



# 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.

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## Administrative Law

*Wilson v Atomic Energy of Canada Ltd*  
**Supreme Court of Canada:** [2016 SCC 29](#)

**Judgment delivered:** 14 July 2016

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

### Catchwords:

Administrative law — Judicial review — Standard of review — Employer terminating non-unionized employee on a without-cause basis with severance package — Employee filing unjust dismissal complaint under Canada Labour Code — Adjudicator allowing employee's complaint — Whether decision of Adjudicator reasonable — Streamlining standard of review framework — Canada Labour Code, R.S.C. 1985, c. L-2, s. 240.

Employment law — Unjust dismissal — Dismissal without cause — Non-unionized employees — Employer terminating non-unionized employee on a without-cause basis with severance package — Employee filing unjust dismissal complaint under Canada Labour Code — Whether non-unionized employees can be lawfully dismissed without cause under Code — Canada Labour Code, R.S.C. 1985, c. L-2, s. 240.

**Held (6:3):** Appeal allowed.

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*Christian Institute v Lord Advocate*

**United Kingdom Supreme Court:** [\[2016\] UKSC 51](#)

**Judgment delivered:** 28 July 2016

**Coram:** Lady Hale, Lord Wilson, Lord Reed, Lord Hughes, Lord Hodge

**Catchwords:**

Administrative law—Judicial review—Act of the Scottish Parliament—Named person scheme—Establishment of framework for scheme—Named person service to be provided for children and young people in Scotland—Whether within legislative competence—Scotland Act 1998 (c.46), s.29—Children and Young People (Scotland) Act 2014 (asp 8), Pt.4.

Human rights—Right to respect for private and family life—Act of the Scottish Parliament providing named person service for children and young people in Scotland—Information sharing provisions—Whether interfering with human rights—Whether proportionate—Children and Young People (Scotland) Act 2014 (asp 8), Pt.4—European Convention on Human Rights, art.8.

**Held (5:0):** Appeal allowed.

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## Agency

*Angove's Pty Ltd v Bailey*

**United Kingdom Supreme Court:** [\[2016\] UKSC 47](#)

**Judgment delivered:** 27 July 2016

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

**Catchwords:**

Agency—Authority—Termination—Agency agreement for importation and distribution of wine—Agreement expressly terminable on either party going into administration or liquidation—Agent going into liquidation while outstanding invoices unpaid—Whether agent's authority to collect on outstanding invoice terminated—Whether liquidators entitled to claim payment of unpaid invoices—Whether any sums collected by liquidators to be held on constructive trust for principal.

**Held (5:0):** Appeal allowed.

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# Agriculture

*Lafortune v Financière agricole du Québec*

**Supreme Court of Canada:** [2016 SCC 35](#)

**Judgment delivered:** 29 July 2016

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

## Catchwords:

Agriculture — Farm income stabilization — Compensation — Calculation method — Legal framework applicable to Quebec's Programme d'assurance stabilisation des revenus agricoles — Participants in program contesting method for calculating compensation payments that was adopted by La Financière agricole du Québec on basis of economic and statistical study — Whether program is contract and, if so, whether it is subject to rules applicable to contract of insurance within meaning of Civil Code of Québec — Whether trial judge erred in refusing to award damages to program's participants for alleged injury related to compensation that was paid — Programme d'assurance stabilisation des revenus agricoles, 2001, 133 G.O. 1, 1336, ss. 86, 87.

**Held (7:0):** Appeal dismissed.

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*Ferme Vi-Ber inc. v Financière agricole du Québec*

**Supreme Court of Canada:** [2016 SCC 34](#)

**Judgment delivered:** 29 July 2016

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

## Catchwords:

Agriculture — Farm income stabilization — Compensation — Calculation method — Legal framework applicable to Quebec's Programme d'assurance stabilisation des revenus agricoles — Participants in program contesting method for calculating compensation payments that was adopted by La Financière agricole du Québec to take federal government grants to farmers into account — Whether program is contract and, if so, whether it is subject to rules applicable to contract of insurance within meaning of Civil Code of Québec — Whether La Financière, in determining compensation payable to participants under program, acted in conformity with its rights and obligations by linking amounts at issue collectively — Programme d'assurance stabilisation des revenus agricoles, 2001, 133 G.O. 1, 1336, s. 88(3).

