



OVERSEAS DECISIONS BULLETIN

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

Volume 12 Number 6 (1 November 2015 – 31 December 2015)

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 and the Supreme Court of New Zealand. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

Trump International Golf Club Scotland Limited and Anor v The Scottish Ministers

Supreme Court of the United Kingdom: [\[2015\] UKSC 74](#).

Judgment delivered: 16 December 2015.

Coram: Lord Neuberger, Lord Mance, Lord Reed, Lord Carnwath and Lord Hodge.

Catchwords:

Administrative Law – Where appellant appealed Scottish Minister’s approval to grant consent to a wind farm application – Whether the decision was beyond power – Whether decision was void for uncertainty.

Held (5:0): Appeal dismissed.

Arbitration

AKN & Anor v ALC & Ors

Court of Appeal of Singapore: [\[2015\] SGCA 63](#).

Judgment delivered: 27 November 2015.

Coram: Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong J.

Catchwords:

Arbitration – Award – Recourse against award – Remission - Award set aside in part – Whether further orders should be made with respect to costs and consequential matters.

Held (3:0): No further orders made.

DirectTV Inc v Imburgia

Supreme Court of the United States: [Docket No 14-462](#).

Judgment delivered: 14 December 2015.

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

Catchwords:

Arbitration – Where service agreement contained arbitration clause which included a class action waiver – Whether class-arbitration waiver unenforceable – Whether clause governed by Federal Arbitration Act.

Held (6:3): Reversed and remanded.

Children

In the matter of J (A child)

Supreme Court of the United Kingdom: [\[2015\] UKSC 70](#).

Judgment delivered: 25 November 2015.

Coram: Lady Hale, Lord Wilson, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Children – Custody rights – Jurisdiction – Child born in United Kingdom to Moroccan parents – Child living in Morocco with mother after divorce and subject to order to reside there – Mother subsequently remarrying in the United Kingdom and bringing child from Morocco – Father unsuccessfully applying to Moroccan court for residential custody – Father six months later issuing proceedings in United Kingdom for child’s return – Whether proceedings governed by international Convention – Whether criterion of urgency satisfied – Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental

Responsibility and Measures for the Protection of Children (1996) (Cm 7727), art 11.

Held (5:0): Appeal allowed.

Company

Eclairs Group Ltd v JKX Oil & Gas plc; Glengary Overseas Limited v JFX Oil & Gas Plc

Supreme Court of United Kingdom: [\[2015\] UKSC 71](#).

Judgment delivered: 2 December 2015.

Coram: Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption and Lord Hodge.

Catchwords:

Company — Director — Shares — Restriction notices — Company's board exercising statutory power to serve notices requesting disclosure of interests in shares and arrangements between shareholders — Board believing information disclosed to be materially inaccurate and imposing restrictions on shares pursuant to articles of association — Whether restrictions on shares imposed for improper purpose — Whether restrictions to be set aside — *Companies Act 2006*, s 793.

Held (5:0): Appeal allowed.

Competition

Societe Cooperative de Production SeaFrance SA v The Competition and Markets Authority and Anor

Supreme Court of United Kingdom: [\[2015\] UKSC 75](#).

Judgment delivered: 16 December 2015.

Coram: Lord Neuberger, Lord Clarke, Lord Sumption, Lord Reed and Lord Hodge.

Catchwords:

Competition – Restriction or distortion of competition – Relevant merger situation – Company operating ferry service between Calais and Dover going into liquidation in France and ordered to make employees redundant – Ferry service ceasing – Liquidator selling assets including ships to company operating Channel Tunnel between Calais and Dover – Ferry service resuming operated by Channel Tunnel company but ships operated

and crewed by another company – Whether relevant merger situation created – Whether competition authority having jurisdiction to prohibit Channel Tunnel company operating any ferry service from Dover using the passenger ships acquired from liquidated company – *Enterprise Act 2002*, s 23(2).

Held (5:0): Appeal allowed.

Constitutional Law

Saskatchewan (Attorney General) v Lemare Lake Logging Ltd
Supreme Court of Canada: [2015 SCC 53](#).

Judgment delivered: 13 November 2015.

Coram: Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Cote JJ.

Catchwords:

Constitutional law — Cooperative federalism — Division of powers — Bankruptcy and insolvency — Property and Civil Rights — Receiver — Federal paramountcy — Federal legislation authorizes court, upon application of secured creditor, to appoint receiver with power to act nationally — Provincial legislation imposes other procedural and substantive requirements before commencing an action with respect to farm land — Whether provincial legislation constitutionally inoperative when application made to appoint national receiver under federal legislation, by reason of doctrine of federal paramountcy — *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 , s. 243 — *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1, ss. 9 to 22.

