



# 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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## Arbitration

*Astro Nusantara International B.V. & Ors v PT First Media TBK*  
**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 12](#)

**Judgment delivered:** 11 April 2018

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

### Catchwords:

Arbitration – Enforcement of award – New York Arbitration Convention 1958 – Where respondents brought arbitral proceedings against appellant and others – Where arbitral tribunal joined three respondents who were not parties to arbitration agreement (“additional parties”) – Where arbitral tribunal made awards in favour of respondents – Where respondents sought to enforce awards in Singapore and Hong Kong – Where Singapore Court of Appeal held arbitral tribunal lacked jurisdiction to make awards in favour of additional parties – Where appellant applied for extension of time to set aside enforcement orders made in Hong Kong – Where Court of First Instance refused to extend time – Where Court of Appeal dismissed appeal – Whether Court of Appeal applied wrong test for considering extension of time.

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

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# Constitutional Law

*Oil States Energy Services, LLC v Greene's Energy Group, LLC et al*  
**Supreme Court of the United States:** [Docket No 16-712](#)

**Judgment delivered:** 24 April 2018

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

**Catchwords:**

Constitutional law – Judicial power – Article III – Inter partes review of patents – Where respondent sought review of petitioner's patent before Patent Trial and Appeal Board – Where Board concluded petitioner's claims unpatentable – Where Federal Circuit affirmed Board's decision – Whether Federal Circuit erred in failing to find actions to revoke patent must be tried in Article III court before jury – Whether inter partes review violates Article III.

**Held (7:2):** Affirmed.

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*Sessions v Dimaya*

**Supreme Court of the United States:** [Docket No 15-1498](#)

**Judgment delivered:** 17 April 2018

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

**Catchwords:**

Constitutional law – Fifth Amendment – Due process – Vagueness – Where respondent convicted of two burglary offences – Where Government sought to deport respondent as "aggravated felon" under *Immigration and Nationality Act* 8 U.S.C. s 1227 – Where Act defines aggravated felony to include "crime of violence" as defined in 18 U.S.C s 16 – Where s 16(b) provides that "crime of violence" includes "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" – Where Ninth Circuit held s 16(b) as incorporated into *Immigration and Nationality Act* unconstitutionally vague – Whether Ninth Circuit erred in concluding s 16(b) unconstitutionally vague.

**Held (5:4):** Affirmed.

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*R v Comeau*

**Supreme Court of Canada:** [\[2018\] SCC 15](#)

**Judgment delivered:** 19 April 2018

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

**Catchwords:**

Constitutional law – *Constitution Act* 1867 s 121 – Interprovincial trade – Provincial offences – Where respondent charged under s 134(b) of *Liquor Control Act*, R.S.N.B 1973 c L-10 – Where s 134(b) prohibits having or keeping liquor in amount exceeding prescribed threshold purchased from Canadian source other than New Brunswick Liquor Corporation – Where trial judge held s 134(b) infringed s 121 of *Constitution Act* – Where Court of Appeal dismissed application for leave to appeal – Whether s 134(b) infringes s 121 of *Constitution Act* – Whether s 121 bars any impediment to interprovincial commerce – Meaning of “admitted free” in s 121.

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

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## Costs

*Gavin Edmondson Solicitors Limited v Haven Insurance Company Limited*

**United Kingdom Supreme Court:** [\[2018\] UKSC 21](#)

**Judgment delivered:** 18 April 2018

**Coram:** Lady Hale, Lord Kerr, Lord Wilson, Lord Sumption, Lord Briggs

**Catchwords:**

Costs – Conditional fee agreement – Settlement offer – Where respondent firm entered into conditional fee agreements with individuals involved in road traffic accidents involving vehicles whose drivers were insured by appellant – Where appellant made settlement offers directly to claimants on terms not including amount for solicitors’ costs – Where claimants accepted offers and cancelled agreements with respondent – Where respondent sought to enforce equitable lien for payment of costs – Where claim dismissed by primary judge – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in allowing respondent to recover fixed costs.

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

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# Criminal Law

*Wilson v Sessions*

**Supreme Court of the United States:** [Docket No 16-6855](#)

**Judgment delivered:** 17 April 2018

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

**Catchwords:**

Criminal law – Ineffectiveness of counsel – Sixth Amendment – Where petitioner convicted of murder and sentenced to death – Where Georgia Superior Court dismissed application for habeas relief on basis counsel’s performance not deficient and did not prejudice petitioner – Where Georgia Supreme Court dismissed application for certificate to appeal – Where District Court deferred to state habeas court’s conclusion – Where Eleventh Circuit affirmed – Whether federal habeas court erred in “looking through” Supreme Court’s decision to state habeas court’s decision.

