

# THE AUSTRALIAN LAW JOURNAL

**VOLUME 82**

January 2008 — December 2008

GENERAL EDITOR  
MR JUSTICE P W YOUNG AO

PRODUCTION EDITOR  
CHERYLE KING

ASSISTANT GENERAL EDITOR  
ANGELINA GOMEZ

INDEX  
ALAN WALKER BA (Hons), DipLib

**THOMSON REUTERS**  
**2008**

**Customer Service and Sales Inquiries**

Tel: 1300 304 195

Fax: 1300 304 196

Web: [www.thomsonreuters.com.au/legal/](http://www.thomsonreuters.com.au/legal/)

Email: [LTA.Service@thomsonreuters.com](mailto:LTA.Service@thomsonreuters.com)

**Editorial Inquiries**

Tel: 61 2 8587 7000

**HEAD OFFICE**

100 Harris Street  
Pyrmont NSW 2009

Tel: 61 2 8587 7000

Fax: 61 2 8587 7100



**THOMSON REUTERS**

©Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0004-9611

Typeset by Thomson Reuters (Professional) Australia Ltd, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW

The mode of citation of this volume of the  
AUSTRALIAN LAW JOURNAL will be: (2008) 82 ALJ

---

## TABLE OF CONTENTS

---

### AUSTRALIAN LAW JOURNAL

TABLE OF AUTHORS .....	v
TABLE OF CASES .....	ix
AUSTRALIAN LAW JOURNAL, VOL 82, No 1, January 2008 to No 12, December 2008 .....	1-888
INDEX .....	889

### AUSTRALIAN LAW JOURNAL REPORTS

TABLE OF CASES REPORTED .....	v
CORRIGENDA .....	ix
AUSTRALIAN LAW JOURNAL REPORTS, VOL 82 .....	1-1525
INDEX .....	1527

---

### ARRANGEMENT OF INDEXES AND TABLES OF CASES

- There are separate Indexes and Tables of Cases to ALJ and ALJR.
- The ALJ Index covers all the material in the Journal. In addition there is an Index of Authors covering the feature articles. The Table of Cases is a table for this volume of all English, Australian, and other decisions, which have formed the subject matter of explanation and comment in articles and in notes and paragraphs in the various departments of the Journal.
- The ALJR Index and Table of Cases relate solely to the cases reported in the Reports, that is, to cases decided by the High Court of Australia.

Comprehensive Tables of Contents for each monthly Part are available at  
[http://www.thomsonreuters.com.au/support/ps\\_index.asp](http://www.thomsonreuters.com.au/support/ps_index.asp)

---



## TABLE OF AUTHORS

AITKEN, LEE —	
Recovery of Chattels in the Common and Civil Law: Possession, Bailment, and Spoliation Suits ..	379
BASTIN, LUCAS AND JUSTICE BRIAN TAMBERLIN —	
David Hicks in the Australian Courts: Past and Future Legal Issues.....	774
BERGIN, JUSTICE P A —	
Mediation in Hong Kong: the Way Forward – Perspectives from Australia .....	196
BOGE, CHRIS —	
A Buyer’s “Interest” in Land under an Uncompleted Contract: a Return to Principle .....	266
BUCKLEY, ROSS P AND MARK DANIELSON —	
Facilitation Payments in International Business: a Proposal to make Criminal Code, s 70.4, Workable .....	92
COLLIER, JUSTICE BERNA —	
Bankrupt Husbands and the Application of the Doctrine of Exoneration in Australian Law: Moving into the 21st Century .....	720
CORKHILL, ANDREW AND MADELEINE SELWYN —	
Evolution of the Common Law Principle of “Issue Waiver”.....	338
COYLE, IAN R, DAVID FIELD AND GLEN MILLER —	
The Blindness of the Eye-Witness .....	471
CRENNAN, SUSAN M —	
Scepticism and Judicial Method .....	169
DANIELSON, MARK AND ROSS BUCKLEY —	
Facilitation Payments in International Business: a Proposal to make Criminal Code, s 70.4, Workable .....	92
DE JERSEY AC, HON P —	
Aspects of the Evolution of the Judicial Function .....	607

---

ELLICOTT QC, R J —	
The Autochthonous Expedient and the Federal Court .....	700
ELLIOTT, MICHAEL AND JUSTIN GLEESON SC —	
Role of Executor in Context of Pre-emptive Rights Provisions.....	392
FIELD, DAVID, IAN R COYLE AND GLEN MILLER —	
The Blindness of the Eye-Witness .....	471
FRENCH, JUSTICE R S —	
Compensation for Marine Pollution.....	527
Dolores Umbridge and Policy as Legal Magic .....	322
FRYBERG, H G —	
Military Commissions: Should Australia Have Some?.....	636
GLEESON SC, JUSTIN AND MICHAEL ELLIOTT —	
Role of Executor in Context of Pre-emptive Rights Provisions.....	392
GLEESON, MURRAY —	
Australia's Contribution to the Common Law.....	247
GOMEZ, ANGELINA —	
Retributive Justice vs Restorative Justice: the Rwandan Experience .....	105
KEANE, P A —	
Judicial Review: the Courts and the Academy .....	623
LAWRENCE, RABBI JEREMY —	
God, Details, Justice and the Rule of Law .....	377
LEVINGSTON, JOHN —	
Admiralty and Insolvency Courts in Conflict .....	849
MCBAIN, GRAHAM S —	
Abolishing the Crime of Sedition: Part 1 .....	543
MCPHERSON CBE, HON B H —	
Judicial Honorifics .....	614

---

---

MANTZIARIS, CHRISTOS —	
Client Legal Privilege in Administrative “Proceedings”: Killing off the Adversarial/Inquisitorial Distinction .....	397
MASON AC KBE, SIR ANTHONY —	
Supreme Court of New South Wales: Opening of Law Term Judges’ Dinner .....	839
MASON AC, JUSTICE KEITH —	
President Mason’s Farewell Speech .....	768
Throwing Stones; Cost/Benefit Analysis of Judges being Offensive to Each Other .....	260
MILLER, GLEN, IAN R COYLE AND DAVID FIELD —	
The Blindness of the Eye-Witness .....	471
MORGAN, DANIEL —	
Reforming Parliamentary Privilege in Queensland.....	461
O’BRYAN, NORMAN AND CHRIS YOUNG —	
A View from Outside the Vortex on Keith Mason’s Retirement Speech and the Australian Doctrine of Judicial Precedent.....	771
PRESTON, HON JUSTICE BRIAN J —	
The Environment and its Influence on the Law .....	180
SACKVILLE, RONALD —	
Intermediate Appellate Courts: the Multiple Issues Dilemma .....	650
SELWYN, MADELEINE AND ANDREW CORKHILL —	
Evolution of the Common Law Principle of “Issue Waiver” .....	338
SPIGELMAN AC, HON J J —	
Consistency and Sentencing .....	450
Lord Mansfield and the Culture of Improvement .....	764
STOLJAR, JEREMY —	
Mortgages, Indefeasibility and Personal Covenants to Pay .....	28
TAMBERLIN, JUSTICE BRIAN AND LUCAS BASTIN —	
David Hicks in the Australian Courts: Past and Future Legal Issues.....	774
TARRANT, JOHN —	
Construing Undertakings and Court Orders.....	82

---

---

TEY, TSUN HANG —	
Reforming the Presumption of Advancement.....	40
VILLALTA PUIG, GONZALO AND MICHAEL WOODS —	
The Constitutionality of National Port Regulation .....	789
WESTGARTH, STUART —	
In-House Counsel and Client Legal Privilege: the Issue of Independence .....	333
WOODS, MICHAEL AND GONZALO VILLALTA PUIG —	
The Constitutionality of National Port Regulation .....	789
YOUNG, CHRIS AND NORMAN O'BRYAN —	
A View from Outside the Vortex on Keith Mason's Retirement Speech and the Australian Doctrine of Judicial Precedent.....	771

---



## TABLE OF CASES<sup>\*</sup>

13 Coromandel Place Pty Ltd v CL Custodians Pty Ltd, 873  
 2660 Woodley Road Joint Venture v ITT Sheraton Corp, 517

### A

- A v Hayden, 193  
 A v Refugee Status Appeals Authority, 168  
 AB v Refugee Status Appeals Authority, 168  
 Abbasi v Secretary of State, 777–779  
 Abbott v New South Wales Monte de Piete Co, 387  
 Abebe v Commonwealth, 405  
 Abu Ali v Ashcroft, 785  
 ACCC. — *see* Australian Competition & Consumer Commission  
 Ackroyd v McKechnie, 188  
 “Acrux”, The, 868  
 Actors & Announcers Equity Association of Australia v Fontana Films Pty Ltd, 800, 803  
 Addis v Gramophone Co, 368–369  
 Adealon International Ltd v Merton London Borough Council, 155–156  
 Adelaide Steamship Co Ltd v Spalvins, 338, 343, 345–347, 772  
 African Farms Ltd, Re, 852  
 AG. — *see* Attorney-General  
 Agent Orange case, 186  
 Aird, Re; Ex parte Alpert, 636  
 Airlines of New South Wales Pty Ltd v New South Wales [No 2], 799  
 Akai Pty Ltd v People’s Insurance Co Ltd, 322  
 Akins v Abigroup Ltd, 772  
 Aktiebolaget Hassle v Alphapharm Pty Ltd, 654–655  
 Al-Hashimi v The Queen, 495–496  
 Al-Kateb v Godwin, 190, 404  
 Albarran v Members of the Companies, Auditors & Liquidators Disciplinary Board, 410  
 Albion Insurance Co Ltd v Government Insurance Office (NSW), 723  
 Aldrich v Cooper, 723  
 Alegrete Shipping Co Inc v International Oil Pollution Compensation Fund 1971 (The “Sea Empress”), 539  
 Alexander v The Queen, 471–472, 477, 482–485, 489–490, 494–495  
 “Alexander Larsen”, The, 858  
 Alicia Hosiery Ltd v Brown Shipley & Co Ltd, 382  
 “Aline”, The (1839), 870  
 Allen v Feather Products Pty Ltd, 374  
 Allen v Snyder, 286  
 Almon (1770), 576  
 AM & S Europe Ltd v Commission of the European Communities (Case 155/79), 403  
 Amaca Pty Ltd v New South Wales, 836  
 Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank, 250  
 Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (Engineers’ Case), 795, 798  
 American Cyanamid Co v Ethicon Ltd, 857  
 Amirbeaggi v Business in Focus (Australia) Pty Ltd, 447  
 Ampolex Ltd v Perpetual Trustee Co (Canberra) Ltd, 341–342, 344  
 “Andalina”, The (1886), 869, 870  
 Andco Nominees Pty Ltd v Lestato Pty Ltd, 392, 395  
 Anderson Group Pty Ltd v Tynan Motors Pty Ltd, 381, 386, 390–391  
 Anderton (1693), 571  
 Andrews v Wilcox, 753–754  
 Ang Toon Teck v Ang Poon Sin, 44–45, 57  
 Anglo-Baltic and Mediterranean Bank v Barber & Co, 858–859  
 Antaios Compania Naviera SA v Salen Rederierna AB, 244  
 Antwerp Bulkcarriers NV v Holt Cargo Systems Inc, 856  
 Anvil Hill Project Watch Association Inc v Minister for the Environment and Water Resources, 409

<sup>\*</sup> This Table includes only cases referred to in articles, notes etc, of the Journal. There is a separate Table of Cases Reported in the ALJR.

- AP Pollution Control Board v Prof MV Nayudu (ret'd), 191
- APLA Ltd v Legal Services Commissioner (NSW), 188
- Aquilina Holdings Pty Ltd v Lynndell Pty Ltd, 762–763
- Archbishop of York, Case of (1562), 563
- Arena v Nader, 462–463, 470, 658
- Aribisala v St James Homes (Grosvenor Dock) Ltd, 760–761
- Arico Trading International Pty Ltd v Kimberley-Clark Australia Pty Ltd, 653
- Aristoc Industries Pty Ltd v RE Wenham (Builders) Pty Ltd, 387
- Armstrong v Budd, 469, 658
- Aro Co Ltd, Re, 851, 861
- “Arosa Kulm”, The (No 2), 867
- Arthur Yates & Co Ltd, Re, 499
- ASC. — *see* Australian Securities Commission
- Ashe v National Westminster Bank plc, 447
- Ashley v Chief Constable of the Sussex Police, 693
- ASIC. — *see* Australian Securities and Investments Commission
- Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd, 268
- Associated Japanese Bank (International) Ltd v Credit du Nord SA, 252
- “Athena”, The, 854
- Athens v Randwick City Council, 83–85, 91
- Atlantic 3-Financial (Aust) Pty Ltd v Deskhurst Pty Ltd, 28
- Atlantic Salvage & Dredging Ltd v The “Calgary Catalina”, 860
- “Atlantic Star”, The, 856
- Atos Consulting Ltd v Avis Europe plc, 243
- Attorney-General v Boothe (1596), 560
- Attorney-General v Carewe, 560
- Attorney-General v Fowles (1630), 566
- Attorney-General v Mison (1599), 560
- Attorney-General v Nissan, 783–784
- Attorney-General v Norstedt “The Triton” (1816), 869
- Attorney-General v Smith(e) (1596), 558, 560
- Attorney-General v Stewart, 695
- Attorney General (Canada) v Attorney General (Ontario), 615–616
- Attorney General (Cth); Ex Rel McKinlay v Commonwealth, 25
- Attorney General (Cth) v Alinta Pty Ltd, 410
- Attorney General (Cth) v Oates, 627
- Attorney-General (NT) v Kearney, 333, 398
- Attorney-General (NT) v Maurice, 338–339, 341–342, 344, 398, 401–402, 405–406, 413
- Attorney General (UK) v Heinemann Publishers Australia Pty Ltd [No 2], 776
- Attorney-General (WA); Ex rel Ansett Transport Industries (Operations) Pty Ltd v Australian National Airlines Commission, 799
- Australand Corp (Qld) Pty Ltd v Johnson, 21
- Australian Broadcasting Tribunal, Re; Ex parte Hardiman, 268
- Australian Broadcasting Tribunal v Bond, 256, 624
- Australian Capital Television Pty Ltd v Commonwealth, 188
- Australian Capital Territory Health Authority v Berkeley Cleaning Group Ltd, 624
- Australian Coastal Shipping Commission v O'Reilly, 797
- Australian Competition & Consumer Commission v ABB Power Transmission Pty Ltd, 695
- Australian Competition & Consumer Commission v Australian Safeway Stores Pty Ltd, 411
- Australian Competition & Consumer Commission v Dataline.net.au Pty Ltd (in liq), 90
- Australian Competition & Consumer Commission v Maritime Union of Australia, 799
- Australian Competition & Consumer Commission v Visy Paper Pty Ltd, 651
- Australian Conservation Foundation v Commonwealth, 187
- Australian Conservation Foundation v Forestry Commission of Tasmania, 187
- Australian Conservation Foundation v Latrobe City Council, 187
- Australian Conservation Foundation v Minister for Resources, 187
- Australian Co-operative Foods Ltd, Re, 499
- Australian Direct Steam Navigation Co, Re, 858
- Australian Energy Ltd v Lennard Oil NL [No 2], 83–86
- Australian Hardwoods Pty Ltd v Commissioner for Railways, 272
- Australian National Airways Pty Ltd v Commonwealth, 797, 799
- Australian National University v Burns, 624, 628
- Australian National University v Lewins, 624, 628, 631
- Australian Receivables Ltd v Tekitu Pty Ltd, 447
- Australian Safeway Stores Pty Ltd v Zaluzna, 254–255

Australian Securities and Investments Commission v Adler, 499  
 Australian Securities and Investments Commission v P Dawson Nominees Pty Ltd, 694–695  
 Australian Securities and Investments Commission v Skase, 90  
 Australian Securities Commission v Marlborough Gold Mines Ltd, 772  
 Awa v Independent News Auckland, 319  
 AWB Ltd v Cole, 398–400, 404–411, 415  
 Azzopardi v The Queen, 524

## B

- B v B, 51  
 B & L Linings Pty Ltd v Chief Commissioner of State Revenue, 835–837  
 Bagilishema case (2000), 116  
 Bagnall (1494), 555  
 Bagot v Oughton, 727–728  
 Bahr v Nicolay [No 2], 270, 271  
 Baker (1688), 570  
 Baker v Barclays Bank, 391  
 Baker v Campbell, 397–398, 401–405, 413  
 Baker v Carr, 783  
 Baker v McGlynn, 203  
 Baker v The Queen, 609–610  
 Baloglow v Konstanidis, 270  
 “Banco”, The, 860–861  
 Banco Nacional de Cuba v Sabbatino, 776  
 “Bangor Castle”, The (1896), 1871  
 Bank of Ethiopia v National Bank of Egypt and Ligouri, 852  
 Bankers Trust International Ltd v Todd Shipyards Corp, 851  
 Barcelona Traction, Light & Power Co Ltd, 778  
 Barclays Bank plc v O’Brien, 724  
 Barclays Mercantile Business Finance Ltd v Sibec Ltd, 384  
 Barilla v James, 339–340  
 Barker v Barker, 19  
 Barlow Clowes International Ltd (in liq) v Eurotrust International Ltd, 250  
 Barnardistan (1684), 569  
 Barnes v Addy, 249–250, 324  
 Barrow (1593), 558  
 Barton v Commonwealth, 414  
 Barton v Taylor, 463  
 Barton v Walker, 286  
 Bass v Clivley, 166  
 Bass v Permanent Trustee Co Ltd, 650  
 Bastwick, Burton and Prynne (1637), 566–567  
 “Batavia”, The (1822), 869  
 Batchelor v Marlow, 157  
 Baxter (1685), 570  
 BBC Hardware Ltd v GT Homes Pty Ltd, 862  
 BCCI Case. — *see* Three Rivers District Council & Bank of Credit & Commerce International SA (In liq) v Bank of England  
 Bear(e) (or Bere) (1699), 571, 572  
 Beauchamp v Croft, 553, 556  
 Beck, In the Marriage of [No 2], 242  
 Beck v Tuckey Pty Ltd, 396  
 Beck (Adolf), Case of, 472, 481  
 Beconwood Securities Pty Ltd v Australia & New Zealand Banking Group, 386  
 Bedard. — *see* Berard  
 Bedford (1711), 573  
 “Beldis”, The, 859  
 Bell v Lever Bros Ltd, 252  
 “Benares”, The (1856), 870  
 Bendix Autolite Corp v Midwesco Enterprises Inc, 450  
 Benecke v National Australia Bank, 342  
 Beni-Felkai Mining Co, Re, 873  
 Benipal v Minister of Foreign Affairs & Immigration, 168  
 Bennet v Bennet, 41–43, 51–52, 57  
 Benson Bros Shipbuilding Co (1960) Ltd v The Ship “Miss Donna”, 860  
 Berard, Re (1849) (or Re Bedard), 616  
 Bere. — *see* Bear  
 Berkley v Poulett, 271, 279  
 “Bernina”, The (1888), 669  
 “Berny”, The, 861  
 Berry, Re, 722, 725, 730, 733–735  
 Beswick v Beswick, 253  
 Betalli v White, 157  
 Betfair Pty Ltd v Western Australia, 320–321  
 Bevin v Smith, 277–278  
 BHP Billiton Iron Ore Pty Ltd v National Competition Council, 317

- 
- BI (Contracting) v University of Adelaide, 834  
 Big Top Hereford Pty Ltd v Thomas, 391  
 Bilbie v Lumley, 251  
 BIS Cleanaway (t/as CHEP) v Tatale, 380, 386–387, 390  
 Bishop of Lincoln (1637), 566  
 BJ Services Co, In the Matter of, 100  
 Black v Garnock, 152, 269, 276  
 Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG, 331  
 Blackburn v Attorney-General, 783  
 Blackler v McElhone, 669  
 Blacktown Concrete Services Pty Ltd v Ultra Refurbishing & Construction Pty Ltd (in liq), 85  
 Blades v Higgs, 387–388  
 Blanch v British American Tobacco Australia Services Ltd, 83, 85  
 Bliss (1719), 574  
 Blomley v Ryan, 250  
 Bloom v Lepre, 303  
 Board of Fire Commissioners (NSW) v Ardouin, 634  
 Bodruddaza v Minister for Immigration & Multicultural Affairs, 256  
 Body Corporate Strata Plan No 4304 v Albion Insurance Co, 773  
 Boilermakers' Case. — *see* R v Kirby; Ex parte Boilermakers' Society of Australia  
 Bolton, Re; Ex parte Beane, 403, 779  
 Bonaccorso. — *see* F & D Bonaccorso  
 Bonino (Nino) v De Lange, 388  
 Bookville Pty Ltd v O'Loughlen, 234–235  
 Boral Besser Masonry Ltd v Australian Competition & Consumer Commission, 326  
 Boral Energy Resources Ltd v TU Australia (Queensland) Pty Ltd, 499  
 Bostock v Saunders, 176  
 Botany Municipal Council v Federal Airports Corporation, 188  
 Boucher v The Queen, 543  
 Boumediene v Bush, 507–508, 604, 645, 784–785  
 Bowen Investments Pty Ltd v Tabcorp Holdings Ltd, 513–515  
 Bowkert v Action Finance Ltd, 250  
 BP Australia Pty Ltd v Nyran Pty Ltd, 345  
 Bracewell v Appleby, 232  
 Brady King Pty Ltd v Commissioner of Taxation (Cth), 752  
 Bray (1556), 558  
 Break Fast Investments Pty Ltd v PCH Melbourne Pty Ltd, 364–366  
 Breskvar v Wall, 28, 31, 38, 437  
 Brewster (1663), 567–568  
 Bridge Wholesale Acceptance Corp (Aust) Ltd v Burnard, 272  
 British American Cattle Co v Caribe Farm Industries Ltd, 438–439  
 British & West Building Society v Mothew, 282  
 British Railways Board v Herrington, 255  
 British Sugar plc v NEI Power Projects, 697  
 Brodie v Singleton Shire Council, 634, 777  
 Brokaw v Seatrain UK Ltd, 383  
 Bropho v Western Australia, 30, 403  
 Brother Industries Ltd v Dynamic Supplies Pty Ltd, 90  
 Brown (1678), 568  
 Brown (1706), 573  
 Brown and Pedersen, In the Marriage of, 240  
 Brown v Allen, Warden, 264  
 Brown v Brown, 41, 53–54  
 Brown v Heffer, 270, 272–275  
 Brown v Lithgow MC, 669  
 Brown v Repatriation Commission, 836  
 Brown v Reztis, 26  
 Browne, 558  
 Browne v Dunn, 836  
 “Brussel”, The. — *see* Holt Cargo Systems Inc v ABC Containerline NV  
 Bryan v Maloney, 253  
 Brybay Pty Ltd (in liq) v Esanda Finance Corp Ltd, 381  
 Building Construction Employees & Builders' Labourers Federation (NSW) v Minister for Industrial Relations, 189, 658  
 Bulankulanma v Secretary, Ministry of Industrial Development (Sri Lanka) (Eppawela case), 184  
 Burdett. — *see* R v Burdett  
 Burnett v Randwick City Council, 380, 384–386  
 Burnett's Trustee v Granger, 380  
 Burnie Port Authority v General Jones Pty Ltd, 185  
 Burton v Crowell Publishing Co, 880  
 Buttes Gas & Oil Co v Hammer, 776, 783–784  
 Byers v Dorotea Pty Ltd, 302  
 Byron Shire Council v Vaughan, 603
-

