



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

R v Secretary of State for the Home Department
Supreme Court of the United Kingdom: [\[2016\] UKSC 16](#)

Judgment delivered: 20 April 2016

Coram: Lord Neuberger, Lady Hale, Lord Clarke, Lord Carnwath, Lord Toulson

Catchwords:

Administrative law – Immigration (European Economic Area) Regulations 2006 – Whether the power to detain under regulation 24(1) was discriminatory without lawful justification – Whether the power was unnecessary and disproportionate – Whether the absence of a time limit for detention infringed the *Hardial Singh* principle – Whether regulations 21 and 24 failed to transpose the safeguards in articles 27 and/or 28 of the Citizens Directive (2004/38/EC)

Held (5:0): Appeal dismissed.

R v Secretary of State for the Home Department
Supreme Court of the United Kingdom: [\[2016\] UKSC 19](#)

Judgment delivered: 27 April 2016

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

Catchwords:

Administrative law – Secretary of State for the Home Department policy relating to the detention of mentally ill persons pending deportation – effect of any failure by the Secretary of State for the Home Department to apply that policy – Decision of *R (Francis)*

Held (5:0): Appeal dismissed.

Arbitration

Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval

Supreme Court of Canada: [2016 SCC 8](#)

Judgment delivered: 18 March 2016

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

Catchwords:

Labour relations — Dismissal — Arbitration — Grievances — Collective agreement stipulating that decision to dismiss teacher could be made only after “thorough deliberations” by school board’s executive committee — Executive committee deciding to dismiss teacher by way of resolution adopted after deliberations held in camera — Arbitrator allowing examination of members of executive committee on motives for their decision — Whether principle that motives are “unknowable” and deliberative secrecy apply to public employer that decides to take disciplinary action against employee.

Administrative law — Judicial review — Standard of review — Arbitration — Inquiry — Interlocutory decision allowing examination of members of decision-making authority of public employer on motives for their decision to dismiss employee — Objections to examination — Whether questions related to principle that motives are “unknowable” and deliberative secrecy that were raised before arbitrator are sufficiently important to legal system that standard applicable to judicial review of interlocutory decision must be correctness.

Held (7:0): Appeal dismissed.

Constitutional Law

Molusi and Ors v Voges N. O. and Ors

Constitutional Court of South Africa: [\[2016\] ZACC 6](#)

Judgment delivered: 1 March 2016

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nkabinde J, Nugent AJ and Zondo J

Catchwords:

Section 26(3) of the Constitution — right to access housing — verbal lease — refusal to accept rent — reason for termination of rental agreement — reason for termination relevant to determining whether termination is just and equitable — common law ground of termination — trial by ambush

Held (9:0): Appeal allowed.

Democratic Alliance v Speaker of the National Assembly and Ors
Constitutional Court of South Africa: [\[2016\] ZACC 8](#)

Judgment delivered: 18 March 2016

Coram: Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nkabinde J, Nugent AJ, Van der Westhuizen J and Zondo J

Catchwords:

Constitutional law — *Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act* s 11 — where Act allows Speaker or Chairperson to direct the 'security services' to arrest and remove a 'person' creating or taking part in a disturbance within the Parliamentary precinct — whether 'person' includes members of Parliament

Held (7:2): Appeal dismissed.

Luis v United States

Supreme Court of the United States: [Docket No 14-419](#)

Judgment delivered: 30 March 2016

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

Catchwords:

Constitutional law – Sixth Amendment – Whether the pretrial freeze of a criminal defendant's legitimate, untainted assets violates the Sixth Amendment right to counsel of choice.

Held (5:3): Vacated and remanded.

Daniels v Canada (Indian Affairs and Northern Development)

Supreme Court of Canada: [2016 SCC 12](#)

Judgment delivered: 14 April 2016

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

Catchwords:

Constitutional law — Aboriginal law — Métis — Non-status Indians — Whether declaration should be issued that Métis and non-status Indians are “Indians” under s. 91(24) of Constitution Act, 1867 — Whether declaration would have practical utility — Whether, for purposes of s. 91(24), Métis should be restricted to definitional criteria set out in *R. v. Powley*, [2003] 2 S.C.R. 207 — Constitution Act, 1867, s. 91(24) — Constitution Act, 1982, s. 35 .

Held (9:0): Appeal allowed in part and cross-appeal dismissed.

