



# OVERSEAS DECISIONS BULLETIN

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

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## Administrative Law

*R (on the application of Mott) v Environment Agency*

**United Kingdom Supreme Court:** [\[2018\] UKSC 10](#)

**Judgment delivered:** 14 February 2018

**Coram:** Lady Hale, Lord Kerr, Lord Carnwath, Lady Blady, Lord Briggs

**Catchwords:**

Administrative law – Judicial review – Licence conditions – *Salmon Freshwater Fisheries Act 1975* – Where respondent held licence to operate putcher rank during salmon season – Where Environment Agency served notice limiting number of fish respondent permitted to catch – Where respondent sought judicial review of decision to impose conditions – Where primary judge held decision irrational and breached property rights under art 1 of Protocol 1 of European Convention on Human Rights – Where Court of Appeal allowed appeal on issue of irrationality but dismissed appeal in relation to Protocol 1 – Whether conditions imposed by Agency amounted to control or de facto expropriation under art 1 of Protocol 1 – Whether compensation required to be paid.

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

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*R (on the application of Bancoult No 3) v Secretary of State for Foreign and Commonwealth Affairs*

**United Kingdom Supreme Court:** [\[2018\] UKSC 3](#)

**Judgment delivered:** 8 February 2018

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Sumption, Lord Reed

**Catchwords:**

Administrative law – Improper purpose – Consultation – Where respondent decided to establish marine protected area preventing fishing in British Indian Ocean Territory (“BIOT”) – Where appellant brought judicial review proceedings on basis respondent motivated by improper purpose of making future resettlement by Chagossians impracticable and consultation process flawed – Where Administrative Court dismissed application for judicial review – Where Court of Appeal held Administrative Court erred in holding cable relied on by appellant as evidence of improper motive inadmissible but dismissed appeal – Whether Court of Appeal erred in concluding use of cable would not contravene art 24 or 27 of Vienna Convention on Diplomatic Relations 1961 – Whether Court of Appeal erred in failing to find respondent motivated by improper purpose – Whether Court of Appeal erred in failing to find consultation process flawed because Government failed to disclose arguable existence of Mauritian fishing rights.

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

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*HM Inspector of Health and Safety v Chevron North Sea Limited (Scotland)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 7](#)

**Judgment delivered:** 8 February 2018

**Coram:** Lord Mance, Lord Sumption, Lord Reed, Lord Hodge, Lady Black

**Catchwords:**

Administrative law – Prohibition notice – *Health and Safety at Work Act 1974* – Appeal against prohibition notice – Additional evidence – Where inspector served prohibition notice on respondent on basis steel grating and stairway treads in weakened condition because of corrosion – Where employment tribunal cancelled notice on basis expert metalwork report indicated metalwork passed British Standard strength test – Where expert report not available to inspector – Where Court of Session held tribunal entitled to have regard to expert report – Whether Court of Session erred in failing to conclude tribunal confined to material which was or could reasonably have been known to inspector at time notice served.

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

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*Delta Air Lines Inc v Lukacs*

**Supreme Court of Canada:** [\[2018\] SCC 2](#)

**Judgment delivered:** 19 January 2018

**Coram:** McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

**Catchwords:**

Administrative law – Standing – *Canada Transportation Act*, S.C. 1996, c 10 – Where complainant filed complaint with Canadian Transportation Agency alleging appellant’s practices in relation to transportation of obese persons discriminatory – Where Act gives Agency broad discretion to hear and determine complaints – Where Canadian Transportation Agency dismissed complaint on basis complainant lacked standing – Where Federal Court of Appeal allowed appeal – Whether Agency reasonably exercised discretion to dismiss complaint.

**Held (6:3):** Appeal allowed in part.

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## Constitutional Law

*Patchak v Zinke, Secretary of the Interior et al*

**Supreme Court of the United States:** [Docket No 16-498](#)

**Judgment delivered:** 27 February 2018

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

**Catchwords:**

Constitutional law – Constitution Article III – Where Secretary purportedly acting under *Indian Reorganization Act*, 25 U.S.C. s 5108 took certain property into trust – Where petitioner filed suit challenging Secretary’s actions – Where Congress enacted *Gun Lake Act*, 128 Stat 1913 which “reaffirmed” property as trust land and provided “an action ... relating to [that] land shall not be filed or maintained in a Federal Court” – Where District Court dismissed suit – Where D.C. Circuit affirmed – Whether *Gun Lake Act* violates Article III of Constitution.

