



OVERSEAS DECISIONS BULLETIN

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

Volume 18 Number 3 (1 May – 30 June 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

Garland v Ming Dai; Garland v Alcaraz-Enriquez

Supreme Court of the United States: [Docket No. 19-1155; 19-1156](#)

Judgment delivered: 1 June 2021

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

Catchwords:

Administrative law – Judicial review – Adverse credibility determination – “Deemed credible or true” rule – Where, in each case, foreign national sought relief from removal proceedings on ground that life or freedom would be threatened if returned to country of origin – Where immigration judge held respondents ineligible for relief because of inconsistencies in testimony and evidence – Where Board of Immigration of Appeals affirmed – Where respondents sought judicial review – Where Ninth Circuit, applying own rule, granted relief, holding that reviewing court must treat non-citizen’s testimony as credible and true, absent explicit adverse credibility determination by immigration judge or Board – Whether Ninth Circuit’s “deemed credible or true” rule consistent with common law or statute.

Held (9:0): Vacated and remanded.

CIC Services, LLC v Internal Revenue Service & Ors
Supreme Court of the United States: [Docket No. 19-930](#)

Judgment delivered: 17 May 2021

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

Catchwords:

Administrative law – Anti-Injunction Act – Taxation – Where *Anti-Injunction Act* 26 USC §7421(a) provided lawsuits challenging validity of tax assessment barred unless tax paid prior to filing – Where IRS Notice 2016-66 required taxpayers to report information about certain insurance agreements – Where non-compliance with Notice may incur civil tax penalty – Where petitioner challenged validity of notice and sought injunction setting aside Notice – Where District Court dismissed action as barred by *Anti-Injunction Act* – Where majority of Sixth Circuit affirmed – Whether suit restraining requirement to report information equivalent to suit restraining assessment or collection of tax – Whether petitioner’s suit barred.

Held (9:0): Reversed and remanded.

R (Fylde Coast Farms Ltd (formerly Oyston Estates Ltd)) v Fylde Borough Council

Supreme Court of the United Kingdom: [\[2021\] UKSC 18](#)

Judgment delivered: 14 May 2021

Coram: Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Sales, Lord Stephens

Catchwords:

Administrative law – Judicial review – Time limitation – Where neighbourhood development plan proposed – Where procedure for making plan involved multiple steps, including consideration of independent examiner’s report – Where, in March 2017, respondent local planning authority decided not to accept recommendation of independent examiner to amend plan – Where referendum held on unamended plan and approved – Where plan made in unamended form – Where appellant sought judicial review of making of plan, on ground respondent failed to accept examiner’s recommendation without good reason – Where s 61N(1) of *Town and Country Planning Act 1990* provided six week time limit for challenging final decision to make plan – Where s 62N(2) provided six week time limit in relation to challenges to consideration of examiner’s report – Where judicial review application inside time limit if s 61N(1) applied and outside time limit if s 61N(2) applied – Where Administrative Court and Court of Appeal held s 61N(2) applied and application brought outside of time – Whether appellant’s judicial review

application challenges final decision or consideration of examiner's report
– Whether s 61N(1) or s 61N(2) applies to exclude appellant's application.

Held (5:0): Appeal dismissed.

American Indian Law

Yellen v Confederated Tribes of the Chehalis Reservation & Ors; Alaska Native Village Corp Association & Ors v Confederated Tribes of the Chehalis Reservation & Ors

Supreme Court of the United States: [Docket No. 20-543; 20-544](#)

Judgment delivered: 25 June 2021

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

Catchwords:

American Indian law – Definition of “Indian tribe” – Alaska Native Corporations (ANCs) – Where *Coronavirus Aid, Relief and Economic Security Act* (CARES) provided monetary payments allocated to “Tribal governments” – Where “Tribal government” defined as government of “Indian tribe” as defined in *Indian Self-Determination and Education Assistance Act* – Where that Act defines “Indian tribe” as any Indian tribe or other organised group “including any Alaska Native village or regional or village corporation” – Where ANCs not “federally recognised tribes” because US Government never entered into treaty with them – Where various respondents federally recognised tribes sued to prevent petitioner ANCs from being allocated CARES funding on basis ANCs not “Indian tribe” – Where District Court dismissed claim and District of Columbia Circuit reversed – Whether only federally recognised tribes eligible for CARES funding – Whether ANCs “Indian tribe”.

Held (6:3): Reversed and remanded.

United States v Cooley

Supreme Court of the United States: [Docket No. 29-1414](#)

Judgment delivered: 1 June 2021

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

Catchwords:

American Indian law – Sovereign powers – Search and seizure – Authority over non-Indian persons – Where tribal police officer approached truck

parked on public right of way within Indian reservation – Where officer spoke to respondent driver and observed semiautomatic rifles in front seat – Where respondent non-Indian – Where officer conducted search, found and seized contraband drugs – Where respondent indicted on federal drug and gun offences – Where respondent sought to suppress drug evidence – Where Ninth Circuit affirmed suppression – Whether tribal police officer authorised to stop and search non-Indian persons on public right of way through reservation for potential violation of state or federal law.

