



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.

Competition Law

S.O.S Support Public Broadcasting Coalition & Ors v South African Broadcasting Corporation (SOC) Limited & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 37](#)

Judgment delivered: 28 September 2018

Coram: Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ and Zondi AJ

Catchwords:

Competition law – Investigation – Interpretation of orders of Competition Appeal Court – Where South African Broadcasting Corporation (“SABC”) and MultiChoice (Pty) Ltd (“MultiChoice”) entered into channel licencing agreement – Where Competition Appeal Court ordered Competition Commission to investigate agreement (“June 2016 order”) – Where SABC and MultiChoice handed over limited number of documents to Commission – Where Commission sought order from Competition Appeal Court declaring Commission authorised under June 2016 order to exercise powers of investigation – Where Competition Appeal Court held June 2016 order did not give Commission power to subpoena witnesses – Whether Competition Appeal Court erred in failing to find Commission had investigative powers.

Held (9:0): Appeal allowed.

Constitutional Law

Rahube v Rahube & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 42](#)

Judgment delivered: 30 October 2018

Coram: Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Constitutional law – Equality – Property – Just administrative action – Where appellant moved into house with first respondent and others in 1970s – Where Deed of Grant issued in name of first respondent in 1988 – Where first respondent instituted eviction proceedings against appellant in 2009 on basis land tenure right held by first respondent by virtue of Deed converted into right of ownership by s 2(1) of *Upgrading of Land Tenure Rights Act 1991* – Where High Court declared s 2(1) unconstitutional and invalid insofar as it automatically converts land tenure rights into rights of property ownership without providing other occupants or affected parties an opportunity to make submissions – Whether s 2(1) violates rights of equality, property and just administrative action.

Held (9:0): Declaration confirmed.

Holomisa v Holomisa & Anor

Constitutional Court of South Africa: [\[2018\] ZACC 40](#)

Judgment delivered: 23 October 2018

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

Catchwords:

Constitutional law – Discrimination – *Divorce Act 1979* s 7(3) – Where first respondent and appellant married under *Transkei Marriage Act 1978* – Where s 7(3) of *Divorce Act* allows court to order just and equitable transfer of assets for marriages entered into before commencement of certain rationalisation laws – Where s 7(3) does not apply to women married under *Transkei Marriage Act* – Whether s 7(3) invalid because discriminates against women of former Transkei.

Held (9:0): Appeal allowed.

Chagnon v Syndicat de la fonction publique et parapublique du Québec
Supreme Court of Canada: [\[2018\] SCC 39](#)

Judgment delivered: 5 October 2018

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

Catchwords:

Constitutional law – Parliamentary privilege – Scope of privilege – Where security guards employed by National Assembly of Québec dismissed by President – Where arbitrator concluded dismissals not protected by parliamentary privilege over management of employees or parliamentary privilege to exclude strangers from legislative assembly – Where primary judge concluded decision to dismiss protected by privilege over management of employees – Where majority of Court of Appeal allowed appeal – Whether majority erred in concluding dismissals not protected by parliamentary privilege.

Held (7:2): Appeal dismissed.

Airports Company South Africa v Big Five Duty Free (Pty) Limited & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 33](#)

Judgment delivered: 27 September 2018

Coram: Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Constitutional law – Constitution s 217 – Contracts for goods or services – Where appellant awarded tender to operate duty-free stores to first respondent – Where second respondent brought application for review of award of tender – Where High Court held tender unlawful – Where first respondent appealed to Full Court of High Court – Where before judgment handed down, first and second respondents entered into settlement agreement – Where Full Court made settlement agreement order of court – Where first respondent sought order from High Court that appellant bound by award of tender – Where High Court refused application on basis Court's decision tender unlawful could not be set aside by agreement – Where Supreme Court of Appeal allowed appeal on basis settlement agreement had effect review proceedings withdrawn as if never happened – Whether Supreme Court of Appeal erred in concluding settlement agreement, made order of court, had effect of setting aside decision tender unlawful.

Held (8:1): Appeal allowed.

