



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

In the matter of an application by Rosaleen Dalton for Judicial Review (Northern Ireland)

Supreme Court of the United Kingdom: [\[2023\] UKSC 36](#)

Reasons delivered: 18 October 2023

Coram: Lord Reed, Lord Hodge, Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose and Dame Siobhan Keegan

Catchwords:

Administrative law – Judicial review – *Human Rights Act 1998* (“HRA”) – Temporal application of HRA – Where father of respondent killed in bomb explosion after checking on neighbour – Where police investigation did not result in charge – Where family member of victim lodged complaint with office of Police Ombudsman for Northern Island regarding police’s behaviour in context of events leading to victim’s death and subsequent investigation – Where Ombudsman found number of complaints – Where following completion of report, victim’s family asked Attorney General to open fresh inquest – Where Attorney General refused request – Where respondent unsuccessful in seeking judicial review of decision – Where Court of Appeal allowed appeal – Whether families who allege failure to investigate death of their relative in way which complies with article 2 of European Convention on Human Rights can bring proceedings before domestic courts when that death occurred before rights under Convention were “brought home” by coming into force of s 6 of HRA – Whether Court should depart from earlier

decision of *In re Finucane* [2019] UKSC 7 and obiter in *In re McQuillan* [2021] UKSC 55.

Held (7:0): Appeal allowed.

Mason v Canada (Citizenship and Immigration)

Supreme Court of Canada: [\[2023\] SCC 21](#)

Reasons delivered: 27 September 2023

Coram: Wagner CJ, Karakatsanis, Côté, Brown,¹ Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ

Catchwords:

Administrative law – Judicial review – Standard of review – Application of *Vavilov* framework to judicial review of administrative decisions involving question of statutory interpretation in immigration context – Standard of review applicable where serious question of general importance for appeal certified by Federal Court.

Immigration – Judicial review – Inadmissibility and removal – Where foreign nationals found inadmissible on security grounds by administrative tribunal for engaging in acts of violence that would or might endanger lives or safety of persons in Canada – Where administrative tribunal interpreted statutory provision at issue as not requiring proof of conduct having nexus to national security or security of Canada – Where applications for judicial review to Federal Court allowed but Federal Court of Appeal ruling that interpretation by administrative tribunal was reasonable – Whether standard of review properly applied by reviewing courts – *Immigration and Refugee Protection Act*, SC 2001, c 27, s 34(1)(e).

Held (8:0): Appeals allowed.

Mncwabe v President of the Republic of South Africa & Ors; Mathenjwa v President of the Republic of South Africa & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 29](#)

Reasons delivered: 24 August 2023

Coram: Zondo CJ, Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Mathopo J, Potterill AJ, Rogers and Theron JJ

Catchwords:

Administrative law – *Functus officio* doctrine – Reversal of appointment – Where two litigants brought separate applications concerning President's

¹ Brown J did not participate in the final disposition of the judgment.

decision to reverse appointment of five Directors of Public Prosecutions (“DPPs”) – Where High Court held President at liberty to reverse appointments because they were not finalised – Whether President entitled to reverse former President’s decision after decision was communicated to appointees – Whether President *functus offico*.

Held (6:3 (Zondo CJ, Madlanga J and Makgoka AJ dissenting)): Leave to appeal granted; appeal dismissed.

Admiralty

Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Limited; and all other persons claiming or being entitled to claim damages arising from a collision between “Star Centurion” and “Antea”, which occurred on or about 13 January 2019 off Horsburgh Light House, South China Sea
Hong Kong Court of Final Appeal: [\[2023\] HKCFA 20](#)

Reasons delivered: 26 July 2023

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

Catchwords:

Admiralty – Collision – Limitation fund – Limitation of liability – *Generalia specialibus non derogant* – Where accepted appellant’s ship “Antea” entirely responsible for collision with vessel “Star Centurion”, which sank in collision – Where appellant claimed entitled to limit liability under *Convention on Limitation of Liability for Maritime Claims 1976* (“Convention”) incorporated into laws of Hong Kong by *Merchant Shipping (Limitation of Shipowners Liability) Ordinance* (Cap 434) – Where appellant constituted limitation fund, which is fund available for payment of claims in respect of which appellant is entitled to limit its liability, and which is to be distributed among claimants in proportion to their established claims against fund – Where appellant did so in Hong Kong by paying HK\$175,062,000 into court – Where respondents’ private recourse claim in respect of wreck removal against appellant likely to exceed amount of limitation fund so shortfall for actual loss of Star Centurion – Where respondents sought declaration appellant not entitled to limit liability for wreck removal claim – Where Court of First Instance found for respondents, under *generalia specialibus non derogant* (general provisions do not overrule specific provisions) – Where Court of Appeal upheld decision for substantially same reasons – Whether appellant entitled to limit its liability for Wreck Removal Claim under 2(1)(a) of Convention.

Held (5:0): Appeals dismissed with costs.

Arbitration

Republic of Mozambique (acting through its Attorney General) v Prinvest Shipbuilding SAL (Holding) & Ors
Supreme Court of the United Kingdom: [\[2023\] UKSC 32](#)

Reasons delivered: 20 September 2023

Coram: Lord Hodge, Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt and Lord Richards

Catchwords:

Arbitration – Scope of arbitration agreements – Where three corporate vehicles (“SPVs”) wholly owned by Republic of Mozambique entered into supply contracts with three respondents – Where contracts contained arbitration clause and governed by Swiss law – Where SPVs borrowed purchase funds from various banks for which Mozambique provided guarantees – Where guarantees governed by English law – Where Mozambique accuses respondents of paying significant bribes to officials under guarantees – Where respondents argue contracts have been performed and while Mozambique not signatory of contracts, as matter of Swiss law, Mozambique bound by arbitration agreements within them – Where respondents sought stay of all Mozambique’s claims pursuant to s 9 of *Arbitration Act 1996* – Where s 9 provides party to arbitration agreement against whom legal proceedings are brought in respect of “matter”, which under agreement is to be referred to arbitration, may apply to court to stay proceedings so far as they concern that matter – Whether Mozambique’s claims in legal proceedings are “matters” – Meaning of “matter”.

Held (5:0): Appeal allowed.

