



# 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

*Mwelase & Ors v Director-General for the Department of Rural Development and Land Reform & Anor*

**Constitutional Court of South Africa:** [\[2019\] ZACC 30](#)

**Judgment delivered:** 20 August 2019

**Coram:** Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

### Catchwords:

Administrative law – Judicial overreach – Extent of power of Land Claims Court (“LCC”) to fashion and implement remedies – Where thousands of labour tenants, including applicants, lodged applications under *Land Reform (Labour Tenants) Act 3 of 1996* with Department of Rural Development and Land Reform before cut-off date – Where Department failed to process applications, and LCC and Supreme Court of Appeal (“SCA”) both found this breached ss 10, 25(6), 33, 195 and 237 of Constitution – Where LCC ordered appointment of Special Master for labour tenants to assist Department in implementation of Act – Where SCA affirmed much of LCC’s order but upheld Department’s appeal against Special Master’s appointment – Where LCC found that applicants had not established Minister of Rural Development and Land Reform in contempt of its order and SCA dismissed applicants’ appeal on question of contempt – Whether LCC order appointing a Special Master should be restored – Whether Minister in contempt.

**Held (7:2 partial dissent):** Appeal in main application succeeds; Supreme Court of Appeal orders set aside; respondents pay costs in this Court; appeal against dismissal of contempt application dismissed with no order as to costs.

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*National Energy Regulator of South Africa & Anor v PG Group (Pty) Limited & Ors*

**Constitutional Court of South Africa:** [\[2019\] ZACC 28](#)

**Judgment delivered:** 15 July 2019

**Coram:** Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla J, Nicholls AJ and Theron J

**Catchwords:**

Administrative law – Monopoly – Pricing regulation – Where National Energy Regulator of South Africa (“NERSA”) made determination that inadequate competition in gas market due to monopoly of Sasol Gas Limited (“Sasol”) – Where NERSA approved applications from Sasol for determination of its maximum gas prices and its transmission tariffs – Where respondents experienced substantial increase in prices as a result – Where respondents sought review on basis that both decisions irrational and unreasonable – Whether maximum price decision separate from methodology adopted and therefore review application within time set out in *Promotion of Administrative Justice Act* – Whether incorrect to merely compare prices before and after decision – Whether marginal costs of monopolist must be considered by regulator to rationally set maximum price – Whether tariff decision independent from maximum price decision.

**Held (9:0):** Appeal upheld in part; remainder of appeal dismissed; applicants must pay respondents’ costs in Constitutional Court.

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*London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government & Ors*

**United Kingdom Supreme Court:** [\[2019\] UKSC 33](#)

**Judgment delivered:** 3 July 2019

**Coram:** Lords Reed, Carnwath, Lady Black, Lords Lloyd-Jones and Briggs

**Catchwords:**

Administrative law – Permitted uses of retail store – Where planning permission granted by Secretary of State in 1985, but use limited by condition to sale of specified categories of goods, not including food – Where permitted categories extended by later consents under s 73 of *Town and Country Planning Act 1990* – Where proposed wording of new permission included “shall be used for the sale and display of non-food

goods only and ... for no other goods”, but 2014 permission did not refer to restriction on sale of food goods – Where second respondent sought certificate from appellant determining that lawful use of store extended to sales of unlimited categories of goods including food – Whether store can be used for sale of food.

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

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## Civil Procedure

*Cape Intermediate Holdings Ltd v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK)*

**United Kingdom Supreme Court:** [\[2019\] UKSC 38](#)

**Judgment delivered:** 29 July 2019

**Coram:** Lady Hale, Lord Briggs, Lady Arden, Lords Kitchin and Sales

**Catchwords:**

Civil procedure – Rule 5.4C of *Civil Procedure Rules* – Where appellant involved in manufacture and supply of asbestos, and was defendant in High Court trials to claims brought by employers’ insurers – Where claims settled before judgment – Where Asbestos Victims Support Groups Forum UK (“Forum”), which was not party to proceedings, applied under r 5.4C for access to all documents used at or disclosed for trial, including trial bundles and transcripts – Whether scope of r 5.4C correctly demarcated – Whether inherent jurisdiction of court to disclose documents limited to skeleton arguments or written submissions relied on in court – Whether Forum had legitimate interest based on public interest in open justice principle in content of documents it was seeking.