**Held (6:1):** Appeal dismissed.

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## Banking

*Baliso v Firstrand Bank Limited t/a Wesbank*

**Constitutional Court of South Africa:** [\[2016\] ZACC 23](#)

**Judgment delivered:** 4 August 2016

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J, and Zondo J

**Catchwords:**

Banking — Credit agreement — Instalment agreement — Compliance — jurisdictional requirement — Section 127 of the National Credit Act — Exception — Probable receipt by the reasonable consumer in opposed matters determined by way of evidence at the trial — Appealability of a dismissal of an exception — *Zweni* requirements.

**Held (11:0):** Application for leave to appeal dismissed.

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## Constitutional Law

*R v Williamson*

**Supreme Court of Canada:** [2016 SCC 28](#)

**Judgment delivered:** 8 July 2016

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

**Catchwords:**

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Delay of nearly three years between charges and end of trial — Whether accused's right to be tried within reasonable time under s. 11(b) of Canadian Charter of Rights and Freedoms infringed — New framework for determining s. 11(b) infringement applied.

**Held (6:3):** Appeal dismissed.

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*R v Jordan*

**Supreme Court of Canada:** [2016 SCC 27](#)

**Judgment delivered:** 8 July 2016

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

**Catchwords:**

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Delay of more than four years between charges and end of trial — Whether accused's right to be tried within reasonable time under s. 11(b) of Canadian Charter of Rights and Freedoms infringed — New framework for applying s. 11(b).

**Held (9:0):** Appeal allowed.

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*R v K.R.J.*

**Supreme Court of Canada:** [2016 SCC 31](#)

**Judgment delivered:** 21 July 2016

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

**Catchwords:**

Constitutional law — Charter of Rights — Benefit of lesser punishment — Sentencing — Accused pleaded guilty to incest and making child pornography — Retrospective application of amendments to Criminal Code expanding scope of community supervision measures sentencing judge can impose on sexual offenders — Offences committed prior to amendments but accused sentenced after — Whether new prohibition measures contained in Criminal Code constitute punishment such that their retrospective operation limits right protected by s. 11(i) of Charter — If so, whether limit is justified — Reformulation of s. 11 (i) test for punishment — Canadian Charter of Rights and Freedoms, ss. 1 , 11 (i) — Criminal Code, R.S.C. 1985, c. C-46, s. 161(1) (c) and (d).

**Held (7:2):** Appeal allowed in part.

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*City of Tshwane Metropolitan Municipality v Afriforum*

**Constitutional Court of South Africa:** [\[2016\] ZACC 19](#)

**Judgment delivered:** 21 July 2016

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Catchwords:**

Constitutional law — Appealability of interim orders — Requirements of an interim interdict — Separation of powers — Removal of street names prima facie right — Irreparable harm — Balance of convenience.

**Held (9:2):** Appeal allowed.

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*R v Cawthorne*

**Supreme Court of Canada:** [2016 SCC 32](#)

**Judgment delivered:** 22 July 2016

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

**Catchwords:**

Constitutional law — Charter of Rights — Fundamental justice — Armed forces — Prosecutorial independence — Right to trial by independent tribunal — Members of Canadian Forces charged with criminal offences — Sections 230.1 and 245(2) of National Defence Act, R.S.C. 1985, c. N-5 , giving Minister of National Defence authority to appeal from decisions of court martial or Court Martial Appeal Court — Whether these provisions violate ss. 7 and 11(d) of the Canadian Charter of Rights and Freedoms.

Criminal law — Trial — Evidence — Mistrial — Accused bringing motion for mistrial on basis of prejudice arising from inadmissible re-examination evidence — Whether military judge erred in declining to grant mistrial.

