



# OVERSEAS DECISIONS BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library

Volume 11 Number 1 (1 January 2014 – 16 March 2014)

Decisions from 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 and the Supreme Court of New Zealand.

---

## Administrative Law

*Bernard v Canada (Attorney General)*

Supreme Court of Canada: [2014 SCC 13](#).

**Judgment delivered:** 7 February 2014.

**Coram:** LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

**Catchwords:**

Administrative law — Standard of review — Unions — Representational duties — Labour relations board ordered employer to disclose home contact information of members of bargaining unit to union — Board held that disclosure necessary to permit union to carry out representational duties — Individual employee challenged order on grounds that it violated her rights under Privacy Act and s 2(d) of Charter — Whether Board's decision that order did not contravene Privacy Act was reasonable.

**Held (5-2, dissent as to costs):** Appeal dismissed.

---

# Bankruptcy

*Law v Siegel*

Supreme Court of the United States: [Docket 12-5196](#).

**Judgment delivered:** 4 March 2014.

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

**Catchwords:**

Bankruptcy law — Exemptions — Petitioner filed for bankruptcy and — Claimed that part of home's value was covered by homestead exemption and exempt from bankruptcy estate — Further claimed that sum of two voluntary liens exceeded home's nonexempt value, leaving no equity recoverable for other creditors — Siegel challenged one lien resulting in protracted litigation — Bankruptcy Court determined that lien was fiction and granted Siegel's motion to "surcharge" Petitioner's homestead exemption to defray fees incurred by Siegel in uncovering Petitioner's fraud — Whether bankruptcy court may order that a debtor's exempt assets be used to pay administrative expenses incurred as a result of debtor's misconduct.

**Held (9-0):** Judgment of the Court of Appeals reversed and case remanded.

---

# Constitutional Law

*R v MacDonald*

Supreme Court of Canada: [2014 SCC 3](#).

**Judgment delivered:** 17 January 2014.

**Coram:** McLachlin CJ, LeBel, Fish, Abella, Rothstein, Moldaver and Wagner JJ.

**Catchwords:**

Constitutional law — Canadian Charter of Rights and Freedoms, s 8 — Search and seizure — Police responded to noise complaint at accused's residence — Accused answered door while concealing loaded restricted firearm — Police pushed door open further to ascertain concealment — Whether officer's conduct constituted search and, if so, whether search reasonable.

Criminal law — Criminal Code RSC 1985, c C-46, s 95 — Elements of offence — *Mens rea* — Possession of loaded restricted firearm — Accused's licence to possess firearm in Alberta did not extend to Nova Scotia, but accused believed it did — Whether Crown required to prove accused knew or was willfully blind to fact that possession of firearm was unauthorised.

**Held (7-0):** Appeal on constitutional issue dismissed. Crown's appeal of acquittal allowed.

---

*Fernandez v California*

**Supreme Court of the United States:** [Docket 12-7822](#).

**Judgment delivered:** 25 February 2014.

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

**Catchwords:**

Constitutional law — Bill of Rights — Search and seizure — Scope of protection — Police officers observed petitioner, who was suspected of a robbery, run into apartment — Police officers asked woman if they could conduct a protective sweep of apartment — Petitioner objected and was removed from apartment he shared with woman — Police officer returned to apartment and obtained woman's consent to search apartment where items found linking petitioner to robbery — Trial court denied motion to suppress evidence and petitioner was convicted — Whether exception to permissible warrantless consent searches of jointly occupied premises (that arises when one occupant objects to search) applied.

**Held (6-3):** Exception did not extend to this situation. Judgment of California Court of Appeal affirmed.

---

*Kaley v United States*

**Supreme Court of the United States:** [Docket 12-464](#).

**Judgment delivered:** 25 February 2014.

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

**Catchwords:**

Constitutional law — Bill of Rights — Assistance of counsel — Petitioners indicted by grand jury for reselling stolen medical devices and laundering the proceeds — Government obtained

restraining order against assets — Petitioners sought to vacate order in order to use disputed assets for legal fees — Whether criminal defendants are constitutionally entitled to contest a grand jury's prior determination of probable cause to believe they committed crimes charged.

Criminal law — Seizure — Pre-trial forfeiture.

