HIGH COURT BULLETIN

[2025] HCAB 3 (24 April 2025)

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
CZA19 v Commonwealth of Australia & Anor	Constitutional law
DBD24 v Minister for Immigration and Multicultural Affairs & Anor	Constitutional law
The King v ZT	Criminal law
Australian Competition and Consumer Commission v J Hutchinson Pty Ltd (ACN 009 778 330) & Anor *Australian Competition and Consumer Commission v Construction, Forestry and Maritime Employees Union & Anor*	Competition law
The King v Ryan Churchill (a pseudonym)	Criminal law
Stuart & Ors v State of South Australia & Ors	Native title
FEL17 v Minister for Immigration, Citizenship and Multicultural Affairs	Immigration
Cherry v State of Queensland	Constitutional law

Forestry Corporation of New South Wales v South East Forest Rescue Incorporated INC9894030	Civil procedure
DZY (a pseudonym) v Trustees of the Christian Brothers	Civil procedure
Plaintiff M19A/2024 & Ors v Minister for Immigration and Multicultural Affairs	Practice and procedure

3: Cases Reserved

Case	**Title**
Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	Immigration
Commissioner of Taxation v PepsiCo, Inc *Commissioner of Taxation v Stokely-Van Camp, Inc* *Commissioner of Taxation v PepsiCo, Inc* *Commissioner of Taxation v PepsiCo, Inc* *Commissioner of Taxation v Stokely-Van Camp, Inc* *Commissioner of Taxation v Stokely-Van Camp, Inc*	Taxation
Laming v Electoral Commissioner of the Australian Electoral Commission	Elections

4: Original Jurisdiction

Case	**Title**
Farmer v Minister for Home Affairs & Anor	Constitutional law

5: Section 40 Removal

Case	**Title**

6: Special Leave Granted

Case	Title
Bed Bath 'N' Table Pty Ltd (ACN 005 216 866) v Global Retail Brands Australia Pty Ltd (ACN 006 348 205)	Trade marks
The King v McGregor	Criminal law
Gray v Lavan (A Firm)	Restitution
Shao v Crown Global Capital Pty Ltd (in prov liq) ACN 604 292 140 & Anor	Contracts
Cullen v State of New South Wales	Negligence
Taylor v Killer Queen LLC & Ors	Trade marks

7: Cases Not Proceeding or Vacated

Case	Title
The King v Batak	Criminal law

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April 2025 sittings.

Civil Procedure

DZY (a pseudonym) v Trustees of the Christian Brothers
M81/2024: [2025] HCA 16

Date delivered: 9 April 2025

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

Catchwords:

Civil procedure – limitation of actions – application to set aside deeds of settlement under s 27QE of *Limitation of Actions Act 1958* (Vic) – where appellant entered into two deeds of settlement relating to sexual abuse alleged against Christian Brothers in school run by respondent – where appellant later commenced proceedings seeking damages from respondent for economic loss caused by abuse – where respondent claimed settlements should not be set aside because it would have pleaded limitation defence and *"Ellis"* defence that unincorporated association not solvent legal entity capable of being sued (*Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565) – where primary judge allowed claim to proceed – where Court of Appeal set aside primary judge's decision – whether majority of Court of Appeal erred in finding power in s 27QE *Limitation of Actions Act* not enlivened unless claimant establishes that limitation or *Ellis* defence had material impact on or was leading factor in decision to settle – whether Court of Appeal misapplied correctness standard of appellate review in *Warren v Coombs* (1979) 142 CLR 531.

Appealed from VSCA: [2024] VSCA 73

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Forestry Corporation of New South Wales v South East Forest Rescue Incorporated INC9894030
S120/2024: [2025] HCA 15

Date delivered: 9 April 2025

Coram: Gageler CJ, Edelman, Steward, Jagot and Beech-Jones JJ

Catchwords:

Civil procedure – standing – where respondent environmental organisation brought civil enforcement proceedings seeking injunctive and declaratory relief against respondent in relation to certain forestry operations on basis of impact on three species of glider – where primary judge found respondent lacked standing because of no "special interest" in subject matter – where Court of Appeal set aside decision on basis that clear language required to abrogate or curtail fundamental rights – whether Court of Appeal erred in concluding that on proper construction of *Forestry Act 2012* (NSW), ss 69SB and 69ZA and *Biodiversity Conservation Act 2016* (NSW), ss 13, 14 and 13.14A private entities have standing to bring civil enforcement proceedings for alleged breach of integrated forestry operations agreement – whether there is presumption of standing to bring proceedings for alleged breach by third party where private person or entity has "special interest" unless abrogated by statute.

Appealed from NSWCA: [2024] NSWCA 113

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Constitutional Law

CZA19 v Commonwealth of Australia & Anor
M66/2024: [2025] HCA 8

Date delivered: 2 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – whether limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 applies to non-citizen detained under ss 189(1) and 196(1) of *Migration Act 1958* (Cth) for purpose of considering whether to grant the person a visa where no real prospect of removal if person not granted a visa – where first respondent taken into immigration detention in December 2018 – where first respondent applied for protection visa and was refused by delegate – where AAT set aside delegate's decision and remitted to delegate with direction that substantial grounds for believing first respondent would suffer significant harm if removed to Poland – where following decision in *NZYQ* first respondent sought habeas corpus and mandamus in Federal Court seeking consideration of visa and declaratory relief regarding lawfulness of detention – where separate question referred for determination in Federal Court – where visa refused by applicant released on bridging visa – whether detention unlawful between November 2022 and release.

Removed into the High Court from Federal Court of Australia under s 40 of the Judiciary Act 1903 (Cth).

DBD24 v Minister for Immigration and Multicultural Affairs & Anor
P34/2024: [2025] HCA 8

Date delivered: 2 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 – where plaintiff arrived in Australia without valid visa and detained in immigration detention between 23 June 2023 and 1 October 2024 – where plaintiff applied for safe haven enterprise visa and was refused by delegate of first respondent – where on 18 December 2023 Administrative Appeals Tribunal remitted refusal and directed that substantial grounds for believing applicant at risk of significant harm if returned to Vietnam – where Tribunal 's decision a "protection finding" under s 197C(3)(b) of *Migration Act* 1958 (Cth) - where plaintiff granted protection visa and released from immigration detention on 1 October 2024 – whether constitutional limitation exceeded where alien has applied for visa and visa being considered in circumstance that visa applicant could not be removed in any event because of extant 'protection finding' under s 197C(3)(b) of *Migration Act* or where consideration of visa application takes unreasonably long time.

Special case referred to Full Court on 5 November 2024.

