



OVERSEAS DECISIONS BULLETIN

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

Volume 11 Number 5 (1 October 2014 — 30 November 2014)

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.

Since Volume 11 Number 5, admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore have been included.

Administrative Law

Nxumalo v President of the Republic of South Africa and Others
Constitutional Court of South Africa: [\[2014\] ZACC 28](#).

Judgment delivered: 2 October 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J, Van der Westhuizen J and Zondo J.

Catchwords:

Administrative law — Commission on Traditional Disputes and Claims (Commission) — *Traditional Leadership and Governance Framework Act 41 of 2003* (“TLGF Act”) — Appellant lodged claim with Commission seeking restoration of Kingship of amaShangana and recognition of his title as King — Commission made decision not to restore Kingship and dismissed appellant’s claim as King — TLGF Act empowered Commission to make final decision which President was required to implement — TLGF Act amended after Commission made finding — Amendment created new Commission only authorised to make recommendations to President — President purported to make final decision under amended TLGF Act not to recognise Kingship — Whether President acted outside of power by making decision in terms of amended TLGF Act instead of original TLGF Act.

Held (11—0): Appeal dismissed.

Lord Chancellor and Secretary of State for Justice and others (No 2) (Attorney General of Jersey and another intervening) v Regina (Barclay and another)

Supreme Court of the United Kingdom: [\[2014\] UKSC 54](#).

Judgment delivered: 22 October 2014.

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

Catchwords:

Administrative law — Judicial review — Court's jurisdiction — Approval of Channel Islands legislation — *Human Rights Act 1998*, Sch 1, Pt I, art 6.1 — Proposed Sark Law provided for appointment, removal and remuneration of chief judge — Secretary of State advised Privy Council committee that proposed legislation was compatible with Convention rights — Committee decided to advise that Royal Assent be given to proposed Law — Queen in Council gave Royal Assent by Order in Council — Claimant sought judicial review of decision to advise that Royal Assent be given — Courts in Bailiwick of Guernsey jurisdiction were to entertain challenge to compatibility of proposed Laws with Convention rights — Whether English High Court has jurisdiction to entertain claim — Whether appropriate for English court to entertain claim.

Held (5—0): Appeal allowed.

Constitutional Law

See also [Criminal Law](#): *R v Conception*

See also [International Law](#): *Kazemi Estate v Islamic Republic of Iran*

Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)

Supreme Court of Canada: [2014 SCC 59](#).

Judgment delivered: 2 October 2014.

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

Catchwords:

Constitutional law — Courts — Access to justice — Court hearing fees — *Constitution Act 1867*, ss 92(14) and 96 — *Court Rules Act RSBC 1996*, c 80 — *Supreme Court Rules*, BC Reg 221/90, as amended by BC Reg 10/96 and BC Reg 75/98 — *Supreme Court Civil Rules*, BC Reg 168/2009, r 20-5(1) — Province enacted regulations establishing graduated court hearing fees — Regulations contained exemption provision from fees for persons “indigent” or “impoverished” — Whether province can establish hearing fee scheme under its administration of justice power pursuant to s 92(14) of *Constitution Act* — Whether regulations imposing hearing fees deny some people access to courts infringing core jurisdiction of s 96 superior courts — Whether provincial hearing fee scheme constitutionally valid.

Held (6—1): Appeal allowed and cross-appeal dismissed.

Stopforth Swanepoel & Brewis Incorporated v Royal Anthem Investments 129 (Pty) Ltd and Others

Constitutional Court of South Africa: [\[2014\] ZACC 26](#).

Judgment delivered: 2 October 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J, Van der Westhuizen J and Zondo J.

Catchwords:

Constitutional law — *Constitution*, s 34 — Right to access to courts — Right to fair public hearing — Notice and an opportunity to be heard — Second and third respondents sought to purchase property from first respondent — Appellant attorneys acted as conveyancers for transaction — Second and third respondents sued first respondent and appellant to recover funds paid to first respondent and held in trust by appellant — Second and third respondents withdrew action against appellant and proceeded against first respondent only — First respondent ordered to repay funds plus interest — First respondent then appealed to Supreme Court of Appeal — Appellant was not cited as party on appeal but Supreme Court of Appeal ordered appellant to repay funds plus interest — Appellant contended that its right to access courts had been violated — Whether procedural and substantive fairness satisfied.

Held (11—0): Appeal allowed.