Bankruptcy

Brake & Anor v Chedington Court Estate Ltd
Supreme Court of the United Kingdom: [\[2023\] UKSC 29](#)

Reasons delivered: 10 August 2023

Coram: Lord Briggs, Lord Hamblen, Lord Leggatt, Lady Rose and Lord Richards

Catchwords:

Bankruptcy – Standing of bankrupt to challenge bankrupt’s estate – Where respondents in partnership with each other and investment vehicle, carrying on accommodation and events business – Where disputes arose between partners and referred to arbitration – Where final award in favour of investment vehicle, and costs ordered against respondents – Where partnership’s property included cottage registered in names of respondents – Where respondents made bankrupt in respect of unpaid costs of

arbitration – Where receivers of partnership’s property sold farm – Where purchaser of farm acquired by appellant – Where respondents and appellant submitted bids for cottage – Where liquidators accepted appellant’s higher bid, subject to contract – Where liquidators not willing to apply to court for order removing respondents as registered proprietors of cottage – Where facilitation agreement made – Where respondents issued application under s 303(1) of *Insolvency Act 1986*, alleging trustee wrongfully enabled appellant to interfere with their right of possession of cottage – Where appellant successfully applied in High Court to strike out relevant parts of application on ground that respondents lacked standing under s 303(1) – Where Court of Appeal dismissed appeal by appellants in their capacities as trustees, because in that capacity they were third party whose only interest was disappointed under-bidders for cottage – Where Court of Appeal held respondents had standing in personal capacities, because as bankrupts had direct interest in relief sought – Whether bankrupts have standing to challenge acts, omissions or decisions of trustee of bankrupt’s estate under s 303(1).

Held (5:0): Appeal allowed.

Civil Procedure

David Subotic & Ors v Securities and Futures Commission

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 32](#)

Reasons delivered: 30 October 2023

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

Catchwords:

Civil procedure – Service of writ outside jurisdiction – Where respondent commenced proceedings against appellants for allegedly operating false trading scheme – Where appellants overseas residents or companies – Where respondent granted leave to serve concurrent writ outside of Hong Kong on appellants – Where respondent sought restoration order in favour of market participants involved and injunctions to freeze certain assets – Where relief sought on basis of two jurisdictional “gateways” under Order 11 rule 1 of Rules of High Court (Cap 4A), which allows writ to be served on defendant situated outside Hong Kong and jurisdiction to be assumed with leave of court – Where Order 11 rule 1(1)(f) applies where claim founded on tort and damage sustained within Hong Kong (“Gateway F”) – Where appellants applied to set aside leave granted to serve writ outside Hong Kong and declaration that Court lacked jurisdiction over them – Where Court of First Instance and Court of Appeal both upheld grant of leave to serve out of jurisdiction – Whether respondent’s claim under s 213 of Ordinance is “claim” and/or “founded on a tort” for purposes of Gateway F.

Held (5:0): Appeal dismissed.

Constitutional Law

Democratic Alliance & Anor v Public Protector of South Africa & Ors
Constitutional Court of South Africa: [\[2023\] ZACC 25](#)

Reasons delivered: 13 July 2023

Coram: Maya DCJ, Baqwa AJ, Madlanga, Majiedt, Mathopo JJ, Mbatha AJ, Mhlantla, Rogers, and Tshiqi JJ

Catchwords:

Constitutional law – Suspension of Public Protectors – Apprehension of bias – *Sub judice* rule – Conflict of interest – Where following order of Constitutional Court in *Speaker of the National Assembly v Public Protector; Democratic Alliance v Public Protector* [2022] ZACC 1, Section 194 Committee resolved to proceed with consideration of motion for removal of Public Protector – Where Public Protector wrote to President informing him of multiple instances of conflict of interest, which precluded President from personally suspending her – Where alleged conflicts of interest included various investigations recently conducted, or currently investigated, by Office of the Public Protector against President – Where High Court declared President’s decision to suspend Public Protector invalid – Where first respondent unsuccessfully appealed to Full Court of High Court – Where three applications made in Constitutional Court following High Court decision – Where first and second applications are applications for leave to appeal by Democratic Alliance and President against High Court’s order in terms of s 172(2)(d) of *Constitution* and r 16 of *Rules of the Constitutional Court* – Where third application is urgent application for leave to appeal brought by Public Protector against judgment and order of Full Court – Where first respondent is Public Protector, second respondent is Speaker of the National Assembly and third respondent is Chairperson of s 194 Committee – Where fourth to seventeenth respondents all political parties represented in National Assembly – Where only tenth, eleventh and sixteenth respondents participated in Constitutional Court proceedings – Whether order of High Court declaring President’s decision invalid and setting aside Public Protector’s suspension subject to confirmation by Constitutional Court under ss 172(2)(a) and (d) of *Constitution* – Whether s 18 of *Superior Courts Act*, which regulates suspension of court order pending appeal, applies to High Court’s order.

Held (9:0): Appeals allowed in part; cross appeals dismissed; Public Protector’s application for leave to appeal dismissed.

EB (born S) v ER (born B) & Ors; KG v Minister of Home Affairs & Ors
Constitutional Court of South Africa: [\[2023\] ZACC 32](#)

Reasons delivered: 13 July 2023

Coram: Zondo CJ, Kollapen, Madlanga, Majiedt JJ, Makgoka, Potterill AJJ, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Constitutional law – Equality before the law – Discrimination – Where two cases heard together concerning constitutional validity of s 7(3) of *Divorce Act* – Where s 7(3) section provides that, where spouses married out of community of property get divorced, divorce court may make equitable order that assets of one spouse be transferred to other (redistribution order) – Where for ordinary civil marriages, this remedy only available where marriage entered into before 1 November 1984 – Where first case concerns absence of redistribution remedy where marriage terminated by death rather than divorce – Where second case concerns absence of redistribution remedy where marriage is entered into on or after 1 November 1984 – Where in each case, wife who brought constitutional challenge was plaintiff in divorce proceedings– Where in each case, High Court made declaration of constitutional invalidity – Whether s 7(3) creates unjustifiable differentiation among individuals or groups – Whether differentiation justified by legitimate government purpose.

Held (9:0): Orders of constitutional invalidity confirmed.

