



# OVERSEAS DECISIONS BULLETIN

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Decisions of the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa, the Supreme Court of New Zealand and the Hong Kong Court of Final Appeal. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

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## Aboriginal Law

*Shot Both Sides v Canada*

**Supreme Court of Canada:** [\[2024\] SCC 12](#)

**Reasons delivered:** 12 April 2024

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

### Catchwords:

Aboriginal law – Treaty rights – Indian reserves – Enforceability of treaty – Where Indigenous tribe claimed actual size of reserve established by treaty smaller in area than promised by treaty – Where tribe commenced action for breach of treaty rights after expiry of applicable limitation period but prior to coming into force of s 35 of *Constitution Act, 1982* – Whether tribe's claim for breach of treaty rights actionable at common law prior to coming into force of s 35 of *Constitution Act, 1982* – Whether tribe's claim statute-barred.

Constitutional law – Aboriginal peoples – Treaty rights – Breach – Whether coming into force of s 35 of *Constitution Act, 1982* created new cause of action for breach of treaty rights – *Constitution Act, 1982, s 35(1)*.

Aboriginal law – Treaty rights – Breach – Remedies – Declaration – Where Indigenous tribe claimed actual size of reserve established by treaty smaller in area than promised by treaty and commencing action for breach of treaty rights – Whether declaration is available remedy.

**Held (7:0):** Appeal allowed in part with costs.

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## Arbitration

*Bissonnette v LePage Bakeries Park St., LLC*

**Supreme Court of the United States:** [Docket No. 23-51](#)

**Reasons delivered:** 12 April 2024

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

**Catchwords:**

Arbitration – Requirement to arbitrate under *Federal Arbitration Act*, 9 USC §1 – Exception for transportation workers – Where respondent produces and markets baked goods distributed worldwide – Where petitioners owned rights to distribute respondent's products in certain parts of Connecticut – Where to purchase those rights, they entered into contract with respondent requiring any disputes to be arbitrated under *Federal Arbitration Act*, 9 USC §1 – Where petitioners argued exempt from coverage under *Federal Arbitration Act* under exception in §1 of Act for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" – Where District Court dismissed case in favour of arbitration, concluding petitioners not "transportation workers" – Where Second Circuit ultimately affirmed on ground §1 exemption available only to workers in transportation industry, but petitioners in bakery industry – Whether transportation worker must work for company in transportation industry to be exempt under §1 of *Federal Arbitration Act*.

**Held (9:0):** Judgment of Court of Appeals for the Second Circuit vacated; case remanded.

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*Coinbase, Inc. v Suski*

**Supreme Court of the United States:** [Docket No. 23-3](#)

**Reasons delivered:** 23 May 2024

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

**Catchwords:**

Arbitration – Arbitrability – Court or arbitrator to decide arbitrability – Where petitioner and respondents entered into two conflicting contracts – Where first contract contained arbitration provision with delegation clause, which provided arbitrator must decide all disputes including whether

dispute arbitrable – Where second contract contained forum selection clause, which provided California courts "shall have sole jurisdiction of any controversies regarding the [sweepstakes] promotion" – Where respondents filed class action in District Court alleging sweepstakes promotion violated various California laws – Where petitioner moved to compel arbitration based on first contract's delegation clause – Where District Court determined second contract's forum selection clause controlled parties' dispute and accordingly denied motion – Where Ninth Circuit affirmed – Whether, in circumstances of two conflicting contracts, arbitrator or court decides arbitrability of contract-related dispute between parties.

**Held (9:0):** Judgment of Court of Appeals for the Ninth Circuit affirmed.

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*CNA v CNB & Anor*

**Court of Appeal of Singapore:** [\[2024\] SGCA\(I\) 2](#)

**Reasons delivered:** 16 May 2024

**Coram:** Sundaresh Menon CJ, Steven Chong JCA and Robert French IJ

**Catchwords:**

Arbitration – Award – Application to set aside award – Breach of fiduciary duties and duty to consult – Where various parties entered Extension Agreement – Where first respondent not consulted by appellant regarding Extension Agreement – Where arbitral tribunal issued First Partial Award and found Extension Agreement invalid as appellant breached its fiduciary duties and its duty to consult – Where appellant applied to Singapore International Commercial Court ("SICC") to set aside partial arbitral awards made against it – Where SICC dismissed both applications to set aside First Partial Award in their entirety – Whether First and Second Partial Awards should be set aside under Art 34(2)(a)(i) and/or (ii) of UNCITRAL Model Law – Whether SICC erred in finding appellant in breach of its fiduciary duty in entering into Extension Agreement – Whether arbitral tribunal had jurisdiction.

**Held (3:0):** Appeal dismissed with costs.

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*DBL v DBM*

**Court of Appeal of Singapore:** [\[2024\] SGCA 19](#)

**Reasons delivered:** 21 May 2024

**Coram:** Sundaresh Menon CJ, Steven Chong JCA and Judith Prakash SJ

**Catchwords:**

Arbitration – Award – Application to set aside award – Breach of natural justice – Where appellant and respondent engaged in business of steel trading – Where dispute arose regarding sales contract and respondent commenced arbitral proceedings – Where Tribunal found in favour of respondent – Where appellant applied to High Court to set aside award pursuant to s 24(b) of *International Arbitration Act 1994* (2020 Rev Ed) asserting breach of rules of natural justice – Where High Court dismissed appellant's application to set aside arbitral award – Whether High Court erred in holding Tribunal had not acted in breach of natural justice.

**Held (3:0):** Appeal dismissed with costs.

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*Smith v Spizzirri*

**Supreme Court of the United States:** [Docket No. 22-1218](#)

**Reasons delivered:** 16 May 2024

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

**Catchwords:**

Arbitration – Enforcement of arbitration agreements – *Federal Arbitration Act* ("FAA") – Where FAA sets forth procedures for enforcing arbitration agreements in federal court – Where s 3 of FAA provided when dispute is subject to arbitration, court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration", 9 USC §3 – Where petitioners filed suit against respondents in state court alleging violations of federal and state employment laws – Where respondents then removed to federal court and filed motion to compel arbitration and dismiss suit – Where petitioners agreed their claims arbitrable, but contended §3 of FAA required District Court to stay action pending arbitration rather than dismissing it entirely – Where District Court issued order compelling arbitration and dismissed case without prejudice – Where Ninth Circuit affirmed – Whether §3 permits court to dismiss case instead of issuing stay when dispute is subject to arbitration and party requests stay pending arbitration.

**Held (9:0):** Judgment of Court of Appeals for the Ninth Circuit reversed; case remanded.

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*Voltas Ltd v York International Pte Ltd*

**Court of Appeal of Singapore:** [\[2024\] SGCA 12](#)

**Reasons delivered:** 2 May 2024

**Coram:** Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and Judith Prakash SJ

**Catchwords:**

Arbitration – Award – Application to set aside award – Conditional award – Jurisdiction to issue further award – *Functus officio* – Where respondent commenced arbitration against appellant claiming, amongst other things, outstanding payments owed – Where appellant responded with counterclaim arising from loss suffered by it as result of respondent's alleged breach of Purchase Agreement – Where arbitrator issued award ordering any sums respondent liable to pay would accrue upon satisfaction of certain conditions and set maximum amounts ("2014 Award") – Where appellant later applied to arbitrator for determination of whether conditions had been met and amount to be paid – Where respondents raised jurisdictional objection contending arbitrator *functus officio* in relation to arbitration and did not retain any jurisdiction – Where arbitrator issued ruling on jurisdiction concluding not *functus officio* ("further award") – Where respondent filed in High Court for ruling arbitrator did not have jurisdiction to make further award – Where High Court held arbitrator *functus officio* and set aside further award – Whether 2014 Award, being conditional award, constituted final award – Whether arbitrator had reserved their jurisdiction to issue further award.

