



OVERSEAS DECISIONS BULLETIN

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Decisions from 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 and the Supreme Court of New Zealand.

Administrative Law

Minister of Defence and Military Veterans v Motau and others
Constitutional Court of South Africa: [\[2014\] ZACC 18](#).

Judgment delivered: 10 June 2014.

Coram: Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuzza AJ, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J.

Catchwords:

Administrative law — Judicial review — Nature of action — Appellant terminated first and second respondents' membership of the Board of the Armaments Corporation of South Africa SOC Ltd — Termination of services was undertaken in terms of s 8(c) of Armaments Corporation of South Africa Limited Act which permits appellant to remove Board members on good cause shown — First and second respondents successfully challenged dismissal with High Court holding that appellant's decision was administrative action and subject to Promotion of Administrative Justice Act (PAJ Act) — High Court further held that decision was reviewable because appellant had made error of law, denied procedural fairness, had acted for improper purpose and had made irrational decision — Whether appellant's decision amounted to executive action — Whether decision closely related to formulation of policy and was adjunct of appellant's policy-making power — Whether appellant had necessary good cause to terminate first and second respondents.

Held (8-3): Appeal allowed in part.

John Anthony Osborne and Helen Osborne v Auckland Council
Supreme Court of New Zealand: [\[2014\] NZSC 67](#).

Judgment delivered: 10 June 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Tipping JJ.

Catchwords:

Administrative law — Judicial review — Weathertight Homes Resolution Services Act 2006 (WHRS Act), s 14(a) requires claim must relate to house built within period of ten years before day claim is brought — Appellants purchased newly built property on 26 April 1997 which had been substantially completed by 15 August 1996 and code compliance certificates issued on 19 February and 18 April 1997 — Appellant's applied for assessor's report under WHRS Act on 14 February 2007 — Report found house was outside eligibility criterion because it became habitable around 15 August 1996 — On basis of report, chief executive of Ministry of Business, Innovation and Employment determined appellants' claim was ineligible — Appellants sought reconsideration and chair of Weathertight Homes Tribunal found claim was eligible as to work which was carried out after 13 February 1997 but was otherwise ineligible — Whether s 14(a) should be construed as paraphrasing s 393 of Building Act 2004 which relevantly encompasses certifications — Whether judicial review proceedings were precluded by s 95(2) of WHRS Act.

Held (5-0): Appeal allowed.

Arbitration

Ewan Robert Carr and Brookside Farm Trust Ltd v Gallaway Cook Allan
Supreme Court of New Zealand: [\[2014\] NZSC 75](#).

Judgment delivered: 20 June 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Arbitration — Arbitration agreements — Right of appeal — Interaction with Arbitration Act 1996 — Appellants and respondents arbitrated dispute under arbitration agreement that stated arbitral award would be final and binding on parties, subject to parties' right to appeal to High Court on questions of law and fact — Appellants sought to challenge award on basis of agreement but provision was ineffective because there was no statutory basis for right of appeal to High Court — Appellants sought to have award set aside by High Court on basis that agreement was invalid — High Court found in

favour of appellants — Court of Appeal reinstated award — Whether parties' arbitration agreement for purposes of Arbitration Act was limited to contractual term submitting their dispute to arbitration or also included provision for right of appeal — Whether ineffective words providing for right of appeal on factual matters could be severed from remainder of parties' agreement so as to preserve agreement's validity — Whether Court should exercise discretion to set aside arbitral award.

Held (5-0): Appeal allowed.

Bankruptcy

Executive Benefits Insurance Agency v Arkison
Supreme Court of the United States: [Docket 12-1200](#).

Judgment delivered: 9 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Bankruptcy — Powers of bankruptcy courts — Respondent filed complaint in Bankruptcy Court against petitioner alleging fraudulent conveyance of assets from third party to petitioner — Bankruptcy Court granted summary judgment for respondent — District Court affirmed decision under *de novo* review — While appeal pending to Ninth Circuit, Supreme Court held in *Stern v Marshall (Stern)* that Article III did not permit bankruptcy courts to enter final judgment on counterclaim for tortious interference, even though final adjudication of that claim by bankruptcy courts was authorised by statute — In light of *Stern*, petitioner moved to dismiss its appeal for lack of jurisdiction — Ninth Circuit rejected motion and affirmed — Where Constitution does not permit bankruptcy court to enter final judgment on bankruptcy-related claim — Whether bankruptcy courts permitted to issue proposed findings of fact and conclusions of law to be reviewed *de novo* by district court.

Held (9-0): Judgment affirmed.

Clark v Rameker
Supreme Court of the United States: [Docket 13-299](#).

Judgment delivered: 12 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Bankruptcy — Exemptions — Individual retirement account (IRA) — Petitioners filed for bankruptcy and sought to exclude roughly \$300,000 in inherited individual retirement account — Bankruptcy Court concluded that inherited IRA does not share same characteristics as traditional IRA and disallowed exemption — District Court reversed — Seventh Circuit reversed District Court’s judgment — Whether funds contained in inherited IRA qualify as “retirement funds” within meaning of bankruptcy exemption.

Held (9-0): Judgment affirmed.

Competition Law

POM Wonderful LLC v Coca-Cola Co

Supreme Court of the United States: [Docket 12-761](#).

Judgment delivered: 12 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Alito, Sotomayor and Kagan JJ.

Catchwords:

Competition law — Unfair competition — Lanham Act, s 1125 permits one competitor to sue another for unfair competition arising from false or misleading product descriptions — Federal Food, Drug, and Cosmetic Act (FDC Act), ss 321 and 331 prohibit misbranding of food and drink — Petitioner filed Lanham Act suit against respondent alleging that name, label, marketing and advertising of one of respondent’s juice blends misled consumers into believing product consists predominantly of pomegranate and blueberry juice — District Court granted partial summary judgment to respondent ruling that FDC Act precludes Lanham Act challenges — Ninth Circuit affirmed in relevant part — Whether petitioner’s Lanham Act cause of action was precluded by the FDC Act.

Held (8-0): Judgment reversed and remanded.

Constitutional Law

R v Anderson

Supreme Court of Canada: [2014 SCC 41](#).

Judgment delivered: 6 June 2014.

