



# 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

*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*  
Supreme Court of Canada: [2016 SCC 47](#)

**Judgment delivered:** 4 November 2016

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

### Catchwords:

Administrative law — Appeals — Standard of review — Boards and tribunals — Assessment Review Board for City of Edmonton — Taxpayer filing complaint disputing municipal property assessment amount — Board increasing property assessment as requested in City's response to complaint — Standard of review applicable to Board's decision to increase taxpayer's property assessment — Whether Board's decision reasonable — Municipal Government Act, R.S.A. 2000, c. M-26, s. 470.

Municipal law — Taxation — Property assessments — Assessment Review Board for City of Edmonton — Taxpayer filing complaint disputing municipal property assessment amount — Board increasing property assessment as requested in City's response to complaint — Lower courts agreeing with taxpayer that Board cannot increase property assessment — Whether Board had power to increase assessment — Municipal Government Act, R.S.A. 2000, c. M-26, s. 467.

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

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## Animal Cruelty

*National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*  
**Constitutional Court of South Africa:** [\[2016\] ZACC 46](#)

**Judgment delivered:** 8 December 2016

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

**Catchwords:**

Animal cruelty — Private prosecution — Juristic persons — NSPCA — Societies for the Prevention of Cruelty to Animals Act — Animals Protection Act — Criminal Procedure Act — National Prosecuting Authority Act.

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

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## Commercial Law

*Mennillo v Intramodal Inc*  
**Supreme Court of Canada:** [2016 SCC 51](#)

**Judgment delivered:** 18 November 2016

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

**Catchwords:**

Commercial law — Corporations — Oppression — Reasonable expectations of shareholder — Shareholder resigning as officer and director of corporation — Whether resignation extended to shareholder status and shares transferred accordingly — Whether evidence supported reasonable expectation asserted by shareholder of being treated as such and, if so, whether reasonable expectation was violated — Whether shareholder unlawfully deprived of shareholder status as a result of corporation's conduct — Canada Business Corporations Act, R.S.C. 1985, c. C-44, s. 241.

**Held (8:1):** Appealed dismissed.

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***Jean Coutu Group (PJC) Inc v Canada (Attorney General)***  
**Supreme Court of Canada:** [2016 SCC 55](#)

**Judgment delivered:** 9 December 2016

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

**Catchwords:**

Commercial law — Corporations — Taxation — Whether rectification of written instrument amount to retroactive tax planning.

Contracts — Interpretation — Common intention of parties — Written instruments relating to transactional scheme not reflecting common intention of parties for tax-neutrality — Transactions having unintended tax consequences — Whether, under Quebec civil law, general intention that execution of transactional scheme be tax-neutral sufficient to authorize rectification of written instruments — Civil Code of Québec, art. 1425.

**Held (7:2):** Appeal dismissed.

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***Canada (Attorney General) v Fairmont Hotels Inc***  
**Supreme Court of Canada:** [2016 SCC 56](#)

**Judgment delivered:** 9 December 2016

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

**Catchwords:**

Commercial law — Corporations — Taxation — Whether rectification of contract amounts to retroactive tax planning.

Contracts — Equity — Remedies — Rectification of written instrument recording prior agreement — Agreement intended by parties to operate on tax-neutral basis — Corporate resolutions effecting share redemption — Share redemption having unintended tax consequences — Whether courts below erred in holding parties' intention can support grant of rectification — Whether equitable remedy of rectification available.

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

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# Constitutional Law

*Department of Transport and Others v Tasima (Pty) Limited*  
Constitutional Court of South Africa: [\[2016\] ZACC 39](#)

**Judgment delivered:** 9 November 2016

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

**Catchwords:**

Constitutional law — Unlawful administrative act — Reactive challenge — Organ of state — Maladministration — Validity of government contract — Contempt of court — Rule of law — Delay.

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

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*Prabakaran a/l Srivijayan v Public Prosecutor*  
Singapore Court of Appeal: [\[2016\] SGCA 67](#)

**Judgment delivered:** 2 December 2016

**Coram:** Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA

**Catchwords:**

Constitutional law - Judicial power - Remedies - Fundamental liberties - Right to life and personal liberty - Where appellants were convicted of drug offences and sentenced to death - Whether relevant sentencing provisions contravened principles of separation of powers embodied in constitution - Whether relevant sentencing provisions are "law" capable of depriving lives and liberty under Art 9(1) of the Constitution.