**Held (3:0):** Appeal dismissed with costs.

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## Banking and Financial Services

*Cantero v Bank of America*

**Supreme Court of the United States:** [Docket No. 22-529](#)

**Reasons delivered:** 30 May 2024

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

**Catchwords:**

Banking and financial services – Federal pre-emption of state laws regulating national banks – *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* – Where petitioners obtained mortgage loans from respondent, national bank chartered under *National Bank Act* – Where respondent did not pay interest on balances and informed petitioners New York interest-on-escrow law pre-empted by *National Bank Act* – Where petitioners brought putative class-action suits in Federal District Court – Where District Court held nothing in *National Bank Act* or other federal law pre-empted New York law – Where Second Circuit reversed – Whether Second Circuit properly applied standard for determining when state laws that regulate national banks are pre-empted.

**Held (9:0):** Judgment of Court of Appeals for the Second Circuit vacated; case remanded.

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# Compulsory Acquisition

*St. John's (City) v Lynch*

**Supreme Court of Canada:** [\[2024\] SCC 17](#)

**Reasons delivered:** 10 May 2024

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

**Catchwords:**

Compulsory acquisition – Expropriation – Constructive expropriation – Compensation – Value to owner – Whether expropriation scheme to be ignored in assessing statutory compensation entitlement – Scope of expropriation scheme – *Expropriation Act*, RSNL 1990, c E-19, s 27(1)(a).

**Held (7:0):** Appeal allowed.

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# Constitutional Law

*Alexander v South Carolina State Conference of the NAACP*

**Supreme Court of the United States:** [Docket No. 22-807](#)

**Reasons delivered:** 23 May 2024

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

**Catchwords:**

Constitutional law – Equal Protection Clause – Gerrymandering – Where following 2020 Census, South Carolina tasked with redrawing its congressional district maps because of population shifts in two of its seven districts – Where State Senate subcommittee responsible for drawing new map issued statement explaining process would be guided by traditional districting principles along with goal of creating stronger Republican tilt in District 1 – Where enacted plan achieved legislature's political goal by increasing District 1's projected Republican vote share – Where plan also raised black voting-age population ("BVAP") – Where National Association for the Advancement of Colored People and District 1 voter challenged plan, alleging it resulted in racial gerrymanders in certain districts and in dilution of electoral power of State's black voters – Where three-judge District Court held State drew District 1 with 17% BVAP target in mind in violation of Equal Protection Clause and this putative use of race to draw District 1 unlawfully diluted black vote – Whether District Court erred in finding race predominated in design of District 1 in enacted plan.

**Held (6:3 (Sotomayor, Kagan and Jackson JJ dissenting)):** Judgment of District Court for the District of South Carolina reversed in part; case remanded in part.

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*Consumer Financial Protection Bureau v Community Financial Services Association of America, Limited*

**Supreme Court of the United States:** [Docket No. 22-448](#)

**Reasons delivered:** 16 May 2024

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

**Catchwords:**

Constitutional law – Appropriations Clause – Funding of Consumer Financial Protection Bureau ("Bureau") – Where Congress authorised Bureau to draw from Federal Reserve System amount its Director deems "reasonably necessary to carry out" Bureau's duties, subject only to inflation-adjusted cap, USC §§5497(a)(1),(2) – Where respondents, trade associations representing payday lenders and credit-access businesses, challenged regulations issued by Bureau pertaining to high-interest consumer loans on statutory and constitutional grounds – Where Fifth Circuit accepted respondents' argument Bureau's funding mechanism violates Appropriations Clause – Whether Bureau funding mechanism complies with Appropriations Clause.

**Held (7:2 (Alito and Gorsuch JJ dissenting)):** Judgment of Court of Appeals for the Fifth Circuit reversed; case remanded.

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*Culley v Marshall*

**Supreme Court of the United States:** [Docket No. 22-585](#)

**Reasons delivered:** 9 May 2024

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

**Catchwords:**

Constitutional law – Due Process Clause – Civil forfeiture cases involving personal property – Timely forfeiture hearing – Where petitioners both loaned their cars to others who were pulled over and arrested – Where in both cases petitioners' cars seized under Alabama civil forfeiture law that permitted seizure of car "incident to an arrest" so long as State "promptly" initiated forfeiture case, *Alabama Code* §20-2-93(b)(1),(c) – Where State of Alabama filed forfeiture complaints against petitioners' cars 10 and 13

days after their seizure – Where, while their forfeiture proceedings pending, petitioners each filed purported class-action complaints in federal court seeking money damages under 42 USC §1983 claiming state officials violated their due process rights by retaining their cars during forfeiture process without holding preliminary hearings – Where Eleventh Circuit affirmed dismissal of petitioners' claims, holding timely forfeiture hearing affords claimants due process and no separate preliminary hearing is constitutionally required – Whether *Constitution* requires separate preliminary hearing to determine whether police may retain car pending the forfeiture hearing.

**Held (6:3 (Sotomayor, Kagan and Jackson JJ dissenting)):** Judgment of Court of Appeals for the Eleventh Circuit affirmed.

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*DeVillier v Texas*

**Supreme Court of the United States:** [Docket No. 22-913](#)

**Reasons delivered:** 16 April 2024

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

**Catchwords:**

Constitutional law – Takings Clause – Right to just compensation – Cause of action – Where petitioners all own property north of US Interstate Highway 10 ("I-10") – Where State of Texas used portions of I-10 as flood evacuation route and installed barrier along highway median to act as dam – Where heavy rainfall occurred and petitioners' land flooded, causing significant damage to property – Where petitioners filed various suits consolidated into single proceeding in federal court with one operative complaint – Where operative complaint includes inverse-condemnation claims under both Texas Constitution and Takings Clause of Fifth Amendment – Where Texas moved to dismiss federal inverse-condemnation claim, arguing plaintiff has no cause of action arising directly under Takings Clause – Where District Court denied Texas' motion, concluding property owner may sue State directly under Takings Clause – Where Fifth Circuit reversed – Whether person whose property is taken without compensation may seek redress under self-executing Takings Clause even if legislature has not affirmatively provided them with cause of action.

