



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

PCCW-HKT Telephone Ltd & Anor v Secretary for Commerce and Economic Development & Anor

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 105](#)

Judgment delivered: 27 December 2017

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

Catchwords:

Administrative law – Licence fees – *Telecommunications Ordinance* s 7 – Interpretation – Where appellants hold licences issued by second respondent under Ordinance – Where appellants sought judicial review of decision of respondents not to further reduce licence fees – Where application dismissed by High Court – Where appeal dismissed by Court of Appeal – Whether respondents erred in law in determining licence fees payable under Ordinance by budgeting for “notional tax” and “dividends” – Whether respondents erred in law in construing *Trading Funds Ordinance* as permitting inclusion in budget of projections for notional tax or dividends.

Held (5:0): Appeal allowed.

Wellington International Airport Ltd v New Zealand Air Line Pilots' Association Industrial Union of Workers Incorporated & Anor
New Zealand Supreme Court: [\[2017\] NZSC 199](#)

Judgment delivered: 21 December 2017

Coram: Elias CJ, William Young, Glazebrook, Ellen France and Arnold JJ

Catchwords:

Administrative law – Judicial review – *Civil Aviation Act 1990* – *Civil Aviation Rules* – Where Rules require that airports have runway end safety areas (“RESAs”) at end of runways – Where Rules state RESAs must extend “at least 90m, and, if practicable, to a distance of at least 240m, or to the greatest distance practicable between 90 and 204m” – Where Rules require that RESAs be “acceptable” to Director of Civil Aviation – Where appellant sought Director’s acceptance of 90m RESAs – Where Director decided 90m RESAs acceptable because costs of longer RESAs would outweigh safety benefits – Where respondents sought judicial review of Director’s decision – Where High Court dismissed application – Where Court of Appeal allowed appeal – Whether Director erred in law in concluding 90m RESAs “acceptable” – Meaning of “practicable”.

Held (5:0): Appeal dismissed.

Dover District Council v CPRE Kent; CPRE Kent v China Gateway International Ltd

United Kingdom Supreme Court: [\[2017\] UKSC 79](#)

Judgment delivered: 6 December 2017

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

Catchwords:

Administrative law – Judicial review – Reasons for decision – Planning permission – *Town and Country Planning (Environment Impact Assessment) Regulations 2011* – Where China Gateway International Ltd sought planning permission for large residential development – Where Planning Committee of Council concluded environmental harm could be minimised by “effective screening” contrary to planning officers’ report screening would be “largely ineffective” – Where Council granted planning permission – Where Council failed to provide statement of “main reasons” for decision contrary to Regulations – Where Court of Appeal quashed planning permission on basis Council failed to comply with Regulations – Whether Court of Appeal erred in quashing planning permission.

Held (5:0): Appeal dismissed.

First Nation of Nacho Nyak Dun & Ors v Yukon
Supreme Court of Canada: [\[2017\] SCC 58](#)

Judgment delivered: 1 December 2017

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

Catchwords:

Administrative law – Judicial review – Treaties – Remedy for breach – Where Yukon, Canada and appellants entered into land claim agreements (“Final Agreements”) – Where Commission established to develop land use plan – Where Commission released Final Recommended Plan – Where s 11.6.3.2 of Final Agreements gave Yukon right to modify Final Recommended Plan – Where Yukon adopted substantially amended plan – Where trial judge held amendments invalid because Yukon failed to act in conformity with process set out in Final Agreements as amendments not presented to Commission – Where trial judge ordered parties to return to second round of consultation – Where Court of Appeal allowed appeal in part and ordered parties to return to earlier stage in approval process – Whether Yukon’s adoption of amended plan authorised by s 11.6.3.2 – If no, whether Court of Appeal erred in ordering parties return to earlier stage of approval process.

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

Osborne & Anor v WorkSafe New Zealand & Anor
New Zealand Supreme Court: [\[2017\] NZSC 175](#)

Judgment delivered: 23 November 2017

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

Catchwords:

Administrative law – Judicial review – Agreement not to prosecute – *Health and Safety in Employment Act 1992* – Where 29 persons died in mining disaster – Where WorkSafe laid charges against Chief Executive Officer (“CEO”) of mining company under Act – Where counsel for CEO proposed prosecution be discontinued in exchange for CEO arranging payment of reparations imposed on company – Where WorkSafe discontinued prosecution on basis not in public interest and offered no evidence at trial – Where considerations taken into account by WorkSafe included conditional offer to pay reparations – Where High Court held WorkSafe permitted to take offer into account – Where Court of Appeal dismissed appeal – Whether decision to withdraw prosecution and offer no evidence unlawful.

Held (5:0): Appeal allowed.