Hunter v Financial Sector Conduct Authority & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 31](#)

Judgment delivered: 20 September 2018

Coram: Mogoeng CJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ, and Theron J

Catchwords:

Constitutional law – Duty to investigate potentially unlawful action – Pension funds cancellation project – Where Financial Sector Conduct Authority (“Authority”) ran cancellation project to cancel registration of pension funds that had effectively ceased to exist – Where Deputy Registrar of Authority applied to High Court for orders requiring Authority to conduct investigations into potentially unlawful cancellations – Where High Court dismissed application – Where Supreme Court of Appeal dismissed appeal – Whether Authority had constitutional duty to investigate potentially unlawful cancellations – If yes, whether Authority fulfilled duty.

Held (6:4): Appeal dismissed.

Minister of Justice and Constitutional Development & Ors v Prince; National Director of Public Prosecutions & Ors v Rubin; National Director of Public Prosecutions & Ors v Acton

Constitutional Court of South Africa: [\[2018\] ZACC 30](#)

Judgment delivered: 18 September 2018

Coram: Zondo ACJ, Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ and Zondi AJ

Catchwords:

Constitutional law – Constitution s 14 – Right to privacy – Use, possession, purchase or cultivation of cannabis in private dwelling for personal consumption – Where High Court declared ss 4(b) and 5(b) of *Drugs and Drug Trafficking Act* 1992 inconsistent with right to privacy under s 14 of Constitution to extent provisions prohibit use, possession, purchase or cultivation of cannabis by adult in private dwelling for personal consumption – Whether declaration of constitutional invalidity should be affirmed.

Held (8:2): Appeal dismissed; cross-appeal allowed in part; declaration confirmed in part.

Contracts

3091-5177 Québec inc (Éconolodge Aéroport) v Lombard General Insurance Co of Canada

Supreme Court of Canada: [\[2018\] SCC 43](#)

Judgment delivered: 19 October 2018

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

Catchwords:

Contracts – Insurance – Exclusion clauses – Where hotel required guests who left cars in parking lot to leave keys at front desk – Where cars stolen – Where car owners’ insurers brought actions against hotel operator – Where trial judge found hotel operator liable for theft of cars – Where trial judge found clause in hotel operator’s insurance contract excluding cover for damage to property in care, custody or control of insured did not apply – Where Court of Appeal allowed appeal on issue of exclusion clause – Whether courts below erred in finding hotel operator liable for theft of cars – Whether Court of Appeal erred in finding exclusion clause applied.

Held (9:0): Appeal allowed in part; appeal allowed.

Corporations Law

Lee Kwok Wa & Ors v Securities and Futures Commission

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 45](#)

Judgment delivered: 31 October 2018

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

Catchwords:

Corporations law – Insider trading – *Securities and Futures Ordinance* s 300 – Where first appellant and friend arranged for second appellant to open securities account and order shares on behalf of appellants and friend – Where Court of First Instance found first and third appellants and friend contravened s 300 by misusing inside information – Where Court of First Instance found second appellant did not contravene s 300 but liable to return profits – Where Court of Appeal dismissed appeal – Whether courts below erred in construing “transaction” in s 300 as including conduct taking place prior to purchase and sale of securities – Whether courts below erred in finding fraudulent or deceptive acts occurred “in a transaction involving securities” for the purpose of s 300.

Held (5:0): Appeal dismissed.

Securities and Futures Commission v Yiu Hoi Ying Charles & Ors
Hong Kong Court of Final Appeal: [\[2018\] HKCFA 44](#)

Judgment delivered: 12 October 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Neuberger NPJ

Catchwords:

Corporations law – Insider trading – Where Market Misconduct Tribunal found Director and Company Secretary of listed company engaged in insider dealing contrary to *Securities and Futures Ordinance* s 270(1) but not guilty under s 271(3) on basis they did not intend to make profit using inside information – Where Court of Appeal dismissed appeal – Whether Director and Company Secretary entitled to rely on s 271(3) defence.

Held (4:1): Appeal allowed.