**Held (9:0):** Appeals allowed.

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*Land Access Movement of South Africa v Chairperson of the National Council of Provinces*

**Constitutional Court of South Africa:** [\[2016\] ZACC 22](#)

**Judgment delivered:** 28 July 2016

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Catchwords:**

Constitutional law – Parliamentary procedure – Where under the s 72(1)(a) of the Constitution the Parliament is required to facilitate public involvement – Requirements under s 72(1)(a) – Whether Restitution of Land Rights Amendment Act 15 of 2014 is invalid.

**Held (11:0):** Appeal allowed.

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## Construction

*Hastings Borough Council v Manolete Partners plc*  
**United Kingdom Supreme Court:** [\[2016\] UKSC 50](#)

**Judgment delivered:** 27 July 2016

**Coram:** Lady Hale, Lord Kerr, Lord Carnwath, Lord Toulson, Lord Hodge

### Catchwords:

Construction — Building — Compensation — “In default” — Tenant of arcade on pier continuing to operate despite surveyors’ report highlighting need for repairs to columns supporting arcade and adjacent decking — Decking providing means of access to and from remainder of pier — Local authority having knowledge of report but taking no action — Second surveyors’ report warning failure to repair supporting columns risking overloading of decking in event of emergency evacuation — Local authority exercising statutory power to close pier as dangerous building in response to second report — Tenant’s assignee claiming statutory compensation for loss of business caused by closure — Exclusion from compensation where claimant having itself been “in default” — Local authority claiming tenant’s continued use of arcade after first report in breach of statutory duties as employer and occupier and amounting to “default” — Whether “default” relating only to matter in relation to which authority exercised power — Building Act 1984 (c 55), ss 78, 106.

**Held (5:0):** Appeal dismissed.

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## Contract

*Mobil Oil New Zealand Limited v Development Auckland Limited*  
**Supreme Court of New Zealand:** [\[2016\] NZSC 89](#)

**Judgment delivered:** 20 July 2016

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

### Catchwords:

Contract – Implied terms – Leases – Tenancy agreements – Construction of terms – Where from the mid-1920s until 2005 properties in Auckland were used for the bulk storage of oil – Where different companies held leases over the properties during that period – Requirement to deliver up the properties “in good order and clean and tidy” – Where lands became heavily contaminated with oil products – Where properties require remediation – Whether appellant is required to remediate the consequence of contamination caused by it and its predecessors.

**Held (5:0):** Appeal allowed.

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*Patel v Mirza*

**United Kingdom Supreme Court:** [\[2016\] UKSC 42](#)

**Judgment delivered:** 20 July 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Toulson, Lord Hodge

**Catchwords:**

Contract—Illegality—Enforceability—Claimant advancing money to defendant pursuant to agreement to use it for insider dealing—Agreement frustrated by failure to obtain inside information—Claimant seeking repayment of money—Circumstances in which claims based on illegality enforceable—Whether claimant entitled to repayment.

**Held (9:0):** Appeal dismissed.

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*Hayward v Zurich Insurance Co Plc*

**United Kingdom Supreme Court:** [\[2016\] UKSC 48](#)

**Judgment delivered:** 27 July 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Clarke, Lord Reed, Lord Toulson

**Catchwords:**

Contract — Rescission — Settlement of action — Employee claiming damages against employer for injury at work — Employers' insurers suspecting that defendant exaggerating effect of injury but entering into settlement agreement on basis of inability to prove suspicions in court — Insurers subsequently receiving proof that employee had exaggerated claim so that settlement excessive — Insurers bringing action for rescission of settlement agreement — Whether sufficient to prove materially false misrepresentation which intended to induce and inducing representee to act to his detriment — Relevance of representee's belief as to truth of representation — Whether employee's false representation inducing insurers to enter into settlement — Whether insurers estopped from retrieving amount overpaid under settlement agreement.

**Held (5:0):** Appeal allowed.

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# Criminal Law

*Johnston v The Queen*

**Supreme Court of New Zealand:** [\[2016\] NZSC 83](#)

**Judgment delivered:** 6 July 2016

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

**Catchwords:**

Criminal law – Attempted sexual violation by unlawful sexual connection – Where the appellant was on the back lawn of a residential property near a sleepout which was used as a bedroom by a teenage girl – Where the girl's father found the appellant and chased him onto a neighbour's property - Whether the actions of the appellant on the night of the alleged offending were sufficiently proximate to constitute the actus reus of an attempt.

