



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

R (Friends of the Earth Ltd & Ors) v Heathrow Airport Ltd
United Kingdom Supreme Court: [\[2020\] UKSC 52](#)

Judgment delivered: 16 December 2020

Coram: Lords Reed and Hodge, Lady Black, Lords Sales and Leggatt

Catchwords:

Administrative law – Judicial review – Planning and environment – Where s 5(8) of *Planning Act 2008* provides that national policy frameworks must give explanation for how policy takes into account existing government policy – Where Secretary of State for Transport designated Airports National Policy Statement as national policy – Where ANPS contains policy framework governing construction of third runway at Heathrow Airport – Where UK ratified Paris Agreement on Climate Change – Where government ministers made statements about government’s approach to Paris Agreement – Where respondent companies sought judicial review of Secretary’s designation of ANPS on basis it did not take into account Paris Agreement – Where High Court dismissed application and Court of Appeal allowed appeal – Whether Paris Agreement or ministers’ statements constitute government policy – Whether ANPS designation unlawful.

Held (5:0): Appeal allowed.

Ortmann v United States of America
Supreme Court of New Zealand: [\[2020\] NZSC 120](#)

Judgment delivered: 4 November 2020

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

Catchwords:

Administrative law – Judicial review – Extradition – Where United States requested extradition of appellants for criminal copyright infringement and related charges – Where *Extradition Act 1999* requires court to find person eligible for surrender – Where District Court held appellants eligible for surrender – Where appellants appealed to High Court – Where appellants simultaneously applied for judicial review of District Court decision – Where High Court dismissed both proceedings – Where Court of Appeal dismissed appeals and concluded judicial review proceedings abuse of process – Whether US required to establish appellants' alleged conduct, if proved, would constitute offence in both US and New Zealand – Whether judicial review proceedings abuse of process.

Held (5:0): Appeal on judicial review issue allowed; appeal on cases stated allowed in part.

Arbitration

Halliburton Company v Chubb Bermuda Insurance Ltd (Formerly known as Ace Bermuda Insurance Ltd)

United Kingdom Supreme Court: [\[2020\] UKSC 48](#)

Judgment delivered: 27 November 2020

Coram: Lords Reed and Hodge, Lady Black, Lord Lloyd-Jones and Lady Arden

Catchwords:

Arbitration – Duty of impartiality – Obligation of disclosure – Where appellant settled claims against it arising from explosion and fire at Deepwater Horizon drilling rig in Gulf of Mexico – Where appellant sought to claim against respondent under liability insurance policy – Where respondent refused to pay on basis settlement not reasonable – Where insurance policy provided for dispute resolution by arbitration – Where parties unable to agree on appointment of third arbitrator – Where, after contested hearing in High Court, respondent's candidate selected – Where subsequent to arbitrator's appointment, arbitrator accepted appointment as arbitrator in two separate references arising from same Deepwater incident, including one nominated by respondent – Where appellant applied to have arbitrator removed – Where High Court dismissed application and Court of Appeal dismissed appeal – Whether

circumstances existed that give rise to justifiable doubts as to arbitrator's impartiality – Whether arbitrator should have disclosed proposed appointments and subsequent references.

Held (5:0): Appeal dismissed.

Civil Procedure

Public Protector v Commissioner for the South African Revenue Service & Ors

Constitutional Court of South Africa: [\[2020\] ZACC 28](#)

Judgment delivered: 15 December 2020

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Civil procedure – Costs – Appeals – Where Public Protector issued subpoena to respondent Commissioner to produce certain taxpayer information under s 7(4) of *Public Protector Act 23 of 1994* – Where Commissioner resisted production on basis of secrecy and confidentiality regime in *Tax Administration Act 28 of 2011* – Where High Court found in favour of Commissioner – Where High Court awarded personal costs order against Public Protector ("*de bonis propriis*") – Where Public Protector applied directly to Constitutional Court to appeal on merits and costs instead of ordinary appeal procedure – Whether circumstances justify direct appeal to Constitutional Court – Whether personal costs order against Public Protector lawful.

Held (10:0): Leave to appeal on merits denied; leave to appeal on costs granted; appeal on costs allowed.

