



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

Volcafe Ltd & Ors v Compania Sud Americana De Vapores SA
United Kingdom Supreme Court: [\[2018\] UKSC 61](#)

Judgment delivered: 5 December 2018

Coram: Reed, Wilson, Sumption, Hodge and Kitchin LJ

Catchwords:

Admiralty – Loss or damage of cargo – Burden of proof – Where appellants owners and holders of bills of lading for consignments of coffee beans – Where condensation damaged coffee beans – Where appellants brought claim against carriers for breach of art III.2 of Hague Rules for failure to “properly and carefully load, handle, stow, carry, keep, care for, and discharge” goods – Where carriers alleged “inherent vice” on ground coffee beans unable to withstand ordinary levels of condensation – Where trial judge held no burden on carrier to prove damage to cargo caused without negligence or due to inherent vice – Whether appellants bore burden of proof under art III.2 – Whether burden of proof altered by art IV.2(m) “inherent vice” exception.

Held (5:0): Appeal allowed.

Arbitration

Swissbourgh Diamond Mines (Pty) Limited & Ors v Kingdom of Lesotho
Court of Appeal of Singapore: [\[2018\] SGCA 81](#)

Judgment delivered: 27 November 2018

Coram: Sundaresh Menon CJ, Andrew Phang Boon Leong, Judith Prakash, Tay Yong Kwang and Steven Chong JJA

Catchwords:

Arbitration – Jurisdiction – Where appellants commenced arbitration proceedings against Kingdom of Lesotho in Southern African Development Community (“SADC”) Tribunal alleging Kingdom breached obligations under SADC Treaty – Where SADC Tribunal “shuttered” between 2010 and 2015 – Where appellants commenced proceedings in Permanent Court of Arbitration (“PCA”) alleging Kingdom breached SADC Treaty and Protocols by participating in shuttering of SADC Tribunal without providing alternative means for claim to be determined – Where PCA Tribunal held it had jurisdiction to hear claim and found Kingdom breached obligations – Where High Court set aside arbitration award on basis PCA Tribunal lacked jurisdiction over dispute – Whether High Court erred in concluding PCA Tribunal lacked jurisdiction.

Held (5:0): Appeal dismissed.

Constitutional Law

Ngaronoa & Ors v Attorney-General & Ors
New Zealand Supreme Court: [\[2018\] NZSC 123](#)

Judgment delivered: 14 December 2018

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

Catchwords:

Constitutional law – Entrenchment – *Electoral Act 1993* – Where s 268 of Act required Parliament to pass amendments to s 74 by majority of 75 per cent of members of House of Representatives – Where s 74 provided every adult person who met certain qualifications may register as elector – Where s 80 disqualified prisoners serving sentences of life imprisonment, preventative detention or term of three years or more – Where *Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010* extended s 80 to disqualify all prisoners – Where High Court dismissed application for declaration amending Act invalid – Where Court of Appeal dismissed appeal – Whether amending Act required 75 per cent majority to be passed.

Held (4:1): Appeal dismissed.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference by the Attorney-General and the Advocate General for Scotland

United Kingdom Supreme Court: [\[2018\] UKSC 64](#)

Judgment delivered: 13 December 2018

Coram: Hale, Reed, Kerr, Sumption, Carnwath, Hodge and Lloyd-Jones LJ

Catchwords:

Constitutional law – Scotland – Legislative competence – *Scotland Act 1998* – Where United Kingdom Parliament enacted *European Union (Withdrawal) Act 2018* – Where Scottish Parliament passed *European Union (Legal Continuity) (Scotland) Bill 2018* – Where s 17 of Bill provides subordinate legislation made by Ministers of United Kingdom on matters of retained European Union law after United Kingdom’s withdrawal from European Union of no effect unless consent of Scottish Ministers obtained – Where s 33 and sch 1 to Bill repeal references in *Scotland Act* to European Union law and European Union – Whether Bill beyond legislative competence of Scottish Parliament under s 29 of *Scotland Act* because relates to matters reserved to United Kingdom Parliament, breaches sch 4 of *Scotland Act* or incompatible with European Union law.

Held (7:0): Questions answered.

Law Society of South Africa & Ors v President of the Republic of South Africa & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 51](#)

Judgment delivered: 11 December 2018

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

Catchwords:

Constitutional law – Treaties – Where Protocol adopted by Southern African Development Community (“SADC”) in 2000 established Tribunal to interpret SADC Treaty and resolve disputes between States and between States and individuals relating to Treaty – Where President of South Africa supported temporary suspension of operations of Tribunal in 2010 – Where President signed further Protocol in 2014 removing Tribunal’s jurisdiction to hear disputes between States and citizens – Where High Court declared President’s participation in suspension of operations of Tribunal and subsequent signing of 2014 Protocol unlawful, irrational and

unconstitutional – Whether High Court correctly concluded President’s participation and signature unconstitutional.