**Held (6:3):** Affirmed.

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*District of Columbia et al v Wesby et al*  
**Supreme Court of the United States:** [Docket No 15-1485](#)

**Judgment delivered:** 22 January 2018

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

**Catchwords:**

Constitutional law – Fourth Amendment – False arrest – Where police responded to complaint about party at house – Where partygoers identified woman as tenant – Where woman admitted she did not have permission to use house – Where police arrested partygoers for unlawful entry – Where District Court held police officers lacked probable cause to arrest partygoers – Where D.C. Circuit dismissed appeal – Whether officers lacked probable cause to arrest partygoers – Whether officers drew reasonable inference partygoers knew no permission to enter house – Whether officers entitled to qualified immunity.

**Held (9:0):** Reversed and remanded.

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## Costs

*Zungu v Premier of the Province of KwaZulu-Natal & Ors*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 1](#)

**Judgment delivered:** 22 January 2018

**Coram:** Mogoeng CJ, Zondo DCJ, Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ, Zondi AJ

**Catchwords:**

Costs – *Labour Relations Act* 1995 s 162 – Where appellant's application dismissed by Labour Court with costs – Where appeal dismissed by Labour Appeal Court with costs – Whether courts below erred in applying general rule that costs follow event to matters under Act.

**Held (11:0):** Appeal against costs order allowed.

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## Criminal Law

*Class v United States*  
**Supreme Court of the United States:** [Docket No 16-424](#)

**Judgment delivered:** 21 February 2018

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

**Catchwords:**

Criminal law – Appeal against conviction – Guilty plea – Where 40 U.S.C. s 5104(e)(1) provides person may not carry firearm on grounds of or in any of Capitol Buildings – Where petitioner indicted for possessing firearm locked in car parked in grounds of Capitol – Where petitioner alleged s 5104(e) violated Second Amendment and Due Process Clause – Where District Court dismissed petitioner’s claims – Where petitioner entered into written plea agreement – Where District Court accepted guilty plea – Where Court of Appeals held petitioner could not appeal conviction on basis s 5104(e) unconstitutional because by pleading guilty waived constitutional claims – Whether Court of Appeals erred in concluded guilty plea barred petitioner from challenging constitutionality of conviction.

**Held (6:3):** Reversed and remanded.

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*Secretary for Justice v Law Kwun Chung*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 4](#)

**Judgment delivered:** 6 February 2018

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Hoffmann NPJ

**Catchwords:**

Criminal law – Sentencing – *Criminal Procedure Ordinance* s 81A – Review of sentences – Where appellants convicted of taking part in or inciting others to take part in unlawful assembly contrary to *Public Order Ordinance* s 18 – Where first and second appellants sentenced to community service – Where third appellant sentenced to three weeks’ imprisonment suspended for one year – Where Secretary for Justice applied to Court of Appeal for review of sentences under s 81A – Where Court of Appeal held sentences manifestly inadequate and resentenced appellants to terms of 6, 7 and 8 months imprisonment – Whether Court of Appeal erred by reversing, modifying, substituting or supplementing factual basis on which original sentence based – Whether Court of Appeal erred in finding magistrate gave disproportionate weight to appellants’ motives – Whether Court of Appeal erred in setting guidelines for sentencing courts.

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

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*HKSAR v Leung Hiu Yeung*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 2](#)

**Reasons for judgment delivered:** 1 February 2018

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Hoffmann NPJ

**Catchwords:**

Criminal law – Appeal against conviction – *Legislative Council (Powers and Privileges) Ordinance* – Where appellant “shoved” police officer during protest at Legislative Council building – Where appellant convicted of obstructing officer of Legislative Council in execution of duty contrary to s 19(b) of Ordinance – Where conviction upheld by Court of First Instance – Whether police officer was “officer” of Legislative Council within meaning of s 19(b) – If yes, whether police officer acting in execution of duty by preventing appellant and other protesters entering Legislative Council in absence of written authority suspending public access to Council.