R v Safarzadeh-Markhali

Supreme Court of Canada: [2016 SCC 14](#)

Judgment delivered: 15 April 2016

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

Catchwords:

Constitutional law — Charter of Rights — Fundamental justice — Sentencing — Whether proportionality in sentencing process a principle of fundamental justice under s. 7 of Canadian Charter of Rights and Freedoms.

Constitutional law — Charter of Rights — Fundamental justice — Overbreadth — Sentencing — Credit for pre-sentence custody — Criminal Code denying enhanced credit in certain circumstances — Whether denial of enhanced credit for pre-sentence custody to offenders who are denied bail primarily because of prior conviction is overbroad in violation of s. 7 of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter — Criminal Code, R.S.C. 1985, c. C-46, ss. 515(9.1), 719(3.1).

Held (9:0): Appeal dismissed.

R v Lloyd

Supreme Court of Canada: [2016 SCC 13](#)

Judgement delivered: 15 April 2016

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

Catchwords:

Constitutional law — Charter of Rights — Cruel and unusual treatment or punishment — Sentencing — Mandatory minimum sentence — Controlled substances offence — Accused convicted of possessing controlled substances for purpose of trafficking and sentenced to one year of imprisonment — Whether one-year mandatory minimum imprisonment term pursuant to s. 5(3)(a)(i)(D) of Controlled Drugs and Substances Act results in cruel and unusual punishment and therefore infringes s. 12 of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter — Whether Court of Appeal erred in increasing sentence to 18 months — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(3)(a)(i)(D).

Constitutional law — Charter of Rights — Fundamental justice — Sentencing — Whether proportionality in sentencing process a principle of fundamental justice under s. 7 of Canadian Charter of Rights and Freedoms — If so, whether one-year mandatory minimum sentence pursuant to s. 5(3)(a)(i)(D) of Controlled Drugs and Substances Act infringes s. 7 of Charter.

Constitutional law — Charter of Rights — Courts — Jurisdiction — Provincial court judge deciding mandatory minimum sentencing provision unconstitutional — Whether provincial court has power to determine constitutionality.

Held (6:3): Appeal allowed.

Bank Markazi v Peterson

Supreme Court of the United States: [Docket No 14-770](#)

Judgment delivered: 20 April 2016

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

Catchwords:

Constitutional law – Separation of Powers – Where s 8772 of the *Iran Threat Reduction and Syria Human Rights Act* of 2012 makes a set of assets held at a New York bank for Bank Markazi, the Central Bank of Iran, available for post-judgment execution to partially satisfy judgments

in actions brought by victims of terrorist acts sponsored by Iran –
Whether provisions violate the separation of powers

Held (6:2): Case affirmed.

Heffernan v City of Paterson

Supreme Court of the United States: [Docket No 14-1280](#)

Judgment delivered: 26 April 2016

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

Catchwords:

Constitutional law – First Amendment – Where an employer demotes an employee out of a desire to prevent the employee from engaging in protected political activity – Whether the employee is entitled to challenge that unlawful action under the First Amendment and Section 1983 – Where the employer's actions are based on a factual mistake about the employee's behaviour.

Held (6:2): Reversed and remanded.

Contract Law

Makate v Vodacom (Pty) Ltd

Constitutional Court of South Africa: [\[2016\] ZACC 13](#)

Judgment delivered: 26 April 2016.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Matojane AJ, Nkabinde J, Van der Westhuizen J, Wallis AJ and Zondo J

Catchwords:

Pleadings — Ostensible authority — Distinct from estoppel — Not necessary to plead ostensible authority in replication

Prescription Act 68 of 1969 — Sections 10(1), 11(d), 129(d) — interpretation of “debt”

Constitution — Section 39(2) — Narrow interpretation of “debt” — claim not prescribed

Held (11:0): Appeal allowed.

Corporate Law

Hotchin v The New Zealand Guardian Trust Company Limited
Supreme Court of New Zealand: [\[2016\] NZSC 30](#)

Judgment delivered: 15 March 2016

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

Catchwords:

Corporations law – Liability of directors – Liability for trustee of securities to contribute to any compensation for misconduct – Liability in tort – Whether Guardian Trust's liability to the investors was in respect of the 'same damage' as Mr Hotchin's liability.

Held (3:2): Appeal allowed.