Held (10:0): Order affirmed.

South African Veterinary Association v Speaker of the National Assembly & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 49](#)

Judgment delivered: 5 December 2018

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

Catchwords:

Constitutional law – Constitution ss 59, 72, 118 – Parliamentary duty to facilitate public participation in law-making process – Where version of *Medicines and Related Substances Amendment Bill* published for public comment did not include “veterinarian” in list of professionals who would require licences to dispense and compound medicines – Whether word “veterinarian” in s 22C(1)(a) of *Medicines and Related Substances Amendment Act 2015* constitutionally invalid.

Held (10:0): Declaration made.

Electoral Commission of South Africa v Speaker of the National Assembly & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 46](#)

Judgment delivered: 22 November 2018

Coram: Cameron, Froneman, Khampepe, Mhlantla and Theron JJ, Basson, Dlodlo, Goliath and Petse AJJ

Catchwords:

Constitutional law – Declaration of invalidity – Extension of suspension – Where Constitutional Court declared Commission’s failure to obtain and record all reasonably available voters’ addresses on electoral roll inconsistent with obligations under Constitution – Where Court suspended declaration of invalidity to 30 June 2018 – Where Commission applied for extension of suspension of declaration of invalidity until after 2019 elections – Whether extension should be granted.

Held (7:2): Orders made.

Mlungwana & Ors v The State & Anor
Constitutional Court of South Africa: [\[2018\] ZACC 45](#)

Judgment delivered: 19 November 2018

Coram: Cameron, Froneman, Khampepe, Mhlantla and Theron JJ, Basson, Dlodlo, Goliath and Petse AJJ

Catchwords:

Constitutional law – Constitution s 17 – Freedom of assembly – Where appellants travelled as group of 15 members to protest about inadequate sanitation facilities – Where others joined protest – Where s 12(1)(a) of *Regulation of Gatherings Act 1993* prohibits convening assembly of more than 15 people without first notifying responsible officer of municipality – Where appellants charged with contravening s 12(1)(a) – Where High Court declared s 12(1)(a) unconstitutional – Whether High Court correctly declared s 12(1)(a) unconstitutional.

Held (9:0): Appeal dismissed.

Reference Re Pan-Canadian Securities Regulation
Supreme Court of Canada: [\[2018\] SCC 48](#)

Judgment delivered: 9 November 2018

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

Catchwords:

Constitutional law – *Constitution Act 1867* s 91(2) – Division of powers – Trade and commerce power – Where federal government and some provincial and territorial governments proposed to implement national cooperative system for regulation of capital markets – Where main components of system are model provincial/territorial statute dealing with day-to-day aspects of securities trade and proposed federal statute establishing criminal offences relating to financial markets and national securities regulator to administer coordinated regime – Where Government of Quebec referred questions whether Constitution authorises cooperative system and draft federal statute to Quebec Court of Appeal – Where majority of Court of Appeal concluded system and draft federal statute unconstitutional – Whether majority of Court of Appeal erred in concluding Constitution does not authorise implementation of cooperative system and draft federal statute exceeds trade and commerce power.

Held (8:1): Appeals allowed.

Churchill Falls (Labrador) Corp v Hydro-Québec
Supreme Court of Canada: [\[2018\] SCC 46](#)

Judgment delivered: 2 November 2018

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

Catchwords:

Contracts – Performance – Good faith and equity – Duty to renegotiate – Unforeseeability – Where appellant and respondent entered into contract for construction and operation of hydroelectric plant in 1969 – Where purchase price for electricity set in contract now well below market prices – Where appellant sought alteration of contract – Where Quebec Superior Court concluded intervention not warranted – Where Court of Appeal dismissed appeal – Whether party to contract can require other party to renegotiate because of allegedly unforeseeable changes in market since contract signed.

Held (7:1): Appeal dismissed.