Held (9:0): Vacated and remanded.

Arbitration

General Dynamics United Kingdom Ltd v State of Libya
Supreme Court of the United Kingdom: [\[2021\] UKSC 22](#)

Judgment delivered: 25 June 2021

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

Catchwords:

Arbitration – Enforcement – Foreign state immunity – Service – Where s 12(1) of *State Immunity Act 1978* (UK) provided any writ or document required to be served for instituting proceedings against foreign State must be transmitted through Foreign, Commonwealth and Development Office (FCDO) to relevant State's Ministry of Foreign Affairs – Where respondent sought to enforce arbitral award in UK against appellant foreign State – Where High Court exercised discretion to dispense with formal service requirements of enforcement proceedings due to political instability in Libya – Where appellant applied to set aside dispensation order but Court of Appeal dismissed application – Whether documents commencing arbitration enforcement proceedings required to be served via FCDO – If so, whether court has discretion to dispense with service requirement.

Held (3:2): Appeal allowed.

Competition Law

National Collegiate Athletic Association v Alston & Ors
Supreme Court of the United States: [Docket No. 20-512](#)

Judgment delivered: 21 June 2021

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

Catchwords:

Competition law – Anti-trust – Compensation limits – Student athletes – Where petitioner issued and enforced rules limiting amount of compensation colleges and universities may pay to “amateur” student athletes – Where student athletes compensated using scholarships or education-related benefits – Where respondent student athletes challenged petitioner’s restrictions on basis restriction violates anti-trust laws – Where District Court upheld certain rules and struck down other rules – Where both sides appealed and Ninth Circuit affirmed in full – Whether compensation limits violate anti-trust rules – If so, whether injunction appropriate remedy.

Held (9:0): Affirmed.

Constitutional Law

Reference re Code of Civil Procedure (Que)

Supreme Court of Canada: [\[2021\] SCC 27](#)

Judgment delivered: 30 June 2021

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

Catchwords:

Constitutional law — Courts — Provincial jurisdiction over administration of justice — Role of superior courts — Where exclusive monetary jurisdiction over civil claims for less than \$85,000 granted to Court of Québec by provincial legislature — Whether grant of exclusive jurisdiction constitutional — *Constitution Act, 1867*, ss 92(14), 96 — *Code of Civil Procedure, CQLR*, c C-25.01, art 35 para 1.

Held (4:3): Appeals dismissed.

R v Chouhan

Supreme Court of Canada: [\[2021\] SCC 26](#)

Judgment delivered: 25 June 2021

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

Catchwords:

Constitutional law — Charter of Rights — Right to fair hearing — Right to trial by jury — Jurors — Selection — Peremptory challenges — Whether amendments to *Criminal Code* abolishing accused's peremptory challenges during jury selection violate right to fair hearing or right to benefit of trial by jury — If not, whether abolition of peremptory challenges applies to accused awaiting trial on date amendments came into force — *Canadian Charter of Rights and Freedoms*, ss 11 (d), (f) — *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Sess., 42nd Parl, 2019, c 25, ss 269, 271, 272 — *Criminal Code*, ss 633, 638.

Held (7:2): Appeal allowed; cross-appeal dismissed.

Lange v California

Supreme Court of the United States: [Docket No. 20-18](#)

Judgment delivered: 23 June 2021

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

Catchwords:

Constitutional law – Fourth Amendment – Warrantless entry – Pursuit of misdemeanour – Where petitioner driving car – Where highway patrol officer signalled to petitioner to pull over – Where petitioner instead drove short distance to his driveway and entered his garage – Where failure to pull over when signalled constituted probable cause to arrest for misdemeanour of failing to comply with police signal – Where officer followed petitioner to garage, questioned him and performed sobriety tests – Where subsequent blood alcohol test showed petitioner's blood alcohol content higher than legal limit – Where petitioner charged with driving under influence – Where petitioner sought to suppress evidence obtained after officer entered garage, arguing warrantless entry violated Fourth Amendment – Where Superior Court denied motion and Court of Appeal affirmed – Whether pursuit of fleeing misdemeanour suspect justifies warrantless entry for purposes of Fourth Amendment.

Held (9:0): Vacated and remanded.

Collins & Ors v Yellen & Ors; Yellen & Ors v Collins & Ors

Supreme Court of the United States: [Docket No. 19-422; 19-563](#)

Judgment delivered: 23 June 2021

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

Catchwords:

Constitutional law – Separation of powers – Where *Housing and Economic Recovery Act of 2008* created Federal Housing Finance Agency (FHFA), an independent regulator of two statutory companies Federal National Mortgage Association and Federal Home Loan Mortgage Corporation– Where Director of FHFA removable by President only for cause – Where Director placed companies into conservatorship and negotiated agreements for companies with Department of Treasury – Where, subsequently, Director entered into amendment of agreement – Where petitioner shareholders of companies challenged amendment on basis FHFA violates separation of powers – Where District Court held FHFA structure unconstitutional and Fifth Circuit affirmed – Whether FHFA structure violates separation of powers because Director removable by President only for cause.