**Held (6-3):** Judgment of the Eleventh Circuit affirmed.

---

*Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others*

**Constitutional Court of South Africa:** [\[2014\] ZACC 3](#).

**Judgment delivered:** 27 February 2014.

**Coram:** Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuzza AJ, Froneman J, Jafta J, Madlanga J, Mhlantla AJ, Nkabinde J and Zondo J

**Catchwords:**

Constitutional law – Right to privacy – Estate Agency Affairs Act 112 of 1976 (EAA Act), s 32A – Financial Intelligence Centre Act 38 of 2001 (FIC Act), s 45B – Whether s 32A EAA Act and s 45B FIC Act unconstitutional by allowing warrantless searches – Whether provisions possess meaningful limits on infringement of right to privacy to limit extent of constitutional invalidity.

**Held (10-0):** Declarations of constitutional invalidity confirmed.

---

## Consumer Law

*Kubyana v Standard Bank of South Africa Ltd*

**Constitutional Court of South Africa:** [\[2014\] ZACC 1](#).

**Judgment delivered:** 20 February 2014.

**Coram:** Mhlantla AJ, Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuzza AJ, Froneman J, Madlanga J and Van der Westhuizen J.

**Catchwords:**

Consumer law – Notice of default – National Credit Act 34 of 2005, s 129 – Credit provider wishing to enforce credit agreement must deliver a notice to a consumer setting out consumer's default – Whether, where consumer elects to receive notice by post, delivery

amounts to taking of steps that would bring notice to attention of reasonable consumer.

**Held (8-0):** Appeal dismissed.

---

## Corporations Law

*Marks and Spencer plc v Commissioners for Her Majesty's Revenue and Customs; Commissioners for Her Majesty's Revenue and Customs v Marks and Spencer plc*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 11](#).

**Judgment delivered:** 19 February 2014.

**Coram:** Lord Neuberger, Lord Mance, Lord Clarke, Lord Reed and Lord Carnwath.

### Catchwords:

Corporations law — Revenue and corporation tax — Income and Corporation Taxes Act 1988, Sch 17A — Finance Act 1998, Sch 18, para 73 — EC Treaty, art 43EC — Parent company established in United Kingdom with subsidiaries established in different member states — Subsidiaries ceased to trade and dissolved following liquidation — Parent company wished to set off subsidiaries' losses against profits for purposes of liability to corporation tax — Court of Justice of the European Communities ruled that domestic measure restricting cross-border group relief in respect of subsidiaries' losses justified save where subsidiaries' losses unavailable for utilisation in own member states — Circumstances to be examined at date of parent company's claim — How claims to be calculated — Whether successive claims to same loss valid — Whether claims statute-barred.

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

---

## Criminal Law

See also [Constitutional Law](#): *R v MacDonald* and *Kaley v United States*

---

*Burrage v United States*

**Supreme Court of the United States:** [Docket 12-7515](#).

**Judgment delivered:** 27 January 2014.

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

**Catchwords:**

Criminal law — Criminal offences — Delivery, distribution and sale of controlled substances — Drug user died following binge using heroin purchased from petitioner — Petitioner pleaded not guilty to indictment for unlawfully distributing heroin where death resulted, attracting 20-year mandatory minimum sentence — Whether mandatory-minimum provision applies when use of covered drug supplied by petitioner contributes to, but is not but-for cause of, victim's death or injury.

Words and phrases — "results from".

**Held (9-0):** Petitioner's conviction reversed and case remanded.

---

*R v Mackle (Northern Ireland); R v Mackle No 2 (Northern Ireland); R v Mackle No 3 (Northern Ireland); R v McLaughlin (Northern Ireland)*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 5](#).

**Judgment delivered:** 29 January 2014.

**Coram:** Lord Neuberger, Lord Mance, Lord Kerr, Lord Hughes and Lord Toulson.

**Catchwords:**

Criminal law — Confiscation order — Validity — Proceeds of Crime Act 2002, s 156 — Proceeds of Crime (Northern Ireland) Order 1996 (SI 1996/1299), art 8 — Defendants admitted specific acts as part of joint criminal enterprise — Prosecution asserted that admitted acts sufficient to show benefit obtained from criminal conduct so as to justify making of confiscation orders — Defendants advised that assertion correct and consenting to orders — Acts relied on by prosecution not sufficient in law to amount to obtaining of benefit — Whether defendants precluded from appealing by reason of orders being made by consent — Whether open to appellate court to uphold orders on other grounds — Whether participation in joint criminal enterprise itself sufficient to show obtaining of benefit.

**Held (5-0):** Appeals allowed.

---

*Richardson and another v Director of Public Prosecutions*  
Supreme Court of the United Kingdom: [\[2014\] UKSC 8](#).

