



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.

Admiralty

Gard Marine and Energy Limited v China National Chartering Company Limited & Anor; China National Chartering Company Limited v Gard Marine and Energy Limited & Anor; Daiichi Chuo Kisen Kaisha v Gard Marine and Energy Limited & Anor

United Kingdom Supreme Court: [\[2017\] UKSC 35](#)

Judgment delivered: 10 May 2017

Coram: Lord Mance, Lord Clarke, Lord Sumption, Lord Hodge, Lord Toulson

Catchwords:

Admiralty – Charterparty – Undertaking to trade vessel between safe ports – Where vessel demise chartered to Ocean Line Holdings Ltd who time chartered vessel to China National Chartering Co Ltd who sub-chartered vessel to Daiichi Chuo Kisen Kaisha – Where demise charter and time charters contained same undertaking to trade vessel between safe ports – Where sub-charterer gave instructions to discharge cargo at port of Kashima in Japan – Where vessel sought to leave port due to long waves but unable to navigate channel due to severe gales – Where vessel grounded – Where combination of long waves and severe gales rare but not abnormal – Whether breach of undertaking to trade only between safe ports – Whether owners entitled to claim against demise charterparty in respect of insured losses – Whether sub-charterer entitled to limit liability

for loss pursuant to 1976 Convention on Limitation of Liability for Maritime Claims enacted by *Merchant Shipping Act 1995*.

Held (3:2): Appeal dismissed.

Arbitration

Globalia Business Travel S.A.U. (formerly TravelPlan S.A.U.) of Spain v Fulton Shipping Inc of Panama

United Kingdom Supreme Court: [\[2017\] UKSC 43](#)

Judgment delivered: 28 June 2017

Coram: Lord Mance, Lord Clarke, Lord Sumption, Lord Hodge, Lord Toulson

Catchwords:

Arbitration – *Arbitration Act 1996* – Admiralty – Charterparty – Where appellants purchased cruise ship chartered to respondent by previous owners – Where parties reached oral agreement to extend charterparty by two years – Where respondent disputed having made agreement – Where appellants treated respondent as in anticipatory repudiatory breach, accepted breach and agreed to sell vessel to third party – Where appellants commenced arbitration seeking damages for repudiatory breach – Where arbitrator found respondent in repudiatory breach – Where arbitrator held respondent entitled to credit for diminishment in value of vessel between date of sale and date vessel would have been redelivered if no breach – Where credit larger than loss of profit so arbitrator held appellants unable to recover damages – Where appellants appealed to High Court under s 69 – Where High Court held arbitrator erred in taking into account diminishment in value of vessel – Where Court of Appeal allowed appeal – Whether in assessing damages for loss of profits charterers entitled to take into account drop in value of vessel as diminishing loss.

Held (5:0): Appeal allowed.

Teal Cedar Products Ltd v British Columbia

Supreme Court of Canada: [\[2017\] SCC 32](#)

Judgment delivered: 22 June 2017

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

Catchwords:

Arbitration – Appeals – Characterisation of questions – Standard of review – Where appellant held licences to harvest Crown timber – Where parties unable to agree on compensation owed by respondent to appellant for reduced access to improvements such as roads and bridges – Where dispute submitted to arbitration under *Forestry Revitalization Act 2003* – Where Court of Appeal construed issues decided by arbitrator as questions of law subject to appellate review – Application of *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 – Whether Court of Appeal erred in construing issues decided by arbitrator as questions of law.

Held (5:4): Appeal allowed in part.

Kindred Nursing Centers Limited Partnership et al v Clark
Supreme Court of the United States: [Docket No 16-32](#)

Judgment delivered: 15 May 2017

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

Catchwords:

Arbitration – Arbitration agreement – Where respondents’ relatives moved into nursing home operated by petitioner – Where respondents used powers of attorney to complete paperwork and sign arbitration agreement on relatives’ behalf – Where agreement provided that any claims arising from relatives’ stay would be resolved by arbitration – Where respondents filed suit alleging alleged petitioner’s substandard care caused deaths of relatives – Where Kentucky Supreme Court found arbitration agreements invalid because neither power of attorney specifically entitled representative to enter into arbitration agreement – Whether holding of Kentucky Supreme Court violates *Federal Arbitration Act 1925*.

Held (7:1): Reversed in part, vacated and remanded in part.

Bankruptcy

Midland Funding, LLC v Johnson
Supreme Court of the United States: [Docket No 16-348](#)

Judgment delivered: 15 May 2017

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

Catchwords:

Bankruptcy – Where petitioner filed proof of claim in respondent’s bankruptcy asserting credit card debt – Where last charge on respondent’s account was more than 10 years ago – Where relevant limitation period was 6 years – Where Bankruptcy Court disallowed respondent’s objection to claim – Where respondent filed suit against petitioner under *Fair Debt Collection Practices Act 1977* – Whether filing proof of claim on obviously time-barred debt is false, deceptive, misleading, unfair or unconscionable debt collection practice within meaning of the Act.

Held (5:3): Reversed.

Constitutional Law

Lawyers for Human Rights v Minister of Home Affairs & Ors
Constitutional Court of South Africa: [\[2017\] ZACC 22](#)

Judgment delivered: 29 June 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution ss 12, 35, 36 – *Immigration Act 2002* s 34(1) – Where appellants’ clients detained under s 34(1) of *Immigration Act* – Where High Court held s 34(1)(b), (d) inconsistent with Constitution s 35(2)(d) and invalid to extent provisions do not allow foreign detainees to challenge lawfulness of detention in court or appear in person before court when request for extension of detention considered – Whether High Court erred in finding foreigners entitled to rights entrenched by Constitution s 35(2)(d) – Whether High Court erred in finding impugned provisions limit constitutional rights – Whether High Court erred in finding limitation of constitutional rights not justified in terms of Constitution s 36.

Held (11:0): Appeal dismissed.

Trinity Lutheran Church of Columbia, Inc. v Comer
Supreme Court of the United States: [Docket No 15-577](#)

Judgment delivered: 26 June 2017

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

Catchwords:

Constitutional law – First Amendment – Free Exercise Clause – Where Department of Natural Resources denied petitioner’s application for grant under Scrap Tire Program on basis petitioner was church – Where Missouri Constitution Art I s 7 prohibits financial assistance directly to church – Where District Court held Free Exercise Clause did not require State to make funds available to petitioner under Program – Where Eighth Circuit affirmed – Whether Department’s policy violated rights of petitioner under First Amendment by denying public benefit on account of religious status.

Held (7:2): Reversed and remanded.

Murr v Wisconsin

Supreme Court of the United States: [Docket No 15-214](#)

Judgment delivered: 23 June 2017

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

Catchwords:

Constitutional law – Takings Clause – Where petitioners own adjacent lots on St Croix River – Where regulations prevent separate sale or development of lots under common ownership unless each have at least one acre suitable for development – Whether regulations amounted to “taking” on basis petitioners deprived of use – Whether State Court of Appeals erred in analysing lots as single unit in assessing effect of regulations.

Held (5:3): Affirmed.

United Democratic Movement v Speaker of the National Assembly & Ors
Constitutional Court of South Africa: [\[2017\] ZACC 21](#)

Judgment delivered: 22 June 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution s 102 – Motion of no confidence – Where President dismissed Finance Minister and Deputy Finance Minister – Where South African economy status subsequently downgraded – Where three political parties asked Speaker of National Assembly to schedule motion of no confidence in President – Where one political party requested secret ballot for motion – Where Speaker decided she had no authority to determine motion be conducted by secret ballot – Whether Speaker has

power to prescribe that voting in motion of no confidence in President be conducted by secret ballot.

Held (11:0): Relief granted.