Scotch Whisky Association & Ors v The Lord Advocate & Anor (Scotland)

United Kingdom Supreme Court: [\[2017\] UKSC 76](#)

Judgment delivered: 15 November 2017

Coram: Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Sumption, Lord Reed, Lord Hodge

Catchwords:

Administrative law – Judicial review – Proportionality – Treaty on the Functioning of the European Union arts 34, 36, 39 – Regulation (EU) No 1308/2013 – Where Scottish Parliament enacted *Alcohol (Minimum Pricing) (Scotland) Act 2012* to address health and social consequences of consumption of cheap alcohol – Where Act amends sch 3 to *Licensing (Scotland) Act 2005* by inserting requirement that alcohol not be sold below statutorily determined minimum price per unit – Whether minimum pricing permissible as exception to prohibition on restrictions on imports contained in art 34 as measure for “protection of health and life of humans” – Whether minimum unit pricing contrary to common organisation of markets in agricultural products established by Regulation (EU) No 1308/2013.

Held (7:0): Appeal dismissed.

Barreau du Québec v Quebec (Attorney General)

Supreme Court of Canada: [\[2017\] SCC 56](#)

Judgment delivered: 10 November 2017

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

Catchwords:

Administrative law – Judicial review – Standard of review – Where Minister applied for review of decisions of Administrative Tribunal of Québec – Where applications for review prepared and filed by person who was not practising advocate entered on Roll of Order of Barreau du Québec – Where s 102 of *Act Respecting Administrative Justice*, CQLR, c J-3 grants Minister right to be “represented by the person of his ... choice” – Where Tribunal concluded s 102 permits person who is not practising advocate to do everything necessary to represent Minister – Where Superior Court allowed application for judicial review – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding Tribunal’s decisions should not have been reversed – Whether Tribunal’s interpretation of s 102 reasonable – Standard of review of Tribunal’s interpretation of Act.

Held (8:1): Appeal dismissed.

Admiralty Law

Toptip Holding Pte Ltd v Mercuria Energy Trading Pte Ltd & Anor
Court of Appeal of Singapore: [\[2017\] SGCA 64](#)

Judgment delivered: 23 November 2017

Coram: Sundaresh Menon CJ, Andrew Phang Boon Leong and Judith Prakash JJA

Catchwords:

Admiralty – Charterparty – Repudiation – Where parties entered into negotiations for charter of vessel – Where respondent subsequently denied existence of charter – Where appellant entered into charterparty with third party at higher rate – Where appellant sought damages for breach of contract – Where trial judge dismissed claim on basis no charterparty concluded as negotiations never reached completion – Whether charterparty concluded – If yes, whether charterparty void for uncertainty – Whether respondent in repudiatory breach of charterparty – Whether appellant entitled to damages.

Held (3:0): Appeal allowed; cross-appeal dismissed.

Constitutional Law

Economic Freedom Fighters & Ors v Speaker of the National Assembly & Anor

Constitutional Court of South Africa: [\[2017\] ZACC 47](#)

Judgment delivered: 29 December 2017

Coram: Mogoeng CJ, Zondo DCJ, Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ, Zondi AJ

Catchwords:

Constitutional law – Constitution s 89 – Impeachment – Where President failed to implement Public Protector’s remedial action after report on Nkandla project released – Whether failure by National Assembly to make rules regulating removal of President in terms of s 89 of Constitution constitutes violation of s 89 – Whether failure by National Assembly to determine whether President breached s 89 inconsistent with ss 89 and 42.

Held (7:4): Application granted.

R v Boutilier

Supreme Court of Canada: [\[2017\] SCC 64](#)

Judgment delivered: 21 December 2017

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

Catchwords:

Constitutional law – Canadian Charter of Rights and Freedoms – Sentencing – *Criminal Code*, R.S.C. 1985, c C-46 s 753 – Where respondent convicted of six offences arising out of robbery and ensuing car chase – Where Crown brought application seeking designation as “dangerous offender” under s 753(1) of Code and imposition of sentence of indeterminate detention under s 753(4.1) – Where sentencing judge concluded s 753(1) unconstitutionally overbroad but held respondent “dangerous offender” and sentenced respondent to indeterminate detention – Where Court of Appeal held s 753(1) not unconstitutional and dismissed appeal – Whether s 753(1) precludes sentencing judge from considering future treatment prospects when deciding whether offender “dangerous” – If yes, whether s 753(1) overbroad contrary to s 7 of Charter – Whether s 753(4.1) leads to grossly disproportionate sentence contrary to s 12 of Charter.

Held (8:1): Appeal dismissed.

Salem Party Club & Ors v Salem Community & Ors

Constitutional Court of South Africa: [\[2017\] ZACC 46](#)

Judgment delivered: 11 December 2017

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

Catchwords:

Constitutional law – Constitution s 25(7) – Dispossession as result of racially discriminatory laws or practices – *Restitution of Land Rights Act* 1994 – Evidence – Admissibility – Where Land Claims Court held first respondent dispossessed of right to certain portions of land as result of past racially discriminatory practices – Where majority of Supreme Court of Appeal dismissed appeal on basis sufficient evidence to conclude community of indigenous persons occupied land from 1870s – Whether courts below erred in approach to hearsay and historical expert evidence.

Held (10:0): Appeal dismissed.

