



OVERSEAS DECISIONS BULLETIN

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

Volume 18 Number 2 (1 March – 30 April 2021)

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

Carr and Ors v Saul, Commissioner of Social Security; Davis and Ors v Saul, Commissioner of Social Security

Supreme Court of the United States: [Docket No 19-1442](#)

Judgment delivered: 22 April 2021

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

Catchwords:

Administrative law – Judicial review – Issue exhaustion – Where petitioners denied disability benefits by Social Security Administration (SSA) – Where petitioners unsuccessfully challenged determinations before SSA administrative law judges (ALJs) – Where SSA Appeals Council denied review in each case – Where, subsequently, Supreme Court decided *Lucia v Securities and Exchange Commission*, which held appointment of SEC ALJs by lower level staff violated Appointments Clause of *Constitution* – Where petitioners argued in federal court that SSA ALJs were also unconstitutional and entitled to fresh administrative review by constitutionally appointed ALJs – Where Courts of Appeals held petitioners could not obtain judicial review because failed to raise challenges in original administrative proceedings – Whether Courts of Appeals erred in imposing issue-exhaustion requirement on Appointments Clause claims.

Held (9:0): Reversed and remanded.

Federal Communications Commission and Ors v Prometheus Radio Project and Ors; National Association of Broadcasters and Ors v Prometheus Radio Project and Ors

Supreme Court of the United States: [Docket No 19-1231](#)

Judgment delivered: 1 April 2021

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

Catchwords:

Administrative law – Arbitrariness or capriciousness – Media and telecommunications – Media ownership rules – Where Federal Communications Commission (FCC) uses its authority to regulate broadcast media by maintaining ownership rules limiting number of radio stations, television stations and newspapers a single entity can own in given market – Where s 202(h) of *Telecommunications Act 1996* directs FCC to review its rules every four years and to repeal or modify rules that no longer serve public interest – Where, in 2017, FCC conducted review of ownership rules and concluded three were no longer necessary to promote competition, localism or viewpoint diversity – Where FCC also concluded evidence did not suggest repealing or modifying rules likely to harm minority and female ownership – Where FCC decided to repeal two rules and modify one – Where respondents petitioner for review of FCC decision on basis decision was arbitrary and capricious – Where Third Circuit vacated FCC decision, holding evidence did not support FCC's conclusion that rule changes would have minimal effect on minority and female ownership – Whether FCC failed to consider relevant evidence or had no evidence to support decision – Whether FCC decision arbitrary or capricious.

Held (9:0): Reversed.

United States Fish and Wildlife Service v Sierra Club, Inc.

Supreme Court of the United States: [Docket No 19-547](#)

Judgment delivered: 4 March 2021

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

Catchwords:

Administrative law – Freedom of information – Deliberative process privilege – Where Environmental Protection Agency (EPA) proposed rule in 2011 which required consultation with US Fish and Wildlife Service and

National Marine Fisheries Service (Services) before proceeding – Where Services must issue “biological opinion” addressing whether proposal will “jeopardise” existence of certain species before proposal may proceed – Where, after consultation with Services, EPA prepared revised proposal in 2013 – Where Services staff prepared draft opinions concluding 2013 proposal jeopardised species – Where Services decision-makers did not approve drafts and instead agreed with EPA to extend period of consultation – Where EPA prepared significantly revised proposal in 2014, in which Services gave final “no jeopardy” opinion – Where respondents submitted FOI request for Services’ draft opinions about 2013 proposal – Where Services invoked deliberative process privilege to prevent disclosure – Where Ninth Circuit held draft opinions not privileged because represented final opinions on 2013 proposal – Whether draft opinions represented final opinions – Whether deliberative process privilege applied to draft opinions.

Held (7:2): Reversed and remanded.

Constitutional Law

R v Desautel

Supreme Court of Canada: [\[2021\] SCC 17](#)

Judgment delivered: 23 April 2021

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

Catchwords:

Constitutional law — Aboriginal peoples — Aboriginal rights — Hunting — Where citizen and resident of United States charged under provincial wildlife legislation with hunting in British Columbia without licence and while not being resident of province — Where charges defended on basis of constitutionally-protected Aboriginal right to hunt in traditional territory of ancestors — Whether Aboriginal people located outside Canada can assert Aboriginal rights under Canadian Constitution — If so, whether provincial wildlife legislation of no force or effect by reason of Aboriginal right — *Constitutional Act, 1982, s. 35(1)*.