Mastercard Inc & Ors v Merricks

United Kingdom Supreme Court: [\[2020\] UKSC 51](#)

Judgment delivered: 11 December 2020

Coram: Lords Kerr, Briggs, Sales, Leggatt and Thomas

Catchwords:

Civil procedure – Collective proceedings – Certification – Where s 47B of the *Competition Act 1998* provides, for claimant to proceed with collective proceeding claim, the Competition Appeal Tribunal must certify claim and make Collective Proceedings Order if satisfied that criteria in s 47B met – Where European Commission decided first appellant breached competition

law by fixing interchange fee – Where respondent issued collective proceedings claim against first appellant as proposed class representative – Where CAT refused to make CPO as the claim not suitable for aggregate award of damages – Where Court of Appeal allowed appeal – Whether issues with quantification of damages relevant to certification phase – Whether CAT erred in application of suitability test.

Held (3:2): Appeal dismissed.

Tanzin et al v Tanvir et al

United States Supreme Court: [Docket No 19-71](#)

Judgment delivered: 10 December 2020

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

Catchwords:

Civil procedure – Remedies – Monetary damages – Where *Religious Freedom Restoration Act 1993* provides persons may sue and obtain appropriate relief against government, including “official (or other person acting under color of law)” – Where respondents sought injunctive relief against federal officials in official capacities and monetary damages against officials in individual capacities – Where District Court dismissed monetary claims – Where Second Circuit reversed decision – Whether RFRA permits monetary damages against officials in individual capacities.

Held (8:0): Judgment of US Court of Appeals for the Second Circuit affirmed.

Carney v Adams

United States Supreme Court: [Docket No 19-309](#)

Judgment delivered: 10 December 2020

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

Catchwords:

Civil procedure – Standing – Where Delaware *Constitution* contains requirement that no more than bare majority of judges on five courts shall be of same political party and additional requirement on three courts, judges not in bare majority must be of the other major political party – Where respondent lawyer political independent – Where respondent challenged those requirements alleging breach of First Amendment rights – Where District Court held respondent has standing and upheld challenge – Where Third Circuit affirmed standing decision to challenge major party requirement and reversed standing to challenge bare majority

requirement – Whether respondent “able and ready” to apply for judicial vacancy – Whether respondent has standing to challenge requirements.

Held (8:0): Judgment of US Court of Appeals for the Third Circuit vacated; case remanded.

Baloyi v Public Protector & Ors

Constitutional Court of South Africa: [\[2020\] ZACC 27](#)

Judgment delivered: 4 December 2020

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Civil procedure – Jurisdiction – Where s 157 of *Labour Relations Act 66 of 1995* provides for jurisdiction of Labour Court over employment disputes – Where appellant challenged termination of employment in High Court – Where High Court denied claim on basis of lack of jurisdiction – Whether High Court and Labour Court have concurrent jurisdiction over employment disputes.

Held (10:0): Appeal allowed.

R (Gourlay) v Parole Board

United Kingdom Supreme Court: [\[2020\] UKSC 50](#)

Judgment delivered: 4 December 2020

Coram: Lords Reed, Hodge and Lloyd-Jones, Lady Arden and Lord Leggatt

Catchwords:

Civil procedure – Costs – Where appellant serving life sentence in prison – Where Parole Board decided not to direct appellant’s release on licence and not to recommend transfer to open prison conditions – Where appellant successfully challenged decisions on judicial review – Where Parole Board did not take part in judicial review proceedings – Where appellant applied for costs order against Parole Board – Where High Court declined to make order, following *R (Davies) v Birmingham Deputy Coroner* [2004] WLR 2755, in which Court of Appeal held that if court or tribunal adopts neutral stance in proceedings in which its decision is challenged, not liable for costs – Where Court of Appeal dismissed appeal – Whether Parole Board a court – If so, whether costs should be awarded against it.

Held (5:0): Appeal dismissed.

Southern Response Earthquake Services Ltd v Ross
Supreme Court of New Zealand: [\[2020\] NZSC 126](#)

Judgment delivered: 17 November 2020

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

Catchwords:

Civil procedure – Representative proceedings – Where respondents brought claim against appellant insurer alleging appellant gave incomplete information resulting in settlement of claim on less favourable basis – Where other policyholders settled claims with appellant in similar circumstances – Where respondents applied to High Court for leave to bring representative claim of class of policyholders – Where respondents preferred to bring claim on opt-out basis – Where High Court granted leave to proceed on opt-in basis – Where Court of Appeal allowed appeal and ordered proceeding on opt-out basis – Whether representative proceedings generally should proceed on opt-in or opt-out basis – Whether Court of Appeal applied appropriate test.

