



OVERSEAS DECISIONS BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library

Volume 10 Number 1 (8 December 2012 – 22 January 2013)

Decisions from 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 and the Supreme Court of New Zealand.

Administrative Law

Sriskandarajah v United States of America

Supreme Court of Canada: [2012 SCC 70](#).

Judgment delivered: 14 December 2012

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell and Karakatsanis JJ.

Catchwords:

Constitutional law — Charter of Rights — Mobility rights — Extradition — Minister ordered surrender of Canadian citizens to U.S. authorities to be tried there on terrorism charges — Whether extradition violates right to remain in Canada even when foreign state's claim of jurisdiction is weak or when prosecution in Canada is feasible — Whether surrender decisions were unreasonable on the evidence — Canadian Charter of Rights and Freedoms, s. 6(1); Extradition Act, S.C. 1999, c. 18.

Administrative law — Natural justice — Procedural fairness — Minister provided all materials considered in making decisions to surrender, except legal advice — Whether procedural fairness required minister to obtain and disclose Canadian prosecutorial authority's assessment of whether to prosecute in Canada.

Held: Appeal dismissed. Extradition does not violate the right of citizens to remain in Canada under s. 6(1) of the *Charter*, even when the foreign state's claim of jurisdiction is weak or when prosecution in Canada is feasible. Claim of procedural unfairness also not established. Procedural

fairness does not require the Minister to obtain and disclose every document that may be indirectly connected to the process that ultimately led him to decide to extradite.

Admiralty Law

Lozman v City of Riviera Beach, Florida

Supreme Court of the United States [Docket No. 11-626](#).

Judgment delivered: 15 January 2013

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

Catchwords:

Admiralty law – Statutory construction – Appellant lived in a floating home docked on a marina owned by the City of Riviera Beach – Respondent sought a lien for dockage fees and damages for trespass – Appellant moved to dismiss the suit for lack of admiralty jurisdiction – Whether floating home constitutes a “vessel”.

Held: Appeal upheld (Sotomayor and Kennedy JJ dissenting). The floating home (which was not self-propelled) was not a “vessel”. A reasonable observer, looking to the home’s physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water. But for the fact that it floated, nothing about the home suggested it was designed to any practical degree to transport persons or things over water.

Civil Procedure

In the matter of A (A Child)

Supreme Court of the United Kingdom: [\[2012\] UKSC 60](#).

Judgment delivered: 12 December 2012

Coram: Lord Neuberger PSC, Lady Hale, Lord Clarke, Lord Wilson, Lord Reed JJSC.

Catchwords:

Children - Family proceedings - Disclosure of information - Court granted father order for staying in contact with his child - Third

party later made confidential allegations that she had been sexually abused by father of child - Local authority found allegations credible and informed mother - Court varied order to provide for supervised contact pending resolution of allegations - Parents and children's guardian sought disclosure of third party's identity and allegations - Third party resisted disclosure on medical grounds – Local authority claimed public interest immunity in respect of records relating to allegations - Whether public interest in resolving allegations outweighs protection of third party - Whether disclosure would infringe third party's Convention rights - Whether refusal of disclosure would infringe Convention rights of parents and child - Whether disclosure would be appropriate - Human Rights Act 1998 (c 42), Sch. 1, Pt I, arts 3, 6, 8.

Held: Appeal dismissed. The third party's privacy rights are not a sufficient justification for the grave compromise of the fair trial and family life rights of the parties which non-disclosure would entail.

Ramakatsa and Others v Magashule and Others

Constitutional Court of South Africa: [\[2012\] ZACC 31](#).

Judgment delivered: 18 December 2012

Coram: Mogoeng CJ, Moseneke DCJ, Yacoob, Froneman Cameron, Jafta, Khampepe, Nkabinde, Skweyiya and Zondo JJ.