Held (7:2): Appeal dismissed.

Sithole and Anor v Sithole and Anor

Constitutional Court of South Africa: [\[2021\] ZACC 7](#)

Judgment delivered: 14 April 2021

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

Catchwords:

Constitutional law – Discrimination – Marriage – Community of property – Where s 21 of *Matrimonial Property Act 99 of 1984* and s 22 *Black Administration Act 38 of 1927* provide that marriages of black couples entered into before 1988 are automatically out of community of property – Where all other married couples automatically in community of property – Where applicant married respondent in 1972 – Where family home registered in respondent’s name only – Where marriage broke down and respondent threatened to sell home – Where applicant devout Roman Catholic and divorce discouraged – Where applicant applied for injunction to restrain respondent from selling home but failed due to not married outside community of property – Where applicant successfully argued in High Court that Acts invalid to extent disadvantaged Black women married prior to 1988 by denying protection afforded by community of property – Whether Acts unfair discrimination and invalid – Whether declaration of invalidity should have immediate and retrospective effect to all applicable marriages.

Held (10:0): Declaration of constitutional invalidity confirmed.

Florida v Georgia

Supreme Court of the United States: [Docket No 142, Orig.](#)

Judgment delivered: 1 April 2021

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

Catchwords:

Constitutional law – Apportionment of interstate streams – Where Supreme Court has original jurisdiction to equitably apportion interstate waters between States – Where Florida brought original action against Georgia alleging Georgia consumed more than fair share of water in Apalachicola River – Where Florida claimed overconsumption caused serious harm to Florida’s oyster fisheries and river ecosystem – Where Supreme Court appointed Special Master to assess Florida’s claim – Where, following initial assessment dismissing Florida’s claim and Florida’s successful appeal to Supreme Court, Special Master issued final report recommending Supreme Court deny Florida relief – Where Special Master concluded Florida failed to prove by clear and convincing evidence that overconsumption caused serious harm – Where Florida filed exceptions – Whether Florida proved Georgia’s overconsumption caused serious harm to Florida’s oyster fisheries or river ecosystem.

Held (9:0): Exceptions overruled, and case dismissed.

References re Greenhouse Gas Pollution Pricing Act

Supreme Court of Canada: [\[2021\] SCC 11](#)

Judgment delivered: 25 March 2021

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

Catchwords:

Constitutional law — Division of powers — Greenhouse gas emissions — Where Federal legislation set minimum national standards of greenhouse gas pricing — Whether greenhouse gas pricing is matter of national concern falling within Parliament’s power to legislate in respect of peace, order and good government of Canada — *Constitution Act, 1867*, s. 91 “preamble” — *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186.

Held (6:3): Reference questions answered.

Ford Motor Co v Montana Eighth Judicial District Court and Ors; Ford Motor Co v Bandemer

Supreme Court of the United States: [Docket No 19-368](#)

Judgment delivered: 25 March 2021

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

Catchwords:

Constitutional law – Fourteenth Amendment – Due Process clause – Jurisdiction of state courts – Where Due Process clause restricts jurisdiction of state courts to claims “arising out of or relating to” non-resident person’s activities in state – Where petitioner manufacturer and seller of cars incorporated in Delaware and headquartered in Michigan – Where petitioner encouraged resale market for its vehicles – Where, in first case, plaintiff alleged Ford car malfunctioned, resulting in death to person in Montana – Where, in second case, plaintiff claimed for injuries caused by collision with defective Ford car on Minnesota road – Where plaintiffs sued petitioner in product liability suit in Montana and Minnesota courts, respectively – Where cars were only brought into relevant State following multiple resales and relocations – Where Ford moved to dismiss both suits for lack of personal jurisdiction, because cars were not manufactured or sold in relevant State – Where Montana and Minnesota Supreme Courts rejected petitioner’s argument – Whether plaintiff’s

claims “arise out of or relate to” petitioner’s activities in Montana or Minnesota.