**Held (9:0):** Judgment of Court of Appeals for the Fifth Circuit vacated; case remanded.

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*Electoral Commission of South Africa v Umkhonto Wesizwe Political Party & Ors*

**Constitutional Court of South Africa:** [\[2024\] ZACC 6](#)



**Reasons delivered:** 20 May 2024

**Coram:** Maya DCJ, Bilchitz, Gamble AJJ, Madlanga, Majiedt, Mathopo, Mhlantla, Theron and Tshiqi JJ

**Catchwords:**

Constitutional law – Eligibility to stand for National Assembly – Disqualification of anyone "convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine", *Constitution* s 47(1)(e) – Where second respondent convicted of offence of contempt of court and sentenced to 15 months' imprisonment without option of fine – Where second respondent only served about three months of sentence – Where first respondent, political party, included second respondent in list of candidates for National Assembly in upcoming election – Where applicant, Electoral Commission, decided pursuant to s 47(1)(e) of *Constitution*, second respondent not qualified to stand as candidate for National Assembly – Where Electoral Court upheld respondents' appeal and set aside decision of applicant to uphold objection – Where applicant contended in this Court s 47(1)(e) concerned with sentence imposed rather than sentence served – Whether second respondent disqualified to stand as candidate for National Assembly in terms of s 47(1)(e) of *Constitution*.

**Held (9:0):** Leave to appeal granted; declaration made.

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*National Rifle Association of America v Vullo*

**Supreme Court of the United States:** [Docket No. 22-842](#)

**Reasons delivered:** 30 May 2024

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

**Catchwords:**

Constitutional law – First Amendment – Punish or suppress gun-promotion advocacy – Where National Rifle Association ("NRA"), petitioner, alleged former superintendent of New York Department of Financial Services ("DFS"), respondent, violated First Amendment by coercing DFS-regulated entities to terminate business relationships with petitioner in order to punish or suppress petitioner's advocacy – Where Second Circuit held respondent's alleged actions constituted permissible government speech and legitimate law enforcement – Whether petitioner's complaint states First Amendment claim.

**Held (9:0):** Judgment of Court of Appeals for the Second Circuit vacated; case remanded.

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*R v Edwards*

**Supreme Court of Canada:** [\[2024\] SCC 15](#)

**Reasons delivered:** 26 April 2024

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

**Catchwords:**

Constitutional law – Charter of Rights – Independent and impartial tribunal – Courts martial – Military judges – Whether military status of military judges violates constitutional guarantee of judicial independence and impartiality to which persons tried before courts martial entitled – *Canadian Charter of Rights and Freedoms*, s 11(d) – *National Defence Act*, RSC 1985, c N-5, ss 165.21, 165.24(2).

**Held (6:1 (Karakatsanis J dissenting)):** Appeals dismissed.

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*Sheetz v County of El Dorado, California*

**Supreme Court of the United States:** [Docket No. 22-1074](#)

**Reasons delivered:** 12 April 2024

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

**Catchwords:**

Constitutional law – Takings Clause – Rights to just compensation – Where petitioner required as condition of receiving residential building permit to pay traffic impact fee – Where fee amount not based on costs of traffic impacts specifically attributable to petitioner's particular project, but rather assessed according to rate schedule that took into account type of development and location within County – Where petitioner sought relief in state court, claiming conditioning building permit on payment of traffic impact fee constituted unlawful "exaction" of money in violation of Takings Clause – Whether Takings Clause distinguishes between legislative and administrative land-use permit conditions.

**Held (9:0):** Judgment of Court of Appeal of California, Third Appellate District vacated; case remanded.

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*Société des casinos du Québec inc. v Association des cadres de la Société des casinos du Québec*

**Supreme Court of Canada:** [\[2024\] SCC 13](#)

**Reasons delivered:** 19 April 2024

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

**Catchwords:**

Constitutional law – Charter of Rights – Freedom of association – Statutory exclusion – Where casino managers excluded from provincial statutory labour relations regime – Whether exclusion infringes managers' guarantee of freedom of association – *Canadian Charter of Rights and Freedoms*, s 2(d) – *Charter of human rights and freedoms*, CQLR, c C-12, s 3 – *Labour Code*, CQLR, c C-27, s 1(l)(1).

Administrative law – Judicial review – Standard of review – Standard of review applicable to findings of fact and findings of mixed fact and law made by administrative decision maker in connection with constitutional question.

**Held (7:0):** Appeals allowed with costs.

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*Tam Sze Leung & Ors v Commissioner of Police*  
**Hong Kong Court of Final Appeal:** [\[2024\] HKCFA 8](#)

**Reasons delivered:** 10 April 2024

**Coram:** Cheung CJ, Ribeiro, Fok, Lam PJJ and Collins NPJ

**Catchwords:**

Constitutional law – Protection of property rights – Procedural fairness – Legality of no consent regime – *Hong Kong Bill of Rights* – Where appellants members of same family who came under suspicion of Securities and Futures Commission ("SFC") for having committed offences involving market manipulation of stocks – Where after investigation and searches of appellants' premises, SFC referred matter to police who took certain actions including freezing of bank account and issue of "Letters of No Consent" ("LNC") – Where appellants applied for judicial review of police's decision to issue and maintain LNCs in respect of appellants' bank accounts, and to fail or refuse to consent to withdrawal of any funds from accounts – Where appellants' judicial review application successful on ultra vires and constitutional grounds – Where Court of Appeal allowed respondent's appeal, upholding lawfulness of police actions concerned – Whether no consent regime operated by respondent and LNCs issued in respect of appellants' bank accounts ultra vires – Whether LNCs issued for improper purpose – Whether no consent regime and LNCs comply with constitutional requirements for protection of fundamental right to property – Whether no consent regime and LNCs procedurally unfair at common law and/or in violation of right to fair hearing under Art 10 of *Hong Kong Bill of Rights* – Whether *Interush Ltd v Commissioner of Police* correct in holding "consent regime" is necessary and proportionate restriction on right to enjoyment of private property under Arts 6 and 105 of Basic Law.

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

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*Xu Yuanchen v Public Prosecutor*

**Court of Appeal of Singapore:** [\[2024\] SGCA 17](#)

**Reasons delivered:** 20 May 2024

**Coram:** Sundaresh Menon CJ, Tay Yong Kwang JCA and Andrew Phang Boon Leong SJ

**Catchwords:**

Constitutional law – Freedom of expression – Criminal defamation – Where applicant director of company which runs socio-political website – Where applicant approved publication of article critical of People's Action Party and members of Cabinet – Where trial judge convicted applicant of criminal defamation – Where on appeal, High Court upheld applicant's conviction – Where applicant sought leave to refer five questions of law– Whether for charge of criminal defamation, appellate court may convict accused person of defamatory meaning not alleged by prosecution without calling accused person to defend themselves against same – Whether Parliament can be said to have considered whether or not Criminal Defamation Provisions "necessary or expedient" derogations from Art 14(1)(a) of *Constitution* imposed by Parliament under Art 14(2)(a) of *Constitution* when Criminal Defamation Provisions pre-dated *Constitution* – Whether phrase "necessary or expedient" in Art 14(2)(a) applies to laws providing against defamation – Whether, if answers to questions 2 and 3 affirmative, Criminal Defamation Provisions "necessary or expedient" derogations from constitutional right to freedom of speech and expression protected under Art 14(1)(a) of *Constitution* – Whether, if question 2 answered negative, proportionality analysis can be applied to determine constitutionality of laws predating *Constitution* that restrict right to freedom of speech and expression.