Contracts

Barnardo's v Buckinghamshire & Ors
United Kingdom Supreme Court: [\[2018\] UKSC 55](#)

Judgment delivered: 7 November 2018

Coram: Hale, Wilson, Sumption, Hodge and Briggs LJ

Catchwords:

Contracts – Pension schemes – Indexation – Retail Prices Index (“RPI”) – Where appellant adopted pension scheme – Where pension scheme provided for pensions to be increased at prescribed rate – Where rate defined as lesser of 5% and percentage rise in RPI over year ending on previous 31 December – Where RPI defined as “General Index of Retail Prices published by the Department of Employment or any replacement adopted by the Trustees without prejudicing Approval” – Where High Court held definition of RPI did not empower trustees to adopt index other than RPI unless RPI discontinued as officially published index and replaced – Where majority of Court of Appeal dismissed appeal – Whether courts below erred in failing to find trustees empowered to adopt index other than RPI which trustees consider more suitable measure of price inflation regardless of whether RPI continues to be published.

Held (5:0): Appeal dismissed.

Corporations

Brunette v Legault Joly Thiffault, s.e.n.c.r.l.

Supreme Court of Canada: [\[2018\] SCC 55](#)

Judgment delivered: 7 December 2018

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

Catchwords:

Corporations – Shareholders – Shareholder actions – Where group of corporations declared bankrupt after receiving unexpected tax assessment – Where appellants as trustees of shareholder of holding company commenced action against group of professionals who set up tax structure – Where Supreme Court dismissed action on basis shareholder lacked sufficient interest under *Code of Civil Procedure*, CQLR, c. C-25 art 165 – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding sufficient interest to bring claim.

Held (8:1): Appeal dismissed.

Costs

McGuire v Secretary for Justice

New Zealand Supreme Court: [\[2018\] NZSC 116](#)

Judgment delivered: 27 November 2018

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

Catchwords:

Costs – Lawyers acting in person – Where appellant applied for approval to provide legal aid services – Where Secretary for Justice refused application – Where appellant commenced judicial review proceedings – Where Secretary applied to strike out part of claim on basis appellant precluded from applying for judicial review by s 83 of *Legal Services Act 2011* because failed to exercise right to review under s 82 – Where High Court dismissed strike out application but declined to award costs to appellant – Where Court of Appeal allowed cross-appeal and struck out claim – Whether Court of Appeal erred in striking out claim – Whether *Joint Action Funding v Eichelbaum* [2017] NZCA 249, which held lawyers acting in person not entitled to costs, correctly decided.

Held (5:0): Appeal dismissed.

Criminal Law

HKSAR v Chan Chi Ho Lincoln

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 64](#)

Judgment delivered: 21 December 2018

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ, Lord Phillips of Worth Matravers NPJ

Catchwords:

Criminal law – Unequivocal plea of guilty – Application to reverse a guilty plea before sentence – Where pedestrian injured whilst crossing the road from a safety island – Where the place of the accident was not a zebra crossing and pedestrians had no priority to use the road – Where unrepresented driver pleaded guilty to careless driving – Where driver subsequently claimed pedestrian hit side of his vehicle while playing with her mobile phone, rather than his vehicle hitting her – Where driver already served the sentence of 150 hours community service – Whether there is a discretion to reverse an unequivocal guilty plea before sentence.

Held (5:0): Appeal allowed with costs; conviction quashed; no retrial.

United States v Stitt; United States v Sims

Supreme Court of the United States: [Docket No 17-765](#); [Docket No 17-766](#)

Judgment delivered: 10 December 2018

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

Catchwords:

Criminal law – Sentencing – Mandatory minimum sentences – *Armed Career Criminal Act* 18 U.S.C. ss 922, 924 – Meaning of “burglary” – Where respondents convicted of unlawfully possessing firearm contrary to s 922 – Where s 924 imposes mandatory minimum sentence for offenders who have at least three previous convictions for certain “violent” felonies, defined to include “any crime punishable by imprisonment for a term exceeding one year ... that ... is burglary” – Where respondents had prior convictions for violations of state burglary laws that prohibited burglary of structures or vehicles adapted or customarily used for overnight accommodation – Where District Courts found state crimes fell within meaning of “burglary” – Where Courts of Appeals allowed appeals – Whether Courts of Appeals erred in construing term “burglary”.

Held (9:0): Reversed; vacated and remanded.

R v Cyr-Langlois

Supreme Court of Canada: [\[2018\] SCC 54](#)

Judgment delivered: 6 December 2018

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

Catchwords:

Criminal law – Evidence – Breathalyzer test results – Presumption of accuracy – Where respondent charged with operating motor vehicle with blood alcohol level over legal limit – Where technician administering breathalyzer tests failed to observe respondent for period prior to administering each test – Where trial judge found failure to follow observation procedure sufficient to raise reasonable doubt about reliability of results for purpose of rebutting presumption of accuracy under s 258 of *Criminal Code*, R.S.C. 1985, c. C-46 – Where trial judge acquitted respondent – Where Superior Court set aside acquittal – Where Court of Appeal restored verdict of acquittal – Whether Court of Appeal erred in concluding trial judge correctly found reasonable doubt as to reliability raised.