Held (5:0): Appeal dismissed.

Test Claimants in the Franked Investment Income Group Litigation & Ors v Commissioners for Her Majesty's Revenue and Customs (1); Test Claimants in the Franked Investment Income Group Litigation & Ors v Commissioners for Her Majesty's Revenue and Customs (2)
United Kingdom Supreme Court: [\[2020\] UKSC 47](#)

Judgment delivered: 20 November 2020

Coram: Lords Reed, Hodge, Carnwarth, Lloyd-Jones, Briggs, Sales and Hamblen

Catchwords:

Civil procedure – Limitation of actions – Where restitutionary claims for recovery of money generally must be brought within six years from date money paid – Where s 32(1)(c) of *Limitation Act 1980* provides limitation period commences on date when claimant discovered or with reasonable diligence could have discovered mistake – Where in 2006, Court of Justice of European Union decided that relevant aspects of UK tax regime incompatible with EU law – Where respondent claimants sought to recover money paid under mistake of law under impugned regime – Where respondents argued limitation period commenced on date of CJEU judgment – Where Court of Appeal found in favour of respondents – Whether respondents' claim time-barred – Whether s 32(1)(c) applies to mistakes of law – If so, whether test for discovery of mistake of law correct.

Held (7:0): Appeals allowed.

Secretary of State for Health & Ors v Servier Laboratories Ltd & Ors
United Kingdom Supreme Court: [\[2020\] UKSC 44](#)

Judgment delivered: 6 November 2020

Coram: Lords Reed, Lloyd-Jones, Briggs, Sales and Hamblen

Catchwords:

Civil procedure – European Union law – EU principle of absolute *res judicata* – Where General Court of EU annulled part of European Commission decision which found appellant companies engaged in anti-competitive behaviour – Where respondents subsequently brought proceedings against appellants in England for damages caused by appellants' alleged anti-competitive behaviour – Where GCEU decision currently pending appeal to Court of Justice of EU – Where UK High Court and Court of Appeal found none of GCEU findings constituted *res judicata* – Whether UK courts bound by *res judicata* regarding factual findings in GCEU decision.

Held (5:0): Appeal dismissed.

Constitutional Law

Moko v Acting Principal of Malusi Secondary School & Ors
Constitutional Court of South Africa: [\[2020\] ZACC 30](#)

Judgment delivered: 28 December 2020

Coram: Mogeong CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Constitutional law – Right to education – Civil procedure – Urgent application – Where applicant prevented from taking final secondary school examination by first respondent – Where respondents rescheduled examination for May 2021 – Where applicant wished to pursue tertiary education at start of 2021 – Where applicant brought urgent application in High Court for examination rescheduled imminently – Where High Court struck matter off urgent roll for lack of urgency – Where applicant directly applied to Constitutional Court for relief – Whether matter urgent – Whether respondents' conduct violation of right to education.

Held (10:0): Application granted.

Syed Suhail bin Syed Zin v Attorney-General
Court of Appeal of Singapore: [\[2020\] SGCA 122](#)

Judgment delivered: 23 December 2020

Coram: Menon CJ, Phang and Prakash JJA

Catchwords:

Constitutional law – Judicial review – Right to equal protection – Art 12(1) of *Constitution* – Where appellant convicted of drug trafficking by High Court and sentenced to death – Where President acting on advice of Cabinet refused clemency – Where President acting on advice of Cabinet ordered execution to take place on 18 September 2020 – Where other prisoners sentenced to death prior to appellant had not been scheduled for execution – Where appellant applied for judicial review of clemency and scheduling decisions in High Court – Where High Court dismissed application – Whether decisions susceptible to judicial review – Whether appellant’s scheduled execution date earlier than others in same position *prima facie* violation of equal protection rights.

Held (3:0): Appeal allowed.

