



# 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

*Belhaj & Anor v Director of Public Prosecutions & Anor*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 33](#)

**Judgment delivered:** 4 July 2018

**Coram:** Lady Hale, Lord Mance, Lord Wilson, Lord Sumption, Lord Lloyd-Jones

### Catchwords:

Administrative law – Judicial review – *Justice and Security Act 2013* s 6 – Closed material – Where appellants alleged senior officer of British Secret Intelligence Service involved in appellants' abduction, mistreatment and "rendering" to Libyan authorities by whom appellants imprisoned and tortured – Where Director of Public Prosecutions declined to bring prosecutions – Where appellants sought judicial review of decision not to prosecute – Where Foreign Secretary applied for declaration proceedings were "proceedings in which a closed material application may be made" for purposes of s 6 of Act – Whether proceedings outside s 6 on basis in "a criminal cause or matter".

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

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## Constitutional Law

*Minister of Justice and Constitutional Development & Anor v South African Restructuring and Insolvency Practitioners Association & Ors*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 20](#)

**Judgment delivered:** 5 July 2018

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

**Catchwords:**

Constitutional law – Constitution s 9(2) – Where Minister promulgated “Policy on the Appointment of Insolvency Practitioners” – Where High Court held Minister lacked power to promulgate policy, policy irrational, and policy unlawfully fettered discretion of Master to appoint provisional insolvency practitioner to estate – Where Supreme Court of Appeal dismissed appeal – Whether policy removes Master’s discretion – Whether policy arbitrary.

**Held (8:2):** Appeal dismissed.

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*Corruption Watch NPC & Ors v President of the Republic of South Africa & Ors; Nxasana v Corruption Watch NPC & Ors*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 23](#)

**Judgment delivered:** 13 August 2018

**Coram:** Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

**Catchwords:**

Constitutional law – Declaration of invalidity – *National Prosecuting Authority Act* 1998 s 12 – Where s 12(4) and (6) of Act permit President to extend term of office of National Director of Public Prosecution (“NDPP”) or indefinitely suspend NDPP without pay – Where President appointed Mr Nxasana as NDPP – Where President subsequently suspended Mr Nxasana – Where Mr Nxasana entered into settlement agreement with President and Minister of Justice and Correctional Services to vacate position in exchange for settlement payment – Where High Court held settlement agreement and vacation of office by Mr Nxasana invalid and declared s 12(4) and (6) of Act constitutionally invalid – Whether High Court erred in holding settlement agreement and vacation of office invalid – Whether declaration of invalidity should be affirmed.

**Held (7:2):** Declaration of invalidity affirmed.

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## Corporations Law

*Baker & Anor v Hodder & Ors*

**New Zealand Supreme Court:** [\[2018\] NZSC 78](#)

**Judgment delivered:** 22 August 2018

**Coram:** Elias CJ, William Young, Glazebrook, O'Regan and Arnold JJ

**Catchwords:**

Corporations law – *Companies Act* 1993 s 174 – Oppression, unfair discrimination or unfair prejudice – Where appellants held shares in family-owned company – Where company became insolvent – Where appellants refused to sign special resolution authorising sale of property – Where High Court granted relief under s 174 on basis appellants' refusal to sign special resolution unfairly prejudicial as company insolvent and continuing to accrue debt – Where Court of Appeal declined to hear appeal because property sold in accordance with orders of High Court – Whether Court of Appeal erred in declining to hear appeal – Whether High Court erred in granting relief under s 174.

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

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*Houghton v Corbett & Ors*

**New Zealand Supreme Court:** [\[2018\] NZSC 74](#)

**Judgment delivered:** 15 August 2018

**Coram:** Elias CJ, Glazebrook, O'Regan, Arnold and Kós JJ

**Catchwords:**

Corporations law – Share offering – Misleading and deceptive conduct – Where appellant purchased shares in public offering – Where appellant brought claim alleging prospectus issued by company in relation to offering misleading – Where High Court held appellant failed to prove prospectus contained untrue statements for purposes of s 56 of *Securities Act* 1978 – Where High Court held *Fair Trading Act* 1986 did not apply because conduct regulated by *Securities Act* – Where Court of Appeal held prospectus contained untrue statement but concluded statement could not have influenced decision to invest – Where Court of Appeal held *Fair Trading Act* applied but untrue statement did not breach Act – Whether Court of Appeal erred in failing to find other statements untrue – Whether Court of Appeal erred in finding untrue statement not capable of influencing decision to invest – Whether Court of Appeal erred in finding untrue statement not misleading and deceptive conduct contrary to s 9 of *Fair Trading Act*.

