



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.

Administrative Law

MOAC Mall Holdings LLC v Transform Holdco LLC

Supreme Court of the United States: [Docket No 21-1270](#)

Reasons delivered: 19 April 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Administrative Law – Jurisdiction – Jurisdictional provision – Where, under conditions prescribed by Congress, Bankruptcy Code permits debtor (or trustee) to sell or lease bankruptcy estate's property outside of ordinary course of bankrupt entity's business (11 USC §363(b)) – Where interested parties may file objection to such sale or lease, and may appeal if court authorises sale or lease of estate's property over objection – Where §363(m) restricts effect of such appeal, stating reversal or modification on appeal of authorisation under §363(b) or §363(c) of sale or lease of property does not affect validity of sale or lease under such authorisation to entity that purchased or leased in good faith, whether or not such entity knew of pendency of appeal, unless such authorisation and such sale or lease were stayed pending appeal – Whether §363(m) jurisdictional provision.

Held (9:0): Decision of United States Court of Appeals for the Second Circuit vacated and remanded.

Constitutional Law

Axon Enterprise, Inc v FTC; Securities and Exchange Commission et al v Cochran

Supreme Court of the United States: [Docket No 21-86](#); [Docket No 21-1239](#)

Reasons delivered: 14 April 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Constitutional law – Separation of powers – Judicial review – Federal-question jurisdiction – Where federal agencies, such as Securities and Exchange Commission ("SEC") and Federal Trade Commission ("FTC"), when electing to institute administrative proceedings to address statutory violations, typically delegate initial adjudication to Administrative Law Judge ("ALJ") with authority to resolve motions, hold hearing, and then issue decision – Where, party objecting to agency proceedings makes claim first within agency itself, and then (if needed) in federal court of appeals – Where Ms Cochran and Axon Enterprise, Inc, respondents in separate enforcement actions initiated in SEC and FTC, each filed suit in federal district court challenging constitutionality of proceedings, sidestepping review scheme and seeking to enjoin administrative proceedings – Where Ms Cochran and Axon asserted tenure protections of agencies' ALJs rendered them insufficiently accountable to President, in violation of separation of powers principles – Where Axon also argued as unconstitutional combination of prosecutorial and adjudicatory functions in FTC – Where each suit premised jurisdiction on district courts' ordinary federal-question authority to resolve "civil actions arising under Constitution, laws, or treaties of United States" (28 USC §1331) – Where district courts dismissed Cochran's and Axon's suits for lack of jurisdiction – Where Ninth Circuit affirmed district court's dismissal of Axon's constitutional challenges to FTC proceeding, concluding claims of type that fell within FTC Act's review scheme – Where Fifth Circuit disagreed as to equivalent SEC question, finding Cochran's claim would not receive "meaningful judicial review" in court of appeals; that claim "wholly collateral to Exchange Act's statutory-review scheme"; and that claim fell "outside SEC's expertise" – Whether statutory review schemes displace district courts' federal-question jurisdiction over claims challenging as unconstitutional structure or existence of SEC or FTC.

Held (Docket No 21-86) (9:0): Decision of United States Court of Appeals for the Ninth Circuit reversed and remanded.

Held (Docket No 21-1239) (9:0): Decision of United States Court of Appeals for the Fifth Circuit affirmed and remanded.

Ledla Structural Development (Pty) Ltd and Others v Special Investigating Unit

Constitutional Court of South Africa: [\[2023\] ZACC 8](#)

Reasons delivered: 10 March 2023

Coram: Kollapen, Madlanga, Majiedt, Mathopo, Mhlantla JJ, Mlambo AJ, Theron and Tshiqi JJ

Catchwords:

Constitutional law – Courts – Powers – Where, following complaints regarding allegations of corruption in procurement of PPE during Covid-19 pandemic, President of Republic of South Africa issued proclamation in terms of *Special Investigating Units and Special Tribunals Act 74 of 1996* – Where Special Tribunal established under s 2 of Act and authorised to investigate maladministration, corruption and breaches of procurement procedure relating to Covid-19, and to take remedial action – Where Special Tribunal reviewed and set aside unlawful contract, issuing interdict and forfeiture order in respect of monies held in terms of preservation order – Whether Special Tribunal court of law – Whether Special Tribunal has powers to adjudicate reviews and, if so, whether it may issue forfeiture orders – Whether open to Constitutional Court to determine correctness of Special Tribunal's factual findings concerning applicants' conduct.

Held (8:0): Appeal dismissed with costs.

