



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.

Administrative Law

R (Begum) v Special Immigration Appeals Commission; R (Begum) v Secretary of State for the Home Department; Begum v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2021\] UKSC 7](#)

Judgment delivered: 26 February 2021

Coram: Lords Reed and Hodge, Lady Black, and Lords Lloyd-Jones and Sales

Catchwords:

Administrative Law – Revocation of citizenship under s 40(2) *British Nationality Act 1981* – Judicial review – Fair and effective hearing – Where Ms Begum British and Bangladeshi dual national – Where in 2015 at age 15, Ms Begum travelled to Syria and married ISIL fighter – Where Ms Begum detained in camp run by Syrian Democratic Forces – Where, on 19 February 2019, Secretary of State for Home Department decided to deprive Ms Begum of British citizenship on basis her return to UK national security risk – Where, on 13 June 2019, Secretary refused Ms Begum leave to enter UK to enable pursuit of an appeal against deprivation decision – Where Ms Begum commenced three sets of proceedings against decisions – Where, in first proceedings, Ms Begum appealed deprivation decision to Special Immigration Appeals Commission (“SIAC”) on basis Secretary did not follow own extraterritorial human rights policy and she was prevented from having fair and effective appeal because of entry refusal decision – Where SIAC made determinations in preliminary hearing

unfavourably to Ms Begum – Where Ms Begum applied for judicial review of SIAC determinations and was partially successful – Where, in second proceedings, Ms Begum challenged entry refusal decision to SIAC on basis decision unlawful under right to fair hearing of appeal in *Human Rights Act 1998* – Where SIAC refused appeal and Ms Begum successfully appealed to Court of Appeal – Where, in third proceedings, Ms Begum applied for judicial review of entry refusal decision on basis her entry to UK requirement for fair and effective hearing in deprivation decision appeal – Where Administrative Court refused application and Ms Begum successfully appeal to Court of Appeal – Whether lower courts applied proper test for balancing right to fair hearing and national security – Whether, if Ms Begum refused entry into UK, her appeal against deprivation decision must be allowed.

Held (5:0): Secretary's appeals allowed; Ms Begum's appeal dismissed.

R (KBR Inc) v Director of the Serious Fraud Office
Supreme Court of the United Kingdom: [\[2021\] UKSC 2](#)

Judgment delivered: 5 February 2021

Coram: Lords Lloyd-Jones and Briggs, Lady Arden, and Lords Hamblen and Stephens

Catchwords:

Administrative Law – Judicial review – Ultra vires – Extra-territoriality – Where s 2(3) of *Criminal Justice Act 1987* provides respondent Director of the Serious Fraud Office (“SFO”) has power to issue notice requiring person to produce documents and information for fraud investigation – Where appellant company incorporated in USA – Where appellant's UK subsidiary under SFO investigation – Where SFO issued notice to subsidiary to produce documents – Where requested material held by appellant outside UK – Where second notice issued to appellant in respect of same documents – Where appellant applied for judicial review to quash second notice – Where Divisional Court refused application – Whether s 2(3) permits SFO to issue notice with extra-territorial application – Whether presumption that Parliament intends legislation to not have extra-territorial effect applies.

Held (5:0): Appeal allowed.

Salinas v United States Railroad Retirement Board
Supreme Court of the United States: [Docket No 19-199](#)

Judgment delivered: 3 February 2021

Coram: Roberts CJ, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh and Barrett JJ

Catchwords:

Administrative law – Availability of judicial review – Appellant sought disability benefits under *Railroad Retirement Act of 1974* based on serious injuries suffered during employment – Where first three applications denied and fourth application granted in 2013 – Where appellant sought reconsideration of amount and start date of benefits – Where reconsideration denied and appellant filed administrative appeal arguing third application, filed in 2006, should be reopened as respondent did not consider certain medical records – Where Board denied request to reopen on basis it was not made within years of 2006 decision – Where appellant sought review in Fifth Circuit but review dismissed for lack of jurisdiction over Board's refusal to reopen – Whether *Railroad Retirement Act* makes judicial review available – Whether Board's refusal to reopen a "final decision" amenable to review.

Held (5:4): Judgment of the US Court of Appeals for the Fifth Circuit reversed; case remanded.