**Judgment delivered:** 5 February 2014.

**Coram:** Lady Hale, Lord Kerr, Lord Hughes, Lord Toulson, Lord Hodge.

**Catchwords:**

Criminal law — Aggravated trespass — Disruption of lawful activity — Criminal Justice and Public Order Act 1994, s 68(1) — Defendants mounted non-violent protest in shop charged with aggravated trespass — Defendants disputed charge on ground that occupants of shop not engaged in “lawful activity” — Ambit of offence — Whether “lawful activity” limited to core activities at premises — Whether incidental or collateral offences relevant.

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

---

*R v Babos*

Supreme Court of Canada: [2014 SCC 16](#).

**Judgment delivered:** 21 February 2014.

**Coram:** McLachlin CJ, LeBel, Abella, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

**Catchwords:**

Criminal law — Stay of proceedings — Abuse of process — Accused charged with offences related to firearms and importation, production and trafficking of methamphetamine — Accused alleged Crown misconduct in obtaining medical records, police collusion to mislead court, and Crown threats pressuring accused to plead guilty — Trial judge stayed proceedings — Whether stay of proceedings necessary to protect integrity of justice system.

**Held (6-1):** Appeals dismissed.

---

*United States v Apel*

Supreme Court of the United States: [Docket 12-1038](#).

**Judgment delivered:** 26 February 2014.

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

**Catchwords:**

Criminal law — Offences — Burglary and criminal trespass on military base — Area designated by government for peaceful protests adjacent to military base — Respondent was barred from military base for trespassing and vandalism but continued to enter protest area — Respondent convicted for reentering military installation having been ordered not to — Whether a “military installation” encompasses a designated protest area and an easement for public road where both fall under commanding officer’s area of responsibility.

**Held (9-0):** The judgment of the Court of Appeals vacated and the case remanded.

---

*Rosemond v United States*

**Supreme Court of the United States:** [Docket 12-895](#).

**Judgment delivered:** 5 March 2014.

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

**Catchwords:**

Criminal law — Accessory — Aiding and abetting — Petitioner participated in drug deal in which gun was fired — Identity of shooter was disputed — Petitioner charged with using or carrying gun in connection with drug crime or, in alternative, aiding and abetting that offence — Whether government must prove that petitioner actively participated in underlying drug or violent crime with advance knowledge that confederate would use or carry gun during crime’s commission — Whether jury instructions given in court below were erroneous.

**Held (7-2, dissent in part):** Judgment below vacated and case remanded.

---

*R v Hutchinson*

**Supreme Court of Canada:** [2014 SCC 19](#).

**Judgment delivered:** 7 March 2014.

**Coram:** McLachlin CJ, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

**Catchwords:**



Criminal law — Offences — Sexual assault — Consent — Criminal Code, R.S.C. 1985, c C-46, ss 265(3)(c), 273.1(1) — Complainant consented to sexual activity with male partner unaware that he had sabotaged condom — Whether evidence established that there was no voluntary agreement of the complainant to engage in sexual activity in question — Whether complainant's apparent consent was vitiated by fraud.

**Held (7-0):** Appeal dismissed.

---

*The Commissioner of Police of the Metropolis v R (on the application of British Sky Broadcasting Limited)*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 17](#).

**Judgment delivered:** 12 March 2014.

**Coram:** Lady Hale, Lord Kerr, Lord Reed, Lord Hughes and Lord Toulson.

**Catchwords:**

Criminal law — Evidence — Production order — Judge, on application for production order against broadcaster, heard evidence not made available to broadcaster — Production order made — Common law principle of fairness requires party to have access to evidence on which case against him based — Whether principle applicable on application for production order — Whether order to be quashed.

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

---

## Discrimination

*Stott v Thomas Cook Tour Operators Limited*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 15](#).

**Judgment delivered:** 5 March 2014.

**Coram:** Lord Neuberger, Lady Hale, Lord Reed, Lord Hughes and Lord Toulson.

**Catchwords:**

Discrimination — International carriage of passengers — European Communities Act 1972, s 2 — Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations

(SI 2007/1895), reg 9 — Council Regulation (EC) No 2027/97 — Parliament and Council Regulation (EC) No 1107/2006, art 10, Annex II — Convention for the Unification of Certain Rules for International Carriage by Air 1999, art 29 — Claimant disabled passenger alleged failure by defendant air carrier to make reasonable efforts to meet seating needs in breach of domestic and European Union law — Claim for damages — Whether excluded by international Convention — Whether domestic and European Union legislation created exception to international Convention — Whether created private law cause of action for damages.