Murray-Hall v Quebec (Attorney General)

Supreme Court of Canada: [\[2023\] SCC 10](#)

Reasons delivered: 14 April 2023

Coram: Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Constitutional law – Division of powers – Double aspect doctrine – Federal paramountcy – Possession and cultivation of cannabis plants in dwelling-house – Where Parliament enacted legislation prohibiting individuals from possessing or cultivating more than four cannabis plants at home – Where Quebec legislature enacted legislation regulating cannabis that included provisions completely prohibiting possession and cultivation of cannabis plants at home – Whether provisions of Quebec legislation prohibiting possession and cultivation of cannabis plants at home are

constitutionally valid in light of division of powers – Whether, if so, they are operative under doctrine of federal paramountcy – *Constitution Act, 1867*, ss 91(27), 92(13), 92(16) – *Cannabis Regulation Act, CQLR, c C-5.3*, ss 5, 10.

Held (8:0): Appeal dismissed.

Contract Law

New York v New Jersey

Supreme Court of the United States: [Docket No 156, Orig](#)

Reasons delivered: 18 April 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Contract law – Bistate contract – Withdrawal – Where New York and New Jersey entered into compact to address corruption at Port of New York and New Jersey – Where Waterfront Commission Compact established bistate agency known as the Waterfront Commission of New York Harbor, to which States delegated sovereign authority to conduct regulatory and law enforcement activities at Port – Where Compact does not address each State's power to withdraw from Compact – Where New Jersey sought to unilaterally withdraw from Compact, over New York's opposition – Where New York filed bill of complaint – Whether New Jersey may unilaterally withdraw from Waterfront Commission Compact notwithstanding New York's opposition.

Constitutional law – Compact clause – Sovereign authority – Where, under Article I, §10, of *Constitution*, each State possesses sovereign authority to enter into compact with another State, subject to Congress's approval.

Held (9:0): New Jersey's motion for judgment on the pleadings granted; New York's cross-motion for judgment on the pleadings denied.

The Law Debenture Trust Corporation plc v Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine); The Law Debenture Trust Corporation plc v Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine)

Supreme Court of the United Kingdom: [\[2023\] UKSC 11](#)

Reasons delivered: 15 March 2023

Coram: Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Kitchin and Lord Carnwath

Catchwords:

Contract law – Sovereign authority – Where Law Debenture Trust Corporation plc ("Trustee"), company incorporated in England and Wales, trustee of Notes – Where Notes issued by Ukraine represented by Minister of Finance, acting upon instructions of Cabinet of Ministers of Ukraine, and constituted by trust deed, to which parties were Trustee and Ukraine ("Trust Deed") – Where Trust Deed governed by law of England and Wales, with courts of England and Wales having exclusive jurisdiction – Where sole subscriber of Notes was Russian Federation – Where, although Notes tradeable, Russian Federation retained Notes since issue – Where Ukraine argued Notes voidable (and have been avoided) for duress – Where Ukraine contends Russian Federation applied unlawful and illegitimate economic and political pressure to Ukraine in 2013 to deter administration from signing Association Agreement with European Union and to induce acceptance of Russian Federation's financial support instead, in form of Notes – Whether Ukraine had capacity to issue Notes or to enter into relevant contracts – Whether Notes issued or relevant contracts entered into with authority – Whether Trust Deed signed and Notes issued as result of duress exerted by Russian Federation and, if so, significance – Whether open to Ukraine to maintain that non-payment of sums due under Notes lawful countermeasure.

Held (5:0; 4:1 (Lord Carnwath dissenting in part)): Appeal dismissed.

Criminal Law

R v Breault

Supreme Court of Canada: [\[2023\] SCC 9](#)

Reasons delivered: 13 April 2023

Coram: Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Criminal law – Impaired driving – Testing for presence of alcohol or drugs – Demand to provide breath sample forthwith – Failure or refusal to comply with demand – Where individual stopped by police officers after being observed driving all-terrain vehicle while intoxicated – Where police officer demanded that individual provide breath sample forthwith even though officers did not have approved screening device in their possession – Where individual repeatedly refused to provide requested sample – Where individual arrested for refusing to comply with police officer's demand –

Whether validity of demand made by police officer requires that officer have immediate access to approved screening device at time demand is made – *Criminal Code*, RSC 1985, c C-46, ss 254(2)(b), 254(5).

Held (8:0): Appeal dismissed.