Coram: McLachlin CJ, LeBel, Abella, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Constitutional law — Charter of Rights — Right to life, liberty and security of the person — Criminal law — Sentencing — Aboriginal offenders — Mandatory minimum sentence — Canadian Charter of Rights and Freedoms, s 7 — Criminal Code, RSC 1985, c C-46, ss 253(1)(b), 255(1)(a)(iii), 727(1) — Accused convicted of impaired driving for fifth time — Crown prosecutor sought mandatory minimum sentence — Whether s 7 of the Charter required Crown to consider Aboriginal status of accused when seeking minimum sentence for impaired driving — Whether consideration of Aboriginal status is principle of fundamental justice — Whether decision to seek mandatory minimum sentence is matter of core prosecutorial discretion — Standard of review for Crown decision making.

Held (7-0): Appeal allowed.

R v Spencer

Supreme Court of Canada: [2014 SCC 43](#).

Judgment delivered: 13 June 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Constitutional law — Charter of Rights — Search and seizure — Privacy — Criminal Code, RSC 1985, c C46, ss 163.1(3), 163.1(4), 487.014(1) — Personal Information Protection and Electronic Documents Act, SC 2000, c 5, s 7(3)(c.1)(ii) — Charter of Rights and Freedoms, s 8 — Police had information that particular IP address was used to access or download child pornography — Police asked Internet service provider to voluntarily provide name and address of subscriber assigned to IP address — Police used information to obtain search warrant for accused's residence — Whether police conducted unconstitutional search by obtaining subscriber information matching IP address — Whether evidence obtained as a result should be excluded — Whether fault element of making child pornography available requires proof of positive facilitation.

Held (8-0): Appeal dismissed.

Susan B Anthony List et al. v Driehaus

Supreme Court of the United States: [Docket 13-193](#).

Judgment delivered: 16 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law — Article III — Standing — Justiciability — Respondent filed complaint alleging petitioner violated Ohio law that criminalises false statements made during course of political campaign — Complaint was dismissed but petitioner continued to pursue separate suit in Federal District Court challenging law on First Amendment grounds — Second suit brought by Coalition Opposed to Additional Spending and Taxes consolidated with first suit — District Court dismissed suits as non-justiciable, concluding that neither presented sufficiently concrete injury for purposes of standing or ripeness — Sixth Circuit affirmed on ripeness grounds — Whether petitioners' pre-enforcement challenge to Ohio statute is justiciable — Whether petitioners have alleged sufficiently imminent injury for the purposes of Article III.

Held (9-0): Judgment reversed and remanded.

Lane v Franks et al.

Supreme Court of the United States: [Docket 13-483](#).

Judgment delivered: 19 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law — First Amendment — Petitioner testified under subpoena regarding events that led to his terminating a person later indicted by federal authorities on charges of mail fraud and theft concerning program receiving federal funds (Schmitz) — In response to budget shortfalls of petitioner's workplace, respondent terminated petitioner and 28 other employees in claimed effort to address financial difficulties — Later respondent rescinded all but two of 29 terminations, those of petitioner and one other — Petitioner sued respondent in individual and official capacities alleging respondent's violation of First Amendment by firing him in retaliation for testifying against Schmitz — District Court granted respondent's motion for summary judgment holding that individual-capacity claims were barred by qualified immunity and official-capacity claims were barred by Eleventh Amendment — Eleventh Circuit affirmed, reasoning that petitioner spoke as employee and not as citizen — Whether First Amendment protects public employee who provided truthful sworn testimony, compelled by subpoena, outside course of ordinary job responsibilities.

Held (9-0): Judgment affirmed in part, reversed in part and remanded.

Sali v National Commissioner of the South African Police Service and others

Constitutional Court of South Africa: [\[2014\] ZACC 19](#).

Judgment delivered: 19 June 2014.

Coram: Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J

Catchwords:

Constitutional law — Discrimination — Age discrimination — Applicant was 41 and applied for permanent position in South African Police Service (SAPS) — SAPS refused appointment on basis of age — First respondent had set age limit of 40 years for reservists applying for permanent appointment — Applicant alleged in Labour Court that SAPS had unfairly discriminated against him on basis of age — Labour Court held that age limit was contained in Regulation and was therefore excluded from ambit of Employment Equity Act's definition of "employment policy or practice" — Applicant sought order that relevant provisions of Regulation be declared invalid in Constitutional Court — Whether constitutional challenge was clearly and properly raised — Whether in interests of justice to grant leave where effective relief cannot be given.

Held (10-1): Application for leave to appeal refused.

Da Silva v Road Accident Fund and another

Constitutional Court of South Africa: [\[2014\] ZACC 21](#).

Judgment delivered: 19 June 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J.

Catchwords:

Constitutional law — Discrimination — Road Accident Fund Act 56 of 1996, s 19(b)(ii) — Section 19(b)(ii) excludes Road Accident Fund (RAF) from liability when claimant is passenger in vehicle driven by member of that claimant's household or when claimant is responsible in law for maintenance of driver — Although section subsequently abolished, claims which arose before 1 August 2008 continued to fall under s 19(b)(ii) — Ms da Silva was injured while passenger in vehicle driven by her husband and her claim was subject to 19(b)(ii) — Whether s 19(b)(ii) violated right to equality — Whether 19(b)(ii) discriminates on basis of age and marital status.

Held (10-0): Order of Free State High Court confirmed. Restriction in s 19(b)(ii) declared unconstitutional and invalid.

McCullen et al. v Coakley et al.

Supreme Court of the United States: [Docket 12-1168](#).

Judgment delivered: 26 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law — First Amendment — Free speech — Reproductive Health Care Facilities Act (RHCF Act) makes it a crime to knowingly stand on public way or sidewalk within 35 feet of entrance to any place, other than hospital, where abortions are performed — Petitioners are individuals who approach and talk to women outside such facilities attempting to dissuade them from having abortions — RHCF Act prevents petitioners from doing so near facilities' entrances — District Court denied challenge and First Circuit affirmed — Whether RHCF Act violates First Amendment.

Held (9-0): Judgment reversed and remanded.

National Labor Relations Board v Noel Canning et al.

Supreme Court of the United States: [Docket 12-1281](#).

