

APRIL 2023

The Authorised Reports of the Supreme Court of the
Northern Territory of Australia

THE
NORTHERN
TERRITORY
LAW REPORTS
2021

EDITOR
DR CAMERON FORD

VOL 43 — PART 1

PAGES 1-87

PUBLISHED FOR THE NORTHERN TERRITORY COUNCIL OF LAW REPORTING INC BY LAWBOOK CO.
FUNDED BY THE LAW SOCIETY PUBLIC PURPOSE TRUST

The mode of citation of this part will be:
43 NTLR

TABLE OF CASES REPORTED

Part 1 — Pages 1-87

Calica; R v	7
EH; Northern Territory v	67
Firth v Kruger	1
Kruger; Firth v	1
Northern Territory v EH	67
R v Calica	7
Stewart, Re Estate of	59

(Cases in **bold** reported in this part)

Published in Sydney



THOMSON REUTERS

© 2023 Thomson Reuters (Professional) Australia Limited

ABN 64 058 914 668

Lawbook Co.

Published in Sydney

© Northern Territory Council of Law Reporting Inc
ISSN 1038-9237

TABLE OF CASES JUDICIALLY CONSIDERED IN THIS PART

<i>Balchin v Anthony</i> (2008) 22 NTLR 52	
Cited. <i>Firth v Kruger</i>	1
<i>Berlyn v Brouskos</i> (2002) 134 A Crim R 111	
Cited. <i>Firth v Kruger</i>	1
<i>Chester, Re</i> (1978) 19 SASR 247	
Considered. <i>Re Estate of Stewart</i>	59
<i>Christodoulou v The Queen</i> [2008] NSWCCA 102	
Cited. <i>R v Calica</i>	7
<i>Coco v The Queen</i> (1994) 179 CLR 427	
Cited. <i>Northern Territory v EH and Another</i>	67
<i>Cohen v Western Australia (No 2)</i> (2007) 180 A Crim R 348	
Cited. <i>R v Calica</i>	7
<i>Collins v Wilcock</i> [1984] 1 WLR 1172	
Cited. <i>Northern Territory v EH and Another</i>	67
<i>Cousen's Will Trusts, Re</i> [1937] Ch 381	
Considered. <i>Re Estate of Stewart</i>	59
<i>Daly v Thiering</i> (2013) 249 CLR 381	
Cited. <i>Northern Territory v EH and Another</i>	67
Referred to. <i>Northern Territory v EH and Another</i>	67
<i>DJR and Mental Health Act 1958, Re</i> [1983] 1 NSWLR 557	
Cited. <i>Northern Territory v EH and Another</i>	67
<i>Einfeld v The Queen</i> (2010) 200 A Crim R 1	
Cited. <i>R v Calica</i>	7
<i>GPG v ACF</i> [1983] 1 NSWLR 54	
Cited. <i>Northern Territory v EH and Another</i>	67
<i>Guardianship Order (BCB), Re Application for</i> (2002) 28 SR (WA) 338	
Cited. <i>Northern Territory v EH and Another</i>	67
<i>Guden v The Queen</i> (2010) 28 VR 288	
Cited. <i>R v Calica</i>	7
<i>Harrison v Melhem</i> (2008) 72 NSWLR 380	
Referred to. <i>Northern Territory v EH and Another</i>	67
<i>Harvey v Bofilios</i> [2017] NTSC 68	
Cited. <i>Firth v Kruger</i>	1
<i>Insane Patient, Re</i> (1952) 69 WN (NSW) 341	
Cited. <i>Northern Territory v EH and Another</i>	67