Nu Africa Duty Free Shops (Pty) Ltd v Minister of Finance & Ors (CCT 29/22); Commissioner for the South African Revenue Service v Ambassador Duty Free (Pty) Ltd & Ors (CCT 57/22); Minister of Finance v Ambassador Duty Free (Pty) Ltd & Ors (CCT 58/22)

Constitutional Court of South Africa: [\[2023\] ZACC 31](#)

Reasons delivered: 3 October 2023

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

Catchwords:

Constitutional law – Separation of powers – Where matter concerns three consolidated cases stemming from prior ruling of High Court – Where first application sought confirmation of High Court’s order declaring ss 75(15)(a)(i)(bb) of *Customs and Excise Act* (“Customs Act”) and 74(3)(a) of Value Added Tax Act (“VAT Act”), as well as certain amendments to Schedule 4 and 6 of Customs Act and to Schedule 1 of VAT Act unconstitutional and invalid to extent they constituted impermissible delegation of plenary power to Minister of Finance (“the Minister”) – Where second and third applications sought leave to appeal directly to Court, contesting declaration of invalidity – Whether conferral of legislative power on Minister by provisions of Customs Act and VAT Act constitutionally impermissible – Whether Minister’s conduct in amending Schedules violated

s 77 of *Constitution* – Whether amendments to Schedules invalid and unlawful because inconsistent with provisions of *Diplomatic Immunities Act* and Vienna Conventions.

Held (7:2 (Rogers and Kollapen JJ dissenting in part)): Orders of constitutional validity not confirmed (CCT 29/22); appeals allowed (CCT 57/22 and CCT 58/22).

Organisation Undoing Tax Abuse v Minister of Transport & Ors
Constitutional Court of South Africa: [\[2023\] ZACC 24](#)

Reasons delivered: 12 July 2023

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

Catchwords:

Constitutional law – Concurrent legislative competences – Road traffic infringement – Where in 1998 Parliament enacted *Administrative Adjudication of Road Traffic Offences Act 46 of 1998* (“AARTO Act”) and in 2019 *Administrative Adjudication of the Road Traffic Offences Amendment Act 4 of 2019* (“AARTO Amendment Act”) – Where AARTO Act introduced demerit system for driving infringements and system of administrative adjudication of traffic infringement cases – Where AARTO Amendment Act created Appeals Tribunal to adjudicate appeals from decisions of Road Traffic Infringement Authority – Where appellant instituted application in High Court against first respondent declaring AARTO legislation constitutionally invalid – Where High Court declared legislation constitutionally invalid because AARTO Act fell within exclusive legislative competence of provincial sphere of government, and usurped certain executive or administrative function of local sphere of government which it gave to national organs of state – Whether AARTO Act constitutionally valid.

Held (10:0): Appeal allowed; order of constitutional invalidity not confirmed.

Reference re Impact Assessment Act
Supreme Court of Canada: [\[2023\] SCC 23](#)

Reasons delivered: 13 October 2023

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

Catchwords:

Constitutional law – Division of powers – Environmental impact assessment – Where federal statute and regulations established assessment process for projects potentially having environmental impacts – Whether statute and regulations intra vires Parliament – *Constitution Act, 1867*, ss 91, 92 –

Impact Assessment Act, SC 2019, c 28, s 1 – *Physical Activities Regulations*, SOR/2019-285.

Held (5:2 (Karakatsanis and Jamal JJ dissenting in part)): Appeal allowed.

Sham Tsz Kit v Secretary for Justice

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 28](#)

Reasons delivered: 5 September 2023

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

Catchwords:

Constitutional law – Marriage equality – Where appellant entered into same-sex marriage in New York – Where in absence of Hong Kong law for same-sex marriage, appellant brought judicial review proceedings for court’s determination on three questions – Where appellant’s application dismissed by both Court of First Instance and Court of Appeal – Where appellant appealed to Court on all three questions – Whether appellant has constitutional right to same-sex marriage under Article 25 of Basic Law (“BL”) and Article 22 of Hong Kong Bill of Rights (“BR”) – Whether absence of any alternative means of legal recognition of same-sex relationship constitutes violation of Article 14 of BR and/or Article 25 of BL and Article 22 of BR – Whether non-recognition of foreign same-sex marriage constitutes violation of Article 25 of BL and Article 22 of BR.

Held (5:0): Appeal allowed in part.

Corporations

Ponce v Société d’investissements Rhéaume Itée

Supreme Court of Canada: [\[2023\] SCC 25](#)

Reasons delivered: 27 October 2023

Coram: Wagner CJ, Karakatsanis, Brown,² Rowe, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Corporations – Civil liability – Obligation of loyalty – Implied contractual obligations – Duty to inform – Obligation to act in good faith – Remedy – Where company informed presidents of group of companies that it was interested in acquiring group – Where presidents did not disclose information to group’s majority shareholders – Where presidents purchased

² Brown J did not participate in the final disposition of the judgment.

shareholders' interests in group and resold them to company for profit – Whether presidents' non-disclosure of interest expressed by company in acquiring group constitutes civil fault – Appropriate remedy if fault established – *Civil Code of Québec*, arts 1375, 1434.

Held (6:0): Appeal dismissed with costs.

Richard Ciliang Yan v Mainzeal Property and Construction Limited (In Liq)
Supreme Court of New Zealand: [\[2023\] NZSC 113](#)

Reasons delivered: 25 August 2023

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

Catchwords:

Corporations – Directors' duties – Reckless trading – Quantification of loss – Where first respondent placed in receivership and liquidation in February 2013 – Where receivers paid secured creditor and preferential creditors in full by conclusion of receivership – Where shortfall owed to unsecured creditors in liquidation approximately \$100 million – Where liquidators brought claims alleging, inter alia, from January 2011, appellants, as directors of first respondent, agreed to (a) business of company being carried on in manner likely to create substantial risk of serious loss to creditors (in breach of s 135 *Companies Act 1993*); and (b) to company incurring obligations to creditors when they did not believe on reasonable grounds that company would be able to perform those obligations when required to do so (in breach of s 136) – Where High Court dismissed s 136 claim but upheld s 135 claim – Where Court of Appeal agreed with High Court that directors breached s 135, but disagreed with High Court's rejection of s 136 claim – Where appellants sought to reverse findings of liability under ss 135 and 136, and also cross-appeal against findings as to approach to loss under s 135 – Whether directors breached ss 135 and 136 – Whether loss can be quantified on information present before Court – Proper approach to quantification of loss in respect of breach of ss 135 and 136.