Criminal Law

R v Awashish

Supreme Court of Canada: [\[2018\] SCC 45](#)

Judgment delivered: 26 October 2018

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

Catchwords:

Criminal law – Interlocutory orders – Review of interlocutory orders – Where respondent charged with driving offences – Where Court of Quebec granted respondent's application to compel Crown to inquire into existence of documents relating to breathalyser maintenance – Where Supreme Court granted certiorari to quash order – Where Court of Appeal allowed appeal – Whether certiorari available to Crown.

Held (9:0): Appeal dismissed.

R v Gubbins

Supreme Court of Canada: [\[2018\] SCC 44](#)

Judgment delivered: 26 October 2018

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

Catchwords:

Criminal law – Evidence – Disclosure – Scope of Crown’s disclosure obligations – Where appellants charged with driving offences – Where appellants requested disclosure of breathalyser maintenance records – Where Court of Queen’s Bench held Crown should have disclosed maintenance records – Where majority of Court of Appeal allowed appeals – Whether majority of Court of Appeal erred in holding maintenance records are third party records not to be disclosed routinely.

Held (8:1): Appeals dismissed.

Secretary for Justice v Leung Hiu Yeung & Ors
Hong Kong Court of Final Appeal: [\[2018\] HKCFA 43](#)

Judgment delivered: 28 September 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Neuberger NPJ

Catchwords:

Criminal law – Sentencing – Where appellants convicted of unlawful assembly contrary to *Public Order Ordinance* s 18(3) – Where magistrate sentenced appellants to community service orders – Where Secretary for Justice appealed sentences to Court of Appeal under *Criminal Procedure Ordinance* s 81A – Where Court of Appeal allowed appeals and substituted sentences of imprisonment for community service orders – Whether Court of Appeal erred in concluding jurisdiction under s 81A engaged – Whether Court of Appeal erred in retrospectively applying principles in *Secretary for Justice v Wong Chi Fung* [2018] HKFCA 4 – Whether Court of Appeal erred in failing to properly consider s 109A of *Criminal Procedure Ordinance* in respect of fifth and sixth appellants before imposing custodial sentences.

Held (5:0): Appeals allowed.

Employment Law

Duncanmec (Pty) Ltd v Gaylard NO & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 29](#)

Judgment delivered: 13 September 2018

Coram: Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Employment law – Dismissal – Arbitration – Where appellant dismissed employees for singing “struggle song” with racist lyrics while participating in strike – Where arbitrator ordered reinstatement of employees – Where Labour Court concluded arbitrator’s decision reasonable – Whether Labour Court erred in failing to find arbitrator acted unreasonably.

Held (10:0): Appeal dismissed.

Human Rights

Lee v Ashers Baking Company Ltd & Ors (Northern Ireland); Reference by the Attorney General for Northern Ireland of devolution issues to the Supreme Court pursuant to paragraph 34 of Schedule 10 to the Northern Ireland Act 1998; Reference by the Attorney General for Northern Ireland of devolution issues to the Supreme Court pursuant to paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 (No 2)

United Kingdom Supreme Court: [\[2018\] UKSC 49](#)

Judgment delivered: 10 October 2018

Coram: Lady Hale, Lord Mance, Lord Kerr, Lord Hodge, Lady Black

Catchwords:

Human rights – Discrimination – Sexual orientation – Where order placed for cake depicting cartoon characters “Bert and Ernie” and words “Support Gay Marriage” – Where owners of bakery refused to produce cake – Where County Court held refusal to complete order constituted discrimination on grounds of sexual orientation contrary to *Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006* and discrimination on grounds of religious belief and political opinion contrary to *Fair Employment and Treatment (Northern Ireland) Order 1998* – Where Court of Appeal dismissed appeal – Where Attorney-General gave notice to Court of Appeal requiring it to make reference to Supreme Court under *Northern Ireland Act 1998* sch 10 para 33 – Where Court of Appeal refused to make reference – Whether Supreme Court has jurisdiction to hear appeal – Whether Court of Appeal erred in refusing to make reference – Whether courts below erred in finding refusal to complete order constituted discrimination on grounds of sexual orientation – Whether *Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006* or *Fair Employment and Treatment (Northern Ireland) Order 1998* imposes civil liability for refusal to express political opinion contrary to religious beliefs.

Held (5:0): Appeal allowed.