**Held (3:0):** Appeals dismissed.

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# Contract Law

*Masstores (Pty) Limited v Pick n Pay Retailers (Pty) Limited*  
Constitutional Court of South Africa: [\[2016\] ZACC 42](#)

**Judgment delivered:** 25 November 2016

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

**Catchwords:**

Contract — Delict — Unlawful interference with contractual relations — Wrongfulness — Contractual exclusivity — Lease agreement — Interdict requirements — Third party interference — Category of delictual interference — Aquilian liability

**Held (8:1):** Appeal allowed

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*Prattley Enterprises Ltd v Vero Insurance*

**New Zealand Supreme Court:** [\[2016\] NZSC 158](#)

**Judgment delivered:** 6 December 2016

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

**Catchwords:**

Contract law – Where parties settled insurance claim – Whether parties entered into settlement agreement under a common mistake as to the correct measure of the indemnity under the policy – Whether the Contractual Mistakes Act 1977 is applicable.

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

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## Criminal Law

*HKSAR v Li Shuk Woon*

**Hong Kong Court of Final Appeal:** [\[2016\] HKCFA 76](#)

**Judgment delivered:** 9 November 2016

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Phillips of Worth Matravers NPJ

**Catchwords:**

Criminal law – Money laundering – Where appellant was charged with dealing with money and jewellery over several years – Where appellant was convicted – Whether the charge was duplicitous.

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

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*Bravo-Fernandez v United*

**Supreme Court of the United States:** [Docket No 15-537](#)

**Judgment delivered:** 29 November 2016

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

**Catchwords:**

Criminal law – Double jeopardy - Issue-preclusion component of Double Jeopardy Clause – Where jury had returned irreconcilably inconsistent verdicts – Whether petitioners could be retried.

**Held (8:0):** Affirmed.

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*R v Golds*

**United Kingdom Supreme Court:** [\[2016\] UKSC 61](#)

**Judgment delivered:** 30 November 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Kerr, Lord Reed, Lord Hughes, Lord Toulson, Lord Thomas

**Catchwords:**

Criminal Law — Homicide — Diminished responsibility — Abnormality of mental functioning — Whether defendant's ability "substantially" impaired — Whether trial judge wrongly refusing to direct jury on meaning of "substantially" — Homicide Act 1957 (c 11), s 2 (as amended by Coroners and Justice Act 2009 c 25), s 52(1).

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

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*HKSAR v Luk Kin Peter Joseph; HKSAR v Yo Oi Kee*

**Hong Kong Court of Final Appeal:** [\[2016\] HKCFA 81](#); [\[2016\] HKCFA 82](#)

**Judgment delivered:** 8 December 2016

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

**Catchwords:**

Criminal law – Where respondents were convicted of conspiring to deceive their principal – Where first respondent was convicted of bribery – Whether lower Court was correct to hold that respondents were agents of China Mining even though they were only directors of its subsidiary and they were under no legal obligation to act on behalf of China Mining – Whether board minutes are a document for the purpose of section 9(3) of the Prevention of Bribery Ordinance – Whether Court of Appeal was correct to hold that the mind and will of the sole director are treated in law as the mind and will of the limited company.

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

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*Shaw v United States*

**Supreme Court of the United States:** [Docket No 15-5991](#)

**Judgment delivered:** 12 December 2016

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

**Catchwords:**

Criminal law – Bank Fraud – Where petitioner used identifying numbers of a bank account belonging to a banking customer in a scheme to transfer funds from that account to accounts at other institutions from which petitioner was able to obtain funds – Where petitioner was convicted for violating 18 U.S.C. §1344(1) which makes it a crime to ‘knowingly execut[e] a scheme ... to defraud a financial institution’ – Whether §1344(1) covers scheme to deprive a bank of money in a customer’s account.

