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A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Williams v Toyota Motor Corporation Australia Limited (HCA) - s272(1)(a) of the *Australian Consumer Law* requires reduction in value damages for breach of the s54 acceptable quality guarantee be assessed at time of supply, having regard to all that is known at time of trial about the state and condition of the goods at time of supply, including the effectiveness, cost, inconvenience, and timing of any repair known at the time of trial (I B)

Capic v Ford Motor Company of Australia Pty Ltd (HCA) - Court followed its decision in *Williams v Toyota* in disposing of a case that raised similar issues regarding s272(1)(a) of the *Australian Consumer Law* (B I)

YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs (HCA) - provisions of the *Migration Regulations 1994* (Cth) authorising curfew and electronic monitoring conditions on persons released from immigration detention after the High Court's decision in *NZYQ v Minister* [2023] HCA 37 were invalid (B I)

Pirina, in the matter of Ceylan Irmak Pty Ltd (in liq) (FCA) - judicial advice given to liquidator that he could treat property owned by company in liquidation as subject to a trust - liquidator appointed manager and receiver of trust (I B C)

Shapkin v Director of Public Prosecutions (No 2) (NSWCA) - District Court judge had not fallen into jurisdictional error when refusing to state a case to the Court of Criminal Appeal (I)

H v RJ (NSWSC) - Court made an order in its parents patriae jurisdiction that a sixteen year old boy who was to undergo surgery should be given a blood transfusion if required, notwithstanding that the boy and his parents did not consent to this (I)

Summaries With Link (Five Minute Read)

Williams v Toyota Motor Corporation Australia Limited [2024] HCA 38
High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Consumer law - Toyota supplied vehicles with a defective diesel exhaust system - Toyota later found a fix which it made available free of charge - Williams brought a Federal Court class action which included an allegation of breach of the guarantee of acceptable quality in s54 of the *Australian Consumer Law* - the primary judge found Toyota supplied all class members vehicles in breach of the s54 guarantee, and that damages should be awarded for reduction in value under s272(1)(a) of the *Australian Consumer Law* - the primary judge held value reduction had to be assessed as at the time of supply to the consumer, and that any information acquired after that time should be taken into account only if it bore upon the "true value" of the vehicle at that time - because Toyota's fix was not expected at the time of supply, it was irrelevant to true value at that time, and any later repair should not be taken into account in assessing value reduction - on appeal, the Full Court of the Federal Court held that any repair of a vehicle by the time of trial should be taken into account in assessing loss of value damages under s272(1)(a) - further, if a repair were not available at the time of trial, the assessment should take into account the possibility that a fix would later become available - Williams and Toyota were each granted special leave to appeal to the High Court - held: (by Gageler CJ, Gordon, Steward, Gleeson, & Beech-Jones JJ, with Edelman J agreeing generally while giving additional reasons and Jagot JJ dissenting): s272(1)(a) requires assessment of how much the value is reduced at the time of supply to the consumer as a result of the failure to comply with the guarantee at that time - this assessment should have regard to all that is known at the time of trial about the state and condition of the goods at the time of their supply to the consumer - the effectiveness, cost, inconvenience, and timing of any repair as known at the time of trial are characteristics of the "state and condition of the goods" at the time of their supply to the consumer and should be included in the assessment of reduction in value - Williams' appeal was allowed, Toyota's appeal was dismissed, and, as neither the primary judge nor the Full Court took the correct approach to s272(1)(a), the proceedings remitted to the primary judge to assess reduction in value damages in accordance with the reasons of the majority of the High Court - Jagot J held that the primary judge reached a substantive outcome unaffected by material error, and would have allowed Williams' appeal and dismissed Toyota's appeal, and mostly reinstated the orders of the primary judge.
Williams (I B)