Intellectual Property

Rogers Communications Inc v Voltage Pictures, LLC
Supreme Court of Canada: [\[2018\] SCC 38](#)

Judgment delivered: 14 September 2018

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

Catchwords:

Intellectual property – Copyright – Infringement – *Norwich* order – Costs of compliance – Where copyright owners obtained *Norwich* order compelling internet service provider (“ISP”) to disclose identity of person suspected of infringing copyright – Where motion judge allowed ISP to recover costs of steps necessary to comply with order – Where Federal Court of Appeal confined ISP’s recovery to costs of complying with order that did not overlap with steps forming part of ISP’s implicit obligations under statutory regime – Whether steps taken by ISP to comply with *Norwich* order overlap with statutory obligations – Whether overlap impacts ISP’s ability to recover reasonable costs of compliance with *Norwich* order.

Held (9:0): Appeal allowed.

Insolvency

Dooneen Ltd (t/a McGinness Associates) & Anor v Mond (Scotland)
United Kingdom Supreme Court: [\[2018\] UKSC 54](#)

Judgment delivered: 31 October 2018

Coram: Lord Reed, Lord Kerr, Lord Hodge, Lady Black, Lord Briggs

Catchwords:

Insolvency – Meaning of “final distribution” – Where second respondent entered into trust deed for benefit of creditors – Where cl 11 of deed provided for termination of deed in event of “final distribution” of estate – Where second respondent entitled to compensation payment – Where trustee made distribution and discharged in circumstances where trustee did not know second respondent entitled to compensation – Where Lord

Ordinary and Inner House held trustee made “final distribution” – Whether courts below erred in concluding trustee made “final distribution”.

Held (5:0): Appeal dismissed.

Interpretation

Maledu & Ors v Itereleng Bakgatla Mineral Resources (Pty) Limited & Anor

Constitutional Court of South Africa: [\[2018\] ZACC 41](#)

Judgment delivered: 25 October 2018

Coram: Zondo DCJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ, Theron J

Catchwords:

Interpretation – *Mining and Petroleum Resources Development Act 2002 s 54* – Other satisfactory remedies – Where first respondent held mining right in respect of farm – Where appellants granted spoliation order to stop mining operations disturbing possession of farm – Where High Court granted respondents order evicting appellants from farm – Whether High Court erred in granting eviction order where respondents had not exhausted processes provided for in s 54.

Held (9:0): Appeal allowed.

Moody’s Investors Service Hong Kong Ltd v Securities and Futures Commission

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 42](#)

Reasons delivered: 11 October 2018

Coram: Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Bokhary NPJ, Lord Neuberger NPJ

Catchwords:

Interpretation – *Securities and Futures Ordinance s 193(1)* – Meaning of “relating to” – Where appellant published report on “red flags for emerging-market companies” in China – Where Securities and Futures Commission concluded appellant breached Code of Conduct of Credit Rating Agencies – Where Court of Appeal dismissed appeal, holding publication constituted “an activity relating to credit ratings” – Whether Court of Appeal erred in finding preparation and publication of report was activity “relating to” carrying on of provision of credit rating services for purposes of s 193.

Held (5:0): Appeal dismissed.

Wezizwe Feziwe Sigcau & Anor v Minister of Cooperative Governance and Traditional Affairs & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 28](#)

Judgment delivered: 11 September 2018

Coram: Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ and Petse AJ

Catchwords:

Interpretation – *Traditional Leadership and Governance Framework Act 2003* ss 9, 10, 26 – Where Act established Commission on Traditional Disputes and Claims – Where Commission decided Zanozuko Sigcau entitled to be king of amaMpondo aseQuakeni – Where Commission communicated decision to President under s 26 of Act – Where s 26(2)(a) required President to immediately implement decision in accordance with s 9 or 10 – Where s 9 provided President obliged to recognise person identified by royal family as entitled in terms of customary law to be king or queen unless allegations customary law not complied with in identifying person – Where High Court held President could comply with s 9 by publishing notice in Government Gazette and issuing certificate of recognition – Whether High Court erred in failing to find President required to follow all steps in ss 9 or 10.

Held (8:1): Appeal dismissed.

