



OVERSEAS DECISIONS BULLETIN

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Decisions of the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa, the Supreme Court of New Zealand and the Hong Kong Court of Final Appeal. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

Masemola v Special Pensions Appeal Board & Anor
Constitutional Court of South Africa: [\[2019\] ZACC 39](#)

Judgment delivered: 15 October 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla and Theron JJ and Victor AJ

Catchwords:

Administrative law – Special pension – Effect of presidential pardon – Where appellant granted special pension under *Special Pensions Act 1996* – Where appellant subsequently convicted of several counts of fraud, which disqualified him pension – Where presidential pardon was granted expunging conviction – Where appellant requested that pension be reinstated by Government Pensions Administration Agency (“GPAA”) – Where GPAA refused to reinstate special pension – Whether pardoned individual entitled to restoration of special pension if previously disqualified as result of being convicted of offence.

Held (9:0): Appeal upheld.

President of the Republic of South Africa v Democratic Alliance & Ors
Constitutional Court of South Africa: [\[2019\] ZACC 35](#)

Judgment delivered: 18 September 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Administrative law – Executive decisions to change Cabinet – Mootness – Where President announced changes to Cabinet, with several Ministers and Deputy Ministers relieved of duties – Where Democratic Alliance launched urgent application in High Court for review seeking to set aside decision and seeking President’s reasons for and record relating to dismissals – Where High Court made interlocutory order directing President to provide record and reasons for dismissals – While appeal from High Court pending, President resigned and replaced – Where review application to challenge dismissals was withdrawn – Where Supreme Court of Appeal dismissed appeal on basis that relief sought would have no practical effect – Whether President under legal obligation to disclose reasons for, and record of proceedings relating to, dismissal of Ministers and Deputy Ministers.

Held (8:2): Appeal dismissed; President of Republic of South Africa ordered to pay costs of application.

Dykema v Malebane & Anor

Constitutional Court of South Africa: [\[2019\] ZACC 33](#)

Judgment delivered: 10 September 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Administrative law – Where Constitutional Court in *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* [2010] ZACC 11 declared Chapters V and VI of *Development Facilitation Act* (“DFA”) invalid – Where Court suspended declaration for two years to allow Parliament time to rectify defects – Where appellant lodged application for planning permission under Chapter V of DFA to set up fuel station on his property before expiry date but decision approving application only issued after declaration took effect – Where *Spatial Planning and Land Use Management Act* (“SPLUMA”) was enacted but only came into effect on 1 July 2015 – Whether applications submitted but not finalised before expiry date remained valid as pending applications when suspension period ended on 17 June 2012 – Whether such applications should be treated as “pending” for purposes of s 60(2)(a) of SPLUMA.

Held (10:0): Appeal upheld.

Arbitration

Rex International Holding Limited & Anor v Gulf Hibiscus Limited
Court of Appeal of Singapore: [\[2019\] SGCA 56](#)

Judgment delivered: 22 October 2019

Coram: Sundaresh Menon CJ, Steven Chong JA and Woo Bih Li J

Catchwords:

Arbitration – Stay of court proceedings – Where respondent commenced proceedings in respect of alleged wrongs committed by appellants and associated companies in relation to joint ventures – Where appellants sought stay of proceedings on case management grounds, relying on dispute resolution clause providing for arbitration in shareholders’ agreement between Rex Middle East Limited (“RME”) and respondent – Where appellants not privy to that shareholders’ agreement and respondent’s claims against appellants not subject to any arbitration clause – Where High Court judge upheld decision of Assistant Registrar to grant stay but made it subject to certain conditions – Where no appeal was brought against order yet no arbitration or other proceedings between RME and respondent ensued – Where High Court judge decided to lift stay of proceedings – Whether respondent, as claimant, ought to have commenced arbitration and, having chosen not to do so, ought not to be allowed to lift stay – Whether stay should not have been granted in first place – Whether stay ought to be lifted.

Held (3:0): Appeal dismissed.