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

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*Trends Publishing International Ltd v Advicewise People Ltd & Ors*  
**New Zealand Supreme Court:** [\[2018\] NZSC 62](#)

**Judgment delivered:** 16 July 2018

**Coram:** Elias CJ, William Young, Glazebrook, O'Regan and Ellen France JJ

**Catchwords:**

Corporations law – Compromises – *Companies Act* 1993 s 232(2) – Where appellant entered into compromise with unsecured creditors – Where compromise approved by qualified majority after three creditors associated with appellant voted in favour of compromise – Where creditors who opposed compromise sought orders under s 232(3) – Where High Court concluded grouping insider creditors with arm's length creditors constituted unfair prejudice and set aside compromise – Where Court of Appeal dismissed appeal – Whether courts below erred in concluding compromise should be set aside.

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

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## Criminal Law

*HKSAR v Leung Chun Kit Brandon*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 30](#)

**Judgment delivered:** 4 July 2018

**Coram:** Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Stock NPJ, Lord Walker NPJ

**Catchwords:**

Criminal law – Criminal procedure – Closing address – Where appellant charged with providing personal data without taking prescribed actions contrary to s 35J(5)(b) of *Personal Data (Privacy) Ordinance* – Where magistrate ruled prosecutor entitled to make closing address – Where Court of First Instance dismissed appeal – Whether courts below erred in concluding prosecution had right to make closing address in criminal trial where defendant unrepresented and called no witnesses.

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

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## Employment Law

*Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union & Ors*

**Constitutional Court of South Africa:** [\[2018\] ZACC 24](#)

**Judgment delivered:** 23 August 2018

**Coram:** Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ and Petse AJ

**Catchwords:**

Employment law – Collective bargaining agreements – Organisational rights – *Labour Relations Act* 1995 – Where appellant entered into collective bargaining agreement with Department of Correctional Services – Where agreement contained membership threshold for admission to Department's Bargaining Council – Where Department subsequently entered into collective bargaining agreement with minority union that did not meet membership threshold for organisational rights set out in collective bargaining agreement between Department and appellant – Where Labour Court held collective bargaining agreement between Department and minority union unlawful – Where Labour Appeal Court allowed appeal – Whether s 18 of Act precluded Department from concluding collective bargaining agreement that was contrary to existing agreement with majority union in relation to organisational rights.

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

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*Assign Services (Pty) Ltd v National Union of Metalworkers of South Africa & Ors*

**Constitutional Court of South Africa:** [\[2018\] ZACC 22](#)

**Judgment delivered:** 26 July 2018

**Coram:** Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

**Catchwords:**

Employment law – Temporary employment services – *Labour Relations Act* 1995 s 198A(3)(b) – Where appellant placed workers with clients – Where workers provided services to clients for period exceeding three months – Where Labour Court held s 198A(3)(b) created dual employment relationship – Where Labour Appeal Court allowed appeal, holding placed workers who worked for period of over three months no longer performing temporary services and clients became sole employers – Whether Labour Appeal Court erred in construction of s 198A(3)(b).

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

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# Family Law

*Owens v Owens*

**United Kingdom Supreme Court:** [\[2018\] UKSC 41](#)

**Judgment delivered:** 25 July 2018

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

**Catchwords:**

Family law – Divorce – *Matrimonial Causes Act 1973 s 1(2)(b)* – Where appellant and respondent married in 1978 – Where appellant left matrimonial home in February 2015 – Where appellant issued divorce petition in May 2015 alleging marriage broken down irretrievably – Where primary judge found test under s 1(2)(b) not met – Where Court of Appeal dismissed appeal – Whether courts below erred in failing to find s 1(2)(b) satisfied.