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

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*Rangitira Developments Limited v Royal Forest and Bird Protection Society of New Zealand Incorporated*

**New Zealand Supreme Court:** [\[2019\] NZSC 81](#)

**Judgment delivered:** 26 July 2019

**Coram:** Winkelmann CJ, Glazebrook, O’Regan, Ellen France and Williams JJ

**Catchwords:**

Civil procedure – Where appellant wishes to develop open cast coal mine on forest land and 104 of 116 hectares it proposes to excavate reserve land administered by Buller District Council (“Council”) – Where appellant has mining permit for project and applied to Council for access

arrangement – Where appellant subsequently applied to High Court for various declarations in relation to s 23 of *Reserves Act 1977* and s 60(2) of *Crown Minerals Act 1991* – Where High Court’s declarations set aside by Court of Appeal – Where proceedings in High Court proceeded on basis that land at issue was local purpose water conservation reserve, but appellant informed Supreme Court of discovery that reserve at issue does not appear to have been classified as local purpose reserve – Whether relationship between s 23 of *Reserves Act* and s 60(2) of the *Crown Minerals Act* is of general and public importance – Whether appeal would resolve issues between parties.

**Held (5:0):** Leave to appeal revoked; costs awarded to respondent; leave reserved to apply again for leave to appeal if proposed appeal no longer moot.

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## Company Law

*Akçil & Ors v Koza Ltd & Anor*

**United Kingdom Supreme Court:** [\[2019\] UKSC 40](#)

**Judgment delivered:** 29 July 2019

**Coram:** Lords Reed, Hodge, Lady Black, Lords Briggs and Sales

### Catchwords:

Company law – Art 24(2) of *Brussels I Recast Regulation* (Regulation (EU) No 1215/2012) (“Recast Regulation”) – Where first respondent is private company in England (“English company”) wholly owned by sixth appellant, publicly listed company in Turkey (“Turkish company”) – Where first to fifth appellants appointed trustees of Turkish company – Where trustees caused Turkish company to serve notice on directors of English company under s 303 of *Companies Act 2006* requiring them to call general meeting to consider resolutions for their removal and replacement – Where directors of English company refused – Where Turkish company served notice under s 305 to convene a meeting, but second respondent and English company successfully sought interim injunction – Where second respondent and English company issued claim seeking declaratory and injunctive relief – Whether art 24(2) of Recast Regulation confers jurisdiction on English courts to determine authority of trustees to cause Turkish company to do anything as English company shareholder – Whether art 24(2) confers exclusive jurisdiction on English courts to determine authority claim or whether notices were void under s 303(5)(a) as against trustees.

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

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## Competition Law

*Competition Commission of South Africa v Media 24 (Pty) Limited*  
**Constitutional Court of South Africa:** [\[2019\] ZACC 26](#)

**Judgment delivered:** 3 July 2019

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

**Catchwords:**

Competition law – Predatory pricing – Where Media24 dominant in newspaper market in Welkom area while Gold Net News had about quarter market share – Where newspapers distributed for free and money made by selling advertising space – Where between 2004 and 2009, Media24 drastically cut rates which one of its newspapers (“Forum”) charging for advertisements – Where Gold Net News argued that lowered prices were below Forum’s costs and Gold Net News exited market in January 2009 – Where subsequently Media24 closed down Forum, so only one newspaper (also owned by Media24) remained in market – Whether predatory pricing under *Competition Act* can only be proven through evidence of specific exclusionary conduct, and not evidence of intention with which conduct committed – Whether average total cost of production constituted appropriate pricing measure for assessing predatory pricing.