**Held (6:3):** Reversed and remanded.

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*R v Magoon*

**Supreme Court of Canada:** [\[2018\] SCC 14](#)

**Reasons delivered:** 13 April 2018

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

**Catchwords:**

Criminal law – Unlawful confinement – Where appellants convicted at trial of second degree murder of child – Where Court of Appeal held death caused while child unlawfully confined and substituting first degree murder convictions – Whether child unlawfully confined – Whether unlawful confinement and murder part of same transaction – *Criminal Code*, R.S.C. 1985, c C-46 ss 231(5), 279(2).

Criminal law – Appeals – Appeals to Supreme Court of Canada – Appeal as of right – Where appellants charged with first degree murder but convicted at trial of second degree murder – Where Court of Appeal substituted first degree murder convictions – Where appellants appealing as of right to Supreme Court of Canada from substituted verdicts – Whether appellants entitled to raise grounds of appeal relating to second degree murder convictions – Meaning of “any question of law” – *Criminal Code*, R.S.C. 1985, c C-46 s 691(2)(b).

Criminal law – Appeals – Appeals to Court of Appeal – Jurisdiction – Where appellants charged with first degree murder but convicted at trial of second degree murder – Where Crown appealed first degree murder acquittals to Court of Appeal – Whether Court of Appeal had jurisdiction to hear Crown appeals – *Criminal Code*, R.S.C. 1985, c C-46 s 676.

**Held (9:0):** Appeals dismissed.

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*R v Carson*

**Supreme Court of Canada:** [\[2018\] SCC 12](#)

**Judgment delivered:** 23 March 2018

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

**Catchwords:**

Criminal Law – Fraud – *Criminal Code*, R.S.C. 1985, c C-46, s 121 – Where s 121 criminalises selling of influence in connection with any matter of business relating to government – Where appellant formerly employed as Senior Adviser in Office of Prime Minister – Where appellant agreed to use government contacts to help company sell water treatment systems to First Nations – Where trial judge acquitted appellant on basis First Nations rather than government decided whether to purchase water treatment systems – Where majority of Court of Appeal allowed appeal – Whether majority of Court of Appeal erred in construction of s 121.

**Held (8:1):** Appeal dismissed.

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*Marinello v United States*

**Supreme Court of the United States:** [Docket No 16-1144](#)

**Judgment delivered:** 21 March 2018

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

**Catchwords:**

Criminal law – Appeal against conviction – Intention – Where Omnibus Clause (26 U.S.C s 7212(a)) prohibits “corruptly or by force or threats of force” obstructing, impeding or endeavouring to obstruct or impede administration of Internal Revenue Code – Where petitioner indicted for violating Omnibus Clause – Where trial judge did not instruct jury that it must find petitioner knew he was under investigation and intended corruptly to interfere with investigation – Where petitioner convicted by jury – Where Second Circuit affirmed – Whether Second Circuit erred in failing to find Omnibus Clause requires proof defendant aware of pending

tax-related proceeding or could reasonably foresee such proceeding would commence.

**Held (7:2):** Reversed and remanded.

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*Klass v S*

**Constitutional Court of South Africa:** [\[2018\] ZACC 6](#)

**Judgment delivered:** 15 March 2018

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

**Catchwords:**

Criminal law – Sentencing – Appeal against sentence – Where appellant convicted of unlawfully manufacturing and dealing drugs contrary to *Drug and Drug Trafficking Act 1992* ss 5, 18, 21 – Where trial judge sentenced appellant to 15 years' imprisonment – Where *Criminal Law Amendment Act 1997* imposes minimum sentence of 15 years' imprisonment where value of drugs more than R50,000 if offender acting alone or more than R10,000 if offender acting as part of syndicate – Where State did not present evidence as to value of drugs seized – Where applications for leave to appeal to High Court and Supreme Court of Appeal dismissed – Whether trial judge erred in applying minimum sentence.

