



OVERSEAS DECISIONS BULLETIN

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

Administrative Law

In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)

United Kingdom Supreme Court: [\[2019\] UKSC 7](#)

Judgment delivered: 27 February 2019

Coram: Lady Hale, Lords Kerr, Carnwath and Hodge, and Lady Black

Catchwords:

Administrative law – Judicial review – Where gunmen burst into Patrick Finucane’s home in Belfast and murdered him in presence of his wife and children on 12 February 1989 – Where collusion between murderers and members of security forces – Where widow brought case before European Court of Human Rights, which decided there had not been inquiry into death compliant with Art 2 of *European Convention on Human Rights* – Where Secretary of State for Northern Ireland wrote to widow and made statement in House of Commons in September 2004 to effect that inquiry would be held on basis of new legislation – Where there was a general election and new government formed in May 2010 – Where decision was made on 11 July 2011 that a public inquiry would not be conducted – Whether widow had a legitimate expectation that public inquiry would be held because of unequivocal assurance given to her – Whether decision not to hold public inquiry made in bad faith or was not based on genuine policy grounds – Whether failure to establish a public inquiry constitutes

violation of widow's rights under Art 2 of the *European Convention on Human Rights* and s 6 of the *Human Rights Act 1998*.

Held (5:0): Declaration that there has not been an Art 2 compliant inquiry into death of Mr Finucane.

Trustees of the Simcha Trust v Da Cruz & Ors; City of Cape Town v Da Cruz & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 8](#)

Judgment delivered: 15 February 2019

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

Catchwords:

Administrative law – Building and construction – Where City of Cape Town approved development application by Four Seasons sectional title scheme in 2005, allowing building of balconies up to boundary of Four Seasons' property – Where adjacent to Four Seasons' property is property owned by Simcha Trust – Where Simcha Trust submitted building application in 2007, seeking to build additional four storeys and top three storeys of new building would touch existing balconies on eighth, ninth and tenth floors of Four Seasons' building – Where Municipality approved Simcha Trust's application in September 2008 and construction commenced – Where Four Seasons instituted review of Municipality's decision to approve Simcha Trust's plans and High Court set aside development approval – Where Simcha Trust and City appealed to Full Court, which found two errors of law, first by applying incorrect test when considering whether any of disqualifying factors were present, and second, by failing to take into account impact of building plans on neighbouring properties – Whether decision-makers applied incorrect test when deciding if building application should be disqualified – Whether legitimate expectations test applies to approving building plans that might disfigure a neighbouring area or be unsightly.

Held (10:0): Appeals dismissed; applicant to pay costs of respondents.

Aquila Steel (S Africa) (Pty) Limited v Minister of Mineral Resources & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 5](#)

Judgment delivered: 15 February 2019

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

Catchwords:

Administrative law – Mining – Minerals and energy – Application for prospecting right – Application for mining right – Where first to fourth respondents government officials responsible for implementing *Mineral and Petroleum Resources Development Act* (“MPRDA”) – Where after MPRDA came into effect, holders of unused “old-order” mineral rights given year within which to apply for those rights under new legislation – Where ZiZa Limited (“ZiZa”) lodged application within prescribed year for rights over certain portions of land – Where Department accepted ZiZa’s application – Where Aquila Steel (South Africa) (Pty) Limited (“Aquila”) later submitted application for prospecting right over same land and Department accepted and registered application in July 2007 – Where in February 2008, Department granted ZiZa a prospecting right over same land – Where Aquila lodged an application for mining right in December 2010 – Where in November 2011 grant made in favour of company incorporated in November 2007 to take over prospecting activities of ZiZa (“PAMDC”) – Where in 2011 Department notified Aquila and PAMDC they held overlapping rights – Where Aquila appealed and PAMDC counter-appealed to Minister – Where Minister found Aquila’s application was unlawfully accepted and ZiZa had valid prospecting right over land – Where Aquila applied for review and High Court found in its favour, granting Aquila mineral right – Where Supreme Court of Appeal overturned decision – Whether ZiZa’s application for a prospecting right was defective and Minister acted unlawfully in upholding ZiZa’s prospecting right.