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

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*Mills v Mills*

**United Kingdom Supreme Court:** [\[2018\] UKSC 38](#)

**Judgment delivered:** 18 July 2018

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

**Catchwords:**

Family law – Periodical payments – Variation – *Matrimonial Causes Act 1973 s 31(1)* – Where former husband and wife entered into consent order in 2002 under terms of which wife received £230,000 settlement and husband to make periodical payments at annual rate of £13,200 – Where husband applied for discharge or downwards variation of periodical payments and wife applied for upwards variation – Where primary judge dismissed applications, noting shortfall between wife's current needs and periodical payments but observing wife had not managed finances wisely – Where Court of Appeal allowed appeal on basis primary judge erred in failing to give sufficient reasons why wife's needs should not be met by payments and increased payments to £17,292 – Whether Court of Appeal erred in interfering with decision of primary judge.

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

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# Human Rights

*In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 48](#)

**Judgment delivered:** 30 August 2018

**Coram:** Lady Hale, Lord Mance, Lord Kerr, Lord Hodge, Lady Black

**Catchwords:**

Human Rights – *Human Rights Act* 1998 – European Convention on Human Rights art 8, 14 – Where s 39A of *Social Security Contribution and Benefits (Northern Ireland) Act* 1992 provided parent can only claim “widowed parent’s allowance” if married to or civil partner of deceased – Where High Court declared s 39A incompatible with art 14 of Convention read with art 8 on basis unjustifiably discriminates against survivor and/or children on basis of marital or birth status – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in failing to find s 39A incompatible with art 14 read with either art 8 or art 1 of the First Protocol.

**Held (4:1):** Appeal allowed.

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*R (on the application of AR) v Chief Constable of Greater Manchester Police & Anor*

**United Kingdom Supreme Court:** [\[2018\] UKSC 47](#)

**Judgment delivered:** 30 July 2018

**Coram:** Lord Kerr, Lord Reed, Lord Carnwath, Lord Hughes, Lord Lloyd-Jones

**Catchwords:**

Human Rights – *Human Rights Act* 1998 – European Convention on Human Rights art 8 – Respect for private and family life – Enhanced Criminal Record Certificate – *Police Act* 1997 s 113B – Where AR acquitted of rape charge – Where AR applied for Enhanced Criminal Record Certificate – Where Certificate included details of rape charge – Where primary judge dismissed challenge to legality of disclosure of rape charge in Certificate – Where Court of Appeal dismissed appeal on basis disclosure reasonable, proportionate and no more than necessary to secure objective of protecting young and vulnerable persons – Whether interference with AR’s rights under art 8 justified – Proper role of appellate court in reviewing finding of proportionality under Convention.

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

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*Williams & Anor v London Borough of Hackney*

**United Kingdom Supreme Court:** [\[2018\] UKSC 37](#)

**Judgment delivered:** 18 July 2018

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

**Catchwords:**

Human rights – *Human Rights Act* 1998 – European Convention on Human Rights art 8 – Respect for family life – Where appellants' children removed under s 46 of *Children Act* 1989 – Where s 46 permitted police to remove children to suitable accommodation for up to 72 hours – Where respondent requested appellants enter into agreement for children to remain in foster placements – Where appellants not informed of right under s 20(7) of *Children Act* to object to children's continued accommodation after expiry of 72 hours – Where appellants sought damages for breach of rights under art 8 – Where High Court awarded damages on basis accommodation of children after 72 hours unlawful because parents did not give informed consent – Where Court of Appeal allowed appeal on basis consent not required, children's accommodation lawful under s 20 of Act and interference with art 8 rights proportionate – Whether Court of Appeal erred in finding lawful basis for children's continued accommodation under s 20.

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

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## Medical law

*An NHS Trust & Ors v Y (by his litigation friend, the Official Solicitor) & Anor*

**United Kingdom Supreme Court:** [\[2018\] UKSC 46](#)

**Judgment delivered:** 30 July 2018

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

**Catchwords:**

Medical law – Medical treatment – Withdrawal of treatment – Where patient suffered brain damage following cardiac arrest and required clinically assisted nutrition and hydration ("CANH") – Where clinical team and family agreed in patient's best interests for CANH to be withdrawn – Where NHS Trust sought declaration in High Court not mandatory to seek court's approval for withdrawal of CANH – Where High Court granted declaration – Whether High Court erred in granting declaration.