Cherry v State of Queensland
B11/2024: [2025] HCA 14

Date delivered: 9 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – separation of powers – judicial power – where plaintiff convicted of two counts of murder in 2002 and sentenced to life imprisonment with mandatory minimum non-parole period of 20 years – where body of second victim never located – where in 2021 new provisions inserted into *Corrective Services Act 2006* (Qld) ("CSA") to amend "no body-no parole" scheme and introducing new "restricted prisoners" regime – where President of Parole Board of Queensland may make "no co-operation" declaration under s 175L of

CSA in respect of a "no body – no parole" prisoner where remains of victim not found and where Board not satisfied prisoner has given "satisfactory co-operation" – where effect of declaration is that prisoner may not apply for parole notwithstanding parole eligibility date set by sentencing judge – where under s 175E of CSA President of Parole Board can make declaration about restricted prisoner (relevantly defined as prisoner sentenced to life imprisonment for more than one conviction of murder) – where effect of declaration is that prisoner may not apply for parole other than in "exceptional circumstances parole" under s 1767 – where plaintiff subject to "no co-operation" declaration and liable for "restricted prisoner" declaration if former lapses – validity of provisions under Ch 5, Divs 1 and 2 CSA – whether ss 175L and 175E CSA invalid as enabling Queensland executive to impermissibly interfere with exercise of judicial power by State Courts contrary to principle established in *Kable v Director of Public Prosecutions* (1996) 189 CLR 51.

Special case referred to Full Court on 27 September 2024

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Criminal Law

The King v ZT
S38/2024: [2025] HCA 9

Date delivered: 2 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – Appeal against conviction – Unreasonable verdict – Joint criminal enterprise – Where respondent found guilty at trial of party to murder – Where case against him founded upon series of admissions made as to involvement in killing – Where respondent's accounts numerous and inconsistent – Where respondent successfully appealed conviction to Court of Criminal Appeal on ground jury's verdict unreasonable – Where Court of Criminal Appeal majority found admissions not sufficiently reliable to establish guilt beyond reasonable doubt – Whether Court of Criminal Appeal majority erred in concluding jury enjoyed no relevant or significant advantage over appellate court – Whether Court of Criminal Appeal majority erred in its application of test in *M v The Queen* (1994) 181 CLR 487.

Appealed from NSWSC (CCA): [2023] NSWCCA 241

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The King v Ryan Churchill (a pseudonym)
M94/2024: [2025] HCA 11

Date delivered: 2 April 2025

Coram: Gageler CJ, Gordon, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – evidence – hearsay – *Evidence Act 1996* (Vic) – where appellant convicted of two counts of incest – evidence given of complainant's representation to another person of having been sexually assaulted – where evidence led that complainant distressed when making representation – where Court of Appeal allowed appeal and held trial judge should have warned jury that evidence of such distress "generally carried little weight" – whether Court of Appeal erred in holding such direction should have been given – whether Court of Appeal erred in finding substantial miscarriage of justice because trial judge did not specifically direct jury they could not use evidence of distress unless first finding link between distress and alleged offending.

Appealed from VSCA: [2024] VSCA 151

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Competition Law

Australian Competition and Consumer Commission v J Hutchinson Pty Ltd (ACN 009 778 330) & Anor
Australian Competition and Consumer Commission v Construction, Forestry and Maritime Employees Union & Anor
B41/2024; B42/2024: [2025] HCA 10

Date delivered: 2 April 2025

Coram: Gageler CJ, Edelman, Steward, Gleeson and Beech-Jones JJ

Catchwords:

Competition law – giving effect to arrangement or arriving at understanding containing provision preventing or hindering acquisition of services from a subcontractor – *Competition and Consumer Act 2010* (Cth) s 45E(3) – where Hutchinson construction company and head contractor on large construction project – where CFMEU a trade union for purposes of *Fair Work (Registered Organisations) Act 2009* (Cth) – where appellant alleged contravention of s 45E(3) and 45E of *Competition and Consumer Act* by first respondent making and giving effect to understanding with second respondent that it would

terminate its sub-contract or cease acquiring services from third party on project – where second respondent alleged to have been knowingly concerned in or party to contravention by threatening industrial action if first respondent did not cease using third party – where primary judge found evidence established respondents entered into arrangement of understanding – where Full Federal Court allowed appeal – whether Full Court found that merely succumbing to threat of industrial action insufficient to give rise to arrangement or understanding – whether making or arriving at arrangement or understanding within meaning of s 45E(3) requires communication of assent that precedes and is distinct from conduct that gives effect or arrangement or understanding.

Appealed from FCAFC: [2024] FCAFC 18; (2024) 302 FCR 79

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Immigration

FEL17 v Minister for Immigration, Citizenship and Multicultural Affairs
S107/2024: [2025] HCA 13

Date heard: 6 December 2024

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

Catchwords:

Immigration – protection visas – invalid application – where appellant applied for protection visa and was refused by delegate – where AAT affirmed delegate's decision – where Assistant Minister for Immigration and Border Protection exercised power under s 417(1) *Migration Act 1958* (Cth) to substitute "another decision" for Tribunal's decision and granted appellate a three month visitor visa with no further stay condition – where appellate subsequently made second application for protection visa – where delegate found application invalid under s 48A – whether majority of Full Federal Court erred in finding application invalid and barred by s 48A.

Appealed from FCA (FC): [2023] FCAFC 153

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Native Title

Stuart & Ors v State of South Australia & Ors
A1/2024: [2025] HCA 12

Date delivered: 9 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Native title – Extinguishment – Proper construction of "native title" in s 223(1) *Native Title Act 1993* (Cth) ("NTA") – Overlapping claims – Where appellants together comprise applicant in native title determination under s 61 of NTA made on behalf of Arabana people in March 2013 over area in vicinity of township of Oodnadatta in South Australia – Where over subsequent five years different claim group, Walka Wani people, made two claims concerning same area ("overlap area") – Where in January 1998 Arabana made claim over area abutting overlap area, resulting in consent determination in 2012 in favour of Arabana in *Dodd v State of South Australia* [2012] FCA 519 ("*Dodd*") – Where overlap area omitted from 1998 claim area because Arabana believed different accommodation of their rights in overlap area would be made by state government – Where primary judge dismissed Arabana claim and made determination of native title in favour of Walka Wani – Where appellants unsuccessfully appealed orders dismissing Arabana Claim to Full Court – Whether Full Court majority erred by not finding trial judge failed to correctly construe and apply definition of "native title" in s 223(1) when dismissing Arabana's native title determination application – Whether Full Court erred by treating all aspects of determination in *Dodd* as being geographically specific.

Appealed from FCA (FC): [2023] FCAFC 131; (2023) 299 FCR 507; (2023) 412 ALR 407

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Practice and Procedure

Plaintiff M19A/2024 & Ors v Minister for Immigration and Multicultural Affairs
M92/2024: [2025] HCA 17

Date handed down: 10 April 2025 ***Appeal allowed by consent***

Coram: Gageler CJ, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

High Court – appellate jurisdiction – practice – reasons for judgment – where first three appellants granted permanent protection visas in 2011 – where delegate of respondent sent "Notice of Intention to Consider Cancellation" to first appellant under s 116 of *Migration Act 1958* (Cth) – where first appellant did not receive notification because of change of address – where respondent

proceeded to cancellation of visa in 2019 – where first appellant did not receive notification and only discovered cancellation in June 2021 – where no review available in Administrative Appeals Tribunal – where appellants sought constitutional or other writ in original jurisdiction of High Court – application dismissed by primary judge (Gordon J) – where on appeal the appellants sought leave to argue new ground not raised below – whether the decision of the delegate of the Minister to cancel the first appellant's protection visa was vitiated by jurisdiction error – where the delegate of the Minister gave weight to the fact that the fist appellant did not respond to the notice – where there was no legal obligation on the first appellant to respond to such a notice – where, before the hearing of the appeal, the Minister for Immigration and Multicultural Affairs conceded jurisdictional error raised by the appellants – consent to orders allowing the appeal filed by the parties – whether reasons for decision required when orders sought by consent – whether appropriate to make orders by consent.