Kwok Wing Hang & Ors v Chief Executive in Council & Anor; Leung Kwok Hung v Secretary for Justice & Anor; Chief Executive in Council & Anor v Kwok Wing Hang & Ors
Hong Kong Court of Final Appeal: [\[2020\] HKCFA 42](#)

Judgment delivered: 21 December 2020

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ, and Lord Hoffmann NPJ

Catchwords:

Constitutional law – Legislative power – Human rights – Where Chief Executive in Council (“CEIC”) imposed *Prohibition on Face Covering Regulations (Cap. 241K)* made under *Emergency Regulations Ordinance (Cap. 241)* – Where Regulations prohibited wearing of face coverings at certain public gatherings – Where applicants successfully challenged lawfulness of Regulations in Court of First Instance – Where Court of Appeal reversed decision in part – Whether CEIC lawfully authorised by Legislative Council to make Regulations – Whether Regulations constitutional – Whether Regulations impermissibly infringe freedom of assembly, speech and right to privacy in Hong Kong *Basic Law* and *Bill of Rights* – Whether prohibitions in Regulations proportionate restrictions of protected rights.

Held (5:0): Applicants' appeals dismissed; Government's appeal allowed.

Smit v Minister of Justice and Correctional Services & Ors
Constitutional Court of South Africa: [\[2020\] ZACC 29](#)

Judgment delivered: 18 December 2020

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Constitutional law – Separation of powers – Where s 63 of *Drugs and Drug Trafficking Act 140 of 1992* provides Minister may amend certain schedules to modify substances subject to the Act – Where s 5(1)(a) of *Extradition Act 67 of 1962* provides magistrate may issue warrant for person's arrest where extradition request and notification received from Minister – Where applicant subject of extradition request for offences regarding supply of cannabis – Where magistrate issued arrest warrant against applicant – Where High Court allowed challenge to *Drugs Act* and denied challenge to *Extradition Act* – Where applicant applied for confirmation of *Drugs Act* decision and appeal *Extradition Act* decision – Whether s 63 of *Drugs Act* unlawful delegation of legislative power to executive – Whether s 63 of *Drugs Act* infringes separation of powers – Whether s 5(1)(a) of *Migration Act* unlawful restriction on judicial discretion – Whether s 5(1)(a) of *Migration Act* infringes separation of powers.

Held (10:0): On *Drugs Act* issue, application allowed.

Held (6:4): On *Migration Act* issue, leave to appeal granted; appeal allowed.

Rutledge v Pharmaceutical Care Management Association
United States Supreme Court: [Docket No. 18-540](#)

Judgment delivered: 10 December 2020

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

Catchwords:

Constitutional law – Federal pre-emption – Where Arkansas Act 900 requires pharmacy benefit managers to reimburse Arkansas at a price equal to or higher than pharmacy's wholesale cost – Where *Employee Retirement Income Security Act 1974* ("ERISA") sets minimum standards for certain employee health plans – Where respondents allege Act 900 interferes with administration of ERISA plans and challenged Act 900 – Where District Court upheld challenge and Eighth Circuit affirmed –

Whether Act 900 impermissibly relates or refers to ERISA – Whether ERISA pre-empts Act 900.

Held (8:0): Judgment of US Court of Appeals for the Eighth Circuit reversed; case remanded.

Sonke Gender Justice NPC v President of the Republic of South Africa & Ors

Constitutional Court of South Africa: [\[2020\] ZACC 26](#)

Judgment delivered: 4 December 2020

Coram: Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Constitutional law – Bill of Rights – Where *Correctional Services Act 111 of 1998* establishes Judicial Inspectorate of Correctional Services to monitor and report treatment of inmates and conditions in correctional centres – Where s 7(2) of *Constitution* provides state must protect and fulfil rights in Bill of Rights – Where applicants successfully challenged ss 88A(1)(b), 88A(4) and 91 of *Correctional Services Act* in High Court because provisions unconstitutionally limit financial, operational and political independence of Judicial Inspectorate – Where applicants applied to confirm decision – Whether ss 88A(1)(b), 88A(4) and 91 of *Correctional Services Act* inconsistent with s 7(2) of *Constitution*.

Held (6:3): Application allowed.