Packingham v North Carolina

Supreme Court of the United States: [Docket No 15-1194](#)

Judgment delivered: 19 June 2017

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

Catchwords:

Constitutional law – First Amendment – Registered sex offender – Where North Carolina statute prohibits registered sex offenders from accessing social networking websites when offender knows website permits child to become member or create webpage – Where petitioner prosecuted under statute after posting statement on Facebook – Whether statute impermissibly restricts lawful speech in violation of First Amendment.

Held (8:0): Reversed and remanded.

Ziglar v Abbasi

Supreme Court of the United States: [Docket No 15-1358](#)

Judgment delivered: 19 June 2017

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

Catchwords:

Constitutional law – Fourth and Fifth Amendments – Executive detention – Where Federal Government ordered detention of aliens in immediate aftermath of September 11 attacks – Where respondents, six men of Arab or South Asian descent, detained for three to six months – Where respondents alleged harsh detention conditions imposed for punitive purpose and on basis of actual or apparent race, religion or national origin in violation of Fifth Amendment – Where respondents alleged wardens subjected respondents to punitive strip searches and knowingly allowed guards to abuse respondents in violation of Fourth and Fifth Amendments – Whether respondents entitled to seek damages for constitutional violations under implied cause of action theory adopted in *Bivens v Six Unknown Federal Narcotics Agents*, 403 US 388 (1971) – Whether petitioners entitled to qualified immunity.

Held (4:2): Reversed in part, vacated in part and remanded in part.

Sessions, Attorney General v Morales-Santana
Supreme Court of the United States: [Docket No 15-1191](#)

Judgment delivered: 12 June 2017

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

Catchwords:

Constitutional law – Fifth Amendment – *Immigration and Nationality Act 1952* – Where Act provided that child of United States citizen eligible for citizenship if parent physically present in United States for ten years prior to child’s birth, at least five years of which were after parent aged 14 – Where exception created for child of unwed United States citizen mother if mother lived in United States for one year prior to birth – Where respondent’s biological father, a United States citizen, moved to Dominican Republic shortly before turning 19 – Where Government sought to remove respondent based on criminal convictions – Where immigration judge rejected respondent’s citizenship claim because at time of birth, father did not satisfy requirement of five years physical presence after age 14 – Whether Second Circuit held gender-based distinction in Act unconstitutional – Whether gender distinction in Act incompatible with Fifth Amendment requirement that Government accord all persons “equal protection of the law”.

Held (8:0): Affirmed in part, reversed in part, and remanded.

Occupiers of Erven 87 & 88 Berea v De Wet N.O. & Anor
Constitutional Court of South Africa: [\[2017\] ZACC 18](#)

Judgment delivered: 8 June 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution s 26(3) – *Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 1998* s 4 – Where appellants, occupiers of a block of flats, served with preliminary notices of eviction under Act – Where counsel for respondents informed High Court that matter had settled and presented draft order to Court – Where appellants unrepresented in High Court – Where High Court made eviction order – Whether eviction order should be rescinded on basis no actual consent on part of appellants or consent not legally valid – Where High Court erred in failing to satisfy itself that eviction would be just and equitable after considering all relevant circumstances in accordance with Constitution s 26(3) and s 4 of Act – Whether eviction order should otherwise be

rescinded under common law or *Uniform Rules of Court* r 42 on basis it was erroneously granted in absence of affected party.

Held (11:0): Appeal allowed.

Electronic Media Network Limited & Ors v e.tv (Pty) Limited & Ors
Constitutional Court of South Africa: [\[2017\] ZACC 17](#)

Judgment delivered: 8 June 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe JJ, Mojaelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution s 192 – Where Broadcasting Digital Migration Policy amended by Minister to insert clause stating that subsidised set top boxes should not have decryption capabilities – Where High Court held Minister had power to pass amendment and amendment not unlawful or irrational – Where Supreme Court of Appeal held amendment unlawful – Whether amendment beyond power of Minister as within exclusive powers of Independent Communications Authority of South Africa under *Independent Communications Authority of South Africa Act 2000* – Whether amendment beyond power as Minister unable to bind Universal Service and Access Agency of South Africa – Whether Minister failed to comply with consultation requirements under *Electronic Communications Act 2005* s 3(5) – Whether amendments to policies exempted from consultation requirements by s 3(6) of *Electronic Communications Act* – Whether amendment procedurally or substantively irrational.

Held (5:4): Appeal allowed.

R v Antic

Supreme Court of Canada: [\[2017\] SCC 27](#)

Judgment delivered: 1 June 2017

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

Catchwords:

Constitutional law – Canadian Charter of Rights and Freedoms – Where s 515(2)(e) *Criminal Code* R.S.C. 1985, c. C-46 provides that judge may only require both cash deposit and surety as condition of release if accused is from out of province or does not ordinarily reside within 200 km of place in which detained – Where accused denied interim release because did not meet geographic criteria in s 515(2)(e) for cash deposit to

be imposed in addition to surety as condition of release – Where bail review judge found geographic limitation infringes s 11(e) of Charter – Whether s 515(2)(e) of *Criminal Code* infringes s 11(e) of Charter.

Held (9:0): Appeal allowed.

County of Los Angeles, California et al v Mendez et al
Supreme Court of the United States: [Docket No 16-369](#)

Judgment delivered: 30 May 2017

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

Catchwords:

Constitutional law – Fourth Amendment – Where Sherriff’s Department informed parolee-at-large seen at residence – Where officers arrived at residence and opened door without announcing presence – Where one of respondents rose holding gun – Where officers opened fire, shooting respondents multiple times – Where parolee not found at residence – Where respondents brought claims under Fourth Amendment for warrantless entry, failure to announce presence and excessive force – Where District Court held that although use of force reasonable, liable nonetheless under “provocation rule” which makes force unreasonable if officer intentionally or recklessly provoked violent confrontation and the provocation was independent Fourth Amendment violation – Where Ninth Circuit affirmed application of provocation rule – Whether Fourth Amendment provides basis for “provocation rule”.

Held (8:0): Vacated and remanded.

Sam Woo Marine Works Ltd v The Incorporated Owners of Po Hang Building

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 36](#)

Judgment delivered: 29 May 2017

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Justice Gleeson NPJ

Catchwords:

Constitutional law – Article 82 of *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* – Where appellant failed to file defence in time – Where District Court judge refused appellant’s application for leave to file pleadings out of time and entered default judgment against appellant – Where application for leave to appeal to Court of Appeal dismissed – Where District Court Ordinance s 63B

provides that no appeal lies from Court of Appeal's decision to refuse or grant leave – Whether s 63B is unconstitutional as inconsistent with art 82 which vests power of final adjudication of Hong Kong Special Administrative Region in Court of Final Appeal – Whether Court of Final Appeal has jurisdiction to entertain appeal from judgment of Court of Appeal refusing leave to appeal.

Held (5:0): Appeal dismissed.

Daniels v Scribante & Anor

Constitutional Court of South Africa: [\[2017\] ZACC 13](#)

Judgment delivered: 11 May 2017

Coram: Nkabinde ACJ, Cameron, Froneman, Jafta, Khampepe, Madlanga JJ, Mbha, Musi AJJ and Zondo J

Catchwords:

Constitutional law – Constitution s 25(6) – Right to secure tenure where insecure as result of past racially discriminatory laws or practices – *Extension of Security of Tenure Act 1997* – Where appellant lived on farm for 16 years – Where respondents, who managed and owned farm, refused to consent to appellant making improvements – Whether s 6 of Act gives occupier right to make improvements to bring dwelling into standard suitable for living – Whether consent of owner required to make improvements – If consent not required, whether occupier may effect improvements in total disregard of owner.

Held (11:0): Appeal allowed.