Lim Meng Suang and another v Attorney—General and another appeal and another matter

Court of Appeal of Singapore: [\[2014\] SGCA 53](#).

Judgment delivered: 28 October 2014.

Coram: Phang JA, Ang Woo Bih Li JJ.

Catchwords:

Constitutional law — Equal protection of the law — Equality before the law — *Constitution of the Republic of Singapore* ("Constitution"), art 12(1) — *Penal Code*, s 377A — Section 377A criminalises homosexual sexual activity — Appellant Tan arrested for engaging in oral sex with male partner in cubicle of public toilet — Tan filed application to challenge constitutionality of s 377A — Appellants Lim and Chee filed application to challenge constitutionality of s 377A — Whether s 377A of Code is inconsistent with art 12(1) of Constitution.

Constitutional law — Fundamental liberties — Right to life and personal liberty — *Constitution*, art 9(1) — Whether s 377A of Code is inconsistent with art 9(1) of Constitution.

Held (3—0): Appeals dismissed.

National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another
Constitutional Court of South Africa: [\[2014\] ZACC 30](#).

Judgment delivered: 30 October 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J.

Catchwords:

Constitutional law — Constitution, s 205(3) — South African Police Service ("SAPS") — Duty to investigate crime — Respondents believed SAPS had duty to investigate alleged torture of members of the Movement for Democratic Change by Zimbabwean officials in Zimbabwe under *Implementation of the Rome Statute of the International Criminal Court Act* ("ICC Act") — SAPS did not investigate — Whether SAPS is obligated under domestic and international law to investigate crimes against humanity of torture allegedly committed in Zimbabwe — Whether need for accused's actual presence in South Africa before investigation can commence.

Constitutional law — Constitution, ss 231(4) and 232 — Domestication of international agreements — Application of customary international law — Whether principles of state sovereignty and complementarity exclude investigation by SAPS.

Held (10—0): Appeal dismissed.

Wakeling v United States of America
Supreme Court of Canada: [2014 SCC 72](#).

Judgment delivered: 14 November 2014.

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

Catchwords:

Constitutional law — Charter of Rights — Search and seizure — Fundamental justice — Interception of communications — *Criminal Code, RSC 1985, c C-46, s 193(2) (e)* — Exemption from offence of disclosing intercepted private communication without consent — Provision of Criminal Code exempted disclosure of lawfully intercepted private communication to person or authority with responsibility in foreign state for investigation or prosecution of offences if disclosure was intended to be in interests of administration of justice in Canada or elsewhere — Whether provision unjustifiably infringes ss 7 or 8 of *Canadian Charter of Rights and Freedoms*.

Criminal Law — Interception of communications — Disclosure of information — *Canadian Charter of Rights and Freedoms, ss 7, 8* — *Criminal Code, RSC 1985, c C-46, s 193(2) (e)* — Exemption from offence — Whether exemption provision which authorises sharing of lawfully obtained wiretap information between Canadian and foreign law enforcement agencies is constitutional.

Held (4—3): Appeal dismissed.

Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others

Constitutional Court of South Africa: [\[2014\] ZACC 32](#).

Judgment delivered: 27 November 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J, Van der Westhuizen J and Zondo J.

Catchwords:

Constitutional law — Inconsistency — *South African Police Service Amendment Act 10 of 2012* (“SAPS Amendment Act”) — South Africa’s anti—corruption unit, Directorate for Priority Crime Investigations (“DPCI”), established in 2008 — Legislation establishing DPCI had constitutional defects — SAPS Amendment Act enacted to cure defects — High Court found some provisions remained inconsistent with constitutional obligation

to create structurally and operationally independent anti—corruption unit — High Court dismissed Helen Suzman Foundation’s (“HSF”) application to have further provisions declared unconstitutional — High Court also struck out additional evidence sought to be led by Glenister and dismissed his application to declare entire legislative scheme unconstitutional — Whether SAPS Amendment Act cures constitutional defects.

Held (by judgment of majority): Glenister’s application for leave to appeal dismissed, HSF’s application for leave to appeal granted but appeal dismissed and substantial part of High Court’s order confirmed.

Consumer Law

Paragon Personal Finance Limited v Pelvin

Supreme Court of the United Kingdom: [\[2014\] UKSC 61](#).

Judgment delivered: 12 November 2014.

Coram: Lady Hale, Lord Clarke, Lord Sumption, Lord Carnwath and Lord Hodge.