**Held (8:0):** Vacated and remanded.

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*R v Docherty*

**United Kingdom Supreme Court:** [\[2016\] UKSC 62](#)

**Judgment delivered:** 14 December 2016

**Coram:** Lord Neuberger, Lord Mance, Lord Reed, Lord Carnwath, Lord Hughes

**Catchwords:**

Criminal law — Sentence — Imprisonment for public protection — Defendant convicted of wounding with intent and regarded as posing a threat to the public — Change of sentencing regime between defendant’s conviction and sentence — Imprisonment for public protection abolished in respect of those convicted on date after that on which defendant convicted — Defendant sentenced to imprisonment for public protection — Whether sentence excessive because principle of *lex mitior* not applied — Whether defendant subjected to discrimination — Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c 10), s 123 — Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012 (SI 2012/2906)

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

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*R v Guraj*

United Kingdom Supreme Court: [\[2016\] UKSC 65](#)

**Judgment delivered:** 14 December 2016

**Coram:** Lord Neuberger, Lord Mance, Lord Reed, Lord Hughes, Sir Declan Morgan

**Catchwords:**

Crime — Sentence — Confiscation order — Judge making forfeiture order and postponing confiscation proceedings — Prosecution failing to apply to extend period of postponement prior to expiry — Whether failure capable of remedy — Whether subsequent confiscation proceedings invalid — Proceeds of Crime Act 2002 (c 29), ss 14(8)(11)(12), 15(2)

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

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*HKSAR v Chan Kam Shing*

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 87](#)

**Judgment delivered:** 16 December 2016

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

**Catchwords:**

Criminal law – Joint criminal enterprise – Where appellant was convicted of murder based on his active participation in a joint criminal enterprise – Where principle of joint criminal enterprise laid out in *Chan Wing Siu v R* – Whether decision should be reviewed in light of UK decisions *R v Jogee* and *R v Ruddock*.

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

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## False Claims

*State Farm Fire & Casualty CO v United States*

Supreme Court of the United States: [Docket No 15-513](#)

**Judgment delivered:** 6 December 2016

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

**Catchwords:**



False claims – False Claims Act – Where petitioner had actions running against them in relation to insurance claims – Where action against petitioner was sealed as required by False Claims Act – Where disclosures about the actions were made violating the seal - Whether a seal violation mandates a dismissal of complaint.

**Held (8:0):** Affirmed.

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## Immigration

*Ali v Secretary of State for the Home Department*

United Kingdom Supreme Court: [\[2016\] UKSC 60](#)

**Judgment delivered:** 16 November 2016

**Coram:** Lord Neuberger, Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes, Lord Thomas

**Catchwords:**

Immigration — Deportation — Conducive to public good — Illegal immigrant refused asylum and leave to remain — Relationship with British citizen formed — Sentence of — Home Secretary ordering deportation as foreign criminal as result of four-years prison term imposed following conviction for serious criminal offence — Weight to be given to public interest in deportation of foreign criminals — Whether deportation disproportionate interference with Convention right to respect for private and family life — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 8 — Statement of Changes in Immigration Rules (1994) (HC 395) (as amended by Statement of Changes in Immigration Rules (2012) (HC 194), para 114), paras 398, 399, 399A

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

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*R (Iqbal) v Secretary of State for the Home Department*

United Kingdom Supreme Court: [\[2016\] UKSC 63](#)

**Judgment delivered:** 14 December 2016

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

**Catchwords:**

Immigration — Limited leave to remain — Application to vary leave — Claimants applying to vary leave to remain before expiry of such leave — Statutory provision automatically extending leave pending decision on “application” to vary leave made before expiry — Claimants’ applications declared invalid due to failure to comply with rules as to fees or provision

of biometric information — Further applications made after expiry of original leave period — Whether statutory provision operating in respect of first applications so as to extend leave period — Whether leave extended until subsequent applications determined — Immigration Act 1971 (c 77), s 3C (as substituted by Nationality, Immigration and Asylum Act 2002 (c 41), s 118 and amended by Immigration, Asylum and Nationality Act 2006 (c 13), s 11(4)) — Immigration (Biometric Registration) Regulations 2008 (SI 2008/3048), regs 3, 23 — Immigration and Nationality (Fees) Regulations 2011 (SI 2011/1055), reg 37

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

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## Jurisdiction

*Sin Chung Yin Ronald and Others v Dental Council of Hong Kong*  
Hong Kong Court of Final Appeal: [\[2016\] HKCFA 74](#)

**Judgment delivered:** 4 November 2016

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Phillips of Worth Matravers NPJ

**Catchwords:**

Jurisdiction – Relationship between offences involving dental companies under the Dentists Registration Ordinance and disciplinary charges related to unprofessional conduct brought before the Dental Council of Hong Kong – Whether there was procedural fairness – Whether the Court of Final Appeal has jurisdiction – Whether Courts can remit matters for rehearing.