**Held (6:4):** Appeal dismissed with costs.

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## Constitutional Law

*Herbert N.O. & Ors v Senqu Municipality & Ors*  
**Constitutional Court of South Africa:** [\[2019\] ZACC 31](#)

**Judgment delivered:** 22 August 2019

**Coram:** Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

**Catchwords:**

Constitutional law – Invalidity – Where *Upgrading of Land Tenure Rights Act 112 of 1991* (“Upgrading Act”) passed in order to grant Africans a secure form of land tenure which they previously could not have, owing to discriminatory laws of apartheid era – Where operation of Upgrading Act extended by *Land Affairs General Amendment Act 61 of 1998* (“Amendment Act”) – Where Teba Property Trust brought application in High Court for declaration that its permission to occupy constitutes land tenure right referred to in item 2 of Sch 2 of Upgrading Act – Where Municipality argued that s 3 of Upgrading Act on which Trust relied for its claim did not apply to area that formed part of former Transkei by virtue

of s 25A of Upgrading Act – Where Trust challenged validity of Amendment Act and s 25A of Upgrading Act, invoking ss 9(1) and 25(1) of Constitution – Where High Court declared that s 1 of Amendment Act and s 25A of Upgrading Act inconsistent with Constitution to extent that they exclude s 3 of Upgrading Act from applying to entire Republic – Whether declaration should be confirmed.

**Held (9:0):** Declaration of invalidity confirmed; s 25A of Act shall be read as if it makes no reference to s 3; Senqu Municipality and Minister of Rural Development and Land Reform to pay applicants' costs in this Court.

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*R v Stillman*

**Supreme Court of Canada:** [2019 SCC 40](#)

**Judgment delivered:** 26 July 2019

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

**Catchwords:**

Constitutional law — Charter of Rights — Right to trial by jury — Military exception — Armed forces — Military offences — Where accused charged with offences under s 130(1)(a) of *National Defence Act*, which transforms criminal and other federal offences into service offences triable by military justice system — Where accused denied jury trial based on military exception to constitutional right to trial by jury for offences where maximum punishment is imprisonment for five years or more — Whether s 130(1)(a) inconsistent with constitutional right to trial by jury in its application to serious civil offences — Whether service offence tried under s 130(1)(a) engages military exception such that right to trial by jury may be denied — *Canadian Charter of Rights and Freedoms*, s 11(f) — *National Defence Act* RSC 1985, c N-5, s 130(1)(a).

**Held (5:2):** Appeals in *Stillman* dismissed; appeal in *Beaudry* allowed, declaration set aside and conviction restored.

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## Contract Law

*X v Kuoni Travel Ltd*

**United Kingdom Supreme Court:** [\[2019\] UKSC 37](#)

**Judgment delivered:** 24 July 2019

**Coram:** Lords Kerr, Hodge, Lloyd-Jones, Lady Arden and Lord Kitchin

**Catchwords:**

Contract law – Where appellant and husband entered into contract with respondent tour operator for package holiday in Sri Lanka – Where appellant was raped and assaulted by hotel employee who wore maintenance staff uniform – Where appellant brought claim against respondent for breach of contract and/or under *Package Travel, Package Holidays and Package Tours Regulations 1992* which implement Council Directive 90/314/EEC – Whether rape and assault of appellant constitute improper performance of obligations of respondent under contract – Whether any liability of respondent in respect of hotel employee’s conduct excluded by cl 5.10(b) of contract and/or reg 15(2)(c).

**Held (5:0):** Two questions referred to Court of Justice of the European Union.

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*Ruiren Xu and Diamantina Trust Limited v IAG New Zealand Limited*  
**New Zealand Supreme Court:** [\[2019\] NZSC 68](#)

**Judgment delivered:** 3 July 2019

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

**Catchwords:**

Contract – Insurance contract – Where home damaged in Canterbury earthquakes – Where home was insured under standard replacement policy underwritten by IAG New Zealand Ltd (“IAG”) – Where claim made with IAG for damage following earthquakes – Where claim remained unresolved when home sold in unrepaired state, with assignment of rights in respect of claim under policy – Where all parties accept that purchasers entitled to payment of indemnity under policy, but purchasers also claim alternative entitlement to replacement benefits under policy should they reinstate house (which former owners had) – Whether *Bryant v Primary Industries Insurance Co Ltd*, which held that right to replacement benefits conditional on insured incurring cost of repair cannot be assigned, should be overruled.