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

Arbitration Law

Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd

Court of Appeal of Singapore: [\[2019\] SGHC 10](#)

Judgment delivered: 12 February 2019

Coram: Andrew Phang Boon Leong, Judith Prakash and Steven Chong JJA

Catchwords:

Arbitration law – Foreign judgment obtained after arbitral awards – Where dispute was properly brought before arbitral tribunal which led to two awards against appellant – Where appellant commenced action in Maldives essentially re-litigating issues which had been decided in arbitration – Where Maldivian court issued judgment awarding substantial damages to appellant and made antithetical findings to arbitral tribunal – Where respondent appealed court decision and sought to enforce awards, but enforcement denied on account of judgment – Where respondent sought and obtained anti-suit relief and declaratory relief from Singapore

High Court on ground that judgment obtained in breach of arbitration agreements between parties – Whether Maldivian suit could be considered to be bound up with resisting enforcement proceedings in Maldives – Whether Singapore High Court was correct in granting injunctive relief and/or declaratory relief.

Held (3:0): Appeal allowed in part.

Competition Law

Competition Commission of South Africa v Hosken Consolidated Investments Limited & Anor

Constitutional Court of South Africa: [\[2019\] ZACC 2](#)

Judgment delivered: 1 February 2019

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

Catchwords:

Competition law – Where Hosken Consolidated Investments Ltd (“HCI”) notified Competition Commission of South Africa in 2014 of intention to acquire Tsogo Sun Holdings Ltd (“Tsogo”) such that it would hold more than 50% of Tsogo’s issued share capital – Where merger approved unconditionally by Commission and confirmed by Competition Tribunal – Where HCI decided to transfer gaming interests owned indirectly by one of its subsidiary companies to Tsogo in 2017 and HCI was of view that this would not constitute notifiable merger – Where Commission subsequently informed HCI in advisory opinion that 2017 transaction amounted to a notifiable merger – Where HCI applied to Tribunal for declaration and then appealed to Competition Appeal Court – Where Court held that Tribunal has powers to grant declaratory order and that proposed transaction does not constitute a notifiable merger because competition authorities previously approved acquisition of sole control of Tsogo by HCI – Whether Tribunal had power to grant declaratory order following advisory opinion – Whether 2017 transaction was notifiable merger in terms of *Competition Act* given that HCI would hold more than 50% of Tsogo’s shareholding.

Held (9:0): Appeal partially upheld.

Constitutional Law

Orphan Well Association v. Grant Thornton Ltd

Supreme Court of Canada: [\[2019\] SCC 5](#)

Judgment delivered: 31 January 2019

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

Catchwords:

Constitutional law – Division of powers – Federal paramountcy – Bankruptcy and insolvency – Environmental law – Where oil and gas companies in Alberta required by provincial comprehensive licensing regime to assume end-of-life responsibilities with respect to oil wells, pipelines, and facilities – Where provincial regulator administering licensing regime and enforcing end-of-life obligations pursuant to statutory powers – Where trustee in bankruptcy of oil and gas company not taking responsibility for company’s unproductive oil and gas assets and seeking to walk away from environmental liabilities associated with them or to satisfy secured creditors’ claims ahead of company’s environmental liabilities – Whether regulator’s use of powers under provincial legislation to enforce bankrupt company’s compliance with end-of-life obligations conflicts with trustee’s powers under federal bankruptcy legislation or with the order of priorities under such legislation – If so, whether provincial regulatory regime inoperative to extent of conflict by virtue of doctrine of federal paramountcy – *Bankruptcy and Insolvency Act, RSC 1985, c B-3, s 14.06* – *Oil and Gas Conservation Act, RSA 2000, c O-6, s 1(1)(cc)* – *Environmental Protection and Enhancement Act, RSA 2000, c E-12, s 134(b)(vi)* – *Pipeline Act, RSA 2000, c P-15, s 1(1)(n)*.

Held (5:2): Appeal allowed.

Mulowayi & Ors v Minister of Home Affairs & Anor
Constitutional Court of South Africa: [\[2019\] ZACC 1](#)

Judgment delivered: 19 January 2019

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

Catchwords:

Constitutional law – Where two appellants came to South Africa as refugees from Democratic Republic of Congo – Where they were granted permanent residence in 2011 – Where couple’s two eldest children recognised as South African citizens by birth, but Gaddiel (born in 2017) had not, despite being registered in terms of *Births and Deaths Registrations Act* – Where couple received letter from Department of Home Affairs informing them that their application for citizenship had been rejected pursuant to Regulations on the *South African Citizenship Act* because reg 3(2)(a) provides that only after ten years of permanent residence may apply – Where High Court declared reg 3(2)(a) of the Regulations on the *South African Citizenship Act* unconstitutional and

invalid – Whether declarations of invalidity in respect of regulations subject to confirmation by Constitutional Court.

Held (10:0): Appeal allowed; suspension of declaration of invalidity set aside.