**Held (5:0):** Appeal dismissed.

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*HKSAR v Yeung Ka Sing; HKSAR v Salim*

**Hong Kong Court of Final Appeal:** [\[2016\] HKCFA 52](#); [\[2016\] HKCFA 53](#); [\[2016\] HKCFA 54](#)

**Judgment delivered:** 11 July 2016

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

**Catchwords:**

Criminal law – Money laundering – Organized and Serious Crimes Ordinance, s 25(1) – Whether the prosecution has to prove the predicate offence in a charge of dealing with property known or believed to represent proceeds of an indictable offence – What is the mental element on a charge of money laundering – Whether, and if so how, the rule against duplicity applies in the context of a money laundering charge.

**Held (5:0):** [2016] HKCFA 52: Appeal dismissed; [2016] HKCFA 53: Appeal dismissed; [2016] HKCFA 54: Appeal allowed.

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*R v Villaroman*

**Supreme Court of Canada:** [2016 SCC 33](#)

**Judgment delivered:** 29 July 2016

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

**Catchwords:**

Criminal law — Evidence — Circumstantial evidence — Inferences — Reasonable verdict — Accused found guilty on charge of possession of child pornography — Whether trial judge erred in his analysis of circumstantial evidence by requiring that inference supporting conclusion other than guilt be based on evidence rather than upon lack of evidence — Whether guilty verdict was unreasonable.

**Held (9:0):** Appeal allowed.

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*Skinner v The Queen*

**Supreme Court of New Zealand:** [\[2016\] NZSC 101](#)

**Judgment delivered:** 10 August 2016

**Coram:** William Young, Glazebrook, Arnold, O'Regan and McGrath JJ

**Catchwords:**

Criminal law – Tax fraud – Where appellants were charged on multiple counts of tax fraud – Where charges included allegations that the appellants knowingly provided false information to the Commissioner of Inland Revenue in their personal tax returns for the years 2006-2010 in breach of s 143B(1)(c) and (f) of the Tax Administration Act 1994 – Whether s 109 of the Tax Administration Act 1994 applies to the proceedings – Where, per s 109, decisions of the Commissioner of Inland Revenue regarding the assessment of income tax are deemed correct in proceedings – Whether s 109 applies to criminal matters.

**Held (5:0):** Appeal dismissed.

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## Criminal Procedure

*Raduvha v Minister of Safety and Security*

**Constitutional Court of South Africa:** [\[2016\] ZACC 24](#)

**Judgment delivered:** 11 August 2016

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Catchwords:**

Criminal Procedure - Arrest and detention of a child — Arrest under section 40(1)(j) of the Criminal Procedure Act 51 of 1977 — Rights of a child in section 28(1)(g) and 28(2) of the Constitution — Police discretion — Police did not consider child's best interests — Discretion to arrest must comply with the Bill of Rights — Detention of a child must be a measure of last resort.

**Held (11:0):** Appeal allowed.

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*Jimmale v S*

**Constitutional Court of South Africa:** [\[2016\] ZACC 27](#)

**Judgment delivered:** 30 August 2016

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Catchwords:**

Criminal procedure — Non-parole order — Section 276B(1) of the Criminal Procedure Act 51 of 1977 — Section 12(1)(a) and section 35(3)(n) of the Constitution — Discretion of trial court to issue non-parole order — Establishment of exceptional circumstances

**Held (11:0):** Appeal allowed.

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## Employment Law

*Solidarity v Department of Correctional Services*

**Constitutional Court of South Africa:** [\[2016\] ZACC 18](#)

**Judgment delivered:** 15 July 2016

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

**Catchwords:**

Employment law - Validity of employment equity plan – non-compliance with section 42 of Employment Equity Act – failure to take into account demographic profile of both regional and national economically active population in setting numerical targets and assessing representivity – Barnard principle – Also applies to African, Coloured and Indian candidates as well as to men, women and people with disabilities – employee may be denied appointment if he or she belongs to a category of persons that is already adequately represented at relevant occupational level – wrong benchmark used to set targets and determine representation – Plan not declared invalid – refused to appoint candidates – unfair discrimination

based on race or gender – numerical targets not quotas – refusal to appoint set aside and appropriate relief granted.