Judgment delivered: 26 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law — Executive powers — Recess Appointments Clause (Clause) gives President power to fill vacancies that occur during Senate recesses — Respondent asked DC Circuit Court to set aside order of petitioner claiming that it lacked quorum because three of five members had been invalidly appointed — Nominations of three members in question were pending in Senate when it passed resolution providing for *pro forma* sessions — President invoked Clause — President appointed three members in question — Respondent argued that appointments were invalid because three-day adjournment between sessions was not long enough to trigger Clause — DC Circuit held that phrase “the recess” as used in Clause does not include intra-session recesses and that Clause applies only to vacancies that first come into existence during recess — Whether Clause refers to inter-session recesses or whether it also includes intra-session recesses — Whether phrase “vacancies that may happen” refers only to vacancies that first come into existence during recess or whether it also includes vacancies that arise prior to recess but continue to exist during recess — Whether, in calculating length of recess, *pro forma* sessions are to be ignored thereby treating series of brief recesses as single, month-long recess.

Held (9-0): Judgment affirmed.

Harris et al. v Quinn, Governor of Illinois et al.

Supreme Court of the United States: [Docket 11-681](#).

Judgment delivered: 30 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law — First Amendment — Illinois' Home Services Program (Rehabilitation Program) allowed Medicaid recipients who would normally need institutional care to hire "personal assistant" (PA) to provide homecare services — Under State law, homecare recipients and State both play some role in employment relationship with the PAs — Recipients control most aspects of employment relationship — Other than compensating PAs, State's involvement in employment matters is minimal — State's employer status was created by executive order, and later codified by legislature, solely to permit PAs to join labor union and engage in collective bargaining under Illinois' Public Labor Relations Act (PLR Act) — Respondent SEIU Healthcare Illinois & Indiana was designated exclusive union representative for Rehabilitation Program employees — Union entered into collective bargaining agreements with State that contained agency-fee provision which required all bargaining unit members who do not wish to join union to pay union fee for cost of certain activities — Group of Rehabilitation Program PAs brought class action against respondents claiming PLR Act violated First Amendment — District Court dismissed claims and Seventh Circuit affirmed concluding that PAs were State employees — Whether First Amendment permits collection of agency fee from Rehabilitation Program PAs who do not want to join or support union.

Held (5-4): Judgment reversed in part, affirmed in part, and remanded.

Agricultural Sector (Wales) Bill Reference by the Attorney General for England and Wales

Supreme Court of the United Kingdom: [\[2014\] UKSC 43](#).

Judgment delivered: 9 July 2014.

Coram: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Reed and Lord Thomas.

Catchwords:

Constitutional law — Legislative competence — Powers devolved — Government of Wales Act 2006 (GW Act) — Agricultural Sector (Wales) Bill

2013 established scheme for regulation of agricultural wages in Wales — Welsh Government considered that it had competence to pass Bill under GW Act because it related to “agriculture” — Attorney General submitted that Bill does not relate to agriculture but instead to employment and industrial relations, subject matters that have not been devolved to Welsh Assembly — Whether Bill is within legislative competence of National Assembly for Wales.

Held (5-0): Bill falls within competence of Welsh Assembly.

R v Taylor

Supreme Court of Canada: [2014 SCC 42](#).

Judgment delivered: 18 July 2014.

Coram: Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Constitutional law — Charter of Rights — Right to counsel — Canadian Charter of Rights and Freedoms, ss 10(b) and 24(2) — Accused informed by police of his right to counsel — Accused informed police that he wished to speak to counsel — Police failed to facilitate contact with counsel at scene of accident and hospital — Blood drawn from accused at hospital without accused being able to consult counsel and used as basis for conviction — Whether police failure to implement or facilitate access to counsel was in breach of accused’s right to retain and instruct counsel without delay — If so, whether evidence should be excluded.

Held (5-0): Appeal dismissed.

Construction

Cool Ideas 1186 CC v Hubbard and another

Constitutional Court of South Africa: [\[2014\] ZACC 16](#).

Judgment delivered: 5 June 2014.

Coram: Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J.

Catchwords:

Construction — Registration — Appellant entered building contract with first respondent — Appellant was not registered at time of entering agreement and at time of construction — First respondent took issue with quality of work and refused to make final payment — Arbitration proceedings found in favour of appellant but first respondent failed to comply with arbitral award

— Appellant sought enforcement of award — First respondent opposed enforcement application on basis that it was not registered home builder in terms of Housing Consumers Protection Measures Act (HCPM Act) — High Court granted enforcement order — Supreme Court of Appeal upheld respondent's appeal — Whether HCPM Act should be construed to protect consumers — Whether enforcing arbitral award would condone illegality.

Held (7-4): Appeal dismissed.

Contract

Healthcare at Home Limited v The Common Services Agency
Supreme Court of the United Kingdom: [\[2014\] UKSC 49](#).

Judgment delivered: 30 July 2014.

Coram: Lord Mance, Lord Kerr, Lord Sumption, Lord Reed and Lord Hughes.

Catchwords:

Contract law — Public procurement — Contract award procedure — Challenge by unsuccessful bidder to clarity of bidding process — Approach to be adopted by court when determining whether criteria sufficiently clear in relation to the clarity of award criteria — Whether the lower courts erred in treating tenderer as hypothetical construct, based on the court's objective assessment of the appropriate standard of clarity, rather than on the basis of the evidence of witnesses as to what an actual tenderer did or thought — Whether lower courts erred in concluding that reasons given to appellants for the rejection of their tender were adequate.

Held (5-0): Appeal dismissed.

Copyright Law

Canadian Artists' Representation v National Gallery of Canada
Supreme Court of Canada: [2014 SCC 42](#).

Judgment delivered: 12 June 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

Catchwords:

Copyright law — Culture and entertainment law — Status of the artist — Copyright — Collective bargaining — Duty to bargain in good faith — Status

of the Artist Act, SC 1992, c 33 — Copyright Act, RSC 1985, c C-42 — Whether artists' associations are precluded from bargaining minimum fees for use of existing artistic works in agreements negotiated under Status of the Artist Act — Whether allowing agreements imposing minimum fees for provision of copyrights for existing works conflicted with Copyright Act — Whether Tribunal's finding that National Gallery of Canada failed to bargain in good faith was reasonable — Standard of review.

Held (7-0): Appeal allowed.

Courts

See also [Criminal law](#): *R v Hart*.

Criminal Law

Bond v United States

Supreme Court of the United States: [Docket 12-158](#).