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

---

## Employment

*Sandifer v US Steel Corp*

**Supreme Court of the United States:** [Docket 12-417](#).

**Judgment delivered:** 27 January 2014.

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

### Catchwords:

Employment law — Wage and hour laws — Coverage and definitions — Petitioner filed suit under Fair Labor Standards Act against respondent — Petitioner sought back-pay for time spent donning and doffing various pieces of protective clothing — Whether time spent is compensable.

Words and phrases — “clothes” — “changing”.

**Held (9-0):** Judgment of Court of Appeals affirmed.

---

*Lawson v FMR LLC*

**Supreme Court of the United States:** [Docket 12-3](#).

**Judgment delivered:** 4 March 2014.

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

### Catchwords:

Employment law — Wrongful termination — Whistleblower protection — Petitioners were former employees of respondent — Petitioners alleged they “blew the whistle” on putative fraud relating to mutual funds and suffered retaliation — Respondent employer argued petitioners could state no claim because legislative protection for whistleblowers does not protect employees of private companies that contract with public companies — Argument upheld by First Circuit Court — Whether legislative protection for whistleblowers extends to employees of privately held contractors and subcontractors who perform work for public companies.

**Held (6-3):** Judgment of US Court of Appeals for the First Circuit reversed and case remanded.

---

## Environment

*R (on the application of HS2 Action Alliance Limited) v The Secretary of State for Transport and another; R (on the application of Heathrow Hub Limited and another) v Secretary of State for Transport and another; R (on the application of Hillingdon London Borough Council and others) v The Secretary of State for Transport*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 3](#).

**Judgment delivered:** 22 January 2014.

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Sumption, Lord Reed and Lord Carnwath.

### Catchwords:

Planning — Development — Environmental assessment — Major national railways project — Parliament and Council Directive 2001/42/EC, arts 1, 2(a), 3(2) — Parliament and Council Directive 2011/92/EU, art 6 — Command paper was followed by post-consultation outline of plans in statement of decisions and next steps — Intended use of hybrid parliamentary Bill with deemed planning consent to realise project — Whether command paper “plan or programme” which “set the framework for future development consent” necessitating strategic environmental assessment — Whether proposed hybrid Bill compliant with EU environmental planning formalities.

**Held (7-0):** Appeal dismissed.

---

# Equity

See also [Tort Law](#): *AI Enterprises Ltd v Bram Enterprises Ltd*

---

---

# Evidence

*R v Sekhon*

Supreme Court of Canada: [2014 SCC 15](#).

**Judgment delivered:** 20 February 2014.

**Coram:** McLachlin C.J. and LeBel, Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

**Catchwords:**

Criminal law — Evidence — Admissibility — Expert evidence — Curative proviso — Criminal Code, R.S.C. 1985, c C46, s 686(1)(b)(iii) — Accused charged with importation of cocaine and possession for purpose of trafficking — Cocaine found in concealed compartment of truck accused was driving — Accused denied knowledge of presence of cocaine — Police officer testified he had never encountered blind courier over course of his many investigations — Whether trial judge erred in admitting and relying upon this expert evidence of police officer — If so, whether curative proviso applicable.

**Held (5-2):** Appeal dismissed.

---

---

# Family Law

*In re LC (Children); In re LC (Children) No 2*

Supreme Court of the United Kingdom: [\[2014\] UKSC 1](#).

**Judgment delivered:** 15 January 2014.

**Coram:** Lady Hale, Lord Wilson, Lord Sumption, Lord Toulson and Lord Hodge.

**Catchwords:**

Children — Custody rights — Jurisdiction — Habitual residence — Child Abduction and Custody Act 1985, Sch 1, arts 3, 13 — FPR, r 16.2 — Four children born and lived in England — Parents separated and mother took children to live in Spain — Children

visited England for holiday with father and failed to return to Spain — Mother applied for immediate return of children to Spain — Whether children habitually resident in Spain — Whether children's state of mind during five-month residence in Spain relevant to determination of habitual residence — Whether judge erred in not allowing 12-year-old child to be made party to proceedings.

**Held (5-0):** Child's assertions about her state of mind during residence in Spain relevant to determine whether her residence was habitual. Conclusion that child and three younger siblings were habitually resident in Spain set aside and issue remitted. Child should have been granted party status.