**Held (11:0):** Appeal allowed.

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## Damages

*Morris-Garner & Anor v One Step (Support) Ltd*

**United Kingdom Supreme Court:** [\[2018\] UKSC 20](#)

**Judgment delivered:** 18 April 2018

**Coram:** Lady Hale, Lord Wilson, Lord Sumption, Lord Reed, Lord Carnwath

**Catchwords:**

Damages – Assessment of damages – Restrictive covenants – Where trial judge found appellants breached restrictive covenants and awarded “negotiating” or “*Wrotham Park*” damages for amount respondent could hypothetically have received in return for releasing appellants from obligation – Where Court of Appeal dismissed appeal – Whether courts below erred in approach to assessment of damages.

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

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# Employment Law

*Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 22](#)

**Judgment delivered:** 25 April 2018

**Coram:** Lady Hale, Lord Wilson, Lady Black, Lord Lloyd-Jones, Lord Briggs

## **Catchwords:**

Employment law – Dismissal – Notice of dismissal – Where employment contract provided for termination on minimum period of notice of 12 weeks but did not specify how notice to be given – Where appellant sent written notice of termination to respondent's home address while respondent away on holiday – Where High Court held notice period commenced on day respondent returned from holiday and read letter – Where majority of Court of Appeal dismissed appeal – Whether courts below erred in failing to find notice period commenced when letter would have been delivered in ordinary course of post or when in fact delivered.

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

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*Encino Motorcars, LLC v Navarro et al*  
**Supreme Court of the United States:** [Docket No 16-1362](#)

**Judgment delivered:** 2 April 2018

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

## **Catchwords:**

Employment law – Overtime pay – *Fair Labor Standards Act* 1938 – Interpretation – Where respondents employed as service advisors by petitioner – Where respondents sued petitioner for backpay alleging petitioner violated Act by failing to pay overtime – Where petitioner moved to dismiss on basis service advisors exempt from overtime pay requirement under s 213(b)(10)(A) of Act – Where District Court dismissed suit – Where Ninth Circuit held exemption does not apply to service advisors – Whether Ninth Circuit erred in concluding service advisors not “salesmen ... primarily engaged in selling or servicing automobiles” for purposes of s 213(b)(10)(A) .

**Held (5:4):** Reversed and remanded.

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*Reilly v Sandwell Metropolitan Borough Council*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 16](#)

**Judgment delivered:** 14 March 2018

**Coram:** Lady Hale, Lord Wilson, Lord Carnwath, Lord Hughes, Lord Hodge

**Catchwords:**

Employment law – Unfair dismissal – *Employment Rights Act 1996 s 98* – Where appellant employed as head teacher of school maintained by respondent – Where appellant’s close friend convicted of sexual offences towards children – Where appellant failed to disclose friendship – Where disciplinary panel found appellant guilty of gross misconduct in failing to disclose friendship and dismissed appellant – Where Employment Tribunal held decision to dismiss appellant not unfair – Where appellant unsuccessfully appealed to Employment Appeal Tribunal and Court of Appeal – Whether Tribunal erred in failing to find dismissal unfair.

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

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## Family Law

*Office of the Children’s Lawyer v Balev*  
**Supreme Court of Canada:** [\[2018\] SCC 16](#)

**Judgment delivered:** 20 April 2018

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

**Catchwords:**

Family law – Custody – Wrongful removal or retention of child – Convention on the Civil Aspects of International Child Abduction – Where mother of children living in Canada pursuant to time-limited custody agreement failed to return children to father in Germany following expiry of consent period – Where primary judge found children habitually resident in Germany and ordered return of children – Where Divisional Court allowed mother’s appeal – Where Court of Appeal allowed father’s appeal – Proper approach to determining whether “habitually resident” – Proper approach to considering child’s objections to return to jurisdiction of habitual residence.

**Held (6:3):** Questions answered.

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## Human Rights



*In the matter of an application by Kevin Maguire for Judicial Review (Northern Ireland)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 17](#)

**Judgment delivered:** 21 March 2018

**Coram:** Lord Kerr, Lord Reed, Lord Hughes, Lady Black, Lord Lloyd-Jones

**Catchwords:**

Human Rights – European Convention on Human Rights art 6 – Right to legal assistance – Where appellant granted legal aid certificate entitling him to funding to instruct solicitor and two counsel – Where appellant represented at trial by barrister described as “leading junior counsel” – Where jury unable to reach verdict – Where barrister disciplined by Bar Council on basis he should not have acted as leading counsel unless senior counsel unavailable – Where appellant wished to be represented by same barrister in retrial – Where appellant applied for judicial review of Bar Council’s decision on basis it impeded choice of lead counsel and thereby violated right under art 6.3 to legal assistance – Where Divisional Court dismissed application – Whether Bar code of conduct incompatible with art 6.3.