Catchwords:

Procedure – Application for leave – Whether appeal raised a constitutional issue – Whether in interests of justice to hear appeal – Whether procedure complied with in filing the application for leave – Whether appeal should leapfrog the Court of Appeal and be heard directly by the Supreme Court.

Contract law – Whether remedy is available for a breach of internal political party rules.

Constitutional law – Whether internal political party irregularities breach the constitutional right to participate in political activities.

Held: Leave to appeal to the Supreme Court granted (Froneman dissenting). Appeal upheld on merits (Mogoeng CJ, Yacoob and Froneman JJ dissenting).

Communications Law

Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168

Supreme Court of Canada: [2012 SCC 68](#).

Judgment delivered: 13 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Communications law — Broadcasting — Canadian Radio-television and Telecommunications Commission (“CRTC”) adopted policy establishing market-based, value for signal regulatory regime — Policy empowered private local television stations (“broadcasters”) to negotiate direct compensation for retransmission of signals by cable and satellite companies (“broadcasting distribution undertakings” or “BDUs”), as well as the right to prohibit BDUs from retransmitting those signals if negotiations were unsuccessful — Whether CRTC has jurisdiction under Broadcasting Act, to implement proposed regime — Broadcasting Act, S.C. 1991, c. 11, ss. 2, 3, 5, 9, 10.

Statutes — Conflicting legislation — Whether proposed regime conflicts with Copyright Act — Whether Copyright Act limits discretion of CRTC in exercising regulatory and licensing powers under Broadcasting Act — Broadcasting Act, S.C. 1991, c. 11, ss. 2, 3, 5, 9, 10 — Copyright Act, R.S.C. 1985, c. C-42, ss. 2, 21, 31, 89.

Held: Appeal allowed (Abella, Deschamps, Cromwell and Karakatsanis JJ dissenting). The proposed regulatory regime is *ultra vires* the CRTC.

Conflict of Laws

See also [Family Law](#): *Takamore v Clarke*

Constitutional Law

See also [Criminal Law](#): *R v Khawaja*

See also [Civil Procedure](#): *Ramakatsa and Others v Magashule and Others*.

See also [Human Rights](#): *Kinloch v Her Majesty's Advocate (Scotland)*.

National Credit Regulator v Opperman and Others
Constitutional Court of South Africa: [\[2012\] ZACC 29](#).

Judgment delivered: 10 December 2012

Coram: Mogoeng CJ, Moseneke DCJ, Van Der Westhuizen, Khampepe, Nkabinde, Cameron, Froneman, Jafta and Skweyiya JJ.

Catchwords:

Constitutional law – Inconsistent legislation – Deprivation of proprietary rights – Section 89(5)(c) of the National Credit Act provides that a credit provider loses his rights to reclaim money lent to a consumer if he was not a registered credit provider at the time he made the loan – Whether section 89(5)(c) compels the Court to void agreements or merely provides a discretion to do so – Whether arbitrary deprivation of property is contrary to section 25(1) of the Constitution – Whether deprivation is reasonable and justifiable limitation of section 25(1) – Whether section 89(5)(c) is constitutionally invalid.

Held: Section 89(5)(c) is invalid (Cameron, Froneman, Jafta JJ dissenting). The section is a punitive measure to protect consumers against unregistered credit providers. The provision compels a court to declare the agreement void and order that the unregistered credit provider's right to claim restitution based on unjustified enrichment of the consumer, be cancelled or forfeited to the state; with no discretion to a court to keep the restitution claim intact. The reasons put forward for this arbitrary deprivation of property were neither reasonable nor justifiable.

Imperial Tobacco Limited (Appellant) v The Lord Advocate
(Respondent) (Scotland)

Supreme Court of the United Kingdom: [\[2012\] UKSC 61](#).

Judgment delivered: 12 December 2012

Coram: Lord Hope DPSC, Lord Walker, Lady Hale, Lord Kerr, Lord Sumption JJSC.