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

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# Migration

*R (on the application of Tag Eldin Ramadan Bashir & Ors) v Secretary of State for the Home Department*

**United Kingdom Supreme Court:** [\[2018\] UKSC 45](#)

**Judgment delivered:** 30 July 2018

**Coram:** Lady Hale, Lord Mance, Lord Kerr, Lord Wilson, Lord Sumption, Lord Reed, Lord Carnwath

## **Catchwords:**

Migration law – Refugees – Convention Relating to the Status of Refugees as modified by Protocol Relating to the Status of Refugees – Where art 40 of Convention provides State may declare Convention extends to territories “for the international relations of which it is responsible” – Where United Kingdom notified United Nations Secretary-General in 1956 Convention extended to Cyprus – Where after Cypriot independence in 1960, United Kingdom gave no notification under art 40 in relation to Sovereign Base Areas (“SBAs”) retained by United Kingdom – Where respondent refugees taken to SBA in 1998 after ship foundered off coast of Cyprus – Where United Kingdom and Cyprus entered into Memorandum of Understanding in 2003 for services to be provided in Cyprus at expense of United Kingdom to refugees who arrived in SBAs after Memorandum concluded – Where Cypriot authorities and SBA Administration entered into agreement in 2005 to deal with refugees in accordance with 2003 Memorandum irrespective of date of arrival in SBAs – Where Secretary of State refused to admit respondents to United Kingdom – Where High Court held Convention did not extend to SBAs – Where Court of Appeal allowed appeal on basis Convention extended to SBAs – Whether Convention applies to SBAs – Whether Convention entitles respondents to be resettled in United Kingdom – Whether Memorandum of Understanding and 2005 agreement valid performance of United Kingdom’s Convention obligations.

**Held (7:0):** Interim judgment delivered.

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*Director of Immigration v QT*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 28](#)

**Judgment delivered:** 4 July 2018

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

## **Catchwords:**

Migration – Dependant visa – Discrimination – Where respondent entered into same-sex civil partnership in England – Where respondent’s partner granted employment visa to work in Hong Kong – Where appellant refused respondent’s application for dependant visa on basis “policy” to admit dependant only if party to monogamous marriage between man and woman – Where Court of First Instance dismissed application for judicial review – Where Court of Appeal allowed appeal on basis exclusion of same-sex married or civil partners not rationally connected to aims of attracting talent and immigration control – Whether Court of Appeal erred in finding differential treatment of respondent discriminatory – Whether Court of Appeal erred in finding discrimination not justified.

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

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## Private International Law

*Goldman Sachs International v Novo Banco SA; Guardians of New Zealand Superannuation Fund & Ors v Novo Banco SA*

**United Kingdom Supreme Court:** [\[2018\] UKSC 34](#)

**Judgment delivered:** 4 July 2018

**Coram:** Lord Mance, Lord Sumption, Lord Hodge, Lady Black, Lord Lloyd-Jones

### Catchwords:

Private international law – Recognition of foreign law – Directive 2001/24/EC on Reorganisation and Winding up of Credit Institutions – Where finance company loaned \$835m to Portuguese bank – Where loan agreement granted English courts exclusive jurisdiction over disputes – Where respondent incorporated as “bridge institution tool” under Directive after bank fell into financial difficulties – Where Resolution Authority of Portugal determined bank’s liability to finance company not transferred to respondent because Portuguese law prohibits transfer of liability to bridge institution if owed to entity holding more than 2% of original credit institution’s share capital (“December decision”) – Where appellants as assignees of finance company’s rights brought claim against respondent seeking repayment of loan – Where primary judge allowed claim on basis liability transferred to respondent and respondent became party to exclusive jurisdiction clause – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding English courts required by art 3 of Directive to recognise December decision and conclude liability not transferred to respondent.

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

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## Procedure

*Department of Transport & Ors v Tasima (Pty) Ltd*  
**Constitutional Court of South Africa:** [\[2018\] ZACC 21](#)

**Judgment delivered:** 17 July 2018

**Coram:** Zondo DCJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

**Catchwords:**

Procedure – Orders – Execution of orders where decision under appeal – *Superior Courts Act* 2013 s 18(3) – Where respondent entered into agreement with Department under which respondent to operate and administer electronic National Information System – Where Constitutional Court declared extension of agreement invalid on 9 November 2016 with retrospective effect from 23 June 2015 – Where prior to delivery of judgment of Constitutional Court, respondent applied to High Court to execute order of Supreme Court of Appeal – Where High court ordered Department to approve certain purchase requisitions and make payments to respondent – Whether Department obliged to comply with orders issued after 23 June 2015 and before 9 November 2016.