Corporations

Off-Beat Holiday Club & Anor v Sanbonani Holiday Spa Shareblock Limited & Ors

Constitutional Court of South Africa: [\[2017\] ZACC 15](#)

Judgment delivered: 23 May 2017

Coram: Nkabinde ACJ, Cameron, Froneman, Jafta, Khampepe, Madlanga JJ, Mbha AJ, Mhlantla J, Musi AJ and Zondo J

Catchwords:

Corporations – *Companies Act 1973* s 252 – Where articles of association of first respondent amended in 1988 conferring right on second respondent to allocate shares – Where third respondent was controlling mind of first and second respondents – Where appellants brought

proceedings seeking declaration allocation of shares invalid and bringing derivative claim against third respondent under s 266 – Whether claims constitute “debts” for purposes of *Prescription Act* 1969 – If so, whether alleged oppressive acts of third respondent constitute continuing wrongs that are not subject to running of prescription.

Held (10:0): Appeal allowed.

Costs

Sin Chung Yin Ronald & Ors v The Dental Council of Hong Kong
Hong Kong Court of Final Appeal: [\[2017\] HKCFA 35](#)

Judgment delivered: 24 May 2017

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Phillips NPJ

Catchwords:

Costs – Where Court allowed appellants’ appeals and made order nisi that Council pay appellants’ costs including costs of disciplinary inquiry – Where appellants had made offer without prejudice save as to costs to Council – Where Court held disciplinary proceedings flawed from outset – Whether indemnity costs should be awarded.

Held (5:0): Costs order nisi to stand as order absolute.

Secretary for Justice v Chan Chi Wan Stephen; Secretary for Justice v Tseng Pei Kun
Hong Kong Court of Final Appeal: [\[2017\] HKCFA 33](#) and [\[2017\] HKCFA 34](#)

Judgment delivered: 19 May 2017

Coram: Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Stock NPJ and Lord Walker NPJ

Catchwords:

Costs – Costs in Criminal Cases Ordinance s 73A – Where Court unanimously allowed appeals against convictions – Where prosecution does not object to costs award in favour of appellants except in respect of costs “related and incidental to the arrest” – Whether costs “related and incidental to the arrest” are costs arising out of prosecution.

Held (5:0): Costs order made.

Limpopo Legal Solutions & Ors v Vhembe District Municipality & Ors
Constitutional Court of South Africa: [\[2017\] ZACC 14](#)

Judgment delivered: 18 May 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Costs – Punitive costs order – Where appellants instituted proceedings against two municipalities and Minister of Environmental Affairs seeking final interdict directing any or all of respondents to fix burst sewage pipelines – Where High Court dismissed application and made punitive costs order against appellants – Whether High Court erred in failing to apply *Biowatch Trust v Registrar, Genetic Resources* [2009] ZACC 14 in making costs order.

Held (11:0): Appeal against costs order allowed.

Criminal Law

R v Bradshaw

Supreme Court of Canada: [\[2017\] SCC 35](#)

Judgment delivered: 29 June 2017

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

Catchwords:

Criminal law – Evidence – Hearsay – Exception to hearsay rule – Where respondent charged with two counts of first degree murder – Where co-accused re-enacted murders for police but later refused to give sworn testimony at respondent's trial – Where Crown sought to admit video-recording of re-enactment of murders – Where trial judge admitted video-recording under exception to hearsay rule – Where Court of Appeal set aside respondent's convictions and ordered new trial – Whether Court of Appeal erred in failing to find trial judge entitled to rely on corroborative evidence to conclude that "threshold reliability" of hearsay statement established.

Held (5:2): Appeal dismissed.

Davila v Davis

Supreme Court of the United States: [Docket No 16-6219](#)

Judgment delivered: 26 June 2017

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

Catchwords:

Criminal law – Ineffective assistance from counsel – Where petitioner convicted of murder by jury – Where conviction and sentence affirmed on appeal – Where petitioner’s counsel on appeal did not challenge jury direction – Where post-conviction counsel did not raise ineffective assistance of appellate counsel claim – Whether ineffective assistance of post-conviction counsel provides cause to excuse procedural default of ineffective assistance of appellate counsel claims.

Held (5:4): Affirmed.

Jae Lee v United States

Supreme Court of the United States: [Docket No 16-327](#)

Judgment delivered: 23 June 2017

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

Catchwords:

Criminal law – Ineffective assistance from counsel – Where petitioner, permanent resident from South Korea, charged with possessing ecstasy with intent to distribute – Where attorney assured petitioner he would not be deported as result of pleading guilty – Where petitioner pleaded guilty to “aggravated felony” under *Immigration and Nationality Act* 1965 s 8 – Where, contrary to attorney’s advice, petitioner subject to mandatory deportation as result of plea – Where District Court refused to set aside plea and conviction – Where Sixth Circuit affirmed – Whether petitioner prejudiced by ineffective assistance of counsel.

Held (6:2): Reversed and remanded.

Weaver v Massachusetts

Supreme Court of the United States: [Docket No 16-240](#)

Judgment delivered: 22 June 2017

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

Catchwords:

Criminal law – Ineffective assistance from counsel – Where courtroom in which petitioner tried was unable to accommodate all potential jurors – Where court officer excluded from courtroom any member of public who was not potential juror, including petitioner’s mother and her minister – Where defence counsel did not object to closure of court – Where petitioner convicted of murder and related charge – Where petitioner filed motion seeking retrial on basis that attorney provided ineffective assistance by failing to object to courtroom closure – Where trial court held petitioner not entitled to retrial – Where Massachusetts Supreme Judicial Court affirmed on basis petitioner failed to show prejudice – Whether petitioner entitled to retrial.

Held (6:2): Affirmed.

Turner et al v United States

Supreme Court of the United States: [Docket No 15-1503](#)

Judgment delivered: 22 June 2017

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

Catchwords:

Criminal law – Evidence withheld by Government – Where petitioners convicted of kidnapping, robbery and murder – Where at trial, Government advanced theory that victim attacked by large group – Where petitioners did not rebut group attack theory – Where petitioners later discovered Government withheld evidence at trial – Where petitioners claim that if evidence had not been withheld, petitioners would have challenged group attack theory and raised alternative theory that single perpetrator or two perpetrators attacked victim – Whether evidence material to guilt – Application of *Brady v Maryland*, 373 US 83 (1963).

Held (6:2): Affirmed.

McWilliams v Dunn

Supreme Court of the United States: [Docket No 16-5294](#)

Judgment delivered: 19 June 2017

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

Catchwords:

Criminal law – Indigent accused – Where jury convicted indigent petitioner of murder and recommended death sentence – Where counsel for petitioner requested neurological and neuropsychological testing of

petitioner – Where request granted and medical report concluded petitioner had neuropsychological problems but likely exaggerating symptoms – Where counsel for petitioner requested expert assistance in reviewing medical findings – Where trial court denied request – Where petitioner sentenced to death – Whether petitioner denied right to meaningful expert assistance guaranteed by *Ake v Oklahoma* 470 US 68 (1985).

Held (5:4): Reversed and remanded.

Ndlovu v S

Constitutional Court of South Africa: [\[2017\] ZACC 19](#)

Judgment delivered: 15 June 2017

Coram: Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojabelo, Pretorius AJJ and Zondo J

Catchwords:

Criminal law – Sentencing – *Criminal Law Amendment Act* 1997 s 51 – Where appellant convicted of rape – Where Magistrate informed appellant at trial that, if convicted, Regional Court bound to impose minimum sentence of 15 years imprisonment under s 51(2) – Where Magistrate sentenced appellant to life imprisonment under s 51(1) on basis offence involved “infliction of serious bodily harm” – Whether Regional Court had jurisdiction to sentence appellant to life imprisonment where not charged with rape involving “infliction of grievous bodily harm” – If yes, whether right to fair trial infringed.

Held (10:0): Appeal allowed.