---

*Lozano v Montoya Alvarez*

**Supreme Court of the United States:** [Docket 12-820](#).

**Judgment delivered:** 5 March 2014.

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

**Catchwords:**

Family Law — Child custody — International Child Abduction Remedies Act — Respondent and child left United Kingdom for New York — Petitioner did not locate child until November 2010, more than 16 months after she left United Kingdom — Petitioner filed Petition for Return of Child pursuant to Hague Convention — When a parent abducts a child and flees to another country, Hague Convention requires that country to return child immediately if other parent requests return within one year — Whether one year period is subject to equitable tolling when abducting parent conceals the child's location from the other parent.

**Held (9-0):** Equitable tolling is not available. Judgment of Court of Appeals affirmed.

---

---

## Immigration

*IA (AP) v The Secretary of State for the Home Department (Scotland)*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 6](#).

**Judgment delivered:** 29 January 2014.

**Coram:** Lady Hale, Lord Kerr, Lord Wilson, Lord Hughes and Lord Hodge.

**Catchwords:**

Immigration — Asylum — Credibility — Applicant granted refugee status in Iraq and Turkey by United Nations High Commissioner for Refugees — Applicant arrived in United Kingdom and claimed asylum — Refusal of claim by Secretary of State upheld on appeal on ground of applicant's lack of credibility — Weight to be attached in United Kingdom to grant of refugee status by Commissioner.

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

---

*R (on the application of EM (Eritrea)); R (on the application of EM (Eritrea)) (EH); R (on the application of EM (Eritrea)) (MA); R (on the application of EM (Eritrea)) (AE) v Secretary of State for the Home Department*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 12](#).

**Judgment delivered:** 19 February 2014.

**Coram:** Lord Neuberger, Lord Kerr, Lord Carnwath, Lord Toulson and Lord Hodge.

**Catchwords:**

Immigration — Asylum — Removal — Human Rights Act 1998, Sch 1, Pt 1, arts 3, 8.1 — Asylum and Immigration (Treatment of Claimants, etc) Act 2004, Sch 3, para 5(4) — Council Regulation (EC) No 343/2003, art 3 — Claimants, third country nationals having previously claimed or been granted asylum in Italy, entered United Kingdom and made fresh asylum claims — Home Secretary ordered claimants' return to Italy as receiving member state — Claimants challenged decision as posing real risk of breach of Convention rights on return by reason of claimed dysfunctional asylum system in Italy — Home Secretary certified claim as clearly unfounded — Quality of evidence required to justify non-return of asylum seekers to receiving member state — Whether necessary to show systemic deficiencies in Italy's asylum or reception procedures — Whether evidence justified non-return of claimants to Italy — Whether Home Secretary justified in certifying claims as clearly unfounded.

**Held (5-0):** Appeals allowed.

---

---

# Intellectual Property

*Medtronic In v Mirowski Family Ventures, LLC*

Supreme Court of the United States: [Docket 12-1128](#).

**Judgment delivered:** 22 January 2014.

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

## Catchwords:

Intellectual property — Patents — Infringement — Burden of proof — Declaratory judgment — Respondent owned patents and had licensing agreement with petitioner permitting petitioner to practice patents in exchange for royalties — Respondent notified petitioner of belief that respondent's products infringed licensed patents — Petitioner challenged assertion of infringement in declaratory judgment action — Whether burden of proving infringement shifts when patentee is defendant in declaratory judgment action and plaintiff, potential infringer, seeks judgment that patent was not infringed.

**Held (9-0):** Judgment of the Federal Circuit reversed and case remanded.

---

# International Law

*BG Group plc v Republic of Argentina*

Supreme Court of the United States: [Docket 12-138](#).

**Judgment delivered:** 5 March 2014.

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

## Catchwords:

International Law — Dispute Resolution — Arbitration agreements — BG Group invoked art 8 of Treaty to arbitrate claim that Argentina violated Treaty — Argentina denied violation claim and argued that arbitrators lacked jurisdiction because BG Group did not comply with local litigation requirement — Arbitrators concluded they had jurisdiction because Argentina's conduct had excused BG Group's failure to comply with requirement — On appeal, Court of Appeals found that interpretation and application of art 8 requirement were matters for courts to decide *de novo* and

that the circumstances did not excuse BG Group's failure to comply with requirement — Whether court of the United States, in reviewing an arbitration award made under Treaty, should interpret and apply the local litigation requirement *de novo*, or with deference that courts ordinarily owe arbitration decisions.

**Held (7-2):** Arbitrators' jurisdiction lawful. Judgment of the Court of Appeals for the District of Columbia Circuit reversed.

---

## Pensions

*Forde and McHugh Limited v The Commissioners for H.M. Revenue & Customs*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 14](#).