R v Jones

Supreme Court of Canada: [\[2017\] SCC 60](#)

Judgment delivered: 8 December 2017

Coram: McLachlin CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté and Rowe JJ

Catchwords:

Constitutional law – Canadian Charter of Rights and Freedoms – Search and seizure – Evidence – Admissibility – Where appellant convicted of firearms and drug trafficking offences – Where trial judge admitted as evidence records of text messages seized from account associated with co-accused obtained under production order pursuant to s 487.012 of *Criminal Code*, R.S.C. 1985, c. C-46 – Where Ontario Court of Appeal dismissed appeal – Whether accused had reasonable expectation of privacy in text messages stored by service provider and therefore standing under s 8 of Charter to challenge production order – Whether production order provides lawful authority for seizing stored text messages or whether wiretap authorization under Part VI of *Criminal Code* required for seizure to comply with s 8 of Charter.

Held (6:1): Appeal dismissed.

R v Marakah

Supreme Court of Canada: [\[2017\] SCC 59](#)

Judgment delivered: 8 December 2017

Coram: McLachlin CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté and Rowe JJ

Catchwords:

Constitutional law – Canadian Charter of Rights and Freedoms – Search and seizure – Evidence – Admissibility – Where appellant sent text messages to accomplice regarding illegal firearms transactions – Where police obtained warrants to search houses of appellant and accomplice – Where police seized mobile telephones – Where primary judge held search warrant for appellant's home invalid and text messages recovered from appellant's mobile telephone inadmissible – Where primary judge admitted text messages recovered from accomplice's mobile telephone – Where majority of Court of Appeal dismissed appeal – Whether accused had reasonable expectation of privacy in text messages recovered on accomplice's device and therefore standing to challenge search and admission of evidence – Whether guarantee against unreasonable search and seizure in s 8 of Charter protects text messages recovered on recipient's device – Whether evidence should be excluded under s 24(2) of

Charter – If yes, whether curative proviso in s 686(1)(b)(iii) of *Criminal Code*, R.S.C. 1985, c. C-46 applies.

Held (5:2): Appeal allowed.

Public Servants Association obo Olufunmilayi Itunu Ubogu v Head of Department of Health, Gauteng & Ors

Constitutional Court of South Africa: [\[2017\] ZACC 45](#)

Judgment delivered: 7 December 2017

Coram: Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojaepelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution ss 1, 23, 25, 34, 167, 172 – *Public Service Act* 1994 s 38(2)(b)(i) – Where state erroneously overpaid employee – Where state began making deductions from salary to recover overpayments – Where Association sought interim relief in Labour Court on behalf of employee – Where Labour Court held deductions from salary violated Bill of Rights and declared s 38(2)(b)(i) “unconstitutional as presently formulated” – Whether Labour Court had jurisdiction to declare provision constitutionally invalid – Whether s 38(2)(b)(i) constitutionally invalid because violates principle of legality and/or undermines judicial process.

Held (9:1): Appeal dismissed.

Dladla & Anor v City of Johannesburg & Ors

Constitutional Court of South Africa: [\[2017\] ZACC 42](#)

Judgment delivered: 1 December 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojaepelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution ss 10, 12, 14 – Where City of Johannesburg provided temporary accommodation at shelter – Where shelter rules required residents of opposite sex to live in separate dormitories and prohibited residents from being inside shelter between 8 am and 5:30 pm – Where High Court held shelter rules infringed rights under Constitution to dignity, freedom and security of person, and privacy – Where Supreme Court of Appeal allowed appeal – Whether rules unconstitutional.

Held (11:0): Appeal allowed.

Ramuhovhi & Ors v President of the Republic of South Africa & Ors
Constitutional Court of South Africa: [\[2017\] ZACC 41](#)

Judgment delivered: 30 November 2017

Coram: Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution s 36 – Discrimination – *Recognition of Customary Marriages Act* 1998 s 7(1) – Where s 7(1) provides that proprietary consequences of customary marriages entered into before commencement of Act governed by customary law – Where deceased entered into various polygamous customary marriages and civil marriages – Where High Court declared s 7(1) invalid because differential treatment of proprietary consequences of marriages entered into before and after Act commenced unconstitutional – Whether s 7(1) incompatible with Constitution because discriminates against women on grounds of gender and marital status.

Held (11:0): Declaration of invalidity confirmed.

State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd

Constitutional Court of South Africa: [\[2017\] ZACC 40](#)

Judgment delivered: 14 November 2017

Coram: Mogoeng CJ, Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe, Madlanga, Mhlantla JJ, Mojapelo, Pretorius AJJ and Zondo J

Catchwords:

Constitutional law – Constitution ss 33, 217 – Where parties entered into agreement pursuant to which appellant awarded respondent contract to provide information services to Department of Defence – Where appellant bought application to set aside agreement on basis agreement concluded in contravention of s 217 – Where High Court dismissed application on basis proceedings brought outside 180-day period within which review must be sought under *Promotion of Administrative Justice Act* 2000 – Where Supreme Court of Appeal dismissed appeal – Whether courts below erred in concluding Act applies where organ of state seeks to set aside own conduct – Whether appellant acted contrary to s 217 in awarding contract to respondent.

Held (11:0): Appeal allowed in part.

Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)

Supreme Court of Canada: [\[2017\] SCC 54](#)

Judgment delivered: 2 November 2017

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

Catchwords:

Constitutional law – Constitution s 35 – Canadian Charter of Rights and Freedoms s 2(a) – Freedom of religion – Where Minister approved construction of ski resort in traditional territory of First Nation – Where territory is site of spiritual significance – Where First Nation claimed resort would drive spirit from site – Where First Nation brought application for judicial review on basis decision violated right to freedom of religion and Minister breached Crown duty of consultation and accommodation under s 35 of Constitution – Where primary judge dismissed application – Where Court of Appeal affirmed decision – Whether Minister’s decision violated s 2(a) of Charter – Whether Minister’s decision Crown had met duty to consult and accommodate was reasonable.

Held (9:0): Appeal dismissed.

Costs

Penny’s Bay Investment Co Ltd v Director of Lands

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 106](#); [\[2017\] HKCFA 107](#); [\[2017\] HKCFA 108](#); [\[2017\] HKCFA 109](#); [\[2017\] HKCFA 110](#); [\[2017\] HKCFA 111](#); [\[2017\] HKCFA 112](#); [\[2017\] HKCFA 113](#); [\[2017\] HKCFA 114](#)

Judgment delivered: 27 December 2017

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

Catchwords:

Costs – Where Court allowed Director’s appeal and dismissed appeal by Penny’s Bay Investment Co Ltd (PBIC) – Where Court made order nisi that PBIC pay Director’s costs of appeals – Whether order should be made absolute – Whether Court should order PBIC to pay Director’s costs of applying for leave to appeal – Whether Court should order PBIC to pay portion of Director’s costs of proceedings in Court of Appeal.

Held (5:0): Orders made.

Ferguson & Ors v Rhodes University
Constitutional Court of South Africa: [\[2017\] ZACC 39](#)

Judgment delivered: 7 November 2017

Coram: Mogoeng CJ, Zondo DCJ, Cameron, Froneman, Jafta JJ, Kathree Setiloane, Kollapen AJJ, Madlanga, Mhlantla JJ and Zondi AJ

Catchwords:

Costs – Judicial discretion – Where appellants involved in student protests on university campus – Where High Court granted urgent interim interdict against appellants – Where appellants sought discharge of interim interdict – Where High Court made interdict final but limited scope – Where High Court ordered parties to pay own costs – Where appellants sought leave to appeal – Where High Court and Supreme Court of Appeal dismissed applications for leave to appeal with costs – Whether courts below erred in making adverse costs orders against appellants – Application of *Biowatch Trust v Registrar, Genetic Resources* [2009] ZACC 14.

Held (10:0): Appeal allowed in part.

Criminal Law

HKSAR v Cheung Wai Kwong
Hong Kong Court of Final Appeal: [\[2017\] HKCFA 103](#)

Judgment delivered: 22 December 2017

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

Catchwords:

Criminal law – *Road Traffic Ordinance* s 52 – Interpretation – Where respondent convicted of “using an unlicensed vehicle” contrary to s 52 of Ordinance – Where conviction based on evidence respondent sat in driver’s seat of car with headlights and reading light on – Where Court of First Instance quashed conviction on basis respondent did not “use” vehicle – Whether Court of First Instance erred in interpretation of “use”.

Held (5:0): Appeal dismissed.

Phakane v The State
Constitutional Court of South Africa: [\[2017\] ZACC 44](#)

Judgment delivered: 5 December 2017

Coram: Nkabinde ADCJ, Cameron, Froneman, Jafta, Khampepe JJ, Mbha, Musi AJJ, Madlanga, Mhlantla and Zondo JJ

Catchwords:

Criminal law – Appeals – Where appellant convicted of murder and sentenced to 20 years imprisonment – Where appellant appealed to Full Court of High Court against conviction and sentence – Where State failed to deliver full record – Where Full Court held sufficient evidence to justify conviction – Whether missing evidence critical to conviction – Whether appeal unfair without missing evidence.

Held (10:0): Appeal allowed.

Employment Law

Association of Justice Counsel v Canada (Attorney-General)

Supreme Court of Canada: [\[2017\] SCC 55](#)

Judgment delivered: 3 November 2017

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

Catchwords:

Employment law – Collective agreements – Canadian Charter of Rights and Freedoms – Where Department of Justice established shift system whereby lawyers attend urgent stay applications in immigration matters in evenings and on weekends – Where lawyers initially compensated irrespective of whether called into work – Where Department changed policy such that lawyers not paid for time spent on standby – Where insufficient volunteers to cover shifts after change in policy – Where Department issued directive making after-hour standby shifts mandatory – Where collective agreement states Department retains all management rights and powers not modified or limited by collective agreement – Where adjudicator concluded directive not reasonable or fair exercise of management rights and infringed right to liberty under s 7 of Charter – Where Federal Court of Appeal set aside adjudicator's decision – Whether adjudicator erred in concluding mandatory standby duty directive represented unreasonable and unfair exercise of employer's management rights and infringed right to liberty.

Held (7:2): Appeal allowed in part.