Held (6:1): Appeal allowed.

Alberta (Attorney General) v Moloney
Supreme Court of Canada: [2015 SCC 51](#).

Judgment delivered: 13 November 2015.

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

Catchwords:

Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Property and civil rights — Judgment debt owed to province constituted claim provable in debtor's bankruptcy — Debtor obtained absolute discharge in bankruptcy — Federal legislation governing bankruptcy providing for debtor's release from all claims

provable in bankruptcy upon discharge — Whether provincial legislation providing for continuing suspension of debtor's driver's licence and motor vehicle permits until payment of judgment debt constitutionally inoperative by reason of doctrine of federal paramountcy — Test for determining whether operational conflict exists — Whether federal and provincial legislation can operate side by side without conflict — Whether operation of provincial law frustrates purpose of federal law — *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 , s. 178(2) — *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 102.

Held (9:0): Appeal dismissed.

407 ETR Concession Co. v Canada (Superintendent of Bankruptcy)
Supreme Court of Canada: [2015 SCC 52](#).

Judgment delivered: 13 November 2015.

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

Catchwords:

Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Property and civil rights — Highway toll debt owed to creditor constituted claim provable in debtor's bankruptcy — Debtor obtained absolute discharge in bankruptcy — Federal legislation governing bankruptcy providing for debtor's release from all claims provable in bankruptcy upon discharge — Whether provincial legislation providing for continuing suspension of debtor's driver's permit until payment of toll debt constitutionally inoperative by reason of doctrine of federal paramountcy — Test for determining whether operational conflict exists — Whether federal and provincial legislation can operate side by side without conflict — Whether operation of provincial law frustrates purpose of federal law — *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 , s. 178(2) — *Highway 407 Act*, 1998, S.O. 1998, c. 28, ss. 22(1), 22(4).

Held (9:0): Appeal dismissed.

R v Moriarity

Supreme Court of Canada: [2015 SCC 55](#).

Judgment delivered: 19 November 2015.

Coram: McLachlin, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Cote JJ.

Catchwords:

Constitutional law — Charter of Rights — Fundamental justice — Overbreadth — Armed forces — Military offences — National Defence Act permitting federal offences to be prosecuted within military justice system in relation to everyone subject to Code of Service Discipline regardless of circumstances in which offences were committed — Whether provisions of National Defence Act at issue broader than necessary to achieve their purpose in violation of s. 7 of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter — *National Defence Act*, R.S.C. 1985, c. N-5, ss. 130(1) (a), 117 (f).

Held (9:0): Appeal dismissed.

Caron v Alberta

Supreme Court of Canada: [2015 SCC 56](#).

Judgment delivered: 20 November 2015.

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

Catchwords:

Constitutional law — Language rights — Alberta laws and regulations — Alberta Languages Act provides provincial laws and regulations be enacted, printed and published in English only — Whether Languages Act is ultra vires or inoperative insofar as it abrogates constitutional duty owed by Alberta to enact, print and publish its laws and regulations in both English and French — Meaning of “legal rights” in 1867 Address to Queen concerning Rupert’s Land and North-Western Territory — *Languages Act*, R.S.A. 2000, c. L-6 — Rupert’s Land and North-Western Territory Order (1870) (U.K.) (reprinted in R.S.C. 1985, App. II, No. 9), Schs. A, B.

Provincial offences — Highways — Traffic offences — Alberta law and regulation under which accused were charged enacted, printed and published in English only — Whether Traffic Safety Act and other laws and regulations that have not been enacted, printed and published in both English and French unconstitutional — *Languages Act*, R.S.A. 2000, c. L-6 — *Traffic Safety Act*, R.S.A. 2000, c. T-6 — Use of Highway and Rules of the Road Regulation, Alta. Reg. 304/2002.

Held (6:3): Appeals dismissed.

R v Appulonappa

Supreme Court of Canada: [2015 SCC 59](#).

Judgment delivered: 27 November 2015.