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

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*HKSAR v Lam Tan Ching Paul*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 1](#)

**Reasons for judgment delivered:** 25 January 2018

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Hoffmann NPJ

**Catchwords:**

Criminal law – Construction – *Import and Export Ordinance* – Where Ordinance prohibits export of powered formula without licence unless formula “in the accompanied personal baggage of a person aged 16 or above” and “formula does not exceed 1.8kg in total net weight” – Where customs officers found appellant carrying four cans containing total of 3.6kg of formula – Where appellant gave evidence two cans were for himself and two for his wife with whom appellant was travelling – Where magistrate convicted appellant under Ordinance – Whether on proper construction phrase “accompanied personal baggage of a person” extends to baggage carried by or immediately with another person.

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

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*R (on the application of Gibson) v Secretary of State for Justice*

**United Kingdom Supreme Court:** [\[2018\] UKSC 2](#)

**Judgment delivered:** 24 January 2018

**Coram:** Lord Mance, Lord Reed, Lord Carnwath, Lord Hughes, Lady Black

**Catchwords:**

Criminal law – Confiscation orders – *Drug Trafficking Act 1994* – Interest on confiscation orders – Where appellant convicted of drug trafficking offences – Where appellant ordered to pay sum by way of compensation order within 12 months or serve six years imprisonment in default of payment – Where appellant’s receiver made part payments – Where prison authorities calculated reduction in six year default term on basis of proportion payments bore to sum and interest – Whether interest should be included when giving credit for part payment of confiscation order.

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

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*R (on the application of Haralambous) v Crown Court at St Albans & Anor*

**United Kingdom Supreme Court:** [\[2018\] UKSC 1](#)

**Judgment delivered:** 24 January 2018

**Coram:** Lord Mance, Lord Kerr, Lord Hughes, Lady Black, Lord Lloyd-Jones

**Catchwords:**

Criminal law – Search and seizure – Public interest immunity – Where search and seizure warrants issued by Magistrate’s Court under *Police and Criminal Evidence Act 1984* – Where appellant applied for unredacted version of application for warrants – Where Magistrate’s Court refused application – Where appellant sought return of material seized on basis warrants unlawful – Where warrants quashed by consent order – Where second respondent applied under s 59 of *Criminal Justice and Police Act 2001* for continued retention of seized materials – Where Crown Court granted application – Where High Court dismissed application for review – Whether High Court erred in holding magistrate issuing search and seizure warrant may consider material which in public interest cannot be disclosed to subject of warrant – Whether High Court in proceedings for review of legality of warrant may have regard to evidence upon which warrant issued which is not disclosed to subject of warrant – Whether High Court erred in holding court deciding application under s 59 may consider material which in public interest cannot be disclosed – Whether High Court in proceedings for review of order under s 59 may have regard to evidence not disclosed to subject of warrant.

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

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## Employment Law

*Digital Realty Trust, Inc v Somers*

**Supreme Court of the United States:** [Docket No 16-1276](#)

**Judgment delivered:** 21 February 2018

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

**Catchwords:**

Employment law – Whistleblowers – Retaliation – *Dodd-Frank Wall Street Reform and Consumer Protection Act 2010* – Where Act defines “whistleblower” as “any individual who provides ... information relating to a violation of the securities laws to the Commission” – Where whistleblowers protected from retaliation in certain circumstances – Where respondent brought claim alleging petitioner terminated employment shortly after respondent reported securities law violations by company to senior management – Where petitioner moved to dismiss claim on basis respondent not whistleblower under Act because respondent did not alert Securities and Exchange Commission to violations prior to termination – Where District Court denied motion – Where Ninth Circuit affirmed – Where Court of Appeals concluded Act does not necessitate recourse to Commission prior to gaining “whistleblower” status – Whether Court of Appeals erred in concluding provision extends to individuals who do not report violation of securities laws to Commission.