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

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## Costs

*Public Protector v South African Reserve Bank*  
**Constitutional Court of South Africa:** [\[2019\] ZACC 29](#)

**Judgment delivered:** 22 July 2019

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

**Catchwords:**

Costs – Personal costs – Punitive costs – Representative litigant – Where South African Reserve Bank (“Reserve Bank”) successfully sought review of Public Prosecutor’s final report containing recommended remedial action – Where High Court ordered Public Protector to personally pay 15% of costs of Reserve Bank on punitive attorney and client scale, including costs of three counsel – Whether sound basis to justify interference with High Court’s exercise of true discretion to award personal and punitive costs against Public Protector – Whether Public Protector acted in bad faith and exceeded bounds of potential indemnification under *Public Protector Act* – Whether Public Prosecutor not honest about engagements during investigation and failed to engage with parties directly affected by new remedial action before publishing final report – Whether punitive aspect of costs order against Public Protector must stand in light of standard of conduct expected from public officials and number of falsehoods put forward by Public Protector in course of litigation.

**Held (8:2):** Appeal dismissed; application for leave to cross-appeal dismissed.

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## Criminal Law

*HKSAR v Chen Keen (alias Jack Chen); HKSAR v Hao May (formerly known as Wang May Yan, alias May Wang); HKSAR v Yee Wenjye (also known as Yu Wenjie, alias Eric Yee)*

**Hong Kong Court of Final Appeal:** [\[2019\] HKCFA 32](#)

**Judgment delivered:** 30 August 2019

**Coram:** Ma CJ, Ribeiro, Fok and Cheung PJJ and Gummow NPJ

### Catchwords:

Criminal law – Dishonest means conspiracy – Where appellants charged and convicted on two counts of conspiracy to defraud – Where one appellant also convicted on further count of money laundering in respect of alleged proceeds of such conspiracies – Where jury told that prosecution need not prove all particulars, provided one or more made out, and jury sure that at least two of appellants knowingly and intentionally made representations or concealed truth – Whether Particulars (a) to (e) relied upon as agreed dishonest means rather than merely overt acts, such that they had to be proved – Whether Particulars (a)-(c) and Particulars (d)-(e) encapsulate different dishonest means involving different co-conspirators, such that the counts containing both sets of particulars essentially include two conspiracies each – Whether convictions unsafe.

**Held (5:0):** Appeal allowed; convictions quashed; re-trial ordered.

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*R (SC 1/2019) v The Queen*

**New Zealand Supreme Court:** [\[2019\] NZSC 87](#)

**Judgment delivered:** 16 August 2019

**Coram:** Winkelmann CJ, O'Regan, Ellen France, Williams and Arnold JJ

**Catchwords:**

Criminal law – Evidence – Where appellant convicted after jury trial of sexual offending against teenage complainant – Where at trial complainant gave evidence about self-harming which began prior to alleged offending – Where appellant's defence at trial was that complainant was "troubled young woman" whose evidence was neither credible nor reliable – Whether evidence about complainant's behaviour admissible – Whether prejudicial effect of evidence had to be assessed in light of defence strategy to show complainant as irrational and overly-emotional – Whether absence of specific direction as to use that could be made of evidence in issue gave rise to miscarriage of justice.