Held (5:0): Appeal dismissed with costs; cross appeal allowed in part.

Criminal Law

Cheyman Lee Mitchell v New Zealand Police
Supreme Court of New Zealand: [\[2023\] NZSC 104](#)

Reasons delivered: 11 August 2023

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

Catchwords:

Criminal law – Special plea of “previous conviction” – Where appellant pulled over by police on road and evidential breath test showed sample of his breath contained 649 micrograms of alcohol per litre of breath – Where appellant charged under ss 32(1)(b) and 56(1) of *Land Transport Act 1998* – Where appellant attempted to plead guilty to both charges, but District Court Judge invited him to enter guilty plea to only one charge – Where conviction entered on s 56(1) charge and special plea of “previous conviction” entered on remaining s 32(1)(b) charge, pursuant to s 46(1)(b) of *Criminal Procedure Act 2011* – Where s 46(1)(b) provides that if plea of “previous conviction” entered, court must dismiss charge if satisfied defendant convicted of “any other offence arising from those facts” – Where on 10 February 2020, different District Court Judge held plea of “previous conviction” applied to s 32(1)(b) charge – Where police granted leave to appeal in High Court, which allowed appeal, concluding Judge erred in finding plea of “previous conviction” applied to s 32(1)(b) charge – Where appellant unsuccessfully appealed to Court of Appeal – Whether, having been convicted of s 56(1) charge, s 46(1)(b) of *Criminal Procedure Act* precludes appellant’s conviction on second (s 32(1)(b)) charge.

Held (5:0): Appeal dismissed.

HKSAR v Mak Wing Wa

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 19](#)

Reasons delivered: 25 July 2023

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

Catchwords:

Criminal law – Unlawful assembly – Where respondent convicted after trial before magistrate of taking part in unlawful assembly – Where magistrate found male person and female person took turns in using laser pointer to shine laser beams at police officers, and in meantime, another person, To, shone torch at police in same direction – Where during this time, respondent sat on railing at top of staircase leading to public light bus station at Wong Tai Sin Square – Where male person, female person and To sat in row on staircase – Where respondent later moved to sit on staircase, took torch from To and shone it at police for about 50 seconds – Where magistrate held that respondent, To, male person and female person at staircase committed acts of prohibited conduct under s 18 of *Public Order Ordinance* (“POO”), and requirement of 3 or more persons engaging in such conduct in s 18 satisfied – Where respondent appealed to Court of First Instance – Where Court held prosecution failed to prove respondent assembled together with others to perform “prescribed conduct”, thus, prosecution did not prove respondent committed offence of “unlawful assembly” – Whether respondent guilty of offence of taking part in unlawful assembly under s 18 of POO.

Held (5:0): Appeal allowed.

La Presse inc. v Quebec

Supreme Court of Canada: [\[2023\] SCC 22](#)

Reasons delivered: 6 October 2023

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

Catchwords:

Criminal law – Publication bans – Where matters dealt with in absence of jury – Whether automatic publication ban on information regarding portion of trial at which jury not present applies prior to empanelment of jury – If so, which matters covered by ban – *Criminal Code*, RSC 1985, c C-46, ss 645(5), 648(1).

Held (7:0): Appeals dismissed.

R v Abdullahi

Supreme Court of Canada: [\[2023\] SCC 19](#)

Reasons delivered: 14 July 2023

Coram: Wagner CJ, Karakatsanis, Côté, Brown,³ Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Criminal law – Participation in activities of criminal organisation – Elements of offence – Existence of criminal organisation – Definition of criminal organisation – Where accused convicted by jury of participation in activities of criminal organisation – Where accused argued on appeal trial judge erred in law in jury instructions on existence of criminal organisation by failing to explain criminal organisation must have structure and continuity – Whether trial judge’s instructions properly equipped jury to decide if criminal organisation existed – *Criminal Code*, RSC 1985, c C-46, ss 467.1(1), 467.11.

Held (7:1 (Côté J dissenting)): Appeal allowed.

R v Kahsai

Supreme Court of Canada: [\[2023\] SCC 20](#)

Reasons delivered: 28 July 2023

³ Brown J did not participate in the final disposition of the judgment.

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

Catchwords:

Criminal law – Trial – Amicus curiae – Proper scope of role of amicus curiae in criminal trial – Where self-represented accused disrupted criminal trial and failed to advance meaningful defence – Where trial judge appointed amicus curiae with limited mandate mid-trial – Whether guarantee of trial fairness permits or requires trial judge to appoint amicus with adversarial mandate to advance interests of accused – Whether delayed and limited appointment of amicus led to appearance of unfairness rising to level of miscarriage of justice.

Held (7:0): Appeal dismissed.

Employment

Chief Constable of the Police Service of Northern Ireland & Anor v Agnew & Ors (Northern Ireland)

Supreme Court of the United Kingdom: [\[2023\] UKSC 33](#)

Reasons delivered: 4 October 2023

Coram: Lord Hodge, Lord Briggs, Lord Kitchin, Lady Rose and Lord Richards

Catchwords:

Employment – Annual leave payments – Remedies available for unlawful deductions and underpayments – Where officers and civilian employees of Police Service of Northern Ireland had since introduction of Working Time Regulations (Northern Ireland) 1998 been paid basic pay while on annual leave – Where case law of Court of Justice of the European Union in relation to Article 7 of Working Time Directive 2003/88/EC evolved to require workers be paid their “normal pay” during such leave – Where appellants accepted basic pay amounted to making unlawful deduction from wages and failure to pay holiday pay in full – Extent of remedy available to respondents – Whether respondents restricted to period ending no later than three months prior to presentation of complaints to Tribunal – Meaning of series of unlawful deductions to pay and when such series ends – Proper approach to calculating unlawful deductions and underpayments of holiday pay, including approach to annual leave entitlement, overtime and reference period for calculating normal pay – Whether respondents discriminated against contrary to Article 14 of European Convention on Human Rights read in conjunction with Article 1 of Protocol 1.

Held (5:0): Appeal dismissed.