HKSAR v Hui Rafael Junior; HKSAR v Kwan Francis Hung-Sang; HKSAR v Kwok Ping-Kwong Thomas; HKSAR v Chan Kui-Yuen

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 37](#); [\[2017\] HKCFA 38](#); [\[2017\] HKCFA 39](#); [\[2017\] HKCFA 40](#)

Judgment delivered: 14 June 2017

Coram: Chief Justice Ma, Mr Justice Fok PJ, Mr Justice Chan NPJ, Mr Justice Stock NPJ and Mr Justice Gleeson NPJ

Catchwords:

Criminal law – Conspiracy – Misconduct in public office – Where first appellant appointed Chief Secretary of HKSAR Government in 2005 – Where payments made into bank account of first appellant at direction of second appellant – Where prosecution alleged payments were bribes to ensure first appellant positively disposed towards property development

company – Where appellants convicted of conspiracy to engage in misconduct in public office – Whether offence of misconduct in public office requires act or omission rather than mere disposition.

Held (5:0): Appeals dismissed.

Honeycutt v United States

Supreme Court of the United States: [Docket No 16-142](#)

Judgment delivered: 5 June 2017

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

Catchwords:

Criminal law – Proceeds of crime – *Comprehensive Forfeiture Act 1984* – Where petitioner employed by hardware store owned by brother – Where brothers indicted for federal drugs crimes including conspiracy to distribute product used in methamphetamine production – Where petitioner convicted at trial – Where brother pleaded guilty and agreed to forfeit \$200,000 – Where District Court declined to enter forfeiture judgment against petitioner on basis petitioner was salaried employee who had not profited from illegal sales – Where Sixth Circuit reversed, holding that as co-conspirators, brothers jointly and severally liable for conspiracy proceeds – Whether Act permits forfeiture where defendant did not acquire property as result of illegal sales because no ownership interest in store.

Held (8:0): Reversed.

Re Solicitor-General's Reference (No 1 of 2016)

New Zealand Supreme Court: [\[2017\] NZSC 58](#)

Judgment delivered: 3 May 2017

Coram: Elias CJ, William Young, Glazebrook, O'Regan and Ellen France JJ

Catchwords:

Criminal law – *Land Transport Act 1998 s 90* – Where defendant served with s 90 notice that licence suspended for three months because accumulated 100 or more demerit points – Where defendant later charged and convicted of driving while suspended – Where High Court quashed conviction on basis s 90 notice invalid because served by police instead of New Zealand Transport Agency – Where, on appeal by Solicitor-General, Court of Appeal upheld High Court's decision – Whether High Court correctly concluded requirements of s 90 not met – If so, whether quashing conviction was correct remedy.

Held (5:0): Appeal allowed.

Discrimination

Cooper, Governor of North Carolina et al v Harris et al
Supreme Court of the United States: [Docket No 15-1262](#)

Judgment delivered: 22 May 2017

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

Catchwords:

Discrimination – Racial discrimination – Equal Protection Clause of Fourteenth Amendment – *Voting Rights Act* 1965 – Where North Carolina redrew two districts after 2010 census – Where reconfiguration increased “black voting-age population” to over 50% in each district – Where District Court held both districts unconstitutional because racial considerations predominated, rejecting North Carolina’s claim that action was justified by Act – Whether District Court erred in concluding that race was predominant rationale and that compliance with Act could not justify that consideration of race.

Held (5:3): Affirmed.

Bank of America Corp et al v City of Miami, Florida
Supreme Court of the United States: [Docket No 15-1111](#)

Judgment delivered: 1 May 2017

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

Catchwords:

Discrimination – Racial discrimination – *Fair Housing Act* 1968 – Where City of Miami filed suit alleging banks violated Act by loaning to African-American and Latino borrowers on worse terms than other equally creditworthy borrowers – Where City of Miami alleged discriminatory conduct led to disproportionate number of foreclosures and vacancies in majority-minority neighbourhoods, impaired racial integration, diminished property-tax revenue, and increased demand for emergency and other services – Whether City of Miami is “aggrieved person” authorised to bring suit under Act – Whether City of Miami’s alleged financial injuries fell within the “zone of interests” protected by Act – Whether City of Miami’s alleged injuries met Act’s “proximate-cause requirement”.

Held (5:3): Vacated and remanded.

Employment Law

BNSF Railway Co v Tyrrell, Special administrator for the estate of Tyrrell, deceased, et al

Supreme Court of the United States: [Docket No 16-405](#)

Judgment delivered: 30 May 2017

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

Catchwords:

Employment law – *Federal Employers’ Liability Act 1908* – Where respondents sued petitioner in Montana state court alleging injuries sustained while employed by petitioner – Where neither worker injured in Montana – Where petitioner not incorporated or headquartered in Montana – Where about 6% of railway track and less than 5% of petitioner’s workforce in Montana – Where Montana Supreme Court held it could exercise jurisdiction over petitioner because petitioner “did business” in Montana within meaning of s 56 of Act and was “found within” Montana within meaning of Montana’s civil procedure law – Whether s 56 addresses personal jurisdiction over railroads – Whether exercise of personal jurisdiction comports with Fourteenth Amendment due process clause.

Held (8:1): Reversed and remanded.

Hartley & Ors v King Edward VI College

United Kingdom Supreme Court: [\[2017\] UKSC 39](#)

Judgment delivered: 24 May 2017

Coram: Lady Hale, Lord Clarke, Lord Wilson, Lord Hughes, Lord Gill

Catchwords:

Employment – *Apportionment Act 1870* – Where appellants employed as teachers – Where appellants participated in lawful strike action – Where respondent deducted pay at rate of 1/260 annual pay as 260 weekdays in calendar year – Where s 2 of Act provides that annuities shall “be considered as accruing from day to day, and shall be apportionable in respect of time accordingly” – Whether s 2 requires pay to be deducted at rate of 1/365.

Held (5:0): Appeal allowed.

Family Law

Howell v Howell

Supreme Court of the United States: [Docket No 15-1031](#)

Judgment delivered: 15 May 2017

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

Catchwords:

Family law – Divorce – Division of property – *Uniformed Services Former Spouses' Protection Act* 1982 – Where divorce decree awarded respondent 50% of petitioner's future Air Force retirement pay – Where petitioner became partially disabled due to earlier service-related injury – Where petitioner required to waive part of retirement pay to receive disability pay – Where Arizona family court ordered petitioner to ensure respondent received full payment without regard to disability waiver – Whether state court may order veteran to indemnify former spouse for loss in portion of retirement pay caused by veteran's waiver of retirement pay to receive service-related disability benefits.

Held (8:0): Reversed and remanded.

Human Rights

Lord Advocate (representing the Taiwanese Judicial Authorities) v Dean
United Kingdom Supreme Court: [\[2017\] UKSC 44](#)

Judgment delivered: 28 June 2017

Coram: Lord Mance, Lord Sumption, Lord Reed, Lord Hughes, Lord Hodge

Catchwords:

Human rights – European Convention on Human Rights arts 3, 5, 8 – Where respondent convicted of manslaughter and other offences by District Court of Taipei – Where respondent fled to Scotland while appeal pending – Where convictions confirmed in absence – Where Ministry of Justice of Taiwan obtained provisional arrest warrant under *Extradition Act* 2003 – Where Appeal Court of High Court of Justiciary held extradition incompatible with art 3 because real risk of ill treatment in Taiwanese prison – Whether Appeal Court applied wrong test in assessing risk of harm respondent might face from non-state actors – Whether Supreme

Court has jurisdiction to hear Lord Advocate's appeal – Whether extradition would otherwise infringe arts 5 or 8.

Held (5:0): Appeal allowed.

R v Cody

Supreme Court of Canada: [\[2017\] SCC 31](#)

Judgment delivered: 16 June 2017

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

Catchwords:

Human Rights – *Canadian Charter of Rights and Freedoms* s 11(b) – Right to be tried within reasonable time – Where appellant charged with drug and weapons offences in January 2010 – Where five years passed between date appellant charged and date trial was scheduled to begin – Where appellant brought application under s 11(b) seeking stay of proceedings due to delay – Where trial judge applied framework set out in *R v Morin* [1992] 1 SCR 771 and stayed proceedings – Where Court of Appeal applied *R v Jordan* [2016] 1 SCR 631 and reversed decision, remitting matter for trial – Whether Court of Appeal erred in application of *Jordan*.