## C

- Cabal v United Mexican States, 400  
 Cadbury Schweppes Pty Ltd v Amcor Ltd, 411, 695  
 Cadia Holdings Pty Ltd v New South Wales, 762  
 Calcutta Tanneries Case. — *see* Mehta (MC) v Union of India (1997)  
 Calder v British Columbia (Attorney-General), 189  
 Caldwell v Ridge Wholesale Acceptance Corp (Australia) Ltd, 729–730, 734  
 Caledonian North Sea Ltd v British Telecommunications plc, 698  
 California v Brewster, 496  
 Calor Gas Ltd v Express Fuels (Scotland) Ltd, 388  
 Calor Gas Ltd v Homebase Ltd, 380, 383–384, 388  
 Caltex Oil (Aust) Pty Ltd v The Dredge “Willemstad”, 248, 327  
 Calverley v Green, 40, 41, 43, 50, 53, 57–58  
 Cameron, Re, 53  
 Cameron v Hogan, 315, 629  
 “Camilla”, The (1858), 871  
 Campbell v Turner, 600–603  
 Campbell v United Kingdom, 403  
 Canada Bay. — *see* City of Canada Bay Council  
 Canada (Director of Investigation & Research) v Southam Inc, 257  
 Candlewood Navigation Corp Ltd v Mitsui OSK Lines Ltd, 248  
 Cannon v Villars, 14  
 Caparo Industries plc v Dickman, 254  
 Capital Finance Australia Ltd v CEO of Customs, 380–381  
 Capital Finance Australia Ltd v Struthers, 753  
 Cargo ex Galam (1863), 869  
 Carr (1680), 568–569  
 Carter v Boehm, 497  
 Carter v Managing Partner Northmore Hale, Davy & Leake, 401–402  
 Cassaniti v Paragalli, 89  
 Castlemaine Tooheys Ltd v South Australia, 188, 320  
 Cattanach v Melchior, 328  
 Caudle v LD Law Ltd, 373–374, 379, 383  
 Causton v Mann Eggerton (Johnsons) Ltd, 401  
 Cavalier v Cavalier, 50  
 Cawood v Green, 90  
 CDJ v VAJ, 651  
 “Cella”, The, 858, 863–865, 868  
 Cellier (1680), 569  
 Central Newbury Car Auctions Ltd v Unity Finance Ltd, 250  
 Challenger Managed Investments Ltd v Direct Money Corp Pty Ltd, 29, 36  
 Chambers (1629), 565  
 Chan v Cresdon Pty Ltd, 273  
 Chandra v Perpetual Trustees Victoria Ltd, 29, 34, 36–37, 39  
 Chang v Registrar of Titles, 269  
 Charles Marshall Pty Ltd v Grimsley, 40  
 Chas Jeffries & Sons Pty Ltd, Re, 392  
 Chase Corp (Australia) Pty Ltd v North Sydney Brick & Tile Co Ltd, 722  
 Chaudhry v The Queen, 496  
 Chicago & Southern Air Lines Inc v Waterman Steamship Corp, 783  
 Chief Commissioner of Stamp Duties (NSW) v ISPT Pty Ltd, 273–275  
 Chief Executive of Customs v Carlton & United Breweries Ltd, 325  
 “Chieftan”, The (1863), 868, 871  
 Chittick v Ackland, 624  
 Chong Siew Kum, Re Estate of, 44, 54–55  
 Chu Kheng Lim v Minister for Immigration, Local Government & Ethnic Affairs, 780  
 Church of Scientology v Woodward, 624  
 Citco Banking Corp v Pusser’s Ltd, 245  
 City Inn (Jersey) Ltd v Ten Trinity Square Ltd, 596  
 City of Canada Bay Council v Bonaccorso Pty Ltd, 436–439  
 City of Glasgow Bank in Liquidation; Buchan’s case, 393  
 Clairview Developments Pty Ltd v Law Mortgages Gold Coast Pty Ltd, 28, 38, 448  
 Clark v Ryan, 497  
 Clarke (1729), 575  
 Clayton v Heffron, 658  
 Clayton v Leroy, 382  
 Clements v Ellis, 31  
 Clinton v Hooper, 732, 736  
 Clipsilam (1451), 555  
 Clough v Leahy, 412, 414  
 Clunies-Ross v Commonwealth, 521  
 Coastal Equipment Agencies Ltd v The “Comer”, 860

- 
- Coastal Equipment Agencies Ltd v The Ship “Ghislain”, 860
- Coco v The Queen, 30, 190, 403–404, 412
- Codelfa Construction Pty Ltd v State Rail Authority (NSW), 83
- Cody v JH Nelson Pty Ltd, 603
- Colavito v New York Organ Donor Network Inc, 876
- Cole v Whitfield, 178, 188, 800
- Coleman v Liberal Party of Australia, NSW Division [No 2], 315
- Coleman v Power, 188
- Collier v Howard, 379
- Collins v Northern Territory, 325
- Combined Auctions Pty Ltd v Gray Eisdell Timms Pty Ltd, 394
- Comcare v Thompson, 322
- Commercial & General Acceptance Ltd v Nixon, 755
- Commercial Bank of Australia Ltd v Amadio, 250, 724
- Commercial Radio Coffs Harbour Ltd v Fuller, 188
- Commissioner for Railways v Quinlans, 255
- Commissioner for Railways (NSW) v Cardy, 255
- Commissioner of Australian Federal Police v Propend Finance Pty Ltd, 402–403
- Commissioner of Corrective Services v Wedge, 500
- Commissioner of Stamp Duties v Livingston, 274
- Commissioner of Stamp Duties (NSW) v Buckle, 722
- Commissioner of Taxation v Rio Tinto Ltd, 338–339, 345–348
- Commissioner of Taxation (Cth) v Pratt Holdings, 397, 404, 408
- Commissioner of Taxation (Cth) v Reliance Carpet Co Pty Ltd, 751
- Commonwealth v Bank of New South Wales, 798
- Commonwealth v Rocklea Spinning Mills Pty Ltd, 863
- Commonwealth v Tasmania (1983) (Tasmanian Dam Case), 188, 800, 805, 881
- Commonwealth v Verwayen, 603
- Commonwealth Bank of Australia v Muirhead, 87–88
- Concrete Constructions (NSW) Pty Ltd v Nelson, 331
- Conlan v Registrar of Titles, 28
- Conley, Re, 722, 731
- Conroy v Knox, 38
- Consolidated Development Pty Ltd v Holt, 597
- Consolidated Trust Co Ltd v Naylor, 31, 33–34, 36, 39
- “Constancia”, The (1866), 869
- “Constellation”, The, 852, 860
- “Convenience Container”, The, 851, 861
- Cook, Re, 234
- Cooper v Cooper Estate, 56
- Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth), 332
- Copeland v Greenhalf, 158
- “Cornelis Verolme”, The. — *see* Turners & Growers Exporters Ltd v The Ship “Cornelis Verolme”
- Cornwell v The Queen, 655–656
- Corporate Affairs Commission (NSW) v Yuill, 331, 403, 413
- Corporation of the City of Enfield. — *see* Enfield
- Corporations Power Case. — *see* New South Wales v Commonwealth (2006)
- Cotofan v Minister for Immigration and Multicultural Affairs, 168
- Cottrell v King, 394, 396
- Coulls v Bagot’s Executor & Trustee Co Ltd, 252–253
- Council for the Regulation of Health Care Professionals v General Medical Council, 244–245
- Council of Civil Service Unions v Minister for the Civil Service, 783
- Council of New South Wales Bar Association v Power, 524–525
- Cousens, Ex parte; Re Blacket, 839
- Cox v Smail, 837
- CPT Custodian Pty Ltd v Commissioner of State Revenue (Vic), 722
- Cracknell and Lonergan Pty Ltd v Sydney City Council, 76
- Craig v The King, 471–472, 474, 477–478, 480
- Craine v Colonial Mutual Fire Insurance Co Ltd, 338
- Crimmins v Stevedoring Industry Finance Committee, 634
- Crisp v Mullings, 46
- Cronmire, Re, 725
- Croudace Construction v Cawoods Concrete Products, 697
- CTM v The Queen, 695–696
- Cullen Allen & Co v Barclay, 382
- Curl’s Case (1727), 567
- Custom Credit Corp Ltd v Goldsmith, 26
-

**D**

- D & F Estates Ltd v Church Commissioners for England, 253
- Dagle v Dagle, 53
- Dainford v Lam, 302
- Daintree Rainforest Case. — *see* Queensland v Commonwealth (1989)
- Dalton (1716), 574
- Dalton (1717), 574
- Dalton v Henry Angus & Co, 824–826
- Dalton (Mary) (1716), 574
- Damayanti Kantilal Doshi v Shobhana J Doshi, 57
- Dames & Moore v Regan, 787
- Dangerfield (1685), 570–571
- Daniels v Anderson, 376
- Daniels Corp International Pty Ltd v Australian Competition & Consumer Commission, 190, 397–398, 402–406, 408, 412–413, 415
- “Daring”, The (1868), 871
- Data Access Corp v Powerflex Services Pty Ltd, 341–342
- Daubert v Merrell Dow Pharmaceuticals Inc, 478, 497–498
- David Securities Pty Ltd v Commonwealth Bank of Australia, 251, 324
- Davis v Commonwealth, 414, 778
- Davis v Turning Properties, 857
- Davison v The Queen, 844
- De Beer v Zimbali Estate Management Association (Pty) Ltd, 388–389
- De Beers Consolidated Mines Ltd v Howe, 231
- De Libellis Famosis (1605), 560–564, 573, 578, 579
- De Vsime, Re, 52
- Dean of St Asaph/Shipleigh (1783), 546, 571, 572, 574, 575, 577
- Debtor, Re a (No 24 of 1971); Ex parte Marley v Trustee of the Property of the Debtor, 723, 730, 733
- Decker v State Coroner (NSW), 400
- Deepak Fertilisers & Petrochemicals Corp v ICI Chemicals & Polymers Ltd, 697
- Defoe (1703), 573
- Dekkan v Picciau, 374–375
- Demicoli v Malta, 469
- Dennis v Australian Broadcasting Corp, 374
- Desktop Marketing Systems Pty Ltd v Telstra Corp Ltd, 526
- Dispensers (1320), 552
- Di Guilo v Boland, 280
- Dickson v Reidy, 728–729, 731–732
- Dietrich v The Queen, 190, 324
- Dingjan, Re; Ex parte Wagner, 799
- Dinsdale v Arthur, 730, 732,
- Director of Fisheries (NT) v Arnhem Land Aboriginal Trust, 650
- Director of Public Prosecutions v Smith, 249
- Director of Public Prosecutions (Cth) v Corby, 782
- Ditfort, Re; Ex parte Deputy Commissioner of Taxation, 777, 783–784
- Diwell v Farnes, 50
- Dodwell & Co Ltd’s Trust, Re, 15
- Doe d Clarke v Smithers, 231
- Doe dem Riley v Campbell (1829), 621
- Doherty v Doherty, 876
- Dollars & Sense Finance Ltd v Rerekohu Nathan, 511–512
- Domican v The Queen, 472, 481–482, 486, 488, 491–492, 494–496
- Donaldson v Bexton, 21
- Donoghue v Stevenson, 185, 253, 327
- Doodeward v Spence, 876–877
- Doran v Priddy, 433
- Doran Constructions Pty Ltd (in liq), Re, 400
- Doric Products Pty Ltd v Lockwood Security Products Pty Ltd, 655
- Doshi v Doshi, 57
- Doulton Potteries Ltd v Bronotte, 387
- “Dowthome”, The (1843), 870
- Doyle v Falconer, 463
- Drake (1706), 573
- Drake-Brockman v Minister for Planning, 187
- DSE (Holdings) Pty Ltd v Intertan Inc, 344–346
- DTR Nominees Pty Ltd v Mona Homes Pty Ltd, 693
- Duff v Blinco [No 2], 22
- Dugan v Mirror Newspapers Ltd, 231
- Duke of Exeter v Smyth, 556
- Duke of Gloucester v Clere, 556
- “Duna”, The (1861), 869, 870
- Duncan v McDonald, 29, 35, 39
- Duncan, Fox & Co v North & South Wales Bank, 722, 726, 737
- Durand v Hollins, 786–787

DW & JA Edwards Pty Ltd v Shih, 379  
Dyer v Dyer, 40

## E

E v Australian Red Cross Society, 877  
Eade v Vogiazopolous [No 2], 28  
Eades (1686), 570  
Earl of Kinnoul v Money, 736  
Earl of Northampton's case, 553  
Earls of Essex and Southampton (1600), 563  
Eastwood v Kenyon, 748  
Ecrosteel Pty Ltd v Pefor Printing Pty Ltd, 82, 90  
"Edward Oliver", The (1867), 871  
Edwards v The Queen, 165  
Edwards v McVeigh, 873  
Edwards v Wootton, 544  
Egan v Willis, 465, 467, 469, 658  
Egerton v Earl Brownlow, 328  
"Elin", The (1883), 867, 870, 871  
Elliot v Commonwealth, 803  
Ellis v Wallsend District Hospital, 286  
Elna Australia Pty Ltd v International Computers (Australia) Pty Ltd [No 2], 330  
Enfield, Corporation of the City of v Development Assessment Commission, 187, 257  
Engineers Case. — *see* Amalgamated Society of Engineers v Adelaide Steamship Co Ltd  
English Scottish & Australian Bank Ltd v Phillips, 29–32, 34, 39  
Entick v Carrington (1765), 176, 569, 634  
Environmental Systems Pty Ltd v Peerless Holdings Pty Ltd, 697–699  
Epebeaka v Minister for Immigration & Multicultural Affairs, 400  
Erglis v Buckley, 466  
Ernst & Young v Butte Mining plc, 89  
Esso Australia Resources Ltd v Commissioner of Taxation (Cth), 343, 345, 397–398, 401–402  
Estate of the late JJ Virgona v De Lautour, 153–154  
Estate Property Holdings v Barclay Mowlem Constructions, 204  
Etchison v ANZ Executors & Trustee Co Ltd, 603  
Ettingshausen v Australian Consolidated Press Ltd, 880  
Evans v The Queen, 304–305

"Ever Success", The, 867, 868, 869  
Evong Estate v Lawton, 57  
Ewers (1691), 572  
Eykyn's Trusts, Re, 46

## F

F, Re; Ex parte F, 800  
F & D Bonaccorso Pty Ltd v City of Canada Bay Council, 436, 438  
F & G Nominees Pty Ltd v Coxon, 21  
Fabre v Arendales, 836  
"Fairport", The (1882), 868, 871  
Fairweather v Fairweather, 394  
Farah Constructions Pty Ltd v Say-Dee Pty Ltd, 249–250, 323–324, 349, 771–773  
Fardon v Attorney-General (Qld), 409, 609–611  
Farley v Skinner, 368–369  
Farnaby and Military Rehabilitation and Compensation Commission, Re, 410  
Farrugia v Official Receiver in Bankruptcy, 724, 725, 732–733, 735–737  
Fastlink Calling Pty Ltd v Macquarie Telecom Pty Ltd, 360  
Fay v Moia, 779  
Federal Airports Corp v Aerolineas Argentinas, 410  
Fencott v Muller, 685  
Fernando v Commissioner, of Police, 772  
"Feronia", The (1868), 871  
Festa v The Queen, 482, 486–488, 491  
Fidler v Sun Life Assurance Co of Canada, 368–370  
Field v Jenolan Caves Reserve Trust, 26–27  
Fine Real Estate Network Pty Ltd v Howell, 88  
Fingleton v The Queen, 178–179, 608  
First National City Bank v Banco Para el Comercio, 640  
Fisher v Wilson (1840), 621  
Fitzharris (1681), 567  
Fitzwilliams v Kelly, 722  
Flint (1716), 574  
Florie, In the Marriage of, 18  
Flynn v Schultz, 787  
Foday Saybana Sankoh, 780  
Forbes v Eden (1867), 630  
Forbes v New South Wales Trotting Club Ltd, 633  
Foroughi v Star City Pty Ltd, 318–319  
Forth v Wade, 74



Fortson Pty Ltd v Commonwealth Bank of Australia, 754–755  
 Fox v Percy, 836  
 Foxley v United Kingdom, 403  
 Frackelton v McQueen, Re, 90  
 Francis v NPD Property Development Pty Ltd, 601  
 Francklin (1731), 575, 578  
 Frank Davies Pty Ltd v Container Haulage Group Pty Ltd (No 1), 698  
 Frankland v The Queen, 249  
 Fraser v State Services Commission, 189  
 Fraser Island Defenders Organisation Ltd v Hervey Bay Town Council, 187  
 French v Queensland Premier Mines Pty Ltd, 30, 75  
 French Caledonia Travel, Re, 873  
 Friends of the Glenreagh Dorrigo Line Inc v Jones, 197  
 Frye v United States, 497  
 Fuller (c 1711), 573

## G

Gabcikovo-Nagymaros Project (Hungary v Slovakia), 191  
 “Galam”, The. — *see* Cargo ex Galam  
 Gallagher v Rainbow, 14  
 Gambotto v WCP Ltd, 245  
 Garcia v National Australia Bank Ltd, 720, 738  
 Garratt’s Ltd v Thanga Thangathurai, 346  
 Gartside v Inland Revenue Commissioners, 274  
 GAS v The Queen, 599  
 Gaunt v Woudenberg, 50  
 Gaur (Virendra) v State of Haryana, 191  
 Gaveston (1307), 552  
 Gazal Apparel Pty Ltd v Davies, 87  
 GB Nathan & Co Pty Ltd, Re, 873  
 Gbemre v Shell Petroleum Development Co Nigeria Ltd, 192  
 GEC Alsthom Australia Ltd v City of Sunshine, 698  
 Gee v Liddell, 724, 726, 728–730, 737  
 Gee v Smart, 727  
 “Gee-Whiz”, The, 868  
 Geelong Harbour Trust Commissioners v Gibbs Bright & Co, 248  
 Geltch v MacDonald, 22–23  
 General Accident Fire & Life Assurance Corp Ltd v Inland Revenue Commissioners, 89

General Newspapers Pty Ltd v Telstra Corp, 624, 631  
 General Secretary, West Pakistan Salt Miners Labour Union, Khewral, Jhelum v Director of Industries & Mineral Development, Punjab, 192  
 General Steel Industries Inc v Commissioner for Railways (NSW), 167  
 “Georg”, The (1894), 870  
 George v Cluning, 246  
 George v Greater Adelaide Development Co Ltd, 193  
 Gerberge (1348), 552  
 Gerhardy v Brown, 783  
 Gibbons Holdings Ltd v Wholesale Distributors Ltd, 318  
 Gibson v United States, 23  
 Gillett v Holt, 250  
 Giumelli v Giumelli, 600  
 Glandon v Tilmunda, 316  
 Glasson v Parkes Rural Distributions Pty Ltd, 624  
 Glencore International AG v Metro Trading International Inc, 386  
 Godavarman Thirumulpad (TN) v Union of India, 184  
 Goldberg v Ng, 338, 344, 402  
 Gollan v Nugent, 386  
 Goodfriend v Goodfriend, 40  
 Gordon v Gonda, 84–85  
 Gosper v Sawyer, 268  
 Government Guarantee Fund v Hyatt Corp, 517  
 Graham v Hall, 421, 593–595  
 Graham Barclay Oysters Pty Ltd v Ryan, 634  
 Grain Pool (WA) v Commonwealth, 798  
 Granfinanciera v Nordberg, 853  
 Grant v Downs, 401, 403  
 Gray v Dowman, 727–728, 732, 736  
 Gray v Minister for Planning, 185, 187  
 Gray Eisdell Timms Pty Ltd v Combined Auctions Pty Ltd, 394  
 “Great Eastern”, The (1867), 867  
 Great Eastern SS Co, Re (1885), 869  
 “Great Peace”, The, 445  
 Great Peace Shipping Ltd v Tsavlis Salvage (International) Ltd, 252  
 Green (as liquidator for Arimco Mining Pty Ltd) v CGU Insurance Ltd, 525  
 Greene v Home Secretary, 779  
 Greenpeace New Zealand v Northland Regional Council, 187

Greenwood (1593), 558  
 Greiner v Independent Commission Against Corruption, 189  
 Grgic v Australia & New Zealand Banking Group Ltd, 29, 34, 37, 39  
 Griffin v Pantzer, 400  
 Griffith University v Tang, 623–625, 627–633, 635  
 Griffiths, Re, 446  
 Griffiths v Minister for Lands, Planning & Environment, 521  
 Grigsby v Melville, 158  
 Grollo v Palmer, 607–608  
 Groongal Pastoral Co Ltd v Falkiner, 30, 39  
 Grundt v Great Boulder Pty Gold Mines Ltd, 250, 602  
 Guantanamo Detainee Case, Re, 645  
 Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd, 363  
 “Gustaf”, The (1862), 869, 870, 871

## H

Ha v New South Wales, 178, 251  
 “Habana”, The Paquet, 640  
 Hadley v Baxendale, 368–369, 697–699  
 Hadwell v Righton, 150  
 Haft v Haft, 517–518  
 Hague v Nam Tran Electronics Inc, 375–376  
 Haida Nation v British Columbia (Minister of Forests), 785  
 Haig v Agee, 785  
 “Halcyon Isle”, The, 851  
 “Halcyon Skies”, The, 868  
 Hale (1594), 560  
 Hall (1580), 558  
 Hall v Hall, 725, 736  
 Hall v Poolman, 10  
 Hall Street Associates, LLC v Mattel, Inc, 828–831  
 Halloran v Minister Administering the National Parks and Wildlife Act 1974, 270, 274, 276  
 Halpern v Halpern, 164–165  
 Hamdan v Rumsfeld, 604, 637–638, 641, 646, 775, 777–778  
 Hamlin v Great Northern Railway Co, 368  
 Hammer Waste Pty Ltd v QBE Mercantile Mutual Ltd, 278

Hannah, In the Marriage of, 18  
 Hanson v Australian Broadcasting Authority, 880  
 Hanson v Royden, 868  
 Haque v Haque [No 2], 268, 270, 275  
 Harada v Registrar of Titles, 158, 274  
 Harisiades v Shaughnessy, 785  
 Harris (1680), 568  
 Harris v Digital Pulse Pty Ltd, 282  
 Hastings-Bass, Re, 445, 446  
 Hedley Byrne & Co Ltd v Heller & Partners Ltd, 253  
 Heffernan v Chacmol Holdings Pty Ltd, 863  
 “Heinrich”, The (1872), 854, 871  
 “Heinrich Bjorn”, The (1886), 859, 871  
 “Helene Roth”, The, 861  
 Henderson’s Caveat, Re, 277  
 Henry Berry & Co Pty Ltd v Rushton, 386  
 Henry Roach (Petroleum) Pty Ltd v Credit House (Vic) Pty Ltd, 755  
 Heperu Pty Ltd v Morgan Brooks Pty Ltd [No 2], 243, 381  
 Herman, Ex parte; Re Mathieson, 85  
 Herron v McGregor, 189  
 “Hersey”, The (1837), 870  
 Hewett v Court, 273  
 HG v The Queen, 478  
 HG & R Nominees v Fava, 28  
 Hickey, In the Marriage of, 18  
 Hicks v Ruddock, 780–782, 785, 787  
 HIIH Insurance Ltd, Re, 499  
 Hill v Haines, 760  
 Hill v Hall, 436  
 Hill v Reglon Pty Ltd, 379, 390–391  
 Hillpalm Pty Ltd v Heaven’s Door Pty Ltd, 437–438  
 Hilter v Dexter, 668  
 HML v The Queen, 449  
 Ho v Professional Services Review Committee No 295, 319  
 Hobson v Gorringe, 13  
 Holland v Wiltshire, 252  
 Holloway (Thomas), Re, 401  
 Holt Cargo Systems Inc v ABC Containerline NV (The “Brussel”), 854–856  
 HongKong Bank of Australia Ltd v Murphy, 344  
 “Hope”, The (1872), 871  
 Hornby (1716), 574  
 Horne (later Horne Tooke) (1777), 576–578

Horsley v Ramsay, 669  
 Hosking v Terry (1840), 621  
 Hotel Services Ltd v Hilton International Hotels (UK) Ltd, 697–699  
 House v The King, 695  
 Howard v Gossett, 465  
 Howard v Miller, 268  
 Howel (1717), 574  
 HP Mercantile v Commissioner of Taxation, 836  
 Huddart Parker & Co Pty Ltd v Commonwealth, 797  
 Huddart, Parker & Co Pty Ltd v Moorehead, 414  
 Hudson v Carmichael, 725, 732, 736  
 Hudson v Venderheld, 634  
 Human Rights Case, Re (Environmental Pollution in Balochistan), 184  
 Humane Society International Inc v Kyodo Senpaku Kaisha Ltd, 693–694  
 Hunt v Anderson, 374  
 Hunt v Peasegood, 731  
 Hunt v Rousmanier's Administrators, 516  
 Hunter, Ex parte (1842), 621  
 Hunter Area Health Services v Presland, 500  
 Huntington v Huntington (1702), 724, 732  
 Hurst v BDO Stoy Hayward LLP, 727  
 Hurst v Crampton Bros (Coopers) Ltd, 394  
 Hurstanger Ltd v Wilson, 165  
 Hurt (1711), 573  
 Hutchins v Federal Commissioner of Taxation, 624  
 Hutchinson, In the Marriage of, 241  
 Hutton's case, 566