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

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## Interpretation

*Hartono & Ors v Ministry for Primary Industries & Anor*

**New Zealand Supreme Court:** [\[2018\] NZSC 17](#)

**Judgment delivered:** 2 March 2018

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

**Catchwords:**

Interpretation – *Fisheries Act* 1996 s 256(1) – Meaning of “interest” in forfeited property – Where Act permits persons with “interest” in forfeited property to apply for relief against effect of forfeiture on interest – Where South Korean company operated three fishing vessels in New Zealand’s exclusive economic zone – Where one vessel sank and two vessels forfeited to Crown – Where company’s crew members applied for relief in respect of unpaid wages – Where High Court upheld claims – Where Court of Appeal allowed appeal on basis “interest” did not extend to unpaid wages not earned on forfeited vessels – Whether unpaid wages constitute “interest” under s 256(1) of Act where not earned on vessel in question and proceedings not commenced under *Admiralty Act* 1973 before forfeiture.

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

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## Jurisdiction

*Jesner et al v Arab Bank, Plc*

**Supreme Court of the United States:** [Docket No 16-499](#)

**Judgment delivered:** 24 April 2018

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

**Catchwords:**

Jurisdiction – Alien Torts Statute – Foreign corporations – Where petitioners filed suits under Statute alleging they or persons on whose behalf claims brought injured or killed by terrorist acts caused or facilitated by respondent – Where District Court dismissed petitioners' claims on basis foreign corporations may not be sued under Statute – Where Second Circuit Affirmed – Whether foreign corporations may be defendants in suits brought under Statute.

**Held (5:4):** Affirmed.

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*Hall v Hall*

**Supreme Court of the United States:** [Docket No 16-1150](#)

**Judgment delivered:** 27 March 2018

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

**Catchwords:**

Jurisdiction – Consolidated proceedings – *Federal Rules of Civil Procedure* r 42(a) – Where respondent's mother bought proceedings against respondent ("trust case") – Where petitioner subsequently appointed as plaintiff after death of respondent's mother – Where respondent bought separate proceedings against petitioner ("individual case") – Where District Court consolidated trust and individual cases under r 42(a) – Where jury returned a verdict for respondent in both proceedings – Where District Court granted petitioner new trial in individual case – Where petitioner filed notice of appeal in trust case – Where Court of Appeals for Third Circuit dismissed appeal on basis judgment not final and appealable because claims in individual case unresolved – Whether Court of Appeals erred in concluding that where cases consolidated under r 42(a), no right of appeal if other consolidated case remains pending.

**Held (9:0):** Reversed and remanded.

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*Cyan, Inc et al v Beaver County Employees Retirement Fund et al*  
**Supreme Court of the United States:** [Docket No 15-1439](#)

**Judgment delivered:** 20 March 2018

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

**Catchwords:**

Jurisdiction – *Securities Act* 1933 – Class actions – Where respondents brought class action against petitioner in state court alleging violations of Act – Where s 77v(a) provides state and federal courts have concurrent jurisdiction “exception as provided in section 77p ... with respect to covered class actions” – Where s 77p(b) disallows certain class actions and s 77p(c) provides for removal of certain class actions to federal court – Where petitioner moved to dismiss for lack of subject matter jurisdiction – Where motion dismissed – Whether state courts have jurisdiction to adjudicate class actions brought under Act – Whether s 77p(c) permits defendants to remove class actions alleging only claims under Act from state to federal court.

**Held (9:0):** Affirmed.

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## Migration

*Saidi & Ors v Minister of Home Affairs & Ors*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 9](#)

**Judgment delivered:** 24 April 2018

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

**Catchwords:**

Migration – *Refugees Act* 1998 s 22(3) – Where appellants applied for refugee status – Where applications refused – Where appellants applied for review in High Court under *Promotion of Administrative Justice Act* 2000 – Where Refugee Reception Officer refused to extend temporary residence permits pending finalisation of proceedings – Where High Court declared s 22(3) confers on Officer discretionary power to extend permit after internal appeal and review process exhausted but does not require Officer to extend permit – Whether s 22(3) grants discretion to extend permit pending outcome of judicial review proceedings – If yes, whether

Officer obliged to extend permit pending finalisation of judicial review process.