R v Downes

Supreme Court of Canada: [\[2023\] SCC 6](#)

Reasons delivered: 10 March 2023

Coram: Karakatsanis, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Criminal law – Voyeurism – Elements of offence – Place in which person can reasonably be expected to be nude – Where accused convicted of voyeurism for surreptitiously photographing two adolescent boys in their underwear in hockey arena dressing rooms – Where trial judge found that Crown proved that boys were in place in which person can reasonably be expected to be nude – Where Court of Appeal set aside convictions and ordered new trial on basis that trial judge failed to address conflicts in evidence about whether nudity could reasonably be expected in dressing rooms at specific time photos were taken – Whether element of offence that person surreptitiously observed or recorded be in place in which person can reasonably be expected to be nude has implicit temporal component – *Criminal Code*, RSC 1985, c C-46, s 162(1)(a).

Held (6:0): Appeal allowed and convictions restored.

R v Haevischer

Supreme Court of Canada: [\[2023\] SCC 11](#)

Reasons delivered: 28 April 2023

Coram: Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Criminal law – Procedure – Summary dismissal of application – Where Crown moved for summary dismissal of applications brought by accused for stays of proceedings for abuse of process – Where trial judge allowed Crown's motion and summarily dismissing stay applications – Whether trial judge erred in allowing motion – Proper threshold applicable to summary dismissal of application in criminal law context.

Held (8:0): Appeal dismissed.

R v McColman

Supreme Court of Canada: [\[2023\] SCC 8](#)

Reasons delivered: 23 March 2023

Coram: Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Criminal law – Impaired driving – Random sobriety stop – Power of police to stop vehicles on private property – Where police followed accused's vehicle from convenience store parking lot to private driveway – Where police formed intention to stop accused to check sobriety while on highway but only stopped him on driveway – Where accused showed obvious signs of impairment on driveway and arrested – Where accused convicted of driving with excessive blood alcohol at trial – Where accused successfully appealed conviction on basis that trial judge erred in finding police authorised to conduct random sobriety stops on private property – Whether police stop authorised – *Highway Traffic Act*, RSO 1990, c H.8, ss 48(1), 216(1).

Constitutional law – Charter of Rights – Arbitrary detention – Remedy – Exclusion of evidence – Where accused arrested by police after random sobriety stop on private property – Where accused convicted of driving with excessive blood alcohol at trial – Whether accused arbitrarily detained by police – Whether, if so, admission of evidence would bring administration of justice into disrepute warranting its exclusion – *Canadian Charter of Rights and Freedoms*, ss 9, 24(2).

Held (8:0): Appeal allowed, acquittal set aside, and conviction and stay entered at trial restored.

R v Metzger

Supreme Court of Canada: [\[2023\] SCC 5](#)

Reasons delivered: 3 March 2023

Coram: Côté, Rowe, Martin, Kasirer and O'Bonsawin JJ

Catchwords:

Criminal law – Appeals – Unreasonable verdict – Evidence – Circumstantial evidence – Where accused convicted of offences arising from home invasion on basis of circumstantial evidence of identity – Where convictions affirmed by majority of Court of Appeal – Where dissenting judge found verdicts unreasonable – Whether verdicts unreasonable.

Held (3:2): Appeal allowed.

Criminal Procedure

Reed v Goertz

Supreme Court of the United States: [Docket No. 21-442](#)

Reasons delivered: 19 April 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Criminal procedure – Statute of limitations – State post-conviction DNA testing – Where petitioner found guilty of 1996 murder – Where Texas Court of Criminal Appeals affirmed petitioner's conviction and death sentence – Where, in 2014, petitioner filed motion in Texas state court under Texas's post-conviction DNA testing law, requesting DNA testing of certain evidence, including belt used to strangle deceased, which petitioner contended would help identify true perpetrator – Where state trial court denied petitioner's motion, reasoning in part that items petitioner sought to test were not preserved through adequate chain of custody – Where Texas Court of Criminal Appeals affirmed, later denying petitioner's motion for rehearing – Where petitioner sued in federal court under 42 USC §1983, asserting Texas' post-conviction DNA testing law failed to provide procedural due process and stringent chain-of-custody requirement unconstitutional – Where District Court dismissed petitioner's complaint and Fifth Circuit affirmed on ground that petitioner's §1983 claim filed too late, after applicable 2-year statute of limitations had run – Where Fifth Circuit held that limitations period began to run when Texas trial court denied petitioner's motion, not when Texas Court of Criminal Appeals denied rehearing – Whether, when prisoner pursues state post-conviction DNA testing through state-provided litigation process, statute of limitations for §1983 procedural due process claim begins to run when state litigation ends.

Held (6:3): Decision of United States Court of Appeals for the Fifth Circuit reversed.