**Held (3:0):** Application dismissed.

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## Contract

*Earthco Soil Mixtures Inc. v Pine Valley Enterprises Inc.*

**Supreme Court of Canada:** [\[2024\] SCC 20](#)

**Reasons delivered:** 31 May 2024

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

**Catchwords:**

Contract – Interpretation – Exclusion clauses – Requirements to negative or vary statutory implied conditions – Where provincial legislation provided

for implied condition in contract for sale of goods by description that goods will correspond to description – Where legislation allowed parties to negative or vary implied condition by express agreement – Where exclusion clause in contract between buyer and seller provided seller not liable for quality of material – Whether exclusion clause was express agreement to oust liability for breach of implied condition that goods must correspond with description – *Sale of Goods Act*, RSO 1990, ss 14, 53.

**Held (6:1 (Côté J dissenting)):** Appeal allowed with costs.

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*RTI Ltd v MUR Shipping BV*

**Supreme Court of the United Kingdom:** [\[2024\] UKSC 18](#)

**Reasons delivered:** 15 May 2024

**Coram:** Lord Hodge, Lord Lloyd-Jones, Lord Hamblen, Lord Burrows and Lord Richards

**Catchwords:**

Contract – Interpretation – Force majeure clause – Reasonable endeavours – Where appellant and respondent entered shipping contract containing force majeure clause – Where contract also included reasonable endeavours proviso, which stipulated specified event would only be force majeure event if "it cannot be overcome by reasonable endeavors from the Party affected" – Where respondent's parent company sanctioned by US government, creating difficulties for respondent to make contractual payments in US dollars – Where appellant argued sanction force majeure event – Where respondent disputed and offered to make payments in Euros – Where appellant rejected offer – Where respondent commenced arbitration for breach of contract – Whether exercise of reasonable endeavours may require party affected, if it is to be entitled to rely on force majeure clause, to accept offer of non-contractual performance from other contracting party in order to overcome effects of specified event.

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

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## Corporations

*Macquarie Infrastructure Corp. v Moab Partners, L.P.*

**Supreme Court of the United States:** [Docket No. 22-1165](#)

**Reasons delivered:** 12 April 2024

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

**Catchwords:**

Corporations – Securities – Misleading statements – Omission of material facts – Securities and Exchange Commission Rule 10b–5(b) – Where petitioner owns subsidiary that operates terminals to store bulk liquid commodities including fuel oil with typical sulfur content close to 3% – Where in 2016, United Nations' International Maritime Organization formally adopted IMO 2020, regulation capping sulfur content of fuel oil used in shipping at 0.5% by 2020 – Where in ensuing years, petitioner did not discuss IMO 2020 in its public offering documents – Where petitioner announced drop in amount of storage contracted for use by its subsidiary due in part to decline in fuel oil market – Where respondent sued petitioner and various officer defendants, and alleged, inter alia, petitioner violated Securities and Exchange Commission Rule 10b–5(b), which makes it unlawful to omit material facts in connection with buying or selling securities when omission renders "statements made" misleading – Whether pure omissions actionable under Rule 10b–5.

**Held (9:0):** Judgment of Court of Appeals for the Second Circuit vacated; case remanded.

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## Copyright

*Warner Chappell Music, Inc. v Nealy*

**Supreme Court of the United States:** [Docket No. 22-1078](#)

**Reasons delivered:** 9 May 2024

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

### **Catchwords:**

Copyright – Infringement – Discovery rule – Time-based limit – Where under *Copyright Act* plaintiff must file suit "within three years after the claim accrued", 17 USC §507(b) – Where respondent sued petitioner for copyright infringements going back ten years – Where respondent argued claims timely because he first learned of infringing conduct less than three years before he sued – Where petitioner argued, and District Court agreed, even if respondent could sue under that rule for older infringements, he could only recover damages or profits for those occurring in last three years – Where Eleventh Circuit reversed, rejecting notion of three-year damages bar on timely claim – Whether copyright infringement claim subject to additional time-based limit preventing recovery of damages for any infringement occurred more than three years before lawsuit's filing.

**Held (6:3 (Thomas, Alito and Gorsuch JJ dissenting)):** Judgment of Court of Appeals for the Eleventh Circuit affirmed.

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# Courts

*Mafisa v Road Accident Fund & Anor*

**Constitutional Court of South Africa:** [\[2024\] ZACC 4](#)

**Reasons delivered:** 25 April 2024

**Coram:** Zondo CJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ, Theron, Tshiqi JJ and Van Zyl AJ

## Catchwords:

Courts – Settlement agreement – Judge's unilateral amendment of settlement agreement – Where applicant passenger in motor vehicle that collided with tree – Where applicant issued summons in High Court against respondent, Road Accident Fund ("RAF") and claimed damages for medical expenses, loss of earnings and general damages – Where parties requested Judge make settlement agreement order of court – Where Judge indicated not entirely satisfied with terms of draft order, and reserved judgment to consider proposed settlement – Where High Court unilaterally amended draft order by striking out amount for loss of earnings and awarded applicant agreed amount for general damages only – Where applicant unsuccessfully applied for leave to appeal to Full Court and Supreme Court of Appeal – Whether High Court could unilaterally amend settlement agreement without allowing parties involved chance to respond, effectively binding them to agreement they did not intend to make.

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

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# Criminal Law

*Bolea v R*

**Supreme Court of New Zealand:** [\[2024\] NZSC 46](#)

**Reasons delivered:** 3 May 2024

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

## Catchwords:

Criminal law – Sentencing – Discharge without conviction – Where appellant pleaded guilty to one charge of participating in organised criminal group – Where appellant Australian national and holds New Zealand resident class visa – Where under s 161(1)(b) of *Immigration Act 2009*, appellant liable for deportation if convicted of offence for which court may impose term of two or more years' imprisonment – Where appellant applied for discharge without conviction under s 106 of *Sentencing Act 2002* – Where if discharged, appellant would not be liable for deportation – Where High

Court did not grant appellant discharge without conviction – Where Court of Appeal dismissed appeal – Whether Court of Appeal correct to dismiss appeal – Whether Court of Appeal correct in way it treated risk of exposure to deportation – Whether Court of Appeal correct to treat risk of actual deportation as consequence of offending, and not of conviction – Whether, if appellant's conviction quashed, this Court determines application for discharge or application should be remitted back to High Court.

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

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*Brown v United States; Jackson v United States*

**Supreme Court of the United States:** [Docket No. 22-6389](#); [Docket No. 22-6640](#)

**Reasons delivered:** 23 May 2024

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

**Catchwords:**

Criminal law – Sentencing – Mandatory minimum sentence under *Armed Career Criminal Act* ("ACCA") – Where petitioners separately convicted of federal crime of possession of firearm by convicted felon – Where in both cases ACCA enhancement recommended based on prior state felony drug convictions – Where both petitioners argued their prior convictions did not qualify as "serious drug offense[s]" – Whether state crime constitutes "serious drug offense" if it involved drug on federal schedules when defendant possessed or trafficked in it but later removed.

**Held (6:3 (Kagan, Gorsuch and Jackson JJ dissenting)):** Judgment of Court of Appeals for the Third Circuit and Judgment of Court of Appeals for the Eleventh Circuit affirmed.

