy and cataplexy, and suffered post-traumatic stress and adjustment disorder as result – Where respondent sued employer, alleging, relevantly, employee committed tort for which appellant, as employer, vicariously liable – Where primary judge found employee's act tortious, but concluded tort not committed in course of employee's employment – Where Court of Appeal applied *Prince Alfred College Inc v ADC* (2016) 258 CLR 134, holding employee occupying room as employee pursuant to obligations of employment contract and therefore requisite connection between employment and employee's actions – Whether event giving rise to respondent's injury within "course or scope of employment" – Proper approach to scope of vicarious liability discussed in *Prince Alfred College Inc v ADC*.

Appealed from QLDSC (CA): [\[2022\] QCA 38](#)

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7: CASES NOT PROCEEDING OR VACATED

Statutory Interpretation

Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes
S60/2022: [\[2022\] HCATrans 70](#)

Date heard: 13 April 2022 – *Special leave granted*

Catchwords:

Statutory interpretation – Jurisdiction – Limitation of actions – Inconsistency – Where s 11(2) of *Federal Courts (State Jurisdiction) Act 1999* (NSW) ("NSW Jurisdiction Act") enabled party to proceeding in which "relevant order" was made to apply to NSW Supreme Court for order that proceeding be treated as one in Supreme Court – Where appellant commenced proceedings in Federal Court of Australia seeking damages from respondent in connection with seaplane accident pursuant to provisions of *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("Commonwealth Act"), incorporated by s 5 of *Civil Aviation (Carriers' Liability) Act 1967* (NSW) – Where Federal Court dismissed application for want of jurisdiction because accident occurred solely in New South Wales – Where action subject to two-year limitation and extinguishment of right to damages – Where two years had passed before Federal Court decision – Where appellant sought orders in NSW Supreme Court under s 11 that Federal Court proceedings be treated as Supreme Court proceedings such that proceedings commenced within limitation period – Where Court of Appeal held "relevant order" in s 11 of NSW Jurisdiction Act refers to not to general want of jurisdiction but to general want of jurisdiction by reason of constitutionally invalid conferral of jurisdiction as considered in *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 – Whether order of Federal Court dismissing Federal Court proceeding for want of jurisdiction was "relevant order" within meaning of s 11 of NSW Jurisdiction Act.

Appealed from NSW (CA): [\[2021\] NSWCA 204](#); (2021) 106 NSWLR 1; (2021) 362 FLR 1; (2021) 393 ALR 485

Consent orders made on 14 September 2022.

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 8 September 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Moon	Moon & Anor (B23/2022)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2022] HCASL 134
2.	Newett	Newett (B27/2022)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2022] HCASL 135
3.	CGN17 & Ors	Minister for Immigration and Border Protection & Anor (M34/2022)	Federal Court of Australia [2022] FCA 494	Application dismissed [2022] HCASL 136
4.	Shah	Victorian Workcover Authority (M46/2022)	Supreme Court of Victoria (Court of Appeal) [2022] VSCA 95	Application dismissed [2022] HCASL 137
5.	Gillies	The Queen (S64/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2008] NSWCCA 339	Application dismissed [2022] HCASL 138
6.	Flowers	State of New South Wales (S95/2022)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 28 [2022] NSWCA 29	Application dismissed [2022] HCASL 139
7.	Liyanage	The State of Western Australia (P7/2022)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 220	Application dismissed [2022] HCASL 140
8.	G	O (P8/2022)	Supreme Court of Western Australia (Court of Appeal) [2022] WASCA 23	Application dismissed with costs [2022] HCASL 141
9.	Emmott	Michael Wilson & Partners Limited (S6/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 315	Application dismissed with costs [2022] HCASL 142

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
10.	Michael Wilson & Partners Limited	Emmott (S18/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 315	Application dismissed with costs [2022] HCASL 142
11.	Saajib	The Owners of SP87265 (S69/2022)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 63	Application dismissed with costs [2022] HCASL 143

9 September 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Bergmuller	Auswild & Ors (M13/2022)	Supreme Court of Victoria (Court of Appeal) [2022] VSCA 8	Application dismissed with costs [2022] HCATrans 152
2.	Parker	Auswild & Ors (M14/2022)	Supreme Court of Victoria (Court of Appeal) [2022] VSCA 8	Application dismissed with costs [2022] HCATrans 152
3.	NBM	The Queen (A3/2022)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 105	Application dismissed [2022] HCATrans 150
4.	Commissioner of Taxation of the Commonwealth of Australia	Shell Energy Holdings Australia Limited (P4/2022)	Full Court of the Federal Court of Australia [2022] FCAFC 2	Application dismissed with costs [2022] HCATrans 151