Frank v Canada (Attorney General)

Supreme Court of Canada: [\[2019\] SCC 1](#)

Judgment delivered: 11 January 2019

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

Catchwords:

Constitutional law – Charter of Rights – Right to vote – Residence – Where *Canada Elections Act* denying right to vote in federal elections to Canadian citizens residing abroad for five consecutive years or more – Where Attorney General of Canada conceding infringement of right to vote – Whether infringement justified – *Canadian Charter of Rights and Freedoms*, ss 1, 3 – *Canada Elections Act*, S.C. 2000, c. 9, ss 11(d), 222.

Held (5:2): Appeal allowed with costs.

Contract Law

Wells v Devani

United Kingdom Supreme Court: [\[2019\] UKSC 4](#)

Judgment delivered: 13 February 2019

Coram: Lords Wilson, Sumption, Carnwath, Briggs and Kitchin

Catchwords:

Contract law – Where different accounts of telephone conversation between estate agent and vendor of a number of flats – Where estate agent claims he disclosed commission terms would be 2% plus VAT, but vendor claims no mention of any commission – Where estate agent claims that commission became payable to him by vendor on completion of sale to a purchaser whom he had introduced to vendor – Where vendor refuses to pay any commission – Whether agreement was complete and enforceable despite there being no express identification of event which would trigger obligation to pay commission – Whether, by reason of failure to comply with requirements imposed by s 18 of the *Estate Agents Act 1979*, trial judge ought to have dismissed claim or discharged any liability to pay commission.

Held (5:0): Appeal allowed; cross-appeal dismissed.

Criminal Law

Garza v Idaho

United States Supreme Court: [Docket 17-1026](#)

Judgment delivered: 27 February 2019

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

Catchwords:

Criminal law – Where Garza signed two plea agreements each arising from State criminal charges and each containing clause stating right to appeal waived – Where shortly after sentencing, Garza told trial counsel that he wished to appeal – Where counsel informed Garza that appeal would be “problematic” given waiver – Where after time period to preserve an appeal lapsed Garza sought State post-conviction relief alleging trial counsel rendered ineffective assistance by failing to file a notice of appeal despite repeated requests – Whether presumption of prejudice recognised in *Roe v Flores-Ortega*, 528 US 470 when trial counsel fails to file an appeal as instructed applies when defendant agreed to appeal waiver.

Held (6:3): Reversed and remanded.

HKSAR v Chan Shui Lun

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 8](#)

Judgment delivered: 27 February 2019

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ, and French NPJ

Catchwords:

Criminal law – Costs – Where appellant was convicted by magistrate for careless driving contrary to s 38(1), *Road Traffic Ordinance* (Cap 374) – Where appeal to Court of First Instance dismissed and appellant ordered to pay costs without affording opportunity to be heard in circumstances where prosecution had not sought costs – Where s 13 of *Costs in Criminal Cases Ordinance* (Cap 492) governs making of costs orders against defendants in unsuccessful magistracy appeals – Where, inter alia, court must have regard to financial means of defendant and satisfy itself that costs order one defendant able to pay – Whether judge did not adhere to applicable principles, and substantive and grave injustice resulted from costs order against appellant.

Held (5:0): Appeal allowed, costs order quashed, and refund ordered.

Madison v Alabama

United States Supreme Court: [Docket 17-7505](#)

Judgment delivered: 27 February 2019

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

Catchwords:

Criminal law – Capital punishment – Where Madison found guilty of capital murder and sentenced to death – Where while awaiting execution Madison suffered a series of strokes and diagnosed with vascular dementia – Where Madison petitioned State trial court for stay of execution on ground that he was mentally incompetent – Where trial court found Madison competent to be executed – Whether Eighth Amendment may permit executing a prisoner even if the prisoner cannot remember committing crime.

Held (5:3): Vacated and remanded.

Timbs v Indiana

United States Supreme Court: [Docket 17-1091](#)

Judgment delivered: 20 February 2019

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

Catchwords:

Criminal law – Forfeiture – Eighth Amendment Excessive Fines Clause – Application to State imposition – Where Timbs pleaded guilty to dealing in controlled substance and conspiracy to commit theft – Where police seized vehicle purchased for \$42,000 with money received from insurance policy when his father died – Where Indiana sought civil forfeiture of Timbs's vehicle – Where trial court determined vehicle's forfeiture grossly disproportionate to gravity of offence and unconstitutional under Eighth Amendment – Where Indiana Supreme Court held Excessive Fines Clause constrains only federal action and inapplicable to State impositions – Whether Excessive Fines Clause incorporated protection applicable to States under Fourteenth Amendment's Due Process Clause.

Held (9:0): Vacated and remanded.