Judicial review

Mikisew Cree First Nation v Canada (Governor General in Council)

Supreme Court of Canada: [\[2018\] SCC 40](#)

Judgment delivered: 11 October 2018

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

Catchwords:

Judicial review – Consultation – Where Parliament adopted legislation amending environmental protection regime – Where First Nation not consulted on legislation – Where First Nation brought application for judicial review in Federal Court – Where reviewing judge declared duty to consult triggered – Where majority of Federal Appeal Court concluded reviewing judge erred in conducting judicial review of legislative action –

Whether Federal Court had jurisdiction to consider application under *Federal Courts Act*, R.S.C. 1985, c F-7 – Whether duty to consult applies to law-making process.

Held (9:0): Appeal dismissed.

Nottingham City Council v Parr & Anor

United Kingdom Supreme Court: [\[2018\] UKSC 51](#)

Judgment delivered: 10 October 2018

Coram: Lady Hale, Lord Wilson, Lord Carnwath, Lady Black, Lord Lloyd-Jones

Catchwords:

Judicial review – Licence conditions – Power to impose licence conditions *Housing Act 2004* ss 64, 67 – Irrationality – Where appellant is licencing authority for houses in multiple occupation (“HMOs”) under *Housing Act* – Where appellant granted HMO licences which imposed condition prohibiting use of attic bedroom for sleeping – Where First-tier Tribunal substituted condition permitting use of attic bedroom for sleeping accommodation by full-time student – Where Upper Tribunal dismissed appeal – Where Court of Appeal upheld decision and imposed further conditions that communal space be kept available for communal living only and no bedrooms be let to persons other than full-time students – Whether power to impose conditions under ss 64 and 67 can be used to limit class of persons for whom HMO suitable – Whether conditions imposed by First-tier Tribunal and Court of Appeal irrational.

Held (5:0): Appeal dismissed.

Jurisdiction

Ngāti Whātua Ōrākei Trust v Attorney General & Ors

New Zealand Supreme Court: [\[2018\] NZSC 84](#)

Judgment delivered: 17 September 2018

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

Catchwords:

Jurisdiction – Justiciability – Where Minister for Treaty of Waitangi Negotiations proposed to transfer commercial properties in Auckland to Ngāti Paoa and Marutūāhu – Where appellant brought judicial review proceedings on basis proposed transfer inappropriate because Ngāti Whātua Ōrākei maintains traditional rights over land and Ngāti Whātua Ōrākei owed process rights including consultation – Where High Court

struck out claim on basis declarations sought related to decisions made in context of development of legislation and not justiciable – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find claim justiciable.

Held (4:1): Appeal allowed in part.

Migration

KO (Nigeria) v Secretary of State for the Home Department; IT (Jamaica) v Secretary of State for the Home Department; NS (Sri Lanka) & Ors v Secretary of State for the Home Department; Pereira v Secretary of State for the Home Department

United Kingdom Supreme Court: [\[2018\] UKSC 53](#)

Judgment delivered: 24 October 2018

Coram: Lord Kerr, Lord Wilson, Lord Reed, Lord Carnwath, Lord Briggs

Catchwords:

Migration – *Nationality, Immigration and Asylum Act 2002* – Right to respect for private and family life – Where Secretary of State ordered deportation of appellants as “foreign criminals” or refused appellants’ applications for leave to remain – Where s 117A requires court or tribunal to have regard to particular considerations in determining whether immigration decision breaches right to respect for private and family life – Where s 276ADE provides leave to remain on grounds of private life should be granted to child applicant who has lived continuously in United Kingdom for seven years where not reasonable to expect child to leave United Kingdom – Where appellants in first, second and third matters have children who are British citizens or have lived in United Kingdom for at least seven years – Where appellant in fourth matter was child at time of application for leave to remain – Whether in determining whether “reasonable to expect” child to leave United Kingdom or deportation of person would be “unduly harsh” on child, tribunal only concerned with position of child and not conduct of parents.

Held (5:0): Appeals dismissed.