Appealed from single Justice High Court: [2024] HCASJ 39

3: CASES RESERVED

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

Aviation Law

Evans & Anor v Air Canada ABN 29094769561
S138/2024: [2025] HCATrans 18

Date heard: 12 March 2025

Coram: Gageler CJ, Edelman J, Steward J, Gleeson J and Beech-Jones J

Catchwords:

Aviation law – international carriage of passengers by air – *Unification of Certain Rules of International Carriage by Air 1999 ("Montreal Convention")* – where appellants sought damages in Supreme Court of New South Wales for injuries allegedly suffered from turbulence on Air Canada flight from Vancouver to Australia under art 17 of Montreal Convention (incorporated into Australian law under s 9B *Civil Aviation (Carriers' Liability) Act 1959* (Cth) – where respondent pleaded it was not liable for damages exceeding "113,100 Special Drawing Rights" in accordance with art 21 of Montreal Convention – where appellants relied on rule 105(C)(1)(a) of Air Canada's International Tariff General Rules which stipulated there were no financial limits on compensatory damages recoverable in respect of bodily injuries – where Court of Appeal found rule 105(C)(1)(a) did not have effect of waiving defence created by art 21 – whether Court of Appeal erred in construing arts 17, 21 and 25 of Montreal Convent ion by treating rule 105(C)(1)(a) as form of consumer notification rather than term of contract of carriage – whether Court of Appeal erred in holding stipulation in rule 105(C)(1)(a) did not preclude financial limit under art 21(2) in cases where damages would exceed a monetary or financial amount and carrier proves no fault – whether Court of Appeal erred in not holding operation of rule 105(C)(1)(a) constitutes a stipulation for purposes of art 25 and displaced application of art 21(2) of Montreal Convention.

Appealed from NSWCA: [2024] NSWCA 153

Civil Procedure

Lendlease Corporation Limited ACN 000 226 228 & Anor v David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund & Anor
S108/2024: [2024] HCATrans 76

Date heard: 5 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Civil procedure – representative proceedings – notices to group members - where appellant is defendant in shareholder class action brought by respondent plaintiffs alleging misleading and deceptive conduct and breach of continuous disclosure obligations – where separate question stated for determination in New South Wales Court of Appeal – whether Court of Appeal erred in holding that Supreme Court of New South Wales does not have power in representative proceeding to approve notice to group members containing notation to effect that upon any settlement, parties or defendant will seek order that group members neither registering nor opting-out shall not be permitted without leave to seek any benefit under settlement – where Court of Appeal authority conflict with Full Federal Court authority on the question.

Appealed from NSWCA: [2024] NSWCA 83; (2024) 114 NSWLR 81

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Constitutional Law

Babet & Anor v Commonwealth of Australia
Palmer v Commonwealth of Australia
B73/2024; B74/2024: [2025 HCATrans 5]; [2025] HCATrans 7

Date heard: 7 February 2025

Orders pronounced: 12 February 2025

Questions answered

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Elections – *Commonwealth Electoral Act 1918* (Cth) – Part XI – Registration of political parties – Where United Australia Party was registered as a political party in 2018 – Where United Australia party was voluntarily deregistered by the Australian Electoral Commission under s 135(1) of the Act in 2022 – Where s 135(3) of the Act provides that a party is ineligible for registration until after the general election next following the voluntary deregistration of that party – Validity of s 135(3) – Whether invalid on the ground that it impairs the direct choice by the people of Senators or Members of the House of Representatives, contrary to ss 7 and 24 of the *Constitution* – Whether invalid on the ground that it impermissibly discriminates against candidates of a political party that has deregistered voluntarily or a Parliamentary party that has deregistered voluntarily – Whether invalid on the ground that it infringes the implied freedom of political communication.

MJZP v Director-General of Security & Anor

S142/2023: [2024] HCATrans 92; [2024] HCATrans 93; [2025] HCATrans 17

Date heard: 12 and 13 December 2024; 11 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial power of Commonwealth – Procedural fairness – Where plaintiff company is carriage service provider within meaning of *Telecommunications Act 1997* (Cth) – Where in June 2021 Australian Security Intelligence Organisation ("ASIO") furnished to Minister for Home Affairs adverse security assessment in respect of plaintiff in connection with s 315A of *Telecommunications Act* – Where plaintiff applied to Administrative Appeals Tribunal ("Tribunal") for review of adverse security assessment – Where Minister made various certifications under *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") that disclosure of certain documents and evidence contrary to public interest – Where Tribunal provided open reasons to plaintiff and first defendant, and closed reasons only to first defendant – Where plaintiff appealed to Federal Court of Australia – Where s 46(1) of AAT Act requires Tribunal to send to Federal Court all documents before Tribunal in connexion with proceeding, including documents subject to certificates issued by Minister – Where s 46(2) of AAT Act requires Federal Court to ensure matter subject to certificates not disclosed to any person other than member of Federal Court for purposes of appeal – Whether s 46(2) substantially impairs institutional integrity of Federal Court – Whether s 46(2) requires Federal Court to exercise Commonwealth judicial power in manner inconsistent with nature of that power – Whether s 46(2) invalid on basis it infringes Ch III of *Constitution*.

Special case referred to the Full Court on 4 June 2024.

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Ravbar & Anor v Commonwealth of Australia & Ors

S113/2024: [2024] HCATrans 90; [2024] HCATrans 91

Date heard: 10 and 11 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – invalidity – implied freedom of political communication – acquisition of property on just terms – where first and second plaintiffs office bearers of Construction and General Division ("C&G Division) of the Construction, Forestry, Mining and Energy Union – where s 333A(1) of *Fair Work (Registered Organisations) Act 2009* (Cth) ("FWRO Act") provides C&G Division and each of its branches placed into administration from earliest time that both a legislative instrument made under s 333B(1) and appointment of administrator under s 323C in force – where s 323B(1) empowers Minister to determine scheme for administration of C&G Division and branches if satisfied in public interest – whether *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) ("Administration Act") and provisions it inserted into *Fair Work (Registered Organisations) Act 2009* and *Fair Work Act 2009* (Cth) sufficiently connected to head of power in s 51 Constitution – whether impugned provisions infringe implied freedom of political communication – whether *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* invalid as unsupported by s 323B FWRO Act as partially disapplied or otherwise read down as to not infringe implied freedom of political communication – whether s 323B FWRO Act and Administration Act purport to confer judicial power of Commonwealth on Minister and thereby inconsistent with Ch III of Constitution – whether ss 323K(1) and 323M FWRO Act effect acquisition of property otherwise than on just terms contrary to s 51(xxxi) of Constitution.