R v Jarvis

Supreme Court of Canada: [\[2019\] SCC 10](#)

Judgment delivered: 14 February 2019

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

Catchwords:

Criminal law — Voyeurism — Elements of offence — Circumstances that give rise to reasonable expectation of privacy — Where accused teacher using concealed camera to make surreptitious video recordings of female high school students engaging in ordinary school-related activities in common areas of school — Where most video recordings focusing on faces, upper bodies and breasts of students — Where students not aware of recording — Where accused charged with voyeurism — Whether students recorded by accused were in circumstances giving rise to reasonable expectation of privacy — *Criminal Code, RSC 1985, c C-46, s 162(1)*.

Held (9:0): Appeal allowed; conviction entered.

R v Bird

Supreme Court of Canada: [\[2019\] SCC 7](#)

Judgment delivered: 8 February 2019

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

Catchwords:

Criminal law — Administrative orders — Collateral attack — Where accused charged criminally with breaching Parole Board long-term supervision order requiring he reside at community correctional centre — Where accused alleged residency condition not within Board's statutory authority and violated constitutional right to liberty — Whether accused could collaterally attack residency condition — Whether residency condition arbitrary in respect of purpose of long-term offender regime — *Canadian Charter of Rights and Freedoms, s 7 — Corrections and Conditional Release Act, SC 1992, c 20, s 134.1(2)*.

Held (9:0): Appeal dismissed.

R v Calnen

Supreme Court of Canada: [\[2019\] SCC 6](#)

Judgment delivered: 1 February 2019

Coram: Moldaver, Karakatsanis, Gascon, Rowe and Martin JJ

Catchwords:

Criminal law — Evidence — Admissibility — Circumstantial evidence — After-the-fact conduct — Charge to jury — General propensity reasoning — Where accused charged with second degree murder in death of domestic partner — Where evidence of accused's discreditable conduct prior to and after victim's death adduced at his trial for murder — Whether after-the-fact conduct admissible to prove requisite intent for second degree murder — Whether trial judge properly instructed jury on use of after-the-fact conduct — Whether trial judge required to provide limiting instruction against use of general propensity reasoning given evidence of accused's discreditable conduct.

Held (3:2): Appeal allowed; conviction for second degree murder restored.

HKSAR v Chu Tsun Wai

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 3](#)

Judgment delivered: 1 February 2019

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

Catchwords:

Criminal law – Appeal against conviction – Where appellant took part in Distributed Denial of Service (“DDoS”) attack on website of Shanghai Commercial Bank in October 2014 – Where DDoS attack failed – Where appellant was charged with criminal damage contrary to s 60(1) of *Crimes Ordinance* (Cap. 200) (“CO”) – Where under s 59(1A) of CO damage to property included “misuse of a computer” in turn defined to include causing computer to function other than as it has been established to function by its owner – Where appellant argued that attack caused no difference to way Bank’s computer functioned given it was established to receive and respond to “requests” and did so during DDoS attack – Whether appellant caused Bank’s computer “to function other than as it has been established to function by or on behalf of its owner”.

Held (5:0): Appeal dismissed.

HKSAR v Shum Wai Kee

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 2](#)

Judgment delivered: 31 January 2019

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

Catchwords:

Criminal law – Appeal against conviction – Where appellant convicted in 2007 of two charges of obtaining property by deception with sentence of seven weeks’ imprisonment – Where appellant submitted to Nursing Council an application for enrolment as a nurse and declaration form in which he declared he had not been convicted of any offence punishable with imprisonment in Hong Kong – Where appellant brought appeal against conviction for making a false declaration to obtain registration for carrying on a vocation – Where appellant argued he genuinely believed he was not required to disclose his previous conviction on declaration form due to provisions of *Rehabilitation of Offenders Ordinance* (Cap 297) confirmed by legal advice obtained from Free Legal Advice Scheme – Where Deputy Magistrate convicted appellant because Deputy Magistrate formed view that legal advice directed appellant to disclose his previous convictions on declaration form – Whether prosecution had to prove appellant appreciated the falsity of his declaration – Whether a genuine and mistaken belief that declaration was not false negated appellant’s liability under s 37 of *Crimes Ordinance* (Cap 200) – Whether declaration made by appellant was one he knew to be false.

Held (5:0): Appeal allowed; conviction quashed.