**Held (8:0):** Appeal allowed in part.

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## Human Rights

*R (Ismail) v Secretary of State for the Home Department*  
**United Kingdom Supreme Court:** [\[2016\] UKSC 37](#)

**Judgment delivered:** 6 July 2016

**Coram:** Lady Hale, Lord Kerr, Lord Sumption, Lord Hughes, Lord Toulson

**Catchwords:**

Human rights — Fair hearing — Letters of request — Request for service of foreign criminal judgment upon person in United Kingdom — Extent of Home Secretary's discretion in relation to serving foreign judgment — Whether right to fair hearing engaged — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 6 — Crime (International Co-operation) Act 2003 (c 32), s 1.

**Held (5:0):** Appeal allowed.

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*R (Lee-Hirons) v Secretary of State for Justice*  
**United Kingdom Supreme Court:** [\[2016\] UKSC 46](#)

**Judgment delivered:** 27 July 2016

**Coram:** Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lord Toulson

**Catchwords:**

Human rights—Liberty—Restricted patient—Patient recalled to hospital—Brief reasons for recall given orally when warrant executed—Further oral but not written reasons given 15 days later—Whether reasons given adequate—Whether breach of Convention—Right to reasons for detention—Whether rendering detention unlawful—Whether damages payable— Human Rights Act 1998 (c 42), s 8, Sch 1, Pt I, art 5.1, 5.2

Mental disorder—Secretary of State's powers—Restricted patient—Recall to hospital—Department of Health circular requiring provision of oral and written reasons within three days of readmission—Reasons given orally when warrant for recall executed—Further oral but not written reasons given 15 days later—Whether failure to provide reasons rendering detention unlawful—Whether damages payable— Mental Health Act 1983 (c 20), s 42(3) — Human Rights Act 1998, s 8, Sch 1, Pt I, art 5.1, 5.2.

**Held (5:0):** Appeal dismissed.

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## Insurance

*Versloot Dredging BV and another v HDI Gerling Industrie Versicherung AG and others*

**United Kingdom Supreme Court:** [\[2016\] UKSC 45](#)

**Judgment delivered:** 20 July 2016

**Coram:** Lord Mance, Lord Clarke, Lord Sumption, Lord Hughes, Lord Toulson

**Catchwords:**

Insurance — Marine — Fraudulent device — Insured recklessly making untrue statement in support of claim honestly believed to be good both as to liability and amount — Whether whole claim forfeited Ships' names — DC Merwestone.

**Held (4:1):** Appeal allowed.

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## Jurisdiction

*Moreno v Motor Insurers' Bureau*

**United Kingdom Supreme Court:** [\[2016\] UKSC 52](#)

**Judgment delivered:** 3 August 2016

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

**Catchwords:**

Jurisdiction - Road traffic — Motor Insurers' Bureau — Uninsured driver — United Kingdom resident injured in Greece when struck by Greek registered vehicle driven by uninsured driver — Claim against Motor Insurers' Bureau for compensation — Whether Greek or English law applicable to assessment of compensation — Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 (SI 2003/37), reg 13(2) — Council Directive 2009/103/EC.

**Held (5:0):** Appeal allowed.

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## Land

*Klaase v van der Merwe N.O.*

**Constitutional Court of South Africa:** [\[2016\] ZACC 17](#)

**Judgment delivered:** 14 July 2016

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

**Catchwords:**

Land - Extension of Security of Tenure Act 62 of 1997 — Definition of “occupier” — Express and Tacit Consent — Rights of Occupiers — Occupiers’ protections under ESTA — Right to Family Life — Joinder in Eviction Proceedings — Variation of eviction order.

**Held (9:0):** Appeal allowed in part.

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## Legal Aid

*Regina (Public Law Project) v Lord Chancellor*

**United Kingdom Supreme Court:** [\[2016\] UKSC 39](#)

**Judgment delivered:** 13 July 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Reed, Lord Carnwath, Lord Hughes, Lord Toulson

**Catchwords:**

Legal aid — Availability — Civil legal services — Qualification criteria for high priority need cases — Secretary of State proposing delegated legislation to introduce residence test for those in most need of legal assistance — Whether proposal ultra vires primary legislation — Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c 10), ss 9(2), 41(2), Sch I, Pt I.