Civil Procedure

Pioneer Corp v Godfrey
Supreme Court of Canada: [2019 SCC 42](#)

Judgment delivered: 20 September 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Civil procedure — Class actions — Certification — Limitation of actions — Where plaintiff alleging defendants conspired to fix prices of optical disc drives and related products — Where plaintiff’s action certified as class proceeding — Where class membership including direct purchasers, indirect purchasers and umbrella purchasers — Where *Competition Act*

setting out limitation period of two years from day on which conduct was engaged in — Whether umbrella purchasers have cause of action under *Competition Act* — Whether *Competition Act* bars plaintiff from bringing common law or equitable claims — Whether plaintiff's proposed questions relating to loss suffered by class members meet standard for certification as common issues — Whether action against certain defendants barred by statutory limitation period — Whether discoverability rule or doctrine of fraudulent concealment applies to extend statutory limitation period — *Competition Act*, RSC 1985, c. C-34, s 36(1) and (4) — *Class Proceedings Act*, RSBC 1996, c. 50, s 4(1).

Held (8:1 in part): Appeals dismissed with costs.

Constitutional Law

Moyo & Anor v Minister of Police & Ors; Sonti & Anor v Minister of Police & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 40](#)

Judgment delivered: 22 October 2019

Coram: Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Constitutional law – Constitutionality of ss 1(1)(b) and 1(2) of *Intimidation Act 1982* – Where first appellant in first matter charged under s 1(1)(b) for allegedly conducting himself in violent and threatening manner towards police at police station – Where first appellant in second matter charged under s 1(1)(a)(ii) and 1(1)(b)(i) based on allegedly threatening text messages and telephone calls made to complainant in criminal matter – Where both challenged constitutionally of ss 1(1)(b) and 1(2) before trial – Whether s 1(1)(b) overbroad and criminalises vast array of constitutionally protected free speech unjustifiably – Whether s 1(2) reverses onus of proof and violates accused's right to remain silent, be presumed innocent and not to be compelled to give self-incriminating evidence.

Held (9:0): Appeals upheld; declared that ss 1(1)(b) and 1(2) of *Intimidation Act 1982* unconstitutional and invalid; Minister of Police to pay costs.

R v Poulin

Supreme Court of Canada: [2019 SCC 47](#)

Judgment delivered: 11 October 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Côté, Brown and Martin JJ

Catchwords:

Constitutional law — Charter of Rights — Benefit of lesser punishment
Criminal law — Appeals — Mootness — Death of respondent —
Respondent passing away after leave to appeal granted but prior to
hearing — Whether Court should exercise discretion to hear appeal —
Offender convicted of historical sexual offences — Offender asserting
constitutional right to receive sentence not available in Criminal Code at
time of commission of offences or time of sentencing, but only for discrete
period between those two times — Whether offender has right to benefit
only of punishment applicable at time of offence and time of sentencing or
right to benefit of any punishment applicable during interval between
those two times — *Canadian Charter of Rights and Freedoms*, s 11(i).

Held (4:3): Motion to proceed with appeal and appeal allowed.

Gelyke Kanse & Ors v Chairperson of the Senate of the University of Stellenbosch & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 38](#)

Judgment delivered: 10 October 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta, Khampepe and Madlanga JJ, Mathopo AJ, Mhlantla and Theron JJ and Victor AJ

Catchwords:

Constitutional law – “Reasonably practicable” in s 29(2) of Constitution –
Where University adopted new language policy (“2016 Policy”) under
Higher Education Act and National Language Policy for Higher Education –
Where 2016 Policy adopts preference for English in certain circumstances
– Where 2016 Policy maintains and preserves Afrikaans subject to
demand and within University’s available resources – Whether 2016 Policy
contravenes ss 6(2), 6(4) and 29(2) of Constitution, and other provisions
of Bill of Rights – Whether 2016 Policy constitutionally justified.

Held (10:0): Appeal dismissed; no order as to costs; costs orders in High Court set aside.