Held (7:0): Appeal allowed.

Stewart v Elk Valley Coal Corp

Supreme Court of Canada: [\[2017\] SCC 30](#)

Judgment delivered: 15 June 2017

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

Catchwords:

Human Rights – *Human Rights, Citizenship and Multiculturalism Act* 2000 s 7(1) – Discrimination – Where appellant worked in mine operated by respondent – Where respondent's policy required employees to disclose drug dependence or addiction – Where appellant tested positive for cocaine after loader operated by appellant involved in accident – Where appellant stated he thought he was addicted to cocaine – Where respondent terminated appellant's employment – Where Alberta Human Rights Tribunal held appellant terminated for breaching policy, not because of addiction – Appropriate standard of review – Whether Tribunal erred in failing to find termination constituted discrimination under s 7 of Act – If so, whether respondent met obligation to accommodate appellant to point of undue hardship.

Held (8:1): Appeal dismissed.

R (on the application of Kiarie) v Secretary of State for the Home Department; R (on the application of Byndloss) v Secretary of State for the Home Department

United Kingdom Supreme Court: [\[2017\] UKSC 42](#)

Judgment delivered: 14 June 2017

Coram: Lady Hale, Lord Wilson, Lord Carnwath, Lord Hodge, Lord Toulson

Catchwords:

Human rights – European Convention on Human Rights art 8 – Where appellants convicted for serious drug related offences – Where first appellant had resided in United Kingdom since age of 3 – Where second appellant had wife and child living in United Kingdom – Where respondent ordered deportation of appellants – Where respondent issued certificates under s 94B of *Nationality, Immigration and Asylum Act 2002* with effect that appellants could only appeal against decisions after deportation – Whether deportation in advance of appeal infringes art 8.

Held (5:0): Appeals allowed.

R (on the application of A and B) v Secretary of State for Health

United Kingdom Supreme Court: [\[2017\] UKSC 41](#)

Judgment delivered: 14 June 2017

Coram: Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes

Catchwords:

Human rights – European Convention on Human Rights arts 8, 14 – Where A, resident of Northern Ireland, became pregnant at age of 15 – Where abortion permitted in narrower circumstances in Northern Ireland than in rest of United Kingdom – Where A, with support of her mother, B, travelled to England to have abortion – Where respondent had duty under s 3(1) of *National Health Service Act 2006* to “provide throughout England, to such extent as he considers necessary to meet all reasonable requirements ... (c) medical ... services” – Where respondent had power under s 7(1) of Act and *NHS (Functions of Strategic Health Authorities and Primary Care Trusts and Administrative Arrangements) (England) Regulations 2002* to make direction that function of providing abortion services should be exercised by primary care trusts for benefit of all United Kingdom residents rather than for those “usually resident” in area – Whether, in failing to make direction, respondent acted irrationally and unlawfully took into account Northern Ireland Assembly’s decision not to

provide abortion services – Whether respondent required by s 3(1) to make direction – Whether failure to make direction violated art 14 of Convention taken in conjunction with art 8 because right to respect for private and family life not secured without discrimination on basis of residence.

Held (3:2): Appeal dismissed.

B v Waitemata District Health Board

New Zealand Supreme Court: [\[2017\] NZSC 88](#)

Judgment delivered: 14 June 2017

Coram: William Young, Glazebrook, Arnold, O'Regan and Ellen France JJ

Catchwords:

Human rights – *New Zealand Bill of Rights Act 1990* – Where appellant was inpatient at respondent's mental health unit over twelve week period – Where appellant admitted to Intensive Care Unit (ICU) for eleven days – Where appellant unable to smoke while in ICU – Whether respondent's smoke-free policy inconsistent with rights under Act – Whether respondent obliged by s 6 of *Smoke-free Environments Act 1990* to provide dedicated smoking rooms in mental health units.

Held (5:0): Appeal dismissed.

R (on the application of Coll) v Secretary of State for Justice

United Kingdom Supreme Court: [\[2017\] UKSC 40](#)

Judgment delivered: 24 May 2017

Coram: Lady Hale, Lord Clarke, Lord Wilson, Lord Hodge, Lord Toulson

Catchwords:

Human rights – *Equality Act 2010* – European Convention on Human Rights arts 8, 14 – Where appellant sentenced to life imprisonment with non-parole period of 11 years 3 months – Where period due to expire in November 2015 – Where appellant anticipated on released to be required to live at "Approved Premises" – Where only 6 "Approved Premises" for women prisoners, none of which are in London or Wales with result that women more likely than men to be placed in premises far from home and community – Whether current facilities amounted to unlawful sex discrimination contrary to Act and rights protected by arts 8, 14 – Whether Secretary of State breached public sector equality duty under s 49 of Act by failing to have due regard to need to eliminate discrimination against women in provision of "Approved Premises".

Held (5:0): Appeal allowed.

Poshteh v Royal Borough of Kensington and Chelsea

United Kingdom Supreme Court: [\[2017\] UKSC 36](#)

Judgment delivered: 10 May 2017

Coram: Lord Neuberger, Lord Clarke, Lord Reed, Lord Carnwath, Lord Hughes

Catchwords:

Human rights – *Housing Act* 1996 (UK) Pt VII – Where Iranian refugee applied to respondent for accommodation as homeless person – Where Act requires local housing authorities to secure provision of “suitable” accommodation – Where housing authority not to make “final offer” of accommodation unless “satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer” – Where appellant refused “final offer” on basis that features of property reminded her of prison in Iran – Whether appropriate to depart from *Ali v Birmingham City Council* [2010] 2 AC 39 in light of *Ali v United Kingdom* (2016) 63 EHRR 20 – Whether reviewing officer should have asked whether real risk of appellant’s mental health being damaged by moving into accommodation offered.

Held (5:0): Appeal dismissed.

Immigration

Maslenjak v United States

Supreme Court of the United States: [Docket No 16-309](#)

Judgment delivered: 22 June 2017

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

Catchwords:

Immigration – Naturalisation – Where petitioner, an ethnic Serb from Bosnia, was granted refugee status in United States – Where petitioner later applied for citizenship – Where petitioner failed to reveal that husband had served as officer in Bosnian Serb Army – Where petitioner charged with knowingly “procuring, contrary to law, naturalisation” on basis that petitioner knowingly made false statement under oath in naturalisation proceeding – Where District Court instructed jury that Government did not need to prove false statement was material to or influenced approval of citizenship application – Where Sixth Circuit

affirmed conviction – Whether Government must establish that illegal act played role in acquisition of citizenship.

Held (9:0): Vacated and remanded.

Esquivel-Quintana v Sessions, Attorney-General
Supreme Court of the United States: [Docket No 16-54](#)

Judgment delivered: 30 May 2017

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

Catchwords:

Immigration – *Immigration and Nationality Act 1965* – Where petitioner, a citizen of Mexico, is permanent resident of United States – Where petitioner convicted of unlawful sexual intercourse with minor more than three years younger than perpetrator – Where Department of Homeland Security initiated removal proceedings on basis petitioner convicted of “aggravated felony” – Where Immigration Judge ordered removal of petitioner to Mexico – Whether conviction amounted to “aggravated felony”.

Held (8:0): Reversed.

Insolvency

Hamish McIntosh v John Howard Ross Fisk and David John Bridgman
New Zealand Supreme Court: [\[2017\] NZSC 78](#)

Judgment delivered: 26 May 2017

Coram: William Young, Glazebrook, Arnold, O'Regan and Ellen France JJ

Catchwords:

Insolvency – *Companies Act 1993* ss 292, 297 – *Property Law Act 2007* s 348 – Where appellant provided funds to company that purported to offer investment management services – Where company was to invest funds on appellant’s behalf – Where appellant later sought to withdraw funds – Where company repaid appellant initial investment plus “profits” – Where company was in fact operating Ponzi scheme – Where liquidators brought claim to set aside payment to appellant – Where High Court allowed liquidators to recover fictitious profits but held appellant entitled to retain initial investment – Where Court of Appeal upheld decision – Whether Court of Appeal erred in ordering appellant to return fictitious profits –

Whether Court of Appeal erred in failing to order appellant to repay initial investment sum.