Economic Freedom Fighters & Anor v Minister of Justice and Correctional Services & Anor

Constitutional Court of South Africa: [\[2020\] ZACC 25](#)

Judgment delivered: 27 November 2020

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Constitutional law – Freedom of expression – Where s 18(2)(b) of the *Riotous Assemblies Act 17 of 1956* creates offence of inciting any person to commit any offence, punishable to same extent person convicted of committing primary offence is liable – Where s 1(1) of the *Trespass Act 6 of 1959* provides for offence of trespass – Where *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 1998* (“PIE”) provides for procedure for eviction land – Where freedom of expression protected in s 16(1) of *Constitution* – Where second applicant allegedly

encouraged people to occupy land without permission – Where prosecutor decided to prosecute second applicant – Where applicants successfully challenged constitutionality of s 18(2)(b) of *Riotous Assemblies Act* in High Court on basis punishment imposed for incitement same as primary offence – Where High Court declined to find s 18(2)(b) unconstitutional because it was overbroad – Where High Court declined to find *Trespass Act* inapplicable where *PIE Act* applies – Where applicants applied to confirm decision of High Court on first issue and appeal on other issues – Whether s 18(2)(b) of *Riotous Assemblies Act* inconsistent with s 16(1) of *Constitution* and invalid – Whether *Trespass Act* inapplicable where *PIE Act* applies.

Held (8:2): Application dismissed; new orders made; leave to appeal granted; appeal dismissed.

Ontario (Attorney General) v G
Supreme Court of Canada: [2020 SCC 38](#)

Judgment delivered: 20 November 2020

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

Catchwords:

Constitutional law – Charter of Rights – Right to equality – Discrimination based on mental or physical disability – Where Ontario’s sex offender registry regime required that individuals either convicted or found not criminally responsible on account of mental disorder (“NCRMD”) of sexual offences have their personal information added to registry and report to police station at least once a year to keep information up to date – Where opportunities for exemption from requirements available to individuals found guilty of sexual offences but not to those found NCRMD who have been granted absolute discharge – Whether provincial sex offender registry regime infringes right to equality of such NCRMD individuals – If so, whether infringement justified – *Canadian Charter of Rights and Freedoms*, ss. 1, 15(1) – *Christopher’s Law (Sex Offender Registry)*, 2000, S.O. 2000, c. 1.

Constitutional law – Remedy – Declaration of invalidity – Suspension of declaration of invalidity – Individual exemption from suspension – Where applicant sought declaration that Ontario’s sex offender registry regime infringes right to equality of NCRMD individuals who have been granted absolute discharge – Where Court of Appeal granted declaration of invalidity, suspended declaration for 12 months and exempted applicant from suspension – Proper approach to determining remedy for unconstitutional legislation – *Canadian Charter of Rights and Freedoms*, s. 24(1) – *Constitution Act*, 1982, s. 52(1) .

Held (7:2): Appeal dismissed.

Mahlangu & Anor v Minister of Labour & Ors

Constitutional Court of South Africa: [\[2020\] ZACC 24](#)

Judgment delivered: 19 November 2020

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ, and Victor AJ

Catchwords:

Constitutional law – Discrimination – Where s 1(xix)(v) of *Compensation for Occupational Injuries Act 130 of 1993* (“COIDA”) excludes domestic workers from definition of employee – Where COIDA creates scheme compensating employees for injury or death in course of employment – Where s 9(3) of South African *Constitution* prohibits discrimination on the basis of race, sex, gender and social origin – Where s 27(1)(c) of *Constitution* guarantees right to social security – Where s 10 of *Constitution* guarantees right to dignity – Where mother of first applicant employed as domestic worker and died in course of employment – Where first applicant denied compensation under COIDA – Where applicant applied to High Court to have s (1)(xix)(v) of COIDA declared unconstitutional – Where High Court made declarations – Where applicants sought confirmation of High Court order pursuant to s 172(2)(d) of *Constitution* – Whether s 1(xix)(v) unconstitutional and infringes rights to equality, human dignity and access to social security.

Held (8:2): Application allowed.

Quebec (Attorney General) v 9147-0732 Québec Inc

Supreme Court of Canada: [2020 SCC 32](#)

Judgment delivered: 5 November 2020

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

Catchwords:

Constitutional law – Charter of Rights – Cruel and unusual treatment or punishment – Scope and purpose of guarantee – Where corporation fined for contravention – Where corporation argued fine was cruel and unusual punishment – Whether s 12 of *Canadian Charter of Rights and Freedoms* protects corporations from cruel and unusual treatment or punishment.