TABLE OF CASES JUDICIALLY CONSIDERED

<i>JD, Re</i> [2003] QGAAT 14	
Referred to. Northern Territory v EH and Another	67
<i>Lee v New South Wales Crime Commission</i> (2013) 251 CLR 196	
Cited. Northern Territory v EH and Another	67
<i>Long v Watkinson</i> (1852) 51 ER 1116	
Considered. Re Estate of Stewart	59
<i>Lord Advocate v Bogie</i> [1894] AC 83	
Considered. Re Estate of Stewart	59
<i>Markovic v The Queen</i> (2010) 30 VR 589	
Cited. R v Calica	7
<i>McLaughlin v Fosbery</i> (1904) 1 CLR 546	
Cited. Northern Territory v EH and Another	67
<i>Muldrock v The Queen</i> (2011) 244 CLR 120	
Cited. R v Calica	7
<i>Peach v Bird</i> (2006) 159 A Crim R 416	
Cited. Firth v Kruger	1
<i>Public Advocate v C, B</i> (2019) 133 SASR 353	
Referred to. Northern Territory v EH and Another	67
<i>R v Barlow</i> (1997) 188 CLR 1	
Cited. Northern Territory v EH and Another	67
<i>R v Chi Sun Tsui</i> (1985) 1 NSWLR 308	
Considered. R v Calica	7
Distinguished. R v Calica	7
<i>R v Daetz</i> (2003) 139 A Crim R 398	
Cited. R v Calica	7
<i>R v Haddara</i> (1997) 95 A Crim R 108	
Cited. R v Calica	7
<i>R v McLeod</i> (2007) 16 VR 682	
Cited. R v Calica	7
<i>R v Minor</i> (1992) 2 NTLR 183	
Cited. R v Calica	7
<i>R v Pham</i> [2005] NSWCCA 94	
Distinguished. R v Calica	7
<i>R v S</i> [2003] 1 Qd R 76	
Distinguished. R v Calica	7
<i>R v Shrestha</i> (1991) 173 CLR 48	
Considered. R v Calica	7
<i>R v UE</i> [2016] QCA 58	
Cited. R v Calica	7
<i>RAP v AEP</i> [1982] 2 NSWLR 508	
Cited. Northern Territory v EH and Another	67

TABLE OF CASES JUDICIALLY CONSIDERED

<i>RH v CAH</i> [1984] 1 NSWLR 694	
Cited. Northern Territory v EH and Another	67
<i>Rigby v Benfell</i> (2020) 93 MVR 11	
Cited. Firth v Kruger	1
<i>Rigby v Taing</i> (2015) 249 A Crim R 320	
Cited. Firth v Kruger	1
<i>Silvano v The Queen</i> (2008) 184 A Crim R 593	
Cited. R v Calica	7
<i>TAN v The Queen</i> (2011) 35 VR 109	
Cited. R v Calica	7
<i>Vallance v The Queen</i> (1961) 108 CLR 56	
Cited. Northern Territory v EH and Another	67
<i>Veness v The Queen</i> (2020) 285 A Crim R 198	
Cited. R v Calica	7
<i>W (a minor) (Medical Treatment: Court's Jurisdiction), Re</i> [1993] Fam 64	
Referred to. Northern Territory v EH and Another	67
<i>Wieland v HS</i> [2004] NTMC 42	
Cited. Northern Territory v EH and Another	67
<i>X7 v Australian Crime Commission</i> (2013) 248 CLR 92	
Cited. Northern Territory v EH and Another	67

STATUTES, RULES, ETC JUDICIALLY CONSIDERED IN THIS PART

NORTHERN TERRITORY

Criminal Code 1983

Pt II	1
-------------	---

Guardianship of Adults Act 2016

s 3	67
s 4	67
s 8	67
s 11	67
s 13	67
s 16	67
s 17	67
s 21	67
s 23	67
s 25	67
s 32	67
s 33	67
s 35	67

Local Court (Criminal Procedure) Act 1928

s 163	1
s 163(3)	1

Sentencing Act 1995

s 5	7
s 5(2)	7
s 5(2)(s)	7

Traffic Act 1987

s 4	1
s 20	1
s 24	1

Wills Act 2000

s 34	59
s 34(1)	59

INDEX

Part 1 — Pages 1-87

APPEALS

Orders on appeal — Powers of appellate court — Appeal from orders, not reasons.
Northern Territory v EH and Another 67