Catchwords:

Constitutional law – Devolution - Scotland – “Devolution issue” – Whether sections 1 and 9 of the Tobacco and Primary Medical

Services (Scotland) Act 2010 are outside the legislative competence of the Scottish Parliament – Section 1 prohibits display of tobacco products in places where tobacco products are offered for sale and Section 9 prohibits vending machines for the sale of tobacco products – Whether sections 1 and 9 relate to ‘the sale and supply of goods to consumers’ and ‘product safety’ – Whether sections modify reserved matters – Whether sections create new offences.

Held: Appeal dismissed. Sections 1 and 9 are designed to discourage or eliminate sales of tobacco products, and promote public health not to regulate their sale or supply, nor to prohibit in any way their sale to those who wish and are old enough to purchase them.

Already, LLC, DBA YUMS v Nike, Inc

Supreme Court of the United States: [Docket No 11-982](#).

Judgment delivered: 9 January 2013

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

Catchwords:

Constitutional law – The judiciary – Case or controversy – Standing – Whether a covenant not to enforce a trademark against a competitor’s existing products and any future “colourable imitations” moots the competitor’s action to have the trademark declared invalid.

Patent law – Jurisdiction and review – Subject matter jurisdiction – Whether a covenant not to enforce a trademark against a competitor’s existing products and any future “colourable imitations” moots the competitor’s action to have the trademark declared invalid.

Held: Appeal dismissed. The covenant was unconditional and irrevocable; it protected the competitor and its distributors.

Contract Law

See also [Civil Procedure](#): *Ramakatsa and Others v Magashule and Others*

Criminal Law

R v Khawaja

Supreme Court of Canada: [2012 SCC 69](#).

Judgment delivered: 14 December 2012

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell and Karakatsanis JJ.

Catchwords:

Constitutional law — Charter of Rights — Freedom of expression — Accused convicted of terrorism offences under Part II.1 of Criminal Code — Whether provisions, in purpose or effect, violate right to free expression — Canadian Charter of Rights and Freedoms, s. 2(b); Criminal Code, R.S.C. 1985, c. C-46, s. 83.01(1)(b)(i)(A).

Constitutional law — Charter of Rights — Fundamental justice — Overbreadth — Terrorism offences — Provision criminalising participation in or contribution to activities of terrorist group — Whether provision broader than necessary to achieve purpose or whether provision's impact disproportionate — Whether provision contrary to principles of fundamental justice — Canadian Charter of Rights and Freedoms, s. 7; Criminal Code, R.S.C. 1985, c. C-46, s. 83.18.

Criminal law — Appeals — Terrorism offences — Trial fairness — Trial judge finding that clause defining terrorist activity as being for political, religious or ideological purpose unconstitutional — Court of Appeal overturning decision on constitutionality but upholding convictions — Whether Court of Appeal erred in applying curative proviso — Whether convictions unreasonable — Criminal Code, R.S.C. 1985, c. C-46, ss. 83.01(1)(b)(i)(A) and 686(1)(b)(iii).

National security — Terrorism — Sentencing — Totality principle — Accused guilty of terrorism offences sentenced by trial judge to 10 and a half years of imprisonment, with parole eligibility set at 5 years — Court of Appeal substituting sentence of life imprisonment coupled with 24 years of consecutive sentences, with parole eligibility set at 10 years — Whether Court of Appeal erred in overturning sentence.

Held: Appeal dismissed on all counts.

Kapa v The Queen

Supreme Court of New Zealand: [2012 NZSC 119](#).

Judgment delivered: 20 December 2012

Coram: Elias CJ, McGrath, William Young Chambers and Glazebrook JJ.

Catchwords:

Criminal law – Sentencing Act – Restitution – Appellant and one accomplice stole gallantry medals worth over \$5 million from National Army Museum – Both later returned medals anonymously to police and collected \$100,000 reward – Both arrested and pleaded guilty – Accomplice returned his share of the reward but the appellant did not – District Court ordered sentence of imprisonment and reparation of \$100,000 – Whether reward donors were persons whose benefit a sentence of reparation could be made under section 32 of the Sentencing Act 2002.