**Held (9:0):** Reversed and remanded.

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## Equity

*Valard Construction Ltd v Bird Construction Co*

**Supreme Court of Canada:** [\[2018\] SCC 8](#)

**Judgment delivered:** 15 February 2018

**Coram:** McLachlin CJ, Abella, Moldaver, Karakatsanis, Côté, Brown and Rowe JJ

**Catchwords:**

Equity – Trusts – Fiduciary duties – Where respondent was general contractor for construction project – Where respondent required subcontractor to obtain labour and material payment bond naming respondent as trustee – Where bond allowed provider of work who did not receive payment from subcontractor to sue third party acting as surety for unpaid sum provided claim brought within 120 days of work – Where subcontractor contracted with appellant to provide work on project – Where subcontractor became insolvent – Where appellant’s invoices unpaid – Where respondent did not disclose existence of bond to appellant within 120 day period – Where appellant sued respondent for breach of

trust – Where trial judge dismissed action – Where Court of Appeal dismissed appeal – Whether trustee of trust contained in labour and material payment bond owes duty to disclose existence of bond to potential beneficiaries of trust.

**Held (6:1):** Appeal allowed.

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*Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*

**Supreme Court of Canada:** [\[2018\] SCC 4](#)

**Judgment delivered:** 2 February 2018

**Coram:** McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

**Catchwords:**

Equity – Fiduciary duties – Where appellant’s traditional lands occupied by settlers before Confederation – Where *Proclamation relating to acquisition of Land* 1860 provided “Indian settlements” not available for pre-emption – Where Imperial Crown officials took no steps to protect land from pre-emption or mark land out as reserve – Where federal Crown officials failed to set aside pre-emptions after Confederation – Where appellant filed claim for compensation under *Specific Claims Tribunal Act*, S.C. 2008, c 22 – Where Specific Claims Tribunal upheld claim – Where Federal Court of Appeal set aside Tribunal’s decision – Whether Imperial Crown owed appellant obligation under colonial legislation to protect lands from pre-emption and set lands aside as reserve – If yes, whether federal Crown assumed responsibility for that obligation at Confederation – Whether after Confederation federal Crown owed and breached fiduciary obligation to set aside pre-emptions and allocate lands as reserve.

**Held (5:4):** Appeal allowed.

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## Family Law

*In the matter of C (Children)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 8](#)

**Judgment delivered:** 14 February 2018

**Coram:** Lady Hale, Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hughes

**Catchwords:**

Family law – Abduction – Convention on the Civil Aspects of International Child Abduction – Where mother took children from Australia to United

Kingdom in May 2015 for eight week trip – Where father consented to extension of trip up to a year – Where mother subsequently expressed intention to remain in United Kingdom – Where father applied to High Court for mandatory summary return under Convention – Where primary judge held mandatory summary return unavailable because children habitually resident in England and Wales by end of June 2016 – Whether mandatory summary return unavailable where child habitually resident before act relied on as wrongful removal or retention occurs – Whether in circumstances where child removed from home state by agreement of parent, wrongful retention can occur before agreed period of absence expires (“repudiatory retention”).

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

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## Human Rights

*Commissioner of Police of the Metropolis v DSD & Anor*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 11](#)

**Judgment delivered:** 21 February 2018

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Hughes

**Catchwords:**

Human rights – European Convention on Human Rights art 3 – Torture or inhuman or degrading treatment or punishment – Failure to investigate – Where taxi driver committed sexual offences against women including respondents – Where respondents brought proceedings against police alleging failure to effectively investigate crimes – Where High Court upheld claim – Where Court of Appeal dismissed appeal – Whether art 3 of Convention imposes positive obligation on states to investigate reported crimes perpetrated by private individuals.