Held (8:1): Appeal allowed.

R v Vice Media Canada Inc

Supreme Court of Canada: [\[2018\] SCC 53](#)

Judgment delivered: 30 November 2018

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

Catchwords:

Criminal law – Production orders – Standard of review – Where police obtained *ex parte* production order compelling appellants to produce messages exchanged with suspected terrorist – Where Superior Court held open to authorising judge to conclude media's interest was outweighed by public interest in obtaining evidence of serious terrorism offences – Where Court of Appeal dismissed appeal – Whether courts below erred in concluding production order validly issued – Standard of review applicable to production orders relating to media.

Held (5:4): Appeal dismissed.

Employment Law

Williams v The Trustees of Swansea University Pension & Assurance Scheme & Anor

United Kingdom Supreme Court: [\[2018\] UKSC 65](#)

Judgment delivered: 17 December 2018

Coram: Kerr, Carnwath, Hodge, Black and Kitchin LJ

Catchwords:

Employment law – *Equality Act 2010* s 15(1) – Discrimination – Disability discrimination – Unfavourable treatment – Where appellant retired from employment to due ill-health – Where appellant entitled under pension scheme to “enhancement” calculated on basis of salary at date of retirement – Where appellant employed full-time for 10 years then part-time for final three years due to disabilities – Where Employment Tribunal held calculation of enhancement based upon final part-time salary constituted discrimination within meaning of s 15(1) – Where Employment Appeal Tribunal allowed appeal – Where Court of Appeal affirmed decision of Employment Appeal Tribunal – Whether Court of Appeal erred in failing to find calculation of enhancement based upon final part-time salary constituted discrimination.

Held (5:0): Appeal dismissed.

South African Commercial, Catering and Allied Workers Union & Ors v Woolworths (Pty) Limited

Constitutional Court of South Africa: [\[2018\] ZACC 44](#)

Judgment delivered: 6 November 2018

Coram: Zondo DCJ, Froneman, Jafta, Khampepe, Madlanga and Theron JJ, Cachalia, Dlodlo, Goliath and Petse AJJ

Catchwords:

Employment law – Retrenchment – *Labour Relations Act 1995* s 189A(19) – Where respondent retrenched members of appellant – Where Labour Court held retrenchment procedurally and substantively unfair and ordered appellant to reinstate members – Where Labour Appeal Court substituted reinstatement for remedy of 12 months’ compensation – Whether retrenchments operationally justifiable on rational grounds for purpose of s 198A(19)(b) – Whether respondent failed to consider alternatives to retrenchment in accordance with s 189A(19)(c) – Whether reinstatement “not reasonably practicable”.

Held (9:0): Appeal allowed.

Equity

Moore v Sweet

Supreme Court of Canada: [\[2018\] SCC 52](#)

Judgment delivered: 23 November 2018

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

Catchwords:

Equity – Restitution – Unjust enrichment – Constructive trusts – Where husband purchased life insurance policy and designated wife as beneficiary – Where parties subsequently separated – Where parties entered into agreement pursuant to which wife would pay premiums in order to remain named as sole beneficiary of policy – Where husband subsequently named new common law spouse as beneficiary – Whether designation of new common law spouse in accordance with *Insurance Act, R.S.O. 1990, c. I.8* precluded recovery by wife – Whether new common law spouse unjustly enriched – If yes, whether constructive trust appropriate remedy.

Held (7:2): Appeal allowed.

Human Rights

Welsh Ministers v PJ

United Kingdom Supreme Court: [\[2018\] UKSC 66](#)

Judgment delivered: 17 December 2018

Coram: Hale, Kerr, Wilson, Black and Lloyd-Jones LJ

Catchwords:

Human rights – Right to liberty – European Convention on Human Rights art 5 – *Mental Health Act 1983* – Community treatment orders – Where appellant discharged from compulsory detention subject to community treatment order – Where community treatment order required appellant to reside in care home subject to close supervision – Where Court of Appeal concluded Act permitted imposition of conditions in community treatment order which have effect of depriving patient of liberty – Whether Court of Appeal erred in concluding Act permits imposition of conditions in community treatment order which have effect of depriving patient of liberty.

Held (5:0): Appeal allowed.