In the matter of an application by Lorraine Gallagher for Judicial Review (Northern Ireland); R (on the application of P, G and W) v Secretary of State for the Home Department & Anor; R (on the application of P) v Secretary of State for the Home Department & Ors
United Kingdom Supreme Court: [\[2019\] UKSC 3](#)

Judgment delivered: 30 January 2019

Coram: Lady Hale, Lords Kerr, Sumption, Carnwath and Hughes

Catchwords:

Criminal law – Spent convictions and cautions – Where respondents convicted or received cautions or reprimands in respect of relatively minor offending – Where disclosure of their criminal records to potential employers made or may in future make it more difficult to obtain employment – Where relevant convictions and cautions were “spent” under legislation designed for rehabilitation of ex-offenders – Where criminal records had to be disclosed when applying for employment involving contact with children or vulnerable adults – Where argued that disclosure schemes contained in *Rehabilitation of Offenders Act 1974* and *Police Act 1997* (as amended) together with related Orders incompatible with Art 8 of *European Convention on Human Rights 1950* protecting right to respect for private and family life – Where Court of Appeal in England and in Northern Ireland upheld respondents’ case – Whether disclosure schemes not incompatible.

Held (4:1): Appeals dismissed (except in W’s case); parts of orders below varied on the cross-appeal.

R (on the application of Hallam) v Secretary of State for Justice; R (on the application of Nealon) v Secretary of State for Justice

United Kingdom Supreme Court: [\[2019\] UKSC 2](#)

Judgment delivered: 30 January 2019

Coram: Lady Hale, Lords Mance, Kerr, Wilson, Reed, Hughes and Lloyd-Jones

Catchwords:

Criminal law – Entitlement to compensation where convictions quashed – Where Mr Hallam spent seven years in prison – Where Mr Nealon spent 17 years in prison – Where convictions eventually quashed for being unsafe in light of newly discovered evidence – Where each applied for compensation under s 133 of *Criminal Justice Act 1988* (as amended) – Where Secretary of State for Justice refused applications on ground that new evidence did not show beyond reasonable doubt that they had not committed relevant offences – Whether requirement in s 133(1ZA) that new or newly discovered fact must show beyond reasonable doubt that person did not commit offence to claim compensation incompatible with presumption of innocence in Art 6(2) of *European Convention on Human Rights*.

Held (5:2): Appeal dismissed.

Stokeling v United States

United States Supreme Court: [Docket 17-5554](#)

Judgment delivered: 15 January 2019

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

Catchwords:

Criminal law – Where Stokeling pleaded guilty to possessing a firearm and ammunition after having been convicted of a felony – Where based on Stokeling’s prior criminal history probation office recommended mandatory minimum 15-year prison term that *Armed Career Criminal Act* (“ACCA”) provides for §922(g) violators who have three previous convictions for a “violent felony” – Where Stokeling objected that prior Florida robbery conviction was not a “violent felony” within ACCA – Where District Court held that Stokeling’s actions during the robbery did not justify an ACCA sentence enhancement but Eleventh Circuit reversed decision – Whether ACCA’s elements clause encompasses robbery offence that requires defendant to overcome victim’s resistance.

Held (5:4): Affirmed.

Employment Law

Stokwe v Member of the Executive Council: Department of Education, Eastern Cape & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 3](#)

Judgment delivered: 7 February 2019

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

Catchwords:

Employment law – Where appellant charged with four counts of misconduct for awarding service contract to spouse’s company without required approval and consent of employer – Where disciplinary body found appellant guilty of two of four charges and dismissed – Where dismissal stayed pending appeal – Where appellant requested reasons for dismissal from Department on several occasions but received no response – Where almost five years after misconduct occurred appeal unsuccessful and dismissal took effect – Where appellant referred a dispute to Education Labour Relations Council challenging substantive and procedural fairness of dismissal – Where arbitrator concluded that dismissal was substantively fair but award was silent on procedural fairness of dismissal – Where Labour Court upheld arbitrator’s finding of substantive fairness and dismissed review application – Where Labour Court refused leave to appeal – Whether dismissal was substantively and/or procedurally unfair – Whether delay was unexplained and unjustified departure from Department’s internal disciplinary procedure and therefore unlawful and/or inconsistent with *Labour Relations Act*.

Held (10:0): Appeal upheld with costs against first and second respondents; matter remitted to Labour Court to determine appropriate remedy.

