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Chapter 1 : High Court Cases Summaries, Torts : Editorial Staff Publishers :

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Court of Appeal, Victoria Date of judgment: The alleged offences occurred at various times between and She also gave evidence that in October the applicant had admitted the alleged behaviour after which he took an overdose of tablets and was hospitalised. The applicant gave evidence and denied any sexual activity with the complainant. He said he had taken some tablets to help overcome a back injury. Counts 1 to 17 alleged 17 specific acts. Count 18 was a charge laid under s47A Crimes Act Vic , namely of maintaining a sexual relationship with a child aged under 16 between 5 August and 18 March The evidence consisted of unparticularised acts, the complainant stating that she was subjected to routine, repeated sexual acts during the six months immediately preceding her fifteenth birthday. The applicant appealed against conviction. One of the grounds was whether the nature of the evidence led to establish count 18 was a matter which required the giving of a propensity warning. The applicant submitted that the trial judge should have directed the jury not to reason that because the applicant engaged in sexual conduct the subject matter of count 18, he was the kind of person who was likely to have committed the crime the subject of other counts. The Court of Appeal dismissed the appeal. The grounds of appeal are: That the Victorian Court of Appeal erred in law in failing to hold that in every such case involving a presentment including a count pursuant to s47A of the Crimes Act Vic that there should have been a propensity direction; and That the Victorian Court of Appeal erred in law by holding that a propensity direction was not necessary in the particular circumstances of this case. This was a fortnightly occurrence. On the way home she was seriously injured in a car accident. The trial judge found in her favour and awarded compensation. Relevantly, he held that at the time of injury the appellant was on a single journey from her place of employment to her place of abode. The respondent appealed on questions of law relating to whether there were two journeys or one, whether if it was a single journey that journey was a daily or other periodic journey for the purposes of s10 3 a of the Act, whether the substantial deviation from and interruption to that single journey materially increased the risk of injury and whether the injury caused was partly or wholly the fault of the worker. The Court of Appeal allowed the appeal setting aside the award for the appellant entered in the Compensation Court and ordering a new award for the respondent. Two of the three judges held that the journey was not a single journey but two journeys and that the trial judge had erred in law in not drawing this conclusion. Two of three judges held that the trial judge had erred in law in finding that the injury had not been caused by fault of the worker. The grounds of appeal include: The Court of Appeal erred in concluding that the question of whether or not the appellant was injured in the course of a daily or other periodic journey between her place of employment and her place of abode was a question of law; The Court of Appeal erred in concluding that the appellant was injured in the course of a journey which was not a daily or other periodic journey between her place of employment and her place of abode; and The Court of Appeal erred in concluding that it was not open as a matter of law to find that the injury to the appellant occurred during a single journey from her place of employment to her place of abode. Arico sought, by cross claim, a declaration of invalidity and an order revoking the KCA patent. The patent is a convention patent, the priority date of which, in reliance on a United States patent, is 2 July The complete specification refers to an invention entitled "Diapers with Elasticised Side Pockets". Arico appealed against both these findings raising issues of insufficient description, fair basis, novelty, manner of manufacture and infringement. The majority of the Full Federal Court allowed the appeal holding that the appeal could be decided by reference solely to s40 2 a of the Patents Act Cth "the Act". Section 40 of the Act is concerned with specifications. Section 40 2 provides as follows: The complete specification does not disclose to a person who may wish to make the invented product after the patent has expired how the product should be constructed. He found that the respondent had not made out the grounds for revocation of the patent and the appellant had made out its case