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*M (SC 13/2023) v R; LF (SC 14/2024) v R*

**Supreme Court of New Zealand:** [\[2024\] NZSC 29](#)

**Reasons delivered:** 23 April 2024

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

**Catchwords:**

Criminal law – Suppression orders – Permanent name suppression – Where LF pleaded guilty to total of ten charges for sexual offending in relation to six victims – Where LF applied for name suppression on basis publication of his name would be likely to cause him extreme hardship and/or endanger his safety under ss 200(2)(a) and (e) of *Criminal Procedure Act 2011* – Where M also sought name suppression under s 202(1) of *Criminal Procedure Act* as person connected with offender – Where LF's application



for name suppression declined by District Court – Where LF appealed unsuccessfully to High Court and Court of Appeal – Where M's application for name suppression also declined in High Court, but Court of Appeal found M reached threshold for suppression under s 202(2)(a) and made order for permanent name suppression of M's name in connection with LF's offending – Where Court of Appeal agreed with High Court suppression of LF's name unnecessary to prevent identification of M – Whether High Court erred in declining to grant LF permanent name suppression – Whether Court of Appeal erred in dismissing part of M's appeal relating to suppression of LF's name.

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

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*R v Lozada*

**Supreme Court of Canada:** [\[2024\] SCC 18](#)

**Reasons delivered:** 17 May 2024

**Coram:** Karakatsanis, Rowe, Martin, Jamal and Moreau JJ

**Catchwords:**

Criminal law – Charge to jury – Co-principal liability – Group assault – Manslaughter – Causation – Intervening act – Where both accused part of group that attacked victim but fatal stab wound inflicted by other group member – Where accused convicted of manslaughter by jury – Where accused appealed convictions and claimed trial judge erred in jury instructions on causation in context of co-principal liability – Whether jury properly instructed.

**Held (3:2 (Rowe and Jamal JJ dissenting)):** Appeals dismissed.

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*R v Tayo Tompouba*

**Supreme Court of Canada:** [\[2024\] SCC 16](#)

**Reasons delivered:** 3 May 2024

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

**Catchwords:**

Criminal law – Trial – Language of accused – Where duty imposed on judge before whom accused first appears to ensure accused advised of right to be tried in official language of their choice – Where Francophone accused convicted of sexual assault following trial conducted in English – Where accused raised breach of judge's duty on appeal – Where Court of Appeal dismissed appeal – Analytical framework that applies where accused appeals conviction while raising breach of judge's duty to ensure accused

advised of right to be tried in official language of their choice, when no decision on accused's language rights was made at first instance – Whether Court of Appeal made reviewable error in declining to order new trial – *Criminal Code*, RSC 1985, c C-46, ss 530(3), 686(1)(a), (b).

**Held (5:2 (Karakatsanis and Martin JJ dissenting)):** Appeal allowed; conviction quashed and a new trial in French ordered.

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*R v T.W.W.*

**Supreme Court of Canada:** [\[2024\] SCC 19](#)

**Reasons delivered:** 24 May 2024

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

**Catchwords:**

Criminal law – Evidence – Admissibility – Complainant's sexual activity – Where accused charged with sexual assault – Where accused and complainant married but separated at time of alleged assault – Where accused applied to adduce evidence of sexual activity between himself and complainant on evening prior to alleged assault – Where application dismissed – Where accused convicted – Whether trial judge erred in refusing to admit evidence of prior sexual activity – *Criminal Code*, RSC 1985, c C-46, s 276.

Courts – Open court principle – Publication bans – Whether statutory provision prohibiting publication of information and evidence relating to accused's application extends to appellate proceedings – Whether, if not, discretionary limits on court openness justified – *Criminal Code*, RSC 1985, c C-46, s 278.95.

**Held (7:2 (Côté and Moreau JJ dissenting)):** Appeal dismissed; Crown's motion allowed in part.

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*Thornell v Jones*

**Supreme Court of the United States:** [Docket No. 22-982](#)

**Reasons delivered:** 30 May 2024

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

**Catchwords:**

Criminal law – Ineffective assistance of counsel – *Strickland v Washington*, 466 US 668 – Where respondent convicted of two premeditated first degree murders and one attempted pre-meditated murder – Where Arizona law at

time required trial court to "impose a sentence of death" if it found "one or more" statutorily enumerated "aggravating circumstances" and "no mitigating circumstances sufficiently substantial to call for leniency" – Where trial court found both aggravating circumstances and mitigating circumstances – Where court concluded mitigating circumstances "not sufficiently substantial to outweigh the aggravating circumstances" and sentenced respondent to death – Where Arizona Supreme Court affirmed – Where respondent sought state postconviction review on theory defence counsel ineffective – Where Arizona courts rejected respondent's claims – Where respondent next filed federal habeas petition in District Court and reasserted ineffective-assistance-of-counsel claims – Where District Court rejected respondent's claims but Ninth Circuit reversed – Where this Court vacated judgment and remanded to Ninth Circuit – Where on reconsideration, Ninth Circuit again granted habeas relief – Whether Ninth Circuit erred in its interpretation and application of *Strickland*.

**Held (6:3 (Sotomayor, Kagan and Jackson JJ dissenting)):** Judgment of Court of Appeals for the Ninth Circuit reversed; case remanded.

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## Criminal Practice

*HKSAR v Hui Lai Ki*

**Hong Kong Court of Final Appeal:** [\[2024\] HKCFA 7](#)

**Reasons delivered:** 3 April 2024

**Coram:** Cheung CJ, Ribeiro, Fok, Lam PJJ and Collins NPJ

### Catchwords:

Criminal practice – Appeal – Re-assessment of evidence on appeal – Where appellant charged with theft of goods from grocery shop – Where in police interview appellant said in rush and forgot to pay – Where at trial, appellant gave evidence forgot to pay due to certain matters including fatigue from recent COVID-19 dose, hearing of news daughter would repeat year at school, and mother admitted to hospital for bowel surgery – Where Magistrate did not believe appellant's testimony and convicted her after trial – Where Court of First Instance dismissed appeal and stated would not intervene with Magistrate's findings of fact because not plainly wrong, illogical or inherently improbable – Whether Court of First Instance applied correct approach to appeal before him – Whether, in respect of appeal against conviction, court bound to re-assess evidence upon which conviction based or court justified in overturning such conviction on basis of its own view of available evidence.

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

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*Justin Richard Burke v R*

**Supreme Court of New Zealand:** [\[2024\] NZSC 37](#)

**Reasons delivered:** 22 April 2024

**Coram:** Winkelmann CJ, Glazebrook, O'Regan, Williams and Kós JJ

**Catchwords:**

Criminal practice – Trial – Directions to jury – Liability of participants in criminal offending – Where appellant charged as party to murder under s 66 of *Crimes Act 1961* – Where at trial, judge directed jury conviction under s 66(2) possible if appellant did not know principal offender had knife and if all appellant foresaw was assault likely to cause more than trivial harm – Where trial judge sentenced appellant on basis found guilty as s 66(2) party and did not know principal offender had knife – Where appellant sentenced to five years and two months' imprisonment – Where Court of Appeal dismissed appellant's appeal against conviction and sentence – Whether Court of Appeal correctly interpreted and applied s 66(2) of *Crime Act* – Whether trial judge should have directed jury conviction under s 66(2) only open if satisfied appellant knew stabbing, or act of its type, probable consequence of prosecution of common purpose – Whether, alternatively, trial judge should have directed jury conviction under s 66(2) only open if satisfied appellant knew unlawful killing probable consequence of prosecution of common purpose.