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

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*Compania Sud Americana De Vapores S.A. v Hin-Pro International Logistics Ltd*

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 79](#)

**Judgment delivered:** 14 November 2016

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Phillips of Worth Matravers NPJ

**Catchwords:**

Jurisdiction – Where respondents shipped goods under a bill of lading issued by the appellant – Where respondent alleged that cargoes were wrongly delivered and brought proceedings against the appellant in PRC courts – Where appellant succeeded in action in English Court and obtained a worldwide freezing order against the Respondent – Where

appellant sort order freezing respondents assets in Hong Kong – Principle of judicial comity – Whether order freezing assets was correct.

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

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*Windsor (City) v Canadian Transit Co*  
**Supreme Court of Canada:** [2016 SCC 54](#)

**Judgment delivered:** 8 December 2016

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

**Catchwords:**

Courts — Jurisdiction — Federal Court — Relief sought under constitutional law — Company incorporated by federal legislation owning and operating Canadian half of bridge between Canada and United States — Company purchasing residential properties near bridge to facilitate maintenance and expansion — City issuing repair orders against properties pursuant to municipal by-law — Company applying to Federal Court for declarations that it has rights under its incorporating legislation which supersede municipal by-law — Whether Federal Court has jurisdiction to decide whether Company must comply with by-law and repair orders — Federal Courts Act, R.S.C. 1985, c. F-7, s. 23 — An Act to incorporate The Canadian Transit Company, S.C. 1921, c. 57.

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

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## Labour Law

*South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others*  
**Constitutional Court of South Africa:** [\[2016\] ZACC 38](#)

**Judgment delivered:** 8 November 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:**

Labour law — Section 193 of the LRA — Unfairness — Gross misconduct — Peremption — Review of arbitration award — Compensation — Racism.

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

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*Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others*

Constitutional Court of South Africa: [\[2016\] ZACC 49](#)

**Judgment delivered:** 15 December 2016

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

**Catchwords:**

Labour law — Prescription Act, 1969 — Labour Relations Act, 1995 — Dismissal dispute — Arbitration award — Section 158(1)(c) application — Prescription of arbitration award — Prescription of debt — Meaning of “debt” — Whether an arbitration award a “debt” in terms of the Prescription Act — Applicability of the Prescription Act to the LRA dispute resolution system.

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

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## Law of the Professions

*Lizotte v Aviva Insurance Company of Canada*

Supreme Court of Canada: [2016 SCC 52](#)

**Judgment delivered:** 25 November 2016

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

**Catchwords:**

Law of professions — Ethics — Powers of investigation of syndic — Production of documents — Litigation privilege — Inquiry by syndic of Chambre de l'assurance de dommages into conduct of claims adjuster — Whether statutory provision creating obligation to produce “any . . . document” at request of syndic can be interpreted as abrogating litigation privilege — Act respecting the distribution of financial products and services, CQLR, c. D-9.2, s. 337.

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

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# Medical Practice

*Khan v General Pharmaceutical Council*

United Kingdom Supreme Court: [\[2016\] UKSC 64](#)

**Judgment delivered:** 14 December 2016

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

**Catchwords:**

Medical practitioner — Professional conduct committee — Review procedure — Registered pharmacist convicted of serious domestic violence — Fitness to Practise Committee finding maximum suspension of 12 months insufficient and directing removal from register — Direction quashed on appeal and question of sanction remitted for consideration of 12-month suspension with view to extension by subsequent committee on review — Whether permissible use of review procedure — Whether removal from register in any event disproportionate — Pharmacy Order 2010 (SI 2010/231), art 54(2)

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

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# Negligence

*Benhaim v St-Germain*

Supreme Court of Canada: [2016 SCC 48](#)

**Judgment delivered:** 10 November 2016

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

**Catchwords:**

Negligence — Civil liability — Medical malpractice — Causation — Evidence — Presumption of fact — Physicians negligently delaying patient's cancer diagnosis — Patient dying of lung cancer — Physicians' negligence undermining plaintiff's ability to prove causation — Trial judge refusing to apply presumption of fact in favour of causation and finding causation not established — Whether trial judge required to draw adverse inference of causation or apply presumption of fact where defendant's negligence undermines plaintiff's ability to prove causation and where at least some evidence of causation adduced — Whether Court of Appeal justified in reversing trial judge's decision on basis of error of law — Whether trial judge committed palpable and overriding error in appreciation of facts — Civil Code of Québec, art. 2849.