Judgment delivered: 2 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Criminal law — Chemical weapons — Chemical Weapons Convention Implementation Act of 1998 (CWCI Act), s 229 — Petitioner spread two toxic chemicals on victim's car, mailbox and door knob in hopes that victim would develop rash — Victim suffered minor chemical burn but otherwise attempted assaults were unsuccessful — Petitioner charged with violating s 229(a) of CWCI Act — Whether CWCI Act covers local crimes — Whether CWCI Act contains clear indication by Congress that CWCI Act should have such reach.

Held (9-0): Judgment reversed and remanded.

Abramski v United States

Supreme Court of the United States: [Docket 12-1493](#).

Judgment delivered: 16 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Criminal law — Acquisition of firearms — Petitioner offered to purchase handgun for uncle — Form petitioner was required to fill out asked whether he was “actual transferee/buyer” of gun and clearly warned that “straw purchasers” were not actual buyer — Petitioner falsely answered that he was actual buyer — Petitioner convicted for knowingly making false statements and making false statement “with respect to the information requirement to be kept” in gun dealer’s records — Fourth Circuit affirmed — Whether petitioner’s misrepresentation is material in circumstances where uncle could have legally bought gun for himself.

Held (5-4): Judgment affirmed.

R v Ahmad and another; Fields and others v Crown Prosecution Service
Supreme Court of the United Kingdom: [\[2014\] UKSC 36](#).

Judgment delivered: 18 June 2014.

Coram: Lord Neuberger (President), Lord Sumption, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Criminal law — Sentence — Confiscation order — Criminal Justice Act 1988, s 71(4) — Proceeds of Crime Act 2002, s 76(4) — Human Rights Act 1998, Sch 1, Pt II, art 1 — Co-conspirators jointly acquired proceeds of conspiracy to defraud — Whether “benefit obtained” by each to be assessed as value of whole amount of proceeds of conspiracy — Whether confiscation orders to be made against each conspirator in full amount of joint benefit — Whether proportionality required apportionment of joint benefit against co-conspirators.

Held (5-0): Appeal allowed in part.

R (on the application of Nunn) v Chief Constable of Suffolk Constabulary
Supreme Court of the United Kingdom: [\[2014\] UKSC 37](#).

Judgment delivered: 18 June 2014.

Coram: Lord Neuberger (President), Lord Clarke, Lord Reed, Lord Carnwath and Lord Hughes.

Catchwords:

Criminal law — Evidence — Prosecution evidence — Disclosure of material to defence — Criminal Procedure and Investigations Act 1996, ss 3, 7A — Claimant convicted of murder and refused permission to appeal — Claimant requested police to give him access to all materials relating to investigation of offence — Police refused requests — Whether continuing duty required

police to comply with requests — Whether refusal unlawful — Extent of continuing duty of police and prosecutor.

Held (5-0): Appeal dismissed.

Loughrin v United States

Supreme Court of the United States: [Docket 13-316](#).

Judgment delivered: 23 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Criminal law — Fraud — Section 1344(2) of federal bank fraud statute makes it crime to knowingly execute scheme to obtain property owned by, or under custody of, bank by means of false or fraudulent pretences — Petitioner was charged with bank fraud after he was caught forging stolen cheques, using them to buy goods and then returning goods for cash — District Court declined to give petitioner's proposed jury instruction that conviction under s 1344(2) required proof of intent to defraud financial institution — Jury convicted and Tenth Circuit affirmed — Whether Government must prove that defendant charged with violating s 1344(2) intended to defraud bank.

Held (9-0): Judgment affirmed.

R (on the application of Nicklinson and another) v Ministry of Justice; The Director of Public Prosecutions v R (on the application of AM) (AP)

Supreme Court of the United Kingdom: [\[2014\] UKSC 38](#).

Judgment delivered: 25 June 2014.

Coram: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed and Lord Hughes.

Catchwords:

Criminal law — Aiding and abetting — Suicide — Suicide Act 1961, s 2(1)(4) — Human Rights Act 1998, s 6, Sch 1, Pt I, art 8 — Claimants with irreversible physical disabilities sought assistance to commit suicide — Whether complete ban on assisted suicide compatible with right to private and family life — Whether appropriate for court to make declaration of incompatibility — Whether Director of Public Prosecutions required to clarify published policy statement to enable potential helpers to know whether prosecution in England likely.

Held (7-2): Nicklinson appeal dismissed.

Held (9-0): DPP appeal allowed; Martin cross-appeal dismissed.

R v Quesnelle

Supreme Court of Canada: [2014 SCC 46](#).

Judgment delivered: 9 July 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law — Evidence — Disclosure — Criminal Code, RSC 1985, c C-46, ss 278.1 to 278.91 — Whether police occurrence reports prepared in the investigation of unrelated incidents involving a complainant or witness are “records” within the meaning of s 278.1 of the Criminal Code, such that they are subject to the Mills regime — Whether the exemption for investigatory and prosecutorial records applies to all police occurrence reports or only those made in relation to the offence in question.

Held (7-0): Appeal allowed.

R v Sipos

Supreme Court of Canada: [2014 SCC 47](#).

Judgment delivered: 10 July 2014.

Coram: LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law — Appeals — Dangerous offenders — Courts — Curative powers — Fresh evidence — Criminal Code, RSC 1985, c C-46, ss 753, 759 — Trial judge declared accused to be dangerous offender without considering long-term offender designation — Whether trial judge committed error of law — Whether court of appeal erred by using curative powers and upholding dangerous offender designation — Role of fresh evidence in dangerous offender designation appeals.

Held (7-0): Appeal dismissed.

R v Hart

Supreme Court of Canada: [2014 SCC 52](#).

Judgment delivered: 31 July 2014.

Coram: McLachlin CJ, LeBel, Abella, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law — Evidence — Admissibility — Confessions — “Mr Big” confessions — Criminal Code, RSC 1985, c C-46, s 486(1) — Accused confessed to murdering his two young daughters at end of lengthy Mr Big operation — Whether new common law rule of evidence should be developed to determine admissibility of Mr Big confessions — Whether accused’s confessions should be excluded.

Courts — Proceedings — Open court principle — Accused requested to testify with public excluded from courtroom — Trial judge refused request — Whether exclusion order in interests of proper administration of justice — Whether failure to accommodate request necessitates new trial.