The Secretary for Justice v Tam Kit-I

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 7](#)

Reasons delivered: 29 March 2023

Coram: Cheung CJ, Ribeiro, Fok, Lam PJJ and French NPJ

Catchwords:

Criminal procedure – Restraint order ("RO") – Confiscation order ("CO") – Where authorities initially contemplated bringing proceedings under Prevention of Bribery Ordinance ("POBO") against respondent – Where s 14C of POBO empowers court to make RO in relation to property in possession or under control of or due to person who subject of investigation in respect of offence alleged or suspected to have been committed under POBO – Where RO made against respondent and extended three times – Where prosecution advised insufficient evidence to charge respondent under POBO, but viable case under Organized and Serious Crimes Ordinance ("OSCO") – Where RO then issued under s 15(8) of OSCO – Where power to issue RO and its continued validity premised on prosecution proceedings or application for CO not having been concluded – Where Secretary for Justice applied to have certain funds of respondent confiscated on basis that respondent "absconded" – Where application for CO rejected – Whether RO freezing certain assets made under OSCO falls to be discharged where court decides not to grant application for CO.

Courts and judges – Characterisation of appeal – Jurisdiction – Procedure Whether appeal relating to discharge of RO to be characterised for procedural and jurisdictional appellate purposes as civil or criminal.

Held (FACV12/2022) (5:0): Appeal allowed and Court of Appeal's order set aside.

Held (FACC 4/2022; FACC 1/2023; FACV 2/2023 (5:0): Appeals dismissed with no order as to costs.

Human Rights

Morgan & Ors v Ministry of Justice (Northern Ireland)

Supreme Court of the United Kingdom: [\[2023\] UKSC 14](#)

Reasons delivered: 19 April 2023

Coram: Lord Reed, Lord Sales, Lord Hamblen, Lord Burrows and Lord Stephens

Catchwords:

Human rights – Right to liberty – Right not to be punished without law – Detention – Terrorism offence – Where Article 5(1) of European Convention on Human Rights provides person with right not to be deprived of one's liberty unless lawful detention after conviction by competent court – Where Article 7(1) of Convention provides no person shall be held guilty of criminal offence which did not constitute offence at time of conduct – Where respondents convicted of terrorism offences and, on 13 November 2020, in accordance with *Criminal Justice (Northern Ireland) Order 2008* ("2008 Order"), sentenced to "custodial period" of half of term of sentences which gave rise to obligation on part of Department of Justice to release

respondents on licence when they had served half their sentences – Where, on 29 April 2021, *Counter Terrorism and Sentencing Act 2021* ("2021 Act") enacted and s 30 of 2021 Act introduced Article 20A into 2008 Order – Where Article 20A provided that prisoners convicted of certain terrorist offences would not be released from custody at halfway point, but rather cases would be referred at two-thirds point to Parole Commission which would not direct release on licence unless satisfied that confinement no longer necessary for protection of public – Where end date of respondents' determinate custodial sentences unaltered – Where respondents challenged s 30 of 2021 Act – Where Court of Appeal declared s 30 of 2021 Act, inserting Article 20A, incompatible with Article 7(1) of Convention but, given that decision, made no determination about Article 5 – Whether changes effected by Article 20A breach Article 5(1) of Convention – Whether changes effected by Article 20A breach Article 7(1) of Convention.

Held (5:0): Appeal allowed and declaration of the Court of Appeal set aside; cross-appeal dismissed.

Industrial Law

National Union of Metalworkers of South Africa v Trenstar (Pty) Ltd

Constitutional Court of South Africa: [\[2023\] ZACC 11](#)

Reasons delivered: 18 April 2023

Coram: Maya DCJ, Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Mathopo J, Potterill AJ, Rogers and Theron JJ

Catchwords:

Industrial Law – Industrial action – Terminated strike – Suspended strike – Where appellant demanded from respondent, on behalf of members, once-off taxable gratuity – Where, after failed conciliation, employees commenced strike – Where appellant advised respondent that strike action would be suspended and members would return to work – Where appellant emphasised that although members would work, action not to be construed as withdrawal of gratuity demand – Where respondent notified appellant that it would impose lock-out of members – Where lock-out notice demanded appellant's members abandon gratuity demand and asserted lock-out response to strike, applying s 76(1)(b) of *Labour Relations Act 66 of 1995* ("LRA") – Where s 76(1)(b) permits employer to use replacement labour during lock-out when "lock-out is in response to strike" – Where appellant contended use of replacement labour impermissible as strike had been suspended, thus lock-out not in response to strike – Proper interpretation of s 76(1)(b) – Whether s 76(1)(b) supports distinction between suspended strike and terminated strike.