Held (9:0): Appeal allowed.

Contracts

CM Callow Inc v Zollinger

Supreme Court of Canada: [2020 SCC 45](#)

Judgment delivered: 18 December 2020

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

Catchwords:

Contracts – Breach – Performance – Duty of honest performance – Where clause in winter maintenance agreement permitted unilateral termination of contract without cause upon 10 days’ notice – Where contract terminated by condominium corporations with required notice to contractor – Where contractor sued for breach of contract – Where trial judge found that statements and conduct by condominium corporations actively deceived contractor and led it to believe contract would not be terminated – Where trial judge awarded damages for breach of contract – Whether exercise of termination clause constituted breach of duty of honest performance.

Held (8:1): Appeal allowed.

Resolute FP Canada Inc v Hydro-Québec

Supreme Court of Canada: [2020 SCC 43](#)

Judgment delivered: 11 December 2020

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

Catchwords:

Contracts – Assignment – Where power supply contract entered into in 1926 by forest products company and private electricity supply company – Where private company and Hydro-Québec entered into contract for sale of movable property and lease of immovables in 1965 in context of nationalization of electricity in Quebec – Whether 1965 contract made Hydro-Québec forest products company’s other contracting party by way of assignment of 1926 contract, thereby enabling Hydro-Québec to claim from company payment of levies imposed on it by two Quebec statutes.

Held (7:2): Appeal dismissed.

Eminent Investments (Asia Pacific) Ltd v Dio Corporation

Hong Kong Court of Final Appeal: [\[2020\] HKCFA 38](#)

Judgment delivered: 3 December 2020

Coram: Ma CJ, Ribiero, Fok and Cheung PJJ, and Lord Collins NPJ

Catchwords:

Contracts – Interpretation – Where respondent engaged appellant to act as financial advisor to provide services related to fundraising – Where parties entered into Financial Advisory Agreement providing appellant entitled to “tail-gunner clause” so appellant entitled to transaction fee if fundraising transaction were to take place within two years after termination of Agreement – Where appellant introduced respondent to investor, who decided to invest in respondent – Where, after termination of Agreement, same investor entered fundraising transaction with respondent – Where appellant commenced action against respondent for payment according to “tail-gunner clause” – Where Court of First Instance and Court of Appeal dismissed claim and appeal – Whether appellant entitled to transaction fee – Whether “tail-gunner clause” purpose was to protect against appellant being deprived of transaction fee it had earned – Whether appellant’s conduct in introducing investor sufficient to earn fee.

Held (5:0): Appeal dismissed.

Criminal Law

Wood v New Zealand Police

Supreme Court of New Zealand: [\[2020\] NZSC 141](#)

Judgment delivered: 10 December 2020

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

Catchwords:

Criminal law – Sentencing – Where s 93 of *Sentencing Act 2002* allows special conditions imposed on sentence other than “residential restriction condition” – Where appellant sentenced in District Court to eight months’ imprisonment with standard and special release conditions to apply after sentence expiry – Where Department of Corrections applied for variation of conditions so appellant could be released to supported accommodation – Where District Court granted variation and imposed special conditions requiring appellant to stay at specified address unless attending reintegration programme and comply with electronic monitoring – Where conditions reimposed after re-offending by appellant – Where appellant unsuccessfully appealed to High Court on sentencing conditions – Whether combination of conditions imposed on appellant constituted “residential restriction” – Whether appellant’s sentencing conditions lawful.

Held (5:0): Appeal allowed.

United States v Briggs

United States Supreme Court: [Docket No. 19-108](#)

Judgment delivered: 10 December 2020

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

Catchwords:

Criminal law – Statute of limitations – Where Uniform Code of Military Justice provides that military offence “punishable by death” may be tried and punished at any time without limitation (10 USC §843(a)) – Where other military offences subject to 5-year statute of limitations – Where respondents convicted of rape – Where, at time when charged, rape punishable by death in Uniform Code – Where US Supreme Court in *Coker v Georgia* 433 US 584 held that Eighth Amendment prohibits death sentence for rape of adult woman – Where Court of Appeal for the Armed Forces set aside convictions on basis respondents’ prosecutions statute-barred – Whether “punishable by death” means capable of punishment by death when all applicable law is taken into account – Whether respondent prosecutions statute-barred.