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

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*Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v Caron*  
**Supreme Court of Canada:** [\[2018\] SCC 3](#)

**Judgment delivered:** 1 February 2018

**Coram:** McLachlin CJ, Abella, Karakatsanis, Wagner, Gascon, Côté and Rowe JJ

**Catchwords:**

Human rights – Disability rights – Duty to accommodate – *Charter of Human Rights and Freedoms*, CQLR, c C-12 – *Act Respecting Industrial*

*Accidents and Occupational Diseases*, CQLR c A-3.001 – Where respondent injured in course of employment – Where respondent unable to resume pre-injury employment – Where respondent informed alternative suitable employment unavailable – Where Commission concluded duty to accommodate under Charter does not apply to Act – Where Superior Court allowed appeal – Where Court of Appeal dismissed appeal – Whether employer’s duty to reasonably accommodate under Charter applies to workers whose disability caused by employment injury.

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

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## Interpretation

*Merit Management Group, LP v FTI Consulting, Inc*  
**Supreme Court of the United States:** [Docket No 16-784](#)

**Judgment delivered:** 27 February 2018

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

**Catchwords:**

Interpretation – *Bankruptcy Code* 11 U.S.C. s 546(e) – Safe harbour – Meaning of “settlement payment ... made by or to (or for the benefit of) a ... financial institution” – Where companies entered into agreement for sale of stock – Where purchaser company arranged for bank to wire \$55m to another bank to be disbursed to shareholders of vendor company – Where purchaser company subsequently filed for bankruptcy – Where petitioner shareholder contended s 546(e) safe harbour barred trustee from avoiding transfer of \$55m – Where Seventh Circuit held s 546(e) does not protect transfers in which financial institutions served as mere conduits – Whether Seventh Circuit erred in holding s 546(e) did not provide safe harbour.

**Held (9:0):** Affirmed and remanded.

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*Murphy v Smith et al*  
**Supreme Court of the United States:** [Docket No 16-1067](#)

**Judgment delivered:** 21 February 2018

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

**Catchwords:**

Interpretation – Suits by prisoners – Costs – Where petitioner awarded judgment against two prison guards in federal civil rights suit – Where 42 U.S.C. s 1997e(d)(2) provides portion of prisoner’s judgment not exceeding 25% “shall be applied to satisfy the amount of attorney’s fees awarded against the defendant” – Where District Court ordered petitioner to pay 10% of judgment toward fee award – Where Seventh Circuit allowed appeal – Whether Seventh Circuit erred in concluding s 1997e(d)(2) requires 25% of prisoner’s judgment to be exhausted before payment demanded from defendants.

**Held (5:4):** Affirmed.

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*Rubin v Islamic Republic of Iran*

**Supreme Court of the United States:** [Docket No 16-534](#)

**Judgment delivered:** 21 February 2018

**Coram:** Roberts CJ, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Gorsuch JJ

**Catchwords:**

Interpretation – *Foreign Sovereign Immunities Act* 1976 s 1610(g) – Satisfaction of judgments – Immunity – Where Act grants property of foreign states immunity from attachment and execution in satisfaction of judgments – Where s 1610(g) provides certain property “subject to attachment in aid of execution, and execution” of judgments – Where petitioners filed action in District Court seeking to attach and execute against Iranian assets including collection of clay tablets and fragments housed at University of Chicago – Where District Court concluded s 1610(g) does not deprive collection of immunity – Where Seventh Circuit affirmed – Whether s 1610(g) provides freestanding basis for parties holding judgment under s 1605A to attach and execute against property of foreign state.

**Held (8:0):** Affirmed.

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*The Advocate General for Scotland v Ramein (Scotland)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 6](#)

**Judgment delivered:** 8 February 2018

**Coram:** Lady Hale, Lord Sumption, Lord Reed, Lord Hodge, Lady Black

**Catchwords:**

Interpretation – *British Nationality Act* 1981 s 4C – Citizenship by descent – Where respondent born in United States in 1978 – Where *British Nationality Act* 1948 s 5(1) provided British citizenship by descent

available if father citizen – Whether respondent’s mother citizen – Where British consulate told mother in 1978 that respondent ineligible for citizenship – Where s 4C provides applications for citizenship to be dealt with on basis law always provided for citizenship by descent from mother on same terms as from father – Where application refused on basis respondent unable to satisfy condition of registration within one year of birth because staff of consulate acting under law then applicable would have refused to register birth as ineligible for citizenship – Where Lord Ordinary dismissed application for judicial review – Where Court of Session allowed appeal – Whether Court of Session erred in construction of s 4C.