**Held (7:0):** Appeal allowed.

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## Negligence

*Carter Holt Harvey Ltd v Minister of Education & Ors*

**Supreme Court of New Zealand:** [\[2016\] NZSC 95](#)

**Judgment delivered:** 29 July 2016

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

**Catchwords:**

Negligence – Limitations – Application of Building Act 2004, s 393 – Where appellant manufactures cladding sheets and cladding systems that have been installed in schools throughout New Zealand – Where respondents allege that a large number of school buildings have been affected by weathertightness issues and allege that these problems have arisen because the cladding sheets and cladding systems supplied by the appellant are defective – Whether respondents have an arguable negligent misstatement claim – Whether respondents have an arguable negligence claim.

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

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## Private International Law

*Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*

**Supreme Court of Canada:** [2016 SCC 30](#)

**Judgment delivered:** 15 July 2016

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

**Catchwords:**

Private international law — Choice of forum — Court having jurisdiction — Forum non conveniens — Whether Ontario courts should assume jurisdiction over third party claim brought by Ontario law firm against several law firms located in Quebec in the context of national class action certified in Ontario — If so, whether Ontario courts ought to decline to exercise jurisdiction on ground that court of another jurisdiction is clearly a more appropriate forum for disposing of litigation.

**Held (6:1):** Appeal dismissed.

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## Procedure

*Minister of Police v Kunjana*

**Constitutional Court of South Africa:** [\[2016\] ZACC 21](#)

**Judgment delivered:** 27 July 2016

**Coram:** Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Catchwords:**

Procedure - Confirmation proceedings — order of invalidity in terms of section 172(2)(a) of the Constitution — section 11(1)(a) and (g) of the Drugs and Drug Trafficking Act 140 of 1992 unconstitutional and invalid — declaration of invalidity prospective.

**Held (10:0):** Confirmed the declaration of constitutional invalidity.

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*Nkabinde v Judicial Service Commission*

**Constitutional Court of South Africa:** [\[2016\] ZACC 25](#)

**Judgment delivered:** 24 August 2016

**Coram:** Mogoeng CJ, Cameron J, Froneman J, Khampepe J, Madlanga J, Mbha AJ, Mhlantla J, Musi AJ and Zondo J

**Catchwords:**

Procedure – Application for rescission of order of Court – Justices of the Constitutional Court disqualified to sit in Colleagues’ matter – no quorum – Court unable to adjudicate matter – matter cannot be left pending indefinitely before Court – principle in *Hlophe v Freedom Under Law* applicable – Rule 42 of Uniform Rules of Court not applicable for rescission of order made at Conference – Applicants knew procedure for application for leave to appeal – Rule 19(3) – argument to be in affidavits – Rule 19(6) – Court may summarily dismiss application for leave to appeal.

**Held (9:0):** Application dismissed.

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*Minister of Agriculture, Forestry and Fisheries v National Society for the Prevention of Cruelty to Animals*

**Constitutional Court of South Africa:** [\[2016\] ZACC 26](#)

**Judgment delivered:** 25 August 2016

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

**Catchwords:**

Procedure - Extension of period of suspension of order of invalidity — Factors to consider when granting an extension — Caution to be exercised in continually extending court orders — Urgency and potential prejudice established.



**Held (11:0):** Appeal allowed.

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## Property Law

*Edwards v Kumarasamy*

**United Kingdom Supreme Court:** [\[2016\] UKSC 40](#)

**Judgment delivered:** 13 July 2016

**Coram:** Lord Neuberger, Lord Wilson, Lord Sumption, Lord Reed, Lord Carnwath

**Catchwords:**

Property - Landlord and tenant — Repairs — Covenant implied by statute — Landlord holding long lease of flat in block — Landlord letting flat to tenant — Tenant injured after tripping on uneven paving stone on pathway leading to main entrance of block — Landlord unaware of defect prior to tenant's accident — Whether pathway exterior of part of building to which landlord having estate or interest so that statutory repairing covenant applying — Whether landlord's liability under covenant in respect of defect outside demised property conditional upon his having notice of defect — Landlord and tenant Act 1985 (c 70), (as amended by Housing Act 1988 (c 50), s 116(1)), s 11(1)(1A)).