Rand Refinery Limited v Sehunane N.O. & Ors
Constitutional Court of South Africa: [\[2023\] ZACC 28](#)

Reasons delivered: 21 August 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Madlanga, Majiedt, Mathopo, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Employment – Where fourth respondent employed by applicant in barcasting department – Where fourth respondent and number of other employees faced disciplinary charges arising from theft of gold bars – Where fourth respondent dismissed following disciplinary hearing – Where fourth respondent referred unfair dismissal dispute to second respondent, Commission for Conciliation, Mediation and Arbitration – Where arbitrator found applicant fairly dismissed – Where third and fourth respondents launched application in Labour Court to have award reviewed and set aside – Where three weeks before hearing, third respondent filed application in terms of r 11 of *Rules of the Labour Court* for leave to supplement fourth respondent’s case by adding, as ground of review, that award improperly obtained – Where new evidence took form of various affidavits in respect of separate litigation in High Court – Where third respondent sought to adduce affidavits together with all papers filed in separate High Court litigation, alleging perjury – Where Labour Court held even though applicant filed notice to oppose application, it failed to file opposing affidavit – Where arbitration award set aside on basis it was improperly obtained due to prima facie proof arbitration proceedings tainted by perjured evidence – Where applicant refused leave to appeal by Labour Appeal Court – Whether applicant’s opposing affidavit filed with Labour Court – Whether Labour Court’s overlooking of applicant’s opposing affidavit violated applicant’s rights in terms of s 34(1) of *Bill of Rights* – Whether arbitration award should be set aside.

Held (9:0): Leave to appeal granted; appeal allowed.

Fraud

Philipp v Barclays Bank UK PLC
Supreme Court of the United Kingdom: [\[2023\] UKSC 25](#)

Reasons delivered: 12 July 2023

Coram: Lord Reed, Lord Hodge, Lord Sales, Lord Hamblen and Lord Leggatt

Catchwords:

Fraud – Obligations owed by banks to customers – Common law and contractual duties of banks – *Quincecare* duty – Where respondent and her

husband deceived by criminals into instructing bank to transfer £700,000 in two payments to bank accounts in United Arab Emirates – Where instructions carried out and money lost – Where respondent claimed bank responsible for money lost – Where bank successfully applied in High Court to have claim summarily dismissed, because it did not owe respondent duty under contract or common law not to carry out payment instructions if bank had reasonable grounds for believing customer being defrauded – Where Court of Appeal allowed an appeal by respondent, accepting duty argument – Whether bank owes duty under contract or common law not to carry out customer’s payment instructions if bank has reasonable grounds for believing customer being defrauded.

Held (5:0): Appeal allowed; order of High Court giving summary judgment restored and varied.

Human Rights

Jones v Birmingham City Council and another

Supreme Court of the United Kingdom: [\[2023\] UKSC 27](#)

Reasons delivered: 19 July 2023

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

Catchwords:

Human rights – Gang-related violence – Interim injunctions – Standard of proof required by art 6(1) of *European Convention on Human Rights* (“ECHR”) – Where Birmingham City Council, respondent, applied for injunctions to prevent appellant, and 17 other defendants, from engaging in gang-related violence and drug-dealing activity – Where interim injunctions granted pursuant to s 34 of *Policing and Crime Act 2009* (“2009 Act”) and s 1 of *Anti-social Behaviour, Crime and Policing Act 2014* (“2014 Act”) – Where interim injunction prevented appellant from, inter alia, entering large area in central Birmingham – Where appellant argued in High Court that injunctions incompatible with art 6 of ECHR – Where High Court held proceedings not in respect of criminal charge and did not require criminal standard of proof – Where Court of Appeal held civil standard of proof in these circumstances compatible with art 6 of ECHR – Whether art 6(1) of ECHR, as given effect by *Human Rights Act 1998*, requires criminal standard of proof to be satisfied in respect of (i) proof person engaged in or encouraged or assisted gang-related violence or gang-related drug dealing activity within s 34(2) of 2009 Act; and (ii) proof person engaged or threatens to engage in anti-social behaviour within s 1(1) of 2014 Act.

Held (7:0): Appeal dismissed.

Insurance

Local Government Mutual Funds Trustee Limited v Napier City Council
Supreme Court of New Zealand: [\[2023\] NZSC 97](#)

Reasons delivered: 1 August 2023

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

Catchwords:

Insurance – General insurance – Interpretation – Indemnification – Where in 2013, group of apartment owners sued Napier City Council, respondent, for negligence in issuing building consents, ensuring adequate inspections and issuing code compliance certificates – Where some building defects related to weathertightness, alleging non-compliance with cl E2 of Building Code – Where Council settled claim by apartment owners for about \$12 million – Where there was no apportionment in settlement sum between weathertightness and other defects – Where expert evidence showing possible to divide losses between weathertightness defects and those exclusively attributable to non-weathertightness defects – Where Council made claim from insurer for portion of remediation costs unrelated to weathertightness – Where insurer declined cover on basis of exclusion clause – Where Council sued for part of settlement amount from insurer in reliance on its indemnity – Where High Court found in favour of insurer – Where Court of Appeal concluded exclusion only removed cover to extent alleged liability arose out of weathertightness claims – Whether insurer liable for portion of claim unrelated to weathertightness or whether effect of exclusion clause excluded cover for that part of claim.

Held (5:0): Appeal dismissed with costs.

Smith & Anor v Royal Bank of Scotland plc
Supreme Court of the United Kingdom: [\[2023\] UKSC 34](#)

Reasons delivered: 4 October 2023

Coram: Lord Hodge, Lord Briggs, Lord Kitchin, Lord Hamblen and Lord Leggatt

Catchwords:

Insurance – Payment Protection Insurance (“PPI”) – Unfair relationship – Consumer credit – Limitation period – Where each appellant had credit card issued by respondent and sold PPI – Where respondent did not disclose to appellants that most of money paid for PPI did not go to insurer but was retained by RBS as commission – Where respondent informed appellants it had received commission when it offered them redress under scheme for PPI mis-selling established by Financial Conduct Authority – Where appellants each brought claim in County Court, seeking order under s 140B

of *Consumer Credit Act 1974* that respondent repay all money paid by them for PPI (less redress already paid), plus interest – Where Court of Appeal ruled in favour of respondent, holding that in each case relevant time limit for bringing claim had expired before claim was brought – Whether claims seeking orders under *Consumer Credit Act 1974* to remedy unfairness in credit relationship brought in time.