Publication of Reasons: 19 September 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Kerrison	Kerrison (B32/2022)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2022] HCASL 144
2.	ZA	Director-General Community Service Directorate (C9/2022)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2022] ACTCA 6	Application dismissed [2022] HCASL 145
3.	BTR17	Minister for Immigration Citizenship Migrant Services and Multicultural Affairs & Ors (M30/2022)	Federal Court of Australia [2022] FCA 382	Application dismissed [2022] HCASL 146
4.	In the matter of an application by Cindy Anne Taylor for leave to appeal (M41/2022)		High Court of Australia	Application dismissed [2022] HCASL 147
5.	Houghton	State of Western Australia (P13/2022)	Supreme Court of Western Australia (Court of Appeal) [2022] WASCA 7	Application dismissed [2022] HCASL 148
6.	Saffari	Amazon.com Inc & Ors (S88/2022)	Federal Court of Australia [2022] FCA 535	Application dismissed [2022] HCASL 149
7.	Scott & Anor	Scott & Anor (A12/2022)	Supreme Court of South Australia (Court of Appeal) [2022] SASCA 33	Application dismissed [2022] HCASL 150
8.	Bibawi	Australian Human Rights Commission & Anor (B22/2022)	Federal Court of Australia [2022] FCA 607	Application dismissed [2022] HCASL 151
9.	Martin	Commissioner of Police (P11/2022)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2022] HCASL 152
10.	Armet	CFC Consolidated Pty Ltd (P20/2022)	Supreme Court of Western Australia (Court of Appeal) [2022] WASCA 63	Application dismissed [2022] HCASL 153
11.	BRL19	Minister for Immigration Citizenship Migrant Services and Multicultural Affairs & Anor (S74/2022)	Federal Court of Australia [2022] FCA 434	Application dismissed [2022] HCASL 154

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Burrows	Macpherson & Kelley Lawyers (Sydney) Pty Ltd & Anor (S100/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 148	Application dismissed [2022] HCASL 155
13.	Ferngrove Pharmaceuticals Pty. Ltd.	Betterway Health Care International Group Pty Ltd (A13/2022)	Supreme Court of South Australia (Court of Appeal) [2022] SASCA 31	Application dismissed with costs [2022] HCASL 156
14.	Leach	The Queen (B10/2022)	Supreme Court of Queensland (Court of Appeal) [2022] QCA 7	Application dismissed [2022] HCASL 157
15.	Harrison	The Queen (B18/2022)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 279	Application dismissed [2022] HCASL 158
16.	Fox	Director of Public Prosecutions (M23/2022)	Supreme Court of Victoria (Court of Appeal) [2022] VSCA 38	Application dismissed [2022] HCASL 159
17.	Monforte	The King (M25/2022)	Supreme Court of Victoria (Court of Appeal) [2018] VSCA 277	Application dismissed [2022] HCASL 160
18.	Djordjevich	Rohrt (in his capacity as liquidator of ACN 091 518 302 Pty Ltd (in liquidation) ACN 091 518 302) (M36/2022)	Supreme Court of Victoria (Court of Appeal) [2022] VSCA 84	Application dismissed with costs [2022] HCASL 161
19.	Hood	Down Under Enterprises International Pty Limited (S85/2022)	Federal Court of Australia (Full Court) [2022] FCAFC 69	Application dismissed with costs [2022] HCASL 162
20.	Hood	Native Oils Australia Pty Ltd (S86/2022)	Federal Court of Australia (Full Court) [2022] FCAFC 69	Application dismissed with costs [2022] HCASL 162
21.	Hood	New Directions Australia Pty Limited (S87/2022)	Federal Court of Australia (Full Court) [2022] FCAFC 69	Application dismissed with costs [2022] HCASL 162
22.	Challenger	The King (M31/2022)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 60	Application dismissed [2022] HCASL 163
23.	Greenslade	Hiew (P14/2022)	Supreme Court of Western Australia (Court of Appeal) [2022] WASCA 47	Application dismissed with costs [2022] HCASL 164

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
24.	Sigalla	The Queen (S72/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2020] NSWCCA 22	Application dismissed [2022] HCASL 165
25.	Sigalla	The Queen (S73/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2020] NSWCCA 22	Application dismissed [2022] HCASL 166
26.	DJL19	Minister for Immigration Citizenship Migrant Services and Multicultural Affairs & Anor (S76/2022)	Federal Court of Australia [2022] FCA 451	Application dismissed with costs [2022] HCASL 167
27.	Mukiza	Minister for Immigration Citizenship Migrant Services and Multicultural Affairs & Anor (S104/2022)	Federal Court of Australia (Full Court) [2022] FCAFC 89 [2022] FCAFC 105	Application dismissed with costs [2022] HCASL 168