Extradition

Konecny v District Court in Brno-Venkov, Czech Republic

United Kingdom Supreme Court: [\[2019\] UKSC 8](#)

Judgment delivered: 27 February 2019

Coram: Lords Kerr and Hodge, Lady Black, Lords Lloyd-Jones and Kitchin

Catchwords:

Extradition – Whether convicted person with unequivocal right to retrial after surrender is an “accused” or “unlawfully at large” under s 14(a)-(b) of *Extradition Act 2003* for purpose of considering “passage of time” bar to surrender – Where appellant convicted in his absence by District Court in Czech Republic of three offences of fraud and sentenced to eight years’ imprisonment – Where extradition requested by District Court by a European Arrest Warrant implemented by Part 1 of the *Extradition Act 2003* – Where conviction not final because appellant had unequivocal right to retrial after surrender if he applied to be re-tried – Where appellant arrested – Where appellant argued at extradition hearing it would be unjust and oppressive to order extradition, taking into account delay since 2004 and would infringe rights under Art 8 of the *European Convention on Human Rights* – Where District Judge held it would not be unjust or oppressive to return appellant to Czech Republic – Where High Court dismissed appeal.

Held (5:0): Appeal dismissed.

International Law

Jam & Ors v International Finance Corp

United States Supreme Court: [Docket 17-1011](#)

Judgment delivered: 27 February 2019

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

Catchwords:

International law – Immunity of international organisation – Where International Finance Corporation (“IFC”) an *International Organizations Immunities Act* international organisation entered into loan agreement with company based in India to finance construction of power plant in Gujarat – Where IFC sued on claim pollution from plant harmed surrounding air, land, and water – Where District Court held that IFC immune from suit because it enjoyed virtually absolute immunity that foreign governments enjoyed when *International Organizations Immunities Act* was enacted – Where decision affirmed on appeal – Whether *International Organizations Immunities Act* affords international organisations more restrictive immunity from suit that foreign governments enjoy today under *Foreign Sovereign Immunities Act*.

Held (7:1): Reversed and remanded.

Migration Law

H (SC 52/2018) v Refugee and Protection Officer
New Zealand Supreme Court: [\[2019\] NZSC 13](#)

Judgment delivered: 25 February 2019

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

Catchwords:

Migration law – Refugee law – Judicial review – Where appellant made claim for recognition as a refugee in New Zealand – Where Refugee and Protection Officer (“Officer”) scheduled interview with appellant – Where appellant missed interview due to illness – Where medical certificate did not comply with s 149(4) of the *Immigration Act 2009* – Where Officer advised appellant’s lawyer that s/he would discuss matter with manager but two days later issued decision declining appellant’s claim – Where Officer made no findings of credibility or fact but concluded that appellant was not refugee – Where appellant commenced judicial review proceedings in High Court notwithstanding s 249 of *Immigration Act 2009* and an appeal to the Immigration and Protection Tribunal – Where High Court dismissed claim for lack of jurisdiction – Whether Officer’s refusal to recognise appellant as a refugee was in substance refusal to consider appellant’s claim – Whether s 249 precluded judicial review in a case where decision under challenge was made without any consideration of substantive matters at issue.

Held (5:0): Appeal allowed; proceeding remitted to High Court for hearing.

Private International Law

Barer v Knight Brothers LLC
Supreme Court of Canada: [\[2019\] SCC 13](#)

Judgment delivered: 22 February 2019

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

Catchwords:

Private international law — Foreign judgments — Recognition — Personal actions of patrimonial nature — Where default judgment rendered by Utah court against Quebec resident sued personally in contractual dispute between corporations — Where Quebec resident not party to contract but associated with dispute as officer of corporate defendants — Where plaintiff seeking to have judgment recognised in Quebec and declared enforceable against Quebec resident — Whether Utah court had jurisdiction over Quebec resident under Quebec rules on indirect international jurisdiction in personal actions of patrimonial nature —

Whether burden of proof for establishing jurisdiction rests on party seeking recognition of foreign judgment — Whether Quebec resident submitted to Utah court’s jurisdiction — Whether dispute substantially connected to Utah — *Civil Code of Québec*, arts 3155(1), 3164, 3168(3), (4), (6).

Held (8:1): Appeal dismissed.

Statutory Interpretation

Nutraceutical Corp v Lambert

United States Supreme Court: [Docket 17-1094](#)

Judgment delivered: 26 February 2019

Coram: Sotomayor J delivered opinion for a unanimous Court

Catchwords:

Statutory interpretation – Where respondent filed class action in federal court alleging petitioner’s marketing of dietary supplement ran afoul of California consumer-protection law – Where District Court ordered class decertified – Where pursuant to Federal Rule of Civil Procedure 23(f) respondent had 14 days to ask Court of Appeals for permission to appeal order – Where respondent filed a motion for reconsideration instead which District Court denied – Where 14 days after denial respondent petitioned Court of Appeals for permission to appeal decertification order – Where petitioner objected that respondent’s petition was untimely because filed far more than 14 days from decertification order – Where Ninth Circuit held that Rule 23(f)’s deadline should be tolled under circumstances because respondent had “acted diligently” and reversed decertification order on merits – Whether Rule 23(f) subject to equitable tolling.