Held (5:0): Appeal allowed; orders made by the district judge in each case reinstated.

Medical Practitioner

McCulloch & Ors v Forth Valley Health Board (Scotland)
Supreme Court of the United Kingdom: [\[2023\] UKSC 26](#)

Reasons delivered: 12 July 2023

Coram: Lord Reed, Lord Hodge, Lord Kitchin, Lord Hamblen and Lord Burrows

Catchwords:

Medical Practitioner – Tort – Negligence – Duty of care – Correct legal test for what constitutes reasonable alternative treatment – Where patient died suffering cardiac arrest – Where appellants, patient’s relatives, claimed patient’s death caused by negligence of doctor – Where appellants alleged doctor required to discuss option of using non-steroidal anti-inflammatory drugs with patient – Where Outer House and Inner House of Court of Session held duty in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11 does not require doctor to discuss course of treatment with patient if doctor has concluded not reasonable option in circumstances of case – Whether doctor under duty to take reasonable care to ensure patient is aware of material risks involved in recommended treatment, and reasonable alternative or variant treatments.

Held (5:0): Appeal dismissed.

Planning Law

Port Otago Limited v Environmental Defence Society Incorporated
Supreme Court of New Zealand: [\[2023\] NZSC 112](#)

Reasons delivered: 24 August 2023

Coram: Winkelmann CJ, Glazebrook, Ellen France, Williams and William Young JJ

Catchwords:

Planning law – Conflicts between ports policies – Where appellant operates two ports in Otago – Validity of proposed regional ports policy contained in proposed Otago Regional Policy Statement prepared by second respondent, Otago Regional Council – Where regional policy statements must give effect to national policy statements – Where relevant national policy statement is New Zealand Coastal Policy Statement (“NZCPS”), which recognises sustainable transport system requires efficient national network of safe ports – Where NZCPS requires adverse effects to be avoided on certain listed indigenous species or in certain areas – Where first respondent and 24 others appealed decision of Council regarding proposed regional ports policy to Environment Court – Where Environment Court found potential conflict between ports and avoidance policies in NZCPS and suggested several amendments to proposed regional ports policy to address resolution of conflict – Where first respondent also appealed to High Court, where appeal was allowed and matter remitted to Environment Court for reconsideration – Where Court of Appeal unanimously dismissed appeal against High Court’s decision, holding no conflict between NZCPS ports policy and avoidance policy: ports policy was subordinate to avoidance policies – Whether potential conflicts between NZCPS ports policy and NZCPS avoidance policies should be addressed in regional policy statements and plans or at the consent level under ss 104 or 104D of *Resource Management Act 1991*.

Held (5:0): Appeal allowed.

Police

R (on the application of Officer W80) v Director General of the Independent Office for Police Conduct and others

Supreme Court of the United Kingdom: [\[2023\] UKSC 24](#)

Reasons delivered: 5 July 2023

Coram: Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Burrows and Lord Stephens

Catchwords:

Police – Disciplinary proceedings – Self-defence – Proper test for self-defence in police disciplinary proceedings – Where W80, police officer, shot victim dead in police operation – Where W80’s account was victim’s hands moved quickly to shoulder bag on his chest – Where W80 responded by firing one shot – Where no firearm found in victim’s bag – Where investigation conducted by Independent Police Complaints Commission (“IPCC”) – Where IPCC concluded W80’s belief of imminent danger honestly held, but unreasonable – Where IPCC sent report to Metropolitan Police Service (“MPS”) for misconduct proceedings – Where MPS considered IPCC incorrectly applied civil law test, which looks to whether honest but mistaken belief is *reasonable*, as opposed to criminal law test of self-

defence, which looks to whether belief *honestly held* – Where MPS refused to bring misconduct proceedings, and then directed to do so by successor of IPCC – Where decision to direct MPS challenged – Where Divisional Court held criminal law test applied – Where Court of Appeal held neither criminal law test nor civil law test applied, and tribunal should apply test contained in wording of use of force standard in Schedule 2 to *Police (Conduct) Regulations 2012*, namely whether force used “necessary, proportionate and reasonable in all the circumstances” – Whether in police misconduct proceeding, open to reasonable disciplinary panel to make finding of misconduct if officer’s honest, but mistaken, belief that their life threatened found to be unreasonable.

Held (5:0): Appeal dismissed.

Real Property

Secretary of State for Transport v Curzon Park Ltd & Ors
Supreme Court of the United Kingdom: [\[2023\] UKSC 30](#)

Reasons delivered: 10 August 2023

Coram: Lord Kitchin, Lord Sales, Lord Hamblen, Lord Leggatt and Lady Rose

Catchwords:

Real property – Compensation for compulsory acquisition – Reality principle – Where *Land Compensation Act 1961* entitles landowners to compensation for compulsory purchased land – Where basic measure of compensation is open market value of land sold by willing seller – Where landowner also entitled to compensation for enhancement of value of land from actual or prospective planning permission for development – Where under s 14 of *Land Compensation Act*, in assessing value of land, account may be taken of, inter alia, “appropriate alternative development” of land – Where under s 17 *Land Compensation Act* landowner may apply to local planning authority for certificate of appropriate alternative development (“CAAD”) stating there is development which is appropriate alternative development for purposes of s 14 – Where appellant compulsorily acquired four neighbouring sites – Where four respondents owners of sites and applied for and granted CAAD in relation to their respective sites – Where Council considered each CAAD application in isolation, rejecting appellant’s contention that cumulative impact of all applications for CAADs should be considered – Where appellant unsuccessfully appealed to Upper Tribunal – Where Court of Appeal held decision maker not entitled to take into account other CAAD applications or decisions relating to development of land – Whether in determining application for CAAD for particular parcel of land decision-maker may take into account CAAD applications or decisions which relate to development of other land.

Held (5:0): Appeal allowed to limited extent; declaration made by Upper Tribunal restored.