Held (9:0): Appeal allowed.

International Public Law

Turkiye Halk Bankasi A S v United States

Supreme Court of the United States: [Docket No 21-1450](#)

Reasons delivered: 19 April 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

International public law – Foreign state immunity – Immunity from jurisdiction – Proceedings on indictment – Where United States indicted Halkbank, bank owned by Republic of Turkey, for conspiring to evade US economic sanctions against Iran – Where Halkbank moved to dismiss indictment on ground that as instrumentality of foreign state, Halkbank immune from criminal prosecution under *Foreign Sovereign Immunities Act of 1976* ("FSIA") – Where District Court denied motion – Where Second Circuit affirmed after first determining District Court had subject matter jurisdiction over Halkbank's criminal prosecution under 18 USC §3231 – Where Second Circuit further held that even assuming FSIA confers immunity in criminal proceedings, Halkbank's charged conduct fell within FSIA's exception for commercial activities – Whether District Court has jurisdiction under §3231 over criminal prosecution of Halkbank – Whether FSIA confers immunity on foreign states and instrumentalities in respect of criminal proceedings.

Held (9:0; 7:2 (Gorsuch and Alito JJ dissenting in part)): Decision of United States Court of Appeals for the Second Circuit affirmed in part, vacated and remanded in part.

Local Government

R v Shropshire Council

Supreme Court of the United Kingdom: [\[2023\] UKSC 8](#)

Reasons delivered: 1 March 2023

Coram: Lord Reed, Lord Kitchin, Lord Hamblen, Lord Stephens and Lady Rose

Catchwords:

Local government – Land subject to statutory trust – Public enjoyment – Where, when land which subject to statutory trust in favour of public is held

by local authority for purpose of public's enjoyment, in order for local authorities to dispose of such land, they must comply with statutory consultation requirements under s 123(2A) of *Local Government Act 1972* ("LGA 1972") – Where land owned by Shrewsbury Town Council ("Shrewsbury TC") but, in October 2017, Shrewsbury TC sold land which was subject to statutory trust to CSE Development (Shropshire) Limited ("CSE") – Where, at time Shrewsbury TC did not realise land subject to statutory trust and so did not comply s 123(2A) of LGA 1972 – Where CSE then applied for planning permission to build houses on land and Shropshire Council, relevant planning authority, granted permission – Where appellant, local resident, brought judicial review proceedings challenging grant of planning permission and arguing because Shrewsbury TC did not comply with statutory requirements, public trust continues to bind land that CSE now owns – Where appellant sought to have grant of planning permission quashed because of existence of trust material factor which Shropshire Council should have considered when deciding whether to grant planning permission – Where High Court dismissed appellant's application for judicial review and Court of Appeal dismissed appeal – Whether Court of Appeal right to hold that effect of s 128(2)(b) of LGA 1972 is that where land which is held for public enjoyment and disposed of without compliance with procedure in section 123(2A), land is freed from any statutory trust by unless donee had "actual knowledge" of existence of statutory trust prior to disposal.

Held (5:0): Appeal allowed and grant of planning permission quashed.

Property

Rakusen v Jepsen

Supreme Court of the United Kingdom: [\[2023\] UKSC 9](#)

Reasons delivered: 1 March 2023

Coram: Lord Lloyd-Jones, Lord Briggs, Lord Kitchin, Lord Burrows and Lord Richards

Catchwords:

Property – Real property – Leases – Rental Repayment Orders ("RROs") – First-tier Tribunal ("FTT") – Where RROs orders that can be made against landlords that have committed certain housing-related offences – Where RROs require landlord to repay amount of rent paid by tenant – Where respondent leaseholder of flat in London – Where, in May 2016, respondent granted short residential tenancy of flat to company called Kensington Property Investment Group Ltd ("KPIG") – Where KPIG subsequently entered into separate agreements with each appellant by which appellants each granted right to occupy one room in flat in exchange for fee – Where, as result of arrangement, flat required to be licenced as "house in multiple

occupation" or "HMO" under *Housing Act 2004*, but no licence ever obtained – Where appellants applied for RROs against respondent on basis that he committed offence of being in control or management of unlicensed HMO contrary to s 72 of *Housing Act 2004* – Where respondent denied he committed offence and applied to strike out appellants' claims, arguing RRO could only be made in favour of appellants against their immediate landlord, KPIG – Where First-tier Tribunal refused to strike out appellants' claims and Upper Tribunal dismissed respondent's appeal – Where Court of Appeal reversed decision – Whether RROs can only be made against tenant's immediate landlord, or whether they can be made against landlord higher up in chain of tenancies.