Catchwords:

Consumer law — Fair trading — Consumer credit — Agreement — *Consumer Credit Act 1974*, s 140A(1)(c) — Borrower used broker to enter into credit agreement with lender and took out associated payment protection insurance — Neither broker nor lender disclosed to borrower that commission on payment protection insurance exceeded actual premium — Broker failed properly to assess suitability of insurance product for borrower — Whether failure to disclose amount of commission rendered lender’s relationship with borrower unfair — Whether broker’s failure to conduct proper suitability assessment amounted to conduct “on behalf of” lender.

Held (5—0): Appeal dismissed.

Contract Law

Country Cloud Trading CC v MEC, Department of Infrastructure Development, Gauteng

Constitutional Court of South Africa: [\[2014\] ZACC 28](#).

Judgment delivered: 3 October 2014.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Majiedt AJ, Van der Westhuizen J and Zondo J

Catchwords:

Contracts — Delict — Wrongfulness — Pure economic loss — intentional interference with contractual relations — Respondent awarded joint venture of four contractors a tender to build clinic in Soweto — Before completion, three contractors withdrew — Respondent awarded completion contract to remaining contractor without putting contract out to tender — Remaining contractor sought loan from appellant — Respondent cancelled completion contract before payment was made — Contractor went into liquidation rendering it unable to repay debt to appellant — Appellant claimed delictual damages from respondent — Whether cancellation of contract was wrongful — Whether recognising appellant's claim was necessary to promote state accountability.

Held (10—0): Appeal dismissed.

Vikram Kumar & Ors v Station Properties Ltd (in rec & liq)
Supreme Court of New Zealand: [\[2014\] NZSC 146](#).

Judgment delivered: 15 October 2014.

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

Catchwords:

Contracts — Agreements — Appellant investors invested in apartment complex developed by respondent — At respondent's request, appellants entered into agreements with respondent for purchase of individual units in development — Appellants understood that they would not be required to purchase units but were simply underwriters facilitating construction of development which would be on—sold — Appellants were also to receive one per cent of purchase price as signing incentive — Respondent was unable to find purchaser for development and looked to appellants to settle purchase agreements — Appellants did not receive signing fee — Appellants refused to settle — Whether respondent entitled to cancel agreements and sue for damages.

Held (4—1): Appeal allowed.

Telchadder v Wickland Holdings Limited
Supreme Court of the United Kingdom: [\[2014\] UKSC 57](#).

Judgment delivered: 5 November 2014.

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

Catchwords:

Contracts — Agreement — Licence to station mobile home on site — Termination — *Mobile Homes Act 1983*, s 2(1), Sch 1, Pt 1, ch 2, para 4 —

Express term in agreement not to cause nuisance to other residents — Defendant occupier engaging in anti-social behaviour on site — Owner giving defendant written notice to stop acting in breach of term or face eviction proceedings — Defendant complying for three years before committing further breach — Owner issuing claim for possession — Statutory requirement for proof of occupier having failed to comply with notice to “remedy” breach of agreement “within a reasonable time” — Whether defendant having remedied breach — Whether issue of further notice and further breach within reasonable term prerequisite of possession proceeding.

Held (5—0): Appeal allowed.

Bhasin v Hrynew

Supreme Court of Canada: [2014 SCC 71](#).

Judgment delivered: 13 November 2014.

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

Catchwords:

Contracts — Breach — Performance — Non-renewal provision — Duty of good faith — Duty of honest performance — Agreement governing relationship between company and retail dealer provided for automatic contract renewal at end of three-year term unless parties gave six months’ written notice to contrary — Company decided not to renew dealership agreement — Retail dealer lost value of business and majority of sales agents solicited by competitor agency — Retail dealer sued company and competitor agency — Whether common law requires new general duty of honesty in contractual performance — Whether company breached that duty.

Damages — Quantum — Contracts — Breach — Performance — Non-renewal provision — Duty of good faith — Duty of honest performance — What is appropriate measure of damages.

Held (7—0): Appeal with respect to C allowed and appeal with respect to H dismissed.

Criminal Law

See also [Constitutional Law](#): *Wakeling v United States of America*

R v Conception

Supreme Court of Canada: [2014 SCC 60](#).

Judgment delivered: 3 October 2014.