**Judgment delivered:** 26 February 2014.

**Coram:** Lord Neuberger, Lord Sumption, Lord Reed, Lord Toulson and Lord Hodge.

**Catchwords:**

Pensions — Unapproved scheme — Employer's contributions — Social Security Contributions and Benefits Act 1992, ss 3(1), 6(1) — Employer made cash and gilt transfers to fund in respect of employee — Employee had no realisable interest in fund until retirement — Whether contributions "earnings" paid to employee — Whether liable to national insurance contributions.

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

---

*Telecommunications Employees Association of Manitoba Inc v Manitoba Telecom Services Inc*

**Supreme Court of Canada:** [2014 SCC 11](#).

**Judgment delivered:** 30 January 2014.

**Coram:** McLachlin C.J. and LeBel, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

**Catchwords:**

Pensions — Pension plans — Surplus — Manitoba Telephone System Reorganization and Consequential Amendments Act, S.M. 1996, c 79, s 15 — Members of pension plan had assets and pension rights transferred to new pension plan as result of privatisation of employer — Original pension fund had actuarial



surplus of 43 million dollars — Actuarial surplus sole result of employee contributions to old plan — Employer used surplus to take contribution holiday — Legislation stated that on implementation date new plan to provide benefits equivalent in value to those which employees were entitled to under old plan — Whether employer violated legal duties.

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

---

---

## Practice and Procedure

*Daimler AG v Bauman*

**Supreme Court of the United States:** [Docket11-965](#).

**Judgment delivered:** 14 January 2014.

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

**Catchwords:**

Civil procedure — Jurisdiction — Personal jurisdiction — Respondents are residents of Argentina who filed suit in California Federal District Court against petitioner for alleged collaboration with Argentinian security forces during Argentina's "Dirty War" — Personal jurisdiction over petitioner based on petitioner subsidiary located in California — Whether District Court precluded from exercising jurisdiction over petitioner given absence of any Californian connection to atrocities, perpetrators or victims described in complaint.

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

---

*Mississippi ex rel Hood v AU Optronics Corp*

**Supreme Court of the United States:** [Docket 12-1036](#).

**Judgment delivered:** 14 January 2014.

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

**Catchwords:**

Civil procedure — Class actions — Class Action Fairness Act (CAFA) — Petitioner State sued respondent alleging violations of state law and sought restitution for LCD purchases made by itself and its

citizens — Respondents sought to remove case to federal court — Whether suit filed by State as sole plaintiff constitutes “mass action” under CAFA where it includes claim for restitution based on injuries suffered by State’s citizens.

**Held (9-0):** A State as the only named plaintiff does not constitute a mass action under the CAFA. Judgment of Court of Appeals for the Fifth Circuit reversed and case remanded.

---

*Ray Haluch Gravel Co v Central Pension Fund of Operating Engineers and Participating Employers*

**Supreme Court of the United States:** [Docket 12-992](#).

**Judgment delivered:** 15 January 2014.

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

**Catchwords:**

Civil procedure — Appeals — Final judgment rule — Respondents sued petitioner to collect benefits contributes and also sought attorney’s fees and costs — District Court issued order on merits of substantive claim and, later, separate decision on motion for fees and costs — Funds appealed both decisions — Appeal against substantive claim filed outside Federal Rules of Procedure’s 30 day deadline — Whether final decision occurred at time decision on fees and costs was made — Whether different result obtains if unresolved claim for attorney’s fees is based on contract rather than, or in addition to, statute.

**Held (9-0):** The appeal of the first decision was untimely. Judgment of Court of Appeals reversed and case remanded.

---

*Vivendi Canada Inc v Dell’Aniello*

**Supreme Court of Canada:** [2014 SCC 1](#).

**Judgment delivered:** 16 January 2014.

**Coram:** LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

**Catchwords:**

Civil procedure — Class actions — Conditions for authorization of action — Identical, similar or related questions of law or fact — Principle of proportionality — Code of Civil Procedure, R.S.Q., c C-25, arts 4.2, 1003(a) — Application for authorisation to

institute class action on behalf of all beneficiaries of private health insurance plan in order to challenge validity of unilateral amendment made to plan by employer and in order to recover damages related to that amendment — Whether claims of all members of proposed group raised common question that can serve to advance resolution of litigation — Whether commonality requirement meant that common answer necessary for all members of group — Whether motion judge could rely on principle of proportionality to refuse to authorise class action that otherwise met four criteria established by legislature.

**Held (7-0):** Appeal dismissed.

---

*Bruno Appliance and Furniture, Inc v Hryniak*  
**Supreme Court of Canada:** [2014 SCC 8](#).