Special case referred to Full Court on 18 October 2024

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State of New South Wales v Wojciechowska & Ors

S39/2024: [2025] HCATrans 3; [2025] HCATrans 4

Date heard: 5 and 6 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial Power of Commonwealth – Where first respondent resided in Tasmania – Where first respondent commenced various proceedings in New South Wales Civil and Administrative Tribunal ("Tribunal") against third and fourth respondents, emanations of State of New South Wales – Where first respondent sought review of various decisions and conduct under *Government Information (Public Access) Act 2009* (NSW) ("GIPA Act") and *Privacy and Personal Information Protection Act 1998* (NSW) ("PPIP Act") – Where claim included claim for damages under s 52(2)(a) PPIP Act – Where first respondent challenged jurisdiction of Tribunal on basis functions performed by Tribunal when determining administrative review applications under GIPA Act and PPIP Act involved exercise of judicial power – Where Court of Appeal held determining administrative review under GIPA Act did not involve exercise of judicial power – Where Court of Appeal held determination of application for damages under s 55(2)(a) of PPIP Act brought by out-of-state resident would involve Tribunal exercising judicial power of Commonwealth – Whether *Burns v Corbett* (2018) 265 CLR 304 applies to exercise of non-judicial power – Whether Court of Appeal erred in holding Tribunal, when performing at instance of out-of-State resident claiming damages review of public sector agency conduct under Pt 5 of PPIP Act and *Administrative Decisions Review Act 1997* (NSW) exercises Commonwealth judicial power.

Courts – State tribunals – Jurisdiction.

Appealed from NSWSC (CA): [2023] NSWCA 191; (2023) 379 FLR 256

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Criminal Practice

Brawn v The King
A20/2024: [2024] HCATrans 85

Date heard: 4 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal practice – appeal – miscarriage of justice – prosecution duty of disclosure – where appellant found guilty of one count of maintaining sexual relationship with child – where defence case was that complainant lied about identity of abuser – where, after trial, prosecution disclosed that appellant's father had been charged with six counts of unlawful sexual intercourse with different child – whether Court or Appeal erred in finding that breach of duty of disclosure did not lead to miscarriage of justice for purpose of s 158(1)(c) *Criminal Procedure Act 1921* (SA) because appellant would not have conducted trial differently – whether Court of Appeal erred in finding appellant

conceded that non-disclosure did deprive him of opportunity to adduce evidence relating to father – proper approach to 'miscarriage of justice' for purposes of s 158(1)(c) *Criminal Procedure Act*.

Appealed from SASCA: [2022] SASCA 96; (2022) 141 SASR 465

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Elections

Laming v Electoral Commissioner of the Australian Electoral Commission
B75/2024: [2025] HCATrans 28

Date heard: 9 April 2025

Coram: Gageler CJ, Gordon, Edelman, Gleeson, Jagot

Catchwords:

Elections – electoral matter – *Commonwealth Electoral Act 1918* (Cth), s 321D(5) – where appellate contravened s 321D(5) by communicating electoral matter without disclosing prescribed details by posting on particular Facebook page – where primary judge found single act of publication of publication of post constituted single breach of s 321D(5) irrespective of how many times post viewed – where Full Federal Court allowed appeal – whether Full Court erred in finding s 321D(5) breached on each occasion p0erson viewed post rather than finding contravention when appellant caused post to be published – meaning of "communicated to a person" in s 321D(1).

Appealed from FCAFC: [2024] FCAFC 109; (2024) 304 FCR 561

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Evidence

MDP v The King
B72/2023: [2024] HCATrans 84

Date heard: 3 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Evidence – Propensity evidence – Miscarriage of justice – Where appellant convicted of various child sexual assault and domestic violence offences against former partner's daughter – Where evidence included evidence from complainant's sister that appellant smacked complainant on bottom – Where trial judge directed jury if they accepted bottom slapping evidence was true, and that it displayed sexual interest of appellant in complainant beyond reasonable doubt, they could use it to reason that it was more likely that offences occurred – Where Court of Appeal found bottom slapping evidence did not meet test for admissibility of propensity evidence – Where Court of appeal found evidence admissible under s 132B of *Evidence Act 1977* (Qld) ("evidence of domestic violence") – Whether Court of Appeal erred holding that no miscarriage of justice occurred when evidence inadmissible as propensity evidence was nonetheless left to jury to be used as propensity evidence.

Appealed from QLDSC (CA): [2023] QCA 134

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Immigration

Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M112/2024: [2025] HCATrans 22

Date heard: 1 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Immigration – Ministerial Directions under s 499 of *Migration Act 1958* (Cth) – visa cancellation – point in time of application of Direction - where Ministerial Direction 65 applied at time of delegate's decision refusing to revoke cancellation of appellant's visa – whether Full Court erred in failing to find Administrative Appeals Tribunal erred in applying later Ministerial Direction 90 in conducting review – whether appellant had accrued right for Direction 65 to be applied for purposes of s 7(2)(c) *Acts Interpretation Act 1901* (Cth).

Appealed from FCAFC: [2024] FCAFC 119; (2024) 305 FCR 26

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Industrial Law

Helensburgh Coal Pty Ltd v Bartley & Ors
S119/2024: [2025] HCATrans 15

Date heard: 6 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ

Catchwords:

Industrial law – unfair dismissal – genuine redundancy – redeployment – *Fair Work Act 2009* (Cth), ss 385(b), 389(2) – where s 385(d) provides applicant for unfair dismissal remedy must demonstrate dismissal not case of genuine redundancy – where s 389(2) provides no genuine redundancy if reasonable in all the circumstances to redeploy employee within employer's enterprise – where respondent scaled back mining operations and terminated respondents' employment – whether Full Federal Court erred in construing s389(2) as authorising Fair Work Commission to inquire into whether employer could have made alternative changes to enterprise (including by terminating other operational or staffing arrangements) so as to make position available to otherwise redundant employee – whether determination of genuine redundancy discretionary decision reviewable only for *House v King* error.

Appealed from FCAFC: [2024] FCAFC 45; (2024) 302 FCR 589

Land Law

La Perouse Local Aboriginal Council ABN 89136607167 & Anor v Quarry Street Pty Ltd ACN 616184117 & Anor
S121/2024: [2025] HCATrans 20

Date heard: 13 March 2025

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

Catchwords:

Land law – indigenous land rights – *Aboriginal Land Rights Act 1983* (NSW), s 36 – claimable Crown land – where second respondent Minister proved in part an Aboriginal land claim in relation to Crown Land in Paddington – where first respondent lessee of site described as "Paddington Bowling Club" but site fallen into disuse other than "oral sublease" over small portion of land – where land subject to reservation of Crown land under s 87 *Crown Lands Act* 1989 (NSW) for use as community and sporting club facilities and tourist facilities and services – where first respondent unsuccessfully sought judicial review of Minister's decision to approve claim – where Court of Appeal allowed appeal – where Court of Appeal found land being "used" for purposes of s 36(1) of *Aboriginal Land Rights Act* such that land was not "claimable Crown land" –

whether Court of Appeal erred in finding Minister required to find land was "claimable Crown land" – whether concept of "use" in s 36(1)(b) requires examination of activities on claimed land as opposed to away from or in relation to claimed land – whether definition of "land" in s 4(1) has result that "use" of "any estate or interest" in respect of land either individually or cumulatively will satisfy s 36(1)(b) – whether leasing of land by Crown a "use" within s 36(1)(b).