Moodley v Kenmont School & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 37](#)

Judgment delivered: 9 October 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga J and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Constitutional law – Rights to equality and dignity – Reasonable and justifiable limits – Where appellant successfully challenged admission policy of Kenmont School in High Court, which ordered school respondents to pay his legal costs – Where school respondents’ appeal dismissed, and Supreme Court of Appeal made costs order in favour of Mr Moodley – Where appellant obtained warrant of execution against school and attached school’s bank account as well as motor vehicle – Where school respondents sought to have warrant and attachment set aside, relying on s 58A(4) of *Schools Act* which protects assets of public schools from attachment – Where appellant filed counter-application seeking, *inter alia*, order declaring s 58A(4) unconstitutional and High Court so declared – Whether differential treatment of public school with regard to attachment of assets infringes appellant’s right to equality in contravention of s 9(1) of Constitution – Whether inability to derive benefit from favourable costs order constitutes violation of s 10 right to dignity – Whether any limitation of rights reasonable and justifiable under s 36(1) of Constitution.

Held (10:0): Appeal by Kenmont School and Kenmont School Governing Body upheld in part.

R (on the application of Miller) v The Prime Minister; Cherry & Ors v Advocate General for Scotland (Scotland)

United Kingdom Supreme Court: [\[2019\] UKSC 41](#)

Judgment delivered: 24 September 2019

Coram: Lady Hale, Lords Reed, Kerr, Wilson, Carnwath, Hodge, Lady Black, Lord Lloyd-Jones, Lady Arden, Lords Kitchin and Sales

Catchwords:

Constitutional law – Prerogative power – Justiciability – Prorogation – Parliamentary sovereignty – Where Prime Minister formally advised Her Majesty in late August to prorogue Parliament for 5 weeks beginning within 9 to 12 September – Where *European Union (Withdrawal) (No 2) Act* passed and received royal assent on 9 September with object to prevent United Kingdom leaving European Union without withdrawal agreement on 31 October – Whether lawfulness of Prime Minister’s advice to Her Majesty justiciable – Whether decision to advise monarch to prorogue unlawful if prorogation has effect of frustrating or preventing, without reasonable justification, ability of Parliament to carry out its constitutional functions – Whether this prorogation did have effect of frustrating or preventing Parliament from carrying out its constitutional functions without reasonable justification.

Held (11:0): Prime Minister’s advice to Her Majesty unlawful; prorogation void and of no effect; appeal in *Miller* allowed; appeal in *Cherry* dismissed.

Freedom of Religion South Africa v Minister of Justice and Constitutional Development & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 34](#)

Judgment delivered: 18 September 2019

Coram: Mogoeng CJ, Basson AJ, Cameron J, Dlodlo AJ, Froneman J, Goliath AJ, Khampepe and Mhlantla JJ, Petse AJ and Theron J

Catchwords:

Constitutional law – Defence of reasonable and moderate parental chastisement – Where YG convicted of assault of his 13-year-old son – Where High Court dismissed YG’s appeal and declared common law defence of moderate and reasonable chastisement constitutionally invalid on grounds that it violates child’s right not to be discriminated against on basis of age, equal protection of law, dignity, freedom from all forms of violence and degradation, and bodily and psychological integrity – Where Freedom of Religion South Africa, which filed submissions as friend of court, seeks to challenge High Court declaration – Whether High Court’s declaration of unconstitutionality of reasonable chastisement defence correct.

Held (10:0): Declared that common law defence of reasonable and moderate parental chastisement is inconsistent with provisions of ss 10 and 12(1)(c) of Constitution; no order as to costs.

Contract Law

Threlfall v Carleton University

Supreme Court of Canada: [2019 SCC 50](#)

Judgment delivered: 31 October 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Contract law — Status of persons — Absence — Presumption of life — Reception of a thing not due — Absentee presumed to be alive for seven years following disappearance unless proof of death is made before then — Retiree becoming absentee upon disappearance — Retiree’s pension plan providing that pension payments would stop upon his death — Presumption of life requiring former employer to continue making pension payments to retiree despite disappearance — Pension payments made to absentee while presumed alive but actually dead — Requirements of error and of absence of debt not present at time payments made but surfacing at later date — Retiree’s remains discovered six years after disappearance

and death recorded as having occurred day after disappearance — Former employer seeking reimbursement of pension payments made to retiree after recorded date of death — Whether rights and obligations premised on absentee's continued existence while he or she is presumed alive are retroactively extinguished from true date of death where proof of death is made within seven years of disappearance — Whether remedy of receipt of payment not due allows for restitution to former employer of payments made to absentee presumed to be alive who is later established to have been dead at time of payments — *Civil Code of Québec*, arts 85, 1491.