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

Catchwords:

Constitutional law — Charter of Rights — Right to liberty — Fundamental justice — Overbreadth — People smuggling — Migrants seeking refugee status in Canada charged with offence of organizing, inducing, aiding or abetting persons coming into Canada without valid documentation — Trial judge finding that offence provision overbroad and therefore unconstitutional because it criminalizes not only organized people smuggling, but helping close family members to come to Canada and humanitarian assistance to refugees — Whether offence provision infringes s. 7 of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter — If no, what is appropriate remedy for constitutional infirmity — Immigration and Refugee Protection Act, S.C. 2001, c. 27 , s. 117.

Immigration law — Offences — People smuggling — Migrants seeking refugee status in Canada charged with offence of organizing, inducing, adding or abetting persons coming into Canada without valid documentation — Whether offence provision unconstitutional — Immigration and Refugee Protection Act, S.C. 2001, c. 27 , s. 117.

Held (7:0): Appeals allowed.

Criminal Law

Wilson v The Queen

Supreme Court of the United Kingdom: [\[2015\] NZSC 189](#).

Judgment delivered: 14 December 2015.

Coram: Elias CJ, William Young, Glazebrook, Arnold and Blanchard JJ.

Catchwords:

Criminal law – Police misconduct – Where there was police misconduct in respect of an undercover investigation – Where appellant was prosecuted and convicted following a plea of guilty – Whether police conduct amounted to an abuse of process – Whether conviction and sentence should be set aside.

Held (5:0): Appeal allowed.

R v Harvey

Supreme Court of the United Kingdom: [\[2015\] UKSC 73](#).

Judgment delivered: 16 December 2015.

Coram: Lord Neuberger, Lord Mance, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Criminal law – Proceeds of Crime – Whether VAT should be included in an aggregate turnover for the relevant period for the purpose of a confiscation order.

Held (3:2): Appeal allowed.

Macklin v Her Majesty's Advocate (Scotland)

Supreme Court of the United Kingdom: [\[2015\] UKSC 77](#).

Judgment delivered: 16 December 2015.

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

Catchwords:

Criminal law – Evidence – Non-disclosure by the Crown – Where the Crown failed disclose evidence – Where Crown relied on dock identification evidence – Whether judge misdirected jury with respect of the dangers of dock identification evidence – Whether Crown acted in manner incompatible with Art 6(1) of the European Convention on Human Rights.

Held (7:0): Appeal dismissed.

R v Lacasse

Supreme Court of Canada: [2015 SCC 64](#).

Judgment delivered: 17 December 2015.

Coram: McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon and Cote JJ.

Catchwords:

Criminal law — Sentencing — Appeals — Powers of Court of Appeal — Court of Appeal reducing sentence of imprisonment from six and a half to four years — Whether Court of Appeal erred in substituting sentence it considered appropriate for one imposed by trial judge, primarily on basis that trial judge had deviated from sentencing range established by courts for impaired driving offences — *Criminal Code*, R.S.C. 1985, c. C-46 , s. 687.

Criminal law — Sentencing — Considerations — Impaired driving causing death — Whether it was open to trial judge to consider frequency of impaired driving in region where offence was committed as relevant sentencing factor — Whether length and other terms of driving prohibition imposed by trial judge were appropriate — *Criminal Code*, R.S.C. 1985, c. C-46 , ss. 259(2) (a.1), 718 to 718.2.

Held (5:2): Appeal allowed.

R v Riseberry

Supreme Court of Canada: [2015 SCC 65](#).

Judgment delivered: 18 December 2015.

Coram: Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Cote and Brown JJ.

Catchwords:

Criminal law — Offences — Elements of offence — Cheating at play — Fraud — Accused attempted to rig horse races by drugging horses — Whether horse race constituted a game for purposes of offence of cheating at play — Whether accused's conduct constituted cheating at play or fraud — *Criminal Code*, R.S.C. 1985, c. C-46 , ss. 197(1) "game", 209, 380(1).

Held (7:0): Appeal dismissed.

Equity

Bank of Cyprus UK Limited v Menelaou

Supreme Court of United Kingdom: [\[2015\] UKSC 66](#).

Judgment delivered: 4 November 2015.

Coram: Lord Neuberger, Lord Kerr, Lord Clarke, Lord Wilson and Lord Carnwath.

Catchwords:

Equity - Restitution — Unjust enrichment — Subrogation — Bank releasing charges over claimant's parents' property in exchange for new charge over property purchased for claimant with proceeds of sale of other property — Claimant unaware of arrangement and purported charge invalid — Bank seeking equitable interest in new property on ground that claimant otherwise unjustly enriched at its expense — Whether bank entitled to claim subrogation to unpaid vendor's lien as means of obtaining restitution.

Held (4:1): Appeal dismissed.