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

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*The Queen v RV*

**Supreme Court of Canada:** [2019 SCC 41](#)

**Judgment delivered:** 31 July 2019

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

**Catchwords:**

Criminal law — Trial — Continuation of proceedings — Evidence — Admissibility — Complainant's sexual activity — Where accused charged with sexual assault and sexual interference — Where Crown led evidence of complainant's sexual activity — Where accused's application to challenge Crown's evidence by cross-examining complainant dismissed — Where proceedings continued before different judge — Where trial judge refused to rehear accused's application — Whether trial judge had jurisdiction to reconsider application — Whether material change in circumstances warranted reconsideration of application — Whether accused entitled to cross-examine complainant on Crown-led evidence relative to her sexual activity — If so, whether curative proviso should be applied — *Criminal Code* RSC 1985, c C-46, ss 276, 669.2, 686(1)(b)(iii).

**Held (5:2):** Appeal allowed and conviction restored.

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*HKSAR v CT*

**Hong Kong Court of Final Appeal:** [\[2019\] HKCFA 26](#)

**Judgment delivered:** 25 July 2019

**Coram:** Ma CJ, Ribeiro, Fok and Cheung PJJ and Gummow NPJ

**Catchwords:**

Criminal law – Where appellant charged with five counts of raping girl contrary to s 118(1) of *Crimes Ordinance* (Cap 200) – Where appellant contended that whole case fabricated – Where specific date only identified for count 5, and appellant gave alibi evidence regarding count 5 – Where appellant convicted on counts 1 to 4 by majority verdict of five to two, and unanimously acquitted of count 5 – Whether “separate offences direction” to jury should be qualified in cases of sexual offences where only direct evidence of commission of offences came from complainant – Whether *Markuleski* direction always necessary or desirable as counterweight to separate offences direction – Whether to successfully appeal on grounds of “factual inconsistency” appellant had to show no reasonable jury which had applied their minds properly to facts of case could have returned verdict in question.

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

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*The Queen v Penunsi*

**Supreme Court of Canada:** [2019 SCC 39](#)

**Judgment delivered:** 5 July 2019

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

**Catchwords:**

Criminal law — Sureties to keep the peace — Application of arrest and judicial interim release provisions — Where Information laid against defendant under peace bond provisions of *Criminal Code* on basis of reasonable grounds to fear he would commit serious personal injury offence — Where Crown’s request to show cause why defendant ought to be detained or required to abide by certain conditions pending hearing on Information denied by provincial court judge — Whether judge can compel appearance of defendant to Information — Whether power of arrest and judicial interim release provisions of *Criminal Code* apply to peace bond proceedings — *Criminal Code* RSC 1985, c C-46, s 810.2.

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

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*H (SC 97/2018) v The Queen*

**New Zealand Supreme Court:** [\[2019\] NZSC 69](#)

**Judgment delivered:** 3 July 2019

**Coram:** Winkelmann CJ, William Young, Glazebrook, O'Regan and Ellen France JJ

**Catchwords:**

Criminal law – Rape – Where H convicted of eight charges of sexual offending against sister and daughter – Where offending historic and took place over period of two decades, earliest occurring between 1 December 1955 and 21 July 1959 – Where s 322 of *Oranga Tamariki Act 1989* provides that charge against young person may be dismissed if time elapsed between date of commission of alleged offence and hearing has been unnecessarily or unduly protracted – Whether charge of rape should have been dismissed under s 322 because it may have been committed when H was a “young person” (aged between 14 and 17) – Whether general object set out in s 4(f)(ii) and reasons behind principle contained in s 5(f) of *Oranga Tamariki Act* still relevant to those charged as adults.

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

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## Employment Law

*Tillman v Egon Zehnder Ltd*

**United Kingdom Supreme Court:** [\[2019\] UKSC 32](#)

**Judgment delivered:** 3 July 2019

**Coram:** Lady Hale, Lords Kerr, Wilson, Briggs and Lady Arden

**Catchwords:**

Employment law – Restraint of trade doctrine – Where respondent employed by appellant in various roles since 2003 – Where cl 13 of employment contract provided for five restraints upon respondent following end of employment limited in duration to six months – Where shortly after termination respondent sought to commence work as employee of rival firm – Where respondent intended to comply with all covenants apart from non-competition covenant in cl 13.2.3 – Where respondent alleged it was unreasonable restraint of trade and void – Whether “interested in” properly construed prohibited any shareholding – Whether correct approach to severance applied.