Held (6:3): Appeal dismissed.

Shabangu v Land and Agricultural Development Bank of South Africa & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 42](#)

Judgment delivered: 29 October 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta, Khampepe and Madlanga JJ, Mathopo AJ, Mhlantla and Theron JJ and Victor AJ

Catchwords:

Contract law – Sureties – Invalid loan agreement – Where Land Bank and Westside Trading 570 (Pty) Ltd (“Westside”) entered into loan agreement whereby Land Bank would advance R100 million to Westside for purpose of acquiring and developing certain identified properties – Where Land Bank concluded mortgage bond and written deed of suretyship with shareholders of Westside – Where Land Bank became aware it was not entitled to loan money to Westside for intended project, and it became common cause that loan agreement was invalid – Where negotiations between parties led to acknowledgment of debt whereby Westside agreed to pay R82 million to Land Bank, though debt closer to R92 million by then – Where Westside wound up – Where Land Bank brought claim against sureties – Where High Court found sureties liable for R82 million owed in terms of acknowledgement of debt – Whether acknowledgment of debt sought to perpetuate original invalidity of loan agreement and therefore invalid – Whether valid claim against sureties.

Held (10:0): Appeal allowed with costs.

Costs

Travelers Insurance Company Ltd v XYZ

United Kingdom Supreme Court: [\[2019\] UKSC 48](#)

Judgment delivered: 30 October 2019

Coram: Lord Reed, Lady Black, Lords Briggs, Kitchin and Sumption

Catchwords:

Costs – Third-party costs orders – Where 623 claimants sued medical group for supply of defective silicone breast implants – Where medical group had insurance cover with Travelers Insurance Co Ltd (“Travelers”) in relation to some claims – Where Travelers had funded whole of medical group’s defence – Where not disclosed until relatively late stage that medical group uninsured in respect of claims of 426 claimants – Where medical group entered insolvent administration half-way through litigation – Where insured claims settled by agreement – Where those with uninsured claims obtained judgment but recovered no damages or costs – Whether Travelers should pay costs of 426 claimants.

Held (5:0): Appeal allowed.

Criminal Law

HKSAR v Mak Wan Ling

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 37](#)

Judgment delivered: 18 October 2019

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ and Lord Reed NPJ

Catchwords:

Criminal law – Gross negligence manslaughter (“GNM”) – Where appellant registered medical practitioner and was indicted for GNM by administering highly contaminated blood product to patient causing patient’s death – Whether gross negligence can be proved by applying objective “reasonable man” test or whether prosecution must additionally prove that accused was subjectively aware of obvious and serious risk of death to deceased.

Held (5:0): Appeal dismissed; questions answered.

HKSAR v Lai Kam Fat

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 36](#)

Judgment delivered: 18 October 2019

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ and Lord Reed NPJ

Catchwords:

Criminal law – Conspiracy to traffic in dangerous drug – Where German customs officers intercepted three postal parcels en route from Bolivia to Hong Kong containing cocaine – Where Hong Kong customs officers carried out controlled delivery operation of one parcel, arresting person who received it (“Tang”) and appellant – Where appellant charged with one count of conspiracy to traffic with Tang and others – Where at trial appellant claimed not to know that parcels contained dangerous drugs – Where trial judge directed jury that prosecution only needs to prove that appellant knew parcels contained dangerous drug and need not prove knowledge of type of drug – Where jury found appellant guilty – Whether s 159A(2) of *Crimes Ordinance* (Cap 200) requires prosecution to prove that defendant had knowledge of substance being trafficked as particularised in indictment – Whether English, Canadian and Australian cases establish general common law principle that prosecution must prove that defendant had knowledge of type of drug being trafficked in.

Held (5:0): Appeal dismissed.

Shark Experience Limited v PauaMAC5 Incorporated
New Zealand Supreme Court: [\[2019\] NZSC 111](#)

Judgment delivered: 11 October 2019

Coram: Winkelmann CJ, William Young, Glazebrook, O’Regan and Ellen France JJ

Catchwords:

Criminal law – Statutory interpretation – Where s 63A of *Wildlife Act 1953* prohibits hunting and/or killing of great white shark – Where respondent issued proceedings in High Court claiming shark cage diving an offence against s 63A and challenged Director-General’s powers to authorise shark cage diving – Whether Court of Appeal was correct to hold that shark cage diving an offence under s 63A.