Admiralty

Evergreen Marine (UK) Ltd v Nautical Challenge Ltd
Supreme Court of the United Kingdom: [\[2021\] UKSC 6](#)

Judgment delivered: 19 February 2021

Coram: Lords Lloyd-Jones and Briggs, Lady Arden, and Lords Hamblen and Burrows

Catchwords:

Admiralty – Collisions – Apportionment of liability – Where collision at sea between appellant's vessel *Ever Smart* and respondent's vessel *Alexandra 1* near entrance of dredged channel to port of Jebel Ali in United Arab Emirates – Where *International Regulations for Preventing Collisions at Sea 1972* provides for crossing rules where vessels likely to cross so as to involve risk of collision and narrow channel rules where vessels are in narrow channel – Where *Ever Smart* in channel and travelling outbound – Where *Alexandra 1* inbound but not entered channel – Where both vessels approaching each other at steady bearing – Where crossing rules applied such that *Alexandra 1* required to give way ("give-way vessel") and *Ever Smart* required to stay on course ("stand-on vessel") – Where narrow channel rules do not provide for specific rules for collision risks – Where Admiralty Court determined crossing rules did not apply and apportioned 80 per cent liability to *Ever Smart* and 20 per cent to *Alexandra 1* – Where Court of Appeal dismissed appeal – Whether crossing rules only apply if putative give-way vessel is on steady course – Whether narrow channel rules displace crossing rules.

Held (5:0): Appeal allowed.

Arbitration

Bloomberry Resorts and Hotels Inc & Anor v Global Gaming Philippines LLC & Anor

Court of Appeal of Singapore: [\[2021\] SGCA 9](#)

Judgment delivered: 16 February 2021

Coram: Menon CJ, Prakash JCA and Woo JAD

Catchwords:

Arbitration – Setting aside of award – Public policy – Fraud – Limitations – Where appellants and first respondent entered into contract – Where appellants allege respondents committed material breach and issued notice of termination – Where respondents commenced arbitration proceedings for wrongful termination – Where, on 20 September 2016, arbitral tribunal issued partial award on liability in favour of respondents – Where Art 34(4) of *Model Law on International Commercial Arbitration* provides for three-month time limit for setting aside arbitral award – Where, on 21 December 2017, appellants applied to High Court to set aside award on basis making of award affected by fraud and contrary to public policy – Where appellants argued respondents failed to disclose certain documents to tribunal relating to proceedings against respondents initiated by United States Securities and Exchange Commission – Where High Court dismissed application – Whether time limit for setting aside award may, for public policy reasons, be extended in cases of fraud – Whether award may be set aside for contrary to public policy – Whether award induced or affected by fraud.

Held (3:0): Appeal dismissed.

CBS v CBP

Court of Appeal of Singapore: [\[2021\] SGCA 4](#)

Judgment delivered: 20 January 2021

Coram: Menon CJ, Prakash JCA and Loh JAD

Catchwords:

Arbitration – Setting aside of award – Breach of natural justice – Where respondent buyer purchased coal shipment – Where seller assigned all trade debts to appellant bank – Where appellant sought payment for shipment delivered to buyer – Where respondent refused to make

payment, claiming full shipment not delivered and subsequent agreement with seller to pay less – Where appellant commenced arbitration and respondent uncooperative in process – Where respondent requested hearing for witnesses to give evidence – Where arbitrator ruled respondent must submit proposed witness statements so arbitrator could decide whether holding hearing or calling witness valuable – Where respondent refused on basis it had right to call witnesses without such conditions – Where arbitrator convened hearing for oral submissions only – Where arbitrator found full shipment delivered and no subsequent agreement for lower price, and awarded appellant's claim – Where respondent successfully challenged award for breach of natural justice in High Court and set aside award – Whether breach of natural justice because respondent not permitted to call witnesses – Whether breach affected award or prejudiced respondent – If so, whether setting aside or remittal appropriate remedy.

Held (3:0): Appeal dismissed.