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

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*British Columbia v Philip Morris International, Inc.*  
**Supreme Court of Canada:** [\[2018\] SCC 36](#)

**Judgment delivered:** 13 July 2018

**Coram:** Abella, Moldaver, Karakatsanis, Gascon, Brown, Rowe and Martin JJ

**Catchwords:**

Procedure – Production of documents – *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c 30 – Where appellant brought action against respondent and others to recover cost of health care benefits related to disease caused or contributed to by exposure to tobacco product under Act – Where s 2(5)(b) provides “health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable” – Where respondent applied for production of health care databases containing coded health care information which appellant intended to use to prove causation and damages in action – Where application judge held databases compellable as information anonymised – Where Court of Appeal dismissed appeal – Whether courts below erred in holding anonymised databases compellable.

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

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*Lorraine (Ville) v 2646-8926 Québec inc.*

**Supreme Court of Canada:** [\[2018\] SCC 35](#)

**Judgment delivered:** 6 July 2018

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

**Catchwords:**

Procedure – Prescription – *Code of Civil Procedure*, CQLR, c. C-25 art 33 – Where respondent purchased lot in residential zone – Where Ville de Lorraine (“Town”) adopted by-law in 1991 making 60% of respondent’s lot conservation land – Where respondent brought action against Town in 2007 seeking declaration by-law null on basis disguised expropriation – Where Superior Court dismissed action as out of time – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in failing to find Superior Court correctly found respondent failed to commence action within reasonable time.

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

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## Real Property

*Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust*

**New Zealand Supreme Court:** [\[2018\] NZSC 75](#)

**Judgment delivered:** 17 August 2018

**Coram:** Elias CJ, William Young, Glazebrook, O’Regan and Ellen France JJ

**Catchwords:**

Real property – Open space covenant – Rectification – Where previous owner of property granted open space covenant in favour of Trust – Where covenant refers to protected area defined by reference to aerial photograph but photograph not attached – Where High Court concluded covenant valid and should be rectified to reflect common intention of Trust and previous owner – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find covenant not valid and binding – Whether Court of Appeal erred in failing to find rectification should not be ordered.

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

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# Taxation

*Total Ltd v Commissioners for Her Majesty's Revenue and Customs*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 44](#)

**Judgment delivered:** 26 July 2018

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

**Catchwords:**

Taxation – Value Added Tax (“VAT”) – *Value Added Tax Act 1994* s 84 – Where s 84 of Act requires trader who wishes to appeal against assessment to VAT to first pay or deposit tax unless trader demonstrates would cause hardship – Where appellant seeks to appeal against assessments to VAT but unable to demonstrate requirement to pay or deposit tax would cause hardship – Whether requirement to pay or deposit disputed tax as precondition for appeal offends European Union law principle of equivalence.

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

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*Prudential Assurance Company Ltd v Commissioners for Her Majesty's Revenue and Customs*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 39](#)

**Judgment delivered:** 25 July 2018

**Coram:** Lord Mance, Lord Sumption, Lord Reed, Lord Carnwath, Lord Hodge

**Catchwords:**

Taxation – Dividends – Dividends from overseas companies – *Income and Corporation Taxes Act 1988* – Where Court of Justice of European Union concluded United Kingdom's treatment of overseas dividends contrary to European Union law because dividends received from overseas companies treated less favourably – Where appellant brought claim to recover corporation tax and advance corporation tax levied contrary to European Union law – Whether appellant entitled to compound interest on tax unlawfully levied – Whether claim in restitution lies to recover lawful advance corporation tax set against unlawful corporation tax – Whether where advance corporation tax from pool including lawful and unlawful advance corporation tax set against unlawful corporation tax liability, unlawful advance corporation tax regarded as pre-payment of unlawful corporation tax liability or partly lawful and unlawful pro rata – Whether franked investment income to be treated as having been applied to relieve lawful and unlawful advance corporation tax pro rata or only lawful advance corporation tax.