Appealed from NSWCA: [2024] NSWCA 107

Land Valuation

Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd
M96/2024: [2025] HCATrans 16

Date heard: 7 March 2025

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

Catchwords:

Land valuation – assessment of land value under *Valuation of Land Act 1960* (Vic) – where respondent owner of land subject to heritage-related planning restrictions – where house built in 1897 on land – where respondent successfully objected to valuations in Victorian Civil and Administrative Tribunal – where valuation required assumption that improvements had not been made – where improvements defined in s 2(1) of *Valuation of Land Act* as "all work actually done or material used on and for the benefit of the land, but only in so far as the effect of the work done or material used increases the value of the land" – proper time for assessment of improvements – whether Court of Appeal erred in construing defining of "improvement" as requiring that effect of work done or material used increased value of land at time that work actually done or material used.

Appealed from VSCA: [2024] VSCA 157

Representative proceedings

Kain v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors
Ernst & Young (a Firm) ABN 75 288 172 749 v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors
Shand v R&B Investments Pty Ltd as trustee for the R&B Penson Fund & Ors
S146/2024; S144/2024; S143/2024: [2025] HCATrans 13;
[2025] HCATrans 14

Date heard: 4 and 5 March 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Representative proceedings – common fund orders – open class securities action – application for approval of notice to group members prior to opt-out – where question reserved for Full Federal Court under s 25(6) of *Federal Court of Australia Act 1976* (Cth) whether under Pt IVA of Act Court has power upon settlement or judgment of representative proceeding to make common fund order for distribution of funds to solicitor otherwise than as payment for costs and disbursements incurred in conduct of proceeding – whether Full Court erred in answer question in affirmative.

Appealed from FCAFC: [2024] FCAFC 89; (2024) 304 FCR 395

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Taxation

Commissioner of Taxation v PepsiCo, Inc
Commissioner of Taxation v Stokely-Van Camp, Inc
Commissioner of Taxation v PepsiCo, Inc
Commissioner of Taxation v PepsiCo, Inc
Commissioner of Taxation v Stokely-Van Camp, Inc
Commissioner of Taxation v Stokely-Van Camp, Inc
M98/2024; **M99/2024**; **M100/2024**; **M101/2024**; **M102/2024**; **M103/2024**:
[2025] HCATrans 23; [2025] HCATrans 25

Dates heard: 2 and 3 April 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Taxation – royalty withholding tax – diverted profits tax – where non-resident taxpayer entered into exclusive bottling agreements ("EBAs") with Australian company (SAPL) for bottling and sale of PepsiCo branded beverages – where EBAs included licence of taxpayers' trademarks and other intellectual property but did not provide for royalty – whether Full Federal Court ought to have found payments made under EBAs included "royalty" paid "as consideration for" use of or right to use intellectual property licensed to SAPL within meaning of s 6(1) *Income Tax Assessment Act 1936* (Cth) ("ITAA") – whether Full Court ought to

have found royalty component of EBA was income “derived” by and “paid to” PepsiCo under s 128(2B) ITAA and thereby withholding tax payable under s 128B(5A) – whether if no royalty withholding tax payable Full Court ought to have found liability for diverted profits tax for purposes of ss 177J and 177P ITAA.

Appealed from FCAFC: [2024] FCAFC 86; (2024) 303 FCR 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

Government of the Russian Federation v Commonwealth of Australia
C9/2023

Catchwords:

Constitutional law – heads of power – acquisition of property – where plaintiff held lease granted by defendant in 2008 over parcel of land ("land") in Australian Capital Territory – where in 1990 National Capital Plan took effect under s 21(2) of *Australian Capital Territory (Planning and Land Management) Act 1908* (Cth) ("PLM Act") – where land fell in designated area under s 10(1) of PLM Act – where land is 'national land' under s 27(1) PLM Act – where lease limited use to diplomatic consular or official purpose of Government of Russian Federation – where limited work undertaken on land – where in 2023 *Home Affairs Act 2023* (Cth) ("HAA") came into effect – where plaintiff's lease terminated under s 5 of HAA – where defendant maintains lease terminated on basis of national security – whether HAA invalid on ground that not supported by head of Commonwealth power – whether if HAA otherwise valid operation of HAA results of acquisition of property from plaintiff under s 51(xxxi) *Constitution* requirement payment of reasonable compensation under s 6(1) HAA.

Special case referred to Full Court on 18 December 2024

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Stott v The Commonwealth of Australia & Anor
M60/2024

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where *Land Tax Act 2005* (Vic) imposes land tax on taxable land payable by owner – where second defendant assessed taxable land under *Taxation Administration Act 1997* (Vic) – where *State Taxation Acts Amendment Act 2015* (Vic) created higher rate of land tax for "absentee owner" – where plaintiff ordinarily resident in New Zealand and "absentee owner" – where Australia and New Zealand signed Convention for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe

Benefits and the Prevention of Fiscal Evasion ("Convention") – where Convention given legislative force in *International Tax Agreements Act 1953* (Cth) – where art 24(1) of Convention provides nationals of contracting State shall not be subjected to "any taxation … which is more burdensome than the taxation… to which national of the other State in the same circumstances, in particular with respect to residence, are or may be subjected" – where plaintiff commenced representative proceedings in Federal Court seeking restitution of difference between absentee owner rate and ordinary rate – where proceedings remain on foot – where on 8 April 2024 *Treasury Laws (Amendment Foreign Investment) Act 2024* (Cth) commenced – where on 4 December 2024 ss 42 and 54 of *State* Taxation *Further Amendment Act 2024* (Vic) commenced – whether prior to commencement of *Treasury Laws (Amendment Foreign Investment) Act* s109 of Constitution invalidates ss 7, 8, 25, 104B and cll 4.1-4.5 of Sch 1 to the *Land Tax Act 2005* to extent of inconsistency of art 24(1) of Convention – if so, whether s 5(3) of *International Taxation Agreements Act 1953* valid or effective to remove inconsistency – whether s 5(3) invalid on ground law is with respect of acquisition of property from a person otherwise than on just terms within meaning of s 51(xxxi) Constitution – whether s 106A *Land Tax Act 2005* invalid or inoperative on plaintiff by force of art 24(1) and s 109 Constitution.

Special case referred to Full Court on 18 December 2024.

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CD & Anor v Commonwealth of Australia
A2/2025

Catchwords:

Constitutional law – *Surveillance Legislation (Confirmation of Application) Act 2024* (Cth) ("the Confirmation Act") – Admissibility of evidence of communications obtained through encrypted application AN0M installed on mobile devices – *Telecommunications (Interception and Access) Act 1979* (Cth) – Whether unlawful interception - Where the Confirmation Act operates retrospectively to confirm that: (a) information or records obtained by the AFP under specified warrants in connection with the operation were not intercepted while passing over a telecommunications system; and (b) information obtained in reliance on those warrants was obtained under the *Surveillance Devices Act 2004* (Cth) or the *Crimes Act 1914* (Cth) – Whether the Confirmation Act is invalid in whole or in part because it is an impermissible exercise by the Parliament of the judicial power of the Commonwealth – Whether the Confirmation Act is invalid in whole or in part because it impermissibly interferes with and undermines the institutional integrity of courts vested with federal jurisdiction.