Held (4:1): Appeal and cross-appeal dismissed.

Joint Administrators of Lehman Brothers Limited v Lehman Brothers International (Europe) (in administration) & Ors
United Kingdom Supreme Court: [\[2017\] UKSC 38](#)

Judgment delivered: 17 May 2017

Coram: Lord Neuberger, Lord Kerr, Lord Clarke, Lord Sumption, Lord Reed

Catchwords:

Insolvency – Administration – *Insolvency Act* 1986 (UK) – *Insolvency Rules* 1986 (UK) – Where all shares in Lehman Brothers International (Europe) (“LBIE”) held by LB Holdings Intermediate 2 Ltd (“LBHI2”) and Lehman Brothers Ltd (“LBL”) – Where LBIE, LBHI2 and LBL in administration – Distribution priorities “waterfall” in insolvency – Whether creditors with debts in foreign currency entitled to shortfall between exchange rate as at administration date and exchange rate as at payment date – Whether, where interest payable during administration under r 2.88(7), interest can be claimed in subsequent liquidation – Whether contributions from members can be sought in respect of liability for interest under r 2.88(7) and liabilities which are not provable – Whether LBIE can prove in administrations of LBHI2 and LBL in respect of liabilities as members to make contributions to LBIE’s prospective liquidation – If not, whether LBIE can exercise right of set-off – If not, whether LBIE can invoke contributory rule that creditor cannot recover until discharged liability as contributory.

Held (4:1): Determinations restored in part, discharged in part and varied in part.

Jurisdiction

Perry v Merit Systems Protection Board
Supreme Court of the United States: [Docket No 16-399](#)

Judgment delivered: 23 June 2017

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

Catchwords:

Jurisdiction – *Civil Service Reform Act 1978* – Where petitioner received notice of termination from employment at Census Bureau for poor attendance – Where petitioner and Bureau reached settlement in which petitioner agreed to 30 day suspension and early retirement – Where settlement required petitioner to dismiss discrimination claims filed with Equal Employment Opportunity Commission – Where, after retiring, petitioner appealed suspension and retirement to Merits Systems Protection Board alleging discrimination and retaliation for prior discrimination complaints – Where Board held it had no jurisdiction because petitioner failed to prove settlement coerced and Board has no jurisdiction over voluntary actions – Where petitioner sought review in D.C. Circuit – Where D.C. Circuit transferred case to Federal Circuit – Proper review forum when Board dismisses mixed case on jurisdictional grounds.

Held (7:2): Reversed and remanded.

Douez v Facebook, Inc.

Supreme Court of Canada: [\[2017\] SCC 33](#)

Judgment delivered: 23 June 2017

Coram: McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ

Catchwords:

Jurisdiction – Choice of forum – Where resident of British Columbia brought action against Facebook in British Columbia alleging breach of British Columbia’s *Privacy Act 1996* s 3(2) – Where Facebook’s terms of use includes clause requiring disputes be resolved in California under Californian law – Whether forum selection clause unenforceable – Whether *forum non conveniens* test adopted in *Court Jurisdiction and Proceedings Transfer Act 2003* intended to replace common law test for forum selection clauses established in *Z.I. Pompey Industrie v ECU-Line N.V.* 2003 SCC 27 – Whether *Privacy Act 1996* overrides forum selection clauses.

Held (4:3): Appeal allowed.

QMY v GSS

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 41](#)

Judgment delivered: 21 June 2017

Coram: Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Stock NPJ and Mr Justice Gleeson NPJ

Catchwords:

Jurisdiction – Where daughter of appellant and respondent born in Hong Kong but resides with appellant in Mainland China – Where appellant commenced proceedings in Family Court for maintenance under *Guardianship of Minors Ordinance* s 10 – Where respondent commenced proceedings in People’s Court of Siming District in Xiamen City seeking custody and maintenance – Whether proceedings in Hong Kong should be dismissed on ground that Court has no jurisdiction to entertain applications under Ordinance in respect of child who is neither ordinarily resident nor present in Hong Kong – If jurisdiction exists, whether Court has discretion to decline jurisdiction other than on *forum non conveniens* principles.

Held (5:0): Appeal allowed.

Bristol-Myers Squibb Co v Superior Court of California, San Francisco County, et al

Supreme Court of the United States: [Docket No 16-466](#)

Judgment delivered: 19 June 2017

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

Catchwords:

Jurisdiction – Where petitioner sold drug in California – Where group of resident and non-resident plaintiffs sued petitioner in California Superior Court – Where non-resident plaintiffs did not allege drug obtained from California source or injuries suffered or treated in California – Where California Superior Court denied petitioner’s motion to quash service of non-residents’ claims on basis petitioner’s extensive activities in California gave Court general jurisdiction – Where Court of Appeal found Court lacked general jurisdiction but had specific jurisdiction over claims brought by non-resident plaintiffs – Where State Supreme Court affirmed on basis non-residents’ claims similar to residents’ claims and petitioner engaged in other activities in California – Whether California courts have specific jurisdiction to entertain non-resident claims.

Held (8:1): Reversed and remanded.

Microsoft Corp v Baker et al

Supreme Court of the United States: [Docket No 15-457](#)

Judgment delivered: 12 June 2017

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

Catchwords:

Jurisdiction – Class certification – Where respondents, owners of Xbox 360 produced by petitioner, filed class action alleging design defect – Where District Court struck out class allegations – Where respondents agreed to voluntary dismissal of claims but reserved right to revive claims should Court of Appeals reverse class certification denial – Where *Federal Rules of Civil Procedure* r 23(f) provides for interlocutory appeal from adverse class certification order in “the sole discretion of the courts of appeals” – Where Court of Appeals denied permission to appeal under r 23(f) – Where Ninth Circuit allowed appeal, holding District Court’s rationale for striking out class allegations was impermissible – Whether federal courts have jurisdiction to review order denying class certification after plaintiffs have voluntarily dismissed claims with prejudice.

Held (8:0): Reversed and remanded.

Mamahule Communal Property Association & Others v Minister of Rural Development and Land Reform

Constitutional Court of South Africa: [\[2017\] ZACC 12](#)

Judgment delivered: 5 May 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga JJ, Mbha AJ, Mhlantla J, Musi AJ and Zondo J

Catchwords:

Jurisdiction – *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* 1998 – Where Minister brought application against respondent community in Land Claims Court – Where community opposed application on ground that Land Claims Court does not have jurisdiction under Act – Whether Land Claims Court has power to adjudicate matters under Act – If not, whether Land Claims Court may declare persons unlawful occupiers and order eviction.

Held (11:0): Appeal dismissed.

Bolivarian Republic of Venezuela et al v Helmerich & Payne International Drilling Co et al

Supreme Court of the United States: [Docket No 15-423](#)

Judgment delivered: 1 May 2017

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

Catchwords:

Jurisdiction – *Foreign Sovereign Immunities Act 1976* – Expropriation exception to foreign state immunity – Where Venezuelan subsidiary of American company supplied oil rigs to entities of Venezuelan Government – Where company and subsidiary filed suit claiming that Venezuela unlawfully expropriated oil rigs – Where Venezuela claimed sovereign immunity – Whether expropriation exception covers expropriation of property belonging to subsidiary as Venezuelan national – Whether expropriation exception enlivened by “non-frivolous expropriation claim”.

Held (8:0): Vacated and remanded.