Cheng Wai Tao & Ors v Poon Ka Man Jason
Hong Kong Court of Final Appeal: [\[2016\] HKCFA 23](#)

Judgment delivered: 1 April 2016

Coram: Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Bokhary NPJ and Mr Justice Spigelman NPJ

Catchwords:

Corporations law – Shareholders – Directors duties – Derivative action – Fiduciary duties – Whether conduct when beyond the scope of duties owned by director to company – Duty of director to act in the best interest of company is a statement of the positive duty of loyalty which encompasses the conflict rule

Held (3:2): Appeal dismissed.

Asset Land Investment Plc and Anor v The Financial Conduct Authority
Supreme Court of the United Kingdom: [\[2016\] UKSC 17](#)

Judgment delivered: 20 April 2016

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

Catchwords:

Corporate law – *Financial Services and Markets Act 2000* – s 19 – Whether the appellants had conducted regulated activities without proper

authorisation – Whether the appellants were operating ‘collective investment schemes’

Held (5:0): Appeal dismissed

Nkata v Firstrand Bank Limited and Ors

Constitutional Court of South Africa: [\[2016\] ZACC 12](#)

Judgment delivered: 21 April 2016

Coram: Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nkabinde J, Nugent AJ, Van der Westhuizen J and Zondo J

Catchwords:

National Credit Act 34 of 2005 — section 129(3) — requirements for reinstatement of credit agreement — payment of credit provider’s reasonable costs of enforcement — credit provider unilaterally capitalised the costs in consumer’s bond account without demand of payment and taxation or agreement on reasonableness — costs not due and payable — reinstatement not precluded

Held (7:2): Appeal allowed.

Criminal Law

Lockhart v United States

Supreme Court of the United States: [Docket No 14-8358](#)

Judgment delivered: 1 March 2016

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

Catchwords:

Criminal law – Where petitioner pleaded guilty to possessing child pornography – Where petitioner had a state-court conviction for first-degree sexual abuse involving the defendant’s adult girlfriend – Where the ten-year mandatory minimum sentence of 18 U.S.C. § 2252(b)(2), applies to prior state-court convictions for crimes “relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward” – Whether the limiting phrase “involving a minor or ward” applies only to the phrase “abusive sexual conduct.”

Held (6:2): Case affirmed.

HKSAR v Leonora Yung

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 17](#)

Judgment delivered: 21 March 2016

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

Catchwords:

Criminal law — whether company was defrauded — transfer of property — whether there was a ‘connected transaction’ which required disclosure under the stock exchange rules — whether accused had a beneficial or financial interest in transactions

Held (5:0): Appeal allowed.

HKSAR v Ho Loy

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 20](#)

Judgment delivered: 23 March 2016

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

Catchwords:

Criminal law – traffic offences – principle of legal certainty – whether the traffic sign was ambiguous, unclear or confusing – whether road user was obliged in law to know the meaning of traffic signs – defence of reasonable excuse

Held (5:0) Appeal allowed.

R v Borowiec

Supreme Court of Canada: [2016 SCC 11](#)

Judgment delivered: 24 March 2016

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

Catchwords:

Criminal law — Infanticide — Elements of offence — Accused found guilty of infanticide in relation to her deceased newborns — Offence provision providing that female person commits infanticide when by wilful act or omission she causes death of her newly-born child, if at time of act or omission she is not fully recovered from effects of giving birth to child and

by reason thereof or of effect of lactation consequent on birth of child her mind is then disturbed — Legal meaning of expression “her mind is then disturbed” — Whether trial judge failed to apply legal standard set out by statutory language and failed to appreciate evidence of accused’s mental state — Criminal Code, R.S.C. 1985, c. C-46 , s. 233.

Held (7:0): Appeal dismissed.

Molina-Martinez v United States

Supreme Court of the United States: [Docket 14-8913](#)

Judgment delivered: 20 April 2016

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

Catchwords:

Criminal law – Sentencing – Sentencing review – Sentencing Guidelines – Where Court referred to incorrect Guidelines range – Requirements for review – Whether Court erred in applying an “additional evidence” rule requiring a showing that use of the incorrect range affected a defendant’s sentence in cases in which a district court applied an incorrect range but sentenced the defendant within the correct range.

Held (8:0): Reversed and remanded.

Elections

Evenwel & Ors v Abbott & Ors

Supreme Court of the United States: [Docket No 14-940](#)

Judgment delivered: 4 April 2016

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

Catchwords:

Elections – One-person, one vote – Legislative districts with equal populations – Whether a state or locality can draw its legislative districts based on total population.

Held (8:0): Case affirmed.