Held (5:0): Appeal dismissed.

Wilkins v United States

Supreme Court of the United States: [Docket No 21-1164](#)

Reasons delivered: 28 March 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Property – Real property – Easements – Public access – Where petitioners own properties in Montana that border road for which United States has held easement since 1962 – Where Government claims easement includes public access, which petitioners dispute – Where, in 2018, petitioners sued Government under *Quiet Title Act*, which allows challenges to United States' rights in real property – Where Government moved to dismiss on ground that petitioners' claim barred by Act's 12-year time bar (28 USC §2409a(g)) – Where petitioners argued that §2409a(g)'s time limit non-judicial claims-processing rule – Where District Court agreed with Government and dismissed case for lack of subject-matter jurisdiction – Where Ninth Circuit held §2409a(g) had already been interpreted as jurisdictional in *Block v North Dakota ex rel Board of Univ and School Lands*, 461 US 273, and affirmed – Whether §2409a(g) non-judicial claims-processing rule.

Held (9:0): Decision of United States Court of Appeals for the Ninth Circuit reversed and remanded.

Sentencing

R (on the application of Pearce and another) (Respondents) v Parole Board for England and Wales (Appellant)

Supreme Court of the United Kingdom: [\[2023\] UKSC 13](#)

Reasons delivered: 5 April 2023

Coram: Lord Hodge, Lord Kitchin, Lord Hamblen, Lord Richards and Lord Hughes

Catchwords:

Sentencing – Parole – Board – Consideration of allegations – Where Parole Board for England and Wales ("Board") responsible for deciding whether or not to direct early release of prisoners serving various categories of sentences of imprisonment – Where, when making decision, Board must be satisfied that it no longer necessary for protection of public that prisoner remain in custody – Where example of test is found in s 28(6)(b) of *Crime (Sentences) Act 1997* ("Statutory Question") – Where in March 2019, Board issued "Guidance on Allegations" concerning correct approach to take, when answering Statutory Question, with respect to allegations made about prisoner but for which they were not convicted, such as where allegations not been proved or disproved on balance of probabilities but, if true, could affect Board's risk analysis – Where Guidance directed Board to "make assessment of allegation to decide whether and how to take it into account" and that in cases where there is mere allegation without any factual basis or allegation not relevant to question of risk it should be disregarded – Where Mr Pearce challenged Board's decision refusing to direct his release – Where Board, in accordance with Guidance, when addressing Statutory Question, took into account number of allegations, for which Mr Pearce not convicted, and his responses when questioned about them – Where respondents challenged Decision and Guidance by way of judicial review, arguing that, in absence of findings of fact, allegation is "non-fact" and, as such, it is not permissible for Board to pay it attention – Where High Court dismissed claim – Where, Court of Appeal held parts of Guidance unlawful in respects, but decision itself held to have been proper and justified – Whether Board can only take into account allegations where proved on balance of probabilities – Where Board's Guidance misstates law.

Held (5:0): Appeal allowed; Board invited to review terms of Guidance in light of Supreme Court's decision.

Statutes

Christopher Ryan v Health and Disability Commissioner

Supreme Court of New Zealand: [\[2023\] NZSC 42](#)

Reasons delivered: 28 April 2023

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

Catchwords:

Statutes – Interpretation – Statutory liability – "Agent of employing authority" – Where appellant general practitioner at Medical Centre – Where, in 2016, another general practitioner at Medical Centre, Dr Sparks, saw one of appellant's patients while appellant on leave – Where Dr Sparks prescribed patient medication from class of antibiotics to which patient had documented allergy – Where patient suffered allergic reaction, admitted to hospital and subsequently made complaint to Health and Disability Commissioner against Dr Sparks – Where Commissioner found Dr Sparks breached *Code of Health and Disability Services Consumers' Rights* and that Medical Centre (that is, appellant and Dr Sparks, trading as Medical Centre) did not directly breach Code but it liable for Dr Sparks' breaches under s 72 of *Health and Disability Commissioner Act 1994* – Where s 72 provided anything done or omitted by person as agent of employing authority shall, for purposes of Act, be treated as done or omitted by employing authority, unless done or omitted without employing authority's express or implied authority – Where appellant commenced judicial review proceedings against decision of Commissioner to hold Medical Centre liable – Where High Court and Court of Appeal found Medical Centre liable – Whether Medical Centre liable under s 72.