R v Boudreault

Supreme Court of Canada: [\[2018\] SCC 58](#)

Judgment delivered: 14 December 2018

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

Catchwords:

Human Rights – *Canadian Charter of Rights and Freedoms* ss 1, 7, 12 – Mandatory victim surcharge – Where *Criminal Code* R.S.C. 1985 c. C-46 s 737 requires offenders to pay mandatory victim surcharge – Where appellants impecunious offenders – Where courts below rejected constitutional challenges to surcharge – Whether surcharge constitutes cruel and unusual punishment – Whether surcharge infringes right to liberty and security of person.

Held (7:2): Appeals allowed.

R v Reeves

Supreme Court of Canada: [\[2018\] SCC 56](#)

Judgment delivered: 13 December 2018

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

Catchwords:

Human Rights – *Canadian Charter of Rights and Freedoms* ss 8, 24 – Search and seizure – Exclusion of evidence – Where accused and spouse shared home – Where spouse consented to police entry into home and seizure of computer – Where child pornography found on computer – Where accused charged with possessing and accessing child pornography – Where application judge held computer evidence should be excluded under s 24 because rights under s 8 violated – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in failing to find evidence should be excluded.

Held (9:0): Appeal allowed.

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

United Kingdom Supreme Court: [\[2018\] UKSC 59](#)

Judgment delivered: 28 November 2018

Coram: Hale, Mance, Carnwath, Hodge and Black LJJ

Catchwords:

Human rights – Right to liberty – Unlawful discrimination – European Convention on Human Rights arts 5, 14 – Extended determinate sentences (“EDS”) – *Criminal Justice Act 2003* – Where Act provided for imposition of EDS comprised of custodial term and “extension period” – Where offender serving EDS eligible for parole after serving two-thirds of custodial term – Where other categories of prisoners serving determinate sentences eligible for parole after serving half of sentence – Where prisoners serving certain indeterminate sentences eligible for parole after serving half of minimum term – Where appellant sentenced to EDS comprised of 21 year custodial term and 4 year extension period – Where appellant sought judicial review of sentence on basis different treatment in relation to parole contravened arts 14 and 5 – Where High Court dismissed claim – Whether EDS prisoners in analogous situation to indeterminate sentence prisoners or other determinate sentence prisoners – If yes, whether justification for difference in treatment between categories of prisoners.

Held (3:2): Appeal dismissed.

Mazraani v Industrial Alliance Insurance and Financial Services Inc & Anor

Supreme Court of Canada: [\[2018\] SCC 50](#)

Judgment delivered: 16 November 2018

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

Catchwords:

Human Rights – *Canadian Charter of Rights and Freedoms* s 19 – Official languages – Where appellant brought proceedings in Tax Court of Canada – Where hearing conducted primarily in English despite requests by witnesses and counsel for intervener to speak French – Where Tax Court of Canada decided matter in appellant’s favour – Where Federal Court of Appeal allowed appeal – Whether Federal Court of Appeal erred in finding language rights of parties, witnesses or counsel violated.

Held (9:0): Appeal dismissed.

Mount Lemmon Fire District v Guido et al

Supreme Court of the United States: [Docket No 17-587](#)

Judgment delivered: 6 November 2018

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

Catchwords:

Human rights – Discrimination – Age discrimination – *Age Discrimination in Employment Act 1967* – Where respondents filed suit alleging petitioner terminated employment in breach of Act – Where s 630(b) states “[t]he term ‘employer’ means a person engaged in an industry affecting commerce who has twenty or more employees. ... The term also means ... a State or political subdivision of a State” – Where Ninth Circuit held words “also means” created separate category of “employer” – Whether Ninth Circuit erred in holding petitioner “employer” for purposes of Act.

Held (8:0): Affirmed.

Interpretation

UKI (Kingsway) Limited v Westminster City Council

United Kingdom Supreme Court: [\[2018\] UKSC 67](#)

Judgment delivered: 17 December 2018

Coram: Hale, Kerr, Carnwath, Lloyd-Jones and Kitchin LJJ

Catchwords:

Interpretation – *Local Government Finance Act 1988* – *Electronic Communications Act 2000* – Service of notice – Where respondent owner of building – Where building managed by third party under contract with respondent – Where appellant council delivered notice by hand to building – Where third party scanned and emailed copy of notice to respondent – Where Valuation Tribunal held service of notice invalid and therefore inclusion of premises on rating list as separate hereditament invalid – Where Upper Tribunal allowed appeal – Where Court of Appeal reinstated Valuation Tribunal’s decision – Whether Court of Appeal erred in concluding notice not validly served on date received by respondent.

Held (5:0): Appeal allowed.