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

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*Lo Siu Wa v Employees Compensation Assistance Fund Board & Anor*  
**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 3](#)

**Judgment delivered:** 31 January 2018

**Coram:** Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Bokhary NPJ, Lord Hoffmann NPJ

**Catchwords:**

Interpretation – Insurance policies – *Employees’ Compensation Ordinance* – Where Ordinance requires insurers to pay compensation due to employee by employer where insurance policy in force “in relation to” employee at time of injury – Where employee injured in course of employment as carpenter – Where employer’s insurance policy stated cover extended to injuries sustained by employees in course of employment “by the insured in the business” – Where “business” described in schedule to policy as “interior design” and “office (interior design)” – Where schedule to policy contained list of employment posts that did not include construction workers such as carpenters – Where Court of First Instance held insurance policy did not cover employee – Where majority of Court of Appeal dismissed appeal – Whether policy covered employee.

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

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## Jurisdiction

*September & Ors v CMI Business Enterprise CC*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 4](#)

**Judgment delivered:** 27 February 2018

**Coram:** Zondo DCJ, Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ, Zondi AJ

**Catchwords:**

Jurisdiction – Labour Court – *Labour Relations Act 1995* – Where appellants left employment with respondent due to alleged racial discrimination – Where dispute referred to Commission for Conciliation, Mediation and Arbitration – Where Labour Court granted default judgment in favour of appellants – Where Labour Appeal Court allowed appeal on basis Labour Court lacked jurisdiction as nature of dispute referred to Labour Court not same as dispute conciliated – Whether Labour Appeal Court erred in concluding evidence relating to discussions during conciliation hearing privileged.

**Held (9:1):** Appeal allowed.

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*S v Okah; Okah v S*

**Constitutional Court of South Africa:** [\[2018\] ZACC 3](#)

**Judgment delivered:** 23 February 2018

**Coram:** Zondo ACJ, Cameron, Froneman, Jafta JJ, Kathree-Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ, Zondi AJ

**Catchwords:**

Jurisdiction – Extraterritorial jurisdiction – *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004* – Where High Court convicted Nigerian citizen of 13 offences under Act relating to two bombings in Nigeria – Where Supreme Court of Appeal overturned four convictions on basis s 15(1) of Act confers extraterritorial jurisdiction only in relation to crimes of financing terrorism – Whether Supreme Court of Appeal erred in holding s 15(1) limited to financing of terrorism – Whether actions qualified for exemption under s 1(4) of Act on basis acts in pursuance of legitimate right to national liberation, self-determination and independence – Whether Supreme Court of Appeal erred in failing to find High Court erred in dismissing application to make “special entries” on record of proceedings under *Criminal Procedure Act 1977* s 317 relating to State’s failure to inform of right to consular access, trial court’s failure to request assistance to secure evidence under *International Co-Operation in Criminal Matters Act 1996* s 2(1), and presence of Nigerian state barrister as prosecutor.

**Held (10:0):** Appeal allowed; appeal allowed in part.

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## Migration

*Jennings et al v Rodriguez et al*

**Supreme Court of the United States:** [Docket No 15-1204](#)

**Judgment delivered:** 27 February 2018

**Coram:** Roberts CJ, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Gorsuch JJ

**Catchwords:**

Migration – Detention pending removal – Duration of detention – Where respondent detained under s 1226 of Title 8 of U.S. Code after criminal convictions – Where respondent filed habeas petition – Where District Court held ss 1225 and 1226 do not authorise prolonged detention in absence of hearing at which Government establishes detention remains justified – Where Ninth Circuit affirmed – Whether Ninth Circuit erred in construing ss 1225(b) and 1226(c) as imposing implicit 6-month time limit on detention – Whether Ninth Circuit erred in construing s 1226(a) as requiring hearing every six months and proof by clear and convincing evidence that further detention beyond initial 6-month period justified.