Held (4:1): Appeal dismissed.

Independent Community Pharmacy Association v Clicks Group Ltd & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 10](#)

Reasons delivered: 28 March 2023

Coram: Zondo CJ, Maya DCJ, Baqwa AJ, Kollapen, Madlanga, Majiedt JJ, Mbatha AJ, Rogers and Tshiqi JJ

Catchwords:

Statutes – Interpretation – Ownership of pharmacies – Regulations – Where s 22(1) of *Pharmacy Act 53 of 1974* ("Pharmacy Act") provides person authorised in terms of s 22A to own pharmacy shall in prescribed manner, specifying prescribed particulars, apply to Director General for licence for premises wherein such business shall be carried on and Director General may be entitled to issue or refuse such licence on such conditions as deemed fit – Where s 22A provides that Minister may prescribe by regulation who may own pharmacy and under what conditions, and conditions upon which authority may be withdrawn – Where licensing conditions provided for in *Regulations relating to the Ownership and Licencing of Pharmacies*, GN R553 GG 24770 ("Ownership Regulations") – Where reg 6(d), entitled "Ownership of community pharmacies", relevantly provides that body corporate may own beneficial interest in community pharmacy on condition shareholder, director, trustee, beneficiary or member of body corporate not owner or holder of any direct or indirect beneficial interest in manufacturing pharmacy – Where first respondent holding company and holds all shares in second respondent, which, in turn,

holds all shares in third and fourth respondents, and fourth respondent holds all shares in fifth respondent – Whether expression "beneficial interest" in reg 6 of Ownership Regulations, promulgated in terms of ss 22 and 22A of Pharmacy Act, includes shareholding in company that owns pharmacy business – Whether group corporate structure of first to fifth respondents contravened Ownership Regulations.

Held (5:4): Appeal upheld with costs.

Luna Perez v Sturgis Public Schools

Supreme Court of the United States: [Docket No 21-887](#)

Reasons delivered: 21 March 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Statutes – Construction – Where petitioner, who is deaf, attended schools in Sturgis Public School District – Where Sturgis announced it would not permit petitioner to graduate, and petitioner filed administrative complaint with Michigan Department of Education alleging Sturgis failed to provide free and appropriate public education, as required by *Individuals with Disabilities Education Act*, 20 USC § 1415 ("IDEA"), by providing petitioner with unqualified interpreters and misrepresenting educational progress – Where parties reached settlement whereby Sturgis promised to provide forward-looking relief petitioner sought, including additional schooling – Where petitioner then sued in federal district court under *Americans with Disabilities Act of 1990* ("ADA") seeking compensatory damages – Where Sturgis moved to dismiss, claiming 20 USC § 1415(l) barred petitioner from bringing ADA claim because it requires plaintiff seeking relief also available under IDEA to first exhaust IDEA's administrative procedures – Where district court agreed and dismissed suit, and Sixth Circuit affirmed – Whether IDEA's exhaustion requirement precludes petitioner's ADA lawsuit.

Held (9:0): Decision of United States Court of Appeals for the Sixth Circuit reversed and remanded.

Minister of Water and Sanitation & Ors v Lotter N O & Ors; Minister of Water and Sanitation & Ors v Wiid & Ors; Minister of Water and Sanitation v South African Association for Water Users Associations

Constitutional Court of South Africa: [\[2023\] ZACC 9](#)

Reasons delivered: 15 March 2023

Coram: Zondo CJ, Baqwa AJ, Kollapen, Madlanga, Majiedt, Mathopo JJ, Mbatha AJ, Mhlantla and Rogers JJ

Catchwords:

Statutes – Interpretation – Water use entitlement – Where sub-s 25(1) of *National Water Act 36 of 1998* provides water management institution may, at request of person authorised to use water for irrigation, allow person on temporary basis and on conditions as water management institution may determine, to use water for different purpose, or allow use of water on another property in same vicinity for same or similar purpose – Where sub-s 25(2) provides person holding entitlement to use water may surrender entitlement or part of entitlement in order to facilitate particular licence application under s 41 – Proper interpretation of sub-ss 25(1) and 25(2) of the *National Water Act* – Whether water use entitlement may be transferred to third party and, if so, whether fee may be charged for transfer.

Held (9:0): Appeal dismissed with costs.