Michalak v General Medical Council & Ors
United Kingdom Supreme Court: [\[2017\] UKSC 71](#)

Judgment delivered: 1 November 2017

Coram: Lady Hale, Lord Mance, Lord Kerr, Lord Wilson, Lord Hughes

Catchwords:

Employment law – *Equality Act 2010* s 120 – Unfair dismissal – Where appellant brought unfair dismissal claim against employer in Employment Tribunal – Where Tribunal found dismissal unfair due to sex and race discrimination and victimisation – Where prior to Tribunal’s determination, employer reported appellant to General Medical Council to consider whether appellant should continue to be registered as medical practitioner – Where Council began fitness proceedings against appellant – Where appellant claims Council discriminated against appellant in pursuing proceedings – Where appellant brought claim against Council in Employment Tribunal – Where Council argued s 120(7) of Act meant Tribunal did not have jurisdiction to hear claim as judicial review already provides for appeal – Whether availability of judicial review proceedings in respect of decisions or actions of Council can properly be described as proceedings “in the nature of an appeal” such that jurisdiction of Tribunal excluded by s 120(7).

Held (5:0): Appeal dismissed.

Equity

Cowper-Smith v Morgan
Supreme Court of Canada: [\[2017\] SCC 61](#)

Judgment delivered: 14 December 2017

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

Catchwords:

Equity – Proprietary estoppel – Where deceased transferred title to family home and other assets into joint ownership with respondent and made trust declaration that respondent absolutely entitled to assets upon deceased’s death – Where deceased executed will providing estate to be divided equally between respondent and deceased’s two other children – Where appellant later moved to family home to look after deceased – Where respondent agreed appellant could live permanently in family home and acquire respondent’s one-third interest in property under will – Where after deceased’s death, respondent announced plans to sell family home – Where trial judge found respondent failed to rebut presumption of undue

influence and declared property belonged to deceased's estate – Where trial judge also concluded appellant entitled to enforce respondent's promise – Where Court of Appeal by majority held that as respondent had no interest in property when assurances made to appellant, no proprietary estoppel could arise – Whether respondent's lack of ownership in property at time promise made prevented proprietary estoppel arising.

Held (9:0): Appeal allowed.

Extradition

Maythem Kamil Radhi v District Court at Manukau & Anor
New Zealand Supreme Court: [\[2017\] NZSC 198](#)

Judgment delivered: 21 December 2017

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

Catchwords:

Extradition – *Extradition Act* 1999 – Where Commonwealth of Australia seeks extradition of appellant to stand trial for people-smuggling – Where District Court held appellant eligible for surrender – Where appellant applied to District Court for order under s 48(4)(a)(ii) of Act that case be referred to Minister of Justice – Where District Court declined to refer case to Minister – Where appeals to High Court and Court of Appeal dismissed – Whether Court of Appeal erred in concluding circumstances did not warrant reference to Minister.

Held (3:2): Appeal allowed

Human Rights

British Columbia Human Rights Tribunal v Schrenk
Supreme Court of Canada: [\[2017\] SCC 62](#)

Judgment delivered: 15 December 2017

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

Catchwords:

Human rights – Human Rights Tribunal – Jurisdiction – Discrimination – Employment – *Human Rights Code*, R.S.B.C. 1996, c 210 – Where co-worker filed complaint against respondent alleging discrimination on basis of religion, place of origin and sexual orientation – Where respondent

alleged *Human Rights Code* had no application because no employment relationship between respondent and co-worker – Where Human Rights Tribunal held it had jurisdiction to deal with complaint – Where British Columbia Supreme Court dismissed respondent’s application for judicial review – Where Court of Appeal allowed appeal, holding Tribunal erred in concluding it had jurisdiction over complaint – Whether discrimination “regarding employment” can be perpetrated by someone other than complainant’s employer or superior – Whether Tribunal erred in concluding it had jurisdiction over complaint.

Held (6:3): Appeal allowed.

R (on the application of HC) v Secretary of State for Work and Pensions & Ors

United Kingdom Supreme Court: [\[2017\] UKSC 73](#)

Judgment delivered: 15 November 2017

Coram: Lady Hale, Lord Clarke, Lord Wilson, Lord Sumption, Lord Carnwath

Catchwords:

Human rights – European Convention on Human Rights – European Union Charter of Fundamental Rights and Freedoms – Where appellant entitled to reside in United Kingdom as primary carer of British national children in accordance with decision of Court of Justice of European Union in *Zambrano v Office nationale de l’emploi* (Case C-34/09) [2012] QB 265 – Where United Kingdom government introduced *The Social Security (Habitual residence) Regulations 2012*, *The Child Benefit and Child Tax Credit (Miscellaneous Amendments) Regulations 2012* and *The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012* – Where regulations preclude *Zambrano* carers from claiming various benefits – Whether denial of benefits to *Zambrano* carers constitutes unlawful discrimination under art 21 of Charter and/or art 14 of Convention.

Held (5:0): Appeal dismissed.