# I

IAC/InterActive Corp, Re, 518–520  
 ICI Australia Operations Pty Ltd v Trade Practices Commission, 89  
 “Immacolata Concezione”, The, 854, 870  
 Indian Council for Enviro-Legal Action v Union of India, 187  
 Industrial Relations Act Case. — *see* Victoria v Commonwealth  
 Ingot Capital Investments Pty Ltd v Macquarie Equity Capital Markets Ltd, 398–399, 405–411, 415  
 Ingram v Commonwealth, 784  
 Interchase Corp Ltd, Re, 400

International Air Transport Association v Ansett Australia Holdings Ltd, 323  
 International Factors v Rodriguez, 382  
 Iran, Islamic Republic of v Barakat Galleries Ltd, 379, 381–383, 391, 445  
 IRG Technical Services Pty Ltd v Commissioner of Taxation (Cth), 446–447  
 Irwin Toy Inc v Quebec, 231  
 Islamic Republic of Iran. — *see* Iran

# J

Jabalpur (ADM) v Shukla, 351  
 Jabbour v Hicks, 775  
 Jackamarra v Krakouer, 401  
 Jacob v Morris (dec'd), Re, 193  
 Jaggard v Sawyer, 365  
 Jago v District Court (NSW), 189, 588  
 James v Oxley, 386  
 Jarvis v Swans Tours, 368–369  
 Jarvis v Williams, 382  
 Jennings, In the Marriage of, 18  
 “Jenny Lind”, The (1872), 871  
 Jerome v Kelly, 270  
 Jessica Estates Pty Ltd v Lennard, 76, 365, 595–596  
 John at Hill (1349), 552  
 John Fairfax Publications Pty Ltd v Hitchcock, 167  
 John Pfeiffer Pty Ltd v Rogerson, 248, 255  
 Johnson (1686), 570  
 Johnson v Agnew, 252  
 Johnson v The “Black Eagle”, 868  
 Jones v Bartlett, 153–154, 255  
 Jones v Cleanthi, 154–155  
 Jones v Dunkel, 836  
 Jones v Ministry of the Interior of the Kingdom of Saudi Arabia, 776  
 Joyce v Director of Public Prosecutions, 778  
 Joyner v Weeks, 514  
 Judiciary and Navigation Acts, Re, 409  
 Journey v MacCracken, 469

# K

“K”, a Judicial Officer, Re, 263  
 Kable v Director of Public Prosecutions (NSW), 409, 607–610, 658

Kades v Kades, 844  
KAP Motors Pty Ltd v Commissioner of Taxation (Cth), 833  
Karacomina v Big Country Developments Pty Ltd, 28, 35  
Kartinyeri v Commonwealth, 190, 404  
Keach (1665), 568  
Keever (1443), 555  
Keily, Re (1857), 730–732, 735–736  
Ken Glover & Associates Inc v Irwin, 725  
Kennedy v Lyell, 411  
Kennedy v Wallace, 404  
Kenzler, Re, 392, 394–395  
Kern Corp v Walter Reid Trading Pty Ltd, 269  
Kesavananda Bharati v State of Kerala, 351  
Khalon v Attorney-General (NZ), 168  
Khan v Hadid [No 2], 512–513  
“Kiama”, The Ship. — *see* Morris v The Ship “Kiama”  
Kielly v Carson, 463  
Kilbourn v Thompson, 469  
Kilford v Blaney, 722  
Kimberley-Clark Australia Pty Ltd v Arico Trading International Pty Ltd, 653–656  
King, Ex parte; Re University of Sydney, 840  
King, In the Marriage of, 18  
Kioa v West, 190, 630  
Kirkpatrick v Kotis, 89  
KLDE Pty Ltd (in vol liq) v Commissioner of Stamp Duties (Q), 268, 270  
Knightly v Knightly, 47  
Kogarah Municipal Council v Golden Paradise Corp, 438  
Kooee Communications Pty Ltd v Primus Telecommunications Pty Ltd, 244  
Koompahtoo Local Aboriginal Land Council v KLALC Property and Investment Pty Ltd, 438–439  
Koowarta v Bjelke-Petersen, 685, 783, 881  
Kostiuk, Re Bankruptcy of, 725, 732, 735  
Kumar v State of Bihar, 191  
Kuper v Keywest Constructions Pty Ltd, 277  
Kurth v McGavin, 80  
Kurtha v Marks, 379  
Kuru v New South Wales, 522–523, 652–653, 656–657  
Kuwait Airways Corp v Iraqi Airways Co, 776–777  
Kwikspan Purlin System Pty Ltd v Commissioner of Taxation (Cth), 84

Kyocera Corp v Prudential-Bache T Services Inc, 830  
Kyrris v Oldham, 375–376

## L

L (a minor), Re (Police investigation: Privilege), 407, 411  
Lace v Chantler, 231  
Lai Min Tet v Lai Min Kin, 44, 46, 51  
Lamb’s case (1610), 561, 563  
Lancaster v Evors, 724  
Landcatch Ltd v International Oil Pollution Compensation Fund, 538–539  
Lange v Australian Broadcasting Corp, 188, 189, 629  
“Lastrigoni”, The, 851  
Latec Investments Ltd v Hotel Terrigal Pty Ltd, 29  
Lattimer v Lattimer, 54  
Laurance v Katter, 465  
Law Guarantee and Trust Society Ltd v Bank of England, 15  
Law Society of New Brunswick v Ryan, 785  
Lawrence (1690), 572  
Leask v Commonwealth, 798  
Lee v Rook, 729–730  
Lee Hiok Tng v Lee Hiok Tng, 46  
Lee Kuan Yew v Tang Liang Hong, 44  
Legal Services Commissioner v Sing, 164  
Legione v Hateley, 270, 273  
Leighton (1630), 556  
Lennard v Jessica Estates Pty Ltd, 596  
Lennard’s Carrying Co Ltd v Asiatic Petroleum Ltd, 231  
“Leoborg”, The [No 2], 854  
Levy v Williams, 34  
Lewis v Daily Telegraph Ltd, 231  
Libke v The Queen, 17  
Lilburne (1649), 567  
Lillicrap v Nalder & Son, 344  
“Limerick”, The (1876), 871  
Lin v Official Trustee in Bankruptcy [No 1], 725, 732  
“Linda Flor”, The (1857), 869, 870, 871  
Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd, 83  
Liquorland (Australia) Pty Ltd v Anghie, 346  
Liverpool Borough Bank v Turner, 862  
Liversidge v Anderson, 351, 779–780, 840  
“Livieta”, The (1883), 869

- 
- LJP Investments Pty Ltd v Howard Chia Investments Pty Ltd, 364–365  
 Llido v The “Lowell Thomas Explorer”, 854  
 Lloyd v Robinson, 182  
 Lloyd v Wallach, 840  
 Lockwood v Commonwealth, 414  
 Lockwood Security Products Pty Ltd v Doric Products Pty Ltd, 654–656  
 Lofthouse, Re, 873  
 London & Blenheim Estates Ltd v Ladbroke Retail Parks Ltd, 157  
 London, Chatham and Dover Railway Co v South Eastern Railway Co, 79  
 London Drugs Ltd v Kuhne & Nagel International Ltd, 253  
 London Graving Dock Co Ltd v Horton, 254  
 Long v Minister for Immigration & Multicultural Affairs, 168  
 Lord Abergavenny’s Case (1607), 753  
 Lord Cromwell’s case (1581), 553, 558  
 Lord George Gordon. — *see* R v Gordon  
 Lord Grey v Lady Grey, 43  
 Louisiana Ship Management Inc, Re, 853  
 Love Canal case, 186  
 Low Geok Khim v Low Geok Bian, 44–45  
 Low Gim Siah v Low Geok Khim, 42–43, 45–46, 57–58  
 Lowe v The Queen, 451  
 Lowson v Coombes, 41  
 Lowthrop (1690), 572  
 Luckins, Re; Ex parte Columbia Picture Industries Inc, 90  
 Ludlow & Braithwaite v Minter Ellison Rudd Watts, 693  
 Lui Kam Lau v Leung Ming Fai, 50–51, 59  
 “Lyrma”, The, 869  
 Lysaght v Edwards, 268, 270, 274
- M**
- Mabo v Queensland (1988), 881  
 Mabo v Queensland [No 2] (1992), 189, 324  
 McBain, Re; Ex parte Australian Catholic Bishops Conference, 256  
 McCabe, In the Marriage of, 241  
 McCauley v The King, 658  
 McDonald v Dennys Lascelles Ltd, 251–252  
 Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar, Diocesan Bishop of  
 Macedonian Orthodox Diocese of Australia &  
 New Zealand, 837–838  
 McFarland v Kempthorne, 155  
 McGinty v Western Australia, 658  
 McGrath v Wallis, 51  
 Machenny (1685), 570  
 Mackay v Wilson, 300  
 McKay v McKay, 315–316  
 McKeown v Cavalier Yachts Pty Ltd, 387  
 Mackie v United States, 156  
 McKinney v The Queen, 324  
 M’Lartey v Middleton, 862  
 Maclean v Shell Chemical (Australia) Pty Ltd, 90  
 Macleod v The Queen, 249  
 McNair Anderson Associates Pty Ltd v Hinch, 83, 89  
 McNally v Harris [No 3], 761  
 Macquarie Bank Ltd v Lin, 603  
 McRae v Commonwealth Disposals Commission, 252  
 Macro v Thompson [No 3], 396  
 McWilliam v McWilliams Wines Pty Ltd, 267, 274  
 “Madonna D’Idra”, The (1811), 867, 870  
 Major, Ex parte, 750  
 “Mahkutai”, The, 253  
 Malan v Green Valley Farm Portion 7 Holt Hill 434 CC, 389  
 Malone v Metropolitan Police Commissioner, 414  
 Mann v Carnell, 338–339, 345, 347, 402  
 Mann v O’Neill, 451  
 Mansell v Beck, 321  
 “Mareva”, The, 857  
 “Margaret Z”, The, 857  
 Markson v Cutler, 373  
 Maronis Holdings Ltd v Nippon Credit Australia Ltd, 346  
 Marshall v Director-General, Department of Transport, 634  
 Martin v Medical Complaints Tribunal, 400  
 Martin Commercial Fueling Inc v Virtanen, 268  
 “Mary Ann”, The (1861), 870  
 “Mary Ann”, The (1865), 871  
 Massachusetts v Environment Protection Agency, 185, 187  
 Mathur v Gupta, 263  
 Mattison v Multiplo Incubators Pty Ltd, 603  
 Maxwell v The Queen, 454  
 Maxwell Communications Corp plc, Re, 852
-

- 
- May v Ceedive Pty Ltd, 12–13  
Mayer v Coe, 28, 38  
MC v Bulgaria, 440  
MC Mehta. — *see* Mehta (MC)  
MCC Proceeds Inc v Lehman Brothers International (Europe), 382  
Medical Research & Compensation Foundation v Amaca Pty Ltd, 396  
Mehmet v Benson, 271  
Mehta (MC) v Kamal Nath, 184, 191–192  
Mehta (MC) v Union of India (1988), 191  
Mehta (MC) v Union of India (1996) (Taj Trapezium Case), 187  
Mehta (MC) v Union of India (1997) (Calcutta Tanneries Case), 187  
Melbourne Corporation; Re Falkener (1843), 621  
Melbourne Corporation v Commonwealth, 799  
Melway Publishing Pty Ltd v Robert Hicks Pty Ltd, 326  
Members of the Yorta Yorta Aboriginal Community v Victoria, 330  
Mercantile Credits Ltd v Shell Co of Australia Ltd, 33–34, 37, 301  
Mercantile General Life Reinsurance Co v Permanent Trustee Australia Ltd, 157  
Mercer v Craven Grain, 386  
Mercier v Mercier, 41  
Meteyard v Love, 398, 400  
Michael v Western Australia, 761–762  
Millar’s Machinery Co v David Way & Son, 697  
Miller (1770), 576  
Miller, Re [1991], 394  
Milligan, Ex parte, 637  
Mills v Meeking, 331–332  
“Minerva”, The (1825), 867  
Mines, The Case of the (1568), 762  
Minister for Aboriginal Affairs v Peko-Wallsend Ltd, 187  
Minister for Arts, Heritage & Environment v Peko-Wallsend Ltd, 777, 783  
Minister for Immigration & Ethnic Affairs v Mayer, 627  
Minister for Immigration & Ethnic Affairs v Teoh, 190  
Minister for Immigration & Multicultural Affairs; Ex parte Applicant S154/2002, 405  
Minister for Immigration & Multicultural Affairs, Re; Ex parte Epeabaka, 405  
Minister for Immigration & Multicultural Affairs, Re; Ex parte Te, 778  
Minister for Immigration & Multicultural Affairs v Eshetu, 409  
Minister for Immigration & Multicultural & Indigenous Affairs, Re; Ex parte Lam, 257, 628, 777  
Minister for Immigration & Multicultural & Indigenous Affairs v B, 409  
Ministry of the Merchant Marine v Patmos Shipping Corp & the United Kingdom Mutual Steamship Assurance Association, 540  
Mirehouse v Rennell, 177  
Mirfield (1451), 555  
Mistretta v United States, 607  
Mitchell v Bailey, 834  
Moate v Moate, 46  
Modbury Triangle Shopping Centre Pty Ltd v Anzil, 254  
Modern Boats Inc, Re, 853  
Moffatt v Moffatt, 250  
Moncrieff v Jamieson, 156–157  
“Monica S”, The, 860  
Moore (1699), 572  
Moore v Regents of the University of California, 876–877  
Moore v Whyte [No 2], 41  
Moorgate Mercantile Co Ltd v Twitchings, 250  
Morgan (1631), 565  
Mormon Church v United States, 231  
Morris v The Ship “Kiama”, 857, 861–864  
Morrison v Peacock, 533, 542  
Morrow v chinadotcom Corporation, 203  
Mortimer (1330), 552  
Mossop v Mossop, 47  
Muirhead, Re; Ex parte Commonwealth Bank of Australia, 88  
Mule v The Queen, 696  
Murdoch v The Queen, 471, 483, 485, 489–491  
Murdock v Aherne, 50  
Murless v Franklin, 40, 42, 45  
Murphy v Brentwood District Council, 253  
Murphyores Inc Pty Ltd v Commonwealth, 778  
Mustapha v Culligan of Canada Ltd, 370  
Mwenya, Ex parte, 780
-

## N

National Audubon Society v Department of Water & Power of the City of Los Angeles, 184  
 National Provincial Bank Ltd v Ainsworth, 274  
 National Westminster Bank plc v Somer International (UK) Ltd, 250  
 Nationwide News Pty Ltd v Wills, 188, 189  
 Neal v The Queen, 599  
 NEAT Domestic Trading Pty Ltd v AWB Ltd, 623–627, 635  
 Nelson v Nelson, 41–43, 53, 57, 322  
 Neo Tai Kim v Foo Stie Wah, 51  
 “Neptune”, The (1824), 869  
 New Cap Reinsurance Corp Holdings Ltd, Re, 852  
 New South Wales v Commonwealth (1990), 715  
 New South Wales v Commonwealth (2006) (Work Choices Case), 790, 800  
 New South Wales v Koumdjiev, 80  
 New South Wales Bar Association. — *see* Council of New South Wales Bar Association  
 New Zealand Drivers Association v New Zealand Road Carriers, 189  
 Newbolt and Bulter (c 1695), 571  
 Newcastle City Council v Leaway Pty Ltd, 86  
 Nino Bonino. — *see* Bonino  
 New South Wales v Kuru, 652–653  
 Newcastle Wallsend Coal Co Pty Ltd v Court of Coal Mines Regulation, 772  
 Newcome Holdings Pty Ltd v Funge Systems Inc, 852  
 Newnham College, Cambridge v HMRC, 380  
 News Ltd v South Sydney District Rugby League Football Club Ltd, 438  
 Newton v Federal Commissioner of Taxation, 26  
 NH Dunn Pty Ltd v LM Ericsson Pty Ltd, 13  
 Nicholas de Wautham (1285), 552  
 Nichols v Jessup, 250  
 Nickerson v Baraclough, 155  
 Nienbar v Stuckey, 388  
 NIML Ltd v Man Financial Australia Pty Ltd, 381  
 Nine Network Australia Pty Ltd v IceTV Pty Ltd, 525–526  
 Nominal Defendant v Andrews, 390  
 Norman v Commissioner of Taxation (Cth), 274  
 North Coast Conservation Council v Executive Director, Queensland Parks & Wildlife Service, 187

North Coast Environment Council Inc v Minister for Resources, 187  
 North General Wagon & Finance Co Ltd v Graham, 386  
 North Sydney Printing Pty Ltd v Sabemo Investment Co Pty Ltd, 155  
 Northampton (1344), 554  
 Northern Pipeline v Marathon Pipeline, 853  
 Nulyarimma v Thompson, 640  
 Nutt (1754), 575  
 “Nymph”, The (1856), 869

## O

OAE v The Queen, 449  
 Oamington Pty Ltd v Commissioner of Land Tax, 722–723  
 OBG v Allan, 379  
 Ocean Time Development Ltd, 375–376  
 Oceanic Sun Line Special Shipping Co Inc v Fay, 324  
 Octra Nominees Pty Ltd v Chipper, 300  
 “Odessa”, The, 382  
 Odey v Barber, 317–318  
 Oetjen v Central Leather Co, 785  
 Official Trustee in Bankruptcy v Citibank Savings Ltd, 725, 729, 733  
 O’Keeffe v Cardinal Cullen (1873), 630  
 Oldnoll (1557), 558  
 Omar v Harvey, 785  
 Oposa (Minors) v Factoran (Secretary of the Department of Environment & Natural Resources, Philippines), 192  
 Oppenheimer v Cattermole, 189  
 O’Reilly v Commissioners of the State Bank of Victoria, 403, 405  
 Organ Retention, Re, 876  
 Owen (1752), 575, 578  
 Owston Nominees No 2 Pty Ltd v Branir Pty Ltd, 85

## P

Pacific Carriers Ltd v BNP Paribas, 83, 85  
 Pacific Coast Syndicate Ltd, Re, 873  
 Paget v Paget, 725–726, 732–735  
 Paine (1695), 572  
 Palgo Holdings Pty Ltd v Gowans, 382  
 Palm Beach Lands Pty Ltd v Marshall, 596  
 Pangallo Estate Pty Ltd v Killara 10 Pty Ltd, 448

- 
- Papakosmas v The Queen, 837  
 The Paquet “Habana”. — *see* “Habana”  
 Parker v Mortgage Advance Securities Pty Ltd, 28, 38  
 Parker v The Queen, 249  
 Parramatta City Council v Hale, 187  
 Parry v Cleaver, 868  
 Parsons v McBain, 722, 724–727, 729–732, 734–735, 737  
 Parteriche v Powlet, 734, 736  
 Pascoe v Commissioner of Taxation (Cth), 837  
 Pasini v United Mexican States, 410  
 Patel v Smith, 384  
 Paul v British Columbia (Forest Appeals Commission), 785  
 PCH Melbourne Pty Ltd v Break Fast Investments Pty Ltd, 365  
 Peake & Pollorts (1589), 558  
 Peck v Western Australia, 481–482  
 Pecore v Pecore, 40, 42–44, 54–58  
 Pegler Ltd v Wang (UK) Ltd, 697  
 Peirs v Peirs (1750), 724, 730  
 Penfold Wines Pty Ltd v Elliott, 381, 388  
 Pengelly v Pengelly, 832–833  
 Penry (1593), 558  
 The People v Casey [No 2], 472  
 Pepper v Attorney-General (Qld) [No 2], 603–604  
 Pepper v Hart, 466  
 Perera v Minister for Immigration & Multicultural Affairs, 167–168  
 Permanent Building Society v Wheeler, 376  
 Perpetual Trustee Co Ltd v Westfield Management Ltd, 14  
 Perpetual Trustees Victoria Ltd v Tsai, 36–38, 671–672, 674  
 Perpetual Trustees (WA) Ltd v Equuscorp Pty Ltd, 345  
 Perre v Apand Pty Ltd, 253–254, 348  
 Perth Construction Pty Ltd v Mount Lawley, 234  
 Peruvian Guano Co v Dreyfus Brothers & Co, 375  
 Peso Silver Mines Ltd v Cropper, 368  
 Peters v The Queen, 249  
 Peters’ American Delicacy Co Ltd v Heath, 245  
 Petritsis v Hellenic Herald Pty Ltd, 286  
 Petrotimor v Commonwealth, 776–777  
 Pettitt v Pettitt, 40, 41, 46–48, 58  
 Philip Morris Inc v Adam P Brown Male Fashions Pty Ltd, 702, 713  
 Phillips v Barnett, 178  
 Phillips v The Queen, 449  
 Pickering v Edmunds, 344  
 “Pieve Superiore”, The, 859  
 Piling v Prynew, 824  
 Pillott v Wilkinson, 384  
 Pine’s Case (1628), 555, 564  
 Pinta v The Queen, 496  
 Pitblado & Hoskin v Swerid, 268, 280  
 Pitkin v The Queen, 482, 493  
 Pitt v Baxter, 80  
 Pittortou, Re, 723, 725, 732, 735–736  
 Plaintiff S157/2002 v Commonwealth, 190, 256, 404  
 Plenty v Dillon, 634  
 Pocock v Lee, 721, 724  
 Polidano v The Queen, 481–482  
 Polites v Commonwealth, 190  
 Polly Peck International plc v Nadir [No 2], 852, 857  
 Polyaire Pty Ltd v K-Aire Pty Ltd [No 4], 84  
 Port Jackson Stevedoring Pty Ltd v Salmond & Spraggon Pty Ltd, 248, 686  
 Potter v Broken Hill Co Pty Ltd, 776  
 Potter v Minahan, 30, 190, 403  
 Powell v Aploolo Candle Co Ltd (1885), 658  
 Powell v Clarence, 669  
 Powys v Mansfield, 57  
 Pratt Holdings Pty Ltd v Commissioner of Taxation, 398, 401  
 Prebble v Television New Zealand, 465–466  
 PricewaterhouseCoopers Legal v Perpetual Trustees Victoria Ltd, 12–13  
 Prince v Barnett, 217  
 “Prince George”, The (1873), 870  
 Propend Finance Pty Ltd v Commissioner of Australian Federal Police, 411  
 Prosecutor v Akayesu, 107, 109, 110, 122–124  
 Prosecutor v Kambanda, 107, 124–125  
 Prosecutor v Kayishena, 122  
 Prosecutor v Musema, 122  
 Prosecutor v Nahimana, 126  
 “Providence”, The (1825), 868  
 Provident Capital Ltd v Printy, 671–673, 674  
 Prudential Assurance Co Ltd v Newman Industries Ltd [No 2], 523  
 Prynne (1632), 565–566  
 PT Ltd v Maradona Pty Ltd, 28, 33–38
-



Public Transport Authority of Western Australia v  
Leighton Contractors Pty Ltd, 411  
Public Trustee v Paradiso, 28, 38  
Public Trustee v Smith, 446  
Puttick v Fletcher Challenge Forests, 773  
Pym (1664), 568  
Pyramid Building Society v Scorpion Hotels Pty Ltd, 28,  
31, 37–38  
Pyrenees Shire Council v Day, 634

### Q

“Queen, The” (No 2), 870  
Queensland v Commonwealth (1989) (Daintree Rainforest  
Case), 188  
Queensland v JL Holdings Pty Ltd, 374  
Queensland Co-operative Milling Association Ltd; Re  
Defence Holdings Ltd, 329  
Queensland Medical Laboratory v Blewett, 410  
Queensland Premier Mines Pty Ltd v French, 30, 39, 75–  
76  
Quick (1433), 555  
Quirin, Ex parte, 638

### R

R v Abdroikov, 147  
R v Aldred, 545  
R v Athuai, 482, 485  
R v Baker, 558  
R v Bartels, 482  
R v BBA, 482  
R v Beare, 549  
R v Bentley (dec’d), 288  
R v Blair, 485  
R v Bloomfield, 453  
R v Boothe, 560  
R v Buckland, 319  
R v Burchielli, 485  
R v Burdett (1820), 549, 564  
R v Cambridge University, 635  
R v Carter, 575  
R v Carter; Ex parte Kisch, 779  
R v Casement [1917], 552  
R v Chief Metropolitan Stipendiary Magistrate; ex parte  
Choudhury (“Satanic Verses” case), 288