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

Catchwords:

Criminal law — Mental disorder — Dispositions by a court or review board — Treatment disposition — *Criminal Code, RSC 1985, c C-46, ss 672.58, 672.62(1)(a)* — Accused declared unfit to stand trial — Hearing judge issued a “forthwith” treatment order without consent of treating hospital — Whether a court may make a disposition order directing that treatment begin immediately even though the hospital or treating physician does not consent to that disposition — Whether the consent requirement relates to the timing of carrying out the order or just to the treatment itself.

Constitutional law — Charter of Rights and Freedoms — Right to life, liberty and security of the person — Criminal law — Mental disorder — Treatment disposition — *Charter of Rights and Freedoms, s 7* — Whether requiring hospital’s consent for all provisions of the treatment disposition would infringe accused’s right to procedural fairness — Whether treatment disposition provisions of Criminal Code are unconstitutionally vague or arbitrary.

Held (9—0): Appeal dismissed.

R v Steele

Supreme Court of Canada: [2014 SCC 61](#).

Judgment delivered: 9 October 2014.

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

Catchwords:

Criminal law — Sentencing — Dangerous offender — Application for remand for assessment — *Criminal Code RSC 1985, c C-46, ss 343 (a), 752 “serious personal injury offence”, 752.1(1)* — Meaning of “serious personal injury offence” — Whether robbery committed by using threats of violence to a person falls within the meaning of a “serious personal injury offence”.

Held (7—0): Appeal allowed.

Jamie Ngahuia Ahsin v The Queen; Raeleen Matewai Noyle Rameka v The Queen

Supreme Court of New Zealand: [\[2014\] NZSC 153](#).

Judgment delivered: 30 October 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Tipping JJ.

Catchwords:

Criminal law — Jury trial — *Crimes Act 1961*, ss 66(1) and 66(2) — Two appellants convicted by jury of murder — Crown alleged that appellants were parties to offence — Whether elements of party liability under ss 66(1) and 66(2) were adequately explained to jury — Whether directions to jury sufficiently linked law to facts and evidence of particular case or identify particularly what jury must find proved against each defendant.

Held (5—0): Rameka's appeal allowed.

Held (4—1): Ahsin's appeal allowed.

CT v The Queen

Supreme Court of New Zealand: [\[2014\] NZSC 155](#).

Judgment delivered: 30 October 2014.

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

Catchwords:

Criminal law — Miscarriage of justice — *Crimes Act 1961*, s 385(1)(c) — Following jury trial, appellant found guilty of indecent assault and one representative count of inducing indecent act — Appellant charged around 40 years after alleged offending — Two stay applications refused — Whether second stay application should have been granted.

Held (5—0): Appeal allowed.

Ashley Dwayne Guy v R

Supreme Court of New Zealand: [\[2014\] NZSC 165](#).

Judgment delivered: 19 November 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and O'Regan JJ.

Catchwords:

Criminal law — Jury trial — Miscarriage of justice — Appellant found guilty of sexual violation by unlawful sexual connection — Jury provided in jury room with two documents that had not been introduced in evidence at trial

— Whether substantial miscarriage of justice occurred — Whether provision of material to jury capable of affecting result of trial so as to constitute miscarriage of justice.

Held (3—2): Appeal allowed.

Damages

See also [Contract Law](#): *Bhasin v Hrynew*

Employment Law

National Grid Electricity Transmission plc v McDonald (Deceased); McDonald (Deceased) v National Grid Electricity Transmission plc
Supreme Court of the United Kingdom: [\[2014\] UKSC 53](#).

Judgment delivered: 22 October 2014.

Coram: Lord Neuberger, Lady Hale, Lord Kerr, Lord Clarke and Lord Reed.

Catchwords:

Employment law — Asbestos dust exposure — Protection — *Factories Act 1937*, s 47(1) — *Asbestos Industry Regulations 1931*, reg 2 — Claimant employed as lorry driver by different employer making monthly visits in four—year period to premises occupied by defendant where process carried on giving off asbestos dust — Main business at premises did not process asbestos or manufacture asbestos products — Judge found claimant’s likely exposure to dust at modest level — Whether claimant among “persons employed” at premises — Whether claimant within ambit of Regulations.

Held (3—2): Appeal dismissed.

Held (4—1): Cross-appeal dismissed

LSG Sky Chefs New Zealand Ltd v Pacific Flight Catering Ltd
Supreme Court of New Zealand: [\[2014\] NZSC 158](#).