**Judgment delivered:** 23 January 2014.

**Coram:** McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

**Catchwords:**

Civil Procedure — Summary Judgment — Rules of Civil Procedure, R.R.O. 1990, reg 194, rule 20 — Investor brought action in civil fraud and subsequently brought motion for summary judgment — Motion judge granted summary judgment but overruled by Court of Appeal — Elements of civil fraud — Whether motion judge erred in granting summary judgment.

**Held (7-0):** Appeal dismissed.

---

*Hryniak v Mauldin*  
**Supreme Court of Canada:** [2014 SCC 7](#).

**Judgment delivered:** 23 January 2014.

**Coram:** McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

**Catchwords:**

Civil Procedure — Summary Judgment — Rules of Civil Procedure, R.R.O. 1990, reg 194, rule 20 — Investors brought action in civil fraud and subsequently brought motion for summary judgment — Motion judge granted summary judgment — Purpose of summary judgment motions — Access to justice — Proportionality — Interpretation of recent amendments to Ontario Rules of Civil

Procedure — Trial management orders — Standard of review for summary judgment motions — Whether motion judge erred in granting summary judgment.

**Held (7-0):** Appeal dismissed.

---

*Walden v Fiore*

**Supreme Court of the United States:** [Docket 12-574](#).

**Judgment delivered:** 25 February 2014.

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

**Catchwords:**

Civil Procedure — Jurisdiction — Personal jurisdiction — Petitioner, Georgia police officer, searched respondents and seized money — Respondents alleged that after return to Nevada, petitioner helped draft false probable cause affidavit in support of money's forfeiture — Respondents filed tort suit against petitioner in Federal District Court in Nevada — Whether court in Nevada may exercise personal jurisdiction over defendant on basis that he knew his allegedly tortious conduct in Georgia would delay return of funds to plaintiffs with connections to Nevada.

**Held (9-0):** Judgment of Court of Appeals reversed.

---

*Burgin; Burgin No 2 v Dunhill (a protected party by her litigation friend Tasker) (No 2)*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 18](#).

**Judgment delivered:** 12 March 2014

**Coram:** Lady Hale, Lord Kerr, Lord Dyson, Lord Wilson and Lord Reed.

**Catchwords:**

Practice — Parties — Mental capacity — CPR r 21.10 — Legally represented claimant compromised claim for personal injuries — Consent order gave effect to compromise — Whether claimant lacked mental capacity at time of compromise — Whether valid settlement of claim — Whether consent order constituted court's approval of settlement — Whether to be set aside.

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

---

---

# Property Law

*Paddico (267) Limited v Adamson and others; Mrs Gill Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Limited*  
Supreme Court of the United Kingdom: [\[2014\] UKSC 7](#).

**Judgment delivered:** 5 February 2014.

**Coram:** Lord Neuberger, Lady Hale, Lord Sumption, Lord Toulson and Lord Hodge.

**Catchwords:**

Property law — Town or village green — Registration — Commons Registration Act 1965, s 14 — Local authority acceded to application for registration — Landowner applied to rectify register some years later — Registration found to have been erroneous — Whether just to order rectification — Relevance of lapse of time between registration and application for rectification — Whether necessary to adduce evidence of detriment or prejudice in order to show rectification unjust — Whether rectification to be ordered.

**Held (5-0):** Paddico appeal allowed. Society's appeal dismissed.

---

*Marvin M Brandt Revocable Trust v United States*  
Supreme Court of the United States: [Docket 12-1173](#).

**Judgment delivered:** 10 March 2014.

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

**Catchwords:**

Property law — Easements — Termination of easements — Congress passed *General Railroad Right-of-Way Act of 1875* providing railroad companies rights of way through public land — Right of way obtained by company in 1908 crossed land conveyed to Brandt family by 1976 land patent — Patent stated land subject to rights of railroad company but did not specify what would occur in event railroad company relinquished its rights — Whether abandoned right of way reverts to government or to private party who acquired land underlying right of way.

**Held (8-1):** Right of way was an easement that was terminated by the railroad's abandonment, leaving Brandt's land unburdened. Judgment of

the United States Court of Appeals for the Tenth Circuit reversed and case remanded.

---

---

## Securities Law

*Chadbourne & Parke LLP v Troice*

Supreme Court of the United States: [Docket 12-79](#).