**Held (5:0):** Appeal allowed.

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## Statutory Construction

*HKSAR v Tse Man Fei*

**Hong Kong Court of Final Appeal:** [\[2016\] HKCFA 47](#)

**Judgment delivered:** 5 July 2016

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

**Catchwords:**

Statutory construction – Public and Municipal Services Ordinance, s 104A(1)(b), s 2 – Where respondent was observed promoting internet service plans next to a poster on a Government bridge – Where the respondent was convicted of the offence of displaying a bill or poster on Government land without permission of the relevant government authority – What act or conduct amounts to 'displaying' a poster.

**Held (5:0):** Appeal dismissed.

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# Taxation

*Amoena (UK) Ltd v Revenue and Customs Commissioners*

**United Kingdom Supreme Court:** [\[2016\] UKSC 41](#)

**Judgment delivered:** 13 July 2016

**Coram:** Lady Hale, Lord Sumption, Lord Reed, Lord Carnwath, Lord Hodge

**Catchwords:**

Taxation — Customs and Excise — Exemption from duty — Mastectomy bra — Clothing liable to duty — Medical apparatus compensating for a deformity and accessories thereof exempt from duty — Whether mastectomy bra accessory to medical apparatus — Whether exempt from duty — Council Regulation (EEC) No 2658/87, Annex 1 (as amended by Commission Regulation (EU) No 927/2012, Annex 1).

**Held (5:0):** Appeal allowed.

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*Trustpower Limited v Commissioner of Inland Revenue*

**Supreme Court of New Zealand:** [\[2016\] NZSC 91](#)

**Judgment delivered:** 27 July 2016

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

**Catchwords:**

Taxation – Income Tax Act 2004, s DA 2(1) – Where appellant derives its income from retail sales of electricity – Where during the 2006, 2007 and 2008 tax years, the appellant incurred costs totalling approximately \$17.7m applying for and obtaining resource consents under the Resource Management Act 1991 in relation to four proposed electricity projects – Whether the expenditure incurred in obtaining the resource consents for the four project is on revenue account or on capital account – Whether expenses are deductible.

**Held (5:0):** Appeal dismissed.

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# Tort

*Campbell v Peter Gordon Joiners Ltd*

**United Kingdom Supreme Court:** [\[2016\] UKSC 38](#)

**Judgment delivered:** 6 July 2016

**Coram:** Lady Hale, Lord Mance, Lord Reed, Lord Carnwath, Lord Toulson

**Catchwords:**

Tort — Cause of action — Whether arising from breach of statutory obligation — Employer's obligation to insure against liability for injury to employees — Statute creating criminal offence for employer's breach of obligation — Breach of obligation committed by corporate employer with knowledge or connivance of director — Director "deemed ...guilty of ...offence by statute in those circumstances — Employee injured when working for company without liability insurance — Company going into liquidation — Employee claiming sole director having connived in company's failure to insure — Whether imposition of deemed criminal liability indicating Parliamentary intention to impose qualified duty on director to ensure company's insurance in place — Whether employee having civil right of action against director for breach of duty — Employers' Liability (Compulsory Insurance) Act 1969 (c 57), ss 1(1), 5.

**Held (3:2):** Appeal dismissed.

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*Willers v Joyce*

**United Kingdom Supreme Court:** [\[2016\] UKSC 43](#); [\[2016\] UKSC 44](#)

**Judgment delivered:** 20 July 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed, Lord Toulson

**Catchwords:**

Tort — Cause of action — Malicious prosecution — Action brought against company director in respect of breaches of contractual and fiduciary duties — Claim withdrawn before trial — Company director claiming damages for malicious prosecution of civil proceedings — Whether tort of malicious prosecution of civil proceedings existing in English law

**Held (5:4):** Appeal allowed.

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