

Damages for unlawful detention

Ruddock v Taylor [2003] NSWCA 262

The usual remedies for invalid government decisions are administrative law remedies, certiorari and mandamus, rather than damages. If a tort is made out, monetary compensation may be available.

Taylor, who was detained after his visa was cancelled, successfully applied to the High Court for certiorari to quash decisions cancelling his visa.¹ He then successfully recovered damages for wrongful imprisonment.

Spigelman CJ emphasised the common law's focus on protecting the personal liberty of individuals, noting that the executive arm of government occupies no special position in this regard. He said:²

'The protection of the personal liberty of individuals has been a fundamental purpose of the common law for centuries. The tort of trespass in the form of false imprisonment has been one of the ways in which that protection has been provided throughout that period.'³

FACTS

The Commonwealth deprived Taylor of his liberty for two lengthy periods (161 and 155 days). After the High Court decided that there was never any

entitlement to detain him, Taylor claimed damages for false imprisonment.

LITIGATION

The primary judge found for Taylor, awarding him \$116,000. The appellants appealed to the New South Wales Court of Appeal on both liability and quantum. Taylor cross-appealed on quantum. The appeal and cross-appeal were dismissed with costs.⁴

FALSE IMPRISONMENT

Spigelman CJ said:⁵

- False imprisonment is an intentional tort. Liability turns on an intention to detain.
- Once a plaintiff proves actual imprisonment, the onus is on the defendant to establish lawful authority.
- The executive arm of government is not in a special position in this regard. It must establish that its officers had lawful authority.
- Good faith is not a defence. The only defence is lawful authority.⁶

CAUSATION

The plaintiff must establish that the defendant or his agent imprisoned the plaintiff, or that the defendant was active in promoting and causing the imprisonment.⁷ The defendant's acts must be the proximate (direct) cause of imprisonment.⁸

The appellants argued that causation was not established as the cancella-

tion of the visa was a separate and distinct act from detention.

Causation was established - the imprisonment was direct and intentional. The element of directness (the sufficiency of the nexus between the defendant's act and the imprisonment) was satisfied because detention was 'an inevitable consequence' of cancelling the visa, that is, the consequences were virtually automatic.¹⁰ Detention was intended as this was 'the natural and probable consequence' of withdrawing the visa.¹¹

Ipp JA said that there are 'two fundamental questions'¹² to determine causation in tort - factual and normative causation.¹³ He noted that this approach forms the basis of section 5D of the *Civil Liability Amendment (Personal Responsibility) Act 2002* (NSW), which is 'in accord with the common law'.¹⁴ Factual causation was established as Taylor would not have been detained but for the cancellation of the visa.¹⁵ Further, as protecting personal liberty is a fundamental purpose of the common law, for normative reasons, the appellants ought to be liable.¹⁶

LAWFUL AUTHORITY

The defence of lawful authority (an obligation to detain Taylor on the basis of knowledge or reasonable suspicion that he was an unlawful non-citizen¹⁷) failed as cancellation of Taylor's visa was unconstitutional.¹⁸ It necessarily followed that any direct consequences of cancellation could not apply to him.¹⁹ ►

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ESTOPPEL

Taylor was not estopped for not raising the civil claim in the High Court proceedings, as this was not unreasonable.²⁰

DAMAGES

Relevant considerations in assessing damages for false imprisonment include:²¹

- The period of deprivation of liberty.
- Damages cannot be computed on the basis that there is some kind of applicable daily rate.
- A substantial proportion of the ultimate award must be given for 'the initial shock of being arrested'.

- As the term of imprisonment extends, the effect upon the person falsely imprisoned progressively diminishes.

The appellants' damages appeal failed,²² as did Taylor's cross-appeal on quantum and his claim for aggravated and exemplary damages.²³ The primary judge's assessment was 'within the range, albeit at the bottom of the range'.²⁴ Exemplary and aggravated damages were not available²⁵ - the ministers and officers were not 'guilty of behaving contumeliously, arrogantly or outrageously'.²⁶ **PL**

Endnotes: **1** *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391. **2** *Ruddock v Taylor* [2003] NSWCA 262 at [3]. **3** See also Ipp JA at [95]. **4** Spigelman CJ at [41], [56]. Meagher JA at [83]. Ipp JA at [84]. **5** [3]-[4]. **6** See also Meagher JA at [73]. **7** Spigelman CJ at [28]-[40]. **8** Spigelman CJ at [33]. **9** Spigelman CJ at [24]. **10** Spigelman CJ at [11]-[12], [25]-[26]. **11** Spigelman CJ at [39]-[40], citing *Scott v Shepherd* (1773) 2 Wm Bl 892, 66 ER 525; see also Meagher JA at [72]. **12** [85]. **13** [86], [88]. **14** [89]. **15** [94]. **16** [95]. **17** s 189 *Migration Act* 1958 (Cth). **18** Spigelman CJ at [14]-[21]; see also Meagher JA at [67]-[69]. **19** Spigelman CJ at [18]; Meagher JA at [69]. **20** Spigelman CJ at [42]-[44]; Meagher JA at [82] citing *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589. **21** Spigelman CJ at [48]-[49]. **22** Spigelman CJ at [46]-[47]; Meagher JA at [81]. **23** Spigelman CJ at [55]-[56]; Meagher JA at [81]. **24** Spigelman CJ at [50]. **25** Spigelman CJ at [53]-[55]; Meagher JA at [81]. Taylor's case for aggravated and exemplary damages was based on his spending most of his detention in a state prison rather than in an immigration facility (he had previously committed sexual offences against children). **26** Meagher JA at [81].

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Abrogation of rights

Dossett v TKJ Nominees Pty Ltd [2003] HCA 69

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In its decision in *Dossett v TKJ Nominees*, the High Court enforced the notion that legislatures cannot retrospectively abrogate rights without manifesting a clear and unambiguous intention to do so.

Dossett involved a Western Australian worker who was injured in the course of his employment in

December 1996. Under the prevailing legislative regime, Mr Dossett was required to obtain the leave of the District Court of Western Australia in order to pursue a common law action in negligence against his employer with respect to his work accident. The court was required to grant leave if Mr Dossett successfully demonstrated a future