Held: Reversed and remanded.

Dawson v Steager

United States Supreme Court: [Docket 17-419](#)

Judgment delivered: 20 January 2019

Coram: Gorsuch J delivered opinion for a unanimous Court

Catchwords:

Statutory interpretation – Where petitioner retired from US Marshals Service and his home State taxed his federal pension benefits as it does all former federal employees – Where pension benefits of certain former State and local law enforcement employees exempt from State taxation –

Where petitioner sued alleging State statute violates intergovernmental tax immunity doctrine as codified at 4 USC §111 whereby United States consents to State taxation of pay or compensation of federal employees only if State tax does not discriminate on basis of source of the pay or compensation – Where trial court found no significant differences between petitioner’s job duties as federal marshal and those of State and local law enforcement officers exempted from taxation and held that State statute violates §111’s antidiscrimination provision – Whether West Virginia statute unlawfully discriminates against petitioner as §111 forbids.

Held: Reversed and remanded.

Helsinn Healthcare SA v Teva Pharmaceuticals USA Inc
United States Supreme Court: [Docket 17-1229](#)

Judgment delivered: 22 January 2019

Coram: Thomas J delivered opinion for a unanimous Court

Catchwords:

Statutory interpretation – Where petitioner filed patent applications covered by the *Leahy-Smith America Invents Act* (“AIA”) – Where respondents sought approval to market generic 0.25mg palonosetron product and petitioner sued for infringement of its patents including the ‘219 patent – Where respondents countered that ‘219 patent was invalid under “on sale” provision of AIA because of petitioner’s earlier agreements with another company – Whether commercial sale to a third party who is required to keep invention confidential may place invention “on sale” under §102(a).

Held: Affirmed.

New Prime Inc v Oliveira
United States Supreme Court: [Docket 17-340](#)

Judgment delivered: 15 January 2019

Coram: Gorsuch J delivered opinion of Court; Ginsburg J concurring

Catchwords:

Statutory interpretation – Where petitioner interstate trucking company and respondent is one of its drivers – Where respondent works under an operating agreement that calls him independent contractor and contains a mandatory arbitration provision – Where petitioner asked court to invoke its statutory authority under *Federal Arbitration Act* to compel arbitration when respondent filed a class action alleging that petitioner denies its drivers lawful wages – Where respondent countered that court lacked

authority because §1 excepts from coverage disputes involving “contracts of employment” of certain transportation workers – Where petitioner argued that any question regarding §1’s applicability belonged to the arbitrator alone to resolve - Where District Court and First Circuit agreed with respondent – Whether Court should determine if §1 exclusion applies before ordering arbitration – Whether respondent’s agreement with petitioner falls within §1’s exception.

Held: Affirmed.

Henry Schein Inc v Archer & White Sales Inc
United States Supreme Court: [Docket 17-1272](#)

Judgment delivered: 8 January 2019

Coram: Kavanaugh J delivered opinion for a unanimous Court

Catchwords:

Statutory interpretation – Where respondent sued petitioner alleging violations of federal and state antitrust law and seeking money damages and injunctive relief – Where relevant contract between parties provided for arbitration of any dispute arising under or related to agreement except for actions seeking injunctive relief – Where petitioner invoked *Federal Arbitration Act* and asked District Court to refer matter to arbitration – Where respondent argued dispute not subject to arbitration because its complaint sought injunctive relief – Where petitioner contended that an arbitrator should decide whether arbitration agreement applied – Where respondent countered that argument for arbitration was wholly groundless so District Court could resolve the threshold arbitrability question – Where District Court agreed with respondent and denied petitioner’s motion to compel arbitration and Fifth Circuit affirmed – Whether “wholly groundless” exception to arbitrability is inconsistent with the *Federal Arbitration Act*.

Held: Vacated and remanded.

Culbertson v Berryhill
United States Supreme Court: [Docket 17-773](#)

Judgment delivered: 8 January 2019

Coram: Thomas J delivered opinion for a unanimous Court

Catchwords:

Statutory interpretation – Where *Social Security Act* regulates fees attorneys may charge claimants seeking Title II benefits for representation before Social Security Administration and in Federal Court

– Where petitioner represented person in Social Security disability benefit proceedings before agency and in District Court – Where agency ultimately awarded past-due benefits and withheld 25% of benefits to pay any attorney’s fees and awarded petitioner fees under §406(a) for representation before agency – Where petitioner moved for a separate fee award under §406(b) for the court proceedings requesting full 25% of past-due benefits – Where District Court granted request in part because petitioner did not subtract amount he already received under §406(a) for his agency-level representation – Whether §406(b)(1)(A)’s 25% cap applies only to fees for court representation and not to aggregate fees awarded under §§406(a) and (b).