Elections

Kham and Ors v Electoral Commission and Anor
Constitutional Court of South Africa: [\[2015\] ZACC 37](#).

Judgment delivered: 30 November 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Matojane JA, Nkabinde J, Van der Westhuizen J, Wallis AJ, Zondo J.

Catchwords:

Election - Municipal elections — Whether free and fair — obligations of the Electoral Commission — Duty to register voters in correct voting district — duty to show addresses on voters roll — Adherence to election timetable — Non-compliance resulting in by-elections not being free and fair — just and equitable relief — Outcome of by-elections set aside — Fresh by-elections ordered — Procedure to be followed in accordance with *Local Government: Municipal Structures Act* 117 of 1998.

Held (4:3): Appeal dismissed.

Extradition

MM v Minister for Justice Canada on behalf of the United States of America

Supreme Court of Canada: [2015 SCC 62](#).

Judgment delivered: 11 December 2015.

Coram: McLachlin CJ, Abella, Cromwell, Moldaver, Karakatsanis, Wagner and Cote.

Catchwords:

Extradition — Committal hearings — Evidence — Role of extradition judge — Test for committal — Principle of double criminality — Mother of three children facing child abduction charges in U.S. — Whether extradition judge applied correct principles in relation to double criminality and to own role in assessing reliability and sufficiency of evidence — Whether extradition judge should consider evidence about possible defences and other exculpatory circumstances in deciding whether to commit for extradition — Whether evidence justified mother's committal — *Extradition Act*, S.C. 1999, c. 18, ss. 3(1), 29(1) (a).

Extradition — Surrender order — Judicial review — Extradition Act providing that Minister of Justice shall refuse to order surrender if unjust or oppressive having regard to all relevant circumstances — Minister ordering mother's surrender for extradition to U.S. to face child abduction charges — Whether Minister gave appropriate consideration to defence of necessity available under Canadian law but not available under law of requesting state — Whether Minister gave appropriate consideration to effect of extradition on best interests of children — Whether Minister's decision to surrender was reasonable — *Extradition Act*, S.C. 1999, c. 18, s. 44(1) (a).

Held (4:3): Appeal dismissed.

Family Law

In the matter of J (A child)

Supreme Court of the United Kingdom: [\[2015\] UKSC 70](#).

Judgment delivered: 25 November 2015.

Coram: Lady Hale, Lord Wilson, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Family Law - Children — Custody rights — Jurisdiction — Child born in United Kingdom to Moroccan parents — Child living in Morocco with mother after divorce and subject to order to reside there — Mother subsequently remarrying in the United Kingdom and bringing child from Morocco — Father unsuccessfully applying to Moroccan court for residential custody — Father six months later issuing proceedings in United Kingdom for child's return — Whether proceedings governed by international Convention — Whether criterion of urgency satisfied — Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996) (Cm 7727), art 11.

Held (5:0): Appeal allowed.

Foreign Sovereign Immunity

OBB Personenverkehr AG v Sachs

Supreme Court of the United States: [Docket No 141067](#).

Judgment delivered: 1 December 2015.

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

Catchwords:

Foreign sovereign immunity – Where respondent brought an action against the Austrian national railroad for injuries she suffered whilst attempting to board a train in Austria – Where activities fall within the “commercial activities” exception to the Foreign Sovereign Immunities Act.

Held (9:0): Case reversed.

Human Rights

Keyu v Secretary of State for Foreign and Commonwealth Affairs and Anor

Supreme Court of the United Kingdom: [\[2015\] UKSC 69](#).

Judgment delivered: 25 November 2015.

Catchwords:

Human Rights — Life — State’s duty to investigate death — Claimants requesting public inquiry into civilian deaths in British protected state caused by British army patrol in 1948 — Secretaries of State exercising discretion not to hold inquiry — Whether Secretaries of State under duty to hold inquiry — Whether discretion exercised reasonably — *Human Rights Act 1998*, s 6, Sch 1, Pt 1, art 2 — *Inquiries Act 2005*, s 1.

Held (4:1): Appeal dismissed.

Regina (Yam) v Central Criminal Court

Supreme Court of the United Kingdom: [\[2015\] UKSC 76](#).

Judgment delivered: 16 December 2015.

Coram: Lord Neuberger, Lady Hale, Lord Mance, Lord Clarke, Lord Sumption, Lord Reed and Lord Toulson.