Harris & Ors v Arizona Independent Redistricting Commission & Ors
Supreme Court of the United States: [Docket No 14-232](#)

Judgment delivered: 20 April 2016

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

Catchwords:

Elections – Redistricting – *Voting Rights Act* – Where Fourteenth Amendment requires districts to be of equal size – Whether Arizona’s redistricting plan deviations predominantly reflected efforts to achieve compliance with the *Voting Rights Act* – Whether redistricting plans aimed to secure political advantage for a political party.

Held (8:0): Case affirmed.

Energy Markets

Hughes v Talen Energy Marketing LLC
Supreme Court of the United States: [Docket No 14-614](#)

Judgment delivered: 19 April 2016

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

Catchwords:

Energy Markets – Whether Maryland’s regulatory program to encourage development of new in-state energy generation is preempted by the *Federal Power Act* – Where *Federal Power Act* vests in the Federal Energy Regulatory Commission exclusive jurisdiction over interstate wholesale electricity rates.

Held (8:0): Case affirmed.

Family Law

Clayton v Clayton & Anor
Supreme Court of New Zealand: [\[2016\] NZSC 30](#)

Judgment delivered: 23 March 2016

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

Catchwords:

Family Law – Family trust – s 182 *Family Proceedings Act 1980* – s 44C of the *Property (Relationships) Act 1976* – whether settlement is a ‘nuptial settlement’ – whether there is ‘continuing provision’ – Whether there is a clear connection between marriage and the settlement of the Trust.

Held (5:0): Appeal allowed.

In the Matter of N

Supreme Court of the United Kingdom: [\[2016\] UKSC 15](#)

Judgment delivered: 13 April 2016

Coram: Lord Neuberger, Lady Hale, Lord Kerr, Lord Wilson, Lord Carnwath

Catchwords:

Family law – Children – Foster care – Jurisdiction – Whether the court of England or Hungary should have jurisdiction – *Council Regulation No 2201/2003* – Whether England is better placed to hear the case – Proper approach to the assessment of the child’s best interest

Held (5:0): Appeal allowed.

Fishery

Lynn Shellfish Ltd & Ors v Loose & Anor

Supreme Court of the United Kingdom: [\[2016\] UKSC 14](#)

Judgment delivered: 13 April 2016

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

Catchwords:

Fishery — Several fishery — Foreshore — Presumed grant from Crown of private right to take shellfish from foreshore — Dispute between lessee of private fishery and members of the public as to seaward extent of private fishery — Extent of foreshore changing over time as result of shifting sands — Whether doctrine of accretion relevant — Whether private fishery extending to foreshore as it existed — Whether extending to all parts of seabed from time to time exposed at low water — Whether seaward boundary lowest astronomical tide

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

Healthcare

Gobeille v Liberty Mutual Insurance Company
Supreme Court of the United States: [Docket No 14-181](#)

Judgment delivered: 1 March 2016

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

Catchwords:

Employee Retirement Income Security Act – Whether ERISA pre-empts a Vermont law – Where Vermont law requires certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database.

Held (6:2): Case affirmed.

Industrial Relations

Transport and Allied Workers Union of South Africa v PUTCO Limited
Constitutional Court of South Africa: [\[2016\] ZACC 7](#)

Judgment delivered: 8 March 2016

Coram: Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nkabinde J, Van der Westhuizen J, Nugent AJ and Zondo J

Catchwords:

Section 64 of the Labour Relations Act — whether an employer can lock out members of a trade union that are not party to a bargaining council where a dispute has arisen — majoritarianism— collective bargaining — section 23 of the Constitution

Held (9:0): Appeal allowed.

Intellectual Property

Magmatic Ltd v PMS International Group plc
Supreme Court of the United Kingdom: [\[2016\] UKSC 12](#)

Judgment delivered: 9 March 2016

Coram: Lord Neuberger, Lord Sumption, Lord Carnwath, Lord Hughes, Lord Hodge

Catchwords:

Design — Community registered design — Infringement — Claimant registering design for ride-on suitcases for children — Suitcases designed to look like animal with horns — Design images showing distinct tonal contrasts but no surface decoration — Defendant selling similar product decorated to look like animals with ears or insects with antennae — Whether infringing registered design — Whether producing on informed user different overall impression — Whether lack of ornamentation in registered design relevant — Council Regulation (EC) No 6/2002, art 10

Held (5:0): Appeal dismissed.