Held (5:0): Appeal allowed; declaration that “Shark cage diving is an offence under s 63A Wildlife Act 1953” set aside; no order as to costs.

Denis v Côté
Supreme Court of Canada: [2019 SCC 44](#)

Judgment delivered: 27 September 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Criminal law — Evidence — Journalists — Courts — Jurisdiction — Subpoena served on journalist — Disclosure of information that identifies or is likely to identify journalistic source — Accused charged with fraud, breach of trust and bribery of officers — Reports by journalist presenting information about investigation into accused that had been obtained from confidential sources — Subpoena served on journalist for purpose of obtaining evidence in support of motion by accused for stay of proceedings — New federal statutory scheme for protection of journalistic sources — Court of Québec quashing subpoena pursuant to new federal statutory scheme for protection of journalistic sources — Superior Court confirming on appeal that subpoena valid — Whether Court of Appeal has jurisdiction to rule on merits of appeal from Superior Court’s decision — *Canada Evidence Act*, RSC 1985, c C-5, s 39.1.

Held (8:1): Appeal against Superior Court’s decision allowed in part; order authorising disclosure set aside; case remanded to court of original jurisdiction for reconsideration; appeal against Court of Appeal’s decision dismissed.

Jesse-James Winter v R

New Zealand Supreme Court: [\[2019\] NZSC 98](#)

Judgment delivered: 13 September 2019

Coram: Winkelmann CJ, O’Regan, Ellen France, Williams and Arnold JJ

Catchwords:

Criminal law – Joint enterprise – Admissibility of evidence under co-conspirators’ exception to hearsay rule – Whether lesser offence should have been left to jury – Where group planned to seriously harm man after dispute arose between him and a female – Where man had left property, so group instead attacked three other people at property – Where two involved in incident pleaded guilty before trial – Where appellant and co-defendant joined plan later and were convicted of being party to two charges of wounding with intent to cause grievous bodily harm and one charge of male assaults female – Where one issue at trial was whether appellant knew that another group member was armed with knife – Whether text message sent by armed group member to his girlfriend stating he was “arming up to do what we do” should have been admitted at appellant’s trial.

Held (5:0): Appeal dismissed.

Employment Law

Gilham v Ministry of Justice

United Kingdom Supreme Court: [\[2019\] UKSC 44](#)

Judgment delivered: 16 October 2019

Coram: Lady Hale, Lords Kerr and Carnwath, Lady Arden and Sir Declan Morgan

Catchwords:

Employment law – Whistle-blower protection – Where following major cost cutting reforms, District Judge raised concerns relating to cuts with local leadership judges and senior court managers, and eventually in formal grievance – Where District Judge claimed detrimental treatment following protected disclosure leading to injury – Whether District Judge a ‘worker’ or ‘person in Crown employment’ for purpose of whistle-blower protection under Pt IVA of *Employment Rights Act 1996* – Whether, if not, this is discrimination in enjoyment of right to freedom of expression, protected by Arts 10 and 14 of European Convention on Human Rights.

Held (5:0): Appeal allowed; case remitted to Employment Tribunal.

Equity

The Manchester Ship Canal Company Ltd v Vauxhall Motors Ltd
(Formerly General Motors UK Ltd)

United Kingdom Supreme Court: [\[2019\] UKSC 46](#)

Judgment delivered: 23 October 2019

Coram: Lord Carnwath, Lady Black, Lord Briggs, Lady Arden and Lord Kitchin

Catchwords:

Equity – Equitable relief from forfeiture – Licence granting possessory rights – Where Vauxhall Motors Ltd built large manufacturing plant on banks of Manchester Ship Canal in early 1960s – Where Vauxhall entered into contract (“Licence”) with Manchester Ship Canal Company (“MSCC”) allowing Vauxhall to construct system of pipes and chambers across MSCC’s land and to drain surface water and treated industrial effluent into Canal in exchange for payment of £50 per year to MSCC – Where cl 5 allows MSCC to terminate Licence if (among other things) annual rent not paid within 28 days of demand – Where rights now worth several hundreds of thousands of pounds per year – Where due to administrative oversight Vauxhall failed to pay its rent within 28 days of demand and MSCC served notice terminating Licence under cl 5 – Where Vauxhall sought equitable relief from forfeiture – Whether courts can only relieve parties from forfeiture of proprietary rights, excluding Vauxhall’s contractual rights under Licence.