Held (8:0): Affirmed.

Torres v Madrid and Anor

Supreme Court of the United States: [Docket No 19-292](#)

Judgment delivered: 25 March 2021

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

Catchwords:

Constitutional law – Fourth Amendment – Right against unreasonable search and seizure – Where respondents police officers arrived at apartment to execute arrest warrant – Where petitioner not subject of arrest warrant – Where respondents attempted to speak to petitioner but, believing they were carjackers, attempted to escape by driving off – Where respondents shot at petitioner to stop her and struck her twice – Where petitioner managed to escape and drove to hospital – Where police arrested her at hospital next day – Where petitioner claimed shooting constituted excessive force and unreasonable seizure under Fourth Amendment – Where District Court held, and Tenth Circuit affirmed, petitioner’s continued flight after being shot at negated Fourth Amendment claim – Whether application of physical force to body of person with intent to restrain seizure, even if person does not submit.

Held (5:3): Vacated and remanded.

Consumer Law

AMG Capital Management LLC and Ors v Federal Trade Commission

Supreme Court of the United States: [Docket No 19-508](#)

Judgment delivered: 22 April 2021

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

Catchwords:

Consumer law – Deceptive conduct – Equitable remedies – Where respondent filed complaint against petitioners alleging deceptive payday lending practices in violation of §5(a) of *Federal Trade Commission Act* – Where §13(b) of Act authorised respondent to seek permanent injunction – Where District Court granted respondent’s request for permanent

injunction pursuant to §13(b) of Act and ordered petitioners to pay \$1.27 billion in restitution and disgorgement on same authority – Where petitioners’ appeal to Ninth Circuit failed – Whether §13(b) authorised respondent to seek, or court to award, equitable monetary relief.

Held (9:0): Reversed and remanded.

Facebook, Inc v Duguid and Ors

Supreme Court of the United States: [Docket No 19-511](#)

Judgment delivered: 1 April 2021

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

Catchwords:

Consumer law – Telecommunications – Where *Telephone Consumer Protection Act 1991* (TCPA) prohibited telemarketing practices by restricting certain communications made with “automatic telephone dialling system” – Where TCPA defined “autodialers” as equipment with capacity to both “store or produce telephone numbers to be called, using a random or sequential number generator” and to dial those numbers – Where petitioner maintained social media platform with security feature allowing users to elect to receive text messages when someone attempts to log in to user’s account – Where petitioner sent such messages to respondent, but respondent did not create any Facebook account or link his telephone number to Facebook – Where respondent claimed petitioner violated TCPA – Where petitioner argued TCPA did not apply because system did not use random or sequential number generator – Where Ninth Circuit held TCPA applied to petitioner’s system – Whether adjectival clause “using a random or sequential number generator” modifies both verbs “store” and “produce” or modifies only “produce” – Whether petitioner’s system violated TCPA.

Held (9:0): Reversed and remanded.

Criminal Law

Jones v Mississippi

Supreme Court of the United States: [Docket No 18-1259](#)

Judgment delivered: 22 April 2021

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

Catchwords:

Criminal law – Sentencing – Discretion – Where petitioner convicted of murder when 15 years old – Where, at time of offence, murder carried mandatory sentence of life without parole – Where subsequently, in *Miller v Alabama*, 567 US 460, Supreme Court held Eight Amendment only permits life without parole for defendants under 18 if sentence not mandatory and court has discretion to impose lesser sentence – Where Mississippi Supreme Court ordered petitioner be resentenced according to *Miller* – Where, at resentencing, judge acknowledged *Miller* discretion but determined that life without parole remained appropriate sentence – Where petitioner unsuccessfully appealed to Mississippi Court of Appeals – Whether *Miller* and subsequent cases require court to make separate factual finding of permanent incorrigibility of person under 18 before resentencing to life without parole.

Held (6:3): Affirmed.