Amardien & Ors v Registrar of Deeds & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 47](#)

Judgment delivered: 28 November 2018

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

Catchwords:

Interpretation – *Alienation of Land Act 1981 s 26* – *National Credit Act s 129* – Where appellants entered into sale agreements with Cape Town Community Housing Company (Pty) Limited (“CTCHC”) for subsidised housing between 2000 and 2001 – Where s 26 of *Alienation of Land Act 1981* obliged CTCHC to record agreements before receiving payments under agreements – Where CTCHC failed to record agreements until 2014 – Where CTCHC subsequently issued notices under s 129 of *National Credit Act* stating appellants in arrears and agreements would be cancelled if default not remedied within 20 days – Where appellants failed to pay – Where CTCHC cancelled agreements – Where High Court held cancellation valid because s 26 only prevented creditor from receiving consideration before recording agreement and did not prevent amounts from becoming due – Where High Court held CTCHC fulfilled obligations under s 129 because not essential for notices to set out amount of arrears – Whether High Court erred in construction of s 26 – Whether High Court erred in concluding CTCHC fulfilled obligations under s 129.

Held (10:0): Appeal allowed.

Secretary of State for Justice v MM

United Kingdom Supreme Court: [\[2018\] UKSC 60](#)

Judgment delivered: 28 November 2018

Coram: Hale, Kerr, Hughes, Black and Lloyd-Jones LJJ

Catchwords:

Interpretation – *Mental Health Act 1983* – Discharge – Powers of First-tier Tribunal and Secretary of State – Where appellant subject of hospital order and restriction order under Act – Where appellant applied to First-tier Tribunal for conditional discharge on basis he live at particular place and not be allowed to leave without escort – Where Tribunal dismissed application on ground it had no power to impose conditions on discharge which amounted to deprivation of liberty – Whether Act permits Tribunal or Secretary to order conditional discharge of restricted patient subject to conditions which amount to detention or deprivation of liberty.

Held (4:1): Appeal dismissed.

HKSAR v Special View Ltd

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 46](#)

Judgment delivered: 7 November 2018

Coram: Ma CJ, Ribeiro and Fok PJJ, Stock and Spigelman NPJJ

Catchwords:

Interpretation – *Marine Fish Culture Ordinance* – Expiration of licence – Where respondent held 12 month licence to operate raft in fish culture zone – Where Director of Agricultural, Fisheries and Conservation Department decided to cancel licence on basis respondent in breach of regulations and licence conditions – Where respondent appealed to Administrative Appeals Board under s 16(1)(c) of Ordinance – Where appeal instituted within 28 days of cancellation decision in accordance with Ordinance but after expiry date of licence – Where respondent charged under s 13(2) with causing or permitting raft to remain in fish culture zone without licence – Where respondent argued licence valid until date of determination of appeal – Where magistrate convicted respondent – Where Court of First Instance allowed appeal – Whether Court of First Instance erred in concluding s 16 of Ordinance rendered licence valid until determination of appeal even if appeal determined after expiry date.

Held (5:0): Appeal allowed.

Northland Environmental Protection Society v Chief Executive of the Ministry for Primary Industries & Ors

New Zealand Supreme Court: [\[2018\] NZSC 105](#)

Judgment delivered: 9 November 2018

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

Catchwords:

Interpretation – *Forests Act 1949* s 2(1) – *Protected Objects Act 1975* s 2(1) – Where appellant formed view swamp kauri being illegally exported in slabs said to be table tops and temple poles – Where High Court held swamp kauri lawfully exported because came within definition of finished or manufactured indigenous timber product in s 2(1) of *Forests Act* – Where Court of Appeal dismissed appeal – Whether courts below erred in concluding table tops and temple poles met definition in s 2(1) of *Forests Act* – Whether swamp kauri is protected object for purposes of *Protected Objects Act*.

Held (5:0): Appeal allowed.

Judicial Review

Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation & Ors

New Zealand Supreme Court: [\[2018\] NZSC 122](#)

Judgment delivered: 14 December 2018

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

Catchwords:

Judicial review – Concessions – *Conservation Act 1987* pt 3B – Where Department of Conservation granted concessions to second and third respondents for commercial tour operations – Where appellant applied for judicial review of decision granting concessions – Where High Court found decision-maker made errors of law but concluded errors did not affect outcome – Where Court of Appeal dismissed appeal – Whether courts below erred in failing to grant relief.

Held (4:1): Appeal allowed.