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

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## European Law

*R (on the application of Association of Independent Meat Suppliers & Anor) v Food Standards Agency*

**United Kingdom Supreme Court:** [\[2019\] UKSC 36](#)

**Judgment delivered:** 24 July 2019

**Coram:** Lady Hale, Lord Hodge, Lady Black, Lords Lloyd-Jones and Sales

**Catchwords:**

European law – Where CMC bought bull at auction that was passed fit for slaughter by Official Veterinarian (“OV”) – Where after post-mortem inspection OV declared meat unfit for human consumption so did not acquire health mark – Where CMC challenged OV’s opinion and argued OV would have to seize carcass under s 9 of *Food Safety Act 1990* and take it before Justice of the Peace to determine whether it should be condemned – Where Food Standards Agency did not accept it needed to use this procedure – Where judicial review proceedings commenced – Whether s 9 procedure was available or mandatory in these circumstances – Whether use of s 9 procedure was compatible with food safety regime laid down by European Union law, specifically Regulations (EC) 178/2002, 852/2004, 853/2004, 854/2004, 882/2004, and 1069/2009 – Whether Regulation 882/2004 mandated an appeal procedure and scope of that challenge.

**Held (5:0):** Two questions referred to Court of Justice of the European Union.

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## Insolvency Law

*Robt. Jones Holdings Limited v Anthony John McCullagh and Stephen Mark Lawrence*

**New Zealand Supreme Court:** [\[2019\] NZSC 86](#)

**Judgment delivered:** 9 August 2019

**Coram:** Glazebrook, O’Regan, Ellen France, Arnold and Kós JJ

**Catchwords:**

Insolvency law – Insolvent transactions – Where Northern Crest Investments Ltd (“Northern Crest”) leased property but fell behind on rent – Where Northern Crest and landlord entered into settlement agreements – Where subsidiary of Northern Crest made eight payments to landlord on Northern Crest’s behalf – Where Northern Crest placed into liquidation less than two years after payments made – Where liquidators applied to High Court to set these (and other) payments aside as insolvent transactions under s 292 of *Companies Act 1993* – Where landlord argued that payment voidable only if, in addition to requirements specified in s 292, it had effect of diminishing pool of assets available to unsecured creditors – Where landlord argued no such diminution occurred because Northern

Crest incurred debt to subsidiary whenever debt to landlord was paid – Whether *Levin v Market Square Trust* was wrongly decided.

**Held (5:0):** Appeal dismissed; appellant to pay respondents costs of \$25,000 plus usual disbursements.

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## Migration Law

*Secretary of State for the Home Department v Franco Vomero (Italy)*  
**United Kingdom Supreme Court:** [\[2019\] UKSC 35](#)

**Judgment delivered:** 24 July 2019

**Coram:** Lady Hale, Lords Reed, Wilson, Mance and Hughes

### Catchwords:

Migration law – Deportation – Where respondent is Italian national who lived in United Kingdom since 1985 – Where respondent killed housemate in 2001 and was sentenced to 8 years’ imprisonment for manslaughter – Where, after completing custodial part of his sentence, Home Secretary decided to deport respondent under regs 19(3)(b) and 21 of *Immigration (European Economic Area) Regulations 2006* – Where Supreme Court referred questions to Court of Justice of the European Union (“CJEU”) – Where, after CJEU delivered its judgment, Supreme Court held further hearing – Whether right of permanent residence (“RPR”) is prerequisite for enhanced protection against expulsion pursuant to art 28 of Directive 2004/38/EC – Whether respondent had acquired RPR.