R v Clapson, 491  
R v Clune, 485  
R v Commonwealth Court of Conciliation & Arbitration;  
Ex parte Barrett, 631  
R v Cox and Railton, 398  
R v Cuenco, 165–166  
R v Curtis (1680), 568  
R v Davis, 605–606, 667–668  
R v Derby Magistrates Court; Ex parte B, 403  
R v Djerke, 492  
R v Earl of Crewe; Ex parte Sekgiome, 780  
R v Electricity Commissioners, 633  
R v Evan, 482, 484, 492–494  
R v F (1995), 478  
R v Farrell (1831), 621  
R v Ferguson; Ex parte Attorney-General (Qld), 588–589  
R v Fidow, 454  
R v Field (1661), 567  
R v Fourde (1604), 560  
R v Fuhrmann, 473–474  
R v Geddes, 450  
R v Ghosh, 249  
R v Glennon, 588  
R v Gordon (Lord George) (1787), 577  
R v Governor of Brixton Prison; Ex parte Ashan, 779  
R v Governor of Metropolitan Gaol; Ex parte Di Nardo,  
779  
R v Hackett, 482  
R v Hall (1845), 8  
R v Hallam, 484, 489  
R v Hamilton, 316–317  
R v Harris (1680), 569  
R v Henry, 455  
R v Hepburn, 473  
R v Home Secretary; Ex parte Khawaja, 779–780  
R v Hughes, 806  
R v Iby, 231  
R v Jones (1630), 566  
R v Jurisic, 454–455  
R v Kearsley (c 1763), 576  
R v Kelly (Edward), 319  
R v Kelly (Thomas), 448  
R v King, 480–481  
R v Kirby; Ex parte Boilermakers’ Society of Australia  
(Boilermakers’ Case), 702

- 
- R v Knell (1729), 575  
R v Knightly, 559  
R v Kostic, 484  
R v KU; Ex parte Attorney-General, 599–600  
R v L, 324  
R v Leech; Ex parte Tolstrup, 231  
R v Long; Ex parte Attorney-General (Qld), 588  
R v McHugh, 545  
R v Mendoza, 494–495  
R v Morrison, 772  
R v Murphy (1986), 465  
R v Murphy [2003], 492  
R v Nash (1718), 574  
R v North & East Devon Health Authority; Ex parte Coughlan, 257  
R v Norton (1630), 566  
R v Nutt, 575  
R v Oliver, 452  
R v Owen (1616), 564  
R v Panel on Takeovers & Mergers; Ex parte Datafin plc, 633  
R v Perkins (1625), 566  
R v Prince, 696  
R v Richards; Ex parte Fitzpatrick & Browne, 465, 469  
R v Roberts (1838), 621  
R v Secretary of State for Foreign & Commonwealth Affairs; Ex parte Everett, 778  
R v Secretary of State for Health; Ex parte C, 414  
R v Secretary of State for the Home Department; Ex parte Bentley, 288  
R v Secretary of State for Transport; Ex parte Factortame Ltd, 159  
R v Smith [1987], 474–475, 477  
R v Smith (1996), 695  
R v Special Commissioners of the Income Tax; Ex parte Morgan Grenfell & Co Ltd, 402–403, 408  
R v Sutton, 472  
R v Toohey; Ex parte Meneling Station Pty Ltd, 274  
R v Turnbull, 472, 481  
R v Walker, 575  
R v Whyte, 450  
R v Williams (1619), 564  
R v Williams (c 1763), 576  
R v Williams [1983], 489  
R v Woollin, 249  
R v Wright, 571  
R v Yirrawala, 483  
R (Al Rawi) v Secretary of State for Foreign & Commonwealth Affairs, 778  
R (Bancourt) v Secretary of State for Foreign & Commonwealth Affairs, 189  
R (Corner House Research) v Director of the Serious Fraud Office, 835  
Radmanovich v Nedeljkovic, 82, 85  
Ralph de Gael (1067), 547  
Ralphson (1684), 569  
Randell v Rockliff, 346  
Rann v Olsen, 466  
Rapid Roofing Pty Ltd v Natalise Pty Ltd, 375  
Rasul v Bush, 604  
Ravensworth (1336), 554  
Rayner v Preston, 268  
Reader's Digest Services Pty Ltd v Lamb, 879  
Redmayn (1717), 574  
Redpath v Kissinger, 787  
Reeves v Sprecher, 245–246  
Refugee Review Tribunal, Re; Ex parte Aala, 257  
Regie Nationale des Usines Renault SA v Zhang, 255–256  
Reichman v Beveridge, 364  
Reid v Sinderberry, 840  
Reliance Car Facilities Ltd v Roding Motors Ltd, 386  
Reliance Carpet Co Pty Ltd v Commissioner of Taxation (Cth), 751  
Repatriation Commission v Nation, 83, 90  
Research Foundation for Science Technology and Natural Resources Policy v Union of India, 187  
Resema v PNG, 218  
Residential Tenancies Tribunal (NSW), Re; Ex parte Defence Housing Authority, 414  
Reynolds v Katoomba RSL All Services Club Ltd, 319  
Rich v Australian Securities & Investments Commission, 406  
Rich v Harrington, 336–337  
Richardson v Forestry Commission (Tasmanian Forests Case), 188  
Riches v Hogben, 600–602  
Rick Dees Ltd v Larsen, 79  
Rideh v Secretary of State for the Home Department, 783  
Rigby v Connol (1880), 630  
Rio Tinto Ltd v Commissioner of Taxation, 347
-

“Ripon City”, The [1897], 868  
 Roach v Electoral Commissioner, 25–26, 418  
 Roake v Chadha, 596  
 Robert Addie & Sons (Collieries) Ltd v Dumbreck, 255  
 Robert de Mowbray (1095), 547  
 Roberts, Re, 51  
 Roberts v Swangrove Estates Ltd, 694  
 Robinson v Gee, 730  
 Robinson v Robinson, 41  
 Robson v Leischke, 832  
 Roger of Hereford (1067), 547  
 Rogers v Wentworth, 86–87  
 Rolloswin Investments Ltd v Chromolit Portugal etc SARL, 231  
 Ronim Pty Ltd, Re, 274–275  
 Rootes v Shelton, 247  
 Rose v Pim, 252  
 Rose and Frank Co v JR Crompton & Bros Ltd, 630  
 Ross (1690), 572  
 Rossfreight Holdings Pty Ltd v Unipep Australia Pty Ltd, 723–724  
 Rothwell v Chemical & Insulating Co Ltd, 166  
 Rowley v O’Chee, 465–466  
 Roxborough v Rothmans of Pall Mall Australia Ltd, 251, 324, 748  
 Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic), 837  
 Royal Botanic Gardens & Domain Trust v South Sydney City Council, 83  
 Royal Commission on the Thomas Case, Re, 846  
 Royalene Pty Ltd v Registrar of Titles, 673–675  
 “Ruby”, The (No 2) (1898), 868  
 Ruddock v Vadarlis, 779  
 Rupar v Rupar, 53  
 Rural Press Ltd v Australian Competition & Consumer Commission, 329  
 Russell v Jorgenson, 669  
 Russell v Russell, 800  
 Russell v Scott, 40, 42  
 Russell v Wilson, 385–386  
 “Ruta”, The, 867, 869, 870  
 Rylands v Fletcher, 185

## S

S v Boulton, 772

S & M Motor Repairs Pty Ltd v Caltex Oil (Australia) Pty Ltd, 90  
 Sabah Yazgi. — *see* Yazgi  
 “Sabina”, The (1843), 869  
 Safeguard Ltd v National Westminster Bank, 394–395  
 Saffron v Delaney, 842  
 Saffron v The Queen, 409, 842  
 St Edmundsbury & Ipswich Diocesan Board of Finance v Clark, 509  
 St John (Oliver) (1615), 564  
 St Johns Shipping Corp v Joseph Rank Ltd, 194  
 “St Lawrence”, The (1880), 870  
 Saint Line Ltd v Richardsons Westgarth & Co Ltd, 697  
 “Salacia”, The, 870, 871  
 Saleeba v Wilkie, 77  
 Salerno v National Crime Authority, 624  
 Sampson v Federal Republic of Germany, 640  
 Sandeman & Sons v Tyzac & Branfoot Steamship Co Ltd, 391  
 Sandrin v W&M Riggs Mechanical Repairs, 82, 86–87  
 “The Satanic Verses” case. — *see* R v Chief Metropolitan Stipendiary Magistrate; ex parte Choudhury  
 Savings Factory Pty Ltd v Daniel, 80–81  
 Sayre v Hughes, 52  
 SB v The Queen, 449  
 Schlieske v Minister for Immigration & Ethnic Affairs, 777  
 Schultz v Corwill Properties Pty Ltd, 512  
 Schwarzschild v Harrods Ltd, 382  
 Scott v Pauly, 41, 43, 53  
 Scott v Surman, 721  
 Scrogg’s case, 567  
 “Sea Empress”, The. — *see* Alegrete Shipping Co Inc v International Oil Pollution Compensation Fund 1971  
 Secretary of State for Home Affairs v O’Brien, 779–780  
 Secretary of State for the Home Department v E, 783  
 Segrave (1305), 552  
 Seidler v Schallhofer, 193  
 Sekhon v Alissa, 41  
 “Selina”, The (1842), 871  
 Semelhago v Paramadevan, 272  
 Sempra Metals Ltd v Inland Revenue Commissioners, 79  
 Sertari Pty Ltd v Nirimba Developments Pty Ltd, 233  
 Seven Bishops (1688), 570–571

- Seven Network Ltd v News Ltd, 260, 334–335, 345, 650–651
- Shanahan v Fitzgerald, 273
- Sharp v Thomson, 380
- Sharpe, Re, 84
- Shaw v Foster, 269
- Shaw v Groom, 193
- Shebbeare (1758), 575
- Shehla, Zia v WAPDA, 192
- Shelfer v City of London Electric and Lighting Co, 365–366
- Shephard v Cartwright, 40
- Sheriff of Middlesex, Case of the, 465–466
- Shevill v Builders Licensing Board, 363
- Shih Shin Wang-Liu v Tsai Pei Lun Betty alias Tsai Pei Loon, 44–45
- Shipley. — *see* Dean of St Asaph
- Shoprite Checkers Ltd v Pangbourne Properties Ltd, 389
- Sierra Club v Morton, Secretary of the Interior, 186
- Silbert v Director of Public Prosecutions (WA), 609
- Sillo v Naude, 388
- Silver v Silver, 46
- Silverwood v Silverwood, 41
- Sim v Stretch, 879
- Simonius Vischer & Co v Holt & Thompson, 286
- Sims v SPM Business Consultants, 380
- Simsek v Macphee, 784
- Sin Sai Peng v Soh Kim Lian Florence, 51
- Sinderberry, Ex parte, 839–840
- Singapore Airlines Ltd v Taprobane Tours WA Pty Ltd, 329
- Singh v Minister for Immigration & Multicultural Affairs, 167
- Singla v Brown, 319–320
- Site Developments (Ferndown) Pty Ltd v Barratt Homes Ltd, 365
- Skelton v Younghouse, 217
- Slander, Action upon the Case for (1662), 567
- Slapp, In the Marriage of, 18
- Small v Gray, 28
- Small v Tomassetti, 34, 38, 674
- Smith (1680), 568
- Smith (1683), 569
- Smith (1716), 574
- Smith v Police, 481
- Smith v Reagan, 787
- Smith v The Queen (1990), 475, 477–478
- Smith v The Queen (2001), 304
- Smith v Torr, 391
- Smithson v Hamilton, 445
- Soar v Foster, 40
- Solicitor-General v Bartlett, 316
- Sommerville, In the Marriage of, 241
- Sorrento Medical Services Pty Ltd v Chief Executive, Department of Main Roads, 277, 513
- South v Ward, 566
- South Australia v Commonwealth (1942), 634
- Southbourne Investments Pty Ltd v Greenmount Manufacturing Ltd, 246
- Southern Equities Corp Ltd v Arthur Andersen & Co (1997), 343–344
- Southern Equities Corp Ltd v Arthur Andersen & Co [No 6] [2001], 334
- Southern Equities Corp Ltd v West Australian Government Holdings Ltd, 411
- Southland Coal Pty Ltd, Re, 397
- Spencer's Case, 363
- Spina v Conran Associated Pty Ltd, 675–676
- Standard Chartered Bank of Australia Ltd v Antico, 342–343, 345
- Stapleton v The Queen, 249
- Starlight Enterprises Ltd v Lipco Enterprises Ltd, 693
- State v Public Service Commission, 184
- State Government Insurance Commission v Trigwell, 324
- Stern v McArthur, 269, 273, 275, 278
- Stevens v Kabushiki Kaisha Sony Computer Entertainment, 325
- Stevens v Yorkhill NHS Trust and Southern General University Hospitals NHS Trust, 876
- Stockdale (1789), 577, 578
- Stockdale v Hansard (1839), 465–467, 470
- Stokes v Clendon, 730
- Story v Advance Bank, 28, 38
- Stow v Mineral Holdings (Aust) Pty Ltd, 274
- Strarch International Pty Ltd (in liq), Re, 400
- Street v Queensland Bar Association, 188
- Strickland v Grieve, 275
- Strickland v Rocla Concrete Pipes Ltd, 709
- Stroud (1629), 543, 548, 557, 558, 564–565, 567, 578
- Sullivan v Moody, 254

Sut v Nominal Defendant, 398  
 Sutton's Hospital, Case of, 231  
 Sweeney v Howard, 78  
 Swiss Bank Corp v Lloyds Bank Ltd, 268, 269, 276  
 "Sydney Cove", The (1815), 869, 870  
 Sydney Diagnostic Services Pty Ltd v Hamlena Pty Ltd, 157  
 Sydney Harbour Collieries Co, Re, 184  
 SZAYW v Minister for Immigration & Multicultural and Indigenous Affairs, 652  
 SZBEL v Minister for Immigration & Multicultural and Indigenous Affairs, 405, 652  
 SZBYR v Minister for Immigration & Citizenship, 652  
 SZHWY v Minister for Immigration & Citizenship, 398–399, 403, 412–413

# T

"Tacoma City", The, 863, 867, 868  
 Taj Trapezium Case. — *see* Mehta (MC) v Union of India (1996)  
 Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd, 232  
 Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd [No 2], 232  
 Tame v New South Wales, 254  
 Tanwar Enterprises Pty Ltd v Cauchi, 266–267, 269–271, 275–276, 280  
 Tasmania Conservation Trust Inc v Minister for Resources, 187  
 Tasmanian Dam Case. — *see* Commonwealth v Tasmania  
 Tasmanian Forests Case. — *see* Richardson v Forestry Commission  
 Tatam v Skivart, 481  
 Tate v Austin (1714), 724  
 Tate v Crewsdon, 724  
 Tavouleras v Law, 384, 391  
 Taxation Commissioner. — *see* Commissioner of Taxation  
 Taylor, In the Marriage of, 18  
 Taylor v New Zealand Poultry Board, 189  
 Taylor Marine Ltd v Taylor Marine Brokers (2005) Ltd, 24  
 Tegra Pty Ltd v Gundagai Shire Council, 821, 835  
 Tekitu Pty Ltd v Dennis, 387  
 Telecom Vanuatu Ltd v Optus Networks Pty Ltd, 379

Telkom SA Ltd v Xsinet (Pty) Ltd, 388–389  
 Telstra Corp Ltd v BT Australasia Pty Ltd, 339, 343–348  
 Telstra Corp Ltd v Minister for Broadband, Communications & the Digital Economy, 523–524  
 Telstra Corp Ltd v Minister for Communications, Information Technology & the Arts [No 2], 336  
 Temwell Pty Ltd v DKGR Holdings Pty Ltd, 345  
 Teo Siew Har v Lee Kuan Yew, 44, 46  
 "Tergeste", The, 854  
 Thaina Town (On Goulburn) Pty Ltd v Sydney City Council, 835–836  
 Theophanous v Herald & Weekly Times Ltd, 326–327  
 Thirsty Mack's Pty Ltd v Hasbeen Pty Ltd, 301, 597  
 Thomas v Mowbray, 190, 404, 608, 610–611, 636, 782–785  
 Thomas v Thomas (1855), 724, 735–736  
 Thomas & Agnes Carvel Foundation v Carvel, 760  
 Thomason v Campbelltown Municipal Council, 339–342, 344–345  
 Thompson (1682), 569  
 Thompson v H & W Nelson Ltd, 868  
 Thompson v Palmer, 250  
 Thompson v Woolworths (Qld) Ltd, 255  
 Thorley v Kerry, 879  
 Thorpe v Commonwealth, 777, 783–784  
 Thranur (1529), 558  
 Three Pty Ltd v Body Corporate for Savoir Faire Community Titles Scheme 3841, 604–605  
 Three Rivers District Council & Bank of Credit & Commerce International SA (In liq) v Bank of England (BCCI Case), 334, 403–404, 407–408, 411  
 Thwaites v Ryan, 601  
 Timbarra Protection Coalition v Ross Mining NL, 187  
 Timber Tops Realty Pty Ltd v Mullens, 601  
 TN Godavarman Thirumulpad. — *see* Godavarman Thirumulpad (TN)  
 Tobin v Broadbent, 78  
 "Tolten", The, 851  
 Tom & Bill Waterhouse Pty Ltd v Racing New South Wales, 749–750  
 Tonkin v Brand, 658

Tooke, Horne. — *see* Horne  
 Toussaint v Attorney-General of St Vincent and the Grenadines, 24–25  
 Towney v Commissioner for Land and Water Conservation (NSW), 772  
 Townsville Hospitals Board v Townsville City Council, 634  
 Toyota Finance Australia Ltd v Dennis, 380, 387–388  
 Tozer, In the Marriage of, 18  
 Traske (1617), 564  
 Travinto Nominees Pty Ltd v Vlattas, 28, 32–34, 36  
 Treco, Re, 855  
 Trethowan v Peden, 7, 658  
 Trewin v Felton, 233–234  
 Trident General Insurance Co Ltd v McNiece Bros Pty Ltd, 253, 324  
 “Triton”, The. — *see* Attorney-General v Norstedt  
 Trustees of the Roman Catholic Church v Ellis, 22–23  
 Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality, 388  
 Tucker v Burrow, 57  
 “Turiddu”, The, 868, 870  
 Turners & Growers Exporters Ltd v The Ship “Cornelis Verolme”, 852, 856–857  
 Tutchin (1704), 572, 573–574, 578  
 Twinsectra Ltd v Yardley, 249–250  
 “Two Ellens, The”, 859  
 Twyn (1663), 567  
 Tyrone v Clutterback, 240–241

## U

U v U, 782  
 Udall (1590), 558–559, 567  
 Underhill v Hernandez, 776  
 “Union”, The (1860), 870  
 Union Bank of Australia v Harrison, Jones & Devlin Ltd, 392  
 Union Steamship Co of Australia Pty Ltd v King, 190  
 Union Transport Finance Ltd v British Car Auctions Ltd, 390  
 United States v Curtiss-Wright Export Corp, 785  
 United States v Herzberg, 98, 103  
 United States v Vitusa Corp, 98, 103

United States Surgical Corp v Hospital Products International Pty Ltd, 286, 340–342, 344

## V

Valantine v Technical & Further Education Commission, 398–399, 405, 411–412, 415  
 Van Eck NO & Van Rensburg v Etna Stores, 388  
 Vaudeville Electric Cinema Ltd v McMillan, 827  
 Vaughan v Watt, 384  
 Veen v The Queen [No 2], 451  
 Veinot v Kerr-Addison Mines Ltd, 255  
 Vella v Ayshan, 302–303  
 Vella v Permanent Mortgages Pty Ltd, 595, 671–672  
 Vellore Citizens Welfare Forum v Union of India, 187, 191  
 Vercorp Pty Ltd v Lin, 164  
 Vetta v Lake Macquarie City Council, 836  
 Victoria v Australian Building Construction Employees’ & Builders Labourers’ Federation, 414  
 Victoria v Commonwealth (1957), 802  
 Victoria v Commonwealth (1996) (Industrial Relations Act Case), 801  
 Victoria v Tymbook Pty Ltd (Retail Tenancies), 826–827  
 “Victoria”, The (1858), 867  
 Villers v Monsley, 880  
 Vincent v State Bank of New South Wales, 385  
 Virgona. — *see* Estate of the late JJ Virgona  
 Visnic v Sywak, 523  
 “Volant”, The, 858

## W

W & A McArthur Ltd v Queensland, 798  
 Wakim, Re; Ex parte McNally, 409, 703, 713, 715, 718  
 Wall v Bright, 269  
 Walsh and Johnson, Ex parte; Re Yates, 189  
 Ward v Beck, 862  
 Wardrope v Dunne, 341  
 Washington University v Catalona, 876–877  
 Waterford v Commonwealth, 333–334, 398, 402, 405–406, 410, 413  
 Watford Electronics Ltd v Sanderson CFL Ltd, 697  
 Watkins v United States, 467–468  
 Waweru v Republic of Kenya, 184, 187, 192  
 Wayne Lawrence Pty Ltd v Hunt, 346

Weir's Settlement Trusts, Re, 274  
 Wells v Osman (1704), 869  
 Wells (John), Re (1840), 621  
 Western Australia v Wilshire, 685  
 Western Australian Planning Commission v Temwood Holdings Pty Ltd, 182  
 Westfield Management Ltd v Perpetual Trustee Co Ltd, 14–15, 233  
 Westpac Banking Corp v 789TEN Pty Ltd, 398  
 "Westport", The (No 4), 868  
 Whaley v County of Tuscola, 876  
 Whitacre v Moody and his Wife (1628), 566  
 White v Betalli, 157–158  
 White v Director of Military Prosecutions, 410, 413  
 White v Dortenzio, 725  
 Wight v Eckhard Marine GmbH, 386  
 Wightman t/a JW Construction v Headfour (Pty) Ltd, 389  
 Wik Peoples v Queensland, 324, 521, 881  
 Wilcox v Richardson, 157  
 Wilkes (1763), 576, 578  
 Wilkinson v Osborne, 192  
 Wilkinson v Verity, 382  
 "William F Safford", The (1860), 869, 870  
 William Steward (Holdings) Ltd, Re, 394  
 Williams (1575), 558  
 Williams (1685), 571  
 Williams v United States, 80  
 Willoughby City Council v Minister Administering the National Parks and Wildlife Act, 184  
 Wilson, Re, 43, 53–54  
 Wilson v Meudon Pty Ltd, 231  
 Wilson v Minister for Aboriginal & Torres Strait Islander Affairs, 607–609, 612  
 Wilton v Farnworth, 250  
 Windeler v Whitehall, 50  
 Winpar Holdings Ltd v Goldfields Kalgoorlie Ltd, 499  
 Wirth v Wirth, 41, 43  
 Wolseley Investments Pty Ltd v Gillespie, 166–167  
 Wolverhampton & Walsall Railway Co v London & North Western Railway Co, 272

Wong v The Queen, 451, 454, 456  
 Woodfall (1770), 576  
 Woodhouse AC Israel Cocoa Ltd SA v Nigerian Produce Marketing Co Ltd, 250  
 Woods (t/as Turner Freeman) v Hanoldt, 403  
 Woodstock AP (Bankrupt), Re, 725  
 Woolworths Ltd v Pallas Newco Pty Ltd, 187  
 Work Choices Case. — *see* New South Wales v Commonwealth  
 Wraynham's case (1618), 563  
 Wright v Clarkson, 400  
 Wrotham Park Estate Co v Parkside Homes, 365  
 Wyong Shire Council v Shirt, 154

## Y

Yacoub v Pilkington (Aust) Ltd, 319  
 Yango Pastoral Co Pty Ltd v First Chicago Australia Ltd, 193  
 Yarmouth Corporation v Simmons, 155  
 Yates v Hall, 868  
 Yates Property Corp Pty Ltd v Boland, 83–84  
 Yazgi (Sabah) v Permanent Custodians Ltd, 29, 37–39, 671–673  
 Yeo Guan Chye Terence v Lau Siew Kim, 47  
 Yerkey v Jones, 720, 724, 738  
 Yonge v Furse, 722  
 York v The Queen, 630  
 York Street Mezzanine Pty Ltd, Re, 243–244  
 Yoseph v Mammo, 202  
 Young v Young, 43  
 Youssouppoff v Metro-Goldwyn Mayer, 880

## Z

Z, Re, 772  
 Z v New South Wales Crime Commission, 400  
 "Zafiro", The, 859–860, 862, 864–865  
 Zafiroopoulos v Recchi, 38  
 Zemanek v Commonwealth Bank of Australia, 334  
 Zenger's Case (1735), 619–620, 622  
 Zimmer v Manning, 387





# INDEX\*\*

## A

### **Aboriginals** — *see also* **Native Title; United Nations Declaration on Indigenous Peoples**

Aurukun rape appeals, 599–600  
Parliament's apology to stolen generation, 227

### **Administrative Law** —

client legal privilege — *see* **Client Legal Privilege**  
environmental law and, 187–188  
High Court contribution, 256–257  
judicial review — *see* **Judicial Review**  
legal professional privilege — *see* **Client Legal Privilege**  
public interest immunity — *see* **Public Interest Immunity**

### **Admiralty Law** —

conflict with insolvency law, 849–875\*  
bankruptcy, 852–857  
Canada, 854–856  
New Zealand, 856–857  
competing priorities in Australia, 872–875  
corporate insolvency, 857–865  
Australia, 861–865  
cross-border insolvency, 865–866  
maritime liens, 850–853  
master and crew wage entitlements, 867–871

### **Advancement** —

presumption, 40–59\*  
co-habiting couples and other relationships, 50–51  
father-child relationship, 51  
history, 40–42  
husband-wife relationship, 46–47  
in loco parentis, 57  
mother-child relationship, 51–55  
Australia, 53–54  
Canada, 54  
Singapore, 54–55  
parent-adult child relationship, 55–56  
rationales, function and effect of application, 42–46  
reforming the presumption, 57–59

statutory reforms for spousal relationship, 48–50  
Canada, 49–50  
New Zealand, 49–50  
UK, 48–49  
wife-husband relationship, 47–48

### **Advocacy** — *see also* **Counsel**

cross-examination  
limits on, 298  
rights of cross-examiner, 16–17  
interview with Jeffrey Sher, 756–757  
use of demonstrations, experiments or inspections, 304–305

### **Affidavits** —

swearing of, 360

### **Agency** —

fraud by bank's agent infecting mortgage, 511–512  
irrevocable proxies, 516–520\*

### **Alternative Dispute Resolution** — *see* **Mediation**

### **Animal Behaviour** —

fowls (1907), 150

### **Antiquities** — *see* **Conversion**

### **Appeal and New Trial** —

intermediate appellate courts  
multiple issues of fact and law, 650–657\*  
antecedents, 653–656  
dilemma, 650–652  
High Court's approach in Kuru case, 652–653  
limits on appeals by taxpayers, 835–837  
offensive discourse between appellate and lower courts, 260–265\*, 507  
special leave to appeal (book review), 219

### **Australian Law Journal** —

80th anniversary conferences cancelled, 295  
guest editors, 434, 509–510, 592  
history (1933), 7  
history (1958), 7  
indexes to, 11  
New South Wales bias, 670, 819–820\*  
selection of articles, 670, 819–820

\*\* This Index is to ALJ only. There is a separate Index to cases reported in the ALJR.