Held (7-0): Appeal dismissed.

Customs

The Commissioners for Her Majesty’s Revenue and Customs v R (on the application of Eastenders Cash and Carry plc and others); R (on the application of First Stop Wholesale Limited) v The Commissioners of Her Majesty’s Revenue and Customs

Supreme Court of the United Kingdom: [\[2014\] UKSC 34](#).

Judgment delivered: 11 June 2014.

Coram: Lord Neuberger (President), Lord Mance, Lord Sumption, Lord Reed, Lord Carnwath.

Catchwords:

Customs and excise — Importation of dutiable goods — Customs and Excise Management Act 1979, ss 49(1), 139(1), 144 — Customs officers detained goods pending further inquiries to determine whether or not duty paid — Statutory power to detain any thing “liable to forfeiture” — Whether permitted detention of goods upon reasonable suspicion of non-payment of duty — Whether power exercisable only where duty in fact not paid — Whether general non-statutory power to detain goods.

Held (5-0): Commissioners’ appeal allowed; First Stop’s first appeal dismissed and second appeal allowed.

Discrimination

Hounga v Allen and another (Anti-Slavery International intervening)
Supreme Court of the United Kingdom: [\[2014\] UKSC 47](#).

Judgment delivered: 30 July 2014.

Coram: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Carnwath and Lord Hughes.

Catchwords:

Discrimination — Race — Dismissal — Race Relations Act 1976, s 4(2)(c) — Employer offered 14-year-old Nigerian claimant home help job in United Kingdom in return for schooling and £50 per month — Claimant entered United Kingdom on false documents and worked illegally — Employer did not educate or pay claimant but inflicted serious physical abuse and exploited vulnerability due to immigration status — Whether claim for discrimination in relation to dismissal failed due to illegality of contract of employment — Whether application of illegality defence contrary to public policy against human trafficking.

Held (5-0): Appeal allowed.

Employment Law

United Food and Commercial Workers, Local 503 v Wal-Mart Canada Corp

Supreme Court of Canada: [2014 SCC 45](#).

Judgment delivered: 27 June 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

Catchwords:

Employment law — Certification — Maintenance of conditions of employment — Collective dismissal — Arbitration — Labour Code, CQLR, c C-27, ss 59, 100.12 — Union certified to represent employees — Negotiations to conclude first collective agreement with employer unsuccessful — Employer announced closure of business — Union filed grievance alleging that dismissal of employees constituted unilateral change in conditions of employment prohibited by s 59 of Quebec Labour Code — Whether s 59 can be used to challenge resiliation of contracts of employment of all employees of establishment — If so, whether arbitrator rendered unreasonable award in concluding that, in this case, resiliations constituted unlawful change in conditions of employment.

Held (5-2): Appeal allowed.

Quebec (Commission des normes du travail) v Asphalte Desjardins Inc.
Supreme Court of Canada: [2014 SCC 51](#).

Judgment delivered: 25 July 2014.

Coram: McLachlin CJ, LeBel, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Employment law — Contracts — Contract of employment for indeterminate term — Civil Code of Québec, arts 2091, 2092 — Act respecting labour standards, CQLR, c N-1.1, ss 82, 83 — Obligation to give notice of termination — Employee giving notice of termination to employer to terminate contract of employment as of later date — Employer terminating contract of employment before departure date announced by employee — Whether employer who receives notice of termination from employee can terminate contract of employment before notice period expires without in turn having to give notice of termination or pay indemnity in lieu of such notice.

Held (7-0): Appeal allowed.

Environmental Law

Utility Air Regulatory Group v EPA
Supreme Court of the United States: [Docket 12-1146](#).

Judgment delivered: 23 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Environmental law — Regulation of greenhouse gas emissions — Clean Air Act (Act) — Respondent promulgated greenhouse gas emission standards for new motor vehicles and made stationary sources subject to Act's "Prevention of Significant Deterioration" (PSD) and Title V on basis of their potential to emit greenhouse gases — Stationary sources would not become subject to PSD or Title V permitting on basis of their potential to emit greenhouse gases in amounts less than 100,000 tonnes per year — Petitioners challenged respondent's actions — Circuit Court dismissed some petitions for lack of jurisdiction and denied remainder — Whether it was permissible for respondent to determine that its motor-vehicle greenhouse gas regulations automatically triggered permitting requirements under Act for stationary sources that emit greenhouse gases.

Held (9-0, with respect to Parts I and II): Judgment affirmed in part and reversed in part.

Equity

Fifth Third Bancorp et al. v Dudenhoeffer et al.
Supreme Court of the United States: [Docket 12-751](#).

Judgment delivered: 25 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Equity — Fiduciary duty — Employee Stock Ownership Plan (ESOP) — Employee Retirement Income Security Act of 1974 (ERIS Act) requires fiduciary of pension plan to act prudently in managing plan's assets — Respondents are former employees of petitioner and ESOP participants — Respondents filed suits against petitioners alleging that they breached fiduciary duty of prudence — District Court dismissed complaint but Sixth Circuit reversed — Whether, when an ESOP fiduciary's decision to buy or hold employer's stock is challenged in court, fiduciary is entitled to defence-friendly standard that lower courts have called "presumption of prudence".

Held (9-0): Judgment vacated and remanded.

Cedar Capital Partners LLC v FHR European Ventures LLP and others
Supreme Court of the United Kingdom: [\[2014\] UKSC 45](#).

Judgment delivered: 16 July 2014.

Coram: Lord Neuberger (President), Lord Mance, Lord Sumption, Lord Carnwath, Lord Toulson, Lord Hodge and Lord Collins.

Catchwords:

Equity — Agency — Fiduciary duty — Secret commission — Agent acting for purchasers in negotiations for purchase of hotel — Agent received secret commission from vendor following sale of hotel — Agent liable to account to purchasers for commission — Whether agent held commission on constructive trust for purchasers — Whether agent liable to purchasers for equitable compensation for sum equal to commission.

Held (7-0): Appeal dismissed.

Housing

Zulu and others v eThekweni Municipality and others
Constitutional Court of South Africa: [\[2014\] ZACC 17](#).

Judgment delivered: 6 June 2014.

Coram: Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J.

