HIGH COURT JUDGMENTS

ANDREW YUILE

Tort

Negligence – duty to take precautions – appellate review – causation

In *Robinson Helicopter Company Incorporated v McDermott* [2016] HCA 22 (8 June 2016) the High Court considered the correctness of the findings of the primary judge, that a safety inspection procedure in a manual for a helicopter made by the appellant was adequate. The judge's conclusion followed from factual findings about the likely cause of a loose bolt connected to a helicopter flex plate and a disturbed torque strip, and whether the manual provided sufficient instruction to enable detection of bolt defects at inspections. The Court of Appeal reversed the decision, on the basis of a different finding about the cause of the loose bolt and the torque strip. The High Court reaffirmed that an appellate court is to conduct a "real review" of the evidence and is required to make factual findings of its own if it concludes that the primary judge erred. But the court should not interfere with the primary judge's findings unless they are demonstrated to be wrong by "incontrovertible facts or uncontested testimony", or are "glaringly improbable" or "contrary to compelling inferences". The High Court found that the evidence supported the primary judge's findings and that judge's reasons were consistent, contrary to the Court of Appeal decision. Further, even if the Court of Appeal findings had survived, the respondent had failed to make out causation. French CJ, Bell, Keane, Nettle and Gordon JJ jointly. Appeal from the Court of Appeal (Qld) allowed.

Constitutional law

Section 109 – Inconsistency between Commonwealth and state laws

In *Bell Group N.V. (in liquidation) v Western Australia* [2016] HCA 21 (16 May 2016) the High Court held that the *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* (WA) (Bell Act), which dealt with the administration of the property of the Bell Group, was inconsistent with the *Income Tax Assessment Act 1936* (Cth) and the *Taxation Administration Act 1953* (Cth) (the Tax Acts) and invalid pursuant to s109 of the Constitution. Under the Bell Act, the liabilities of creditors of the Bell Group were assessed as proved or not by an authority created under the Act. The authority was given an absolute discretion to determine, and to recommend to the Governor, the quantification of any creditor's liability, the amount to be paid or the property to be transferred to a creditor, and the priority to be given to any payment or transfer. Any surplus vested in the state. All rights of creditors outside the Bell Act were extinguished. The Governor had a further discretion to accept the authority's recommendation. The Court held that the Bell Act altered, impaired or detracted from the rights of the Commonwealth under the Tax Acts, which provided for debts to be paid to the Commonwealth and for priority to be given to those debts. The Bell Act further altered, impaired or detracted from the rights and obligations of the liquidator under the Tax Acts. The Bell Act was invalid in its entirety, as it could not stand without the impugned sections, nor could those sections be read down. French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ jointly; Gageler J separately concurring. Answers to Special Case given.

Criminal law

Sentencing – appeals – use of additional material on appeal

In *Betts v The Queen* [2016] HCA 25 (15 June 2016) the High Court considered

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the circumstances in which new material could be considered by an appellate court conducting an appeal on sentence. The appellant had pleaded guilty to two charges and was sentenced. He appealed from the sentence on four grounds, and provided the Court with a folder of new material in case the Court of Appeal came to re-sentence him. Two of the four grounds were upheld, but the appeal was dismissed on the basis that no lesser sentence was warranted. In its decision, the Court of Appeal did not take into account the new material. The High Court noted that while the Court of Appeal has power to receive new evidence to avoid miscarriages of justice, it requires appellants to establish proper grounds before it will consider receiving such evidence. At the same time, it is generally accepted that evidence of an offender's rehabilitation since the first sentence can be taken into account. Here, the appellant's case before the sentencing judge was different to – and inconsistent with – that on appeal. The High Court held that the appellant had made his forensic choices at first instance and there was nothing in the new material that suggested the Court of Appeal's rejection of the new evidence occasioned a miscarriage of justice. French CJ, Kiefel, Bell, Gageler and Gordon JJ jointly. Appeal from the Court of Appeal (NSW) dismissed.

Constitutional law

Section 80 – trial by jury – whether state law allowing for trial by judge alone applicable

In *Alqudsi v The Queen* [2016] HCA 24 (15 June 2016) the High Court considered whether state criminal procedure laws allowing for trial by judge alone in indictable matters can be used in a trial of a Commonwealth indictable offence. Mr Alqudsi was charged on indictment with offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth). All offences under that Act are specified to be tried on indictment. Mr Alqudsi applied for a trial by judge alone, which the *Criminal Procedure Act 1986* (NSW) allows for in trials of indictable offences, in certain circumstances. The matter was removed to the High Court to consider whether that procedure was available in light of s80, which relevantly provides that "The trial on indictment of any offence against any law of the Commonwealth shall be by jury". The Court held that s80 does not allow for exceptions. The Commonwealth can specify when an offence is triable summarily or on indictment, but where an offence is tried on indictment, then s80 "admits of no other mode of trial" but trial by jury. State procedural laws allowing for trial by judge alone are not picked up and applied in those circumstances. Kiefel, Bell and Keane JJ jointly; Gageler J, and Nettle and Gordon JJ, concurring separately; French CJ dissenting. Answer given to case stated. ■

Andrew Yuile is a Victorian barrister, ph (03) 9225 7222, email ayuile@vicbar.com.au. The full version of these judgments can be found at www.austlii.edu.au. Numbers in square brackets refer to paragraph numbers in the judgment.

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Contact: Russell Munday B Com, FCA, F Fin
Bruce Wilkinson B Bus, FCA
Phone: 03 9816 9122 Fax: 03 9816 9422
Address: Level 2, 35 Whitehorse Road, Balwyn
Email: advice@mwforensic.com.au
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