Mkhize N.O. v Premier of the Province of KwaZulu-Natal & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 50](#)

Judgment delivered: 6 December 2018

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

Catchwords:

Judicial review – Substitution – Where fourth respondent removed deceased as Inkosi of community and appointed second respondent – Where deceased commenced proceedings in High Court seeking to set aside removal – Where interim order made preventing second respondent from holding position until matter resolved – Where deceased died before trial – Where appellant appointed executrix of deceased's estate – Where appellant sought to be substituted for deceased in High Court proceedings and joined as second applicant as guardian of deceased's son – Where High Court dismissed applications – Where Supreme Court of Appeal granted substitution application in deceased's monetary claims but dismissed application to be substituted or joined in review application on basis claim to be reinstated was personal right – Where Supreme Court of Appeal refused application for rescission of interim order on basis deceased's wrongful removal should be determined at trial to determine monetary claims and rightful successor – Where High Court subsequently held appellant had no claim to pursue review of deceased's removal as monetary claims separate from review application and unrelated to whether deceased unlawfully removed – Where Supreme Court of Appeal dismissed application for leave to appeal – Whether High Court misinterpreted decision of Supreme Court of Appeal – Whether High Court failed to have regard to principle of *res judicata*.

Held (10:0): Appeal allowed.

Weyerhaeuser Co v United States Fish and Wildlife Service et al
Supreme Court of the United States: [Docket No 17-71](#)

Judgment delivered: 27 November 2018

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

Catchwords:

Judicial review – Review of exercise of discretion – Where Fish and Wildlife Service listed dusky gopher frog as endangered species – Where Service designated area including land owned by petitioner as “critical habitat” – Where petitioner commenced judicial review proceedings – Where District Court upheld designation of area as critical habitat and declined to consider challenge to decision not to exclude petitioner’s land – Where Fifth Circuit affirmed – Whether Service authorised to designate area as critical habitat where area would require some modification to support population of species – Whether decision not to exclude petitioner’s land from critical habitat subject to judicial review.

Held (8:0): Vacated and remanded.

Jurisdiction

Attorney General v Taylor & Ors

New Zealand Supreme Court: [\[2018\] NZSC 104](#)

Judgment delivered: 9 November 2018

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

Catchwords:

Jurisdiction – Declarations of inconsistency – *New Zealand Bill of Rights Act 1990* – Where respondents sought declaration prohibition against prisoners voting introduced by *Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010* inconsistent with right to vote in s 12 of Bill of Rights – Where High Court made declaration – Where Court of Appeal concluded High Court had jurisdiction to make declaration and dismissed appeal – Where Court of Appeal further held Mr Taylor disenfranchised by previous legislation and lacked standing to apply for declaration – Whether High Court has jurisdiction to make declaration of inconsistency – Whether Court of Appeal erred in concluding Mr Taylor lacked standing.

Held (3:2): Appeal dismissed; cross-appeal allowed.

Migration

Rhuppiah v Secretary of State for the Home Department

United Kingdom Supreme Court: [\[2018\] UKSC 58](#)

Judgment delivered: 14 November 2018

Coram: Wilson, Carnwath, Hughes, Black and Lloyd-Jones LJJ

Catchwords:

Migration – Respect for private life – Financial independence – *Nationality, Immigration and Asylum Act 2002* s 117B – Where appellant is Tanzanian national – Where appellant provides care to friend suffering debilitating condition – Where appellant applied for leave to remain in the United Kingdom – Where s 117B(3) requires financial independence to be weighed against right to respect for private life – Where s 117B(5) provides little weight should be given to private life if private life established at time when immigration status was precarious – Where Home Secretary dismissed appellant’s application – Where First-tier Tribunal upheld Home Secretary’s decision on basis s 117B(5) applied and appellant not “financially independent” as appellant depended on support from father and friend – Where Upper Tribunal and Court of Appeal dismissed appeals – Whether courts below erred in construction of word “precarious” in s 117B(5) – Whether courts below erred in concluding appellant not financially independent within meaning of s 117B(3).

Held (5:0): Appeal allowed.

Patents

Warner-Lambert Company LLC v Generics (UK) Ltd t/a Mylan & Anor

United Kingdom Supreme Court: [\[2018\] UKSC 56](#)

Judgment delivered: 14 November 2018

Coram: Mance, Sumption, Reed, Hodge and Briggs LJJ

Catchwords:

Patents – Swiss-form patents – Sufficiency – Where appellant’s patent contained claims relating to use of pregabalin for treating (1) pain, (2) inflammatory pain and (3) neuropathic pain – Where respondents launched generic pregabalin product in 2015 – Where primary judge held patent contained sufficient disclosure in specification to support claim pregabalin was efficacious in treatment of inflammatory and peripheral

neuropathic pain only – Where primary judge rejected application concerning amendment to narrow patent as abuse of process – Where Court of Appeal upheld primary judge’s findings relating to sufficiency and decision on amendment application – Whether courts below erred in concluding claim 1 extended to all pain and claim 3 to all neuropathic pain – Whether courts below erred in concluding claims relating to pain and neuropathic pain invalid – Whether courts below erred in concluding amendment application was abuse of process.