Legal Profession

Quebec (Criminal and Penal Prosecutions) v Jodoin

Supreme Court of Canada: [\[2017\] SCC 26](#)

Judgment delivered: 12 May 2017

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

Catchwords:

Legal profession – Costs against lawyer – Where lawyer filed motions for writs of prohibition alleging bias on part of judge who was to preside over hearing – Where, before motions served, parties informed different judge would be presiding – Where lawyer drew up new series of motions for writs of prohibition alleging bias on part of presiding judge – Where Superior Court dismissed motions and awarded costs against lawyer personally – Where Court of Appeal set aside award of costs against lawyer personally – Whether appropriate in circumstances to award costs against lawyer – Whether Court of Appeal erred in substituting own opinion for that of Superior Court.

Held (7:2): Appeal allowed.

Negligence

Saadati v Moorhead

Supreme Court of Canada: [\[2017\] SCC 28](#)

Judgment delivered: 2 June 2017

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

Catchwords:

Negligence – Mental injury – Where appellant’s tractor-truck struck by respondent’s vehicle – Where accident was second in series of five motor vehicle accidents involving appellant – Where trial judge found accident caused appellant’s psychological injuries – Where finding based on testimony of friends and family as to personality change after accident, not medical or expert evidence – Where Court of Appeal overturned trial judge’s finding on basis appellant had not demonstrated recognised psychiatric or psychological injury – Whether recovery for mental injury requires expert evidence or other proof of recognised psychiatric illness.

Held (9:0): Appeal allowed.

Patent Law

AstraZeneca Canada Inc. v Apotex Inc.
Supreme Court of Canada: [\[2017\] SCC 36](#)

Judgment delivered: 30 June 2017

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

Catchwords:

Patent law – *Patent Act* 1985 s 2 – Invalidity – Where appellant granted pharmaceutical patent – Where respondent applied to Minister of Health to sell generic version of drug – Where appellant brought action against respondent for patent infringement – Where Federal Court held patent invalid for lack of utility because it “promised more than it could provide” (“promise doctrine”) – Where Federal Court of Appeal upheld decision – Whether patent improperly invalidated on basis of “promise doctrine” – Whether “promise doctrine” is correct approach to determine whether patent has sufficient utility.

Held (9:0): Appeal allowed.

Matal v Tam
Supreme Court of the United States: [Docket No 15-1293](#)

Judgment delivered: 19 June 2017

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

Catchwords:

Patent law – Where respondent, lead singer of group “The Slants”, sought registration of trademark for title “The Slants” – Where Patent and Trademark Office denied application under *Lanham (Trademark) Act 1946* on basis trademark may “disparage ... or bring ... into contempt or disrepute” any “persons, living or dead” – Where Federal Circuit found disparagement clause in Act unconstitutional under First Amendment – Whether disparagement clause violates First Amendment.

Held (8:0): Affirmed.

Sandoz Inc v Amgen Inc et al

Supreme Court of the United States: [Docket No 15-1039](#)

Judgment delivered: 12 June 2017

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

Catchwords:

Patent law – *Biologics Price Competition and Innovation Act 2009* – Where petitioner sought Food and Drug Administration (FDA) approval to market “biosimilar” product – Where respondent sued petitioner for patent infringement and violations of competition law due to failure to supply application and manufacturing information to respondent as required by s 262(l)(2)(A), and provision of notice of commercial manufacturing under s 262(l)(8)(A) prior to obtaining licensure from FDA – Where Federal Court enjoined petitioner from marketing product until 180 days after date it provided notice in accordance with s 262(l)(8)(A) – Whether Federal Court erred in failing to find that s 262(l)(2)(A) is enforceable by injunction under federal law – Whether applicant may provide notice under s 262(l)(8)(A) prior to obtaining licensure.

Held (9:0): Vacated in part, reversed in part, and remanded.

Impression Products, Inc v Lexmark International, Inc

Supreme Court of the United States: [Docket No 15-1189](#)

Judgment delivered: 30 May 2017

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

Catchwords:

Patent law – *Patent Act 1952* – Patent infringement – Where respondent owned patents covering components of cartridges – Where respondent sold cartridges to purchasers either at full price, or at discount price if purchaser agreed to refrain from transferring cartridge to anyone except

respondent (“return program”) – Where remanufacturer companies acquired empty cartridges from purchasers then refilled and resold cartridges – Where respondent sued petitioner, a remanufacturer company, for patent infringement in respect of: (1) return program cartridges sold by petitioner within United States and (2) cartridges sold by petitioner abroad – Where Federal Circuit held by majority that respondent entitled to sue for infringement in respect of both categories – Whether initial sale of cartridges by respondent to purchasers exhausted respondent’s patent rights in cartridges.

Held (7:1): Reversed and remanded.

Procedure

Google Inc v Equustek Solutions Inc

Supreme Court of Canada: [\[2017\] SCC 34](#)

Judgment delivered: 28 June 2017

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

Catchwords:

Procedure – Injunctions – Interlocutory injunction – Non-party – Where respondent brought action against distributor – Where distributor left province – Where, despite court orders prohibiting sale of inventory and use of respondent’s intellectual property, distributor continued to carry on business from unknown location – Where Supreme Court of British Columbia issued interlocutory injunction ordering Google to cease displaying any part of distributor’s websites on any search results worldwide – Where Court of Appeal dismissed Google’s appeal – Whether Supreme Court erred in ordering non-party to globally de-index websites – Whether Supreme Court had jurisdiction to grant injunction with extraterritorial effect – Whether just and equitable to grant injunction.

Held (7:2): Appeal dismissed.

California Public Employees’ Retirement System v ANZ Securities, Inc

Supreme Court of the United States: [Docket No 16-373](#)

Judgment delivered: 26 June 2017

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

Catchwords:

Procedure – Limitation period – *Securities Act* 1933 ss 11, 13 – Where Lehman Brothers Holding Inc. raised capital through public securities offerings in 2007 and 2008 – Where petitioner purchased securities – Where class action filed claim against respondents in 2008 in Southern District of New York for participation in transactions – Where petitioner filed separate complaint in Northern District of California in 2011, more than three years after securities offerings – Where petitioner opted out of class action settlement – Where s 13 provides claim under s 11 must be brought “within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence” and cannot be brought “more than three years after the security was bona fide offered to the public” – Where trial court dismissed petitioner’s claim as out of time – Where Second Circuit affirmed – Whether claim properly dismissed – Whether 3 year time limit under s 13 was “tolled” during pendency of class action – If not, whether requirement that petitioner’s claim be “brought” within 3 years met because of filing of class action.

Held (5:4): Affirmed.

Pellerin Savitz LLP v Guindon

Supreme Court of Canada: [\[2017\] SCC 29](#)

Judgment delivered: 9 June 2017

Coram: McLachlin CJ, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

Catchwords:

Procedure – Limitation period – Lawyer’s professional fees – Where lawyer and client entered into fee agreement which provided invoices payable within 30 days – Where lawyer sent five invoices to client between 5 October 2011 and 1 March 2012 – Where lawyer filed action to recover unpaid fees on 12 March 2015 – Where Court of Appeal held action prescribed as regards first four invoices – Whether limitation period for claim for lawyer’s professional fees begins to run on billing date, date of termination of contract, or date of performance of last professional service.

Held (7:0): Appeal dismissed.

Town of Chester, New York v Laroe Estates, Inc

Supreme Court of the United States: [Docket No 16-605](#)

Judgment delivered: 5 June 2017

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

Catchwords:

Procedure – Intervention – *Federal Rules of Civil Procedure* r 24(a)(2) – Where land developer filed suit against Town of Chester – Where respondent filed motion to intervene of right under r 24(a)(2) on basis that it had paid land developer more than \$2.5 million in relation to the development project and had equitable interest in the property – Where respondent also filed intervener’s complaint seeking compensation – Where District Court denied motion to intervene on basis that equitable interest did not confer standing – Where Second Circuit reversed, holding that intervener of right not required to meet standing requirements under Art III of Constitution – Whether litigant seeking to intervene as of right under r 24(a)(2) must meet requirements of Art III if intervener wishes to pursue relief not requested by plaintiff.