**Held (5:3):** Reversed and remanded.

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*SM (Algeria) v Entry Clearance Office, UK Visa Section*

**United Kingdom Supreme Court:** [\[2018\] UKSC 9](#)

**Judgment delivered:** 14 February 2018

**Coram:** Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes

**Catchwords:**

Migration – *Immigration (European Economic Area) Regulations 2006* – Directive 2004/83/EC – Where appellant placed into legal guardianship of French nationals under Islamic “kefalah” system – Where appellant applied for entry clearance to United Kingdom as adopted child of European Union national under reg 12 of Regulations – Where respondent refused application on basis guardianship not recognised as adoption in United Kingdom law – Where Upper Tribunal allowed appeal – Where Court of Appeal overturned Tribunal decision on basis member states permitted to restrict forms of adoption recognised as falling within definition of “family member” – Whether child in legal guardianship of European Union citizen under “kefalah” is “direct descendant” within meaning of art 2.2(c) of Directive – Whether Directive should be interpreted so as to deny entry to child if victim of exploitation, abuse or trafficking or at risk of such – Whether member state entitled to enquire, before recognising child as “direct descendent” under art 2.2(c), into whether procedures for placing child in guardianship or custody gave sufficient consideration to best interests of child.

**Held (5:0):** Questions referred to Court of Justice of the European Union.

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*B (Algeria) v Secretary of State for the Home Department*

**United Kingdom Supreme Court:** [\[2018\] UKSC 5](#)

**Judgment delivered:** 8 February 2018

**Coram:** Lady Hale, Lord Mance, Lord Hughes, Lord Hodge, Lord Lloyd-Jones

**Catchwords:**

Migration – *Immigration Act 1971* – Immigration detention – Where Secretary of State notified respondent of intention to make deportation order – Where respondent detained pending deportation under sch 3 of Act – Where Special Immigration Appeals Commission held no justification for detention under Act because no reasonable prospect of removing respondent, but held it retained jurisdiction to impose bail conditions – Where High Court dismissed appeal – Where Court of Appeal allowed appeal on ground Commission had no jurisdiction to impose bail conditions if detention unlawful – Whether Court of Appeal erred in holding Commission had no jurisdiction to impose bail conditions.

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

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## Negligence

*Steel & Anor v NRAM Limited (formerly NRAM Plc)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 13](#)

**Judgment delivered:** 28 February 2018

**Coram:** Lady Hale, Lord Wilson, Lord Reed, Lord Hodge, Lady Black

**Catchwords:**

Negligence – Professional negligence – Negligent misrepresentation – Where appellant employed as solicitor – Where appellant's client granted respondent security over property comprised of four units – Where client sought release of one unit from security – Where appellant erroneously informed respondent client paying off whole loan – Where respondent executed deeds discharging security over three units instead of one – Where respondent brought claim for damages against appellant – Where Court of Session allowed claim – Whether appellant assumed responsibility for representation.

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

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*Robinson v Chief Constable of West Yorkshire Police*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 4](#)

**Judgment delivered:** 8 February 2018

**Coram:** Lady Hale, Lord Mance, Lord Reed, Lord Hughes, Lord Hodge

**Catchwords:**

Negligence – Duty of care – Breach of duty – Causation – Where appellant knocked over and injured in course of arrest of suspected drug dealer by police officers – Where trial judge held police officers entitled to immunity from claims in negligence – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in concluding most claims against police officers engaged in core functions will fail third stage of “*Caparo test*” as not fair, just and reasonable to impose duty of care – Whether Court of Appeal erred in finding suspected drug dealer caused harm to appellant and case therefore concerned with omission by police not positive act – Whether Court of Appeal erred in concluding that even if owed duty of care, police officers did not act in breach of duty.