R (on the application of C) v Secretary of State for Work and Pensions

United Kingdom Supreme Court: [\[2017\] UKSC 72](#)

Judgment delivered: 1 November 2017

Coram: Lady Hale, Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hughes

Catchwords:

Human rights – European Convention on Human Rights – *Human Rights Act 1998* – *Equality Act 2010* – *Gender Recognition Act 2004* – Where

appellant underwent gender reassignment – Where Department uses centralised database which records information about customers including fact of gender reassignment and previous names, titles or gender (“Retention policy”) – Where specific authorisation required to access records of some customers who require extra protection of privacy (“Special Customer Records policy”) – Where appellant brought proceedings in High Court after incidents where transgender status openly referred to at Department offices – Where High Court held Retention policy breached right to privacy under art 8 of Convention because not sufficiently clear but dismissed claims that policies otherwise unlawful – Where Court of Appeal dismissed appeal – Whether policies unlawful under *Human Rights Act 1998*, *Equality Act 2010* and *Gender Recognition Act 2004*.

Held (5:0): Appeal dismissed.

Brown v The Parole Board for Scotland, The Scottish Ministers & Anor (Scotland)

United Kingdom Supreme Court: [\[2017\] UKSC 69](#)

Judgment delivered: 1 November 2017

Coram: Lord Neuberger, Lady Hale, Lord Reed, Lord Hodge, Lord Carloway

Catchwords:

Human Rights – European Convention on Human Rights – *Human Rights Act 1998* – Where appellant sentenced to “extended sentence” comprising seven year custodial term and extension period of three years – Where appellant released on licence after serving two-thirds of custodial term – Where appellant recalled to custody after committing further offence – Where appellant claims not provided with appropriate rehabilitation courses following recall to prison contrary to art 5 of Convention – Whether duty under art 5 to provide prisoners with real opportunity for rehabilitation applies to prisoners serving extended sentences.

Held (5:0): Appeal dismissed.

Interpretation

Registrar of the Hong Kong Institute of Certified Public Accountants v Wong Tak Man Stephen & Anor

Hong Kong Court of Final Appeal: [\[2017\] HKCFA 104](#)

Judgment delivered: 22 December 2017

Coram: Mr Justice Ribeiro ACJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Bokhary NPJ, Mr Justice Gummow NPJ

Catchwords:

Interpretation – *Professional Accountants Ordinance* s 34(1)(a)(vi) – Where second appellant audited financial statements of company – Where Disciplinary Committee of Hong Kong Institute of Certified Public Accountants found auditors failed to properly evaluate compliance with Hong Kong Accounting Standard 39 (“HKAS 39”) before issuing unqualified audit opinion – Where Committee found auditors breached s 34(1)(a)(vi) of Ordinance – Where Court of Appeal dismissed appeal – Whether auditors failed to comply with HKAS 39 – Whether auditors who wrongly interpret or apply professional standard commit breach of s 34(1)(a)(vi) – Whether s 34(1)(a)(vi) imports standard of reasonableness in assessing whether auditor has “failed or neglected to observe, maintain or otherwise apply a professional standard”.

Held (5:0): Appeal dismissed.

Fonterra Co-Operative Group Ltd v McIntyre and Williamson Partnership & Ors

New Zealand Supreme Court: [\[2017\] NZSC 197](#)

Judgment delivered: 21 December 2017

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

Catchwords:

Interpretation – *Dairy Industry Restructuring Act* 2001 s 106 – Where appellant acquires milk from dairy farmers who own shares in appellant in proportion to number of shares held – Where appellant also acquires milk on contract from suppliers who hold stipulated minimum number of shares – Where appellant entered into milk supply contracts with respondents – Where s 106 of Act prohibits discrimination between “new entrants” and existing shareholder suppliers of appellant – Where High Court held agreements breached s 106 – Where Court of Appeal dismissed appeal – Whether respondents were “new entrants” for purposes of s 106 – If yes, whether terms of supply agreements breached s 106.

Held (4:1): Appeal dismissed.

R (on the application of Hysaj & Ors) v Secretary of State for the Home Department; Bakijasi v Secretary of State for the Home Department

United Kingdom Supreme Court: [\[2017\] UKSC 82](#)

Judgment delivered: 21 December 2017

Coram: Lady Hale, Lord Kerr, Lord Wilson, Lord Hughes, Lord Hodge

Catchwords:

Interpretation – *British Nationality Act 1981 s 40* – Citizenship – Where s 40 of Act permits Secretary of State to deprive person of citizenship if satisfied grant obtained by “fraud, false representation or concealment of a material fact” – Where appellants falsely stated born in Kosovo when seeking asylum in United Kingdom – Where appellants granted indefinite leave to remain and later naturalised as British citizens – Where Secretary of State declared grants of citizenship nullities such that appellants were never British citizens – Whether Secretary of State erred in concluding grants of citizenship were nullities as opposed to valid grants of which appellants liable to be deprived.

Held (5:0): Appeals allowed.