Held (9:0): Vacated and remanded.

Kokesh v Securities and Exchange Commission

Supreme Court of the United States: [Docket No 16-529](#)

Judgment delivered: 5 June 2017

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

Catchwords:

Procedure – Limitation period – Where Securities and Exchange Commission brought action against petitioner alleging violation of various securities laws – Where Commission sought monetary civil penalties, disgorgement and injunction barring petitioner from future violations – Where jury found petitioner violated securities laws – Where District Court held civil penalty could not be imposed because action brought outside 5 year limitation period – Where District Court concluded disgorgement was not a “penalty” so not subject to 5 year limitation period – Where Tenth Circuit affirmed District Court decision – Whether claim for disgorgement must be commenced within 5 years of date claim accrued.

Held (9:0): Reversed.

Janferie Maeve Almond v Bruce James Read

New Zealand Supreme Court: [\[2017\] NZSC 80](#)

Judgment delivered: 30 May 2017

Coram: William Young, Glazebrook, Arnold, O'Regan and Ellen France JJ

Catchwords:

Procedure – Extension of time – *Court of Appeal (Civil) Rules 2005 r 29A* – Where appellant instructed solicitors to file appeal against High Court’s decision – Where appeal filed one day out of time due to lawyer’s error – Where Court of Appeal refused to grant extension of time because it considered appeal to be hopeless – Whether Court of Appeal erred in refusing to grant extension – Principles to be applied in relation to application for extension of time.

Held (5:0): Appeal allowed.

Water Splash Inc. v Menon

Supreme Court of the United States: [Docket No 16-254](#)

Judgment delivered: 22 May 2017

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

Catchwords:

Procedure – Service – Hague Service Convention – Where petitioner sued respondent, a former employee, in Texas – Where respondent resided in Canada – Where petitioner obtained permission to effect service by mail – Where trial court issued default judgment – Where trial court denied respondent’s motion to set aside judgment on ground she had not been properly served – Where Texas Court of Appeals held that Convention prohibited service of process by mail – Whether Hague Service Convention prohibit service of process by mail.

Held (8:0): Reversed and remanded.

TC Heartland LLC v Kraft Foods Group Brands LLC

Supreme Court of the United States: [Docket No 16-341](#)

Judgment delivered: 22 May 2017

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

Catchwords:

Procedure – Patents – Where patent infringement suit required to be brought in jurisdiction where defendant “resides” or “committed acts of infringement and has a regular and established place of business” – Where respondent filed patent infringement suit in Delaware – Where petitioner incorporated and headquartered in Indiana but shipped impugned products to Delaware – Whether petitioner “resides” or has “regular and established place of business” in Delaware.

Held (8:0): Reversed and remanded.

AGS v Harlene Hayne, Vice-Chancellor of the University of Otago
New Zealand Supreme Court: [\[2017\] NZSC 59](#)

Judgment delivered: 3 May 2017

Coram: William Young, Glazebrook, Arnold, O'Regan and Ellen France JJ

Catchwords:

Procedure – *Criminal Procedure Act 2011 s 200* – Suppression orders – Where appellant employed by respondent as security guard – Where appellant pleaded guilty to charges of wilful damage and assault – Where District Court discharged appellant without conviction – Where District Court made suppression order under s 200 prohibiting disclosure of appellant's name or other details – Where appellant disclosed District Court appearance to employer – Whether disclosure constituted breach of suppression order – Whether University, having received the information, entitled to rely and act upon it.

Held (5:0): Appeal dismissed.

Real Property

Lakes International Golf Management Limited v Hartley Clendon Vincent
New Zealand Supreme Court: [\[2017\] NZSC 99](#)

Judgment delivered: 29 June 2017

Coram: Elias CJ, William Young, Glazebrook, O'Regan and Ellen France JJ

Catchwords:

Real property – Covenants – Enforcement of covenants – Where respondent's family trust owns residential section at resort – Where covenant registered against property requires owner to join and meet levies imposed by "Golf Club" – Where "Golf Club" defined as "golf club to be incorporated as an incorporated society to provide for playing rights on the golf course" – Where golf course not managed by incorporated society but rather by club controlled by appellant – Where Court of Appeal held covenant did not require respondent to become member of club that is not incorporated society – Whether covenant can be enforced against respondent where club is not incorporated society.

Held (5:0): Appeal dismissed.

Statutory interpretation

Henson et al v Santander Consumer USA Inc

Supreme Court of the United States: [Docket No 16-349](#)

Judgment delivered: 12 June 2017

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

Catchwords:

Statutory interpretation – *Fair Debt Collection Practices Act* 1977 – Where “debt collector” defined by Act as person who “regularly collects or attempts to collect ... debts owed or due ... another” – Where third party loaned money to petitioners – Where respondent purchased defaulted loans from third party and sought to collect debts – Where Fourth Circuit held respondent did not qualify as “debt collector” because did not seek to collect debts owed to “another” but rather sought to collect debts it purchased and owned – Whether respondent fell within statutory definition of “debt collector”.

Held (9:0): Affirmed.

Genesis Medical Scheme v Registrar of Medical Schemes & Anor

Constitutional Court of South Africa: [\[2017\] ZACC 16](#)

Judgment delivered: 6 June 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojabelo, Pretorius AJJ and Zondo J

Catchwords:

Statutory interpretation – *Financial Institutions (Protection of Funds) Act* 2001 – Where appellant was registered as medical scheme under *Medical Schemes Act* 1998 – Where Registrar of Medical Schemes rejected appellant’s annual financial statements on basis statements did not correctly reflect financial position – Where Registrar, relying on High Court decision in *Registrar of Medical Schemes v Ledwaba No* [2007] ZAGPHC 24 (“*Omnihealth*”), considered that personal medical savings account (PMSA) funds were “trust property” for purposes of *Financial Institutions (Protection of Funds) Act* – Whether PMSA funds constitute “trust property” within meaning of definition in Act.

Held (9:2): Appeal allowed.

Advocate Health Care Network et al v Stapleton et al
Supreme Court of the United States: [Docket No 16-74](#)

Judgment delivered: 5 June 2017

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

Catchwords:

Statutory interpretation – *Employee Retirement Income Security Act 1974* – Where Act exempted “church plans” from certain regulations – Where Act initially defined “church plan” as “a plan established and maintained ... for its employees ... by a church” – Where Congress amended definition to include plans “maintained by an organization ... if such organization is controlled by or associated with a church” – Where petitioners, three church-affiliated organisations that run hospitals and healthcare facilities, offered pension plans to employees – Where respondents filed class actions alleging pension plans do not fall within “church plan” exemption because not established by church – Where District Court held plan must be established by church to qualify as “church plan” – Where Court of Appeals affirmed District Court decision – Whether pension plan must be established by church to qualify as “church plan”.

Held (8:0): Reversed.

Suffolk Coastal District Council v Hopkins Homes Ltd & Anor;
Richborough Estates Partnership LLP & Anor v Cheshire East Borough Council

United Kingdom Supreme Court: [\[2017\] UKSC 37](#)

Judgment delivered: 10 May 2017

Coram: Lord Neuberger, Lord Clarke, Lord Carnwath, Lord Hodge, Lord Gill

Catchwords:

Statutory interpretation – *Planning and Compulsory Purchase Act 2004* – Where National Planning Policy Framework (NPPF) published in 2012 – Where local planning authorities required to have regard to national policies under s 19(2) of the Act – Where local planning authorities required to prepare “development plan” under pt 2 of the Act – Whether local policies were “relevant policies for the supply of housing” within meaning of NPPF – Proper approach to interpretation of statutory development plan.

Held (5:0): Appeals dismissed.