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

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*McIntosh v United States*

**Supreme Court of the United States:** [Docket No. 22-7386](#)

**Reasons delivered:** 17 April 2024

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

**Catchwords:**

Criminal practice – Forfeiture – Requirement to enter preliminary order before sentencing – Where petitioner indicted on multiple counts of *Hobbs Act* robbery and firearm offenses – Where indictment demanded petitioner "shall forfeit... all property... derived from proceeds traceable to the commission of the [*Hobbs Act*] offenses" – Where at sentencing hearing District Court imposed forfeiture – Where respondent failed to submit order of forfeiture for court's signature within week from hearing – Where on appeal, respondent moved for limited remand to supplement record with written order of forfeiture – Where Second Circuit granted unopposed motion – Where back in District Court, petitioner argued failure to comply with Federal Rule of Criminal Procedure 32.2(b)(2)(B), which provided "[u]nless doing so is impractical," federal district court "must enter the

preliminary order [of forfeiture] sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant", meant District Court could not proceed with forfeiture at all – Where District Court overruled petitioner's objections, and Second Circuit affirmed in relevant part – Whether district court that fails to comply with Rule 32.2(b)(2)(B)'s requirement to enter preliminary order before sentencing is powerless to order forfeiture against defendant.

**Held (9:0):** Judgment of Court of Appeals for the Second Circuit affirmed.

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*R (SC 64/2022) v Chief Executive of the Department of Corrections*  
**Supreme Court of New Zealand:** [\[2024\] NZSC 47](#)

**Reasons delivered:** 7 May 2024

**Coram:** Winkelmann CJ, Glazebrook, O'Regan, Williams and Kós JJ

**Catchwords:**

Criminal practice – Extended supervision order ("ESO") and compulsory care order ("CCO") – Concurrent ESO and CCO – Where appellant spent most of his life in institutional care – Where appellant has intellectual disability and been found unfit to stand trial – Where appellant prone to sexually offend against women and girls – Where appellant subject to both ESO and CCO – Where respondent applied to High Court for review of ESO in 2021, as *Parole Act 2002* required – Where High Court affirmed making of ESO, and Court of Appeal dismissed appeal – Whether statutory scheme permits concurrent ESOs and CCOs – Whether GPS monitoring could be required under CCO – Whether *New Zealand Bill of Rights Act 1990* affects exercise of courts' powers of review of continuation of ESO.

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

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## Damages

*Sharp Corp Ltd v Viterra BV (previously known as Glencore Agriculture BV)*

**Supreme Court of the United Kingdom:** [\[2024\] UKSC 14](#)

**Reasons delivered:** 8 May 2024

**Coram:** Lord Reed, Lord Hodge, Lord Briggs, Lord Hamblen and Lord Leggatt

**Catchwords:**

Damages – Assessment of damages – Where appellant and respondent entered into two sales contracts for sale of lentils and sale of peas – Where respondent defaulted and appellant commenced arbitration seeking

damages – Where Grain and Free Trade Association ("GAFTA") Appeal Board issued two arbitration awards, and found respondent liable to pay damages – Where respondent appealed decision on damages – Where primary judge dismissed appeal – Where Court of Appeal allowed appeal but in relation to question of law which it amended – Whether Court of Appeal exceeded its jurisdiction – Whether, if appeal succeeds, damages should be awarded on "as is, where is" basis.

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

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## Employment Law

*Harrow v Department of Defense*

**Supreme Court of the United States:** [Docket No. 23-21](#)

**Reasons delivered:** 16 May 2024

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

**Catchwords:**

Employment law – Challenging furlough decision – Untimely appeal – Where respondent furloughed petitioner for six days – Where petitioner challenged decision before Merits Systems Protection Board – Where after five year delay, Board ruled against him – Where petitioner had right to appeal to Court of Appeals for Federal Circuit, provided he did so "within 60 days" of Board's final order, 5 USC §7703(b)(1) – Where petitioner did not learn about Board's decision until 60-day period had run, and filed appeal late – Where petitioner asked Federal Circuit to overlook untimeliness and equitably toll filing deadline – Where Federal Circuit held deadline unalterable "jurisdictional requirement" and denied request – Whether 60-day limit is jurisdictional and therefore precludes equitable exceptions.

**Held (9:0):** Judgment of Court of Appeals for the Federal Circuit vacated; case remanded.

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*Muldrow v City of St. Louis, Missouri*

**Supreme Court of the United States:** [Docket No. 22-193](#)

**Reasons delivered:** 17 April 2024

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

**Catchwords:**

Employment law – Civil rights – Discrimination – *Civil Rights Act of 1964*, Title VII – Transferring employee on basis of sex – Where from 2008 through 2017, petitioner worked as plain clothes officer in St. Louis Police Department's specialised Intelligence Division – Where in 2017, new Intelligence Division commander transferred petitioner out of unit so he could replace her with male police officer – Where petitioner's rank and pay remained same in new position, but she no longer worked with high-ranking officials on departmental priorities lodged in Intelligence Division, instead supervising day-to-day activities of neighbourhood patrol officers – Where petitioner also lost access to unmarked take-home vehicle and had less regular schedule involving weekend shifts – Where petitioner brought Title VII suit to challenge transfer under 42 USC §2000e-2(a)(1), alleging respondent in ousting her from Intelligence Division, discriminated against her based on sex "with respect to... terms [or] conditions" of her employment – Where District Court granted respondent summary judgment – Where Eighth Circuit affirmed, holding petitioner did not show transfer caused her materially significant disadvantage – Whether transferring employee on basis of race, colour, religion, sex, or national origin violates Title VII.

**Held (9:0):** Judgment of Court of Appeals for the Eighth Circuit vacated; case remanded.

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*Regenesys Management (Pty) Ltd t/a Regenesys v Ilunga & Ors*  
**Constitutional Court of South Africa:** [\[2024\] ZACC 8](#)

**Reasons delivered:** 21 May 2024

**Coram:** Zondo CJ, Maya DCJ, Kollapen, Mathopo, Rogers JJ, Schippers AJ, Theron, Tshiqi JJ and Van Zyl AJ

**Catchwords:**

Employment law – Employees' posts declared redundant – Substantively or procedurally unfair dismissal – Inadequate consultation – Where dispute arose between applicant and its former employees, respondents – Where respondents notified applicant would undergo restructuring and invited to apply for vacant positions – Where respondents' applications unsuccessful, resulting in their retrenchment – Where respondents then sought reinstatement until applicant adhered to fair procedure – Where Labour Court found dismissals of former employees substantively and procedurally unfair – Where Labour Appeal Court upheld decision – Whether Labour Appeal Court erred in finding dismissal of some employees substantively unfair – Whether applicant can contest adverse finding or conclusion made by court of first instance in second or subsequent appeal, if it did not raise this challenge in first appeal – Whether, given provisions of s 189A(18) of *Labour Relations Act*, Labour Court has jurisdiction to adjudicate dispute about procedural fairness of dismissal for operational requirements including one brought to Labour Court in terms of s 189A(13).