R (on the application of Black) v Secretary of State for Justice
United Kingdom Supreme Court: [\[2017\] UKSC 81](#)

Judgment delivered: 19 December 2017

Coram: Lady Hale, Lord Mance, Lord Kerr, Lord Hughes, Lord Lloyd-Jones

Catchwords:

Interpretation – *Health Act 2006* – Where Act prohibits smoking in enclosed public places – Where appellant serving sentence of imprisonment – Where appellant claims smoking ban not properly enforced in common parts of prison – Where Secretary of State refused to provide confidential and anonymous access to National Health Service Smoke-free Compliance Line to prisoners – Where appellant sought judicial review of Secretary’s decision – Where High Court held smoking ban bound Crown – Where Court of Appeal allowed appeal – Whether Crown bound by smoking ban.

Held (5:0): Appeal dismissed.

Negligence

Deloitte & Touche v Livent Inc (receiver of)
Supreme Court of Canada: [\[2017\] SCC 63](#)

Judgment delivered: 20 December 2017

Coram: McLachlin CJ, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

Catchwords:

Negligence – Negligent misrepresentation – Duty of care – Where auditor failed to discover fraud by company’s directors – Where trial judge held auditor breached duty of care to provide accurate information to shareholders – Where trial judge held measure of damages was difference between company’s value on date auditor should have resigned and value at time of insolvency – Where Court of Appeal dismissed appeal – Whether courts below erred in concluding auditor breached duty of care – Appropriate date from which to calculate quantum of damages.

Held (4:3): Appeal allowed in part.

Southland Indoor Leisure Centre Charitable Trust v Invercargill City Council

New Zealand Supreme Court: [\[2017\] NZSC 190](#)

Judgment delivered: 14 December 2017

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

Catchwords:

Negligence – Duty of care – Negligent misstatement – Contributory negligence – Where respondent granted appellant building consent for remedial work to trusses over stadium – Where consent subject to conditions – Where respondent issued interim and final code compliance certificates for remedial work despite non-compliance with conditions – Where roof collapsed under snowfall because remedial work defective – Where appellant brought proceedings against respondent for negligence in issuing compliance certificates – Where High Court upheld claim – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding respondent did not owe duty of care to appellant – Whether Court of Appeal erred in characterising claim as negligent misstatement – Whether appellant’s actions amounted to contributory negligence.

Held (3:2): Appeal allowed in part

Tiuta International Limited (in liquidation) v De Villiers Surveyors Limited

United Kingdom Supreme Court: [\[2017\] UKSC 77](#)

Judgment delivered: 29 November 2017

Coram: Lady Hale, Lord Kerr, Lord Sumption, Lord Lloyd-Jones, Lord Briggs

Catchwords:

Negligence – Damages – Causation – Where appellant entered into loan facility agreement secured by charge over residential development – Where appellant subsequently entered into second loan facility agreement shortly before expiry of first loan facility secured by fresh charge – Where

funds advanced under second loan facility for refinancing indebtedness under first loan facility and for completion of development ("new money") – Where advances under second loan facility made on basis of valuation by respondent – Where appellant sought damages for losses suffered as result of reliance on negligent valuation – Where High Court held losses limited to new money advanced under second loan facility – Where Court of Appeal allowed appeal – Whether losses limited to new money advanced under second loan facility.

Held (5:0): Appeal allowed.

Procedure

Four Seasons Holdings Incorporated v Brownlie
United Kingdom Supreme Court: [\[2017\] UKSC 80](#)

Judgment delivered: 19 December 2017

Coram: Lady Hale, Lord Clarke, Lord Wilson, Lord Sumption, Lord Hughes

Catchwords:

Procedure – Service outside jurisdiction – *Civil Procedure Rules* 1998 – Practice Direction 6B – Where appellant incorporated in Canada – Where hotel operated by subsidiary of appellant in Egypt – Where respondent's husband and daughter died, and respondent injured, in car crash during excursion in Egypt booked through hotel – Where respondent brought claim against appellant seeking damages for personal injuries, damages under *Law Reform (Miscellaneous Provisions) Act* 1934 as husband's executrix, and damages for bereavement and loss of dependency under *Fatal Accidents Act* 1976 – Where Court of Appeal granted respondent permission to serve claim for damages under *Fatal Accidents Act* 1976 outside England and Wales but denied permission in respect of other claims – Whether Court of Appeal erred in granting permission in respect of claim under *Fatal Accidents Act* 1976 because proper law of tort is Egyptian law such that claim has no reasonable prospects of success – Whether in respect of remaining claims damage "sustained within jurisdiction" for purposes of para 3.1(9)(a) of Practice Direction 6B.

Held (5:0): Appeal allowed.

O'Connor v Bar Standards Board
United Kingdom Supreme Court: [\[2017\] UKSC 78](#)

Judgment delivered: 6 December 2017

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

Catchwords:

Procedure – Limitation period – *Human Rights Act* 1998 s 7(5)(a) – Where respondent brought six disciplinary charges against appellant in June 2010 – Where Disciplinary Tribunal found five charges proved in May 2011 – Where Visitors of Inns of Court allowed appeal in August 2012 on basis none of alleged conduct involved breach of Bar Code of Conduct – Where appellant commenced proceedings against respondent in February 2013 for alleged racial discrimination in bringing disciplinary proceedings – Where s 7(5)(a) provides proceedings must be brought before end of period of one year beginning on date on which act complained of took place – Where courts below held limitation period expired – Whether disciplinary proceedings against appellant were series of discrete acts or single continuing act – If single continuing act, whether act ended with verdict of Disciplinary Tribunal or verdict of Visitors of Inns of Court.