Catchwords:

Housing — Demolition of shacks — Invasion of government land — Standing — Leave to intervene in proceedings where no interim demolition and eviction order granted — Appellants were residents of informal settlement — Appellants alleged at least 24 incidents of demolition of their shacks carried out by Municipal Land Invasion Control Unit with assistance of South African Police Services — High Court granted interim order authorising respondents to take all reasonable and necessary steps to prevent persons from invading, occupying and/or erecting structures on certain land — First respondent sought confirmation of interim order before High Court — Appellants brought application for leave to intervene, contending they had direct and substantial interest in interim order issued by High Court — Appellants also contended that interim order authorised their eviction without compliance with Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIEUOL Act) — Respondents opposed intervention application, arguing that order did not affect appellants because it was aimed at preventing land invasions — High Court held PIEUOL Act was not applicable and dismissed application - Whether appellants had standing in proceedings before High Court — Whether Constitutional Court should determine constitutionality of order when not raised on appeal.

Held (11-0): Appeal allowed.

Human Rights

Burwell, Secretary of Health and Human Services, et al. v Hobby Lobby Stores, Inc et al.; Conestoga Wood Specialties Corp et al. v Burwell, Secretary of Health and Human Services, et al.

Supreme Court of the United States: [Docket 13-354](#); Docket 13-356.

Judgment delivered: 30 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Human rights — Freedom of religion — Religious Freedom Restoration Act of 1993 (RFR Act) prohibits Government from substantially burdening person's exercise of religion even if burden results from rule of general applicability unless Government demonstrates that application of burden to person is in furtherance of compelling governmental interest and is least restrictive means of furthering that interest — Department of Health and Human Services (DHHS) promulgated regulations under Patient Protection and Affordable Care Act of 2010 (PPAC Act) which required specified employers' group health plans to furnish preventive care and screenings for women without any cost sharing requirements — DHHS decided types of preventive care to be covered — Employers are generally required to provide coverage for 20 contraceptive methods approved by Food and Drug Administration, including four that have effect of preventing already fertilised egg from developing further — Religious employers, such as churches, are exempt from this mandate — Petitioners in two cases (13-354, 13-356) are owners of for-profit corporations and have sincere Christian beliefs that life begins at conception and that it would violate their religion to facilitate access to contraceptive devices — Whether RFR Act permits DHHS to demand that closely held corporations provide health-insurance coverage for methods of contraception that violate religious beliefs of companies' owners.

Held (5-4): Judgment affirmed in 13-354. Judgment reversed and remanded in 13-356.

R (on the application of Sandiford) v The Secretary of State for Foreign and Commonwealth Affairs

Supreme Court of the United Kingdom: [\[2014\] UKSC 44](#).

Judgment delivered: 16 July 2014.

Coram: Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath and Lord Toulson.

Catchwords:

Human rights — Legal aid — Availability — Criminal proceedings before foreign court — Human Rights Act 1998, Sch 1, Pt I, art 6 — Convention for the Protection of Human Rights and Fundamental Freedoms (1953), art 1 — Claimant British national convicted in Indonesia and sentenced to death — Claimant seeking mandatory order requiring Foreign Secretary to fund legal representation for appeal — Foreign Secretary having blanket policy not to fund legal expenses for British nationals in foreign criminal proceedings — Whether claimant within jurisdiction of United Kingdom so as to require Foreign Secretary to depart from policy to comply with Convention right to fair trial — Whether Foreign Secretary's blanket policy challengeable under common law as improper use of prerogative power.

Held (5-0): Appeal dismissed.

Immigration

Scialabba, Acting Director, United States Citizenship and Immigration Services, et al. v Cuellar de Osorio et al.

Supreme Court of the United States: [Docket 12-930](#).

Judgment delivered: 9 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Immigration — Child beneficiaries — Child Status Protection Act (CSP Act), s 1153(h)(3) sets forth remedy in circumstances where child “ages out” providing that alien’s petition shall automatically be converted to appropriate category and alien shall retain original priority date issued upon receipt of original petition — Respondents filed petitions for their aged-out children (sponsored children who reached adulthood and lost their immigration status), asserting that newly filed petitions should receive same priority date as original petitions — US Citizenship and Immigration Services gave new petitions current priority dates — District Court granted Government summary judgment, deferring to Board of Immigration Appeals’ determination that only those petitions that can be seamlessly converted from one family preference category to another without need for new sponsor are entitled to conversion under s 1153(h)(3) — Ninth Circuit reversed — Whether CSP Act grants remedy to all aliens who counted as child beneficiaries when sponsoring petition was filed, but no longer do so by time they reach front of visa queue.

Held (5-4): Judgment reversed and remanded.

Intellectual Property

Nautilus, Inc v Biosig Instruments, Inc

Supreme Court of the United States: [Docket 13-369](#).

Judgment delivered: 2 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Intellectual property — Patents — Patent Act, s 112 requires patent specification to distinctly claim subject matter which applicant regards as

invention — Disputed patent involved a heart-rate monitor used with exercise equipment — Invention claimed to improve on prior monitors — Respondent alleged petitioner sold exercise machines containing respondent's patented technology — District Court held that patent failed s 112 requirement — Federal Circuit reversed and remanded judgment, concluding that patent claim met s 112 — Whether the standard required of s 112 is met where claim is "amenable to construction" and claim, as construed, is not "insolubly ambiguous".

Held (9-0): Judgment vacated and remanded.

Limelight Networks, Inc v Akamai Technologies, Inc
Supreme Court of the United States: [Docket 12-786](#).

Judgment delivered: 2 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Intellectual property — Patents — Patent Act, s 271(a) requires performance of all steps of method patent to be attributable to single party — Respondent is exclusive licensee of patent that claims method of delivering electronic data using content delivery network (CDN) — Petitioner also operates CDN and carries out several steps claimed in patent — Customers of petitioner, rather than petitioner itself, perform step of patent known as "tagging" — Whether petitioner may be liable for inducing infringement of patent under s 271(b) when no one has directly infringed patent under s 271(a) or any other statutory provision.

Held (9-0): Judgment reversed and remanded.

Alice Corporation Pty Ltd v CLS Bank International et al.
Supreme Court of the United States: [Docket 13-298](#).