R v RV

Supreme Court of Canada: [\[2021\] SCC 10](#)

Judgment delivered: 12 March 2021

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

Catchwords:

Criminal law — Appeals — Unreasonable verdict — Inconsistent verdicts — Charge to jury — Where accused convicted by jury of sexual interference and invitation to sexual touching while acquitted of sexual assault — Where all three offences arose from same conduct involving one complainant — Where accused appealed against verdicts of guilt and Crown cross-appealed against verdict of acquittal — Whether legal error in jury instructions can reconcile apparently inconsistent verdicts — Appropriate remedy — *Criminal Code*, R.S.C. 1985, c. C-46, s. 686(4), (8).

Held (7:2): Appeal allowed.

R v Esseghaier

Supreme Court of Canada: [\[2021\] SCC 9](#)

Judgment delivered: 5 March 2021

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

Catchwords:

Criminal law — Appeals — Curative proviso — Jury selection process — Where accused convicted of terrorism offences — Where accused appealed convictions on basis that jury improperly constituted — Where Court of Appeal overturned convictions and ordered new trial — Where Court of Appeal held that jury selection error could not be cured by operation of curative proviso at s. 686(1) (b)(iv) of *Criminal Code* — Whether curative proviso can be applied to cure procedural errors occurring during jury selection process — *Criminal Code*, R.S.C. 1985, c. C-46, s. 686(1) (b)(iv).

Held (9:0): Appeal allowed.

Extradition

Zabolotnyi v The Mateszalka District Court, Hungary
Supreme Court of the United Kingdom: [\[2021\] UKSC 13](#)

Judgment delivered: 30 April 2021

Coram: Lords Lloyd-Jones, Hamblen, Leggatt, Burrows and Stephens

Catchwords:

Extradition – Evidence – Admissibility of fresh evidence – Assurances given by foreign countries – Where respondent requested extradition of appellant pursuant to European arrest warrant – Where appellant resisted extradition because real risk he would be held in prison not compliant with Art 3 of *European Convention on Human Rights* – Where District Judge ordered extradition on basis Hungary had taken significant steps to improve prisons – Where Hungary gave assurance to appellant he would be held in prison compliant with Art 3 – Where appellant applied for permission to rely on fresh evidence on appeal to Divisional Court, comprising reports of alleged breaches of assurances given to persons extradited to Hungary – Where Divisional Court refused to admit evidence on basis it could only admit evidence relating to assurances if manifestly credible, directly relevant and of real importance, and dismissed appeal – Whether special test for admitting evidence relating to assurances given by foreign countries – Whether evidence admissible.

Held (5:0): Appeal dismissed.

Immigration

Niz-Chavez v Garland, Attorney-General
Supreme Court of the United States: [Docket No 19-863](#)

Judgment delivered: 29 April 2021

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

Catchwords:

Immigration – Discretionary relief – Stop-time rule – Where 8 USC §1229b(b)(1) provided non-permanent resident aliens ordered removed eligible for discretionary relief if established continuous presence in country for at least 10 years – Where stop-time rule in §1229b(d)(1) provided period of continuous presence “shall be deemed to end ... when alien is served a notice to appear” – Where “notice to appear” defined as notice specifying certain information – Where government ordered removal of petitioner alien and sent him document with some information – Where, two months later, government sent petitioner document with more information – Where, separately, documents not provide sufficient information to constitute “notice to appear” but together provided required information – Where government contended stop-time rule applied when served with second document – Whether use of indefinite article “a” means single document containing all required information must be given – Whether stop-time rule applied to petitioner.

Held (6:3): Reversed.

G v G

Supreme Court of the United Kingdom: [\[2021\] UKSC 9](#)

Judgment delivered: 19 March 2021

Coram: Lords Lloyd-Jones, Hamblen, Leggatt, Burrows and Stephens

Catchwords:

Immigration – Refugees – Non-refoulement – Interaction with child abduction proceedings – Where 1980 Hague Convention provided for prompt return of wrongfully abducted child to country of habitual residence – Where parties divorced parents of child born and habitually resident in South Africa – Where mother wrongfully removed child to England in breach of father’s right of custody – Where mother applied for asylum on basis she was subjected to death threats and violence because she divorced father and identified as lesbian – Where child listed as dependent on asylum application – Where father applied for child’s return to South Africa under Hague Convention – Where primary judge stayed father’s application pending determination of asylum claim – Where father appealed and Court of Appeal held High Court not barred from determining application for return order nor making such an order – Whether child listed as dependent on asylum application subject to non-refoulement obligations – If so, whether return order under 1980 Hague Convention can be made where child protected from refoulement – If not, whether return order application should be stayed.