Capic v Ford Motor Company of Australia Pty Ltd [2024] HCA 39

High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Consumer law - Ford supplied a number of vehicles with a faulty transmission - Capic brought a Federal Court class action for breach of the guarantee of acceptable quality in s54 of the Australian Consumer Law - the primary judge found Ford breached the s54 guarantee and awarded Capic reduction in value damages under s272(1)(a) of the *Australian Consumer Law* - on appeal, the Full Court followed the decision a differently constituted Full Court had just handed down in *Toyota Motor Corporation Australia Limited v Williams* [2023] FCAFC 50 (see the appeal from this case above) and held that events after supply could bear on the assessment of reduction in value damages - the Full Court held the primary judge had erred by not taking into account facts about repairs known at the time of trial and the use by Capic of her vehicle up until the time of trial, and that evidence as to the value of the vehicle at the time of trial was relevant as it would have allowed the primary judge to ensure Capic was not over-compensated - Capic was granted special leave to appeal to the High Court and Ford cross-appealed - held (by Gageler CJ, Gordon, Steward, Gleeson, & Beech-Jones JJ, with Edelman J agreeing with the orders proposed while expressing his own reasons and Jagot JJ dissenting): for the reasons given in the *Williams v Toyota* appeal (above), the Full Court erred in finding that assessment of damages under s272(1)(a) may require reduction in value to be assessed at a time other than the time of supply to the consumer, or that there could be an adjustment to avoid over-compensation - the Full Court had erred in remitting the matter to the primary judge on this basis - the Full Court did not err in finding that s272(1)(a) requires having regard to what is known about capacity to repair by the time of trial - the Full Court erred in finding s272(1)(a) required having regard to Capic's use of her vehicle up to the time of trial, as this did not bear on an assessment of value reduction at the time of supply - the Full Court erred in finding that the value of Capic's vehicle at the time of trial was relevant under s272(1)(a) as it would have enabled the primary judge to ensure that Capic was not over-compensated, as the value at time of trial would only be relevant if it could throw light on the value at time of supply - Capic's appeal was allowed, Ford's cross-appeal dismissed, and proceedings remitted to the primary judge to reassess damages in accordance with the reasons of the reasons of the majority of the High Court in this appeal and in the *Williams v Toyota* appeal - Jagot J would have allowed Capic's appeal and largely reinstated the primary judge's orders.
Capic (B I)

YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs [2024] HCA 40
High Court of Australia
Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ
Constitutional law - the plaintiff's refugee visa cancelled for serious criminal offending - on release from prison, he went into immigration detention - the High Court later held in *NZYQ* that immigration detention with no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future is beyond Commonwealth legislative power (see Benchmark 29 December 2023) - this applied to the plaintiff, as he was stateless - in the moral panic following *NZYQ*, Parliament hastily introduced a new visa for the "NZYQ cohort" - new

provisions of the *Migration Regulations 1994* (Cth) provided that the Minister must impose the curfew and electronic monitoring conditions to the new visa, unless satisfied this was not reasonably necessary for the protection of any part of the Australian community - the plaintiff was released from immigration detention and given a visa with the curfew and monitoring conditions - he was later charged with offences of failing to comply with each condition - a special case was referred to High Court, asking whether the regulations authorising the conditions were constitutionally invalid - held (by Gageler, Gordon, Gleeson, & Jagot JJ, with Edelman J agreeing for his own reasons and Steward and Beech-Jones JJ dissenting for separate reasons): Commonwealth laws authorising detention other than through a court exercising the judicial power of the Commonwealth adjudging and punishing criminal guilt contravene Ch III of the Constitution unless reasonably capable of being seen to be necessary for a legitimate and non-punitive purpose - the NZYQ cohort included persons with serious criminal histories, but was not confined to such persons - the curfew condition involved a material and relatively long-term deprivation of liberty, which would apply to all members of the NZYQ cohort unless the Minister reached the specified satisfaction - the monitoring device was more than a slight or modest interference with bodily integrity, and failing to ensure it remained charged at all times was a criminal offence attracting a mandatory one year prison sentence - it would be visible unless covered by certain clothing, so was likely cause a degradation of autonomy and further restrict the wearer's movement and liberty - both conditions were prima facie punitive - the conditions' stated purpose of "the protection of any part of the Australian community" was designedly unparticularised and indeterminate, and meant what it said, and should not be read down to mean protection from a risk of harm arising from future offending - the conditions were not reasonably capable of being seen as necessary for any legitimate and non-punitive purpose - if protection from any harm were a legitimate non-punitive purpose, this would defeat the point of the legitimacy requirement - in any event, the regulations were not reasonably capable of being seen as necessary for protecting any part of the Australian community from harm, as they applied unless Minister reached the specified satisfaction, and any right to make representations arose only after they were imposed - the conditions imposed a price that persons in the NZYQ cohort had to pay for their presence in the Australian community, and were a form of extra-judicial collective punishment based on membership of that cohort - the regulations authorising the conditions were constitutionally invalid.
YBFZ (B I)

Pirina, in the matter of Ceylan Irmak Pty Ltd (in liq) [2024] FCA 1280
Federal Court of Australia
Jackman J
Corporations law - a liquidator of a company discovered that the company owned property subject to a mortgage, and later was informed by an accountant that the company may own that property as trustee of a trust - the accountant gave the liquidator an unexecuted copy of a trust deed and the front page of a contract of sale showing the purchaser as the sole shareholder and director of the company, rather than the company itself - the liquidator discovered conflicting evidence as to whether the company held the property as trustee of a particular trust