Held (5:0): Appeal dismissed.

European Law

Routier & Anor v Commissioners for Her Majesty's Revenue and Customs

United Kingdom Supreme Court: [\[2019\] UKSC 43](#)

Judgment delivered: 16 October 2019

Coram: Lady Hale, Lords Reed, Carnwath, Hodge and Lloyd-Jones

Catchwords:

European law – Freedom of movement of capital – Statutory exception from inheritance tax not applying to gifts to charitable trusts not governed by UK law – Whether restriction on exception violates principle of freedom of movement of capital – Art 56 of Treaty Establishing the European Community (“EC”) – Where Mrs Beryl Coulter died in Jersey, leaving her residuary estate on trust for charitable purposes (“Coulter Trust”) – Where will specified that trust to be governed by Jersey law, but estate included substantial assets in United Kingdom – Where will amended to make law of England and Wales proper law of Coulter Trust and it was registered as charity under English law – Where Her Majesty’s Revenue and Customs determined that Mrs Coulter’s gift to Coulter Trust did not qualify for relief from inheritance tax in respect of gifts to charities provided by s 23 of *Inheritance Tax Act 1984* – Whether movement of capital between United Kingdom and Jersey should be regarded as internal transaction taking place within single member state for purposes of Art 56 of EC – Whether refusal of relief under s 23 justifiable under European Union law.

Held (5:0): Appeal allowed.

Intellectual Property

Ascendis Animal Health (Pty) Limited v Merck Sharpe Dohme Corporation & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 41](#)

Judgment delivered: 24 October 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Intellectual property – Patents – *Res judicata* – Where Ascendis Animal Health (Pty) Limited (“Ascendis”) instituted patent revocation proceedings against Merck Sharpe Dohme Corporation (“Merck”) and another’s patent for anti-parasitic formulation, claiming patent invalid as it lacked novelty

and inventiveness – Where Merck and another instituted proceedings claiming damages against Ascendis for infringement – Where Supreme Court of Appeal upheld patent in revocation proceedings, in which lack of novelty was sole claim advanced – Where Ascendis sought to amend its plea in infringement action to remove defence of lack of novelty and add additional defence – Where Commissioner of Patents refused application by Ascendis to amend its plea, holding that validity of patent was *res judicata* between parties – Whether all challenges to patent *res judicata* due to Supreme Court of Appeal decision.

Held (5:5): Appeal dismissed (no majority); each party to pay its own costs.

Shanks v Unilever Plc & Ors

United Kingdom Supreme Court: [\[2019\] UKSC 45](#)

Judgment delivered: 23 October 2019

Coram: Lady Hale, Lords Reed and Hodge, Lady Black and Lord Kitchin

Catchwords:

Intellectual property – Patents – Employee inventor – Where Professor Shanks was employed by Unilever UK Central Resources Ltd (“CRL”) when he conceived invention – Where rights to invention belonged to CRL from outset under *Patents Act 1977* – Where CRL assigned rights to Unilever plc, which was granted various patents relating to invention and derived net benefit of approximately £24.3 million – Where Professor Shanks applied for compensation under s 40 of Act – Whether patents had been of “outstanding benefit” to CRL and just for Professor Shanks to receive fair share of that benefit.

Held (5:0): Appeal allowed.

Keatley Surveying Ltd v Teranet Inc

Supreme Court of Canada: [2019 SCC 43](#)

Judgment delivered: 26 September 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Côté, Brown and Martin JJ

Catchwords:

Intellectual property – Copyright – Crown copyright – Plans of survey – Where land surveyor bringing class action on behalf of land surveyors in Ontario who registered or deposited plans of survey in provincial land survey offices – Where land surveyor alleging that surveyors’ copyright infringed when plans of survey digitized, stored and copied by province’s service provider – Where action dismissed on basis that copyright in plans of survey belongs to province – Whether copyright in plans of

survey vests in Crown pursuant to s 12 of *Copyright Act* — Whether plans of survey prepared or published by or under direction or control of province — *Copyright Act*, RSC 1985, c. C-42, s 12.

