

High Court judgments: May - June 2012



CONSTITUTIONAL LAW

- *Executive power*
- *Whether executive power authorises expenditure of public money without legislation*

In *Williams v Commonwealth* [2012] HCA 23 (20 June 2012) W brought proceedings in the original jurisdiction of the High Court. He contended that a 2007 agreement between the Commonwealth and a company to provide chaplaincy services to the school in Queensland that W's children attended was invalid as beyond the power of the Commonwealth under s61 of the Constitution or prohibited as a law creating a religious test for public office contrary to s116. The High Court accepted that W had standing to bring the proceedings. It rejected a submission that s61 of the Constitution empowered the Commonwealth to spend money on a matter in which it had power to legislate under ss51, 52 or 122 of the Constitution. The Court concluded that the Commonwealth did not have power under s61 to spend the funds on chaplaincy service as a matter constituting benefits to students (Constitution, s51(xxiiA)) or to aid a trading corporation (Constitution, s51(x)). The Court concluded that the scheme did not create an "office of the Commonwealth" and was thus not contrary to s116 of the Constitution. The members of the Court observed that lack of power under s61 did not affect the ability of the Commonwealth to provide funds under other provisions of

the Constitution such as s92. Questions answered accordingly: French CJ; Gummow with Bell JJ; Hayne J; Crennan J; Kiefel J; contra Heydon J.

CRIMINAL LAW (VIC)

- *Driving offences*
- *Culpable driving*
- *Dangerous driving*

In *King v Q* [2012] HCA 24 (20 June 2012) the High Court rejected a submission by a person convicted of culpable driving (s318 of the *Crimes Act* 1958 (Vic)) that the trial judge had misdirected the jury on the lesser alternate charge of dangerous driving (s319 of the *Crimes Act*). The court consolidated the nature of "criminal negligence" and the requirement in establishing dangerous driving that the jury conclude it was driving deserving of criminal punishment. Decision of *De Montero v Q* (2009) 25 VR 694 overruled. The High Court by majority concluded the trial judge had not erred or any error was of no consequence: French CJ, Crennan, Kiefel JJ jointly; contra Heydon J; Bell J. Appeal dismissed.

APPEAL

- *When fresh evidence may be received by intermediate appellate courts*

In *Clodumar v Nauru Lands Committee* [2012] HCA 22 (20 June 2012) C failed in proceedings in the Supreme Court of Nauru because there was no evidence that the President had approved

a land transfer. C subsequently became aware that there was evidence. Section 5 of the *Nauru (High Court Appeals) Act* 1976 (Cth) gave the High Court original jurisdiction under s76(ii) of the Constitution to determine an "appeal" from the Supreme Court of Nauru. C appealed to the High Court and sought to rely on the fresh evidence. The court reviewed authority as to when intermediate appellate courts should receive "fresh" evidence. The Court concluded the reference to a right of "appeal" without reference to the ability to receive fresh evidence did not prevent the court receiving such evidence to completely and finally resolve the controversy. Appeal allowed; retrial ordered.

CRIMINAL LAW

- *Rape*
- *Rape within marriage*
- *Husband's immunity from prosecution for rape*
- *Whether at common law marriage established wife's consent to intercourse*

In *PGA v Q* [2012] HCA 21 (30 May 2012) in 2010 PGA was charged with the rape of his wife in 1963. The High Court by majority rejected a contention that the common law had operated so that upon the marriage of PGA and his wife in 1962 the wife had given consent to the intercourse: French CJ, Gummow, Hayne, Crennan, Kiefel JJ jointly; contra Heydon J; contra Bell J. Appeal dismissed. ●