Judgment delivered: 5 November 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ

Catchwords:

Employment law — Entitlements — Transfer — *Employment Relations Act 2000* — Appellant and respondent are competitors in airline catering — Appellant replaced respondent as supplier of meals to Singapore Airlines —

Replacement of respondent by appellant was “restructuring” for purpose of Pt 6A of *Employment Relations Act 2000* such that affected employees were entitled to transfer employment to appellant — Transfer was on existing terms and conditions of employment and appellant was required to recognise accrued live entitlements — Appellant sought reimbursement for cost of accrued entitlements from respondent based on common law cause of action for money paid to use of another by compulsion of law — Whether payments made by appellant to discharge entitlements were only “to the use of” respondent — Whether respondent remained legally liable in relation to entitlements after transfer date.

Held (5—1): Appeal dismissed.

Evidence

Imperial Oil v Jacques

Supreme Court of Canada: [2014 SCC 66](#).

Judgment delivered: 17 October 2014.

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

Catchwords:

Evidence — Civil procedure — Disclosure — *Code of Civil Procedure, CQLR*, c C-25, art 402 — *Criminal Code, RSC 1985*, c C-46, s 193(2) (a) — *Competition Act, RSC 1985*, c C-34, ss 29, 36 — Plaintiffs in class action filed motion for disclosure of documents in which they requested disclosure by third party of recordings of private communications intercepted in course of criminal investigation — Defendants to class action objected to disclosure on basis of immunities from disclosure provided for in legislation or established by courts — Whether party to civil proceeding can request disclosure of recordings of private communications intercepted by state in course of criminal investigation — How conditions for and limits on disclosure are to be set.

Held (6—1): Appeals dismissed.

Extradition

VB; EN; CM; CU v Westminster Magistrates' Court

Supreme Court of the United Kingdom: [\[2014\] UKSC 59](#).

Judgment delivered: 5 November 2014.

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

Catchwords:

Extradition — Evidence — Non—disclosure — *Extradition Act 2003, s 77* — Witnesses claimed to be in fear of giving evidence — Application for order for non—disclosure of witnesses' evidence to requesting state or Crown Prosecution Service — Whether magistrates' court had power in extradition proceedings to make order.

Held (4—1): Appeal dismissed.

Human Rights

R (on the application of Lord Carlile of Berriew and others) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2014\] UKSC 60](#).

Judgment delivered: 12 November 2014.

Coram: Lord Neuberger, Lady Hale, Lord Kerr, Lord Clarke and Lord Sumption.

Catchwords:

Human rights — Freedom of expression — Interference with — *Human Rights Act 1998, Sch 1, Pt I, art 10* — Claimant members of Houses of Parliament invited dissident Iranian politician to visit London from France to discuss human rights and democracy in Iran — Home Secretary refused politician's entry to United Kingdom — Interference with right to freedom of expression — Whether justification for interference with claimants' rights.

Held (4—1): Appeal dismissed.

Immigration

Febles v Canada

Supreme Court of Canada: [2014 SCC 68](#).

Judgement delivered: 30 October 2014.

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

Catchwords:

Immigration law — Convention refugees — Exclusion based on commission of serious crime prior to admission to country of refuge — *Immigration and Refugee Protection Act, SC 2001, c 27, s 98* — *United Nations Convention*

Relating to the Status of Refugees, Can TS 1969 No 6, art 1F (b) — Cuban national sought refugee protection in Canada — Immigration and Refugee Board rejected claim for refugee protection on grounds that claimant committed serious crimes prior to admission to Canada — Whether consideration of grounds for exclusion should include matters or events after commission of crime, such as whether claimant is fugitive from justice or unmeritorious or dangerous at the time of the application for refugee protection — Whether claimant who has committed serious crime in the past may nevertheless qualify for refugee protection because he or she has served sentence or because of redeeming conduct in the interim.

Held (5—2): Appeal dismissed.

Insurance

Firm PI 1 Ltd v Zurich Australian Insurance and Body Corporate 398983
Supreme Court of New Zealand: [\[2014\] NZSC 147](#).

Judgment delivered: 15 October 2014.