Held: Reversed and remanded.

Tenancy Law

SA v Metro Vancouver Housing Corp

Supreme Court of Canada: [\[2019\] SCC 4](#)

Judgment delivered: 25 January 2019

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

Catchwords:

Tenancy law – Social law – Affordable housing – Rental assistance program – Application for means-tested rent subsidy – Disclosure of assets – *Henson* trust – Tenancy agreement – Rental assistance program – Where landlord offering discretionary rental assistance to tenants who have less than \$25,000 in assets – Where tenant refusing to disclose balance of *Henson* trust established for her care and maintenance in application for rental assistance – Whether trust should be treated as tenant’s asset for purpose of determining eligibility for rental assistance – Whether landlord has contractual obligation to consider complete application for rent subsidy by tenant – Whether tenant’s application was complete when it did not include value of her *Henson* trust – If so, whether landlord breached contractual obligation – Appropriate remedy – Availability of declaratory relief.

Held (7:2): Appeal allowed with costs.

Tort Law

Salomon v Matte-Thompson

Supreme Court of Canada: [\[2019\] SCC 14](#)

Judgment delivered: 28 February 2019

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

Catchwords:

Tort law — Negligence — Lawyers — Professional liability — Duty to advise — Duty of loyalty — Where lawyer recommending financial advisor to clients — Where clients investing millions of dollars with recommended financial advisor’s firm — Where lawyer repeatedly endorsing advisor and encouraging clients to make and retain investments — Where investments made in funds that were parts of Ponzi scheme — Where millions lost in fraud — Where clients claiming that lawyer and his law firm were professionally negligent — Where trial judge dismissed claim — Where Court of Appeal allowed appeal and ordered compensation — Whether Court of Appeal erred by employing notion of distorting lens in determining whether trial judge had made palpable and overriding errors — Whether Court of Appeal expanded professional obligations of lawyers who refer clients to independent advisors — Whether Court of Appeal erred by interfering with trial judge’s findings relating to faults committed by lawyer and to causation.

Held (8:1): Appeal dismissed.

Cameron v Liverpool Victoria Insurance Co Ltd
United Kingdom Supreme Court: [\[2019\] UKSC 6](#)

Judgment delivered: 20 February 2019

Coram: Lords Reed (Deputy President), Sumption, Carnwath and Hodge, and Lady Black

Catchwords:

Tort law – Negligence – Motor vehicle collision – Unknown tortfeasor – Where respondent was injured when her car collided with another car due to negligence of other driver – Where negligent driver made off without stopping and remains unknown – Where registered keeper of car was not driver and was convicted of failing to disclose negligent driver’s identify – Where respondent brought proceedings against car’s keeper and added a claim against appellant insurer – Where respondent applied to amend claim to substitute car’s keeper as defendant for “the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013” – Where District Judge dismissed application and entered summary judgment for insurer – Where Court of Appeal allowed appeal by majority holding than alternative right of claim against Motor Insurance Bureau was irrelevant – Whether there was power to issue or amend claim – Whether *Road Traffic Act 1988* compatible with Sixth Motor Insurance Directive (2009/103/EC).

Held (5:0): Appeal allowed; order of District Judge reinstated.

Perry v Raleys Solicitors

United Kingdom Supreme Court: [\[2019\] UKSC 5](#)

Judgment delivered: 13 February 2019

Coram: Lady Hale, Lords Wilson, Hodge, Lloyd-Jones and Briggs

Catchwords:

Tort law – Negligence – Causation – Lawyers – Where respondent retired miner suffering from Vibration White Finger (“VWF”) – Where Department for Trade and Industry set up scheme to provide tariff-based compensation to miners suffering from VWF – Where special damages under scheme could include a Services Award to qualifying miners – Where respondent engaged appellant law firm to pursue a VWF claim – Where respondent given medical ratings sufficient both for general damages and for a Services Award to be presumed – Where respondent settled claim for payment of general damages only and made no claim for Services Award within specified time – Where respondent claimed professional negligence by appellant law firm in failing to give competent legal advice – Where trial judge found no causation and dismissed claim – Where Court of Appeal reversed finding on causation and granted respondent loss of chance damages plus interest – Whether trial judge’s order should be restored.

Held (5:0): Appeal allowed; order of County Court judge restored.