Held (5:0): Appeal allowed.

Pereida v Wilkinson, Acting Attorney-General
Supreme Court of the United States: [Docket No 19-438](#)

Judgment delivered: 4 March 2021

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

Catchwords:

Immigration – Removal – Burden of proof – Where respondent initiated removal proceedings against petitioner for entering and remaining in country unlawfully – Where petitioner sought to apply for cancellation of removal on discretionary grounds – Where USC §1229b(b)(1)(C) provided eligibility for cancellation required petitioner to prove they have not been convicted of “crime involving moral turpitude” – Where petitioner convicted of crime under Nebraska law – Where Nebraska law lists several separate crimes, only one not involving moral turpitude – Where record did not establish exactly which crime petitioner convicted of – Where primary judge held petitioner’s conviction unlikely to be for crime not involving moral turpitude – Where Eighth Circuit held petitioner bore burden of proof of showing he had not committed crime involving moral turpitude and he had not discharged burden – Whether petitioner bore burden of proof – Whether burden discharged.

Held (5:3): Affirmed.

Industrial Law

Asda Stores Ltd v Brierly and Ors
Supreme Court of the United Kingdom: [\[2021\] UKSC 10](#)

Judgment delivered: 26 March 2021

Coram: Lords Reed, Hodge and Lloyd-Jones, Lady Arden and Lord Leggatt

Catchwords:

Industrial law – Equal pay – Valid comparator – Where *Equality Act 2010* allowed female claimants to seek compensation for being paid less than males in same employment – Where s 79(4)(c) of *Equality Act* provided for “common terms requirement” for equal pay claim, requiring that claimants be able to compare themselves to valid comparator employed on “common terms” – Where respondents workers employed in appellant’s retail business and claimed compensation for being paid less

than male workers employed in respondents' distribution depots – Where retail and distribution locations separate – Where appellant applied for dismissal of claim on basis no valid comparator – Where Employment Tribunal held distribution workers valid comparison, and appellant's appeals to Employment Appeal Tribunal and Court of Appeal unsuccessful – Whether employees in appellant's retail business entitled to compare themselves to employees in appellant's distribution depots.

Held (5:0): Appeal dismissed.

Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and Anor (T/A Clifton House Residential Home)

Supreme Court of the United Kingdom: [\[2021\] UKSC 8](#)

Judgment delivered: 19 March 2021

Coram: Lords Wilson and Carnwath, Lady Arden and Lord Kitchin

Catchwords:

Industrial law – Sleep-in workers – Where *National Minimum Wage Act 1998* (UK) and *National Minimum Wage Regulations 2015* (UK) provided for fixed minimum hourly wage (NMW rate) for “time work” and “salaried hour work” except where worker permitted to sleep – Where time during which worker permitted to sleep included in “time work” or “salaried time work” only when worker “awake for purpose of working” – Where appellants carers for vulnerable adults and employed by respondents – Where appellants required to sleep at place of work in order to attend emergencies or assist caring for vulnerable people – Where, in first appeal, appellant “time worker” and paid nightly allowance plus one hour at NMW rate – Where, in second appeal, appellant “salaried time worker” and paid fixed amount per week – Where appellants claimed in Employment Tribunal entitlement to NMW rate for each hour of sleep-in shifts, even when asleep – Where Court of Appeal held neither appellants entitled to be paid NMW rate for all hours of sleep-in shift – Whether appellants entitled to NMW rate for all hours of sleep-in shift.

Held (4:0): Appeals dismissed.

Insurance Law

Burnett or Grant v International Insurance Company of Hanover Ltd

Supreme Court of the United Kingdom: [\[2021\] UKSC 12](#)

Judgment delivered: 5 April 2021

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

Catchwords:

Insurance law – Policy construction – Where respondent widow of person who died following unlawful assault by door steward at bar – Where employer of door steward obtained public liability insurance from appellant – Where policy excluded liability for “deliberate acts” and “wrongful arrest” – Where respondent claim against insurer succeeded before Lord Ordinary – Where appellant’s appeal dismissed by Court of Session – Whether death caused by “deliberate act” or “wrongful arrest” – Whether exclusion applies.