Bankruptcy

City of Chicago, Illinois v Fulton & Ors

Supreme Court of the United States: [Docket No 19-357](#)

Judgment delivered: 14 January 2021

Coram: Roberts CJ, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch and Kavanaugh JJ

Catchwords:

Bankruptcy – Bankrupt estate and property – Automatic stay – Where *Bankruptcy Code* 11 USC §541 automatically creates estate comprising all legal and equitable interests of the debtor upon filing of bankruptcy petition – Where §542 provides entity in possession of property of bankrupt estate shall deliver property to trustee with some exceptions – Where §362 creates automatic stay of efforts to collect all pre-petition debts upon filing of petition, including stay of actions to “obtain possession” or “exercise control” of estate property (§362(a)) – Where respondents filed petitions and requested appellant city council return vehicles owned by respondents impounded for failure to pay fines for motor vehicle infractions – Where respondent's refusal held to violate automatic stay – Where Seventh Circuit Court of Appeals affirmed violation – Whether appellant “exercised control” over respondents' property by retaining possession of vehicles – Whether, on proper construction, §362 requires estate property to be turned over to trustee even if exception in §542 applies.

Held (8:0): Judgment of the US Court of Appeals for the Seventh Circuit vacated; case remanded.

Constitutional Law

AmaBhungane Centre for Investigative Journalism NPC & Anor v Minister of Justice and Correctional Services & Ors; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC & Ors
Constitutional Court of South Africa: [\[2021\] ZACC 3](#)

Judgment delivered: 4 February 2021

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ and Victor AJ

Catchwords:

Constitutional law – Right to privacy (s 36 of *Constitution*) – Where *Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002* (“RICA”) permits government surveillance and interception of communication and information if authorised by designated judge – Where applicant journalists applied to High Court for declaration of invalidity – Where High Court declared RICA unconstitutional on grounds RICA makes no provision for subject of surveillance to be notified; permits unfettered Executive discretion to appoint designated judge; lacks any mechanism to ensure surveillance subject protected in ex parte application process; lacks adequate provision of management of surveillance information once obtained; and lacks consideration of journalists’ and lawyers’ rights – Where High Court decided no order as to costs – Where applicants appeal on costs and respondent Ministers appeal on merits – Whether RICA provides adequate safeguards to protect privacy – Whether RICA unconstitutional and invalid because unjustifiably infringes right to privacy – If so, whether applicants entitled to costs in both proceedings.

Held (10:0): Applicant journalists appeal allowed; Respondent Ministers appeal dismissed.

Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma

Constitutional Court of South Africa: [\[2021\] ZACC 2](#)

Judgment delivered: 25 January 2021

Coram: Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ and Victor AJ

Catchwords:

Constitutional law – Judicial commission of inquiry – Power to compel witness appearance – Rights of Commission witnesses – Direct access – Where s 3 of *Commissions Act 8 of 1947* empowers Commission to compel witness to appear before it – Where applicant Commission summoned respondent to give evidence on specified dates in November 2020 – Where respondent attended but left early without Chairperson’s permission – Where Commission summoned respondent to appear on specified dates in January and February 2021 – Where Commission applied for urgent direct access to Constitutional Court to direct respondent to comply with summons – Whether direct access should be granted – Whether Commission empowered to compel respondent to attend – Whether respondent entitled to right to silence or privilege against self-incrimination.

Held (9:0): Application granted; declarations made.

Rikhotso v Premier, Limpopo Province & Ors
Constitutional Court of South Africa: [\[2021\] ZACC 1](#)

Judgment delivered: 25 January 2021

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron and Tshiqi JJ and Victor AJ

Catchwords:

Constitutional law – Access to courts (s 34 of *Constitution*) – Just administrative action (s 33 of *Constitution*) – *Functus officio* – Where applicant headman of Nsavulani ward from 2003 – Where applicant charged with misconduct by fifth respondent in 2010 and 2011 and invited to attend disciplinary enquiry – Where applicant failed to attend on three occasions – Where fifth respondent decided to remove applicant from office – Where first respondent removed applicant from office in 2013 – Where, in 2017, applicant applied to review removal decision – Where, pursuant to s 9(2) of *Promotion of Administrative Justice Act 3 of 2000*, applicant filed application for condonation of delay in bringing review proceedings – Where High Court granted condonation in 2018 – Where High Court in 2019 subsequently dismissed application on ground application had prescribed and delay not reasonable – Where application for leave to appeal to Supreme Court of Appeal denied – Whether applicant denied just administrative action – Whether High Court *functus officio* with respect to prescription as it already granted condonation – Whether High Court competent to rule on issue of prescription.

Held (10:0): Appeal allowed.