Held: Appeal allowed, sentence of reparation quashed (Glazebrook J dissenting). Only victims, as defined in section 4 of the Sentencing Act, can be the recipients of a sentence of reparation under section 32(1). Reward donors do not, by their payments, make themselves victims. Their loss suffered cannot be considered direct loss under section 32(1)(a) or consequential loss under section 32(1)(c)

R v Yumnu

Supreme Court of Canada: [2012 SCC 73](#).

Judgment delivered: 21 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Criminal law — Jurors — Selection — Appellants convicted of first degree murder and conspiracy to commit murder — Prior to jury selection, Crown requested that police conduct criminal record checks of prospective jurors and also provide comments on whether any prospective jurors were “disreputable persons” — None of the information received in response by Crown disclosed to defence — Whether it was appropriate to seek such information — Whether it should have been disclosed — Whether there is a reasonable possibility that such conduct affected trial fairness or gave rise to an appearance of unfairness, such that a miscarriage of justice occurred.

Held: Appeal dismissed. Although the Crown failed in its disclosure obligations there was no reasonable possibility that the jury would have been differently constituted had the pertinent information obtained from the vetting process been disclosed.

R v Emms

Supreme Court of Canada: [2012 SCC 74](#).

Judgment delivered: 21 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Criminal law — Jurors — Selection — Appellant convicted of fraud — Prior to jury selection, Crown requested that police conduct criminal record checks of prospective jurors and also provide comments on whether any prospective jurors were “disreputable persons” — None of the information received in response by Crown disclosed to defence — Whether it was appropriate to seek such information — Whether such information should have been disclosed — Whether there is a reasonable possibility that such conduct affected trial fairness or gave rise to an appearance of unfairness, such that a miscarriage of justice occurred.

Held: Appeal dismissed. While the conduct of the police and the Crown was in some respects improper and should not be repeated, there is no basis for concluding that they conspired to obtain a favourable jury. What occurred did not constitute a serious interference with the administration of justice, nor was it so offensive to the community’s sense of fair play and decency that the proceedings should be set aside as a miscarriage of justice.

R v Davey

Supreme Court of Canada: [2012 SCC 75](#).

Judgment delivered: 21 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Criminal law — Jurors — Selection — Appellant convicted of first degree murder for killing police officer — Prior to trial, Crown sought personal opinions of local police officers as to the “suitability” of prospective jurors for use in exercise of peremptory challenges — Neither the annotated jury panel lists setting out opinions of local police officers nor the fact that inquiries had been made was disclosed to the defence — Whether it was appropriate to seek such opinions — Whether opinions should have been disclosed — Whether there is a reasonable possibility that such

conduct affected trial fairness or gave rise to an appearance of unfairness, such that a miscarriage of justice occurred — Criminal Code, R.S.C. 1985, c. C-46, s. 686(1)(a)(iii).

Held: Appeal dismissed. If the Crown seeks the opinion of a police officer, any information received relevant to the selection process (touching on a potential juror's eligibility, suitability, or ability to remain impartial) must be disclosed. However, general impressions, personal or public knowledge in the community, rumours or hunches, need not be disclosed. The discussions in this case were of the second variety.

Smith v United States

Supreme Court of the United States: [Docket No 11-8976](#).

Judgment delivered: 8 January 2013

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

Catchwords:

Criminal law – Defences – Statute of limitations – Burden of proof – Whether petitioner bears the burden to prove withdrawal from conspiracy by a preponderance of the evidence – Whether once defence of withdrawal is raised the government has the burden to prove beyond a reasonable doubt that defendant did not withdraw outside the limitations period

Held: Appeal dismissed. A defendant bears the burden of proving a defence of withdrawal.