\* Indicates a more important reference.

**B****Bankruptcy —**

- exoneration for wives of bankrupt husbands, 720–738\*
  - husband's estate, 727–729
    - Dickson v Reidy, 728–729
    - early cases, 727–728
  - other relationships, 729–730
  - parameters of the doctrine, 721–724
  - preconditions to application of doctrine, 730–736
    - charge over property, 731
    - charge to pay debts or benefit another person, 731–736
    - money borrowed applied for benefit of principal debtor, 736
  - wife's estate, 724–727
    - Parsons v McBain, 725–727
  - transactions at an undervalue, 319–320
  - wife taking transfer of property just before husband's bankruptcy, 760

**Barristers — see Counsel****Battery —**

- defence of mistaken belief, 693

**Bigamy —**

- history, 8

**Bill of Rights —**

- book review, 885–886

**Book Reviews/New Books —**

- Australian Dictionary of Biography*, Vol 17, (ed Dianne Langmore), 810–811
- Bennett, J M, *George Higinbotham: Third Chief Justice of Victoria 1886–1892*, 60–64
- Bodkin, Colin, *Patent Law in Australia*, 882
- Bonyhady, T and P Christoff (eds), *Climate Law in Australia*, 886–887
- Boulle, Laurence, *The Law of Globalisation*, 419
- Buti, A, *Sir Ronald Wilson: A Matter of Conscience*, 880–882
- Cane, Peter, *The Political Economy of Personal Injury Law*, 883
- Cope, Malcolm, *Equitable Obligations: Duties, Defences and Remedies*, 282–283
- Duncan, W D and W M Dixon, *The Law of Real Property Mortgages*, 420–421

Eisgruber, Christopher L, *The Next Justice: Repairing the Supreme Court Appointments Process*, 417–418

Farrall, Jeremy Matam, *United Nations Sanctions and the Rule of Law*, 808–810

Freckelton, Ian and David Ranson, *Death Investigation and the Coroner's Inquest*, 139–140

Gibson, Geoffrey, *The Making of a Lawyer: What they didn't Teach you at Law School*, 884–885

Haines, D M, *Construction of Wills in Australia*, 217

Hardcastle, Rohan, *Law and the Human Body: Property Rights, Ownership and Control*, 876–878

Juratowitch, Ben, *Retroactivity and the Common Law*, 349–350

McNamara, Lawrence, *Reputation and Defamation*, 878–880

McPherson, B H, *The Reception of English Law Abroad*, 218–219

O'Brien, David, *Special Leave to Appeal*, 219

Ong, Denis, *Trusts Law in Australia*, 3rd ed, 349

O'Sullivan, Dominic, Steven Elliott and Rafal Zakrzewski, *The Law of Rescission*, 883–884

Parkinson, Charles O H, *Bills of Rights and Decolonization*, 885–886

Twomey, Anne, *The Chameleon Crown*, 283

Walmsley, S, A Abadee, B Zipser, *Professional Liability in Australia*, 2nd ed, 419–420

Winterton, George (ed), *State Constitutional Landmarks*, 658

**Bribery — see International Business****Business, International — see International Business****C****Chattels — see Personal Property****Child Pornography —**

- art and, 431–432
- right to silence and inferences, 524–525

**China —**

- judges visiting Queensland, 591

**Civil Rights —**

- freedom of conscience and, 821

**Client Legal Privilege (Legal Professional Privilege) —**

- administrative proceedings, 397–416\*
- adversarial/inquisitorial distinction, 405–412
- AWB Ltd and Ingot: critique, 408–411

\* Indicates the more important references.

- AWB Ltd and Ingot: facts and reasoning, 406–408
- Maurice and Waterford: availability of litigation privilege assumed, 405–406
- Valantine: New South Wales Court of Appeal, 411–412
- restatement of rule, 412–416
- ALRC Reports 102 and 107, 415–416
- discarding “proceeding” for “participation in a decision making process”, 413–415
- intermediate appellate authority: SZHWY, 412–413
- rights-based justification, 401–405
- litigation privilege, 404–405
- movement within three categories, 401–404
- statutory context of privilege claims, 399–401
- exclusion of Evidence Act, 399–400
- statutory modifications of privilege, 400–401
- in-house counsel, 333–337\*
- issue waiver, 338–348\*
- fairness and, 341–344
- inconsistency and, 345–346
- post-Rio Tinto, 347–348
- seminal cases, 339–340
- Climate Change** —
- Australian law (book review), 886–887
- Clubs and Associations** — *see* **Political Parties**
- Commercial Law** — *see also* **Companies and Corporations; International Business**
- international judicial exchange on best practice, 359
- Lord Mansfield, 764–767
- multi-judge courts for long commercial trials, 229
- Queensland cases, 589
- Common Law** — *see also* **Policy**
- Australia’s contribution to, 247–259\*
- administrative law, 256–257
- contract, 251–253
- criminal law, 248–250
- equity, 250–251
- tort, 253–256
- retroactivity (book review), 349–350
- Commonwealth** — *see* **Constitutional Law**
- Companies and Corporations** — *see also* **International Business**
- articles of association, power to alter, 245
- corporations sole, 22–23
- directors — *see* **Directors**
- foreign companies, authorisation of derivative actions, 245–246
- life estates in property, 15, 231, 235, 366–367
- prescribed interests, accrued rights under repealed statute, 21
- private companies — *see* **Private Companies**
- winding up
- duties of liquidators, 375–376
- indemnity for court appointed receivers, 21
- litigation benefitting lawyers & funders, 10
- pooling assets, 374
- Compensation** —
- equitable, for disposal of shares, 761
- Confidentiality** —
- mediation, 206
- Constitutional Law** —
- caretaker governments, 71
- Crown, history of (book review), 283
- environmental law and, 188–192
- interstate trade, valid and invalid protection, 320–321
- port regulation — *see* **Port Regulation**
- States (book review), 658
- votes for women, 25–26
- Consumer Protection** —
- secret commissions, 165
- Contract** — *see also* **Contract for Sale of Land**
- accrued rights under repealed statute, 21
- consequential loss, 697–699
- damages for mental distress on breach (Canada), 368–370
- environmental law and, 192–194
- evidence of post-contract conduct, 318
- High Court contribution, 251–253
- interpretation, commercial construction, 244
- option exercised by deposit of personal cheque, 246
- punctuation in drafting, 515
- rescission — *see* **Rescission**
- specific performance, limits of, 166–167

\* Indicates the more important references.

**Contract for Sale of Land — see also Conveyancing**

- buyer's "interest" under uncompleted contracts, 266–281\*
- equity, 279–280
- nature of interest, 266
- querying traditional classification, 267–279
- covenants, running of, 596–597
- drunkenness, effect of, 80
- forfeited deposits, GST on, 751–752
- inalienability and pre-emption, 164
- licence as interest in land, 513
- price increase as repudiation, 693
- right of pre-emption, when exhausted, 300
- "selling" and "entering upon" a sale, 604–605
- short payment of deposit, 373
- Statute of Frauds and profits à prendre, 22
- termination for failure to complete building in "proper and tradesmanlike manner", 302–303
- time to complete, 79

**Conversion —**

- goods retained until holding charges paid, 375
- title to excavated antiquities, 445

**Conveyancing — see also Contract for Sale of Land**

- forfeiture of deposit, 760–761
- short payment of deposit, 373
- waiver of conditions, 21–22

**Copyright —**

- TV programming, 525–526

**Coroners —**

- book review, 139–140

**Corporations Law — see Companies and Corporations****Corruption —**

- anti-corruption commissions (SA), 295

**Costs —**

- agreements and revised estimates, 80–81
- mediation, 206–207
- proceedings to recover, 447
- security for, litigation funding, 525

**Counsel — see also Advocacy; Client Legal Privilege**

- appointment of Senior Counsel (Victoria), 163
- exchanges with judges, 149
- relations with judges (book review), 884–885

**Court Orders —**

- construction, 82–91\*
- consent orders, 89
- extrinsic material, 85–88
- injunctions, 89–90
- need to identify ambiguity, 83–85
- practical considerations, 85
- undertakings, 90

**Courts — see also Litigation**

- accommodation, 359–360
- decentralisation (Qld), 590–591
- decision-making function, 607–613\*
- delays, 295–296
- digital recording of proceedings, 590
- etiquette, 509
- forms, 360
- orders — see **Court Orders**
- performance indicators, 297
- referees, 821–822
- resources, 71–72

**Covenants — see Contract for Sales of Land; Landlord and Tenant****Criminal Law and Procedure — see also Evidence;****Proceeds of Crime; Sedition**

- control orders, Hicks case, 782–783
- High Court contribution, 248–250
- injunction restraining screening of "Underbelly" (TV) program, 227
- investigation, foreign government pressure to drop inquiries, 834–835
- Norfolk Island (1908), 433–434
- outraging public decency, 316–317

**Cross-Examination — see Advocacy****D****Damages — see Negligence****Debt —**

- lawyers' pressure on debtors, 164

**Defamation —**

- reputation (book review), 878–880
- striking out applications, 167
- women, 433

\* Indicates the more important references.

**Directors** —  
 fiduciary duties, breaches and damages, 523

**Discovery** —  
 consent orders, 523–524  
 redacted versions of documents excluding privileged material, 243  
 statutory restrictions, 834

**Divorce** —  
 history, 8

## E

**Easements** —  
 abandonment: Torrens statutes, 234–235  
 adding properties to, 14–15  
 court-imposed, 303  
 extinguishment, 154–155  
 fences, gates and parking, 233–234  
 interference with, injunctions and actions for damages, 232  
 necessity, 155–156  
 parking vehicle permanently, 157–158  
 servient owner compelled to consent to development on dominant land, 233  
 storing boat on strata lot, 157–158  
 unsolicited permission to use track, 317–318

**Electoral Systems** —  
 constitutional conventions, 71  
 votes for women, 25–26

**Employment Law** —  
 pension schemes, mistakes in deeds, 445

**Environmental Law** — *see also* **Marine Pollution**  
 civil law and, 180–195\*  
   administrative law, 187–188  
   constitutional law and human rights, 188–192  
   contract law, 192–194  
   property law, 180–185  
   torts, 185–187  
 draining wetlands (1908), 229

**Equity** —  
 compensation — *see* **Compensation**

exoneration — *see* **Bankruptcy**  
 expectation, 606–603  
 High Court contribution, 250–251  
 Mansfield's contribution, 747–748  
 mistake in pension scheme deed, 445  
 principles (book review), 282–283  
 stating accounts, 74  
 subrogation — *see* **Subrogation**

**Evidence** — *see also* **Affidavits**; **Expert Evidence**; **Witnesses**  
 deliberate omission as admission of guilt, 165–166  
 eyewitness identification, 471–498\*  
   abolition of common knowledge rule, 496–498  
   process, 471–496  
     direct and circumstantial evidence, 482–483  
     identification of accused by eyewitness, 471–472  
     identity and resemblance, 480–482  
     impression on the mind, 476–479  
     judicial direction on jury use of evidence, 483–496  
     misinformation effect, 480  
     observation and perception, 473–476  
     retention of an observation, 479–480  
 hearsay rule, 228–229, 435  
 right to silence and inferences, 524–525  
 similar uncharged acts, 449

**Exoneration** — *see* **Bankruptcy**

**Expert Evidence** —  
 exceptional circumstances, 319  
 state of knowledge in past, 834

**Extradition** —  
 precedent: Privy Council, 23

**Eye-witnesses** — *see* **Evidence**

## F

**Facilitation** — *see* **Mediation**

**Fair Trial** —  
 expense, 820–821  
 pre-trial publicity, 588–589

\* Indicates the more important references.

**Family Law** — *see also* **Divorce**

- contact orders, exclusivity of, 677
- final division of property during cohabitation, 18–19
- financial agreements
  - de facto relationships, 678
  - dealing with other matters, 677
  - necessity of full compliance, 678–679
  - parties to, 677
  - property or maintenance orders and, 241–242
- parentage testing orders, 240–241
- property orders, erroneous property values, 19–20
- rights of domestic owners when relationships sour, 315–316

**Federal Court of Australia** —

- establishment & history, 700–719\*
  - Commonwealth government & the judicial system, 718
  - Federal Court of Australia Act 1976 (Cth), 709–713
  - Federal courts & State jurisdiction prior to 1976, 702–703
- future of Federal Court, 716–718
  - court of appeal, 717
  - divisions, 717
  - docket system, 717–718
- future relevance of Constitution, s 77(iii), 715–716
- High Court, State courts & other federal courts (1903–76), 701–702
- history since 1976, 713–715
- object of Constitution, s 77(iii), 703
- one system of courts, 703–704
- origins, 704–709
- mediation, 198–199

**Federalism** —

- co-operation between States and Commonwealth, 295, 587
- national capital site, 431

**Fiduciary Duty** —

- directors — *see* **Directors**

**Freedom of Information** —

- media access, 8–9

**Freedom of Speech** — *see* **Parliamentary Privilege****G****Gaming**

- “games of chance”, 448
- problem gamblers’ actions for damages, 318–319

**Genocide** — *see* **Rwanda****Globalisation** —

- book review, 419

**Goods and Services Tax (GST)** —

- forfeited deposits, 751–752
- overpaid, restitution, 833

**Government Inquiries** — *see* **Public Inquiries****Governors** —

- Rum Rebellion (1808), 7–8, 148

**H****Habeas Corpus** —

- Guantanamo Bay detainees, 604
- Hicks case, 779–780

**High Court** —

- appointments and retirements, 147, 587, 667
  - Chief Justice, 587, 667
- common law contribution — *see* **Common Law**
- judicial method, 768–773\*
- number of judges, 667
- special leave to appeal (book review), 219

**Human Body** —

- property rights (book review), 876–878

**Human Rights** —

- environmental law and, 188–192
- obligations of commercial enterprises, 440–444\*

**Humour** — *see* **Trivia****I****Identification** — *see* **Evidence****Immigration Law** —

- right to interpreter, 167–168

**Imprisonment** —

- visit to condemned cells (1908), 298–299

\* Indicates the more important references.

**Industrial Relations —**

arrangements for the performance of work and time limitations, 26–27

**Information Services — see Legal Information Services****Injunctions —**

construing, 89–90  
made despite doubts as to enforceability, 693–694  
Mareva orders distinguished, 447  
undertakings as to damages, 835

**Inquiries — see Public Inquiries****Insolvency —**

conflict with admiralty law — *see Admiralty Law*

**Intellectual Property — see Copyright; Patents****Interest —**

common law power to award, 79

**International Business —**

facilitation payments, 92–104\*  
defence, 95–102  
benefits of a “minor nature”, 96–99  
record-keeping provision, 101–102  
routine government action, 99–101  
offence of bribing a foreign public official, 94–95  
taxation treatment of bribes, 102  
human rights, 440–444\*

**International Law — see also Kosovo; Marine Pollution; Military Law**

Hicks case  
act of state doctrine & justiciability, 776–778  
justiciability, 783–786  
state’s duty to protect citizens, 778–779, 786–787  
international interests in mobile equipment, 680–683\*

**Interpretation — see also Court Orders; Policy; Statutory Interpretation**

exceptional circumstances, 319

**Interpreters — see Litigation****J****Joint Tenants —**

severance, 77

**Joint Ventures —**

domestic co-owners in soured relationship, 315–316

**Judges —**

acting appointments (1908), 361–362  
appointment  
selection & training, 820  
United States (book review), 417–418  
Chinese judges visiting Queensland, 591  
exchanges with counsel, 149  
experience of the real world, 227–228  
function, 607–613\*  
honorifics, 614–622\*  
Australia, 621–622  
Canada, 620–621  
England, 616–620  
“my lord”, 617–618  
prerogative, 615–616  
“your honour”, 618–622  
independence — *see Judicial Independence*  
lawyers’ contact with, 73  
method — *see Judicial Method*  
multi-judge courts for long commercial trials, 229  
national judicial complaints commission, 588  
offensive discourse between, 260–265\*  
United States, 507–508  
policy and judicial function, 328–331  
quotations from, 8, 73, 140, 151  
retirements and appointments, 147, 587, 667  
swapping between jurisdictions, 229

**Judgments —**

database, 508

**Judicial Independence —**

function of courts, 607–613\*

**Judicial Method — see also Policy; Statutory Interpretation**

book review, 884–885  
international seminar, 359  
scepticism and, 169–179\*  
Derrida, 171  
diffusion of sovereignty, 175–178  
Foucault, 172–175  
on repression, 174–175  
on sovereignty, 173–174  
on the Enlightenment, 173  
on truth, 174  
Lyotard, 171

\* Indicates the more important references.

**Judicial Review —**

- academic criticism of decisions, 623–635\*
- ADJR Act, 624–625
- decisions “of an administrative character ... made under an enactment”, 631–633
- erosion of ADJR Act, 625–626
- Griffith University v Tang, 627–628
- legal vacuum or freedom of association, 629–630
- NEAT Domestic Trading Pty Ltd v AWB Ltd, 626–627
- public power and judicial review, 633–635
- rights and interests, 630–631
- soft law, 631
- United States, 828–831\*

**Juries —**

- pre-trial publicity, 588–589
- reform (NSW), 147
- strain on citizens, 72

**Justice —**

- spiritual force of laws, 377–378
- retributive vs restorative — *see* **Rwanda**

**Justices of the Peace —**

- witnessing signatures, 593–595

**K****Kosovo —**

- Australia’s recognition of, 236–239\*

**L****Land — *see* Real Property****Land and Environment Court of New South Wales —**  
mediation, 197–198**Landlord and Tenant — *see also* Leases**

- covenants
  - damages for breach, altering premises without landlord’s consent, 513–515
  - to assent to assignment, 24
- landlord’s liability for defects in property, 153–154

**Language — *see* Legal Language; Words and Phrases****Law Reports —**

- donation to overseas courts, 432–433

**Lawyers — *see* Legal Practitioners****Leases —**

- liability for acts of sublessees, 76
- priority for option to purchase, 301, 597
- timely payment of rent essential, 363–364

**Legal History — *see* Personalia/People in the Law****Legal Information Services — *see also* Technology and Law**

- BarNet’s JADE (Judgments and Decisions Enhanced) project, 508

**Legal Language — *see also* Words and Phrases**

- changes in language, 148–149
- punctuation, 515

**Legal Practitioners —**

- contact with judges, 73
- cost agreements and revised estimates, 80–81
- pressure on debtors, 164
- pro bono work, 10, 592
- proceedings to recover costs, 447
- “top lawyers”, 747
- women, 361, 747

**Legal Professional Privilege — *see* Client Legal Privilege****Liquidators —**

- litigation benefitting lawyers & funders, 10

**Liquor Licensing —**

- New South Wales, 508

**Litigation —**

- funding
  - liquidation, 10
  - regulation, 296–297
  - security for costs, 525
- right to interpreter, 167–168
- simplification and cost-cutting, 73

**M****Magistrates —**

- exercising another office, 80

**Mareva Orders —**

- injunctions distinguished, 447

\* Indicates the more important references.



**Marine Pollution —**

- compensation for, 527–542\*
- claims in foreign courts, 537–542
  - France: The Erika, 541
  - Italy: The Haven, 540–541
  - Italy: The Patmos, 539–540
  - Spain: The Aegean Sea, 538
  - Spain: The Prestige, 541–542
  - UK: The Braer – Landcatch case, 538
  - UK: The Sea Empress, 539
- Commonwealth & State laws, 531–537
  - Protection of the Sea (Civil Liability) Act 1981 (Cth), 534–535
  - Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 (Cth), 535–536
  - Protection of the Sea (Powers of Intervention) Act 1981 (Cth), 537
  - Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth), 533–534
- international law on maritime safety & protection of marine environment, 527–530
- international oil pollution compensation funds, 530–531
- International Tanker Owners' Pollution Federation (ITOPF), 531
- IOPC Funds criteria for admissibility of claims, 542

**Maritime Law — see Marine Pollution****Media —**

- Hicks gag order, 780–782
- pre-trial publicity, 588–589

**Mediation —**

- history in Australia, 196–216\*
  - confidentiality, 206
  - cost, 206–207
  - facilitation, 204–205
  - Federal Court, 198–199
  - Land and Environment Court of New South Wales, 197–198
  - New South Wales, 200–204
  - online mediation, 204
  - pitfalls, 205–206
  - regulation, 205
  - ripe time for mediation, 207–210
  - statistics, 211–216
  - Victoria, 199–200

**Medical Law —**

- professional misconduct, entrapment by journalists, 244–245

**Migration Law — see Immigration Law****Military Coups —**

- Rum Rebellion (1808), 7–8, 148

**Military Law —**

- military commissions, 636–648\*
  - Australian need for, 638–647
  - “law of war” commissions, 640–647
  - martial law commissions, 638
  - occupied territory commissions, 638–640
- history, 637
- types of, 638

**Mining —**

- copper and gold, 762

**Mortgages —**

- caveat ordered removed, 753–754
- forged mortgages
  - indefeasibility (Qld), 673–675
  - recovery of “all moneys”, 671–673
- fraud by bank's agent infecting, 511–512
- fraud in proceeding to registration, 512–513
- indefeasibility and personal covenants to pay, 28–39\*
  - authorities on personal covenants, 33–36
  - High Court authorities
    - covenants in leases, 32–33
    - transfers of mortgages, 30–32
  - indefeasibility and separate loan agreements, 36–37
  - State laws, 37–39
  - Torrens system, 29–30
- limitation of actions, 447
- mortgagee's duties on sale, 754–755
- registration executed under power of attorney, in
  - excess of authority, 675–676
- Torrens system (book review), 420–421
- transfer
  - obligations under loan agreement, 75–76
  - subject to equities, 448

**N****Native Title —**

- compulsory acquisition (NT), 521

---

\* Indicates the more important references.