Ahmed & Ors v Minister of Home Affairs & Anor

Constitutional Court of South Africa: [\[2018\] ZACC 39](#)

Judgment delivered: 9 October 2018

Coram: Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Migration – *Immigration Directive 2015* – Where Director-General of Department of Home Affairs issued Directive banning asylum seekers from applying for visas – Where appellants' applications for visas rejected on basis appellants asylum seekers – Where High Court held Directive invalid – Where Supreme Court of Appeal allowed appeal – Whether Directive invalid as inconsistent with *Immigration Act 2002* and/or *Immigration Regulations 2014* reg 23.

Held (10:0): Appeal allowed.

Gavrić v Refugee Status Determination Officer, Cape Town & Ors
Constitutional Court of South Africa: [\[2018\] ZACC 38](#)

Judgment delivered: 28 September 2018

Coram: Mogoeng CJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Migration – *Refugees Act 1998* s 4(1)(b) – Serious non-political crime – Where appellant convicted of murder for participation in assassination of Željko Ražnatović in Serbia – Where appellant applied for refugee status under Act on basis falsely believed to be member of political group that orchestrated assassination – Where Refugee Status Determination Officer refused application under s 4(1)(b) on ground appellant committed serious non-political crime – Where High Court affirmed decision – Where Supreme Court of Appeal refused application for leave to appeal – Whether Officer's decision procedurally unfair – Whether Officer erred in concluding appellant committed serious non-political crime – Whether s 4(1)(b) of Act unconstitutional.

Held (7:2): Appeal allowed.

Procedure

Warner v Scapa Flow Charters (Scotland)
United Kingdom Supreme Court: [\[2018\] UKSC 52](#)

Judgment delivered: 17 October 2018

Coram: Lady Hale, Lord Reed, Lord Sumption, Lord Hodge, Lord Briggs

Catchwords:

Procedure – Limitation period – Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 – *Prescription and Limitation (Scotland) Act 1973* – Where respondent’s husband died while scuba diving from motor vessel operated by appellant – Where respondent brought action for damages in negligence in personal capacity and as guardian of son – Where Lord Ordinary held action barred by Convention because not brought within two years from date passenger would have disembarked – Where Inner House upheld decision in relation to claim in personal capacity but reversed order in relation to claim on behalf of son – Whether Inner House erred in concluding claim brought on behalf of son not time barred – Whether limitation period suspended under s 18 of Act.

Held (5:0): Appeal dismissed.

Morudi & Ors v NC Housing Services and Development Co Limited & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 32](#)

Judgment delivered: 25 September 2018

Coram: Mogoeng CJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ, and Theron J

Catchwords:

Constitution – Constitution s 34 – Right of access to courts – Standing – Where first to fourth appellants shareholders and directors of company – Where proceeding commenced in High Court against company and first to fourth appellants in capacities as directors seeking declaration in relation to shareholding – Where shareholders’ meeting resolved to withdraw company’s opposition to application – Where High Court held first to fourth appellants lacked standing because proceedings brought against them in representative capacities as directors and company withdrew opposition – Where Supreme Court of Appeal dismissed appeal – Whether in refusing to grant audience, High Court denied first to fourth appellants right of access to courts.

Held (9:0): Appeal allowed.

Tort

Darnley v Croydon Health Services NHS Trust
United Kingdom Supreme Court: [\[2018\] UKSC 50](#)

Judgment delivered: 10 October 2018

Coram: Lady Hale, Lord Reed, Lord Kerr, Lord Hodge, Lord Lloyd-Jones

Catchwords:

Tort – Negligence – Duty of care – Where appellant attended hospital after being struck in head – Where receptionist told appellant he would have to wait up to four or five hours to see clinician – Where appellant felt too unwell to remain and left hospital – Where appellant later taken by ambulance back to hospital – Where appellant suffered permanent brain damage – Where appellant brought proceedings against respondent alleging breach of duty of care by reception staff concerning information given about time he would have to wait and failure to assess appellant for priority triage – Where High Court dismissed claim – Where majority of Court of Appeal dismissed appeal on grounds no duty of care to advise about waiting times, damage outside scope of any duty owed and no causal link between breach of duty and injury – Whether courts below erred in dismissing claim.

Held (5:0): Appeal allowed.