R (on the application of VIP Communications Ltd (In Liquidation)) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2023\] UKSC 10](#)

Reasons delivered: 8 March 2023

Coram: Lord Reed, Lord Lloyd-Jones, Lord Sales, Lord Stephens and Lord Richards

Catchwords:

Statutes – Construction – Where Global Systems for Mobile Communications ("GSM") telecommunications equipment containing one or more SIM cards, as used in mobile phones, and enable phone calls and text messages from landlines to be routed directly on to mobile networks – Where, when call routed through GSM gateway, only data transmitted over network is number and location of SIM card in GSM gateway – Where information such as identity of caller and user's location not transmitted, as would ordinarily be case without GSM gateway – Where, under s 8(4) of *Wireless Telegraphy Act 2006* ("WTA 2006"), Office of Communications ("Ofcom") is under duty to make regulations exempting installation and use of certain wireless telegraphy equipment from requirement for license under s 8(1) of WTA 2006, if satisfied that conditions in s 8(5) are met as respects use of type of equipment – Where, under s 5(2) of *Communications Act 2003* ("CA 2003"), Ofcom is under duty to carry out its functions in accordance with directions given by Secretary of State on very limited grounds, which include interests of national security and public safety – Where Ofcom published notice in July 2017 stating its intention to make regulations under s 8 of WTA 2006 exempting commercial multi-user GSM gateway apparatus ("COMUGs") from licensing requirements of s 8(1) –

Where Secretary of State for Home Department issued direction that COMUGs should not be exempted by Ofcom ("Direction") – Where Direction given on basis of serious national security and public safety concerns – Where High Court held Secretary of State had no power under s 5 to direct Ofcom not to comply with its duty under s 8(4) of WTA 2006 to make regulations if Ofcom satisfied that conditions in s 8(5) met – Where Direction held to be *ultra vires* – Where Court of Appeal dismissed appeal – Whether Ofcom's duty under s 8(4) of WTA 2006 qualified or overridden by duty under s 5(2) of CA 2003.

Held (5:0): Appeal allowed.

Taxation

Mouldsdales t/a Mouldsdales Properties v Commissioners for His Majesty's Revenue and Customs

Supreme Court of the United Kingdom: [\[2023\] UKSC 12](#)

Reasons delivered: 22 March 2023

Coram: Lord Reed, Lord Briggs, Lord Sales, Lord Hamblen and Lady Rose

Catchwords:

Taxation – Value added tax ("VAT") – Property – Sale – Land and buildings – Where sales of land and buildings generally exempt from VAT under Sch 9 Group 1 to *Value Added Tax Act 1994* ("VATA"), but para 1 of Sch 10 to VATA gives taxable person option to tax transactions relating to particular parcel of land – Where, when option to tax is exercised, VAT must be charged and accounted for to His Majesty's Revenue and Customs ("HMRC") whenever there sale of that land – Where paras 12 to 17 of Sch 10 to VATA provide for compulsory disapplication of option to tax in certain circumstances – Where, if option to tax is disapplied, sale of property where option to tax has been exercised goes back to being VAT exempt sale – Where appellant bought building for purchase price to which VAT added because seller had opted to tax land on which building built – Where appellant then exercised option to tax land, enabling appellant to claim back from HMRC input VAT paid to seller – Where, appellant sold property to company not registered for VAT – Where, when appellant sold property, he did not add VAT to purchase price – Where appellant argues he did not charge VAT because Sch 10 to VATA meant option to tax disapplied and so sale of property VAT exempt – Where HMRC's position that sale not tax exempt, and appellant should have charged purchaser VAT and paid VAT over to HMRC – Whether appellant ought to have charged VAT on sale price of property which appellant sold to unconnected purchaser.

Held (5:0): Appeal dismissed.

Tort

Trustees of the Barry Congregation of Jehovah's Witnesses v BXB
Supreme Court of the United Kingdom: [\[2023\] UKSC 15](#)

Reasons delivered: 26 April 2023

Coram: Lord Reed, Lord Hodge, Lord Briggs, Lord Burrows and Lord Stephens

Catchwords:

Tort – Vicarious Liability – Relationship – Akin to employment – Close connection – Where respondent raped in 1990 by elder of Barry Congregation of Jehovah's Witnesses – Where elder convicted of raping respondent in 2014 – Where, in 2017, respondent brought proceedings against appellant, claiming appellant vicariously liable for 1990 conduct of elder – Where High Court and Court of Appeal found in respondent's favour – Whether Jehovah's Witness organisation vicariously liable for rape committed by elder – Whether relationship between appellant and tortfeasor one of employment or akin to employment – Whether wrongful conduct so closely connected with acts that tortfeasor authorised to do that it can be regarded as done by tortfeasor while acting in course of tortfeasor's employment or quasi-employment.

Held (5:0): Appeal allowed.