Jurisdiction

Americold Realty Trust v ConAgra Foods Inc

Supreme Court of the United States: [Docket No 14-1382](#)

Judgment delivered: 7 March 2016

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

Catchwords:

Jurisdiction – Diversity jurisdiction – Unincorporated entity – Whether for purposes of diversity jurisdiction, citizenship of an unincorporated entity depends on the citizenship of all of its members – Where under Maryland law, a real estate investment trust is held and managed for the benefit of its shareholders

Held (8:0): Case affirmed.

Franchise Tax Board of California v Hyatt

Supreme Court of the United States: [Docket 14-1175](#)

Judgment delivered: 19 April 2016

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

Catchwords:

Jurisdiction – Where Nevada has jurisdiction of California – Whether Nevada Court could issue damages against California greater than it could award against Nevada in similar circumstances.

Held (6:2): Vacated and remanded.

Land

Nebraska v Parker

Supreme Court of the United States: [Docket No 14-1406](#)

Judgment delivered: 22 March 2016

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

Catchwords:

Land – Indian Reservation – Whether 1882 law that authorized the Secretary of the Interior to survey, appraise, and sell roughly 50,000 acres diminished the Omaha Indian Reservation.

Held (8:0): Case affirmed.

Negligence

Cox v Ministry of Justice

Supreme Court of the United Kingdom: [\[2016\] UKSC 10](#)

Judgment delivered: 2 March 2016

Coram: Lord Neuberger of Abbotsbury, Baroness Hale of Richmond, Lord Dyson MR, Lord Reed, Lord Toulson

Catchwords:

Vicarious liability — Relationship akin to employment — Prisoner — Prisoner paid to assist prison catering manager in moving kitchen supplies — Manager suffering injury when prisoner ignoring instruction — Whether Ministry of Justice vicariously liable for prisoner's negligence

Held (5:0): Appeal dismissed.

Blackwell v Judd

Supreme Court of New Zealand: [\[2016\] NZSC 40](#)

Judgment delivered: 22 April 2016

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

Catchwords:

Negligence – Contract law – Capacity – Specific performance – Renewal of lease – Option to purchase – Legal advice – Failure to include condition in lease – Whether competent lawyer would have provided advice regarding fluctuating market and rental prices

Held (5:0): Appeal allowed.

Public International Law

World Bank Group v Wallace

Supreme Court of Canada: [2016 SCC 15](#)

Judgment delivered: 29 April 2016

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

Catchwords:

Public international law — Jurisdictional immunity — International organizations — Financial institutions — Accused in Canadian criminal proceedings applying for third party production order to compel senior investigators of international financial organization to appear before court and produce documents — International financial organization claiming archival and personnel immunities under its Articles of Agreement — Whether claimed immunities apply to international financial organization — Bretton Woods and Related Agreements Act, R.S.C. 1985, c. B-7, sch. II, arts. I, III, s. 5(b), art. VII, ss. 1, 3, 5, 6, 8, sch. III, arts. I, V, s. 1(g), (h), art. VIII, ss. 1, 3, 5, 6, 8.

Criminal law — Evidence — Disclosure — Interception of communications — Accused charged with bribing foreign public officials — Accused challenging wiretap authorizations on Garofoli application — Accused seeking production of documents held by third party international financial organization and validation of subpoenas to organization's personnel in support of application — Whether documents sought by accused are relevant to Garofoli application — Proper threshold for third party production on a Garofoli application.

Held (9:0): Appeal allowed.

Procedure

Tyson Foods, Inc v Bouaphakeo & Ors

Supreme Court of the United States: [Docket No 14-1146](#)

Judgment delivered: 22 March 2016

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

Catchwords:

Procedure – Class action – Certification of class action – Whether the district court erred in certifying and maintaining a class of employees who allege that the employer’s failure to pay them for donning and doffing protective gear violate the *Fair Labor Standards Act* - Where the employees’ rely on “representative evidence” to determine the number of additional hours that each employee worked – Where the employer had failed to keep adequate records.

Held (6:2): Affirmed and remanded.

Welch v United States

Supreme Court of the United States: [Docket No 15-6418](#)

Judgment delivered: 18 April 2016

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

Catchwords:

Procedure – Ruling in *Johnson v United States* that provisions under the *Armed Career Criminal Act* where unconstitutional – Whether new rule is substantive or procedural – Whether ruling has a retroactive effect

Held (7:1): Vacated and remanded.