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

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*Commissioners for Her Majesty's Revenue and Customs v Taylor Clark Leisure Plc (Scotland)*

**United Kingdom Supreme Court:** [\[2018\] UKSC 35](#)

**Judgment delivered:** 11 July 2018

**Coram:** Lord Mance, Lord Reed, Lord Carnwath, Lord Hodge, Lord Briggs

**Catchwords:**

Taxation – Value Added Tax (“VAT”) – Representative members – Where respondent was “representative member” of VAT group – Where former member of VAT group, Carlton Clubs Ltd (“Carlton”), brought claims under s 80 of *Value Added Tax Act 1994* for repayment of VAT output tax overpaid by respondent – Where appellant paid Carlton’s claims but refused to repay claims submitted by respondent – Where First Tier Tribunal affirmed decision on basis respondent failed to submit claims before expiry of time limit and could not rely on Carlton’s claims – Where Inner House of Court of Session allowed appeal on basis Carlton’s claims should be construed as claims on behalf of respondent – Whether Inner Court erred in holding claim for repayment by member of VAT group must normally be construed as claim on behalf of representative member of group.

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

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## Tort

*Banca Nazionale del Lavoro SPA v Playboy Club London Ltd & Ors*

**United Kingdom Supreme Court:** [\[2018\] UKSC 43](#)

**Judgment delivered:** 26 July 2018

**Coram:** Lady Hale, Lord Mance, Lord Sumption, Lord Reed, Lord Briggs

**Catchwords:**

Tort – Negligence – Duty of care – Where customer who wished to gamble at appellant club applied for cheque cashing facility for up to £800,000 – Where club’s policy required credit reference from bank for twice amount – Where appellant arranged for associated company to ask customer’s bank for reference – Where bank stated customer trustworthy up to £1,600,000 despite lacking reasonable basis for reference – Where High Court held bank owed duty of care to appellant – Where Court of Appeal allowed appeal on basis only duty owed was to associated company to

whom reference addressed – Whether Court of Appeal erred in failing to find duty of care owed.

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

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*James-Bowen & Ors v Commissioner of Police of the Metropolis*  
**United Kingdom Supreme Court:** [\[2018\] UKSC 40](#)

**Judgment delivered:** 25 July 2018

**Coram:** Lady Hale, Lord Mance, Lord Kerr, Lord Wilson, Lord Lloyd-Jones

**Catchwords:**

Tort – Negligence – Duty of care – Where police officers arrested suspected terrorist (“BA”) – Where BA brought proceedings against Commissioner alleging police officers assaulted BA during arrest and Commissioner vicariously liable – Where police officers initially assured Commissioner’s legal advisers acting for them but subsequently told legal advisers only acting for Commissioner – Where BA’s claim settled on third day of trial with admission of liability by Commissioner and apology – Where police officers acquitted of charges of assault occasioning actual bodily harm arising out of arrest – Where police officers brought proceedings against Commissioner for reputational, economic and psychiatric damage on basis retainer arose between them and Commissioner’s legal team by reason of assurances and Commissioner owed duty of care in preparing and conducting defence against BA’s claim – Where trial judge struck out claims – Where Court of Appeal allowed appeal in part on basis arguable Commissioner owed duty of care to safeguard police officers’ economic and reputational interests in conduct of litigation – Whether Court of Appeal erred in concluding duty of care arguable.

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

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*Esther Chan Pui Kwan v Chang Wa Shan; Chang Wa Shan v Esther Chan Pui Kwan*

**Hong Kong Court of Final Appeal:** [\[2018\] HKCFA 29](#)

**Judgment delivered:** 11 July 2018

**Coram:** Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Mr Justice Stock NPJ, Lord Walker NPJ

**Catchwords:**

Tort – Slander – Malicious falsehood – Where defendant falsely told lawyers plaintiff was source of documents defendant gave to lawyers to use in cross-examination in probate action – Where plaintiff sued

defendant for slander and malicious falsehood – Where primary judge dismissed action on basis defendant’s statement to lawyers privileged – Where Court of Appeal allowed appeal – Whether privilege covers communications between lawyer and person who provides information for possible use in proceedings – Whether damages resulting from privileged republication recoverable as damages flowing from original non-privileged publication by defendant where republication should have been within reasonable contemplation of defendant – Whether in claim for malicious falsehood facts may be relied upon to support innuendo meaning where not specifically pleaded.

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

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