Held (7:0): Appeal dismissed.

Jurisdiction

In the matter of NY (A Child)

United Kingdom Supreme Court: [\[2019\] UKSC 49](#)

Judgment delivered: 30 October 2019

Coram: Lords Wilson and Hodge, Lady Black, Lords Kitchin and Sales

Catchwords:

Jurisdiction – Inherent jurisdiction – Where Israeli nationals married and moved to London with only child – Where marriage broke down and father returned to Israel, but mother remained in London with child – Where father applied under Hague Convention on the Civil Aspects of International Child Abduction 1980 (“Convention”), set out in Sch 1 to *Child Abduction and Custody Act 1985*, for summary order for child’s immediate return to Israel – Where Court of Appeal made summary order for child’s return under inherent jurisdiction to make orders in relation to children – Whether inherent jurisdiction was available to Court of Appeal in principle – Whether exercise of inherent jurisdiction was flawed.

Held (5:0): Appeal allowed.

Private International Law

RS v PR

Supreme Court of Canada: [2019 SCC 49](#)

Judgment delivered: 25 October 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Brown and Martin JJ

Catchwords:

Private international law — *Lis pendens* — Application for stay of ruling — Condition of susceptibility of recognition of foreign judgment — Burden and degree of proof — Discretion of trial judge — Parallel applications for divorce filed first in Belgium by husband and then in Quebec by wife — Husband applying in Quebec for stay of ruling on wife’s application on

basis of international *lis pendens* — Application dismissed by Superior Court but allowed by Court of Appeal — Whether Court of Appeal erred in attributing burden of proof and in interpreting degree of proof required for condition of susceptibility of recognition of foreign judgment in context of international *lis pendens* — Whether Court of Appeal was justified in intervening in exercise of trial judge’s discretion — *Civil Code of Québec*, art 3137.

Held (6:1): Appeal allowed; Superior Court’s conclusion on dismissing application for stay restored.

Property Law

Douglas Craig Schmuck v Opuia Coastal Preservation Incorporated
New Zealand Supreme Court: [\[2019\] NZSC 118](#)

Judgment delivered: 29 October 2019

Coram: Glazebrook, O’Regan, Ellen France, Williams and Arnold JJ

Catchwords:

Property law – Easements – Where appellant owns boatyard – Where reserve lies between boatyard and sea – Where slipway runs across reserve from sea to turntable located mostly on boatyard land but partially on reserve – Where appellant sought easements over reserve for many years under s 48(1)(f) of *Reserves Act 1977* – Where District Council exercised power under s 48(1)(f) to grant easements – Where Minister delegated power to consent to easements granted under s 48 to District Council – Where Opuia Coastal Preservation Society filed proceedings challenging District Council’s consent to certain easements granted – Whether Council had power to grant easement for commercial purposes over reserve land – Whether easements that Court of Appeal found invalid were capable of being easements at all – Whether consent decision was lawfully made.

Held (5:0): Appeal allowed; consent to easements reinstated; costs reserved.

Tenancy law

Sequent Nominees Ltd (formerly Rotrust Nominees Ltd) v Hautford Ltd
(a company registered in the British Virgin Islands)
United Kingdom Supreme Court: [\[2019\] UKSC 47](#)

Judgment delivered: 30 October 2019

Coram: Lords Wilson, Carnwath, Hodge, Briggs and Lady Arden

Catchwords:

Tenancy law – Covenant – Change of use – Tenant’s covenant not to apply for planning permission without landlord’s consent – Unreasonably withheld consent – Where six-storey terraced building leased in 1986 – Where sub-tenant converted first, second, third and fourth floors into self-contained flats although existing planning permission not allow residential use – Where change of use would make majority of building residential, giving tenant chance to compulsorily acquire freehold under *Leasehold Reform Act 1967* (“enfranchisement”) – Where increased risk of enfranchisement would devalue landlord’s property, so (former) landlord refused consent to make a planning application for increased residential use – Whether refusal unreasonable.