**Judgment delivered:** 26 February 2014.

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

**Catchwords:**

Securities law — Liability — *Securities Litigation Uniform Standards Act of 1998* (Litigation Act) — Respondents filed civil class actions under state law contending that petitioners assisted Ponzi scheme by falsely representing that uncovered securities, purchased by respondents, were backed by covered securities — Whether Litigation Act encompasses class action in which the respondents allege that they “purchased” uncovered securities, but that petitioners falsely told victims that the uncovered securities were backed by covered securities.

**Held (7-2):** The Litigation Act does not preclude the plaintiffs’ state-law class actions. Court of Appeals’ judgment is affirmed.

---

---

## Tort Law

*Air Wisconsin Airlines Corporation v Hoepfer*

Supreme Court of the United States: [Docket 12-315](#).

**Judgment delivered:** 27 January 2014.

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

**Catchwords:**

Torts — Intentional torts — Defamation — Respondent was pilot for petitioner — Respondent responded angrily to his underperformance in training session — Officials for petitioner alerted Transportation Security Administration (TSA) that respondent may be armed and that there was concern for his mental state — TSA removed respondent from plane — Respondent

sued for defamation — Whether immunity, provided for by Aviation and Transportation Security Act, may be denied without determination that disclosure was materially false.

**Held (6-3, dissent in part):** Judgment of the Supreme Court of Colorado reversed and case remanded.

---

*Al Enterprises Ltd v Bram Enterprises Ltd*  
**Supreme Court of Canada:** [2014 SCC 12](#).

**Judgment delivered:** 31 January 2014.

**Coram:** McLachlin CJ, LeBel, Fish, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

**Catchwords:**

Torts — Intentional torts — Unlawful interference with economic relations — Scope of liability — Minority owner of apartment building and its director interfered with attempts by majority owners to sell building to third parties — Whether minority owner and its director liable in tort for unlawful interference with economic relations.

Fiduciary duty — Breach by director — Minority owner of apartment building and its director interfered with attempts by majority owners to sell building to third parties — Whether director liable for breach of fiduciary duty.

**Held (7-0):** Appeal dismissed.

---

*Cramaso LLP v Ogilvie-Grant (Earl of Seafield) and Others (Scotland)*  
**Supreme Court of the United Kingdom:** [\[2014\] UKSC 9](#).

**Judgment delivered:** 12 February 2014.

**Coram:** Lord Mance, Lord Clarke, Lord Reed, Lord Carnwath and Lord Toulson.

**Catchwords:**

Negligence — Duty of care — Misrepresentation — Change in identity of prospective contracting party — Landowners negotiated lease of grouse moor with individual — Landowners provided misleading figure as to estimated grouse population — Individual formed limited liability partnership as vehicle for lease — Whether duty of care owed to partnership — Whether partnership induced to

enter into contract by negligent misrepresentation — Whether entitled to damages.

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

---

*Lawrence and another v Coventry and others*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 13](#).

**Judgment delivered:** 26 February 2014.

**Coram:** Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption and Lord Carnwath.

**Catchwords:**

Torts law — Nuisance — Noise — Appellants lived in residential property close to motocross track — Issued proceedings against operators of motocross track for injunction — Whether respondents' activities constitute nuisance — Whether respondents have prescriptive right to carry out activities which produce noise.

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

---

---

## Trusts

*Central Bank of Nigeria v Williams*

**Supreme Court of the United Kingdom:** [\[2014\] UKSC 10](#).

**Judgment delivered:** 19 February 2014.

**Coram:** Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption and Lord Hughes.

**Catchwords:**

Trusts — Limitation of action — Fraudulent breach of trust — Dishonest assistance — Limitation Act 1980, s 21(1)(3) — Claim alleged that bank party to fraudulent breach of trust by trustee — Whether "action by a beneficiary under a trust ... in respect of ... fraudulent breach of trust to which the trustee was a party or privy" — Whether exception to time bar restricted to actions brought against trustee — Whether claim statute-barred.

**Held (3-2):** Appeal allowed.

---

---



# Wills

*Marley v Rawlings and Another*

Supreme Court of the United Kingdom: [\[2014\] UKSC 2](#).

**Judgment delivered:** 22 January 2014.

**Coram:** Lord Neuberger, Lord Clarke, Lord Sumption, Lord Carnwath and Lord Hodge.

**Catchwords:**

Wills — Rectification — Clerical error — Wills Act 1837, s 9 — Administration of Justice Act 1982, s 20(1)(a) — Husband and wife executed each other's wills by mistake — Whether husband intended to give effect to will executed by him — Whether valid "will" — Whether power to rectify will executed by husband.

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