Held (5:0): Appeal dismissed.

Intellectual Property

Google LLC v Oracle America, Inc

Supreme Court of the United States: [Docket No 18-956](#)

Judgment delivered: 5 April 2021

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

Catchwords:

Intellectual property – Copyright – Fair use – Where respondent owned copyright in Java SE computer platform – Where, in 2005, petitioner built new software platform Android – Where petitioner copied 11,500 lines of code from Java SE Program to build new platform to make it more attractive to programmers familiar with Java programming language and to enhance interoperability – Where lines of code part of Application Programming Interface (API), which allows programmers to use prewritten computing tasks for use in own programs so applications written in other languages can still operate – Where Federal Circuit held APIs copyrightable and petitioner’s use did not constitute fair use – Whether APIs copyrightable – Whether using lines from APIs to create transformative program fair use.

Held (6:2): Reversed and remanded.

Practice and Procedure

Member of the Executive Council for Health, Gauteng Provincial Government v PN

Constitutional Court of South Africa: [\[2021\] ZACC 6](#)

Judgment delivered: 1 April 2021

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

Catchwords:

Practice and procedure – *Res judicata* – Damages – Where respondent mother of child afflicted with cerebral palsy caused by injuries sustained at birth at state healthcare facility – Where respondent claimed for damages against applicant – Where High Court gave order as to liability, with quantum to be decided at later stage, and ordered applicant obliged to “pay to” respondent “100% ... of her agreed or proven damages” – Where, after order granted, Constitutional Court handed down judgment in *MEC for Health and Social Development, Gauteng v DZ obo WZ* [2017] ZACC 37, in which Court adverted to potential development of common law such that damages for medical negligence could be satisfied by provision of public healthcare services and undertaking to pay costs of services unable to be provided in public healthcare, instead of monetary compensation – Where, at hearing for quantum, applicant sought to argue development of common law – Where High Court held manner of compensation *res judicata* and not open to applicant to seek development of common law – Whether manner of compensation *res judicata* – Whether applicant entitled to raise development of common law argument at quantum hearing.

Held (10:0): Leave to appeal granted; appeal allowed.

Uzuegbunam and Anor v Preczewski and Ors

Supreme Court of the United States: [Docket No 19-968](#)

Judgment delivered: 8 March 2021

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

Catchwords:

Practice and procedure – Standing – Mootness – Nominal damages – Where appellants former students of college who were prevented from speaking about their religion or distributing written religious materials by college policies – Where appellant challenged policies based on right to freedom of speech and sought injunctive relief and nominal damages against respondent college officials – Where respondents chose to discontinue and change challenged policies and sought dismissal of appellant’s actions – Where parties agreed policy change rendered injunctive relief claim moot – Where Eleventh Circuit held, while nominal damages can save case from mootness where person pleads compensatory damages but fails to prove amount, plea for nominal damages alone does not establish standing – Whether claim nominal damages sufficient to save claim from mootness.

Held (8:1): Reversed and remanded.

Property Law

Rittson-Thomas and Ors v Oxfordshire County Council
Supreme Court of the United Kingdom: [\[2019\] UKSC 13](#)

Judgment delivered: 23 April 2021

Coram: Lord Lloyd-Jones, Lady Arden, Lords Sales, Burrows and Stephens

Catchwords:

Property law – *School Sites Act 1841* – Reversion – Where s 2 of *School Sites Act* provided landowner may donate land for educational purposes by means of statutory charitable trust and if land ceased to be used for those purposes, it reverts to landowner – Where, in 1914 and 1928, landowner conveyed land to appellant for school – Where, in 2006, pupils moved to new school premises and, in 2017, original site sold to pay for costs of new premises – Where respondent heirs of landowner claimed original site reverted to landowner's estate – Where claim rejected by High Court and decision reversed by Court of Appeal – Whether land gifted under *School Sites Act* for use of school reverts when school ceases to operate from gifted land – Whether school entitled to sell land to pay for new school premises.