Held (8:0): Judgments of the Court of Appeal for the Armed Forces reversed; cases remanded.

Environmental law

Texas v New Mexico

United States Supreme Court: [Docket No. 65, Orig.](#)

Judgment delivered: 14 December 2020

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

Catchwords:

Environmental law – Water policy – Untimely appeals – Where 1949 Pecos River Compact provides for apportionment of Pecos River water between New Mexico and Texas – Where River Master’s manual provides when water stored in New Mexico at Texas’ request, New Mexico’s delivery obligations reduced by amount of water stored – Where, in 2014, tropical storm caused heavy rainfall – Where, at Texas’ request, water stored in New Mexico to prevent flooding – Where significant amount evaporated

while in storage – Where dispute arose as to how evaporated water accounted under Compact – Where New Mexico and Texas sought informal negotiation of dispute – Where New Mexico subsequently filed motion with River Master claiming delivery credit for evaporated water – Where New Mexico motion outside of deadline imposed by Compact – Where River Master found New Mexico entitled to credit – Whether New Mexico motion untimely – Whether New Mexico entitled to delivery credit.

Held (7:1 (Alito J dissenting in part)): Motion for review of River Master’s determination denied.

Evidence

R (Maughan) v Her Majesty’s Senior Coroner for Oxfordshire
United Kingdom Supreme Court: [\[2020\] UKSC 46](#)

Judgment delivered: 13 November 2020

Coram: Lords Reed, Kerr, Wilson and Carnwarth, and Lady Arden

Catchwords:

Evidence – Standard of proof – Coroner’s inquest – Where inquest held into death – Where respondent coroner decided jury could not safely reach short form conclusion of suicide on criminal standard of proof (beyond reasonable doubt) – Where coroner put questions to jury and asked them to make narrative statement of circumstances of death – Jury answered questions and made narrative statement of suicide on civil standard of proof (on balance of probabilities) – Where appellant commenced judicial review application against jury’s conclusion – Where Divisional Court dismissed application and Court of Appeal dismissed appeal – Whether the standard of proof in inquest proceedings for suicide is civil or criminal standard – Whether standard depends on whether determination expressed as short-form conclusion or narrative statement.

Held (3:2): Appeal dismissed.

Human Rights

Leung Kwok Hung v Commissioner of Correctional Services
Hong Kong Court of Final Appeal: [\[2020\] HKCFA 37](#)

Judgment delivered: 27 November 2020

Coram: Ma CJ, Ribiero and Fok PJJ, Chan and Lord Collins NPJJ

Catchwords:

Human rights – Anti-discrimination – Sex discrimination – Where appellant male prisoner required to have hair cut pursuant to Standing Order 41-05 – Where Standing Order requires hair of male prisoners to be cut short – Where Standing Order allows female prisoners to decide whether to have hair cut – Where s 5(1)(a) of *Sex Discrimination Ordinance* (Cap 480) prohibits sex discrimination – Where Art 22 of Bill of Rights prohibits discrimination on ground of sex – Where appellant successfully challenged lawfulness of Standing Order in Court of First Instance – Where Court of Appeal allowed respondent's appeal – Whether Standing Order unlawful sex discrimination.

Held (5:0): Appeal allowed.

Migration Law

Robinson (Jamaica) v Secretary of State for the Home Department
United Kingdom Supreme Court: [\[2020\] UKSC 53](#)

Judgment delivered: 16 December 2020

Coram: Lady Black, Lords Lloyd-Jones, Sales, Burrows and Stephens

Catchwords:

Migration law – Rights of EU citizen child – Where principle in *Zambrano v Office national de l'emploi* [2012] QB 265 requires that non-EU national, who is carer of dependent EU citizen child, protected against deportation from EU territory – Where subsequent Court of Justice of EU decision restricted scope of *Zambrano* principle by providing deportation may occur in “exceptional circumstances” – Where appellant Jamaican national and carer of British national child – Where appellant convicted of serious criminal offence and subject to deportation order – Where appellant applied to respondent for leave to remain – Where respondent refused and Upper Tribunal overturned refusal – Where Court of Appeal allowed appeal – Whether “exceptional circumstances” additional hurdle or merely summary of exception to general rule – Whether deportation order lawful.