CRIME

Appeal and review — Appeal from Local Court to Supreme Court — By prosecutor on a question of law alone — Exceptional discretionary power — Local Court (Criminal Procedure) Act 1928 (NT), ss 163, 163(3).
Firth v Kruger 1

Criminal liability — De minimis non curat lex — Not freestanding rule — Applicable to qualitative standards — Cannot displace plain meaning — Traffic Act 1987 (NT), ss 4, 20, 24.
Firth v Kruger 1

Regulatory offences — Not governed by ordinary principles of criminal responsibility — Criminal Code 1983 (NT), Pt II.
Firth v Kruger 1

HEALTH

Consent to medical treatment — Guardianship — Whether guardian may consent to modest physical restraint — History of parens patriae jurisdiction — Guardianship of Adults Act 2016 (NT), ss 3, 4, 8, 11, 13, 16, 17, 21, 23, 25, 32, 33, 35.
Northern Territory v EH and Another 67

INTERPRETATION

“De minimis non curat lex”.
Firth v Kruger 1

LEGISLATION

Criminal Code 1983 (NT), Pt II — Local Court (Criminal Procedure) Act 1928 (NT), ss 163, 163(3) — Traffic Act 1987 (NT), ss 4, 20, 24.
Firth v Kruger 1

Guardianship of Adults Act 2016 (NT), ss 3, 4, 8, 11, 13, 16, 17, 21, 23, 25, 32, 33, 35.
Northern Territory v EH and Another 67

Sentencing Act 1995 (NT), ss 5, 5(2), 5(2)(s).
R v Calica 7

INDEX

LEGISLATION — *continued*

Wills Act 2000 (NT), ss 34, 34(1).	
<i>Re Estate of Stewart</i>	59

SENTENCING

Non-parole period — Deportation — Relevance of — Generally not relevant to non-parole period.	
<i>R v Calica</i>	7
Penalties — Deportation — Crafting sentence to avoid impermissible.	
<i>R v Calica</i>	7
Subjective considerations on sentence — Deportation — Relevance of — Hardship caused by and loss of opportunity to migrate relevant to mitigation — Generally not relevant to non-parole period — May not be taken into account to avoid deportation — Sentencing Act 1995 (NT), ss 5, 5(2), 5(2)(s).	
<i>R v Calica</i>	7

STATUTORY INTERPRETATION

Approaches — De minimis non curat lex — Not freestanding rule — Cannot displace plain meaning — Traffic Act 1987 (NT), ss 4, 20, 24.	
<i>Firth v Kruger</i>	1
Common law — Use of — Historical context and basic principles.	
<i>Northern Territory v EH and Another</i>	67
Legal presumptions — Legislature aware of judicial treatment in other jurisdictions.	
<i>Northern Territory v EH and Another</i>	67
Principle of legality — Common law rights and freedoms — Assumption of intention not to abrogate — Diminution of — Where rights exceed common law rights — Where enhanced protection to individual.	
<i>Northern Territory v EH and Another</i>	67
Principle of legality — Common law rights and freedoms — Rebuttal by clear and unambiguous language — Encompasses express words and by necessary implication — Guardianship of Adults Act 2016 (NT).	
<i>Northern Territory v EH and Another</i>	67

SUCCESSION

Construction — Description of person at date of will — Yields to contrary intention.	
<i>Re Estate of Stewart</i>	59
Construction — Statutory rule — Gift to issue predeceasing testator — Doctrine of lapse — Alternative disposition to avoid lapse — Disposition to trustee on trust for beneficiary — Wills Act 2000 (NT), ss 34, 34(1).	
<i>Re Estate of Stewart</i>	59