Ryan, Director, Arizona Department of Corrections v Valencia Gonzales; Tibbals, Warden v Sean Carter

Supreme Court of the United States: [Docket No 10-930 and 11-218](#).

Judgment delivered: 8 January 2013

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

Catchwords:

Criminal law – Habeas corpus – Procedure – Right to counsel – Appointment of counsel – Capital cases – Mental incapacity – Stay of proceedings – Whether death row inmates have the right to have habeas corpus action filed in court stayed until they are competent and can assist their counsel.

Held: Appeal upheld. A State prisoner does not have a right to suspension of his federal habeas proceedings when he is adjudged incompetent.

R v O'Brien

Supreme Court of Canada: [2013 SCC 2](#).

Judgment delivered: 17 January 2013

Coram: McLachlin CJ, Fish, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

Catchwords:

Criminal law — Offences — Uttering threats — Elements of offence — Mens rea — Respondent repeatedly told ex-girlfriend that he would kill her — Ex-girlfriend testified that words uttered by accused did not intimidate her or cause her fear as accused frequently talked in that manner — Whether trial judge erred in law in determining that accused did not have requisite mens rea — Criminal Code, R.S.C. 1985, c. C-46, s. 264.1(1)(a).

Held: Appeal dismissed (McLachlin CJ, Abella and Rothstein JJ dissenting). It is an essential element of the offence under s 264.1(1)(a) of the *Criminal Code* that the accused intended his or her words to intimidate or to be taken seriously. The trial judge properly considered the words uttered in the context of the evidence of the recipient of the threats and concluded that the evidence left her with a reasonable doubt as to whether the accused had the requisite intent.

R v Manning

Supreme Court of Canada: [2013 SCC 1](#).

Judgment delivered: 17 January 2013

Coram: McLachlin CJ, LeBel, Fish, Abella, Cromwell, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law — Forfeiture orders — Accused who had previously been convicted of multiple alcohol-related driving offences and breaches of probation orders and undertakings plead guilty to the charge of driving a motor vehicle while impaired by drugs or alcohol — Crown requested order of forfeiture of motor vehicle — Question whether trial judge erred in refusing to issue order.

Held: Appeal allowed and forfeiture order granted.

R v Ryan

Supreme Court of Canada: [2013 SCC 3](#).

Judgment delivered: 18 January 2013

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Criminal Law — Defences — Duress — Abused wife paid an undercover police officer posing as a “hit man” to murder husband who had threatened her life — Wife relied on defence of duress and was acquitted at first instance, upheld on appeal – Question whether duress is available in law as a defence where the threats made against the accused were not made for the purpose of compelling the commission of an offence — Statutory and common law parameters of defence of duress — Whether stay of proceedings is appropriate in circumstances of case.

Held: Appeal allowed and the proceedings stayed (Fish J dissenting in part). The defence of duress is only available when a person commits an offence while under compulsion of a threat made for the purpose of compelling him or her to commit the offence. This was not R’s situation and the defence of duress was not available to her. If an accused is threatened without compulsion, his or her only defence is self-defence.

Equity

Professional Institute of the Public Service of Canada v Canada (Attorney General)

Supreme Court of Canada: [2012 SCC 71](#).

Judgment delivered: 19 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

Catchwords:

Pensions — Pension plans — Surplus — Public sector pension plans administered by government — Government amortised actuarial surpluses in Superannuation Accounts — New legislation came into force on April 1, 2000 amending Superannuation Acts — Government debited over \$28 billion directly from Superannuation Accounts on basis of new legislation — Whether Superannuation Accounts contain assets — Whether government

owes fiduciary duty to Plan members — Whether a constructive trust should be imposed over balances in Superannuation Accounts as of March 31, 2000 — Whether new legislation authorised government to debit actuarial surpluses in Superannuation Accounts — Public Service Superannuation Act, R.S.C. 1985, c. P-36 — Canadian Forces Superannuation Act, R.S.C. 1985 c. C-17 — Royal Canadian Mounted Police Superannuation Act, R.S.C. 1985, c. R-11 — Public Sector Pension Investment Board Act, S.C. 1999, c. 34.