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

Catchwords:

Insurance — Insurance contract — Interpretation — Apartment buildings insured by first respondent — Appellant insurance broker arranged insurance contract on behalf of Body Corporate — Contract included cover against natural disaster — Apartment buildings damaged in earthquake — Buildings insured for total of \$12.95 million, that being reinstatement value estimated by approved firm of valuers — Actual reinstatement cost was \$25 million — Earthquake Commission (EQC) paid second respondent \$6.8 million under *Earthquake Commission Act 1993* — Whether first respondent is liable to pay full amount of reinstatement value or whether it is liable to pay only difference between \$6.8 million that EQC paid and reinstatement value of \$12.95 million — Whether sum insured under contract is inclusive or exclusive of all amounts payable to Body Corporate by EQC for natural disaster damage.

Held (3—2): Appeal dismissed.

International Law

Kazemi Estate v Islamic Republic of Iran
Supreme Court of Canada: [2014 SCC 62](#).

Judgment delivered: 10 October 2014.

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

Catchwords:

International Law — Sovereign immunity — *State Immunity Act, RSC, 1985, c S-18, s 3(1)* — Civil proceedings initiated in Quebec against Iran, Iranian head of state and two state officials in relation to alleged torture and death of Canadian citizen in Iran — Whether proceedings are barred, in whole or in part, by application of State Immunity Act — Whether international law requires State Immunity Act to be interpreted to include exception in cases of torture — Whether immunity extends to foreign public officials acting in their official capacity — Whether torture may constitute an official act of a state.

Constitutional law — Charter of Rights — Bill of Rights — Right to security of person — Right to a fair hearing — Sovereign immunity — *State Immunity Act, RSC, 1985, c S-18, s 3(1)* — *Canadian Bill of Rights, RSC 1985, App III, s 2 (e)* — *Charter of Rights and Freedoms, s 7* — Civil proceedings initiated in Quebec against Iran, Iranian head of state and two state officials in relation to alleged torture and death of Canadian citizen in Iran — Proceedings barred by application of s 3(1) of State Immunity Act — Whether s 3(1) of State Immunity Act inconsistent with s 2(e) of Bill of Rights or infringes s 7 of Charter.

Held (6—1): Appeal dismissed.

Local Government

R (on the application of Moseley) v London Borough of Haringey
Supreme Court of the United Kingdom: [\[2014\] UKSC 56](#).

Judgment delivered: 29 October 2014.

Coram: Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson and Lord Reed.

Catchwords:

Local government — Finance — Council tax — Council tax reduction scheme — Consultation — *Local Government Finance Act 1992, s 13A, Sch 1A* — Claimant challenged fairness of consultation process — Whether fairness required consultation document to identify alternatives to preferred scheme and reasons for rejecting them — Whether consultation process fair.

Held (5—0): Appeal allowed.

R (on the application of ZH and CN) v London Borough of Newham and London Borough of Lewisham

Supreme Court of the United Kingdom: [\[2014\] UKSC 62](#).

Judgment delivered: 12 November 2014.

Coram: Lord Neuberger, Lady Hale, Lord Clarke, Lord Wilson, Lord Carnwath, Lord Toulson, Lord Hodge.

Catchwords

Local government — Homeless persons — Temporary accommodation — *Protection from Eviction Act 1977*, s 3 — Claimants applied for accommodation as homeless persons in priority need — Local housing authority provided temporary accommodation pending final decision — Authority found claimants intentionally homeless — Whether obliged to obtain court order before evicting claimants.

Held (5—2): Appeal dismissed.

Patents

Les Laboratoires Servier and another v Apotex Inc and others

Supreme Court of the United Kingdom: [\[2014\] UKSC 55](#).

Judgment delivered: 29 October 2014.

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

Catchwords:

Patents — Infringement — Defence of illegality — Meaning of “turpitude” — Respondent imported and sold pharmaceutical product in United Kingdom (UK) — Appellant obtained interim injunction to stop respondent — Appellant gave cross-undertaking in damages in event its patent was invalid — Respondent claimed damages pursuant to undertaking — Product manufactured abroad by infringement of foreign patent — Whether *ex turpi causa* defence available.

Held (5—0): Appeal dismissed.

Practice and Procedure

HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz v Apex Global Management Ltd and another

Supreme Court of the United Kingdom: [\[2014\] UKSC 64](#).

Judgment delivered: 26 November 2014.

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

Catchwords:

Practice — Interim order — Review — Defendant disobeyed order made by case management judge — Whether judgment to be entered for claimant in default of compliance — Whether appellate court entitled to interfere with case management judge's decision.

Held (4—1): Appeal dismissed.