Special case referred to Full Court on 18 March 2025.

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Farmer v Minister for Home Affairs & Anor
S160/2024

Catchwords:

Constitutional law – Migration law – *Migration Act 1958* (Cth) – Where the plaintiff is a citizen of the United States and is not a citizen or resident of Australia – Where the plaintiff is an internationally recognised political commentator – Where the plaintiff arranged to conduct a speaking tour in Australia – Where the plaintiff applied for a Temporary Activity (Class GG) visa for her proposed travel to Australia – Where the Minister for Home Affairs decided to refuse to grant the plaintiff the visa, relying on s 501(6)(d)(iv) of the Act in making the decision – Where the Minister reasonably suspects that the plaintiff does not pass the character test and that it is in the national interest to refuse to grant the plaintiff a visa – Validity of s 501(6)(d)(iv) – Whether invalid on the ground that it infringes the implied freedom of political communication – Whether the Minister adopted an incorrect construction of s 501(6)(d)(iv).

Special case referred to Full Court on 13 March 2025.

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5: SECTION 40 REMOVAL

The following cases have been removed into the High Court of Australia under s 40 of the *Judiciary Act 1903* (Cth).

Constitutional Law

G Global 120E T2 Pty Ltd as trustee for the G Global 120E AUT v Commissioner of State Revenue
G Global 180Q Pty Ltd as trustee for the G Global 180Q AUT v Commissioner of State Revenue

B48/2024; B49/2024; B50/2024

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance ("German Agreement") given legislative force under s 5(1) *International Tax Agreements Act 1953* (Cth) ("ITAA") – where first respondent imposed foreign land tax surcharge under s 32(1)(b)(ii) of *Land Tax Act 2010* (Qld) ("LTA") on basis that first respondent a foreign company or trustee of foreign trust – where first respondent contended this had effect of imposing more burdensome taxation on enterprise carried on by resident of Australia the capital of which partly owned by resident(s) of Germany than on other similar enterprises carried on by Australian resident contrary to art 24(4) of German Agreement - validity of *Treasury Laws Amendment (Foreign Investment) Act 2024* (Cth) which inserted s 5(3) into ITAA which provides that operation of a provision of a bilateral tax agreement provided for in s 5(1) "is subject to anything inconsistent with the provision contained in a law of the Commonwealth, or of a State or Territory, that imposed a tax other than an Australian tax, unless expressly provided otherwise in that law" – where s 5(3) expressed to operate with retrospective effect – whether prior to commencement of the *Treasury Laws Amendment (Foreign Investment) Act 2024,* s 32(1)(b)(ii) of LTA invalid in application to appellants, by force of s 109 of the Constitution by reason of its inconsistency with s 5(1) of ITAA – if so, whether 5(3) of the International Tax Agreements Act 1953 (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment(Foreign Investment) Act*), in so far as it operates by reference to provision contained in a law of a State, supported by head of Commonwealth legislative power – if so whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*), when read with cl 2 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*, effective to remove inconsistency between s 32(1)(b)(ii) of the LTA and s 5(1) of ITAA and any consequent invalidity – if so, whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign*

Investment) Act 2024) when read with cl 2 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024* invalid (in whole or in part) because it effected an acquisition of the property of appellants otherwise than on just terms within meaning of s 51(xxxi) of the Constitution.

Proceedings removed into the High Court from Supreme Court of Queensland under s 40 of the Judiciary Act 1903 (Cth); special case referred to Full Court on 19 December 2024.

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6: SPECIAL LEAVE GRANTED

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

Aviation Law

Evans & Anor v Air Canada ABN 29094769561
S138/2024: [2024] HCASL 270

Date determined: 10 October 2024 – *Special leave granted*

Catchwords:

Aviation law – international carriage of passengers by air – *Unification of Certain Rules of International Carriage by Air 1999 ("Montreal Convention")* – where appellants sought damages in Supreme Court of New South Wales for injuries allegedly suffered from turbulence on Air Canada flight from Vancouver to Australia under art 17 of Montreal Convention (incorporated into Australian law under s 9B *Civil Aviation (Carriers' Liability) Act 1959* (Cth) – where respondent pleaded it was not liable for damages exceeding "113,100 Special Drawing Rights" in accordance with art 21 of Montreal Convention – where appellants relied on rule 105(C)(1)(a) of Air Canada's International Tariff General Rules which stipulated there were no financial limits on compensatory damages recoverable in respect of bodily injuries – where Court of Appeal found rule 105(C)(1)(a) did not have effect of waiving defence created by art 21 – whether Court of Appeal erred in construing arts 17, 21 and 25 of Montreal Convent ion by treating rule 105(C)(1)(a) as form of consumer notification rather than term of contract of carriage – whether Court of Appeal erred in holding stipulation in rule 105(C)(1)(a) did not preclude financial limit under art 21(2) in cases where damages would exceed a monetary or financial amount and carrier proves no fault – whether Court of Appeal erred in not holding operation of rule 105(C)(1)(a) constitutes a stipulation for purposes of art 25 and displaced application of art 21(2) of Montreal Convention.

Appealed from NSWCA: [2024] NSWCA 153

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Constitutional Law

Farshchi v The King
M20/2025: [2025] HCADisp 41

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Constitutional law – Inconsistency – Criminal law – Appeal – Conviction – Where appellant charged with causing a person to remain in forced labour and conducting a business involving forced labour – *Criminal Code Act* 1995 (Cth) – ss 270.6A(1) and (2) – Trial – *Jury Directions Act* 2015 (Vic) – s 64(1)(e) – Where trial judge directed the jury as to the meaning of the phrase "beyond reasonable doubt" – Whether trial judge erred by directing the jury that a reasonable doubt is not an unrealistic possibility – Whether direction diminishes the criminal standard of proof – Whether direction inconsistent with s 13.2 of the *Criminal Code* (Cth) and s 80 of the *Constitution* – Whether s 64(1)(e) is thereby not picked up by s 68(1) of the *Judiciary Act 1903* (Cth) to apply to trials conducted in federal jurisdiction.

Appealed from VSCA: [2024] VSCA 235

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Contract Law

R Lawyers v Mr Daily & Anor
A8/2025: [2025] HCADisp 48

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Contract law – Negligence – Where parties to a marriage entered into a binding financial agreement – Where the purpose of the agreement was to agree in advance how the parties' existing and after-acquired property would be divided in the event of their later separation – Where advice of solicitors for one party in relation to the preparation and negotiation of agreement was inadequate – Where, following the parties' separation, the financial agreement was found to be unenforceable – Whether the party's contract claim against former solicitors was statute barred – Time when a negligently drawn contract first sees damage sustained – Whether loss and damage was sustained by the party upon entry into the defective contract or a later date – Where primary judge found that no loss or damage was sustained by the party until, at the earliest, the date of separation, such that the party's claim against his former solicitors was not statute barred – Where through a solicitor's negligence in the drafting and preparation of a contract a client fails to secure contractual protection against a contingent loss or liability – Whether actionable damage is sustained immediately at the time of the entry into the contract or only upon the occurrence of the contingency.