Held (5:0): Appeal allowed.

Taxation

Balhousie Holdings Ltd v Commissioners for Her Majesty's Revenue and Customs (Scotland)
Supreme Court of the United Kingdom: [\[2021\] UKSC 11](#)

Judgment delivered: 31 March 2021

Coram: Lords Hodge and Briggs, Lady Arden, Lords Sales and Carloway

Catchwords:

Taxation – Value Added Tax – Zero-rated supplies – Where Sch 8 of *Value Added Tax Act 1994* provided certain supplies as being “zero-rated”, including residential care homes – Where company in appellant's VAT group, Balhousie Care Ltd (BCL), acquired residential care home from developer and received zero-rated supply over care home – Where BCL financed purchase through sale and leaseback arrangement with third

party – Where BCL sold care home to third party and simultaneously third party leased care home back to BCL – Where respondent imposed “self-supply charge” pursuant to para 36(2) of Sch 10 Pt 2 of Act, allowing respondent to recover benefit of zero-rated supply if appellant disposed of “entire interest” in care home – Where Inner House of Court of Session held BCL disposed of its entire interest – Whether sale and leaseback involve disposal of BCL’s “entire interest” in care home – Whether sale and leaseback transactions should be considered as one transaction or as separate transactions.

Held (5:0): Appeal allowed.

Torts

Ontario (Attorney General) v Clark
Supreme Court of Canada [\[2021\] SCC 18](#)

Judgment delivered: 30 April 2021

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

Catchwords:

Torts — Crown law — Prosecutorial immunity — Misfeasance in public office — Where police officers commenced misfeasance claim against Attorney General on basis of Crown prosecutors’ failure in conduct of criminal trials to challenge accused’s claims of assault by police officers during arrest — Where officers alleged that they suffered reputational harm and seeking damages — Whether prosecutorial immunity precludes misfeasance claims by police officers against Crown prosecutors for decisions made in exercise of public duties — Whether claim should be struck.

Held (8:1): Appeal allowed.

Austin v Roche Products (New Zealand) Ltd
Supreme Court of New Zealand: [\[2021\] NZSC 30](#)

Judgment delivered: 31 March 2021

Coram: Glazebrook, O’Regan, Ellen France, Williams and Arnold JJ

Catchwords:

Torts – Negligence – Accident Compensation scheme (ACC) – Where *Accident Compensation Act 2001* provided claimants cannot sue for compensatory damages in respect of personal injury covered by ACC

scheme – Where appellant took prescription drug for many years, distributed by respondent – Where appellant claimed drug caused excessive and painful bone growth in spine – Where appellant claimed and received compensation under ACC scheme – Where appellant also sought to sue respondent in negligence – Where respondent applied to strike out proceeding – Where High Court refused to strike out – Where Court of Appeal struck out claim as barred by ACC – Whether appellant entitled to ACC scheme because injuries ordinary consequence of consuming prescription drug – Whether claim should be struck out.

Held (5:0): Appeal dismissed.

Trusts

Wilkinson and Anor v Crawford NO and Ors

Constitutional Court of South Africa: [\[2021\] ZACC 8](#)

Judgment delivered: 1 April 2021

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

Catchwords:

Trusts – Construction of trust deed – Public policy – Discrimination – Where applicants adopted grandchildren of Mr Druiff – Where Druiff executed trust deed identifying children as income beneficiaries, and upon their death, shares devolve upon their “children” – Where trust deed provided on termination of trust, capital to be divided among children, or if they died, on their “legal descendants” – Where Druiff executed amendment providing if children died prior to termination, share would devolve on their “descendants” – Where applicants sought declarator in High Court that trust deed applied to adopted grandchildren, but was denied as Druiff had not explicitly included adopted grandchildren – Where applicants unsuccessfully appealed on basis exclusion of adopted grandchildren contrary to public policy because constitutes discrimination on basis of birth contrary to s 9 of *Constitution* – Whether trust deed excludes adopted grandchildren – If so, whether public policy may render private trust deed unenforceable – If so, whether exclusion constitutes unfair discrimination and contrary to public policy.

Held (8:2): Leave to appeal granted; appeal allowed.