**Held (4:3):** Appeal allowed.

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## Patents

*Samsung Electronics Co Ltd v Apple Inc*

Supreme Court of the United States: [Docket No 15-777](#)

**Judgment delivered:** 6 December 2016

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

**Catchwords:**

Patents – Where s 289 of the Patent Act makes it unlawful to manufacture or sell an ‘article of manufacture’ which a patented design or a colourable imitation thereof has been applied and makes an infringer liable to the patent holder ‘to the extent of his total profit’ 35 U.S.C. §289 – Whether the relevant ‘article of manufacture’ need be the whole product sold to the consumer for a §289 award.

**Held (8:0):** Reversed and remanded.

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## Privacy

*Royal Bank of Canada v Trang*

Supreme Court of Canada: [2016 SCC 50](#)

**Judgment delivered:** 17 November 2016

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

**Catchwords:**

Privacy — Disclosure of personal information — Disclosure without knowledge or consent — Exceptions — Compliance with court order — Implied consent — Judgment creditor sought to enforce judgment obtained against debtors by selling their home — Sherriff refused to sell house without mortgage discharge statement from mortgagee — Mortgagee refused to produce discharge statement on ground that Personal Information Protection and Electronic Documents Act precluded disclosure — Whether Act precludes mortgagee from disclosing mortgage discharge statement to judgment creditor without mortgagor/debtor’s consent — Whether order sought by judgment creditor constitutes “order made by a court” pursuant to s. 7(3)(c) of Act — Whether debtors

impliedly consented to disclosure of mortgage discharge statement — Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, s. 7(3) (c), schedule 1, cl. 4.3.6.

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

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*Alberta (Information and Privacy Commissioner) v University of Calgary*  
**Supreme Court of Canada:** [2016 SCC 53](#)

**Judgment delivered:** 25 November 2016

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

**Catchwords:**

Privacy — Investigation of complaints — Powers of Information and Privacy Commissioner — Production of documents — Solicitor-client privilege — Dismissed employee filing complaint with Commissioner and seeking access to her personal employment information — Employer claiming solicitor-client privilege over some documents — Whether statutory provision which requires public body to produce records to Commissioner “despite . . . any privilege of the law of evidence” allows Commissioner to review documents over which solicitor-client privilege is claimed — If so, whether Commissioner made reviewable error by ordering production of documents — Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, s. 56(3).

Administrative law — Judicial review — Standard of review — Information and Privacy Commissioner — Standard of review applicable to Commissioner’s decision to compel production of records over which solicitor-client privilege is asserted — Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, s. 56(3).

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

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## Procedure

*HKSAR v MD Emran Hossain*

**Hong Kong Court of Final Appeal:** [\[2016\] HKCFA 86](#)

**Judgment delivered:** 16 December 2016

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

**Catchwords:**

Procedure – Criminal law – Where appellant was convicted of a charge of burglary in the District Court and sentenced to three years imprisonment – Where appellant applied before the Court of Appeal for leave to appeal against conviction and sentence – Where leave dismissed by single judge – Where appellant renewed application for leave to appeal – Where leave dismissed by panel of three judges including the single judge that dismissed earlier application – Whether a single Justice of Appeal who refused leave to appeal to the Court of Appeal can lawfully sit as a member of the panel on a renewed application for leave to appeal.

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

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## Property

*Escrow Holdings Forty-One Ltd v District Court at Auckland*  
New Zealand Supreme Court: [\[2016\] NZSC 167](#)

**Judgment delivered:** 20 December 2016

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

**Catchwords:**

Property – Where site was subdivided into three lots: Lots 1, 2 and 3 – Where Lot 1 was further subdivided into two lots: Lots 4 and 5 – Where condition of subdivision of Lot 1 was that Lot 4 would be jointly owned by the owners of Lots 2 and 3 – Where half interests in Lot 4 were amalgamated with each of Lots 2 and 3 – Where subsequently the half interests in Lot 4 and the interest in Lot 4 was de-amalgamated – Whether residents of Lot 2 had interests in Lot 4.