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

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## Procedure

*Burnden Holdings (UK) Limited v Fielding & Anor*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 14](#)

**Judgment delivered:** 28 February 2018

**Coram:** Lord Kerr, Lord Sumption, Lord Carnwath, Lord Lloyd-Jones, Lord Briggs

**Catchwords:**

Procedure – Limitation period – *Limitation Act* 1980 s 21(1)(b) – Where respondents directors and controlling shareholders of appellant – Where appellant by liquidator issued proceedings against respondents for unlawful distribution of appellant’s shareholding in third party – Where claim outside six-year limitation period under s 21(3) of Act for action by beneficiary for breach of trust – Where High Court granted summary judgment in favour of respondents on ground claim time-barred – Where Court of Appeal set aside judgment on basis limitation period did not run because s 21(1)(b) provides no limitation period applies to action by beneficiary to recover from trustee trust property or proceeds of trust property – Whether Court of Appeal erred in finding s 21(1)(b) applied to company directors.

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

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*Barton v Wright Hassall LLP*

**United Kingdom Supreme Court:** [\[2018\] UKSC 12](#)

**Judgment delivered:** 21 February 2018

**Coram:** Lady Hale, Lord Wilson, Lord Sumption, Lord Carnwath, Lord Briggs

**Catchwords:**

Procedure – Service – Service by email – *Civil Procedure Rules* r 6.15 – Where appellant commenced action against respondent by claim form – Where appellant emailed claim form to respondent’s solicitors on last day before expiry of issued claim form – Where primary judge held claim form expired unserved and refused application for extension of time under r 7.6 or order validating service by email under r 6.15 – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find service by email should be validated.

**Held (3:2):** Appeal dismissed.

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*R v Canadian Broadcasting Corp*

**Supreme Court of Canada:** [\[2018\] SCC 5](#)

**Judgment delivered:** 9 February 2018

**Coram:** McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

**Catchwords:**

Procedure – Injunctions – Mandatory interlocutory injunctions – Where appellant posted information on website revealing identity of murder victim – Where order subsequently made prohibiting publication, broadcast or transmission of information that could identify victim under s 486.4(2.2) of *Criminal Code*, R.S.C 1985, c. C-46 – Where appellant refused to remove information – Where chambers judge dismissed Crown’s application for mandatory interlocutory injunction – Where majority of Court of Appeal allowed appeal and granted injunction – Whether Court of Appeal erred in finding chambers judge erred in refusing injunction because Crown failed to show strong prima facie case of criminal contempt.

**Held (9:0):** Appeal allowed.

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*National Association of Manufacturers v Department of Defense et al*

**Supreme Court of the United States:** [Docket No 16-299](#)

**Judgment delivered:** 22 January 2018

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

**Catchwords:**

Procedure – Jurisdiction – *Federal Water Pollution Control Act* 33 U.S.C. s 1369 (“*Clean Water Act*”) – Where *Clean Water Act* prohibits discharge of pollutant in “waters of the United States” – Where Environmental Protection Agency (“EPA”) and Army Corps of Engineers issued “Waters of the United States Rule” defining term “waters of the United States” – Where *Clean Water Act* enumerates categories of EPA actions for which review lies directly and exclusively in federal courts of appeals – Where petitioner sought dismissal of challenges to Rule in Sixth Circuit – Where Sixth Circuit denied motions to dismiss – Whether challenges to Rule fall outside ambit of s 1369 of Act and must be filed in federal district courts.

**Held (9:0):** Reversed and remanded.

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*Artis v District of Columbia*

**Supreme Court of the United States:** [Docket No 16-460](#)

**Judgment delivered:** 22 January 2018

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

**Catchwords:**

Procedure – Limitation period – 28 U.S.C. s 1367 – Where petitioner filed federal claim and three related state claims in Federal District Court – Where s 1367(c) provides that when claim qualifying for exercise of federal jurisdiction dismissed, related state claims ordinarily dismissed – Where Federal District Court dismissed petitioner’s state claims under s 1367(c) – Where petitioner refiled state claims in District of Columbia Superior Court 59 days after dismissal of claims by Federal District Court – Where s 1367(d) provides period for refiling state claims dismissed under s 1367(c) “shall be tolled while the claim is pending” in federal court and for 30 day period after dismissed – Where Superior Court held claims time barred – Where District of Columbia Court of Appeals dismissed appeal – Whether “tolled” means limitation period suspended while federal suit pending.

**Held (5:4):** Reversed and remanded.

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