Statutory Interpretation

Sturgeon v Frost & Ors

Supreme Court of the United States: [Docket No 14-1209](#)

Judgment delivered: 22 March 2016

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

Catchwords:

Statutory interpretation - Section 103(c) of the Alaska National Interest Lands Conservation Act – Scope of the National Park Service’s authority over lands within the boundaries of conservation system units in Alaska – meaning of the word ‘land’ – Whether the Act must be read as a whole – Whether Federal Agency can ban the use of a Hovercraft

Held (8:0): Vacated and remanded.

Nichols v United States

Supreme Court of the United States: [Docket No 15-5238](#)

Judgment delivered: 4 April 2016

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

Catchwords:

Statutory interpretation – Criminal law provisions – Sex offender registration – Where the Sex Offender Registration and Notification Act makes it a federal crime for certain sex offenders to “knowingly fail to register or update a registration,” – Where the Act requires sex offenders who move to another state to, “no later than 3 business days after each change of name, residence, employment, or student status,” inform in person at least one jurisdiction “where the offender resides, . . . is an employee, and . . . is a student,” – Whether the Act required the petitioner, a registered sex offender, to update his registration in Kansas once he left the state and moved to the Philippines.

Held (8:0): Case reversed.

The Mayor’s Office for Policing and Crime v Mitsui Sumitomo Insurance Co (Europe) Ltd and Ors

Supreme Court of the United Kingdom: [2016] UKSC 18

Judgment delivered: 20 April 2016

Coram: Lord Neuberger, Lord Clarke, Lord Hughes, Lord Toulson, Lord Hodge

Catchwords:

Statutory interpretation – *Riot (Damages) Act 1886* – Where respondents suffered losses during the 2011 London Riots - Whether s 2 allows claims for consequential losses – Whether s 2 only allows for compensation of physical losses

Held (5:0): Appeal allowed.

Taxation

DB Group Services (UK) Ltd v Revenue and Customs Comrs; UBS AG v Revenue and Customs Comrs

Supreme Court of the United Kingdom: [\[2016\] UKSC 13](#)

Judgment delivered: 9 March 2016

Coram: Lord Neuberger, Lord Mance, Lord Reed, Lord Carnwath, Lord Hodge

Catchwords:

Revenue — Income tax — Employment — Earnings — Employment-related restricted securities — Statutory exemption from income tax where employee awarded shares subject to condition providing for forfeiture in event of stated contingency — Taxpayer bank forming company for sole purpose of obtaining statutory exemption — Taxpayer setting up scheme whereby beneficial interests in shares in company allocated to employees in amounts equal in value to cash bonus entitlements — Contingency being remote event within short period of time with no business or commercial purpose — Employees thereafter free to redeem shares for cash — Whether exemption to be construed as limited to conditions having business or commercial purpose — Whether shares purchased as part of scheme restricted securities to which exemption applying — Whether employees liable to income tax on value of shares — Income Tax (Earnings and Pensions) Act 2003 (c 1)(as amended by Finance Act 2003 (c 14), s 140, Sch 22), ss 423(2), 425(2), 429

Held (5:0): Appeal allowed.

Torts

Mohamud v Wm Morrison Supermarkets plc

Supreme Court of the United Kingdom: [\[2016\] UKSC 11](#)

Judgment delivered: 2 March 2016

Coram: Lord Neuberger, Lady Hale, Lord Dyson, Lord Reed, Lord Toulson

Catchwords:

Vicarious liability — Employment — Course of employment — Petrol station attendant assaulting customer — Whether acting within course of employment — Whether employer liable for assault

Held (5:0): Appeal allowed.

Gill Gurbux Singh v Dah Sing Insurance Services LTD
Hong Kong Court of Final Appeal: [\[2016\] HKCFA 22](#)

Judgment delivered: 31 March 2016

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

Catchwords:

Torts – Employment – Insurance Companies Ordinance – Requirements to be a ‘technical representative’ – ‘Duty of care’ to comply with requirements under the ordinance – Liability under tort

Held: (5:0): Appeal allowed.

Trusts

Clayton & Anor v Clayton
Supreme Court of New Zealand: [\[2016\] NZSC 29](#)

Judgment delivered: 23 March 2016

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

Catchwords:

Trusts – Family trust – whether trust was a ‘sham’ – Whether trust was ‘illusory’ – Powers of trustee – Whether property is ‘relationship property’

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