Held: Appeal dismissed. The Superannuation Accounts are legislated records and do not contain assets in which the Plan members have a legal or equitable interest. The Acts provide only a legal entitlement to statutorily defined pension benefits. Therefore no enrichment and corresponding deprivation occurred, precluding the imposition of a constructive trust. Additionally, the government had no fiduciary duty to the plan members, either in a recognised capacity or as an ad hoc relationship.

Evidence

See also [Constitutional Law](#): *R v Khawaja*.

R v N.S

Supreme Court of Canada: [2012 SCC 72](#).

Judgment delivered: 20 December 2012

Coram: McLachlin CJ, LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

Catchwords:

Charter of Rights — Freedom of religion — Right to fair hearing — Right to make full answer and defence — Muslim witness at preliminary hearing in sexual assault trial wanted to testify with her face covered by niqab — Whether requiring witness to remove the niqab while testifying would interfere with her religious freedom — Whether permitting her to wear niqab while testifying would create a serious risk to trial fairness — Whether both rights could be accommodated to avoid conflict between them — If not, whether salutary effects of requiring the witness to remove niqab outweigh deleterious effects — Canadian Charter of Rights and Freedoms, ss. 2(a), 7 and 11(d).

Criminal law — Evidence — Cross-examination — Muslim witness at preliminary hearing in sexual assault trial wanted to testify with her face covered by niqab — Whether permitting her to wear niqab while testifying would create a serious risk to trial fairness.

Held: Appeal dismissed and the matter remitted to the preliminary inquiry judge (Abella J dissenting).

Extradition

Kim v The Prison Manager, Mount Eden Corrections Facility
Supreme Court of New Zealand: [2012 NZSC 121](#).

Judgment delivered: 20 December 2012

Coram: Elias CJ, McGrath, William Young Chambers and Glazebrook JJ.

Catchwords:

Extradition – Statutory construction – Appellant arrested by New Zealand authorities pursuant to request by the People’s Republic of China – Appellant seeking warrant of habeas corpus – whether reasonable grounds existed to satisfy a judge that appellant was an extraditable person under the Extradition Act – Whether state seeking extradition must comply with provisions of its own extradition law before seeking a provisional warrant – whether mere suspicion of the commission of an offence meets the requirement that the appellant be an “accused” person.

Held: Appeal dismissed. Extradition Act written in an international context so necessarily must accommodate procedural differences in approach to prosecution of crime in different national jurisdictions. Each case must turn on their facts, and on the information before the Judge the appellant was plainly an accused person. Additionally it is not necessary to establish compliance with extradition law in China before a provisional warrant is issued. The provisional warrant process is preliminary and able to be used before any request for surrender has been made.

Family Law

See also [Civil Procedure](#): *In the matter of A (A Child)*.

Takamore v Clarke

Supreme Court of New Zealand: [2012 NZSC 116](#).

Judgment delivered: 18 December 2012

Coram: Elias CJ, Tipping, McGrath, William Young and Blanchard JJ.

Catchwords:

Family law – Whether executrix is entitled to determine disposal of the body of deceased – Whether executrix is entitled to take possession of the body of the deceased notwithstanding its burial.

Conflict of laws – Conflict of Tuhoe tikanga law and New Zealand common law – Deceased individual had explicitly noted his non-identification as Maori.

Held: Appeal dismissed. Three judges held that there is a common law rule under which personal representatives have both the right and duty to attend to disposal of the body of a deceased. The rule becomes operative where there is no agreement or acquiescence among the family on what is to be done, where arrangements have broken down, or where nothing is happening.

Human Rights

Kinloch v Her Majesty's Advocate (Scotland)

Supreme Court of the United Kingdom: [\[2012\] UKSC 62](#).