**Held (8:2):** Appeal allowed; cross-appeal dismissed.

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## Negligence

*Dryden & Ors v Johnson Matthey Plc*

**United Kingdom Supreme Court:** [\[2018\] UKSC 18](#)

**Judgment delivered:** 21 March 2018

**Coram:** Lady Hale, Lord Wilson, Lord Reed, Lady Black, Lord Lloyd-Jones

### Catchwords:

Negligence – Personal injury – Where appellants employed by respondent in factories making catalytic convertors – Where respondent failed to ensure factories properly cleaned in breach of duties under health and safety regulations and common law – Where appellants developed platinum salt sensitisation as result of exposure to platinum salts – Where appellants required to take up different roles with respondent at reduced rate of pay or terminate employment because further exposure likely to cause allergic reaction – Where primary judge dismissed claims for damages – Where Court of Appeal dismissed appeal – Whether courts below erred in failing to find platinum salt sensitisation qualifies as actionable personal injury – If no, whether courts below erred in failing to find appellants may recover damages for economic loss under implied contractual term and/or in negligence.

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

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## Patents

*SAS Institute Inc v Iancu, Director, United States Patent and Trademark Office et al*

**Supreme Court of the United States:** [Docket No 16-969](#)

**Judgment delivered:** 24 April 2018

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

### Catchwords:

Patents – Inter partes review – Where 35 U.S.C. s 318(a) provides Patent Trial and Appeal Board “shall issue a final written decision with respect to

the patentability of any patent claim challenged by the petitioner” – Where petitioner sought review of respondent’s patent alleging all of patent’s claims unpatentable – Where Director instituted review of some claims and denied review in respect of rest of claims – Where Board’s decision addressed only claims in respect of which Director instituted review – Where Federal Circuit affirmed Board’s decision – Whether Federal Circuit erred in failing to find s 318(a) required Board to decide patentability of every claim challenged.

**Held (5:4):** Reversed and remanded.

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## Procedure

*Pretorius & Anor v Transport Pension Fund & Ors*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 10](#)

**Judgment delivered:** 24 April 2018

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

**Catchwords:**

Procedure – Exceptions – Where appellants brought class action in High Court – Where respondents raised exceptions – Where High Court upheld three exceptions, holding claim for “unlawful state action” ought to have been brought under *Promotion of Administrative Justice Act 2000*, breach of contract claim “vague and embarrassing” and claim for unfair labour practice lacked particularity – Where Supreme Court of Appeal refused leave to appeal – Whether High Court erred in upholding exceptions because effectively deprived appellants of opportunity to pursue two constitutional causes of action in class action proceedings.

**Held (10:0):** Appeal allowed.

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*Helen Suzman Foundation v Judicial Service Commission*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 8](#)

**Judgment delivered:** 24 April 2018

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

**Catchwords:**

Procedure – *Uniform Rules of Court* r 53(1)(b) – Record of deliberations – Where Commission recommended appointment of certain candidates as judges of High Court and not others – Where Foundation sought review of

Commission's decision in High Court – Where Commission filed record of proceedings including reasons but not record of deliberations – Where Foundation applied for order compelling Commission to provide record of deliberations – Where High Court dismissed application – Where Supreme Court of Appeal dismissed appeal – Whether Commission required by r 53(1)(b) to provide record of deliberations.

**Held (7:3):** Appeal allowed.

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*Ayestas v Davis*

**Supreme Court of the United States:** [Docket No 16-6795](#)

**Judgment delivered:** 21 March 2018

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

**Catchwords:**

Procedure – Legal representation – Funding – Where 18 U.S.C s 3599(f) provides District Court may authorise funding for “investigative, expert or other services ... reasonably necessary for the representation of the defendant” – Where petitioner applied for funding to develop claim that counsel at trial and in subsequent state habeas petition ineffective – Where District Court denied funding request on basis petition procedurally barred because claim never raised in state court – Where Fifth Circuit affirmed – Whether Fifth Circuit erred in applying wrong standard in review of denial of funding request.