Catchwords:

Human Rights – Access to courts – European Court of Human Rights – Order made by Crown Court that evidence heard in camera not to be published – Convicted person applying to European Court of Human Rights alleging that right to fair trial infringed – Judge refusing to vary order to permit disclosure to European court – Whether decision hindering effective exercise of convicted person’s right of application to European court – Whether for domestic or European court to order disclosure if appropriate

- Convention for the Protection of Human Rights and Fundamental Freedoms (1953), arts 34, 38.

Held (7:0): Appeal dismissed.

Immigration Law

R (on the application of Ali) v Secretary of State for the Home Department; R (on the application of Bibi) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2015\] UKSC 68](#).

Coram: Lord Neuberger, Lady Hale, Lord Wilson, Lord Hughes and Lord Hodge.

Catchwords:

Immigration Law – Whether an amendment to the *Immigration Rules* requiring a foreign spouse or partner of a British citizen to pass a test of competence in the English language before continuing to live in Britain was valid – Whether rule breached arts 8 and 14 of the European Convention on Human Rights.

Held (5:0): Appeals dismissed but further submissions on the practical implication invited.

B010 v Canada (Citizenship and Immigration)

Supreme Court of Canada: [2015 SCC 58](#).

Judgment delivered: 27 November 2015.

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

Catchwords:

Immigration law — Inadmissibility and removal — Organized criminality — People smuggling — Migrants aided illegal entry of asylum-seekers to Canada in course of collective flight to safety — Migrants seeking refugee status in Canada but found inadmissible based on grounds of organized criminal people smuggling — What conduct makes a person inadmissible to apply for refugee status for having engaged in people smuggling? — Whether people smuggling engaged in, in context of transnational crime, confined to activities conducted, directly or indirectly, for financial or other material benefit — What limits may be inferred from provision rendering persons inadmissible on grounds of organized criminality? — What is effect of requirement that people smuggling be in context of transnational crime? — Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 37(1) (b).

Held (7:0): Appeals allowed.

Kanthasamy v Minister of Citizenship and Immigration
Supreme Court of Canada: [2015 SCC 61](#).

Judgment delivered: 10 December 2015.

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

Catchwords:

Immigration — Judicial review — Refugee claim — Humanitarian and compassionate considerations — Best interests of child — 17-year old refugee claimant from Sri Lanka seeking humanitarian and compassionate exemption to apply for permanent residence from within Canada — Whether decision to deny relief was reasonable exercise of humanitarian and compassionate discretion — Proper role of Ministerial Guidelines used by immigration officers in determining whether humanitarian and compassionate considerations warrant relief — *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 , s. 25(1).

Held (5:2): Appeal allowed.

Intellectual Property

Canadian Broadcasting Corp v SORAC 2003 Inc.,
Supreme Court of Canada: [2015 SCC 57](#).

Judgment delivered: 26 November 2015.

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

Catchwords:

Intellectual Property — Copyright — Licences — Collective societies — SODRAC administering reproduction rights as collective society — Application by SODRAC to set terms and conditions of licence for reproduction by CBC of musical works in SODRAC's repertoire from 2008-2012 — CBC making ephemeral synchronization copies, including musical works, as producer and ephemeral broadcast-incidental copies, including musical works, as broadcaster — Synchronization copies made during production subject to licence — Whether broadcast-incidental copies engage reproduction right — If so, whether licence for broadcast-incidental copies should be implied in synchronization licences — If reproduction licence required for broadcast-incidental copies,

whether Board erred in valuation of licence — Whether Board applied principles of technological neutrality and balance properly — *Copyright Act*, R.S.C. 1985, c. C-42 , s. 3(1) (d).

Intellectual Property — Copyright — Interim licences — Collective societies — Board decision setting terms and conditions of licence released after expiry of licence period — Board setting interim licence based on status quo — 2008-2012 licence selected as status quo — Whether Board erred in setting terms of interim licence — *Copyright Act*, R.S.C. 1985, c. C-42 , s. 66.51 .

Administrative law — Judicial review — Standard of review — Copyright Board — Appropriate standard of review — Whether specific standard of review should be ascribed to each issue arising in decision under review.

Held (7:2): Appeal allowed.

Judiciary

Shapiro v McManus

Supreme Court of the United States: [Docket No 14-990](#).

Judgment delivered: 8 December 2015.

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

Catchwords:

Judiciary – Where 28 U.S.C. 2284 states that a three-judge district court is required for all actions challenging apportionment of congressional districts – Whether there is judicial discretion.

Held (9:0): Case reversed.