of infringement. The Court erred in ordering that Australian Patent No. The respondent was employed as a cleaner at Blacktown Girls High School. In October he injured his back lifting garbage bins. He elected to accept permanent loss compensation under the Act. In October he commenced proceedings claiming damages in respect of the injury. The election that he had made stood in his way and was irrevocable except with the leave of the court. By sA 5 if certain conditions were satisfied then, with the leave of the court, the respondent could revoke the election. The conditions which had to be satisfied included in sub-section 5 c: On 3 June Master Greenwood granted leave to the respondent to revoke his election and to commence fresh proceedings. The judge at first instance allowed the appeal. The respondent then appealed to the Court of Appeal. There was no reasonable cause to believe that the further deterioration would occur, and para c is satisfied. The Court of Appeal erred in not finding that upon its proper construction sA 5 c operates to preclude a worker from revoking his or her election not to sue for damages when a reasonable person in the position of the worker at the time the election is made would think that deterioration was either likely or was a real possibility as a consequence of the injury. In September the delegate of the first respondent refused the application. In January the RRT affirmed the decision of the delegate. The applicant sought judicial review in the Federal Court. Finkelstein J heard the matter in August Judgment was delivered on 10 December , setting aside the decision of the RRT and remitting the matter to the RRT for reconsideration. The first respondent appealed to the Full Federal Court, which on 6 January allowed the appeal and set aside the orders made by Finkelstein J. The applicant subsequently became aware that on 23 December Heerey J had delivered judgment in a matter Besim Ferati v. Minister for Immigration and Multicultural Affairs in which he had considered material which had been published by the second respondent on the internet on his "homepage". Part of the material on the homepage, which was published in October , included the following: Heerey J had held in Ferati that this material constituted a clear case of apprehended bias. The applicant filed an application for prerogative relief by way of prohibition and certiorari, upon the ground that the decision taken by the second respondent in the case of the applicant would excite in the mind of a reasonable party or member of the public that it affected by apprehended bias. The application also sought an extension of time in respect of the application for certiorari. On 29 March Hayne J directed that the application for prerogative relief and the application for extension of time be made by notice of motion to a Full Court. The victim, Mr Gauci, was leaving for work on 7 December at about 8. He saw two young men speaking to his wife near the front gate of his home. One of the two men leaned into the passenger seat of the white Laser parked in front of the gate and stood up holding a gun in his hand. He fired a shot which hit Mr Gauci in the abdomen. Mr Gauci fell backwards onto the ground, crying out for help. Two further shots were fired at him and hit him as he lay on the ground. He sustained severe injuries which left him a paraplegic. The person who did the shooting was Daniel Papalia. He gave evidence in support of the Crown case against the appellant. He said that he had been living at the home of Allan Knibbs. The appellant had come to the house and told Papalia that he wanted him to kill someone. The appellant was interviewed by police. He admitted knowing the victim, but repeatedly and vehemently denied any involvement in the shooting. The appellant did not give evidence at his trial. However, unless the comment is made by another defendant in the proceeding, the comment must not suggest that the defendant failed to give evidence because the defendant was, or believed that he or she was, guilty of the offence charged. The Court found that although the directions could have been more simply and clearly expressed by the trial judge, they were adequate to the circumstances of the particular case. The appeal against conviction was dismissed. This matter was stood over on 16 April awaiting the decision in RPS v. The applicant was charged with a number of offences alleged to have been committed on a child under 10 years. After a trial by jury in the District Court he was found guilty in relation to each count. The Crown case was that the offences occurred on 4 May at the home of the applicant. The Crown case is that the applicant indecently assaulted the complainant as she sat on his lap while he was driving home. The boys sat on the floor. The applicant lay on the bed and the complainant sat at the end of the bed. The applicant told the complainant to lie down. The complainant alleged that the applicant removed her clothes and had sexual intercourse with her on the bed. The Court of Criminal

Appeal held that although the trial judge should, ordinarily in giving directions to the jury concerning the failure of the accused to give evidence, refer to the possibility that the accused may have reasons for remaining silent, the rule is not expressed in absolute terms. Although the trial judge should have referred to that possibility, the applicant did not suffer any miscarriage of justice by reason of the omission. Counsel for the applicant had not taken the point at the trial. The question of law said to justify the grant of special leave to appeal is: Were the directions given by the trial judge to the jury in respect of the failure of the applicant to give evidence in error? The respondent brought proceedings for damages for personal injury in the District Court in respect of a work related accident which occurred on 20 February He and an apprentice, Mr Dawes, were instructed by a foreman to clean and paint some steel rails weighing approximately kilograms each. When the rail was in this position the two men could clean and paint it. The rails were lifted and moved by using a lifting hook, each rail being lifted a short height and then lowered onto the pieces of wood. Explicit instructions were given to the respondent that when lifting, he was to keep his back straight and bend his knees. The respondent became fed up with painting the rails whilst bending over, so he chose to modify the system of work designed by the appellant. He wanted to lift the rails to a better height so that he could paint them without bending over. He found something described as a scaffold frame and placed this in an appropriate position. He and Mr Dawes then manually rather than using the lifting hooks lifted the next rail onto the scaffold frame so that the rail then stood about 2 feet above floor level.

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Luton v Lessels Affirms previous High Court definitions of a tax. Western Australia v Ward native title is a bundle of rights, which may be extinguished one by one, for example, by a mining lease Ermogenous v Greek Orthodox Community of SA Inc [] HCA 8 , CLR 95 whether the engagement of a minister of religion was a contract, in which the Court was critical of the language of presumptions as to intention to create a legal relationship. Austin v Commonwealth Case that deals with issues of intergovernmental immunity and discrimination of states against Commonwealth power. Al-Kateb v Godwin Electrolux v AWU Fardon v Attorney-General Qld Regarding the separation of powers. Coleman v Power Deals with the implied right to freedom of political communication found in the Australian Constitution. Combet v Commonwealth Harriton v Stephens New South Wales v Fahy Roach v Electoral Commissioner Whether laws disenfranchising all prisoners were constitutional. Thomas v Mowbray Whether "interim control orders" were constitutional. Farah Construction v Say-Dee Fiduciary duties; contains obiter dicta pertaining to many areas of the law of Equity. Derivative Crown immunity from statutes â€" whether a government contractor is bound by the Trade Practices Act Cth in its commercial dealings with the Crown. Betfair Pty Limited v Western Australia

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