Sentencing

HKSAR v Lui Sai Yu

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 26](#)

Reasons delivered: 22 August 2023

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

Catchwords:

Sentencing – Construction of *National Security Law* provisions – Where appellant pleaded guilty in District Court to one count of incitement to secession, contrary to art 21 of *National Security Law* (“NSL 33”) – Where Judge found NSL21 had tiered penalty system and circumstances of offence committed by appellant were of serious nature, thus falling within upper band which warranted sentence of imprisonment of not less than 5 years but not more than 10 years – Where judge initially adopted starting point of 5 years and 6 months’ imprisonment and indicated she would discount it by one-third to reflect appellant’s guilty plea at earliest opportunity, but judge then agreed with prosecution’s submission that for offences of serious nature, NSL21 mandated minimum 5 years’ imprisonments – Where judge accordingly sentenced appellant to 5 years’ imprisonment – Where appellant sought leave to appeal against sentence in Court of Appeal – Where Court of Appeal affirmed judge’s categorisation of serious crime and adoption of 5 years and 6 months’ imprisonment as starting point – Where Court of Appeal rejected appellant’s submissions that (i) for offences of serious nature, legislative intention of NSL21 was to lay down a range of starting points between 5 and 10 years rather than to set 5 years’ imprisonment as minimum sentence; and (ii) three conditions laid down in art 33(1) were not exhaustive and other mitigating factors (such as a guilty plea) could operate to take final sentence below 5 years – Proper interpretation of arts 20, 21 and 33 of *National Security Law*.

Held (5:0): Appeal dismissed.

Kaine Van Hemert v R

Supreme Court of New Zealand: [\[2023\] NZSC 116](#)

Reasons delivered: 31 August 2023

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

Catchwords:

Sentencing – Mental impairment – Manifestly unjust – Presumption of life imprisonment – Where appellant discovered his ex-partner entered new relationship, and his mental health deteriorated into severe psychotic episode – Where mental health assistance was given, but due to misunderstanding appellant left alone overnight – Where in early morning of 31 December 2019, appellant left his house, taking with him large knife – Where appellant engaged services of victim, who was working as sex worker – Where victim got into passenger seat and disagreement arose, and appellant killed victim, using knife and rock – Where after receiving sentence indication, appellant pleaded guilty to murder – Where High Court held at sentencing due to extent of mental illness appellant suffered from at time of offending, would be manifestly unjust to sentence him to life imprisonment – Where consequently, presumption of life imprisonment under s 102 of *Sentencing Act 2002* did not apply – Where appellant sentenced to 10 years’ imprisonment, and imposed minimum period of six years and eight months – Where Crown appealed to Court of Appeal, which held High Court misapplied s 102 – Where following second sentence indication, appellant again pleaded guilty – Where High Court sentenced appellant to life imprisonment with a minimum period of 11 and a half years – Whether Court of Appeal was correct to conclude presumption in favour of life imprisonment in s 102 of *Sentencing Act* not displaced given circumstances of offence and of offender.

Held (4:1 (Williams J dissenting in part)): Appeal allowed.

Statutes

R (on the application of PACCAR Inc & Ors) v Competition Appeal Tribunal & Ors

Supreme Court of the United Kingdom: [\[2023\] UKSC 28](#)

Reasons delivered: 26 July 2023

Coram: Lord Reed, Lord Sales, Lord Leggatt, Lord Stephens and Lady Rose

Catchwords:

Statutes – Costs – Litigation funding – Damage-based agreements (“DBAs”) – Interpretation of definition first used in one statutory context then adopted and used in another – Where issues arose in context of applications to bring collective proceedings for breach of competition law – Where European Commission found five major European truck manufacturing groups, including appellants, infringed competition law – Where second and third respondents relied on litigation funding arrangements (“LFAs”) to obtain collective proceeding order (“CPO”) from Competition Appeal Tribunal – Where litigation funders committed to fund proceedings in return of percentage of any damages recovered in litigation – Where appellants submitted LFAs constitute DBAs and unlawful and unenforceable for failure to comply with statutory requirements for DBAs – Where definition of DBAs

derived from *Compensation Act 2006*, and used in different legislative context of s 58AA of *Courts and Legal Services Act 1990* – Whether LFAs pursuant to which funder entitled to recover percentage of any damages recovered were DBAs – Whether s 58AA of *Courts and Legal Services Act 1990*, together with regulations made under section 58AA(4), render unenforceable agreements between claimants and litigation funders in which funder agrees to loan money to pay for litigation in return for receiving share of any damages recovered for claimant in proceedings.

Held (4:1 (Lady Rose dissenting)): Appeal allowed.

R (on the application of Worcestershire County Council) v Secretary of State for Health and Social Care

Supreme Court of the United Kingdom: [\[2023\] UKSC 31](#)

Reasons delivered: 10 August 2023

Coram: Lord Reed, Lord Hamblen, Lord Leggatt, Lord Burrows and Lord Richards

Catchwords:

Statutes – Compulsory medical detention – Responsibility for “after-care services” – Where in March 2014, “JG” detained under s 3 of *Mental Health Act 1983* for treatment in hospital in Worcester – Where under s 117 of *Mental Health Act*, local authorities have duty to provide “after-care services” for people, such as JG, who leave hospital after period of compulsory detention – Where duty imposed on local authority for area in which person concerned was “ordinary resident” immediately before detention – Where JG “ordinarily resident” in Worcester before first detention and Worcestershire County Council obliged to provide after-care services – Where in June 2015, JG detained under s 3 in Swindon – Where JG left hospital in August 2017 and dispute arose between appellant and Swindon Borough Council as to which was responsible for providing JG with after-care services – Where Councils referred dispute to respondent who decided appellant responsible – Where High Court held Swindon responsible – Where Court of Appeal held appellant responsible – Whether appellant or Swindon Borough Council responsible for providing and paying for “after-care services” under s 117 of *Mental Health Act* for particular individual.

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

Superannuation

Mudau v Municipal Employees Pension Fund & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 26](#)

Reasons delivered: 2 August 2023

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

Catchwords:

Superannuation – Pension funds – Amendment of rules – Retrospective application of amendment – Where dispute arose from withdrawal benefit claim from Municipal Employees’ Pension Fund (“Fund”), registered under *Pension Funds Act 24 of 1956* – Where claim made by appellant, who was employed by third respondent – Where second respondent administrator of Fund – Where appellant resigned on 31 May 2013 and became entitled to withdrawal benefit pursuant to Fund’s Rules, which provided upon resignation, member entitled to withdrawal benefit three times their contribution plus interest (“old rule”) – Where in June 2013, Fund amended old rule, and unregistered rule amendment provided member’s withdrawal benefit would be deemed as one and a half times member’s contributions plus interest and would apply with retrospective effect from 1 April 2013 (“amended rule”) – Where amended rule subsequently registered – Where appellant received withdrawal benefit calculated under amended rule – Where appellant successfully complained to Pension Funds Adjudicator – Where Pension Funds Adjudicator concluded amended rule could not be applied before its approval and registration by Registrar and retrospective rule amendment could not be applied to benefits already accrued before its registration by Registrar – Where respondents unsuccessfully applied to High Court – Where Court of Appeal found for respondents – Whether rule amendments apply to members who have exited pension fund before registration of such amendments – Whether pension fund can apply rules in anticipation of their registration by Registrar – Whether amendment which purports to be retrospective ought to affect pending proceedings before an adjudicator.