Judgment delivered: 19 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Intellectual property — Patents — Petitioner is assignee of several patents designed to facilitate exchange of financial obligations between two parties by using computer system as third-party intermediary — Respondents filed suit against petitioner arguing that patent claims at issue are invalid, unenforceable or not infringed — Petitioner counterclaimed alleging infringement — District Court held all claims were ineligible for patent

protection because they were directed to abstract idea — Federal Circuit affirmed — Whether patent claims are patent eligible or are instead drawn to patent-ineligible abstract idea.

Held (9-0): Judgment affirmed.

American Broadcasting Cos, Inc, et al. v Aereo, Inc
Supreme Court of the United States: [Docket 13-461](#).

Judgment delivered: 25 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Intellectual property — Copyright — Performance of copyrighted work — Copyright Act of 1976 gives copyright owner exclusive right to perform copyrighted work publicly — Act's Transmit Clause defines exclusive right to include right to transmit or otherwise communicate performance of copyrighted work to public by means of any device or process, whether members of public capable of receiving performance receive it in same place or in separate places and at same time or at different times — Respondent sells service that allows subscribers to watch television programs over Internet at about same time as programs are broadcast over air — Petitioners sued for copyright infringement and sought preliminary injunction — District Court denied preliminary injunction and Second Circuit affirmed - Whether respondent infringed exclusive right to perform copyrighted work publicly.

Held (6-3): Judgment reversed and remanded.

Land Rights

Tsilhqot'in Nation v British Columbia
Supreme Court of Canada: [2014 SCC 44](#).

Judgment delivered: 26 June 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Land rights — Aboriginal title — Forest Act, RSBC 1995, c 157 — Constitution Act, 1982, s 35 — Elements of test for establishing Aboriginal title to land — Rights and limitations conferred by Aboriginal title — Duties owed by Crown before and after Aboriginal title to land established —

Province issued commercial logging licence in area regarded by semi-nomadic First Nation as traditional territory — First Nation claimed Aboriginal title to land — Whether test for Aboriginal title requires proof of regular and exclusive occupation or evidence of intensive and site-specific occupation — Whether trial judge erred in finding Aboriginal title established — Whether Crown breached procedural duties to consult and accommodate before issuing logging licences — Whether Crown incursions on Aboriginal interest justified under s 35 Constitution Act, 1982 framework.

Land rights — Aboriginal title — Forest Act, RSBC 1995, c 157 — Constitution Act, 1982, s 35 — Provincial laws of general application— Constitutional constraints on provincial regulation of Aboriginal title land — Division of powers — Doctrine of inter-jurisdictional immunity — Infringement and justification framework under s 35 Constitution Act, 1982 — Province issued commercial logging licence in area regarded by semi-nomadic First Nation as traditional territory — First Nation claimed Aboriginal title to land — Whether provincial laws of general application apply to Aboriginal title land — Whether Forest Act on its face applied to Aboriginal title lands — Whether application of Forest Act ousted by operation of Constitution — Whether doctrine of inter-jurisdictional immunity should be applied to lands held under Aboriginal title.

Held (8-0): Appeal allowed and declaration of Aboriginal title over area requested granted. Declaration that British Columbia breached its duty to consult, owed to the Tsilhqot'in Nation, also granted.

Grassy Narrows First Nation v Ontario (Natural Resources)

Supreme Court of Canada: [2014 SCC 48](#).

Judgment delivered: 11 July 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

Catchwords:

Land rights — Treaty rights — Harvesting rights — Interpretation of taking-up clause — Constitution Act, 1867, ss 91(24), 92(5), 92A, 109 — Constitution Act, 1982, s 35 — Treaty No 3 — Certain lands subject to treaty were annexed to Ontario after signature of treaty between Ojibway and Canada — Whether province had authority to take up tracts of that land so as to limit harvesting rights under treaty or whether it required federal approval to do so.

Held (7-0): Appeal dismissed.

Practice and Procedure

Republic of Argentina v NML Capital, Ltd

Supreme Court of the United States: [Docket 12-842](#).

Judgment delivered: 16 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito and Kagan JJ.

Catchwords:

Practice and procedure — Post-judgment discovery — Petitioner defaulted on external debt and respondent prevailed in 11 debt-collection actions brought against petitioner — To execute judgments, respondent sought discovery of petitioner's property — District Court granted motions to compel compliance — Second Circuit affirmed — Whether Foreign Sovereign Immunities Act of 1976 limits scope of discovery available to judgment creditor in federal post-judgment execution proceeding against foreign sovereign.

Held (7-1): Judgment affirmed.

Foxworth Investments Limited and another v Henderson

Supreme Court of the United Kingdom: [\[2014\] UKSC 41](#).

Judgment delivered: 2 July 2014.

Coram: Lord Kerr, Lord Sumption, Lord Reed, Lord Carnwath and Lord Toulson.

Catchwords:

Practice and procedure — Appeal — Witness action tried by judge alone — Review by appellate court — Principles applicable.

Held (5-0): Appeal allowed.

Canada (Attorney General) v Confédération des syndicats nationaux

Supreme Court of Canada: [2014 SCC 49](#).

Judgment delivered: 17 July 2014.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Practice and procedure — Civil procedure — Motion to dismiss — *Stare decisis* — Code of Civil Procedure, CQLR, c C-25, art 165(4) — Action to have certain statutory provisions relating to employment insurance declared unconstitutional — Motion to dismiss on basis that issues being raised had already been decided by Supreme Court of Canada in earlier decision — Whether motion to institute proceedings is correct in law even if alleged facts are assumed to be true.

Held (7-0): Appeal allowed.

Privacy

Secretary of State for the home Department and another v R (on the application of T and another) (FC)

Supreme Court of the United Kingdom: [\[2014\] UKSC 35](#).

Judgment delivered: 18 June 2014.

Coram: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson and Lord Reed.

Catchwords:

Privacy — Confidential information — Disclosure — Police — Enhanced criminal record certificate — Police Act 1997, s 113B — Human Rights Act 1998, Sch 1, Pt I, art 8 — Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, arts 3, 4 — Police retained data of cautions, warnings and reprimands as well as convictions on police national computer — Statutory scheme required disclosure of all previous convictions, cautions, warnings and reprimands following application by potential employer for enhanced criminal record certificate for assessment of individual's suitability for work — Whether scheme incompatible with individual's Convention right to respect for private life — Whether statutory instrument provided for exemptions from spent conviction provisions of rehabilitation of offenders legislation *ultra vires* because incompatible with Convention right to respect for private life — Appropriate remedy.