Appealed from FedCFamC1A: [2024] FedCFamC1A 185

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Shao v Crown Global Capital Pty Ltd (in prov liq) ACN 604 292 140 & Anor
S46/2025: [2025] HCADisp 81

Date determined: 3 April 2025 – *Special leave granted*

Catchwords:

Where Facility Agreement required two lenders nominate a bank account into which proceeds could be paid — where only one lender nominated an account — where proceeds of facility paid into nominated account in breach of requirements of agreement such that borrower did not obtain good discharge of its debt — where proceedings as between the two lenders were litigated — whether those proceedings amounted to ratification of rogue lender's nomination such that the borrower obtained good discharge of its debt — whether right of action now lies against borrower – where debtor repays a debt in breach of contract by, for example, repaying it into the wrong bank account (or otherwise contrary to the contractual instructions of the creditor) – whether the creditor can accept repayment of the debt but sue the debtor for damages arising from the breach of contract.

Appealed from NSWCA: [2024] NSWCA 302

Criminal Law

The King v McGregor
S45/2025: [2025] HCADisp 66

Date determined: 3 April 2025 – *Special leave granted*

Catchwords:

Sentencing — appeal against sentence — statutory mandatory minimum sentence prescribed — proper construction of s 16AAC of the *Crimes Act 1914* (Cth) — reduction of mandatory minimum where provisions in s 16AAC(3) apply — whether provision is to be treated as capping maximum discount as a proportion of the mandatory minimum, as opposed to provision setting a minimum floor — federal offenders — sentence by State court for offence against Commonwealth law — whether aggregate sentencing under s 53A of *Crimes (Sentencing Procedure) Act 1999* (NSW) can be applied to federal offences — whether s 53A is capable of being picked up by s 68(1) of the

Judiciary Act 1903 (Cth) and applied to the sentencing of all federal offenders in New South Wales.

Appealed from NSWCCA: [2024] NSWCCA 200

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Negligence

Cullen v State of New South Wales
S47/2025: [2025] HCADisp 82

Date determined: 3 April 2025 – *Special leave granted*

Catchwords:

Duty of care – public authorities – injury – bystander – whether police officers owe duty to take reasonable care to avoid risk of harm to class of persons in immediate vicinity of operational response during protest march – risk of harm in police actions inflicting physical injury on identified class of persons – s 43A of *Civil Liability Act 2002* (NSW) - breach – whether regard to be had to police obligations to take actions to prevent breaches of the peace even in crowded situations – causation – whether conduct of the officers was causative of the harm suffered by the appellant – whether beyond the scope of the respondent's legal liability under s 5D(1)(b) of the *Civil Liability Act 2002* (NSW).

Appealed from NSWCA: [2024] NSWCA 310

Restitution

Gray v Lavan (A Firm)
P7/2025: [2025] HCADisp 77

Date determined: 3 April 2025 – *Special leave granted*

Catchwords:
Unjust enrichment – where client engaged a firm of solicitors to conduct litigation on his behalf – where the firm issued, and the client paid, invoices for legal work performed by the firm over many years – where invoices were subject to the client's right to obtain a taxation and the return of excessive charges – where 10 years after the final payment the parties resolved their dispute as to the amount overpaid, but excluding the client's claim to interest, on the basis that the firm would repay $900,000, this amount reflecting what would have been found to be excessive as not fair and reasonable and ordered to be refunded to the client by the firm if the taxation had proceeded – whether

the firm was unjustly enriched, because there had been a failure of basis, or a total failure of consideration, in respect of those overpaid sums, that warranted their repayment – whether the measure of the firm's enrichment was not merely the value of the principal sum, but also the use value of that sum for ten years prior to repayment – whether to reverse its unjust enrichment, the firm was obliged to pay interest to the client (whether simple or compound), and not merely the principal sum.

Appealed from WASCA: [2024] WASCA 147

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Statutes

CD & Anor v Director of Public Prosecutions (SA) & Anor
A24/2024: [2024] HCASL 297

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Telecommunications (Interception and Access) Act 1979* (Cth) ("the Act"0 – admissibility of evidence obtained communications obtained through encrypted application "AN0M" installed on mobile devices – where appellants charged with participating in criminal organisation and firearms offences – where prosecution seeks to lead evidence of communications obtained through "AN0M" application – where "AN0M" operated such that when mobile device user pressed 'send' on text message separate second message created in AN0M application with copy of message and additional data and sent via XMPP server to an "iBot" server which then re-transmitted to servers accessible by Australian Federal Police – whether AFP's conduct in obtaining evidence of AN0M communications involved interception of communication passing over telecommunications system contrary to s7(1) of Act and thereby inadmissible – where Court of Appeal found use of AN0M application and platform did not involve interception of communication – where s 5F of Act provides communication taken to start passing over telecommunications system when sent or transmitted by person send communication and taken to continue to pass over system until accessible to intended recipient – whether Court of Appeal erred in failing to find under s 5F(a) of Act that having composed text message and pressing 'send' on mobile device connected to telecommunications system start of process for sending message over that system – whether Court of Appeal erred in failing to find covert copying of text message and covert transmission of message upon pressing 'send' unlawful interception – whether Court of Appeal erred in construction of term "intended recipient" by finding "iBot" server intended recipient under ss 5F(b) and 5GH of Act.

Appealed from SASCA: [2024] SASCA 82

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Palmanova Pty Ltd v Commonwealth of Australia
S147/2024: [2024] HCASL 294

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Protection of Movable Cultural Heritage Act 1986* (Cth) ("the Act") – where Bolivian artefact purchased by applicant from US gallery in 2020 seized upon entry into Australia under Act – whether artefact exported from Bolivia to US prior to 1960 – where artefact seized upon entry into Australia under s 14 of Act – whether artefact liable for forfeiture – temporal operation of Act – whether majority of Full Federal Court erred in interpretation of s 14(1) of Act by concluding Act not limited in application to protected object of foreign country exported from that country after date of commencement of Act (1 July 1987) – whether majority erred in concluding unnecessary to consider extrinsic material in construction of s 14.

Appealed from FCAFC: [2024] FCAFC 90; (2024) FCR 163

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Torts

Hunt Leather Pty Ltd ACN 000745960 & Anor v Transport for NSW
Hunt Leather Pty Ltd ABN 46000745960 & Ors v Transport for NSW

S135/2024; S136/2024: [2025] HCADisp 12

Date determined: 6 February 2025 – *Special leave granted*

Catchwords:

TORTS – nuisance – private nuisance – appellants claimed their properties were affected by construction of Sydney Light Rail – whether interference with enjoyment of appellants' property substantial and unreasonable – whether failure by appellants to establish a failure to take reasonable care determinative – whether respondent bore onus of establishing that it took reasonable care – whether respondent failed to take reasonable care – significance to cause of action in nuisance of taking reasonable care – whether use of road for construction purposes exceptional – whether interference with reasonable enjoyment inevitable – whether delay in construction attributable to discovery of unknown utilities – whether damages should include a "recovery period" – whether s 43A of *Civil Liability Act 2002* (NSW) applicable – damages –

pure economic loss – funded litigation – funding agreement included commission to funder – whether commission recoverable as component of damages.