Held (9:0): Leave to appeal granted; appeal allowed with costs.

Taxation

Commissioners for His Majesty’s Revenue and Customs v Vermilion Holdings Ltd (Scotland)

Supreme Court of the United Kingdom: [\[2023\] UKSC 37](#)

Reasons delivered: 25 October 2023

Coram: Lord Hodge, Lord Lloyd-Jones, Lord Leggatt, Lord Burrows and Lady Rose

Catchwords:

Taxation – Income tax – Employee Option Scheme – *Income Tax (Earnings and Pensions) Act 2003* (“ITEPA”), s 471 – Where s 471 of ITEPA with its related sections, imposed liability to income tax as employment income in relation to gains made on exercise of share option if treated as employment-

related securities option – Where in 2006, respondent granted option to acquire shares in it to Quest Advantage Ltd (“Quest”) – Where respondent and Quest agreed to amend option and entered into new option agreement – Where in 2016 respondent transferred option to Mr Noble, and respondent asked His Majesty’s Revenue and Custom (“HMRC”) to confirm transfer was subject to capital gains tax – Where HMRC informed respondent that transfer was subject to income tax as it had been granted to Mr Noble because of his employment as director of Quest – Where Quest successfully challenged HMRC’s decision in First Tier Tribunal – Where Inner House of the Court of Session found in favour of respondent – Where HMRC appealed to this Court – Correct interpretation of s 471 of ITEPA.

Held (5:0): Appeal allowed.

Sasol Chevron Holdings Limited v Commissioner for the South African Revenue Service

Constitutional Court of South Africa: [\[2023\] ZACC 30](#)

Reasons delivered: 3 October 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Taxation – Value added tax (“VAT”) – *Promotion of Administrative Justice Act 3 of 2000* (“PAJA”) – Delay in instituting application for review – Where applicant joint venture company – Where joint venture partner, vendor as contemplated in *Value-Added Tax Act 3 of 2000* (“VAT Act”), supplied on flash title basis certain moveable goods to applicant – Where joint venture partner elected to levy tax at zero rate in terms of s 11(1) of VAT Act read with Part 2 Section A of Export Regulations – Where regulation 15(1)(a) of Export Regulations prescribes 90-day period within which zero-rated goods must be exported – Where applicant did not export goods within 90 days and joint venture partner sought extension of 90-day period – Where Commissioner granted extensions of 90-day period in respect of certain invoices, but ruled applicant not entitled to apply for VAT refund – Where applicant sought review of Commissioner’s decision in High Court – Where Commissioner unsuccessfully argued in High Court that applicant had not complied with s 7(1) of PAJA because application had been instituted after 180-day period contemplated in that section – Where Supreme Court of Appeal found for Commissioner – Whether applicant brought its review application within period of 180 days stipulated by section 7(1)(b) of PAJA – Whether on proper application of Export Regulations, applicant entitled to extension of time within which to claim refund of VAT levied on supply of export goods.

Held (9:0): Leave to appeal granted; appeal dismissed with costs.

Target Group Ltd v Commissioners for His Majesty's Revenue and Customs

Supreme Court of the United Kingdom: [\[2023\] UKSC 35](#)

Reasons delivered: 11 October 2023

Coram: Lord Reed, Lord Lloyd-Jones, Lord Sales, Lord Hamblen and Lady Rose

Catchwords:

Taxation – Value added tax (“VAT”) – Financial services exemption to VAT – Where VAT paid on all services supplied for consideration by taxable person – Where VAT governed by Council Directive 2006/112/EC (“Directive”) – Where Directive exempts specified supplies from VAT under article 135(1)(d), which applies to “transactions... concerning payments, transfers, debts, but excluding debt collection” – Where Shawbrook Bank Limited provider of mortgages and loans – Where appellant administers loans made by Shawbrook – Where First Tier Tribunal found appellant’s supply included transactions concerning payments or transfers within financial services exemption but predominant nature of supply was debt collection, therefore excluded from exemption and taxable – Where Upper Tribunal held services supplied by appellant to Shawbrook not exempt but standard rated supplies for VAT purposes – Where Court of Appeal unanimously dismissed appeal – Whether appellant carried out “transactions...concerning” “payments” and/or “transfers” and/or “debts” within meaning of article 135(1)(d).

Held (5:0): Appeal dismissed.

Tort

Young v Attorney-General

Supreme Court of New Zealand: [\[2023\] NZSC 142](#)

Reasons delivered: 30 October 2023

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

Catchwords:

Tort – Private nuisance – Scope of liability in private nuisance for naturally occurring hazard – Where appellant owns land damaged by earthquakes – Where neighbouring cliff-top properties treated as within red zone under *Canterbury Earthquake Recovery Act 2011* – Where Crown acquired cliff-top properties between 2012 and 2015 – Where ongoing instability of cliffs meant appellant’s land unsafe and red zoned – Where Crown made initial red zone offer to buy appellant’s property and then improved red zone offer, described as “hybrid” because mix of types of offers otherwise made – Where appellant rejected these offers – Where appellant brought

proceedings against Crown in trespass and nuisance – Where appellant sought damages reflecting value of lost property – Where High Court found that rockfall risk was actionable nuisance and “measured” duty on Crown to do what was reasonable to prevent or minimise risk – Where High Court found Crown’s later hybrid offer meant that Crown had met that duty – Where appellant unsuccessfully appealed to High Court – Whether Court of Appeal erred in dismissing appeal and holding that hybrid offer met measured duty of care.

Held (5:0): Appeal dismissed with costs.