Held (5-0): Appeals against declarations of incompatibility in respect of 1997 Act dismissed; appeal against declaration that the 1975 Order was *ultra vires* allowed.

Search and Seizure

Riley v California; United States v Wurie

Supreme Court of the United States: [Docket 13-132](#); [Docket 13-212](#).

Judgment delivered: 25 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Search and seizure — Police powers — Warrantless search — Police accessed digital information on the phone of petitioner Riley — Based in part on photographs and videos found, State charged Riley in connection with shooting and sought enhanced sentence based on Riley's gang membership — Riley sought suppression of evidence obtained on cell phone — Trial Court denied motion and Court of Appeal affirmed — Respondent Wurie was arrested after apparent drug sale — Police seized cell phone, accessed call log and traced number to Wurie's apartment — Police secured search warrant and found drugs, firearm, ammunition and cash — Wurie charged with drug and firearm offences — Wurie moved to suppress evidence obtained from search — District Court denied motion and Wurie was convicted — First Circuit reversed denial of motion and vacated convictions — Whether police may, without warrant, search digital information on cell phone seized from individual who has been arrested.

Held (9-0): Judgment in 13-132 reversed and remanded. Judgment in 13-212 affirmed.

Securities

Halliburton Co et al. v Erica P John Fund, Inc

Supreme Court of the United States: [Docket 13-317](#).

Judgment delivered: 23 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Securities — Fraud — Misrepresentation — Securities Exchange Act of 1934, s 10(b) — Respondent filed class action against petitioners alleging misrepresentations that inflated petitioner's stock price — Petitioner argued that class certification was inappropriate because evidence it had earlier introduced to disprove loss causation also showed that its alleged misrepresentations had not affected its stock price — Petitioner argued it had rebutted presumption established in *Basic Inc v Levinson* — District Court rejected assertion and certified the class — Fifth Circuit affirmed, concluding that petitioner could use its price impact evidence to rebut *Basic* presumption only at trial and not class certification stage — Whether *Basic*'s presumption of reliance should be overruled or modified — If not, whether defendants should nonetheless be afforded opportunity in securities class

action cases to rebut presumption at class certification stage, by showing lack of price impact.

Held (9-0): Judgment vacated and remanded.

Taxation

United States v Clarke et al.

Supreme Court of the United States: [Docket 13-301](#).

Judgment delivered: 19 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Taxation — Information and records relating to tax obligations — Challenge to summonses — Internal Revenue Service (IRS) issued summonses to respondents for information and records relevant to tax obligations — When respondents failed to comply, IRS brought enforcement action in District Court — Respondents challenged motives of IRS in issuing summonses — District Court denied request and ordered summonses enforced — Eleventh Circuit reversed holding that District Court's refusal to allow respondents to examine IRS agents constituted abuse of discretion — Whether taxpayer has right to question IRS officials about their reasons for issuing summons — Whether bare allegation of improper purpose is sufficient or whether taxpayer must point to specific facts or circumstances plausibly raising inference of bad faith.

Held (9-0): Judgment vacated and remanded.

Tort Law

CTS Corp v Waldburger et al.

Supreme Court of United States: [Docket 13-339](#).

Judgment delivered: 9 June 2014.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Tort law — Statutes of limitation — Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA Act), s 9658 applies to statutes of limitations governing actions for personal injury or

property damage arising from the release of a hazardous substance, pollutant, or contaminant into the environment Petitioner sold property on which it had stored chemicals as part of its operations — Twenty-four years later, respondents sued alleging damages from stored contaminants — Petitioner moved to dismiss citing state statute of repose that prevented subjecting defendant to tort suit brought more than 10 years after defendant's last culpable act — Fourth Circuit held that CERCLA Act, s 9658 had remedial purpose that favoured pre-emption — Whether s 9658 pre-empts state statutes of repose.

Held (7-2): Judgment reversed.

ICL Plastics Limited and others v David T Morrison & Co Limited t/a Gael Home Interiors

Supreme Court of the United Kingdom: [\[2014\] UKSC 48](#).

Judgment delivered: 30 July 2014.

Coram: Lord Neuberger (President), Lord Sumption, Lord Reed, Lord Toulson and Lord Hodge.

Catchwords:

Tort law — Negligence — Prescription and Limitation (Scotland) 1973 Act, ss 6(1) and 11(3) — Explosion occurred in appellant's factory — Respondent's shop was among number of properties damaged — Respondent sought damages against appellant on basis that damage was caused by appellant's negligence, nuisance and breach of duty — Appellant argued that obligation to make reparation to respondent prescribed long before action was raised — Respondent argued that date from which prescriptive period begins to run was postponed — Whether s 11(3) construed as having effect of postponing running of time until creditor was aware that loss had been caused by breach of duty.

Held (3-2): Appeal allowed.

Trusts Law

Shergill and others v Khaira

Supreme Court of the United Kingdom: [\[2014\] UKSC 33](#).

Judgment delivered: 11 June 2014.

Coram: Lord Neuberger (President), Lord Mance, Lord Clarke, Lord Sumption and Lord Hodge.

Catchwords:

Trusts — Trustees — Power to appoint — Temples established under charitable trust to promote beliefs of Sikh religious sect — Dispute as to whether particular individual was spiritual successor having power under trust deed to appoint trustees — Claim for declaration that claimant trustees lawfully appointed by spiritual successor — Whether issue involving determination of religious belief — Whether justiciable.

Held (5-0): Appeal allowed.

Water Law

United Utilities Water plc v The Manchester Ship Canal Company Ltd and another; United Utilities Water plc v The Manchester Ship Canal Company Ltd

Supreme Court of the United Kingdom: [\[2014\] UKSC 40](#).

Judgment delivered: 2 July 2014.

Coram: Lord Neuberger (President), Lord Clarke, Lord Sumption, Lord Hughes and Lord Toulson.

Catchwords:

Water law — Sewerage — Discharge — Water Industry Act 1991, s 116 — Sewerage undertaker discharged surface water and treated effluent from sewage outfalls into private watercourses without owners' consent — Whether implied statutory power authorised discharge — Whether authorised discharge from future outfalls as well as those in use when Act came into force.

Held (5-0): Appeal allowed.