Contracts

Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District

Supreme Court of Canada: [2021 SCC 7](#)

Judgment delivered: 29 January 2021

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

Catchwords:

Contracts — Breach — Performance — Duty to exercise contractual discretion in good faith — Where waste removal contract provided municipal district with absolute discretion to allocate waste to various disposal facilities — Where municipal district's reallocation of waste resulted in reduction of waste company's profit — Where waste company alleged breach of contract due to reallocation of waste depriving it of possibility of achieving target profit — Whether reallocation of waste constitutes breach of duty to exercise contractual discretion in good faith.

Held (9:0): Appeal allowed.

The Financial Conduct Authority v Arch Insurance (UK) Ltd & Ors; Hiscox Action Group v Arch Insurance (UK) Ltd & Ors; Argenta Syndicate Management Ltd v The Financial Conduct Authority & Ors; Royal & Sun Alliance Insurance Plc v The Financial Conduct Authority & Ors; MS Amlin Underwriting Ltd v The Financial Conduct Authority & Ors; Hiscox Insurance Company Ltd v The Financial Conduct Authority & Ors; QBE UK Ltd v The Financial Conduct Authority & Ors; Arch Insurance (UK) Ltd v The Financial Conduct Authority & Ors

Supreme Court of the United Kingdom: [\[2021\] UKSC 1](#)

Judgment delivered: 15 January 2021

Coram: Lords Reed, Hodge, Briggs, Hamblen and Leggatt

Catchwords:

Contracts – Contract construction – Insurance contracts – Where appellant insurers wrote business interruption insurance policies – Where UK Government took public health measures to combat transmission of COVID-19 in March 2020 – Where measures disrupted policyholders' business – Where Financial Conduct Authority ("FCA") made agreement with appellant insurers to bring test case on behalf of policyholders seeking clarity on certain clauses in 21 standard policies – Where trial court found substantially in favour of FCA – Where appellant insurers appealed trial court decision and FCA appealed issues on which it did not

succeed at trial – Where trial court certified appeals as suitable for direct appeal to UK Supreme Court – Whether policies cover business interruption losses from COVID-19 pandemic and public health measures – Proper approach to causation.

Held (5:0): FCA appeal allowed; Appellant insurers' appeal dismissed.

Criminal Law

D (SC 31/2019) v New Zealand Police

Supreme Court of New Zealand: [\[2021\] NZSC 2](#)

Judgment delivered: 9 February 2021

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

Catchwords:

Criminal law — Sentencing – Child Sex Offender Register – Where s 9 of *Child Protection (Child Sex Offender Government Agency Registration) Act 2016* provides court may order person sentenced for qualifying offence to be placed on the Child Sex Offender Register – Where appellant plead guilty to a qualifying offence – Where offending occurred prior to Registration Act entering into force – Where s 6 of *Sentencing Act 2002* provides where penalty varies between time of offence and sentence, offender entitled to benefit of lesser penalty despite any other enactment – Where District Court made registration order against appellant – Where appeals to High Court and Court of Appeal dismissed – Whether Registration Act impliedly displaces Sentencing Act and applies to offences committed prior to commencement – If so, whether District Court applied correct test in making registration order.

Held (3:2): Appeal allowed.

HKSAR v Lai Chee Ying

Hong Kong Court of Final Appeal: [\[2021\] HKCFA 3](#)

Judgment delivered: 9 February 2021

Coram: Cheung CJ, Ribeiro and Fok PJJ, Chan and Stock NPJJ

Catchwords:

Criminal law — Bail – Where respondent charged with “collusion with foreign country to endanger national security” under art 29(4) of *National Security Law 2020* – Where art 42(2) provides no bail shall be granted to defendant unless judge has sufficient grounds for believing defendant will

not continue to commit acts endangering national security – Where magistrate refused bail – Where respondent successfully appealed to Court of First Instance and released on bail – Whether art 42(2) creates specific exemption to general rule in favour of grant of bail – Whether art 42(2) be read to be compatible with rights and freedoms in Basic Law and Hong Kong Bill of Rights – Whether Court of First Instance applied correct test.

Constitutional law – Jurisdiction – Where *National Security Law* enacted by National People’s Congress in absence of local Hong Kong national security legislation – Where National People’s Congress Standing Committee decided to promulgate *National Security Law* to Hong Kong – Whether Court of Final Appeal has jurisdiction to review *National Security Law* on basis of incompatibility with Basic Law or International Covenant on Civil and Political Rights – If so, whether *National Security Law* must be remedially interpreted to protect constitutionally protected rights.