**Held (9:0):** Leave to appeal and cross-appeal granted; appeal dismissed with costs; cross-appeal upheld with costs.

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*Secretary of State for Business and Trade v Mercer*  
**Supreme Court of the United Kingdom:** [\[2024\] UKSC 12](#)

**Reasons delivered:** 17 April 2024

**Coram:** Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lord Richards and Lady Simler

**Catchwords:**

Employment law – Industrial relations – Industrial action – Trade union representative suspended for planning and taking part in strike – Where appellant employed as support worker – Where appellant workplace representative of UNISON, and involved in planning and took part in lawful strike action – Where appellant's employment subsequently suspended – Where while suspended, appellant received normal pay but unable to earn pay for overtime she would otherwise have worked – Where appellant brought claim against employer under s 146 of *Trade Union and Labour Relations (Consolidation) Act 1992* ("TULRCA") that she suffered detrimental treatment done for sole or main purpose of preventing or deterring her from taking part in activities of independent trade union "at an appropriate time" or penalising her for having done so – Where Employment Tribunal held s 146 did not apply – Where appellant successfully appealed to Employment Tribunal – Where intervener, Secretary of State for Business and Trade, held s 146 could not be interpreted compatibly with Art 10 of European Convention on Human Rights but refused to make declaration of incompatibility – Whether worker subject to detriment for purpose of preventing or deterring her participation in union-organised industrial action can potentially bring claim under s 146(2)(b) of TULRCA.

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

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## Family Law

*DHB v CSB*

**Constitutional Court of South Africa:** [\[2024\] ZACC 9](#)

**Reasons delivered:** 22 May 2024

**Coram:** Zondo CJ, Maya DCJ, Kollapen, Mathopo, Rogers JJ, Schippers AJ, Theron, Tshiqi JJ and Van Zyl AJ

**Catchwords:**



Family law – Enforceability of prenuptial agreement – Ousting jurisdiction of divorce court – Where applicant and respondent entered into antenuptial agreement and further prenuptial agreement – Where applicant instituted divorce proceedings against respondent, still pending – Where respondent filed counter-claim seeking enforcement of prenuptial agreement – Where applicant filed plea to counter-claim denying terms of agreement enforceable – Where Regional Court, relying on principle of *pacta sunt servanda* and freedom of contract, held prenuptial agreement enforceable and could be read with antenuptial contract – Where on appeal, High Court held agreement unenforceable as it ousted court's discretion under s 7(2) of *Divorce Act* – Where Supreme Court of Appeal ruled in favour of respondent finding two legal instruments could co-exist – Whether prenuptial agreement purporting to regulate patrimonial consequences of divorce, including maintenance, is contrary to public policy and unenforceable for reason it impermissibly ousts jurisdiction conferred on divorce court in terms of s 7(2) of *Divorce Act*.

**Held (8:1 (Schippers AJ dissenting)):** Leave to appeal granted; appeal dismissed with costs.

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## Fraud

*Eurobank Ergasias S.A. v Bombardier inc.*

**Supreme Court of Canada:** [\[2024\] SCC 11](#)

**Reasons delivered:** 5 April 2024

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

### Catchwords:

Fraud – Financial institutions – Banks – Letters of credit – Bank's obligation to pay on demand – Fraud exception – Scope and availability of exception when fraud of third party to letter of credit is alleged – Whether fraudulent conduct of stranger to letter of credit can be attributable to letter's beneficiary as beneficiary's own fraud, thereby requiring issuing bank to refuse demand for payment under fraud exception.

**Held (7:2 (Karakatsanis and Côté JJ dissenting)):** Appeal dismissed with costs.

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## Human Rights

*R (on the application of AM (Belarus)) v Secretary of State for the Home Department*

**Supreme Court of the United Kingdom:** [\[2024\] UKSC 13](#)

**Reasons delivered:** 24 April 2024

**Coram:** Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens and Lady Simler

**Catchwords:**

Human rights – Refusal to grant leave to remain ("LTR") – Right to respect for private and family life – European Convention on Human Rights ("ECHR"), Art 8 – Where respondent Belarusian nation – Where respondent arrived in United Kingdom and asylum claim refused and removed to Belarus – Where upon arrival to Belarus, respondent provided false information which led Belarussian authorities to believe not citizen of Belarus – Where respondent consequently refused entry and returned to UK – Where respondent convicted of various offences in UK and qualifies as foreign criminal – Where appellant, Home Secretary, wishes to extradite respondent to Belarus – Where respondent not cooperative and successfully managed to thwart appellant's efforts to remove him – Where respondent filed application for judicial review of appellant's failure to provide him with LTR or permission to work in UK – Where Upper Tribunal dismissed respondent's challenge to Home Secretary's determination respondent is not stateless, but upheld respondent's claim refusal to grant him LTR (with permission to work) violated his rights under Art 8 of ECHR – Where Home Secretary unsuccessfully appealed to Court of Appeal in relation to finding of violation of Art 8 – Whether refusal by appellant to grant leave to remain to respondent, who cannot be removed to their country of nationality, violates respondent's right to respect for private and family life under Art 8 of ECHR.

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

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## Planning Law

*Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency*

**Supreme Court of New Zealand:** [\[2024\] NZSC 26](#)

**Reasons delivered:** 11 April 2024

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

**Catchwords:**

Planning law – Approval of new road – Where respondent proposed East West Link ("EWL") – Where some EWL works occur in parts of environment identified as "significant ecological areas" in Auckland Unitary Plan ("AUP") – Where respondent required certain approvals before it can proceed with proposed EWL – Where Board of Inquiry ("Board") determined approvals

mostly consistent with *Resource Management Act 1991* and relevant planning instruments, namely AUP and New Zealand Coastal Policy Statement – Where appellant and interested party appealed Board's decision to High Court, which dismissed appeal – Whether High Court correct to dismiss appeal against Board's decision.

**Held (4:1 (William Young J dissenting)):** Appeal allowed.

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## Public International Law

*Argentum Exploration Ltd v Republic of South Africa*  
**Supreme Court of the United Kingdom:** [\[2024\] UKSC 16](#)

**Reasons delivered:** 8 May 2024

**Coram:** Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Richards

**Catchwords:**

Public international law – State immunity – Commercial transaction exception to state immunity – *State Immunity Act 1978*, s 10(4)(a) – Where SS TILAWA ("Vessel") sunk by enemy action, carrying cargo of bars of silver being carried from Bombay to Durban – Where silver belonged to appellant, Republic of South Africa – Where silver recovered in 2017 – Where respondent claims to be salvor of silver and argues entitled to claim for salvage – Where appellant argued High Court had no power to hear respondent's claim because of principle of state immunity – Where respondent argued appellant did not have immunity, because exception under s 10(4)(a) of *State Immunity Act 1978* applied – Where High Court found in favour of respondent, holding silver "in use or intended for use for commercial purpose" – Whether appellant immune under s 10(4)(a) to jurisdiction of United Kingdom in respect of respondent's salvage claim.