Held (3:2): Appeal allowed.

Tort Law

Singularis Holdings Ltd (In Official Liquidation) (A Company Incorporated in the Cayman Islands) v Daiwa Capital Markets Europe Ltd

United Kingdom Supreme Court: [\[2019\] UKSC 50](#)

Judgment delivered: 30 October 2019

Coram: Lady Hale, Lords Reed, Lloyd-Jones, Sales and Thomas

Catchwords:

Tort law – Duty of care – Banking – Implied term – *Quincecare* duty of care – Where company (“Singularis”) registered in Cayman Islands set up to manage personal assets of Mr Al Sanea – Where Mr Al Sanea sole shareholder, president, treasurer and chairman of Singularis, plus one of seven directors – Where sole signing powers over Singularis’ bank accounts rested with Mr Al Sanea – Where bank complied with instructions from Mr Al Sanea to pay out US\$204m from Singularis’ account to third parties – Where payments were misappropriation of Singularis’ funds and joint liquidators were appointed – Where Singularis sued bank for, inter alia, breach of *Quincecare* duty of care by giving effect to payment instructions – Whether reasonable grounds for believing fraud – Attribution – Whether Mr Al Sanea’s fraud should be attributed to Singularis.

Held (5:0): Appeal dismissed.

Fleming v Ontario

Supreme Court of Canada: [2019 SCC 45](#)

Judgment delivered: 4 October 2019

Coram: Wagner CJ, Abella, Moldaver, Côté, Brown, Rowe and Martin JJ

Catchwords:

Tort law — Police — Powers — Common law power of arrest — Breach of peace — Counter-protestor, acting lawfully, arrested to prevent apprehended breach of peace by others — Counter-protestor charged with obstructing police officer but charge later withdrawn — Counter-protestor filing statement of claim against Province and police officers seeking general damages for assault and battery, wrongful arrest and false imprisonment, aggravated or punitive damages and damages for violation of various constitutional rights — Whether police have common law power to arrest someone acting lawfully in order to prevent apprehended breach of peace by others.

Held (7:0): Appeal allowed; trial judge's order restored.

In the matter of D (A Child)

United Kingdom Supreme Court: [\[2019\] UKSC 42](#)

Judgment delivered: 26 September 2019

Coram: Lady Hale, Lord Carnwath, Lady Black, Lord Lloyd-Jones, Lady Arden

Catchwords:

Tort law – False imprisonment – Consent – Scope of parental responsibility – Where child diagnosed with attention deficit hyperactivity disorder, Asperger's syndrome and Tourette's syndrome, and has mild learning disability – Where child discharged from hospital to residential placement where under constant supervision and not allowed to leave premises except for planned activity – Where on child's 16th birthday proceedings issued for declaration that consent of child's parents meant child not deprived of liberty at placement – Whether it is within scope of parental responsibility to consent to living arrangements for 16 or 17-year-old child which would otherwise amount to deprivation of liberty within meaning of Art 5 of European Convention of Human Rights, in particular where child lacks mental capacity to make decision.

Held (3:2): Appeal allowed.

Statutory Rights

Magnificent Mile Trading 30 (Pty) Limited v Charmaine Celliers NO & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 36](#)

Judgment delivered: 9 October 2019

Coram: Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Statutory rights – Mining – Where deceased owned property with large coal deposit – Where *Mineral and Petroleum Resources Development Act 2002* (“MPRDA”) afforded those like deceased exclusive right, for period of one year, to apply for prospecting right under MPRDA – Where deceased applied for prospecting right over his property on 29 April 2005 and Magnificent Mile Trading 30 (Pty) Limited (“Magnificent Mile”) applied for same on 3 May 2005 – Where deceased passed away while decision in respect of his application pending – Where Department granted prospecting right in favour of deceased over another farm and granted Magnificent Mile prospecting right over deceased’s property – Where Department’s attempts to rectify error unsuccessful – Whether right that deceased enjoyed was mere right to decision which terminated when he died – Whether right that deceased enjoyed was transmissible – Whether deceased or heir(s) had to seek review of, and to set aside, decision granting Magnificent Mile prospecting right over deceased’s property.

Held (9:0): Appeal dismissed.