**Negligence** — *see also* **Professional Liability**

- fear of injury, 166
- problem gamblers' redress against casinos, 318–319

**New South Wales** —

- Casino, Liquor and Gaming Control Authority established, 508
- Court of Appeal, 507, 768–770
- Land and Environment Court — *see* **Land and Environment Court of New South Wales**
- Licensing Court abolished, 508
- mediation, 200–204
- Supreme Court — *see* **Supreme Court (NSW)**

**Norfolk Island** —

- criminal proceedings (1908), 433–434

**O****Obituaries** —

- Durack, Peter D (Hon), 739
- Khanna, Hans Raj (Justice), 351–352\*
- Lane, Patrick (Prof), 11, 284–285\*
- Macrossan, John Murtagh (Chief Justice), 659–660
- Samuels, Gordon (Hon), 285–287\*
- Santow, Kim (Justice), 359, 499–500\*
- Watkins, Tasker (Sir), 287–288\*

**Occupational Health and Safety** —

- damages for fear of injury, 166

**Online Services** — *see* **Technology and Law****Overseas Aid** —

- donation of law reports, 432–433

**P****Parliamentary Privilege** —

- extent of, 24–25
- reform (Qld), 461–470\*
  - Bill of Rights 1688, Article 9, 464–466
  - codification, 466–467
  - Crime and Misconduct Commission report, 462–463
  - future conflicts, 468–470
  - government action, 463–464
  - lost opportunity, 467–468
  - Nuttall crisis, 461–462

**Parole** —

- remorse and (NSW), 9–10

**Partnership** —

- conflicts of interest, 23–24
- fiduciary duties, 316

**Patents** —

- Australian law (book review), 882

**Personal Injury** —

- political economy (book review), 883

**Personal Property** —

- bailment of wine from grapes delivered to winemaker, 448
- recovery of chattels, 379–391\*
  - bailment of “fungibles”, *ius tertii* and delivery up, 386–387
  - “brevi manu” orders, 380–381
  - entitlement to possession, 381–384
  - “mere custody” by employees or servants, 384–386
  - self-help, 387–388
  - spoliation suits, 388–389
  - termination of bailments, 389–391
- security (Canada), 680–683\*

**Personalities/People in the Law** — *see also* **Obituaries**

- Allsop, James Leslie Bain (Justice), 507
- Asprey, Ken (Justice), 842–844
- Australian Dictionary of Biography, 810–811
- Beech, Andrew R (Justice), 689–690
- Bennett, John Michael (Dr), 598
- Boland, Roger (Justice), 312–313
- Cranston, Ross (Justice), 159
- Crawford, E C (Chief Justice), 371–372
- Crisford, Jane (Justice), 690–691
- Crooks, Stephen D (Justice), 691
- Else Mitchell, Rae (Justice), 842, 844
- French, Robert S (Chief Justice), 587, 667, 684–686\*
- Gageler, Stephen (SC), 598
- Gilmour, John (Justice), 688
- Gleeson, Murray (Chief Justice), 587, 686–688\*
- Higinbotham, George (Chief Justice), 60–64
- Jordan, Frederick (Sir), 839–840
- Kelly, Jack Lawrence (Major General Hon), 648–649
- Lees, J W C, 688–689
- McCallum, Lucy (Justice), 313–314
- McKerracher, Neil (Justice), 160
- Mansfield (Lord), 747–748, 764–767\*
- Mason, Anthony (Sir), 839–848\*
- Mason, Keith (Justice), 507, 758–759\*, 768–770
- Murphy, Peter (Justice), 160–161
- Newnes, David W (Justice), 691–692

\* Indicates the more important references.

- Penfold, Hilary Ruth (Justice), 312  
 Reeves, John E (Justice), 161  
 Refshauge, Richard (Justice), 162–163  
 Rein, Nigel (Justice), 371  
 Sher, Jeffrey (QC), 756–757  
 Wilson, Ronald (Sir), 880–882\*
- Police** —  
 media criticism, 148  
 trespass, 522–523
- Policy** —  
 law and, 322–332\*  
   democratic legitimacy, 331–332  
   judicial function, 328–331  
   utility of discussing, 323–326  
   working definition, 326–328
- Political Parties** —  
 justiciability of disputes, 315
- Pornography** — *see* **Child Pornography**
- Port Regulation** —  
 constitutionality, 789–807\*  
   Commonwealth jurisdiction, 796–801  
   constitutional problems & solutions, 795–806  
   international best practice, 792–793  
   national & international standards, 792  
   national regulation, 793–795  
   regulating elements of national port regulation, 801–806  
   State regimes, 791
- Postmodernism** — *see* **Judicial Method**
- Powers of Attorney** —  
 application of funds not authorised by, 77–78  
 excessive exercise, 675–676
- Practice and Procedure** —  
 Civil Justice Review (Vic), 509  
 court forms, 360  
 denial of leave to amend pleadings, 374  
 “exceptional circumstances”, 319  
 history (1908–10), 669  
 proceedings in claimant’s absence, 374–375
- Precedent** —  
 High Court, 768–773  
 Privy Council, 23  
 wrongness of previous decisions, 317
- Private Companies** —  
 role of executor in context of pre-emptive rights provisions, 392–396\*
- Privilege** — *see* **Parliamentary Privilege; Self-Incrimination**
- Privy Council** —  
 precedent, 23
- Procedure** — *see* **Practice and Procedure**
- Proceeds of Crime** —  
 confiscation, 316
- Professional Liability** —  
 book review, 419–420
- Promissory Notes** —  
 method of discharge, 243–244
- Property** — *see also* **Personal Property; Real Property**  
 church trust property, 22–23  
 corporations and life estates, 15, 231, 235, 366–367  
 court appointed receivers: indemnity, 21  
 human body (book review), 876–878  
 light fittings as fixtures or chattels, 826–827  
 Statute of Frauds and profits à prendre, 22
- Public Inquiries** —  
 cost of obtaining information, 296  
 thinking and acting, 748–749
- Public Interest Immunity** —  
 confidentiality of whistleblowers, 694–695
- Public Officials** —  
 remuneration & perks, 822  
 use of position, 432
- Q**
- Queensland** —  
 decentralisation, 590–591  
 Supreme Court of Queensland — *see* **Supreme Court (Qld)**
- Quizzes** — *see* **Trivia**
- Quotations** — *see* **Judges; Trivia**

\* Indicates the more important references.

R	S
<p><b>Rape</b>— <i>see</i> <b>Sexual Assault</b></p> <p><b>Real Property</b> — <i>see also</i> <b>Trespass</b>          compulsory acquisition (NT), 521          Crown claiming title by adverse possession, 694          environmental law and, 180–185          houses as fixtures, 12–14          land use, 76–77, 595–596          support for land, duty of care, 824–826          trees damaging neighbouring property, 832</p> <p><b>Reasons for Judgment</b> — <i>see</i> <b>Court Orders</b></p> <p><b>Religion</b> —          church trust property, 22–23</p> <p><b>Rescission</b> —          book review, 883–884          relief where set aside for duress, 164–165</p> <p><b>Restitution</b> —          claimant recouping outgoing from others, 833</p> <p><b>Restorative Justice</b> — <i>see</i> <b>Rwanda</b></p> <p><b>Retributive Justice</b> — <i>see</i> <b>Rwanda</b></p> <p><b>Retroactivity</b> — <i>see</i> <b>Statutory Interpretation</b></p> <p><b>Rwanda</b> —          retributive vs restorative justice for genocide, 105–138*              framing victims and perpetrators, 106–113              ethnic framing, 109–113              framing process, 106–108              Gacaca Courts, 134–138              reconciliation                  trial process, 126–127                  Truth and Reconciliation Commission, 133              restorative justice: Truth and Reconciliation Commission (TRC), 127–132                  potential as better frame-breaker than trials, 127–128                  telling stories: victims and perpetrators, 128–132              retributive justice: trial process, 114                  perpetrators, 117–121                  public acknowledgment, 121–123                  victims, 114–117              truth                  trial process, 123–126                  Truth and Reconciliation Commission, 132–133</p>	<p><b>Scepticism</b> — <i>see</i> <b>Judicial Method</b></p> <p><b>Sedition</b> —          history of the crime, 543–579*              Anglo-Saxon law, 546–547              English law (1066–1240), 547–548              English law (1240–1275), 548–550              English law (1275–1290), 550–551              English law (1290–1400), 552–555                  contempt of court, 554–555                  scandalum magnatum, 553–554                  Treason Act 1351, 552–553              English law (1400–1549), 555–557                  development of treason, 555–556                  scandalum magnatum, 556                  sedition, 556–557              English law (1549–1605), 557–561                  sedition against the sovereign, 558–561                  treason and scandalum magnatum, 557–558              English law (1605–1610), 561–564, 579              English law (1610–1649: reigns of James I and Charles I), 564–567              English law (1660–1685: reign of Charles II), 567–569              English law (1685–1688: reign of James II), 570–571              English law (1689–1702: reign of William III), 571–572              English law (1702–1714: reign of Queen Anne), 572–574              English law (1714–1727: reign of George I), 574              English law (1727–1760: reign of George II), 574–575              English law (1760–1792: reign of George III), 575–578*              Roman law, 546</p> <p><b>Self-Incrimination, Privilege against</b> —          right to silence and inferences, 524–525</p> <p><b>Self-Represented Litigants</b> —          advice and referral service (Qld), 591–592          delays and costs, 243</p> <p><b>Senior Counsel</b> —          appointment, Victoria, 163</p>

\* Indicates the more important references.

- 
- Sentencing** —  
 consistency, 450–460\*  
 remorse and (NSW), 9–10
- Sex Crimes** —  
 defence of mistake as to age, 695–696
- Sexual Assault** —  
 consent, 761–762  
 rape cases, Aurukun appeals, 599–600
- Silence, Right to** — *see* **Self-Incrimination**
- Solicitors** — *see* **Legal Practitioners**
- South Australia** —  
 anti-corruption commission, 295
- Specific Performance** — *see* **Contract**
- State Revenue** —  
 limits on appeals by taxpayers, 835–837
- Statutory Interpretation** — *see also* **Policy; Words and Phrases**  
 accrued rights under repealed statute, 21  
 ejusdem generis rule, 603–604  
 extrinsic materials, 446–447  
 intention of draftsman, 668–669  
 plain construction and wide application, 749–750  
 retroactivity  
 book review, 349–350  
 overriding Torrens legislation, 436–439
- Strata Titles** —  
 right or one owner to exclude people from common property, 80
- Subrogation** —  
 Torrens system, 762–763
- Succession** —  
 rights of applicants for letters of administration, 373–374  
 role of executor in context of pre-emptive rights provisions, 392–396\*  
 Succession Amendment (Family Provisions) Bill 2008 (NSW), 508
- Supreme Court (NSW)** —  
 reminiscences of (Sir Anthony Mason), 839–848\*
- Supreme Court (Qld)** —  
 Commercial List, 589
- T**
- Taxation** — *see also* **Goods and Services Tax (GST); State Revenue**  
 bribes, 102  
 limits on appeals by taxpayers, 835–837
- Technology and Law** —  
 digital recording of proceedings, 590  
 online mediation, 204  
 online services, 508, 589–590
- Terrorism** —  
 civil liberties and, 9  
 Hicks case, 774–788\*  
 factual background, 775  
 Federal Court application, 775–780  
 justiciability & foreign affairs, 783–786  
 legal issues, 780–783  
 state's duty to protect citizens, 778–779, 786–787
- Torrens System** —  
 implied repeal of legislation, 436–439  
 subrogation, 762–763  
 unregistered interests, competing, 753  
 writs of execution, unregistered purchasers, 152
- Tort** — *see also* **Battery**  
 environmental law and, 185–187  
 High Court contribution, 253–256
- Trespass** —  
 injunctions and damages, 364  
 general principle, 364–365  
 relativity analysis, 365–366  
 police, 522–523
- Trivia** —  
 humorous jottings, 749  
 questions and answers, 823, 888  
 quotations from judges, 73, 140
- Trusts and Trustees** — *see also* **Advancement**  
 book review, 349  
 operative mistake of fact, 446  
 seeking judicial advice, 837–838
- 

\* Indicates the more important references.

## U

**Undertakings** — *see* **Court Orders**

**United Kingdom** —

reception of English law abroad (book review), 218–219

**United Nations** —

sanctions (book review), 808–810

**United Nations Declaration on Indigenous Peoples** —

adoption, 306–311\*

background, 306–307

legal issues, 307–310

collective rights, 308

cultural identity, 308–309

right to lands and self-determination, 309–310

so-called veto power, 310

**United States** —

judicial review, 828–831\*

military commissions, 636–648\*

Supreme Court appointment process (book review), 417–418

**Unrepresented Claimants** — *see* **Self-Represented Litigants**

## V

**Victoria** —

Civil Justice Review, 509

mediation, 199–200

Senior Counsel appointments, 163

**Voluntary Associations** — *see* **Political Parties**

## W

**Wills** — *see also* **Advancement**

construction (book review), 217

delegation of will-making power, rectification, 832–833

gift of property owned by company controlled by testator, 446

mutual, removal of executrix, 760

**Witnesses** —

anonymity and right to fair trial, 605–606, 667–668

**Words and Phrases** — *see also* **Legal Language**

“exceptional circumstances”, 319

“games of chance”, 448

“issue waiver”, 338–348\*

“policy”, 326–328

“whore”, 433

---

\* Indicates the more important references.

THE  
AUSTRALIAN  
LAW JOURNAL  
REPORTS

**VOLUME 82**

January 2008 — December 2008

EDITED BY  
LAWBOOK CO.

PRODUCTION EDITOR  
CAROLYN MAY

**THOMSON REUTERS**

**2008**

**Customer Service and Sales Inquiries**

Tel: 1300 304 195

Fax: 1300 304 196

Web: [www.thomsonreuters.com.au/legal/](http://www.thomsonreuters.com.au/legal/)

Email: [LTA.Service@thomsonreuters.com](mailto:LTA.Service@thomsonreuters.com)

**Editorial Inquiries**

Tel: 61 2 8587 7000

**HEAD OFFICE**

100 Harris Street  
Pyrmont NSW 2009

Tel: 61 2 8587 7000

Fax: 61 2 8587 7100



**THOMSON REUTERS**

©Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0004-9611

Typeset by Thomson Reuters (Professional) Australia Ltd, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW



---

**The mode of citation of this volume of the  
AUSTRALIAN LAW JOURNAL REPORTS  
will be: 82 ALJR**

---

## **AUSTRALIAN LAW JOURNAL REPORTS**

### **CONTENTS**

TABLE OF CASES REPORTED .....	v
ADDENDUM AND CORRIGENDA .....	ix
AUSTRALIAN LAW JOURNAL REPORTS, VOL 82 .....	1-1525
INDEX .....	1527

---

### **ARRANGEMENT OF INDEXES AND TABLES OF CASES**

- The ALJR Table of Cases and Index relate solely to the cases reported in the Reports, that is, to cases decided by the High Court of Australia.
  - The ALJ Table of Cases and Index relate solely to the content of the Journal and are located in the separately bound ALJ.
-



## TABLE OF CASES REPORTED

### A

Adams v The Queen, 718  
 AK v Western Australia, 534  
 Alcoa Australia Rolled Products Pty Ltd; Weston Aluminium Pty Ltd v, 74  
 Alinta LGA Ltd (formerly Australian Gas Light Co) v Mine Subsidence Board, 826  
 Alinta Ltd; Attorney-General (Cth) v, 382  
 Ansett Australia Holdings Ltd; International Air Transport Association v, 419  
 Arnhem Land Aboriginal Land Trust; Northern Territory v, 1099  
 Asciano Services Pty Ltd v Chief Commissioner, State Revenue, 1491  
 Attorney-General (Cth) v Alinta Ltd, 382  
 Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corp Ltd, 564  
 Australian Finance Direct Ltd v Director of Consumer Affairs (Vic), 202  
 Australian Prudential Regulation Authority; Siminton v, 1478  
 Ayles v The Queen, 502

### B

Betfair Pty Ltd v Western Australia, 600  
 BHP Billiton Iron Ore Pty Ltd v National Competition Council, 1482  
 Blessington v The Queen, 82  
 Bluebottle UK Ltd v Deputy Commissioner of Taxation, 127  
 Broadbeach Properties Pty Ltd; Deputy Commissioner of Taxation v, 1411  
 Burrell v The Queen, 1221

### C

Calco Timbers Pty Ltd; Dwyer v, 669  
 Carr v Western Australia, 1  
 CGU Insurance Ltd v Porthouse, 1135  
 Channel Seven Adelaide Pty Ltd v Manock, 303

Collins v Tabart, 1521  
 Commonwealth; Telstra Corp Ltd v, 521  
 Community Services, Director-General, Department of; MW v, 629  
 Consumer Affairs (Vic), Director of; Australian Finance Direct Ltd v, 202  
 Copyright Agency Ltd v New South Wales, 1244  
 Crown Lands Act, Minister Administering the v NSW Aboriginal Land Council, 1505  
 CTM v The Queen, 978

### D

Dowe v Commissioner of New South Wales Crime Commission, 1465  
 Duffy Bros Fruit Market (Campbelltown) Pty Ltd; Gumland Property Holdings Pty Ltd v, 576  
 Dwyer v Calco Timbers Pty Ltd, 669

### E

Elliott v The Queen, 82  
 Environment Protection Authority; Weston Aluminium Pty Ltd v, 74  
 Esanda Finance Corp Ltd; Aussie Vic Plant Hire Pty Ltd v, 564  
 Evans v The Queen, 250

### F

Fergusson v Latham, 1524  
 Foots v Southern Cross Mine Management Pty Ltd, 173  
 French; Queensland Premier Mines Pty Ltd v, 115  
 Futuris Corp Ltd; Commissioner of Taxation (Cth) v, 1177

### G

Gassy v The Queen, 838  
 Gately v The Queen, 149  
 Gedeon v Commissioner of New South Wales Crime Commission, 1465  
 Griffiths v Minister for Lands, Planning & Environment, 899

Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd, 576

Gypsy Jokers Motorcycle Club Inc v Commissioner of Police, 454

## H

Hearne v Street, 1259

His Eminence Petar, Diocesan Bishop, Macedonian Orthodox Diocese of Australia & New Zealand; Macedonian Orthodox Community Church St Petka Inc v, 1425

Hungary, Republic of; Zentai v, 680

## I

Imbree v McNeilly (No 2), 1501

Imbree v McNeilly, 1374

Imbree; McNeilly v (No 2), 1501

Imbree; McNeilly v, 1374

Immigration & Citizenship, Minister for; MZXOT v, 1061

International Air Transport Association v Ansett Australia Holdings Ltd, 419

Ireland; O'Donoghue v, 680

## J

Justice, Department of, Secretary; Osland v, 1288

## K

Ketchell; Master Education Services Pty Ltd v, 1322

Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd, 345

Kuru v New South Wales, 1021

## L

Lands, Planning & Environment, Minister for; Griffiths v, 899

Latham; Fergusson v, 1524

Le; Director of Public Prosecutions (Vic) v, 92

Lumbers v W Cook Builders Pty Ltd (In liq), 1037

## M

MA Howard Racing Pty Ltd; Deputy Commissioner of Taxation v, 1411

Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar, Diocesan Bishop, Macedonian Orthodox Diocese of Australia & New Zealand, 1425

Mahmood v Western Australia, 372

Manock; Channel Seven Adelaide Pty Ltd v, 303

Master Education Services Pty Ltd v Ketchell, 1322

McNeilly v Imbree (No 2), 1501

McNeilly v Imbree, 1374

McNeilly; Imbree v (No 2), 1501

McNeilly; Imbree v, 1374

Migration Agents Registration Authority; Shi v, 1147

Mine Subsidence Board; Alinta LGA Ltd (formerly Australian Gas Light Co) v, 826

MW v Director-General, Department of Community Services, 629

MZXOT v Min for Immigration & Citizenship, 1061

## N

National Competition Council; BHP Billiton Iron Ore Pty Ltd v, 1482

Neutral Bay Pty Ltd; Deputy Commissioner of Taxation v, 1411

New South Wales Crime Commission, Commissioner of; Dowe v, 1465

New South Wales Crime Commission, Commissioner of; Gedeon v, 1465

New South Wales; Copyright Agency Ltd v, 1244

New South Wales; Kuru v, 1021

Northern Territory v Arnhem Land Aboriginal Land Trust, 1099

NSW Aboriginal Land Council; Minister Administering the Crown Lands Act v, 1505

## O

O'Donoghue v Ireland, 680

Osland v Secretary, Department of Justice, 1288

## P

PM v The Queen, 57

Police, Commissioner of; Gypsy Jokers Motorcycle Club Inc v, 454

Porthouse; CGU Insurance Ltd v, 1135

Public Prosecutions (Vic), Director of v Le, 92

## Q

Queensland Premier Mines Pty Ltd v French, 115

## R

R v Tang, 1334

R; Adams v, 718

R; Ayles v, 502  
 R; Blessington v, 82  
 R; Burrell v, 1221  
 R; CTM v, 978  
 R; Elliott v, 82  
 R; Evans v, 250  
 R; Gassy v, 838  
 R; Gately v, 149  
 R; PM v, 57  
 R; WGC v, 220  
 Raftland Pty Ltd v Commissioner of Taxation (Cth), 934  
 Reliance Carpet Co Pty Ltd; Commissioner of Taxation (Cth) v, 968  
 Roads & Traffic Authority v Royal, 870  
 Royal; Roads & Traffic Authority v, 870

### S

Sanpine Pty Ltd; Koompahtoo Local Aboriginal Land Council v, 345  
 Shi v Migration Agents Registration Authority, 1147  
 Siminton v Australian Prudential Regulation Authority, 1478  
 Southern Cross Mine Management Pty Ltd; Foots v, 173  
 State Revenue, Chief Commissioner of; Asciano Services Pty Ltd v, 1491  
 Street; Hearne v, 1259  
 Sydney Harbour Foreshore Authority; Walker Corp Pty Ltd v, 489

### T

Tabart; Collins v, 1521  
 Tang; R v, 1334  
 Taxation, Deputy Commissioner of v Broadbeach Properties Pty Ltd, 1411  
 Taxation, Deputy Commissioner of v MA Howard Racing Pty Ltd, 1411  
 Taxation, Deputy Commissioner of v Neutral Bay Pty Ltd, 1411

Taxation, Deputy Commissioner of; Bluebottle UK Ltd v, 127  
 Taxation, Federal Commissioner of v Futuris Corp Ltd, 1177  
 Taxation, Federal Commissioner of v Reliance Carpet Co Pty Ltd, 968  
 Taxation, Federal Commissioner of; Raftland Pty Ltd v, 934  
 Taxation, Federal Commissioner of; WR Carpenter Australia Pty Ltd v, 1211  
 Taxation, Federal Commissioner of; WR Carpenter Holdings Pty Ltd v, 1211  
 Telstra Corp Ltd v Commonwealth, 521

### U

United States of America; Williams v, 680

### W

W Cook Builders Pty Ltd (In liq); Lumbers v, 1037  
 Walker Corp Pty Ltd v Sydney Harbour Foreshore Authority, 489  
 Washer v Western Australia, 33  
 Western Australia; AK v, 534  
 Western Australia; Betfair Pty Ltd v, 600  
 Western Australia; Carr v, 1  
 Western Australia; Mahmood v, 372  
 Western Australia; Washer v, 33  
 Weston Aluminium Pty Ltd v Alcoa Australia Rolled Products Pty Ltd, 74  
 Weston Aluminium Pty Ltd v Environment Protection Authority, 74  
 WGC v The Queen, 220  
 Williams v United States of America, 680  
 WR Carpenter Australia Pty Ltd v Commissioner of Taxation (Cth), 1211  
 WR Carpenter Holdings Pty Ltd v Commissioner of Taxation (Cth), 1211

### Z

Zentai v Republic of Hungary, 68



---

## ADDENDUM

### Vol 82 —

Page 668:

On 31 July 2008 the Court made the following order in the matter of MW v Director-General, Department of Community Services [2008] HCA 12:

“Order 2(b) of the orders of this Court dated 28 March 2008 be varied by the deletion of the words ‘18 December 2006’ and the substitution of the words ‘19 December 2006’.”

---

## CORRIGENDA

### Vol 82 —

Page 251:

*For* “Decision of the Supreme Court of New South Wales (Court of Criminal Appeal), reported at (2006) 164 A Crim R 498, reversed” *read* “Decision of the Supreme Court of New South Wales (Court of Criminal Appeal), reported at (2006) 164 A Crim R 489, reversed.”

Page 366, fn 64:

*For* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2007)” *read* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2008)”.

Page 368, fn 79:

*For* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2007)” *read* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2008)”.

Page 370, fn 94:

*For* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2007)” *read* “*Cheshire and Fifoot’s Law of Contract*, 9th Aust ed (2008)”.

Page 377, fn 9:

*For* “[1995] 2 Qd R 1 at 5” *read* “[1994] 2 Qd R 1 at 5”.