Property Law

Scott v Southern Pacific Mortgages Limited

Supreme Court of the United Kingdom: [\[2014\] UKSC 52](#).

Judgment delivered: 22 October 2014.

Coram: Lady Hale, Lord Wilson, Lord Sumption, Lord Reed and Lord Collins.

Catchwords:

Property law — Land registration — Overriding interest — “Actual occupation” — *Land Registration Act 2002*, s 29, Sch 3, para 2 — Vendor agreed to sell house to purchaser at significant undervalue in return for right to continue in occupation indefinitely — Exchange of contracts of sale, completion and execution of mortgage all took place on same day — Vendor remained in occupation pursuant to tenancy granted by purchaser — Mortgagee's claim for possession — Whether vendor had overriding interest taking priority over mortgagee's charge.

Held (5—0): Appeal dismissed.

Sims v Dacorum Borough Council

Supreme Court of the United Kingdom: [\[2014\] UKSC 63](#).

Judgment delivered: 12 November 2014.

Coram: Lord Neuberger, Lady Hale, Lord Clarke, Lord Wilson, Lord Carnwath, Lord Toulson and Lord Hodge.

Catchwords:

Property law — Joint interest — Joint tenancy — *Human Rights Act 1998*, Sch 1, Pt I, art 8, Pt II, art 1 — Notice terminating tenancy given by one joint tenant without authority of other joint tenant effective to terminate tenancy entirely — Whether compatible with other tenant's Convention rights.

Held (7—0): Appeal dismissed.

Statutes

Thibodeau v Air Canada

Supreme Court of Canada: [2014 SCC 67](#).

Judgment delivered: 28 October 2014.

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

Catchwords:

Statutes — Interpretation — Conflicting legislation — *Official Languages Act*, RSC 1985, c 31 (4th Supp) ("OLA"), s 77(4) — *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 UNTS 350 ("Montreal Convention"), art 29 — Airline breached passengers' right to services in French under OLA by failing to provide services in French on international flights — Passengers applied to Federal Court for damages under OLA — Whether award of damages barred by limitation of damages liability set out in Montreal Convention — Whether OLA and Montreal Convention conflict or overlap.

Held (5—2): Appeals dismissed.

Tort

Chuan Wu v Body Corporate 366611 and Theta Management Limited

Supreme Court of New Zealand: [\[2014\] NZSC 137](#).

Judgment delivered: 9 October 2014.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Tipping JJ.

Catchwords:

Tort — Trespass — Appellant owed unit in building — First respondent was body corporate of building — Majority of owners leased units to second respondent which in turn licensed them to students — Appellant sought to lease to students directly — Respondents had ability to program and activate access cards to building — Appellant sought access to building in order to lease to students but was refused — Respondents required appellant to sign Security and Access Protocol and pay security deposit as condition of access — Appellant issued proceedings in trespass and nuisance — Whether building's Body Corporate Rules or *Unit Titles Act 1972* gave respondents power to require owners of units to sign Protocol and pay deposit — Whether respondents liable in trespass for ousting appellant from common property.

Held (5—0): Appeal allowed and judgment of lower Court on first cause of action reinstated.

Trusts

AIB Group (UK) plc v Mark Redler & Co Solicitors
Supreme Court of the United Kingdom: [\[2014\] UKSC 58](#).

Judgment delivered: 5 November 2014.

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

Catchwords:

Trusts — Trustees — Breach of trust — Re-mortgage of property — Solicitors held funds on trust for transfer to mortgagors and charge to mortgagees on discharge of existing mortgage debt — Solicitors breached trust discharging part of existing mortgage debt and released balance to mortgagors — Mortgagees suffered loss — Whether obligation to restore trust fund — Whether loss to be compensated by monetary payment — Measure of equitable compensation — Principles applicable.

Held (5—0): Appeal dismissed.

Jennings Roadfreight Limited (in liq) v Commissioner of Inland Revenue
Supreme Court of New Zealand: [\[2014\] NZSC 160](#).

Judgment delivered: 7 November 2014.

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

Catchwords:

Trusts — Company in liquidation — Appellant in liquidation and money in appellant's bank account paid to respondent — Liquidators made applications under ss 251 and 292 of *Companies Act 1993* to recover funds — Court of Appeal held that money in bank account at time of liquidation was held on trust for respondent under s 167(1) of *Tax Administration Act 1994* — Whether s 167(1) trust ceased.

Held (5—0): Appeal allowed.