Held (5:0): Appeal allowed.

R v TJM

Supreme Court of Canada: [2021 SCC 6](#)

Judgment delivered: 29 January 2021

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

Catchwords:

Criminal law — Young persons — Judicial interim release — Where young person charged with offence listed in s 469 of *Criminal Code* and elected to be tried by judge of superior court of criminal jurisdiction — Whether judge of superior court has jurisdiction to hear and adjudicate young person’s application for judicial interim release — If so, whether jurisdiction exclusive or held concurrently with judges of designated youth justice court for province — *Youth Criminal Justice Act*, S.C. 2002, c. 1, ss. 13(1), (2), (3), 33(8).

Held (9:0): Appeal allowed.

HKSAR v Lo Kin Sun

Hong Kong Court of Final Appeal: [\[2021\] HKCFA 1](#)

Date of order: 4 January 2021

Date of publication of reasons: 12 January 2021

Coram: Ma CJ, Riberio, Fok and Cheung PJJ, and Lord Neuberger of Abbotsbury NPJ

Catchwords:

Criminal law — Fair trial – Unrepresented defendant – Where appellant charged with assaulting inspector of Environmental Protection Department (“EPD”) contrary to s 40 of *Offences Against the Person Ordinance* (Cap 212) – Where appellant unrepresented at trial – Where evidence of two EPD officers contained inconsistencies – Where magistrate did not address inconsistencies or assist appellant to put inconsistencies to EPD officers – Where appeal to High Court denied – Whether magistrate failed to conduct trial fairly and impartially – Whether magistrate required to assist unrepresented defendant in conduct of defence.

Held (5:0): Appeal allowed.

Industrial Law

Uber BV & Ors v Aslam & Ors

Supreme Court of the United Kingdom: [\[2021\] UKSC 5](#)

Judgment delivered: 19 February 2021

Coram: Lords Reed and Hodge, Lady Arden, Lords Sales, Hamblen and Leggatt

Catchwords:

Industrial law – Worker and contractor – Proper test for distinguishing – Where s 230(3) of *Employment Rights Act 1996* provides for definition of “worker” as individual under contract who undertakes to do work for third party where third party is not client of individual – Where various legislation create certain entitlements for “workers” – Where appellant companies technology providers and operators of Uber app – Where app allowed passengers to book rides with registered drivers – Where appellants controlled fare price and imposed contract terms – Where drivers retained ability to refuse work – Where appellants imposed penalties on drivers for too many refusals – Where appellants maintained rating system for drivers and imposed penalties for low average rating – Where appellants restricted ability of drivers to communicate with passengers and to take passengers without using app – Where respondent drivers successfully claimed “worker” entitlements in Employment Tribunal – Where appellants unsuccessfully appealed to Employment Appeal Tribunal and Court of Appeal – Whether drivers “workers” – If so, whether drivers “working” when willing to accept passengers but not actually driving.

Held (6:0): Appeal dismissed.

Practice and Procedure

Brownback & Ors v King

Supreme Court of the United States: [Docket No 19-546](#)

Judgment delivered: 25 February 2021

Coram: Roberts CJ, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh and Barrett JJ

Catchwords:

Practice and procedure – Judgment bar – Where *Federal Tort Claims Act* 28 USC §1346(b) (“FTCA”) allows plaintiff to bring certain state-law suits against federal government if plaintiff alleges specified statutory elements of actionable claim – Where §2676 provides that judgment in action brought under FTCA shall bar any action by plaintiff involving same subject matter – Where respondent sued federal government under FTCA for actions of appellant federal employees and also sued employees individually – Where District Court dismissed FTCA claim for failing to state valid claim and held suit against employees judgment barred by §2676 – Where respondent successfully appealed only dismissal of suit against employees to Sixth Circuit – Whether dismissal of FTCA claim final judgment on merits – Whether suit against employees judgment barred by judgment in FTCA claim.

Held (9:0): Judgment of the US Court of Appeals for the Sixth Circuit reversed.