Landlord and Tenant

Marks and Spencer plc v BNP Paribas Securities Trust Co (Jersey) Ltd & Anor

Supreme Court of the United Kingdom: [\[2015\] UKSC 72](#).

Judgment delivered: 2 December 2015.

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

Catchwords:

Landlord and Tenant — Lease — Construction — Lease requiring rent to be paid quarterly in advance — Break clause allowing tenant to terminate lease on specified date — Tenant exercising break clause and claiming repayment of rent paid for period after termination of lease — Whether rent paid in advance apportionable in time at common law or under statute — Whether term to be implied requiring apportionment — *Apportionment Act 1870, s 2*.

Held (5:0): Appeal dismissed.

Police

Regina (Roberts) v Commissioner of Police of the Metropolis and Anor (Liberty intervening)

Supreme Court of the United Kingdom: [\[2015\] UKSC 79](#).

Judgment delivered: 17 December 2015.

Coram: Lady Hale, Lord Clarke, Lord Reed, Lord Toulson and Lord Hodge.

Catchwords:

Police — Powers — Stop and search — Senior police officer authorising officers to stop and search for offensive weapons even where no grounds for suspicion — Authorisation covering limited area and lasting for 17 hours — Claimant stopped and searched — Whether stop and search power “in accordance with the law” — *Criminal Justice and Public Order Act 1994, s 60* (as amended by *Knives Act 1997, s 8, Crime and Disorder Act 1998, s 25(2)* and *Serious Crime Act 2007, s 87(1)*) — *Human Rights Act 1998, Sch 1, Pt I, art 8*.

Held (5:0): Appeal dismissed.

Procedure

Baloyi v Member of the Executive Committee for Health and Social Development, Limpopo and Ors

Constitutional Court of South Africa: [\[2015\] ZACC 39](#).

Judgment delivered: 10 December 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlange J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ.

Catchwords:

Procedure – Where record of arbitration was lost – Whether decision of the arbitrator can stand.

Held (9:2): Condonation and leave to appeal granted.

Thevarajah v Riordan & Ors

Supreme Court of the United Kingdom: [\[2015\] UKSC 78](#).

Judgment delivered: 16 December 2015.

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

Catchwords:

Procedure – Freezing orders – “Unless” clauses – Where respondent obtained freezing order requiring information and documents relating to assets of appellants – Where freezing order contained an “unless” clause debarring appellants from defending claim unless there was compliance with freezing order – Where appellants failed to comply – Whether appellants debarred from defending action.

Held (5:0): Appeal dismissed.

Property

Mathale v Linda and Anor

Constitutional Court of South Africa: [\[2015\] ZACC 38](#).

Judgment delivered: 2 December 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Matojane AJ, Nkabinde J, Van der Westhuizen J, Wallis AJ, Zondo J.

Catchwords:

Property – Eviction – Execution orders appealable – Final in effect – Interests of justice – Irreparable harm – Municipalities’ housing obligations.

Held (11:0): Appeal upheld.

Securities

Canadian Imperial Bank of Commerce v Green

Supreme Court of Canada: [2015 SCC 60](#).

Judgment delivered: 4 December 2015.

Coram: McLachlin CJ, Rothstein, Cromwell, Moldaver, Karakatsanis, Gascon and Cote.

Catchwords:

Securities — Class actions — Limitation of actions — Statutory action for secondary market misrepresentation — Suspension of limitation period — Plaintiffs in three class proceedings claiming damages under common law tort of negligent misrepresentation and under statutory cause of action for secondary market misrepresentation in s. 138.3 of Securities Act — Leave required to commence statutory action under s. 138.8 of Securities Act — Limitation period for statutory action expiring prior to leave being granted — Whether s. 28 of Class Proceedings Act, 1992, operates to suspend limitation period applicable to statutory action before leave to commence statutory action is granted — Whether statutory action time-barred — If yes, whether statutory action can be saved by order granting leave nunc pro tunc or doctrine of special circumstances — Whether threshold of reasonable possibility of success applies for leave to commence statutory action under s. 138.3 of Securities Act — Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 28 — Securities Act, R.S.O. 1990, c. S.5, ss. 138.3, 138.8, 138.14.

Civil procedure — Class actions — Preferable procedure — Plaintiffs in three class proceedings claiming damages under common law tort of negligent misrepresentation and under statutory cause of action for secondary market misrepresentation — Whether Court of Appeal erred in holding that five of seven common issues relating to common law misrepresentation claim should be certified.

Held (7:0):