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

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## Statutes

*Rudisill v McDonough*  
**Supreme Court of the United States:** [Docket No. 22-888](#)

**Reasons delivered:** 16 April 2024

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

**Catchwords:**

Statutes – Educational assistance for veterans – "GI bills" – Durational limits of GI bills – Servicemember meeting criteria for educational benefits under two different GI bills – Competing durational limits – Where petitioner enlisted in United States Army in 2000 and served total of eight years over three periods of military service – Where petitioner became entitled to *Montgomery GI Bill Act of 1984* ("Montgomery") as result of first period of service – Where petitioner earned undergraduate degree and used 25 months and 14 days of Montgomery benefits to finance his education – Where through subsequent periods of service, petitioner also became entitled to more generous educational benefits under *Post-9/11 Veterans Educational Assistance Act of 2008* ("Post-9/11") – Where petitioner sought to use his Post-9/11 benefits to finance graduate degree and understood such benefits would be limited to 22 months and 16 days under 38 USC §3695's 48-month aggregate benefits cap – Where Government informed petitioner only eligible for 10 months and 16 days of Post-9/11 benefits (the length of his unused Montgomery benefits) due to §3327, provision in Post 9/11 designed to coordinate benefits for servicemembers meeting criteria for both Montgomery benefits and Post-9/11 benefits – Where §3327 provided servicemember meeting criteria for both GI bills can elect to swap Montgomery benefits for more generous Post-9/11 benefits, up to total of 36 months of benefits – Where Federal Circuit found when petitioner sought to use his Post-9/11 benefits, he made "election" under §3327(a)(1) to swap his Montgomery benefits for Post 9/11 benefits, making his benefits subject to §3327(d)(2)'s 36-month limit – Whether petitioner can access his Post-9/11 benefits entitlement without being subject to §3327(d)(2)'s durational limit.

**Held (7:2 (Thomas and Alito JJ dissenting)):** Judgment of Court of Appeals for the Federal Circuit reversed; case remanded.

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## Taxation

*Capitec Bank Limited v Commissioner for the South African Revenue Service*

**Constitutional Court of South Africa:** [\[2024\] ZACC 1](#)

**Reasons delivered:** 12 April 2024

**Coram:** Zondo CJ, Maya DCJ, Kollapen, Mathopo, Mhlantla, Rogers, Theron, Tshiqi JJ and Van Zyl AJ<sup>1</sup>

**Catchwords:**

Taxation – Value added tax ("VAT") – Taxable supply – Exempt activity – Where applicant lent money to unsecured borrowers – Where applicant does

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<sup>1</sup> Van Zyl AJ was present at the hearing but was unable to participate in the disposition of the case.

not charge VAT on interest but does on fees it levies and claims input tax deductions attributable to charging of those fees – Where for tax period of November 2017, applicant submitted its VAT return to respondent, Commissioner for the South African Revenue Service – Where in its return, applicant deducted tax fraction of full amount of fees it levied, relying on s 16(3)(c) of *Value-Added Tax Act* ("VAT Act") – Where respondent disallowed deduction on basis supply of loan cover did not constitute taxable supply – Where Tax Court set aside respondent's additional assessment – Where respondent successfully appealed to Supreme Court of Appeal, which found applicant in business of providing credit, not insurance, and provision of credit exempt supply – Whether supply of insurance contract to borrowers who pay interest and fees made exclusively in course or furtherance of exempt activity – Whether amount in s 16(3)(c) of VAT Act may be apportioned where insurance contract is supplied only partly in course or furtherance of enterprise – Whether supply free of charge may constitute taxable supply.

**Held (8:0):** Leave to appeal granted; appeal allowed.

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## Tort

*Davies v Bridgend County Borough Council*

**Supreme Court of the United Kingdom:** [\[2024\] UKSC 15](#)

**Reasons delivered:** 8 May 2024

**Coram:** Lord Reed, Lord Lloyd-Jones, Lord Burrows, Lord Stephens and Lady Simler

### **Catchwords:**

Tort – Private nuisance – Damages for diminution in value of land – Where some date before respondent purchased land, Japanese knotweed spread from land owned by appellant – Where at time respondent purchased land, encroachment of Japanese knotweed onto neighbouring land not actionable private nuisance – Where actionable private nuisance arose in 2013 when appellant was, or ought to have been, aware of risk of damage and loss of amenity to land as result of publicly available information about Japanese knotweed at time, and it failed to implement reasonable and effective treatment programme in relation to Japanese knotweed which it knew or ought to have known was growing on its land – Where in 2018 appellant implemented reasonable and effective treatment programme – Where respondent brought claim for damages against appellant, and district judge found appellant in continuing breach between 2013 and 2018 but declined to award damages because diminution in value irrecoverable – Where district judge's ruling upheld on first appeal – Where Court of Appeal upheld finding of continuing breach but found damages for residual diminution of value of respondent's land recoverable – Whether respondent entitled to

residual diminution in value of land – Whether residual diminution in value caused by appellant's breach of duty in private nuisance.

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

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## Trade Marks

*Lifestyle Equities CV & Anor v Ahmed & Anor, Lifestyle Equities CV & Anor v Ahmed & Anor*

**Supreme Court of the United Kingdom:** [\[2024\] UKSC 17](#)

**Reasons delivered:** 15 May 2024

**Coram:** Lord Lloyd-Jones, Lord Kitchin, Lord Leggatt, Lord Stephens and Lord Richards

### Catchwords:

Trade marks – Infringement – Accessorial liability – Where brother and sister ("Ahmeds") directors of company, Hornby, which arranged for manufacture of clothing, footwear and headgear and sold it to retailers – Where Hornby sold various items bearing logos with words "SANTA MONICA POLO CLUB" and pictures of polo players on horses – Where Lifestyle companies own trade marks featuring polo player on horse and words "BEVERLY HILLS POLO CLUB" – Where Lifestyle sued Hornby alleging infringement of Lifestyle's trade marks – Where Lifestyle also sued Ahmeds personally, claiming they were jointly liable with Hornby for infringements – Where trial judge found Hornby infringed Lifestyle's trade marks and Ahmeds jointly liable – Where both parties appealed to Court of Appeal, which upheld primary judge's decision – Whether trial judge and Court of Appeal erred in law finding Ahmeds jointly liable with Hornby in absence of any finding they knew or ought to have known Hornby's use of Santa Monica Polo Club signs infringed Lifestyle's trade marks.

Trade marks – Infringement – Remedies – Account of profits – Whether account of profits should be awarded where no finding Ahmeds acted unconscionably or in bad faith – Whether, if so, Ahmeds should have been ordered to account to Lifestyle for profits made by either (i) company or (ii) directors themselves.

**Held (5:0):** Lifestyle's appeal dismissed; Ahmeds' appeal allowed.

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## Trade Practices

*Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission & Anor*  
**Constitutional Court of South Africa:** [\[2024\] ZACC 3](#)

**Reasons delivered:** 17 April 2024

**Coram:** Zondo CJ, Chaskalson, Dodson AJJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ and Tshiqi J

**Catchwords:**

Trade practices – Competition – Merger conditions – Breach of merger conditions – Where dispute arose from merger approved by Competition Tribunal ("Tribunal") – Where merger approved subject to conditions, including maintaining aggregate employee numbers from pre-merger operations for specified period and limiting retrenchment – Where applicant faced economic challenges and had to initiate entrenchments, leading to complaint regarding breach of merger conditions – Where respondent issued Notice of Apparent Breach, which applicant challenged in Tribunal – Where Tribunal set aside Notice of Breach – Where Competition Appeal Court set aside Tribunal's decision – Whether this Court's jurisdiction is engaged – Nature and standard of review powers of Tribunal under r 39(2)(b) of *Rules for the Conduct of Proceedings in the Competition Commission* – Proper approach to determining whether retrenchments merger specific – Whether Competition Appeal Court entitled to interfere with factual findings of Tribunal.

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

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