Private International Law

Federal Republic of Germany & Ors v Philipp & Ors

Supreme Court of the United States: [Docket No 19-351](#)

Judgment delivered: 3 February 2021

Coram: Roberts CJ, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh and Barrett JJ

Catchwords:

Private international law – Foreign sovereign immunity – Where *Foreign Sovereign Immunity Act* 28 USC §1605(a)(3) provides exception to foreign sovereign immunity rule for “property taken in violation of international law” – Where respondents heirs of German Jewish art dealers forced by Nazi Government to sell medieval relic collection to Prussian Government – Where relics now held by appellant – Where respondents brought compensation claim in US District Court against appellant – Where appellant moved to dismiss claim under foreign sovereignty immunity – Where appellants argued sovereign’s taking of own nationals’ property not unlawful under international law of

expropriation – Where respondents argued Nazi purchase of relics act of genocide and violation of international human rights law – Where District Court denied appellant’s motion and District of Columbia Circuit Court of Appeals affirmed – Whether relics were taken in violation of international law – Whether §1605(a)(3) exception refers to violations of international law of expropriation and thereby incorporates domestic takings rule.

Held (9:0): Judgment of the US Court of Appeals for the District of Columbia Circuit vacated; case remanded.

Property Law

T W Logistics Ltd v Essex County Council & Anor
Supreme Court of the United Kingdom: [\[2021\] UKSC 4](#)

Judgment delivered: 12 February 2021

Coram: Ladies Black and Arden, Lords Sales, Burrows and Stephens

Catchwords:

Property law – Town or village greens – Where s 15 of *Commons Act 2006* provides land may be registered as a town or village green where significant amount of local inhabitants indulged as of right in lawful sports and pastimes on land for at least 20 years – Where various statutes make criminal offences to interfere with local inhabitants’ enjoyment of town or village green – Where appellant owner of land forming part of quay in commercial port – Where appellant used land for passage of port vehicles and storage of cargo – Where land used concurrently for exercise and recreation by significant number of local inhabitants for preceding 20 years – Where local inhabitant applied to respondent council for registration of land as town or village green – Where respondent registered land as town or village green – Where appellant unsuccessfully challenged registration in High Court and unsuccessfully appealed to Court of Appeal – Whether registration of land as town or village green would criminalise appellant’s pre-existing commercial activities – If so, whether registration is barred.

Held (5:0): Appeal dismissed.

Torts

Okpabi & Ors v Royal Dutch Shell Plc & Anor
Supreme Court of the United Kingdom: [\[2021\] UKSC 3](#)

Judgment delivered: 12 February 2021

Coram: Lord Hodge, Lady Black, and Lords Briggs and Hamblen

Catchwords:

Torts – Jurisdiction – Duty of care – Where second respondent foreign subsidiary of first respondent – Where appellants citizens of Nigeria and allegedly suffered harm because of second respondent's actions – Where appellants claimed first respondent owed them duty of care in respect of subsidiary's actions – Where respondents sought orders striking out claim against first respondent for lack of jurisdiction – Where High Court held no arguable case that first respondent owed appellants duty of care for actions of subsidiary – Where appeal to Court of Appeal unsuccessful – Whether appellants have arguable case that first respondent owed them duty of care – Whether court has jurisdiction to try claim against first respondent.

Held (4:0): Appeal allowed.

Wills and Probate

King N.O. & Ors v De Jager & Ors

Constitutional Court of South Africa: [\[2021\] ZACC 4](#)

Judgment delivered: 21 February 2021

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga and Majiedt JJ, Mathopo AJ, Mhlantla, Theron J and Victor AJ

Catchwords:

Wills and probate – Public policy – Anti-discrimination – Where s 8 of *Promotion of Equality Prevention of Unfair Discrimination Act 4 of 2000* and s 9(2) prohibit sex discrimination – Where, in 1902, Mr and Mrs De Jager signed will which gave property to children subject to condition that property must devolve to male descendants only, until third generation – Where a great grandson died without male children – Where daughters of that great grandson claimed against his estate and argued condition unenforceable for contravening public policy, legislation or constitutional values – Where executor applied to High Court to declare clause invalid – Where High Court dismissed application – Where daughters unsuccessfully appealed to Supreme Court of Appeal – Whether clauses in private wills may be invalidated for public policy reasons – Whether clauses in private wills invalid for conflict with legislation or constitution.

Held (9:0): Appeal allowed.