Judgment delivered: 19 December 2012

Coram: Lord Hope DPSC, Lady Hale, Lord Mance, Lord Kerr, Lord Reed JJSC.

Catchwords:

Human Rights – Devolution - Scotland - Human rights - Police using unauthorised surveillance to observe and record appellant in public places engaged in criminal activities - Evidence of observations led at trial - Whether breach of Convention right to respect for private life - Whether leading of evidence compatible with Convention right to fair trial - Scotland Act 1998, ss. 44(1), 57(2), Sch. 6, para 1(d).

Constitutional law - Devolution - Scotland – “Devolution issue” - Police using unauthorised surveillance to observe and record appellant in public places engaged in criminal activities - Whether infringing Convention right to respect for private life - Whether

actions of police capable of giving rise to devolution issue - Scotland Act 1998 (c 46), ss. 44(1), 57(2), Sch. 6, para 1(d).

Held: Appeal dismissed. No interference with the Appellant's rights under articles 8 and 6 of the Convention.

Labour Law

X v Mid Sussex Citizens Advice Bureau and another
Supreme Court of the United Kingdom: [\[2012\] UKSC 59](#).

Judgment delivered: 12 December 2012

Coram: Lord Neuberger PSC, Lord Walker, Lady Hale, Lord Mance, Lord Wilson JJSC.

Catchwords:

Labour law – Discrimination – Volunteer – Appellant signed volunteer agreement with respondent – Later asked to cease to act as a volunteer in circumstances amounting to discrimination on grounds of disability – Whether a “volunteer” falls within the scope of the protections against discrimination.

Held: Appeal dismissed. The Disability Discrimination Act 1995 applies only to those employed under a legally binding contract.

Geys v Societe Generale, London Branch
Supreme Court of the United Kingdom: [\[2012\] UKSC 63](#).

Judgment delivered: 19 December 2012

Coram: Lord Hope DPSC, Lady Hale, Lord Wilson, Lord Sumption, Lord Carnwath JJSC.

Catchwords:

Employment - Contract of employment - Repudiation - Employee summarily dismissed in breach of contract - Payment in lieu of notice subsequently paid into employee's bank account - Employee sought to affirm contract - Whether express and immediate dismissal automatically terminates contract - Whether employer validly exercised contractual right to dismiss by paying payment in lieu of notice into bank account.

Held: Allowed the appeal and dismissed the bank's cross appeal (Lord Sumption JSC dissenting). A repudiatory breach of a contract of

employment does not terminate the contract unless the other party elected to accept the repudiation.

Patent Law

See also [Constitutional Law](#): *Already, LLC, DBA YUMS v Nike, Inc.*

Restitution

See also [Criminal Law](#): *Kapa v The Queen*

Statutes

See also [Communications Law](#): *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*

Torts

Lee v Minister for Correctional Services

Constitutional Court of South Africa: [\[2012\] ZACC 30](#).

Judgment delivered: 11 December 2012

Coram: Mogoeng CJ, Moseneke DCJ, Nkabinde, Froneman, Jafta, Van der Westhuizen, Cameron, Khampepe and Skweyiya JJ

Catchwords:

Torts – Damages – The correct standard of causation at common law – Whether the common law causation test should be developed to meet applicants who cannot pinpoint the source of damage particularly in the case of airborne communicable diseases – Whether systemic omission meets the standard – Whether “but for” the systemic failure of the respondent to

provide reasonable screening procedures for 4000 inmates the appellant would not have contracted TB.

Held: Appeal upheld (Mogoeng CJ, Cameron, Khampepe and Skweyiya JJ dissenting). There is a legal duty on the responsible authorities to provide adequate health care services as part of the constitutional right of all prisoners to conditions of detention that are consistent with human dignity. There was a probable chain of causation between the negligent omissions by the responsible authorities and the appellant's infection with TB.