Held (5:0): Appeal allowed.

R v Sciascia

Supreme Court of Canada: [\[2017\] SCC 57](#)

Judgment delivered: 23 November 2017

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

Catchwords:

Procedure – Joinder – Jurisdiction – Where appellant charged with offences under *Criminal Code*, R.S.C. 1985, c C-46 and *Highway Traffic Act*, R.S.O 1990, c H8 – Where appellant tried for all offences in single proceeding in Ontario Court of Justice – Where appellant found guilty of one criminal offence and one provincial offence – Where Court of Appeal held trial judge lacked jurisdiction to hold joint trial but dismissed appeal on basis error could be cured by applying proviso under s 686(1)(b)(iv) of Code and s 102(1)(b)(iii) of *Provincial Offences Act*, R.S.O, 1990, c P33 – Whether Ontario Court of Justice had jurisdiction to conduct joint trial – If no, whether error can be cured by provisos.

Held (6:1): Appeal dismissed.

Gordon & Ors, as the Trustees of the Inter Vivos Trust of the late William Strathdee Gordon v Campbell Riddell Breeze Paterson LLP (Scotland)

United Kingdom Supreme Court: [\[2017\] UKSC 75](#)

Judgment delivered: 15 November 2017

Coram: Lord Neuberger, Lord Mance, Lord Sumption, Lord Reed, Lord Hodge

Catchwords:

Procedure – Prescription – *Prescription and Limitation (Scotland) Act 1973* – Where farmland owned by trust leased to tenant – Where trustees instructed solicitors to serve notices to quit on tenant – Where notices served in November 2004 requiring removal by November 2005 – Where Scottish Land Court gave judgment in July 2008 refusing to give effect to notices to quit because inaccurate description of tenant and lease – Where trustees brought proceedings against solicitors in May 2012 – Where Act provides obligation ceases if no claim made within five years – Where Outer House held claim prescribed – Where Inner House dismissed appeal – Whether s 11(3) of Act postponed start of prescriptive period to date of judgment of Scottish Land Court.

Held (5:0): Appeal dismissed.

Hamer v Neighborhood Housing Services of Chicago et al
Supreme Court of the United States: [Docket No 16-658](#)

Judgment delivered: 8 November 2017

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

Catchwords:

Procedure – Prescription – Appeals – Where petitioner filed employment discrimination suit against respondents – Where District Court granted respondents' motion for summary judgment – Where notice of appeal due in October 2015 – Where District Court granted two month extension to allow petitioner to secure new counsel – Where *Federal Rules of Appellate Procedure* r 4(a)(5)(C) confined extensions to 30 days – Where Court of Appeals dismissed appeal on basis 30 day period was jurisdictional – Whether Court of Appeals erred in treating limitation on extensions of time in r 4(a)(5)(C) as jurisdictional.

Held (9:0): Vacated and remanded.

Taxation

R (on the application of De Silva & Anor) v Commissioners for Her Majesty's Revenue and Customs
United Kingdom Supreme Court: [\[2017\] UKSC 74](#)

Judgment delivered: 15 November 2017

Coram: Lord Neuberger, Lord Kerr, Lord Reed, Lord Hughes, Lord Hodge

Catchwords:

Taxation – Income tax – *Taxes Management Act 1970* – Where appellants invested in partnerships in implementation of marketed tax avoidance schemes – Where partnerships lodged tax returns claiming substantial trading losses – Where respondent disallowed certain claims for expenditure – Where partnerships entered into settlement agreement under s 54(1) of Act – Where respondent wrote to appellants stating personal tax returns would be amended in line with lower partnership losses stated in partnership settlement agreement – Where appellants sought judicial review on basis respondent failed to institute inquiry under Sch 1A para 5 of Act within relevant time limit – Where Upper Tribunal dismissed claim – Where Court of Appeal dismissed appeal – Whether respondent required to institute inquiry under Sch 1A para 5 in order to challenge appellants claims for relief from income tax.

Held (5:0): Appeal dismissed.

Littlewoods Limited & Ors v Commissioners for Her Majesty's Revenue and Customs

United Kingdom Supreme Court: [\[2017\] UKSC 70](#)

Judgment delivered: 1 November 2017

Coram: Lord Neuberger, Lord Clarke, Lord Reed, Lord Carnwath, Lord Hodge

Catchwords:

Taxation – *Value Added Tax Act 1994* – Overpayment – Interest – Where taxpayer overpaid VAT between 1973 and 2004 – Where Commissioners repaid principal sum and simple interest – Where taxpayer claims interest should have been paid on compound basis as restitution for mistake of law or tax unlawfully demanded – Whether common law restitution claims excluded by ss 78, 80 of Act – If yes, whether exclusion of claims contrary to European Union law in light of decision of Court of Justice in Case C-591/10 *Littlewoods*.

Held (5:0): Commissioners' appeal allowed; Littlewoods' cross-appeal dismissed.