Page 556, fn 91:

*For* “15 February 1995” *read* “15 February 1955”.

Page 674 [29], lines 11-12:

*For* “fact, degree and judgment” *read* “fact, degree and value judgment”.

Page 738 [35], line 5:

*For* “uncharged” *read* “charged”.

---

Page 903, counsel:

*For “M A Perry” read “M A Perry QC”.*

Page 911, fn 30:

*For “(2004) 14 NTLR 188 at [213]-[214]” read “(2004) 14 NTLR 188 at [43]-[44]”.*

Page 1102, counsel for the fifth respondent:

*For “R J Webb” read “R J Webb QC”.*

---



# INDEX\*

## A

### Aboriginals —

land rights under legislation

New South Wales

Aboriginal Land Council — legislative control over use of assets — mandatory requirements relating to accounts and audit — *Aboriginal Land Rights Act 1983* (NSW) — *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd*, 345

claim to Crown land — “lawfully used or occupied” — use — surplus land and building — preparations for sale — *Aboriginal Land Rights Act 1983* (NSW), s 36(1)(b) — *Minister Administering Crown Lands Act v NSW Aboriginal Land Council*, 1505

Northern Territory

grant in fee simple to Land Trust — tidal waters within grant boundaries — marine buffer zone adjoining grant — meaning of “Aboriginal land” — offence of entering and remaining — defences — Commonwealth and Territory laws regulating or authorising entry — fishing inside grant boundaries by non-owners — rights to fish — at common law — by statute — *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Sch 1, ss 10(1), 70, 70(1), 70(2A), 70(2A)(h), 73(1), 73(1)(b), 73(1)(d) — *Fisheries Act* (NT), ss 10, 11 — *Aboriginal Land Act* (NT), Pts II, III, ss 5, 12 — *Northern Territory v Arnhem Land Aboriginal Land Trust*, 1099

unalienated Crown land

compulsory acquisition of land — acquisition “for any purpose whatsoever” — limitations implied into grant of power — acquisition of “native title” in order to sell or lease land — acquisition for purpose of conferring rights and interests in land on others — whether acquisition for non-governmental purpose permissible — purpose enabling exercise of powers conferred upon executive — *Crown Lands Act* (NT), s 9 — *Lands Acquisition Act* (NT), ss 4, 43(1)(b) — *Native Title Act 1993* (Cth), s 223 — *Griffiths v Minister for Lands, Planning & Environment*, 899

extinguishment of native title by compulsory acquisition — Federal requirements for valid extinguishment of native title rights — “all non-native title rights” — equality of treatment between native and non-native title rights — no requirement for native title rights to subsist concurrently with non-native title rights — *Native Title Act 1993* (Cth), s 11(1), 24MD(2) — *Racial Discrimination Act 1975* (Cth) — *Griffiths v Minister for Lands, Planning & Environment*, 899

### Administrative Law — see also Freedom of Information; Judicial Review

Administrative Appeals Tribunal (Cth) — powers and functions — correct or preferable decision — basis for making assessment — relevant time for consideration — statutory interpretation — cautions — conditions for lifting — power to impose — *Migration Act 1958* (Cth), ss 303(1), 304A, 306 — *Administrative Appeals Tribunal Act 1975* (Cth), ss 25(4), 43(6) — *Shi v Migration Agents Registration Authority*, 1147

### Appeal and New Trial — see also Criminal Law

appeal — general principles

interference with discretion of court below — New South Wales — judicial advice — identification of error in exercise of discretion — *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar, Diocesan Bishop, Macedonian Orthodox Diocese of Australia and New Zealand*, 1425

interference with judge’s findings of fact — functions of appellate court — where inferences of fact involved — where facts not in dispute — and inferences obvious — *CGU Insurance Ltd v Porthouse*, 1135

---

\* This Index is to cases reported in ALJR only. There is a separate Index to ALJ.

**Appeal and New Trial — continued**appeal — general principles — *continued*

points and objections not taken below — when not allowed to be raised on appeal — questions not raised on pleadings or in argument — particular cases — motor vehicle accidents — New South Wales — consequences of keeping proper lookout — possibility of less severe injuries — onus on applicant not discharged — *Fergusson v Latham*, 1524

**B****Bankruptcy —**

administration of property — proof of debts — what debts provable — costs — indemnity costs order — made after commencement of bankruptcy — whether arising from prior obligation — underlying judgment debt provable — discretionary nature of costs orders — whether contingent liability or incidental to provable debt — *Bankruptcy Act 1966* (Cth), s 82 — *Foots v Southern Cross Mine Management Pty Ltd*, 173

petition and sequestration order — effect of bankruptcy on property and proceedings — actions by and against bankrupt — stay of proceedings against bankrupt after presentation of petition — other matters — costs — order made after commencement of bankruptcy — relationship to provable judgment debt — relevance — whether contingent on, incidental to or arising from prior obligation — applicability of leave requirement — *Bankruptcy Act 1966* (Cth), ss 58(3), 82(1) — *Uniform Civil Procedure Rules 1999* (Qld), r 72(1) — *Foots v Southern Cross Mine Management Pty Ltd*, 173

**C****Carriers —**

railways — railway authorities — rail access regime — commercial use of railway infrastructure — *Transport Administration Act 1988* (NSW), Sch 6A, cl 5(1) — *Asciano Services Pty Ltd v Chief Commissioner of State Revenue*, 1491

**Citizenship, Immigration and Emigration —**

migration — immigration assistance — disciplinary actions — review of disciplinary orders — relevant time for consideration — statutory interpretation — cautions — conditions for lifting — power to impose — *Shi v Migration Agents Registration Authority*, 1147

**Communications Law —**

telecommunications — infrastructure — copper wire network — local loops — ownership — qualifications — reservation in vesting statute — third party access — exercise of right — whether amounting to acquisition of property — *Constitution*, s 51(xxxi) — *Telstra Corporation Ltd v Commonwealth*, 521

**Constitutional Law (Cth) —**

external affairs power — implementation of treaties and conventions — suppression of slavery — interpretation — Commonwealth criminal law — appropriate and adapted — law valid — *R v Tang*, 1334

non-judicial organs of government — Crown — immunities, prerogatives and privileges — freedom from interference by courts — availability of prerogative writs and other relief — income tax assessment — Commissioner's failure to comply with statute — statutory protection — whether jurisdictional error in assessment — *Constitution*, s 75(v) — *Income Tax Assessment Act 1936* (Cth), s 175 — *Federal Commissioner of Taxation v Futuris Corp Ltd*, 1177

operation and effect of Commonwealth *Constitution*

construction of the *Constitution* — reference to American decisions — Commerce Clause decisions — before 1900 — *Betfair Pty Ltd v Western Australia*, 600

---

**Constitutional Law (Cth) — continued**

## operation and effect of Commonwealth Constitution — continued

powers with respect to property — power to acquire property on just terms — acquisition of property — inchoate rights — telecommunications network — line sharing services — formerly public property — reservation in vesting statute — *Constitution*, s 51(xxxi) — *Telecommunications Act 1991* (Cth), s 136 — *Trade Practices Act 1974* (Cth), ss 152AL(3), 152AR — *Telstra Corporation Ltd v Commonwealth*, 521

## relationship between Commonwealth and States generally

effect of Commonwealth law on States — extradition to foreign states — procedure — statutory regime — State-appointed magistrates — exercise of functions as *personae designatae* — executive arrangements between Commonwealth and State governments — whether invalid incursion into State legislative function — *Constitution*, s 107 — *Extradition Act 1988* (Cth), s 46 — *O'Donoghue v Ireland*; *Zentai v Republic of Hungary*; *Williams v United States of America*, 680

effect of State laws on Commonwealth — institutional integrity of State courts — improper interference by executive in judicial process — State law restricting court's use of confidential information — State law not empowering executive to constrain court — relevance of availability of claim to public interest immunity — *Constitution*, Ch III — *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police*, 454

## restrictions on Commonwealth and State legislation — freedom of interstate trade, commerce and intercourse — interference with interstate trade, commerce and intercourse

ambit of protection — discriminatory laws — gaming and wagering — prohibitions and restrictions — operation of betting exchange — publication of racing fields without authorisation — proportionality to mischief — protectionism — *Constitution*, s 92 — *Betting Control Act 1954* (WA), ss 24(1aa), 27D(1) — *Betfair Pty Ltd v Western Australia*, 600

particular activities — gaming and wagering — telephone and internet betting — operation of interstate betting exchange — publication and supply of racing fields — *Betfair Pty Ltd v Western Australia*, 600

State Constitutions, powers and laws — saving powers of State Parliaments — appointment of magistrates — conferral of functions — extradition proceedings under Commonwealth law — magistrates' functions as *personae designatae* — nature of conferral — Commonwealth statute law and executive arrangements — whether amounting to incursion on State legislative power — *Constitution*, s 107 — *Extradition Act 1988* (Cth), s 46 — *O'Donoghue v Ireland*; *Zentai v Republic of Hungary*; *Williams v United States of America*, 680

**Consumer Credit —**

credit protection — regulated contracts and regulated mortgages — credit sale, loan and continuing credit contracts — disclosure — amount agreed under contract to be lent — loan to customer to pay for supply — arrangement between supplier and lender — part of loan retained by lender — retention not disclosed to customer — *Consumer Credit (Victoria) Code* (Vic), ss 15, 15(B), 15(B)(a)(ii) — *Australian Finance Direct Ltd v Director of Consumer Affairs* (Vic), 202

**Contempt, Attachment and Sequestration —**

## contempt

breach of “implied undertaking” — nature of contempt — New South Wales — competency of appeal — *Supreme Court Act 1970* (NSW), ss 101(5), 101(6) — *Hearne v Street*, 1259

what constitutes — breach of undertaking to court — “implied undertaking” — documents used in litigation — improper use — corporate litigant — liability of servants and agents — *Hearne v Street*, 1259

**Contracts —**

breach — conditions and warranties — essential terms — termination for breach — damages — recovery of substantial damages after termination — loss recoverable for non-fundamental breach — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

building, engineering and related contracts — remuneration — recovery on quantum meruit — subcontractor — purported assignment of benefit — assignment ineffective — claim for final payment — no contractual relationship with subcontractor — whether principal retained benefit unconscionably — *Lumbers v W Cook Builders Pty Ltd (In liq)*, 1037

**Contracts — continued**

discharge, breach and defences to action for breach

conditions — breach of contract — distinction between essential and inessential terms — common intention of parties — application of doctrine respecting intermediate terms — contractual requirement to keep books and records — reason why “essential” term — *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd*, 345

repudiation and non-performance

election and rescission — effect of rescission — rescission for vitiating factor affecting contract’s formation — *Federal Commissioner of Taxation v Reliance Carpet Co Pty Ltd*, 968

repudiation — different senses in which “repudiation” used — *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd*, 345

termination for breach — sufficiently serious breach of non-essential term — breach going to root of contract — breach depriving party of substantial part of benefit of contract — breach justifying termination — *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd*, 345

illegal and void contracts — contracts illegal by statute — franchise agreements — Industry Code of Conduct — non-compliance — simultaneous contravention of statute — effect on contract — whether void for illegality — availability of statutory remedies — common law sanction not attracted — *Master Education Services Pty Ltd v Ketchell*, 1322

**Conveyancing —**

breach of contract for sale and remedies — entitlement to deposit — forfeiture to vendor — vendor’s liability to pay goods and services tax — “supply” represented by making of contract — “a taxable supply” — *Property Law Act 1958* (Vic), s 49(2) — *Sale of Land Act 1962* (Vic), s 26(1)(a) — *Federal Commissioner of Taxation v Reliance Carpet Co Pty Ltd*, 968

land titles under Torrens system — mortgages, charges and encumbrances — transfer of mortgage — loan agreement — obligation to pay — agreement secured by mortgage — mortgage transferred — no agreement to assign right to recover under loan agreement transferred — *Land Title Act 1994* (Qld), ss 62, 62(1), 62(4) — *Queensland Premier Mines Pty Ltd v French*, 115

**Copyright —**

assignments, licences and royalties — licences — implied licences — requirements for implication of licence — where statutory licensing scheme available — use of copyright material for purposes of the Crown — registered subdivision plans — supply of copies to public — *Copyright Agency Ltd v New South Wales*, 1244

lawful use of copyright material — Crown use — services of a State — statutory licensing scheme — registered subdivision plans — terms of use — equitable remuneration of copyright owners — *Copyright Act 1968* (Cth), Pt VII Div 2, ss 183(1), 183(5), 183A(2) — *Copyright Agency Ltd v New South Wales*, 1244

**Corporations —**

constitution and replaceable rules — effect as contract — contract between company and member — contract to pay dividend — company not bound to recognise rights in respect of securities — obliged to pay dividend only to membership as at record date for dividend — equitable assignment by member of right to receive dividend effective as between member and assignee — assignee’s notice of assignment and direction to pay ineffective against company — *Corporations Act 2001* (Cth), s 140(1) — *Bluebottle UK Ltd v Deputy Commissioner of Taxation*, 127

financial services and markets — financial markets — operating rules — listing rules: operation and effect — dividends — shareholdings as at recording date — *ASTC Settlement Rules*, r 5.20.5 — *Corporations Regulations 2001* (Cth), reg 7.11.39 — *Corporations Act 2001* (Cth), ss 761A, 793C — *Bluebottle UK Ltd v Deputy Commissioner of Taxation*, 127

share capital — shares — dividends — declaration of dividend — fixing amount of dividend and time for payment — when debt arises — replaceable rule excluded — construction of replacement rule in constitution — *Company Law Review Act 1998* (Cth) — *Corporations Act 2001* (Cth), ss 254U, 254V(1), 254V(2) — *Bluebottle UK Ltd v Deputy Commissioner of Taxation*, 127

---

**Corporations — continued**

- takeovers — review — Takeovers Panel and its predecessors — no unconstitutional conferral of judicial power — *Corporations Act 2001* (Cth), s 657(2)(b) — *Attorney-General (Cth) v Alinta Ltd*, 382
- voluntary administration — deeds of company arrangement — creditors on whom binding — mutual debts — contractual arrangements for settlement — modification of normal creditor/debtor relationship — priorities between creditors in administration — how affected — public policy considerations — *Corporations Act 2001* (Cth), Pt 5.3A — *International Air Transport Association v Ansett Australia Holdings Ltd*, 419
- winding-up — in insolvency — statutory demand
  - application to set aside demand — genuine dispute as to indebtedness — assessing genuineness — alleged tax debt grounding demand — proceedings for review of assessment on foot — statutory provisions deeming assessment immune from dispute — no “genuine dispute” — no “other reason” to set aside — *Corporations Act 2001* (Cth), ss 459G, 459H(1)(a), 459J(1)(b) — *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd*; *Deputy Commissioner of Taxation v MA Howard Racing Pty Ltd*; *Deputy Commissioner of Taxation v Neutral Bay Pty Ltd*, 1411
  - extension of time to comply with demand — expiry of time for compliance — whether extension can be granted thereafter — *Corporations Act 2001* (Cth), ss 459C, 459F(1), 459F(2), 459F(2)(a)(i) — *Corporations Act 2001* (Cth), Pt 5.4 — *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corporation Ltd*, 564

**Criminal Law —**

- appeal and new trial
  - miscarriage of justice
    - jury trial — replaying pre-recorded evidence to jury — circumstances in which no miscarriage of justice — *Criminal Code* (Qld), s 688E(1) — *Gately v The Queen*, 149
    - particular circumstances involving miscarriage
      - improper admission or rejection of evidence — whether unfairly prejudicial — grave departure from requirements for fair trial — substantial miscarriage of justice — application of proviso — *Criminal Appeal Act 1912* (NSW), s 6(1) — *Evans v The Queen*, 250
      - other irregularities — jury unable to reach verdict — supplementary directions — treatment of circumstantial evidence — fairness to unrepresented accused — *Gassy v The Queen*, 838
    - power to dismiss appeal where no substantial miscarriage of justice — particular matters — supplementary directions to jury — requirement of manifest impartiality — unrepresented accused — effect of direction on further deliberations — whether amounting to “substantial” miscarriage — *Criminal Law Consolidation Act 1935* (SA), s 353(1) — *Gassy v The Queen*, 838
    - tests — effect of evidence aliunde to support verdict — improper admission or rejection of evidence — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723
    - misdirection and non-direction — child sexual abuse — complainant’s evidence of uncharged acts — direction as to standard of proof for uncharged acts — direction warning against propensity reasoning — evidence used to establish step in proof of prosecution case — permitted step in reasoning towards accused’s guilt — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723
    - objections and points not raised in court below — improper admission or rejection of evidence — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723
  - appeal and new trial and inquiry after conviction — appeal and new trial
    - miscarriage of justice — particular circumstances involving miscarriage — other irregularities — failure to give adequate reasons — trial by judge alone — appellate court found no substantial miscarriage of justice — application for the proviso at issue — *Criminal Procedure Act 2004* (WA), ss 30(4), 120(2) — *AK v Western Australia*, 534
    - practice: after criminal appeal legislation — miscellaneous matters — New South Wales — powers of appellate court — sentence of life imprisonment — recommendation prisoners never be released — court’s power to review — final orders not perfected by entry on indictment — reopening of appeal — whether sentence still appealable — *Sentencing Act 1989* (NSW), s 13A — *Sentencing Legislation Further Amendment Act 1997* (NSW) — *Elliott v The Queen*; *Blessington v The Queen*, 82

**Criminal Law — continued**

## evidence

complaint — admissibility of details and fact of complaint — incapacity of witnesses to accredit themselves in chief — complainant's evidence explaining delay in making complaint — *Evidence Act 1929* (SA), ss 34CA, 341(6a) — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723

## confessions and admissions

records of interview — tape recordings of interview — Western Australia — exclusion of evidence — interpretation of rules — application of common law rules — “interview” — recording of “interview” — requirement of “consent” — *Criminal Code* (WA), Ch LXA, ss 570, 570(1), 570D, 570D(2), 570D(4) — *Carr v Western Australia*, 1

statements — records of interview — tape recordings of interview — “walk-through” re-enactment — tender of part — inferences drawn from extract — untested by other evidence — where selective tender inappropriate — necessity for clear directions to jury — *Mahmood v Western Australia*, 372

## judicial discretion to admit or exclude evidence

evidence unfair to admit or improperly obtained — *Evidence Act 1995* (NSW), s 138 — *Gedeon v Commissioner of New South Wales Crime Commission*; *Dowe v Commissioner of New South Wales Crime Commission*, 1465

prejudicial evidence — in-court demonstrations — relevance test — refusal of opportunity to call alibi evidence — failure to give reasons — *Evans v The Queen*, 250

## matters relating to proof — standard of proof — direction to jury

jury's access to pre-recorded evidence — correct direction to jury — *Gately v The Queen*, 149

reasonable doubt — sexual offences — use of other evidence from complainant — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723

matters relating to witnesses and accused persons — competence and compellability — children — pre-recorded evidence of child complainants — jury's access — pre-recorded evidence not “exhibit” — *Evidence Act 1977* (Qld), ss 21AD(1)(a), 21AM — *Evidence Act 1977* (Qld), Pt 2, Div 4A, subdiv 3 — *Gately v The Queen*, 149

## relevance

child sexual abuse — use of evidence of other sexual misconduct — conduct not amounting to criminal offence — circumstances in which admissible — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723

reception at later trial of evidence at earlier trial — drug-related conspiracies — acquittal in respect of first charges — whether relevant to trial of subsequent charge — principle of full credit being given for earlier acquittal — *Criminal Appeals Act 2004* (WA), s 30(4) — *Washer v Western Australia*, 33

similar facts — relevance — admissibility — sexual offences — child sexual abuse — evidence of other sexual conduct between accused and complainant — sexual conduct other than offence being tried — general rule excluding evidence — exceptions — evidence not consistent with innocence — probative value and prejudicial effect — “relationship evidence” — evidence disclosing accused's sexual interest in complainant — *HML v The Queen*; *SB v The Queen*; *OAE v The Queen*, 723

federal and state investigative authorities — New South Wales — controlled operations — immunity for unlawful activity — “despite any other Act or law” — immunity for conduct made unlawful by federal law — prohibition against engaging in conduct likely to seriously endanger health or safety — jurisdictional fact — authorising sales of prohibited drug — likely to be on sold to users — reasonable person test — *Crimes Act 1914* (Cth), s 15M — *Law Enforcement (Controlled Operations) Act 1997* (NSW), ss 7(1)(b), 16 — *Gedeon v Commissioner of New South Wales Crime Commission*; *Dowe v Commissioner of New South Wales Crime Commission*, 1465

information, indictment or presentment — alternative charge of same kind substituted — necessity to amend arising through amendment to criminal statute — absence of formal application to amend — amendment effected of judge's own motion — alleged judicial usurpation of prosecutorial function — alleged denial of opportunity to plead to lesser charge — whether injustice arose — failure to note information properly — *Criminal Law Consolidation Act 1935* (SA), ss 69, 70(1)(c), 281, 281(2), 281(3) — *Criminal Law Consolidation Act Amendment Act 1972* (SA) — *Ayles v The Queen*, 502

**Criminal Law — continued**

- judgment and punishment — orders for compensation, reparation, restitution, forfeiture and other matters relating to disposal of property — forfeiture or confiscation — tainted property — extent of interest embraced by forfeiture orders — “sufficient consideration” for transfer of property — “natural love and affection” as consideration — application of test for reasonable suspicion concerning transfer — *Confiscation Act 1967* (Vic), ss 3, 3(1), 52(1), 52(1)(a)(iii), 52(1)(a)(v), 52(1)(b)(ii) — *Confiscation Amendment Act 2007* (Vic), s 4(3) — *Director of Public Prosecutions (Vic) v Le*, 92
- jurisdiction, practice and procedure
  - judgment and punishment — inspection of reasons prior to formal recording — procedural fairness — no obligation to accord — *Burrell v The Queen*, 1221
  - prosecution — filing of information, presentment or indictment — New South Wales — indictable offences by children — jurisdiction of District Court — *PM v The Queen*, 57
  - summing up
    - directions and comment — where unequivocal direction required — prosecution address — matters not tested in evidence — interpretation of evidence — explanations consistent with innocence — *Mahmood v Western Australia*, 372
    - supplementary directions — duty of trial judge — manifest impartiality and neutrality — unrepresented defendant — circumstantial prosecution case — insufficient attention to defence case — rapid return of guilty verdict — whether substantial miscarriage — *Gassy v The Queen*, 838
  - verdict — inconsistent, ambiguous and meaningless verdicts — offences against the person — opaque nature of verdict — *WGC v The Queen*, 220
- particular offences — offences against the person
  - homicide — murder — practice and procedure — sentencing — life imprisonment — recommendation prisoners never be released — legal effect at time of sentence — effect of subsequent legislation — *Elliott v The Queen*; *Blessington v The Queen*, 82
  - other offences against the person — sexual offences — unlawful sexual intercourse or carnal knowledge — New South Wales — honest and reasonable mistake — availability of — sexual intercourse with child aged between 14 and 16 — appellant believed complainant aged 16 — statutory construction — legislative intention to exclude fundamental common law principle — where not established — *Crimes Act 1900* (NSW), s 66C(3) — *CTM v The Queen*, 978
  - sexual offences — unlawful sexual intercourse or carnal knowledge — proof, evidence and procedure — elements of offence — date of commission of offence — whether an element — *Criminal Law Consolidation Act 1935* (SA), ss 49, 49(3), 49(4), 49(4)(a) — *WGC v The Queen*, 220
- “slavery” — fault element — “intentionally” — directions to jury — *R v Tang*, 1334
- witnesses — questions to witnesses — relevance of — *Evans v The Queen*, 250

**D****Defamation —**

- actions for defamation — pleading — South Australia — defence — strikeout and repleading — interlocutory stages — fair comment — not established on pleadings — where leave to replead refused — irremediable defect — *Channel Seven Adelaide Pty Ltd v Manoc*, 303
- fair comment
  - fairness of comment — meaning of “fair” — *Channel Seven Adelaide Pty Ltd v Manoc*, 303
  - foundation of fact — television broadcast — current affairs — promotion of upcoming programme — promise of new allegations of fact — facts not sufficiently stated, referred to or notorious — availability of defence — *Channel Seven Adelaide Pty Ltd v Manoc*, 303

**Defamation — continued**

fair comment — *continued*

in general — distinction between comment and fact — television broadcast — current affairs — facts insufficiently enunciated — indistinguishable from comment — availability of defence on pleadings — *Channel Seven Adelaide Pty Ltd v Manoc*, 303