Appealed from NSWCA: [2024] NSWCA 227

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Michael Stewart by his litigation guardian Carol Schwarzman v Metro North Hospital and Health Service (ABN 184 996 277 942)
B10/2025: [2025] HCADisp 35

Date determined: 6 March 2025 – *Special leave granted*

Catchwords:

Torts – Assessment of damages – Cost of future care – Location – Where the appellant suffered personal injuries arising from his treatment as a patient at a hospital operated by the respondent – Where, at trial, the respondent admitted duty, breach and causation – Where the assessment of damages for the injuries was at issue – Where the primary judge awarded damages in the sum of $2,190,505.48, before management fees to the appellant – Where the basis of the primary judge's award of damages was to provide enhanced care and therapy while the appellant resided at a care facility – Where the appellant sought significantly higher damages, on the basis the appellant has communicated a desire to live independently, rather than in a care facility – Whether the primary judge erred in assessing damages.

Appealed from SCQCA: [2024] QCA 225

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Trade Marks

Bed Bath 'N' Table Pty Ltd (ACN 005 216 866) v Global Retail Brands Australia Pty Ltd (ACN 006 348 205)
M32/2025: [2025] HCADisp 65

Date determined: 3 April 2025 – *Special leave granted*

Catchwords:

Consumer law – misleading or deceptive conduct – passing off – whether, by its use of trade mark in relation to soft homewares in a market in which the appellant's trade mark has a significant reputation accumulated over a 40 year period in the soft homewares market, the respondent contravened s 18(1) of

the *Australian Consumer Law* – whether respondent's use of trade mark was misleading and deceptive – where primary judge found that the respondent's representatives were "wilfully blind" to the risk of confusion – "fitted for purpose" test.

Appealed from FCAFC: [2024] FCAFC 139

Taylor v Killer Queen LLC & Ors

S49/2025: [2025] HCATrans 031

Date determined: 11 April 2025 – *Special leave granted*

Catchwords:

Infringement – defence to infringement – where infringing mark is deceptively similar to the registered mark – whether person using the infringing mark would obtain registration – honest concurrent use – whether concurrent use established – whether honest use established – cancellation – whether, because of reputation in prior mark, use of the registered mark would be likely to deceive or cause confusion – where ground of cancellation established – whether discretion should be exercised not to cancel the registration of the registered mark.

Appealed from FCAFC: [2024] FCAFC 149

7: CASES NOT PROCEEDING OR VACATED

Criminal law

The King v Batak
S148/2024: [2025] HCATrans 027

Date heard: 8 April 2025 ***Special leave revoked***

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – complicity – accessorial liability – whether common law principles of complicity apply to offence of murder under s 18(1)(a) *Crimes Act 1900* (NSW) – whether Court of Criminal Appeal erred in concluding it was error of law to permit constructive law to be left to jury on basis of accessorial liability – whether accessory before the fact to constructive murder an offence known to law in New South Wales – if so, whether mental element differs depending on whether act causing death coincides with physical elements of foundational offence of whether a distinct act.

Appealed from NSWCCA: [2024] NSWCCA 66

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 3 April 2025

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
1.	Wu	Wu (C2/2025)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2024] ACTCA 35	Special leave refused [2025] HCADisp 57
2.	Ford	The Council of the Law Society of the Australian Capital Territory (C5/2025)	Supreme Court of the Australian Capital Territory (Full Court) [2024] ACTSCFC 2	Special leave refused [2025] HCADisp 58
3.	Farrant	Westpac Banking Corporation (P2/2025)	Supreme Court of Western Australia (Court of Appeal) [2024] WASCA 157	Special leave refused [2025] HCADisp 59
4.	Ghosh	Ghosh (M1/2025)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 294	Special leave refused [2025] HCADisp 60
5.	Hicks	Slater and Gordon Ltd (ACN 097 297 400) (M9/2025)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 298	Special leave refused [2025] HCADisp 61
6.	Mr Gin	Ms Hing (M6/2025)	Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave refused [2025] HCADisp 62
7.	AGD19	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S1/2025)	Federal Court of Australia [2024] FCA 1298	Special leave refused [2025] HCADisp 63
8.	Attorney-General for the State of Queensland	Van De Wetering (B72/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 222	Special leave refused with costs [2025] HCADisp 64
9.	Palmer	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (S2/2025)	Full Court of the Federal Court of Australia [2024] FCAFC 154	Special leave refused with costs [2025] HCADisp 67
10.	Transport for NSW	Goldmate Property Luddenham No 1 Pty Ltd (S4/2025)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 292	Special leave refused with costs [2025] HCADisp 68
11.	Badenoch Integrated Logging Pty Ltd (ACN 097 956 995)	Daniel Matthew Bryant and Craig David Crosbie in their capacities as joint and several liquidators (M4/2025)	Full Court of the Federal Court of Australia [2024] FCAFC 167	Special leave refused with costs [2025] HCADisp 69

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
12.	Badenoch Integrated Logging Pty Ltd	Daniel Matthew Bryant and Craig David Crosbie in their capacities as joint and several liquidators (M5/2025)	Full Court of the Federal Court of Australia [2024] FCAFC 167	Special leave refused with costs [2025] HCADisp 69
13.	Kumar	Minister for Immigration and Multicultural Affairs & Ors (B77/2024)	High Court of Australia [2024] HCASJ 41	Leave refused with costs [2025] HCADisp 70
14.	Kumar	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (B2/2025)	Full Court of the Federal Court of Australia [2024] FCAFC 79	Special leave refused with costs [2025] HCADisp 71
15.	Forostenko	Springfree Trampoline Australia Pty Ltd (B4/2025)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 255	Special leave refused with costs [2025] HCADisp 72
16.	Footscray Football Club Limited (ACN 005 226 595)	Kneale (M3/2025)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 314	Special leave refused with costs [2025] HCADisp 73
17.	Girchow Enterprises Pty Ltd & Ors	Husseini & Ors (S153/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 143	Special leave refused with costs [2025] HCADisp 74
18.	Tan & Anor	Blue Mirror Pty Ltd (ACN 640 259 445) & Anor (S158/2024)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 253	Special leave refused with costs [2025] HCADisp 75
19.	Hytera Communications Corporation Ltd & Anor	Motorola Solutions Inc. (S7/2025)	Full Court of the Federal Court of Australia [2024] FCAFC 168	Special leave refused with costs [2025] HCADisp 76
20.	McIver	Australian Capital Territory (C3/2025)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2024] ACTCA 36	Special leave refused with costs [2025] HCADisp 78
21.	Williams	Australian Capital Territory (C4/2025)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2024] ACTCA 36	Special leave refused with costs [2025] HCADisp 79
22.	Harris Health Care Pty Limited ACN 071 243 617	Alan John Hayes in his capacity as liquidator of Sirrah Pty Ltd (In Liquidation) & Ors (S8/2025)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 301	Special leave refused with costs [2025] HCADisp 80
23.	JR	State of New South Wales (S11/2025)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 308	Special leave refused with costs [2025] HCADisp 83

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
24.	Jensen	State of New South Wales (S12/2025)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 308	Special leave refused with costs [2025] HCADisp 84
25.	Dickens	State of New South Wales (S13/2025)	Supreme Court of New South Wales (Court of Appeal) [2024] NSWCA 308	Special leave refused with costs [2025] HCADisp 85