Held (3:2): Appeal dismissed; cross-appeal allowed.

Real Property

London Borough of Southwark & Anor v Transport for London

United Kingdom Supreme Court: [\[2018\] UKSC 63](#)

Judgment delivered: 5 December 2018

Coram: Hale, Reed, Carnwath, Lloyd-Jones and Briggs LJJ

Catchwords:

Real property – Meaning of “highway” – Where art 2(1)(a) of *Greater London Authority Roads and Side Roads (Transfer of Property etc) Order 2000* transferred responsibility for “highway” from London borough councils including respondents to appellant – Where High Court held “highway” included airspace above and subsoil below surface of road except to extent parts of subsoil or airspace had acquired separate identity by transfer date – Where Court of Appeal held “highway” carried same meaning as at common law and under s 263 of *Highways Act 1980* and therefore included only zone of ordinary use (i.e. road surface and airspace and subsoil necessary for operation, maintenance and repair of road) – Whether Court of Appeal erred in construction of “highway”.

Held (5:0): Appeal allowed.

S Franses Ltd v The Cavendish Hotel (London) Ltd

United Kingdom Supreme Court: [\[2018\] UKSC 62](#)

Judgment delivered: 5 December 2018

Coram: Hale, Sumption, Black, Briggs and Kitchin LJJ

Catchwords:

Real property – Security of tenure – *Landlord and Tenant Act 1954* s 30(1)(f) – Where s 30(1)(f) provides landlord may oppose application for new tenancy on basis landlord intends to demolish or reconstruct

premises or substantial part of premises, or carry out substantial work on building or part thereof – Where appellant occupied ground floor and basement of premises under 25-year lease – Where appellant requested grant of new tenancy – Where landlord opposed grant of new tenancy under s 30(1)(f) – Where proposed works had no practical utility other than eviction – Where County Court held landlord could oppose grant of new tenancy under s 30(1)(f) because landlord genuinely intended to carry out works – Where High Court dismissed appeal – Whether courts below erred in concluding s 30(1)(f) could be invoked.

Held (5:0): Appeal allowed.

Regency Villas Title Ltd & Ors v Diamond Resorts (Europe) Ltd & Ors
United Kingdom Supreme Court: [\[2018\] UKSC 57](#)

Judgment delivered: 14 November 2018

Coram: Hale, Kerr, Sumption, Carnwath and Briggs LJ

Catchwords:

Real property – Easements – Grants of easements – Where owner of country estate sold part of estate (“Property A”) and retained remainder of estate (“Property B”) – Where Property B acquired by investment company and developed into timeshare complex – Where Property A subsequently acquired by same investment company and also developed into timeshare complex – Where Property A transferred to associated company in 1981 – Where 1981 transfer granted transferee, successors in title, lessees and occupiers of Property A use of certain facilities of Property B – Where new owners of Property B sought to charge timeshare owners of Property A for use of facilities – Where respondents brought proceedings seeking declaration respondents entitled under easement to free use of sporting and recreational facilities provided within property B and recovery of sums paid for use of facilities – Where trial judge held 1981 transfer granted easement and largely upheld claims for recovery of payments – Where Court of Appeal allowed appeal in part, reducing sum recoverable for payments made – Whether courts below erred in concluding 1981 transfer granted easement – Whether Court of Appeal erred in limiting grant of rights to facilities in existence in 1981.

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

Refugee Law

Ruta v Minister of Home Affairs

Constitutional Court of South Africa: [\[2018\] ZACC 52](#)

Judgment delivered: 20 December 2018

Coram: Cameron, Froneman, Khampepe, Mhlantla and Theron JJ, Basson, Dlodlo, Goliath and Petse AJJ

Catchwords:

Refugee law – Asylum seeker applications – Effect of delay – Relevance of criminal record in South Africa – Overriding principle of *non refoulement* – Where Rwanda national entered South Africa unlawfully – Where he was arrested in Pretoria for traffic violations and convicted and imprisoned – Where Department of Home Affairs moved to deport him to Rwanda while he was imprisoned – Where he applied for asylum, arguing that he would face certain death in Rwanda – Whether delay impedes right to asylum – Whether being convicted of a crime disqualifies a person from seeking and receiving a refugee permit – Whether only the Refugee Status Determination Officer is authorised to consider application merits – Whether *Immigration Act* must be read in harmony with the *Refugees Act* and international law.

Held (9:0): Appeal allowed with costs.