- the liquidator sought judicial direction under s90-15 of the *Insolvency Practice Schedule (Corporations)* as to whether he would be justified in treating the property and the funds received from leasing it as assets of the trust, and also sought an order under s57 of the *Federal Court of Australia Act 1976* (Cth) that he be appointed as receiver and manager of the property and undertaking of the trust - held: the Court was satisfied that the company purchased the property as trustee for the trust and still held the property in that capacity - direction given that the liquidator would be justified intreating the property as trust property, despite the contradictory documents and information received - as for appointing the liquidator as receiver and manager of the trust, the trust deed provided that a corporate trustee of the trust would be removed as trustee if it went into liquidation - there was no evidence any replacement trustee had been appointed - therefore, the company, since going into liquidation, had held the property as a bare trustee, rather than as a trustee under the trust deed having all the powers granted by the trust deed - therefore, in order to sell the property, the liquidator required either an court order to sell or an order appointing him receiver - it was clearly appropriate to appoint the liquidator as receiver and manager of the trust - it was also appropriate to order the liquidator's remuneration for acting as receiver and manager be calculated on a time cost basis in accordance with his firm's current schedule of rates, to be paid from the property of the trust, on the proviso no amount be paid until fixed by the Court.
Pirina, in the matter of Ceylan Irmak Pty Ltd (in liq) (I B C)

Shapkin v Director of Public Prosecutions (No 2) [2024] NSWCA 263
Court of Appeal of New South Wales
McHugh JA, Basten, & Griffiths AJJA
Administrative law - the applicant was convicted in the Local Court of damage to property contrary to s195(1)(a) of the *Crimes Act 1900* (NSW) and intimidation contrary to s13(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) - he was sentenced to an 18-month Community Correction Order and fined $1000 - he appealed to the primary judge in District Court, which confirmed both convictions and sentence - the applicant requested the primary judge state a case to the Court of Criminal Appeal pursuant to s5B of the *Criminal Appeal Act 1912* (NSW), stating questions of law regarding the defence of necessity in respect of both charges, whether evidence should have been admitted with respect to the property damage charge, whether the evidence had been capable of establishing the *actus reus* and *mens rea* of the intimidation charge, and whether the facts could support the severity of the sentence imposed the primary judge refused to state a case - the applicant sought judicial review of this decision - held: the applicant, who was self-represented regarding the request for a stated case, had delayed in formulating questions of law to be stated, and there was no satisfactory explanation for this delay - the questions of law the application ultimately did formulate contained premises that were inaccurate or incomplete - the primary judge made an affirmative decision to decline to state a case and did so on a reasoned basis - in light of the privative clause in s176 of the *District Court Act 1973* (NSW), this judicial review was confined to jurisdictional error, and did not extend to error of law on the face of the record - the Court rejected the applicant's contention that, once a "pure question of law" is identified, the judge

has no discretion and must state a case - the primary judge had had a discretion to refuse to state a case, and she did not take into account any irrelevant or impermissible matters - the primary judge had not erred in the exercise of her discretion - even if the primary judge had erred in determining that the proposed questions were generally not questions of law arising on the appeal, those would have been errors within jurisdiction - although a question in the form "was the evidence capable of..." may be a question of law, the primary judge was entitled to be cautious where the question being in that form was the only basis for concluding it may be question of law - the primary judge's failure to reformulate the applicant's question was not a failure to exercise jurisdiction - proceedings dismissed.
View Decision (I)

H v RJ [2024] NSWSC 1404
Supreme Court of New South Wales
Hammerschlag CJ in Eq
Parens patriae jurisdiction - a 16-year-old boy was diagnosed with arrhythmogenic right ventricular cardiomyopathy, and surgery was scheduled - the boy and his parents were devoted Jehovah's Witnesses, and consented to the surgery, but not to any blood transfusion that may be required - the hospital sought orders that, without consent, it could perform a blood transfusion during surgery if an authorised clinician formed the opinion that this was necessary - held: the surgeon had given impressive evidence that the risk of something going wrong requiring a blood transfusion was low, and that the risk involved in the transfusion was very low - the parents explained their position in affidavits, and were not cross-examined - the boy gave his view in a statement attached to an affidavit of the solicitor appointed to be his representative - the Court gave due weight to the parents' and the boy's religious beliefs - the contents and articulation of the boy's statement conveyed intelligence and understanding commensurate with his age - it was important to allow the boy an appropriate level of autonomy - however, there was a comprehensive clinical psychologist's report stating the boy was not yet able to function autonomously or independently in the specific area of medical decision making, and that, despite his otherwise age-appropriate maturity, he continued to lack appropriate competence in that area - the overriding consideration was the boy's welfare and best interests - the fact that a transfusion was unlikely to be required was a strong reason to make the order sought - s174 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides a defence to a medical practitioner who carries out medical treatment on a person under the age of eighteen without consent in urgent circumstances to save the person's live or prevent serious damage to the person's health - relying on this section after the fact would involve argument as to whether the situation was urgent - further, the Hospital's evidence was that a blood transfusion, if required, should not wait until the boy's condition deteriorated to the point of being an urgent situation - an order under the Court's parens patriae jurisdiction would give certainty to the medical practitioner's performing the surgery - the Court was satisfied it should make the orders sought by the hospital.
View Decision (I)

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