**E****Energy and Natural Resources —**

minerals

courts or tribunals exercising jurisdiction in mining matters — New South Wales — decisions — Mine Subsidence Board — merits appeal to Land and Environment Court — judicial review by Supreme Court — *Mine Subsidence Compensation Act 1961* (NSW), s 12B — *Land and Environment Court Act 1979* (NSW), s 19(f1) — *Supreme Court Act 1970* (NSW), ss 65, 65(1) — *Alinta LGA Ltd (formerly Australian Gas Light Co) v Mine Subsidence Board*, 826

support and subsidence — mine subsidence legislation — statutory role of Mine Subsidence Board (NSW) — when claims for compensation to be entertained — when de novo “appeal” to Land and Environment Court available — *Mine Subsidence Act 1961* (NSW), ss 12(1), 12(1)(a), 12(1)(d), 12(1A), 12(2)(b), 12A(1), 12A(1)(b), 12B, 12B(a), 12B(b), 15, 15(5)(b), 15B(3A) — *Alinta LGA Ltd (formerly Australian Gas Light Co) v Mine Subsidence Board*, 826

**Environment and Planning —**

courts and tribunals with environment jurisdiction — New South Wales — Land and Environment Court — merits appeals — mine subsidence compensation — Class 3 jurisdiction — ancillary jurisdiction — inherited powers — de novo nature of “appeal” — *Mine Subsidence Compensation Act 1961* (NSW), s 12B — *Land and Environment Court Act 1979* (NSW), ss 16(1A), 16(2), 19(f1), 38, 39(2), 39(3) — *Alinta LGA Ltd (formerly Australian Gas Light Co) v Mine Subsidence Board*, 826

environmental planning — development control

consents, approvals and permits — interpretation and construction — *Environmental Planning and Assessment Act 1979* (NSW), s 76A(1) — *Weston Aluminium Pty Ltd v Environment Protection Authority; Weston Aluminium Pty Ltd v Alcoa Australia Rolled Products Pty Ltd*, 74

when consent required — “controlled development” — licence for — grant of environment protection licence — variation of licence — *Protection of the Environment Operations Act 1997* (NSW), ss 50(2), 58 — *Weston Aluminium Pty Ltd v Environment Protection Authority; Weston Aluminium Pty Ltd v Alcoa Australia Rolled Products Pty Ltd*, 74

**Equity — see Trusts and Trustees****Evidence — see also Criminal Law**

admissions and declarations — admissions — informal admissions — generally — self-serving statements — murder trials — taped records of interview — selective tender of re-enactment tape — objection to tender of balance — *Mahmood v Western Australia*, 372

documentary evidence — statutory provisions as to statements in documents where direct oral evidence admissible — statement by child — written statement and pre-trial recording — both admissible — *Evidence Act 1977* (Qld), s 93A — *Gately v The Queen*, 149

facts excluded from proof — on grounds of privilege — professional confidence — legal profession — waiver of privilege — conduct inconsistent with maintenance of confidentiality — limited disclosure of existence and effect of legal advice — documents created in connection with petition for mercy — *Freedom of Information Act 1982* (Vic), s 32 — *Osland v Secretary, Department of Justice*, 1288

inspection — views — demonstration, experimentation or inspection — in-court demonstrations — application of common law rules — application of s 53 — *Evidence Act 1995* (NSW), ss 53, 53(3)(d) — *Evans v The Queen*, 250



**Extradition —**

to foreign states — procedure — magistrates' courts — conferral of functions as *personae designatae* — statutory authority and executive arrangements — nature of conferral — validity — *Constitution*, s 107 — *Crimes Act 1914* (Cth), s 4AAA — *Extradition Act 1988* (Cth), ss 19, 46 — *O'Donoghue v Ireland*; *Zentai v Republic of Hungary*; *Williams v United States of America*, 680

**F****Family Law and Child Welfare —**

child welfare under State legislation — crimes and offences by children — jurisdiction of District Courts — New South Wales — Children's Court — "serious children's indictable offence" — commencement of proceedings — validity of — requirement for court attendance notice — power to remit — *Children (Criminal Proceedings) Act 1987* (NSW), ss 3, 7, 28, 31, 31(1), 31(2), 44 — *Criminal Procedure Act 1986* (NSW), s 46(2) — *PM v The Queen*, 57

children — overseas orders, child abduction and children out of jurisdiction — child abduction matters under international conventions

procedural matters — return orders — evidence — sufficiency of — power of court to make order permitting cross-examination — *Family Law (Child Abduction Convention) Regulations 1986* (Cth), reg 16 — *MW v Director-General of Department of Community Services*, 629

wrongful removal or retention — joint or sole guardianship of child — character of relationship between mother and father at time child born — whether mother and father living in de facto relationship — rights of access — rights of custody — right to determine place of residence of child — *Family Law (Child Abduction Convention) Regulations 1986* (Cth), regs 2(1), 4(2), 16(1A) — *Care of Children Act 2004* (NZ), s 17 — *Convention on the Civil Aspects of International Child Abduction* — *MW v Director-General of Department of Community Services*, 629

**Freedom of Information —**

exempt documents — documents subject to legal professional privilege — waiver — explanation by executive for denying petition for pardon — *Freedom of Information Act 1982* (Vic), s 32 — *Osland v Secretary, Department of Justice*, 1288

review of decisions — Victorian Civil and Administrative Tribunal — discretion to allow access — "public interest" — document privileged from compulsory disclosure — public interest override not precluded by legal professional privilege — *Freedom of Information Act 1982* (Vic), ss 30, 50(4) — *Osland v Secretary, Department of Justice*, 1288

**G****Gaming and Wagering —**

internet and telephone betting — betting exchanges — cross-border operations — prohibitions and restrictions imposed under State law — constitutional validity — *Constitution*, s 92 — *Betting Control Act 1954* (WA), ss 24(1aa), 27D(1) — *Betfair Pty Ltd v Western Australia*, 600

**Goods and Services Tax —**

"a taxable supply" — "consideration" for "supply" — supply constituted by "grant of real property" — contractual rights exercisable over or in relation to land — exclusion where deposit taken as security under contract — forfeiture of deposit in real estate sale — forfeiture to vendor for failure by purchaser to perform obligations — payment "in connection with" a supply — *A New Tax System (Goods and Services Tax) Act 1999* (Cth), ss 9-10(2)(d), 9-15(1)(a), 99-5, 99-10 — *Value Added Tax Act 1994* (UK) — *Federal Commissioner of Taxation v Reliance Carpet Co Pty Ltd*, 968

**Guarantee —**

contract of guarantee — construction and effect — extent of liability — guarantee of lessee's obligations under lease — assignment of reversion — scope of guarantor's liability — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

**H****High Court and Federal Court —**

federal judicature — nature and extent of judicial power

administrative tribunals — Takeovers Panel — finding that statute contravened — declaration of unacceptable circumstances — remedial order — while court jurisdiction excluded — *Constitution*, Ch III, s 75(v) — *Judiciary Act 1903* (Cth), s 39B — *Corporations Act 2001* (Cth), Chs 6, 6A, 6B, 6C, ss 657A(2), 657A(2)(b), 657A(3)(a), 657A(3)(b), 657D(1), 657D(2), 657F, 657G, 659B — *Attorney-General (Cth) v Alinta Ltd*, 382

conferral on State courts — institutional integrity of State courts — State law restricting court's use of confidential information — *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police*, 454

functions that may be conferred on federal courts — issue of constitutional writ of mandamus — *MZXOT v Minister for Immigration & Citizenship*, 1061

**High Court of Australia**

appellate jurisdiction

procedure

ancillary orders

amount of damages entered — *Law Reform (Miscellaneous Provisions) Act 1965* (NSW), s 11 — *Imbree v McNeilly (No 2)*; *McNeilly v Imbree (No 2)*, 1501

costs — offers of compromise — effect — *Uniform Civil Procedure Rules 2005* (NSW), r 20.26 — *Imbree v McNeilly (No 2)*; *McNeilly v Imbree (No 2)*, 1501

parties — intervener and amicus curiae — constitutional issue arising in commercial litigation — intervention below by Attorney-General (Cth) — finding below of unconstitutionality — settlement between original parties after decision below — no contradictor for appeal on constitutional issue — counsel engaged by Attorney-General granted leave to oppose appeal as amicus curiae — *Judiciary Act 1903* (Cth), s 78A(3) — *Attorney-General (Cth) v Alinta Ltd*, 382

special leave to appeal

bail — contempt of court below — applicant serving 12 months imprisonment — pending special leave application — prospects of success — utility — special or exceptional circumstances — where not made out — *Siminton v Australian Prudential Regulation Authority*, 1478

criminal cases — application for declaration — undesirable fragmentation of criminal process — circumstances favouring grant of leave — *Gedeon v Commissioner of New South Wales Crime Commission*; *Dowe v Commissioner of New South Wales Crime Commission*, 1465

where rescinded — *Fergusson v Latham*, 1524

motor vehicle accident — conflicting versions of events — one version preferred by judge on balance of evidence — no material error identified in court below — difficulty in disturbing findings — no error justifying High Court's intervention — *Collins v Tabart*, 1521

removal of causes — remittal of matters — generally — implied power in absence of supporting law — *Constitution*, covering cl 5 — *Constitution*, ss 71, 75, 75(v), 76, 77, 77(i), 77(ii), 109 — *Judiciary Act 1903* (Cth), ss 28, 38(e), 39(1) — *Migration Act 1958* (Cth), ss 412(1)(b), 476, 476A, 476B, 476(2)(a), 477(2)(d), 484 — *MZXOT v Minister for Immigration & Citizenship*, 1061

## I

**Income Tax and Related Legislation —**

ascertainment of assessable income — particular classes of taxpayers

international agreements — related companies — transactions not at arm's length — deemed income — request for particulars — factors relevant to Commissioner's determination — fairness and reasonableness to taxpayer — tax avoidance purpose — profit shifting motive — irrelevant considerations — request for particulars refused — *Income Tax Assessment Act 1936* (Cth), s 136AD(1), Pt III Div 13 — *Taxation Administration Act 1953* (Cth), s 14ZZO(b)(i), Pt IVC *WR Carpenter Holdings Pty Ltd v Federal Commissioner of Taxation*; *WR Carpenter Australia Pty Ltd v Federal Commissioner of Taxation*, 1211

trustees, cestuis que trust and administrators of estates — trustees and cestuis que trust — beneficiary presently entitled — accumulated tax losses — offsetting income to profitable business — purported acquisition of, and distribution to, loss-bearing trust — reimbursement agreement — whether façade or “sham” — subjective intentions of parties — to whom attributable — *Income Tax Assessment Act 1936* (Cth), ss 99A, 100A — *Raftland Pty Ltd v Federal Commissioner of Taxation*, 934

assessments — conclusiveness of assessment

scope of judicial review — protection against failure to comply with Act — extent of protection — errors in process of assessment — double-counting in successive assessments — bad faith — deliberate failure to administer excluded from protection — conclusive evidence of due making of assessment — *Income Tax Assessment Act 1936* (Cth), ss 175, 177F, 177F(3), Pt IIIA Div 19A — *Federal Commissioner of Taxation v Futuris Corp Ltd*, 1177

use of statutory demand by Commissioner of Taxation — tax “may be recovered” — collection and recovery of tax — in bankruptcy and liquidation — where appeals pending — applicability to statutory demand procedure — *Income Tax Assessment Act 1936* (Cth), s 201 — *Taxation Administration Act 1953* (Cth), ss 14ZZM, 14ZZR — *Taxation Administration Act 1953* (Cth), Pt IVC — *Taxation Administration Act 1953* (Cth), Sch 1, s 105-100 — *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd*; *Deputy Commissioner of Taxation v MA Howard Racing Pty Ltd*; *Deputy Commissioner of Taxation v Neutral Bay Pty Ltd*, 1411

collection and recovery of tax — collection from person owing money to taxpayer — non-resident taxpayer — retention of sufficient money to pay tax “which is or will become due” — collection of tax “due and payable” — *Income Tax Assessment Act 1936* (Cth), ss 255, 255(1)(a), 225(1)(b), 225(2) — *Bluebottle UK Ltd v Deputy Commissioner of Taxation*, 127

objections and appeals — appeals to court

powers and functions of court — appeals against decisions on taxation objections — judicial review for jurisdictional error — distinction — *Constitution*, s 75(v) — *Judiciary Act 1903* (Cth), s 39B — *Taxation Administration Act 1953* (Cth), Pt IVC — *Federal Commissioner of Taxation v Futuris Corp Ltd*, 1177

practice and procedure — scope of judicial review outside Pt IVC — limitation on evidence receivable on judicial review — *Taxation Administration Act 1953* (Cth), Pt IVC — *Income Tax Assessment Act 1936* (Cth), ss 175, 175A, 177(1) — *Federal Commissioner of Taxation v Futuris Corp Ltd*, 1177

**Insurance —**

policies of insurance — construction — exclusion clauses — known claims and circumstances — definition — test to be applied — *CGU Insurance Ltd v Porthouse*, 1135

professional indemnity insurance — exclusions — known claims and circumstances — disclosure — what must be disclosed — standard of reasonable person in professional position of insured — *CGU Insurance Ltd v Porthouse*, 1135

**Intellectual Property — see Copyright**

**Interpretation — see also Statutes**

admissibility of extrinsic evidence in relation to instruments — when evidence admissible — to prove intention of parties — tax management arrangements — loss offsetting — “sham” transactions — what aspects may be disregarded — subjective intentions of parties — to whom attributable — corporations and trusts — *Raftland Pty Ltd v Federal Commissioner of Taxation*, 934

general rules of construction of instruments — commercial and business transactions — objectivity principle — history and circumstances of transaction — mutual debts — arrangement for setting off — effect of subsequent insolvency — *International Air Transport Association v Ansett Australia Holdings Ltd*, 419

**J****Judicial Review —**

grounds of review — jurisdictional matters

conditions of jurisdiction — jurisdictional fact — *Gedeon v Commissioner of New South Wales Crime Commission*; *Dowe v Commissioner of New South Wales Crime Commission*, 1465

recognised “jurisdictional error” categories not closed — *Judiciary Act 1903* (Cth), s 39B — *Federal Commissioner of Taxation v Futuris Corp Ltd*, 1177

reviewable decisions and conduct — Western Australia — compulsory removal of fortifications — review of notice — information confidential to Commissioner of Police — restriction on public disclosure by court — *Corruption and Crime Commission Act 2003* (WA), s 76(2) — *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police*, 454

**L****Landlord and Tenant —**

assignment, severance and sublease — assignment and severance of reversion — rights and liabilities of assignee — obligation touching and concerning land — termination for breach of covenant to pay rent — loss of bargain damage — “benefit of every covenant” in lease — assignee’s rights against guarantor — whether guarantee passes with reversion — scope of guarantee extending to loss of bargain damages — *Conveyancing Act 1919* (NSW), s 117 — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

covenants — running with land or reversion — covenants which run — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

leases and tenancy agreements — construction and interpretation — variation of lease — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

rent — breach of covenant to pay — actions to recover rent or damages — damages — termination of lease for breach of covenant to pay rent — loss recoverable for non-fundamental breach — recovery of loss of bargain damages — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

termination of tenancy — forfeiture — relief against forfeiture — equitable relief — lessee’s refusal to comply with term of any relief — *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market*, 576

---

## M

**Magistrates —**

jurisdiction, powers and duties — subject matter

New South Wales — extradition to foreign states — exercise of functions under Commonwealth law — nature of conferral — *Extradition Act 1988* (Cth), s 46 — *Local Courts Act 1982* (NSW), s 23 — *O'Donoghue v Ireland*; *Zentai v Republic of Hungary*; *Williams v United States of America*, 680

Western Australia — extradition to foreign states — exercise of functions under Commonwealth law — nature of conferral — *Extradition Act 1988* (Cth), s 46 — *Magistrates Court Act 2004* (WA), s 6 — *O'Donoghue v Ireland*; *Zentai v Republic of Hungary*; *Williams v United States of America*, 680

## N

**Negligence —**

contributory negligence — road accident cases — passenger supervising learner driver — instructions given — failure to take reasonable care for own safety — liability apportioned — *Imbree v McNeilly*; *McNeilly v Imbree*, 1374

damage — causation — heightened risk of injury — design of road — whether contributing materially to actual motor collision — whether intermediate appellate court dealt with causation — *Road & Traffic Authority v Royal*, 870

duty of care — essentials of action of negligence — special relationships and duties — learner driver — supervising passenger — no special duty of care — *Imbree v McNeilly*; *McNeilly v Imbree*, 1374

## P

**Personal Property —**

alienation of personal property — assignment of choses in action generally — effect of assignment — right to receive dividend — effect on company notified of assignment — *Bluebottle UK Ltd v Deputy Commissioner of Taxation*, 127

**Police —**

actions for wrongful arrest, trespass and other wrongs — domestic violence — invitation to police to enter premises — revocation — whether refusal to leave lawful — for purpose of investigation — to prevent breach of the peace — *Crimes Act 1900* (NSW), ss 357F, 357F(2), 357F(3), 357F(4), 357G, 357H, 357H(1), 357H(1)(a), 357H(1)(a)(i), 357H(1)(a)(ii), 357H(1)(a)(iii), 357H(1)(a)(iv), 357H(1)(a1), 357H(1)(b), 357I — *Kuru v New South Wales*, 1021

Western Australia — organised crime — fortification removal notice — compulsory removal of fortifications — review of notice — confidential information — exemption from disclosure — requirement for court to keep information confidential — *Corruption and Crime Commission Act 2003* (WA), ss 72(2), 76, 76(2) — *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police*, 454

**Primary Industry —**

fish — constitutional, territorial and related issues — territorial issues — Northern Territory — Aboriginal land rights — tidal waters within boundaries of Aboriginal land grants — marine buffer zone adjoining Aboriginal land — ambit of fishing licence — common law public right to fish — *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Sch 1, ss 10(1), 70, 70(1), 70(2A), 70(2A)(h), 73(1), 73(1)(b), 73(1)(d) — *Fisheries Act* (NT), ss 10, 11 — *Aboriginal Land Act* (NT), Pts II, III, ss 5, 12 — *Northern Territory v Arnhem Land Aboriginal Land Trust*, 1099

**Procedure — see also Contempt, Attachment and Sequestration**

courts — attempt to oust jurisdiction of court — improper interference by executive in judicial process — law restricting court's use of confidential information — no impermissible interference with court's jurisdiction — *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police*, 454

courts and judges generally — precedents — decisions of particular courts — English superior courts — construction of identical or analogous legislation — *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar, Diocesan Bishop, Macedonian Orthodox Diocese of Australia and New Zealand*, 1425

judgments and orders — amending, varying and setting aside — effect of entering or recording judgment or order — courts of superior record — error in reasoning — residual power to correct — *Criminal Appeal Act 1912* (NSW) — *Criminal Appeal Rules 1952* (NSW), r 50C(3) — *Burrell v The Queen*, 1221

**Professions and Trades —**

lawyers — professional indemnity insurance — policies of insurance — construction — exclusions — known claims and circumstances — disclosure — objective standard of knowledge — reasonable person in professional position of insured — imputation of insured's subjective knowledge to reasonable person — *CGU Insurance Ltd v Porthouse*, 1135

**Real Property —**

compulsory acquisition of land

compensation — assessment — market value — matters to be disregarded — purpose for which land required — New South Wales — purposes not attributable to resuming authority — *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), s56(1)(a) — *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority*, 489

powers of acquisition — compulsory acquisition “for any purpose whatsoever” — acquisition of native title land — for purposes of selling and leasing to others — *Griffiths v Minister for Lands, Planning & Environment*, 899

**Restitution —**

restitution resulting from unenforceable, incomplete, illegal or void contracts — recompense for services rendered — quantum meruit — where informal, unenforceable contract — building contracts — ineffective assignment of benefit to associated company — entitlement of purported assignee to recover from principal — transaction amounting to subcontract — other means of recovery available — where restitutionary relief refused — *Lumbers v W Cook Builders Pty Ltd (In liq)*, 1037

**S****Stamp Duties —**

what transactions or instruments are liable — leases — New South Wales — agreement “by which” right to use land conferred or acquired — legal source of right to use land — rail access regime — commercial use of railway infrastructure — *Duties Act 1997* (NSW), s 164A(b), Ch 5 — *Transport Administration Act 1988* (NSW), Sch 6A, cl 5(1) — *Asciano Services Pty Ltd v Chief Commissioner of State Revenue*, 1491

**Statutes — see also Interpretation**

Acts of Parliament

interpretation

“all” — where “all” means “any” — *Native Title Act 1993* (Cth), s 24MD(2)(b) — *Griffiths v Minister for Lands, Planning & Environment*, 899

consideration of extrinsic matters — previous state of law and mischief to be remedied — bankruptcy legislation — provable debts — costs orders — occurring after commencement of bankruptcy — examination of legislative history — consideration of authorities — *Bankruptcy Act 1966* (Cth), s 82 — *Foots v Southern Cross Mine Management Pty Ltd*, 173

**Statutes — continued**

## Acts of Parliament — continued

operation and effect of statutes — particular classes of statute — penal — punishment and penalty — New South Wales — criminal appeal legislation — sentence of life imprisonment — where “warranted in law” — circumstances obtaining at time of sentence — *Criminal Appeal Act 1912* (NSW), s 6(3) — *Elliott v The Queen*; *Blessington v The Queen*, 82

interpretation — consideration of extrinsic matters

previous state of law and mischief to be remedied — contestable textual interpretation — purposive interpretation — utility of resort to extrinsic matter — consistency of interpretative method — *Australian Finance Direct Ltd v Director of Consumer Affairs (Vic)*, 202

statutes in pari materia — judicial interpretation — utility of case law — compulsory acquisition of land — compensation — assessment of market value — comparison of “terse” and comprehensive statutory language — New South Wales — *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), s 56 — *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority*, 489

**T****Taxes and Duties — see also Goods and Services Tax; Income Tax and Related Legislation; Stamp Duties**

customs and excise — penal provisions — offences — penalties — drug offences — possession of prohibited import — MDMA — comparative seriousness of kinds of drug — observation by sentencing judge — whether leading to error in sentencing — *Customs Act 1901* (Cth), s 233B — *Adams v The Queen*, 718

**Torts — see Defamation; Negligence; Trespass****Trade and Commerce —**

industry codes of conduct — non-compliance — effect on contracts — whether void for illegality — franchise agreements — *Trade Practices Act 1974* (Cth), Pt VI, s 51AD — *Master Education Services Pty Ltd v Ketchell*, 1322

*Trade Practices Act 1974* (Cth) and related legislation

restrictive trade practices — access to services — transport infrastructure — privately owned railway track — designation as “declared service” — exceptions — use by owner in connection with stockpile management system — whether part of “production process” — access sought for transportation purposes only — *Trade Practices Act 1974* (Cth), ss 44B(a), 44B(f), Pt IIIA — *BHP Billiton Iron Ore Pty Ltd v National Competition Council*, 1482

telecommunications industry and access regime — declared services — access to line sharing services — qualified ownership of infrastructure — whether access conditions involve acquisition of property — compensation on just terms — validity of legislation — *Constitution*, s 51(xxxi) — *Trade Practices Act 1974* (Cth), ss 152AL(3), 152AR, 152EB — *Telstra Corporation Ltd v Commonwealth*, 521

**Trespass —**

trespass to land and rights of real property — by police — *Kuru v New South Wales*, 1021

**Trusts and Trustees —**

applications to the court for advice and authority — petition or summons for advice — principles applied and particular cases of advice — charitable trusts — proceedings against trustees — best interests of trust — adversarial proceedings — availability of judicial advice — defence — costs — trustee’s indemnity — recourse to trust property — *Trustee Act 1925* (NSW), s 63 — *Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar, Diocesan Bishop, Macedonian Orthodox Diocese of Australia and New Zealand*, 1425

**W****Words and Phrases —**

“intentionally” — *R v Tang*, 1334

“slavery” — *R v Tang*, 1334

“sufficient consideration” — *Director of Public Prosecutions (Vic) v Le*, 92

**Workers’ Compensation —**

proceedings to obtain compensation — determination of claims— appeals, judicial review and stated cases — nature and scope of appeal — appellate court to decide for itself whether injury serious — correct approach — whether appellate jurisdiction exercised — *Accident Compensation Act 1985* (Vic), ss 134AB(16)(b), 134AB(19)(c), 134AD — *County Court Act 1957* (Vic), s 74— *Dwyer v Calco Timbers Pty Ltd*, 669

---