**Held (9:0):** Vacated and remanded.

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*Food and Allied Workers Union obo Gaoshubelwe v Pieman's Pantry (Pty) Limited*

**Constitutional Court of South Africa:** [\[2018\] ZACC 7](#)

**Judgment delivered:** 20 March 2018

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

**Catchwords:**

Procedure – Prescription – *Prescription Act* 1969 – Where members of appellant dismissed by respondent for participation in strike – Where unfair dismissal dispute referred to Commission for Conciliation, Mediation and Arbitration for conciliation – Where unresolved dispute subsequently referred to arbitration – Where Commission held it lacked jurisdiction to arbitrate dispute – Where appellant referred claim to Labour Court for adjudication under s 191 of *Labour Relations Act* 1995 – Where Labour

Court held claim prescribed – Where Labour Appeal Court dismissed appeal – Whether *Prescription Act* applies to unfair dismissal disputes under s 191 of *Labour Relations Act* – Whether courts below erred in failing to find prescription interrupted by referral of dispute to Commission.

**Held (7:4):** Appeal allowed.

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*U.S. Bank N.A, Trustee, by and through CW Capital Asset Management LLC v Village at Lakeridge, LLC*

**Supreme Court of the United States:** [Docket No 15-1509](#)

**Judgment delivered:** 5 March 2018

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

**Catchwords:**

Procedure – Appeals – Standard of review – Where respondent owes debts to parent company and petitioner – Where respondent filed for bankruptcy – Where parent company transferred claim against respondent to non-“insider” to facilitate approval of reorganisation plan – Where Bankruptcy Court rejected petitioner’s argument transaction not arm’s length – Where Ninth Circuit affirmed – Whether Ninth Circuit erred in reviewing Bankruptcy Court’s determination for clear error rather than de novo.

**Held (9:0):** Affirmed.

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*Texas v New Mexico et al*

**Supreme Court of the United States:** [Docket No 141, Orig](#)

**Judgment delivered:** 5 March 2018

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

**Catchwords:**

Procedure – Intervention – “Federal interests” – Where Colorado, New Mexico and Texas signed Rio Grande Compact to resolve dispute over water rights – Where Texas brought action alleging New Mexico violated Compact – Where United States intervened and filed complaint with parallel allegations – Where Special Master filed report recommending United States’ complaint be dismissed in part because Compact does not confer on United States power to enforce terms – Whether United States may pursue claims for Compact violations.

**Held (9:0):** United States' exception sustained.

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## Taxation

*Iceland Foods Ltd v Berry (Valuation Officer)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 15](#)

**Judgment delivered:** 7 March 2018

**Coram:** Lord Kerr, Lord Reed, Lord Carnwath, Lord Hughes, Lady Black

**Catchwords:**

Taxation – Rateable value – *Valuation for Rating (Plant and Machinery) (England) Regulations 2000* – Where appellant applied to Valuation Officer to reduce rateable value of retail warehouse on basis services provided by air handling system were “manufacturing operations or trade processes” under Regulations – Where Valuation Officer rejected application – Where Valuation Tribunal decided in favour of appellant – Where Upper Tribunal allowed appeal – Where Court of Appeal upheld Upper Tribunal’s decision – Whether Court of Appeal erred in construction of Regulations.

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

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## Tort

*Jonathan Lu & Ors v Paul Chan Mo-Po & Anor*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 11](#)

**Judgment delivered:** 10 April 2018

**Coram:** Chief Justice Ma, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Chan NPJ, Lord Reed NPJ

**Catchwords:**

Tort – Defamation – Qualified privilege – Malice – Where appellants commenced proceedings against respondents for defamation on basis six publications suggested first and second appellants cheated in school examinations and third appellant covered up cheating – Where jury found all six publications defamatory but two not published maliciously so protected by qualified privilege – Where Court of Appeal held trial judge misdirected jury as to malice and set verdicts aside – Whether Court of Appeal erred in concluding no evidence on which jury could have found malice on part of respondents – Whether Court of Appeal erred in concluding there should be no retrial.



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

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*JSC BTA Bank v Khrapunov*

**United Kingdom Supreme Court:** [\[2018\] UKSC 19](#)

**Judgment delivered:** 21 March 2018

**Coram:** Lord Mance, Lord Sumption, Lord Hodge, Lord Lloyd-Jones, Lord Briggs

**Catchwords:**

Tort – Conspiracy – Loss by “unlawful means” – Where bank brought claim in tort alleging appellant entered into understanding with father-in-law to dissipate and conceal father-in-law’s assets that were subject to freezing and receivership orders – Where appellant unsuccessfully applied to contest jurisdiction of High Court – Where Court of Appeal dismissed appeal – Whether courts below erred in concluding contempt of court can constitute “unlawful means” for tort of conspiracy to cause loss by unlawful means – Whether under art 2 of Lugano Convention English courts lack jurisdiction because appellant domiciled in Switzerland.

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

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