Held (5:0): Appeal dismissed.

Property

Synlait Milk Ltd v New Zealand Industrial Park Ltd
Supreme Court of New Zealand: [\[2020\] NZSC 157](#)

Judgment delivered: 22 December 2020

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

Catchwords:

Property – Restrictive covenants – Modification – Where s 317 of *Property Law Act 2007* gives court discretion to modify covenants if one of specified grounds made out – Where appellant built factory on land in breach of restrictive covenants benefitting respondent's land – Where appellant purchased land on condition vendor obtain removal of covenants – Where vendor successfully obtained extinguishment of covenants in High Court – Where respondents successfully appealed to Court of Appeal – Whether Court of Appeal erred in declining to exercise its discretion to modify covenants – Whether covenants should be modified.

Held (5:0): Appeal allowed.

Hydro-Québec v Matta

Supreme Court of Canada: [2020 SCC 37](#)

Judgment delivered: 13 November 2020

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

Catchwords:

Property – Real rights – Servitudes – Conventional servitudes – Electrical transmission lines – Where Hydro-Québec project to construct new electrical transmission line – Where construction of new line to be routed in part through lots on which Hydro-Québec already had servitudes established for another line – Where owners of lots objected that rights arising from established servitudes did not permit construction of new line – Whether Hydro-Québec can develop and modernize its system on basis of rights it holds under decades-old servitudes that were established for specific construction projects.

Held (7:0): Appeal allowed.

Alexander Devine Children's Cancer Trust v Housing Solutions Ltd

United Kingdom Supreme Court: [\[2020\] UKSC 45](#)

Judgment delivered: 6 November 2020

Coram: Lords Kerr, Lloyd-Jones, Kitchin, Hamblen and Burrows

Catchwords:

Property – Restrictive covenants – Modification – Public interest requirement – Where developer built housing units on land in breach of restrictive covenants benefitting adjoining children’s hospice – Where, after building was completed, developer applied for modification or discharge of restrictive covenants pursuant to s 84 of the *Law of Property Act 1925* – Where modification requires proof that restriction is contrary to public interest – Where Court of Appeal overturned Upper Tribunal decision to allow application and took into account developer’s deliberate breach in public interest test – Whether developer’s conduct relevant to public interest test in s 84.

Held (5:0): Appeal dismissed.

Taxation

Commissioners for Her Majesty’s Revenue and Customs v London Clubs Management Ltd

United Kingdom Supreme Court: [\[2020\] UKSC 49](#)

Judgment delivered: 27 November 2020

Coram: Lord Carnwarth, Ladies Black and Arden, Lords Kitchin and Sales

Catchwords:

Taxation – Excise duty – Definition of “banker’s profits” – Where gaming duty payable calculated by reference to “banker’s profits” in accordance with ss 11(8)(b) and 11(10) of *Finance Act 1997* – Where “banker’s profits” defined as “value, in money or money’s worth, of stakes staked” less value of prizes – Where respondent issued non-negotiable chips and promotional vouchers worth face-value when played in casino game (“Non-Negs”) – Where Non-Negs not redeemable for cash and cannot be used to buy goods or services – Where respondent initially included face value of Non-Negs in calculation of duty – Where respondent subsequently excluded Non-Negs and applied to appellant for repayment of alleged overpayment of duty – Where appellant rejected claim – Where Upper Tribunal found in favour of respondent and Court of Appeal dismissed appeal – Whether Non-Negs have “value, in money or money’s worth”.

Held (5:0): Appeal dismissed.

Torts

1688782 Ontario Inc v Maple Leaf Foods Inc

Supreme Court of Canada: [2020 SCC 35](#)

Judgment delivered: 6 November 2020

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

Catchwords:

Torts – Negligence – Duty of care – Pure economic loss – Negligent misrepresentation or performance of service – Negligent supply of shoddy goods or structures – Proximity – Where Listeria outbreak at plant of exclusive meat supplier resulted in recall of meat products used by restaurant chain franchisees and causing them economic loss – Where franchisees not in contractual privity with supplier but bound to purchase meat products exclusively from it through chain of indirect contracts – Whether supplier owed duty of care to franchisees such that economic losses are recoverable in tort.

Held (5:4): Appeal dismissed.