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

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*Snyders and Others v De Jager and Others*  
Constitutional Court of South Africa: [\[2016\] ZACC 55](#)

**Judgment delivered:** 21 December 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:**

Property law — Extension of Security of Tenure Act, 1997 — Eviction of ESTA occupier — Appeal of eviction order granted by the Magistrate's Court and confirmed by the Land Claims Court — Section 19(3) of ESTA — Appeal lies to the Supreme Court of Appeal — Termination of employment



but no termination of right of residence — No compliance with substantive and procedural requirements of termination of right of residence.

**Held (10:1):** Appeal allowed.

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## Securities Fraud

*Salman v United States*

**Supreme Court of the United States:** [Docket No 15-628](#)

**Judgment delivered:** 6 December 2016

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

**Catchwords:**

Securities fraud – Insider trading – Where Securities and Exchange Commission’s Rule 10b-5 prohibits undisclosed trading on insider corporate information by persons bound by a duty of trust and confidence not to exploit that information for their personal gain – Where *Dirks v SEC* 463 U.S. 646 held that a tippee’s liability hinges on whether the tipper’s disclose the information for a personal benefit – Where petitioner received information for brother of a relative by marriage – Application of *Dirks v SEC* 463 U.S. 646.

**Held (8:0):** Affirmed

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## Social Housing

*R (MA and others) v Secretary of State for Work and Pensions*

**United Kingdom Supreme Court:** [\[2016\] UKSC 58](#)

**Judgment delivered:** 9 November 2016

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

**Catchwords:**

Social security — Housing benefit — Assessment — Secretary of State introducing changes to calculation of appropriate maximum housing benefit for public sector tenants — Effect of changes to reduce benefit payable in cases of deemed under-occupancy — Regulation precluding any provision for additional bedroom above number deemed necessary by application of standard size criteria — Additional criteria in regulation allowing for additional bedroom in respect of specified classes of person —

Claimants being persons outside additional criteria either needing additional bedroom for disability-related reason or having additional bedroom for inconsequential reason but needing to remain in property as providing specially-converted secure “sanctuary scheme” accommodation — Whether changes having disproportionate adverse impact on disabled persons and/or female victims of domestic violence — Whether unlawful discrimination in enjoyment of Convention right — Whether breach of public sector equality duty — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 14, Pt II, art 1 — Equality Act 2010 (c 15), s 149 — Housing Benefit Regulations 2006 (SI 2006/213), reg B13 (as inserted by Housing Benefit (Amendment) Regulations 2012 (SI 2012/3040), reg 5(7) and amended by Housing Benefit (Amendment) Regulations 2013 (SI 2013/665), reg 2(3) and Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 (SI 2013/2828), reg 2(3)).

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## Statutory Construction

*Lee v Whangarei District Court*

New Zealand Supreme Court: [\[2016\] NZSC 173](#)

**Judgment delivered:** 22 December 2016

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

**Catchwords:**

Weatheright Homes Resolution Services Act 2006 (“WHRS Act”) – Interpretation of s 37(1) of the WHRS – Where appellant had filed for assessor’s report inside limitations period – Where appellant had filed current proceedings outside limitations period – Whether s 37(1) provides that the filing of an application by the owner of a dwelling-house for an assessor’s report has the same effect, for the purposes of the Limitation Act 1950, as filing proceedings in a Court.

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

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## Succession

*Laubscher N.O. v Duplan and Another*

Constitutional Court of South Africa: [\[2016\] ZACC 44](#)

**Judgment delivered:** 30 November 2016

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

**Catchwords:**

Succession — Same-sex permanent partners — Reciprocal duty of support — Right to inherit — Intestate succession — Section 1(1) of the Intestate Succession Act — Section 13(2)(b) of the Civil Union Act — Effect of reading-in remedy — Interplay between Gory and the Civil Union Act

**Held (10:0):** Appeal dismissed.

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## Surrogacy

*AB and Another v Minister of Social Development*

Constitutional Court of South Africa: [\[2016\] ZACC 43](#)

**Judgment delivered:** 29 November 2016

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

**Catchwords:**

Surrogacy — Surrogate motherhood agreement — Statutory genetic origin requirement — Whether irrational — Whether limits commissioning parent's rights to equality, dignity, reproductive autonomy, reproductive health care, and privacy — Best interests of the child.

**Held (7:4):** Order of Constitutional invalidity not upheld.

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