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

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## Social Security

*Secretary of State for Work and Pensions v MM*  
**United Kingdom Supreme Court:** [\[2019\] UKSC 34](#)

**Judgment delivered:** 18 July 2019

**Coram:** Lady Hale, Lords Kerr, Hodge, Lady Black and Lord Sales

### Catchwords:

Social security – Personal independence payment (“PIP”) – Where PIP non-means tested allowance paid to certain people with long term health problems or disability – Where descriptor 9c in Pt 2 of Sch 1 to *Social Security (Personal Independence Payment) Regulations 2013* under Pt 4 of *Welfare Reform Act 2012* states, “Needs social support to be able to

engage with other people” – Where PIP claim rejected on ground that claimant only needs prompting to be able to engage with other people face to face – Where Secretary of State accepted “social support” may consist of “prompting” but contended it had to be “from a person trained or experienced in assisting people to engage in social situations” – Whether need for help simply from someone familiar or trusted sufficient.

**Held (5:0):** Appeal allowed; claim to return to First-tier Tribunal for determination.

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## Taxation Law

*Commissioners for Her Majesty’s Revenue and Customs v Frank A Smart & Son Ltd (Scotland)*

**United Kingdom Supreme Court:** [\[2019\] UKSC 39](#)

**Judgment delivered:** 29 July 2019

**Coram:** Lords Reed, Wilson, Hodge, Briggs and Lady Arden

**Catchwords:**

Taxation law – Value added tax (“VAT”) – Arts 167 and 168(1) of Council Directive (EC) 2006/112/EC – Where respondent received Single Farm Payment (“SFP”) agricultural subsidy from Scottish Government – Where respondent spent about £7.7m on purchasing 34,377 entitlement to SFP units in addition to its initial allocation of 194.98 units – Where respondent paid VAT on entitlement to SFP units which it purchased and sought to deduct or claim repayment of that VAT as input tax – Whether taxpayer can deduct as input tax VAT which it has incurred in purchasing entitlements to SFP and claim repayment of surplus input VAT.

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

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*Perfekta Enterprises Limited v Commissioner of Inland Revenue*

**Hong Kong Court of Final Appeal:** [\[2019\] HKCFA 25](#)

**Judgment delivered:** 12 July 2019

**Coram:** Ma CJ, Ribeiro, Fok and Cheung PJJ and Gummow NPJ

**Catchwords:**

Taxation law – Profit tax – Where appellant owned building (“Lot”) which appellant used as manufacturing base in Hong Kong since 1969 – Where appellant’s manufacturing base shifted from late 1970s and it made series of applications in 1990s for redevelopment of Lot – Where appellant entered into agreement under which it received consideration (“Initial

Payment”) in exchange for right to develop Lot with appellant’s subsidiary – Where s 14(1) of *Inland Revenue Ordinance* (Cap 112) provided profits tax not chargeable on profit arising from sale of capital asset – Where Deputy Commissioner of Inland Revenue took view that Initial Payment assessable as profits tax – Whether Court of Appeal erred in concluding appellant disposed of Lot as trading asset – Whether operations of subsidiary could be treated as those of appellant – Whether procuring joint venture participants for property developers part of appellant’s business.

**Held (5:0):** Appeal allowed; assessment annulled.

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## Tort Law

*De Klerk v Minister of Police*

**Constitutional Court of South Africa:** [\[2019\] ZACC 32](#)

**Judgment delivered:** 22 August 2019

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

**Catchwords:**

Tort law – Unlawful detention – Legal causation – Where complaint of assault was lodged with South African Police Service against De Klerk – Where De Klerk reported to Sandton police station on request and arrested without warrant on charge of assault with intent to do grievous bodily harm – Where De Klerk was transported to Randburg Magistrate’s Court placed in holding cells and appeared in Court later same morning – Where matter routinely postponed by Magistrate and De Klerk remanded in custody without question of bail arising or being addressed – Where De Klerk released from custody after complaint was withdrawn – Whether Magistrate’s unlawful remand decision rendered harm that arose from De Klerk’s subsequent unlawful detention too remote from unlawful arrest.

**Held (6:4):** Appeal upheld; Minister of Police ordered to pay applicant R300 000 with interest at prescribed rate from 30 October 2014 to date of payment, and costs before High Court, Supreme Court of Appeal and this Court.

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