Administrative law – Judicial review – Anti-injunction clause – Where petitioners challenged amendment also on ground Director exceeded statutory powers – Where *Housing and Economic Recovery Act of 2008* contained anti-injunction clause, prohibiting review of FHFA actions unless actions exceed powers and functions of conservator – Where District Court dismissed statutory claim and Fifth Circuit reversed – Whether Director exceed statutory powers – Whether petitioners' claims barred.

Held (7:2): Affirmed in part, reversed in part, vacated in part and remanded.

Mahanoy Area School District v BL

Supreme Court of the United States: [Docket No. 20-255](#)

Judgment delivered: 23 June 2021

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

Catchwords:

Constitutional law – First Amendment – Freedom of speech – Limitations –
- School disciplinary action – Where respondent high school student posted vulgar content on social media off-campus and on weekend – Where school suspended respondent from cheerleading squad as punishment for posts – Where respondent sued school to reinstate respondent to cheerleading squad, claiming violation of First Amendment – Where District Court found punishment violated First Amendment and Third Circuit affirmed – Whether schools may discipline students for off-campus student speech consistent with First Amendment.

Held (8:1): Affirmed.

Cedar Point Nursery & Ors v Hassid & Ors

Supreme Court of the United States: [Docket No. 20-107](#)

Judgment delivered: 21 June 2021

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

Catchwords:

Constitutional law – Fifth Amendment – Takings Clause – Union access to employer’s property – Where California regulation title 8, §20900(e)(1)(C) granted labour organisations right to access agricultural employer’s property to solicit support for unionisation – Where respondent union organisers sought access to petitioners’ agricultural property – Where petitioners sought to enjoin enforcement of regulation on grounds regulation physical taking by appropriating their property rights without compensation, contrary to Takings Clause – Where District Court denied relief and Ninth Circuit affirmed – Whether regulation constitutes physical taking – Whether regulation contrary to Takings Clause.

Held (6:3): Reversed and remanded.

United States v Arthrex Inc & Ors; Smith & Nephew Inc & Ors v Arthrex Inc & Ors; Arthrex Inc v Smith & Nephew Inc & Ors

Supreme Court of the United States: [Docket No. 19-1434; 19-1452; 19-1458](#)

Judgment delivered: 21 June 2021

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

Catchwords:

Constitutional law – Appointments Clause – Administrative Patent Judges (APJ) – Where APJs conduct adversarial proceedings as part of Patent Trial and Appeal Board (PTAB) – Where Secretary of Commerce appoints all members of PTAB except for Director, who is nominated by President and confirmed by Senate – Where Arthrex appealed to Federal Circuit from patent decision on basis structure of PTAB violated Appointments Clause – Where Arthrex argued APJs principal officers’ appointments unconstitutional because neither Secretary nor Director can review decisions or remove at will – Where Federal Circuit agreed and held APJs removable at will by Secretary – Whether APJs principal officers whose appointments unconstitutional – If so, whether making APJs removable at will or making decisions reviewable by Director appropriate remedy.

Held (5:4): Vacated and remanded.

Fulton & Ors v Philadelphia & Ors

Supreme Court of the United States: [Docket No. 19-123](#)

Judgment delivered: 17 June 2021

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

Catchwords:

Constitutional law – First Amendment – Free Exercise Clause – Where Philadelphia’s foster care system contracted with agencies to certify prospective foster families under statutory criteria – Where petitioner Catholic Social Services (CSS) contracted with Philadelphia to provide foster care services – Where CSS will not certify same-sex couples because of CSS’s religious beliefs – Where other foster agencies will certify same-sex couples – Where Philadelphia informed CSS it will not renew contract or refer children to CSS because CSS’s refusal to certify same-sex couples violated non-discrimination provision in contract and in various city ordinances – Where CSS challenged Philadelphia’s decision but District Court refused relief because non-discrimination requirement neutral and generally applicable, following *Employment Div, Department of Human Resources v Smith*, 494 US 872 – Where Third Circuit affirmed – Whether non-discrimination requirement neutral and generally applicable – Whether refusal of Philadelphia to contract with CSS unless CSS agrees to certify same-sex couples violates Free Exercise Clause of First Amendment.

Held (9:0): Reversed and remanded.

Caniglia v Strom & Ors

Supreme Court of the United States: [Docket No. 20-157](#)

Judgment delivered: 17 May 2021

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

Catchwords:

Constitutional law – Fourth Amendment – Warrantless search and seizure – Community caretaking function – Where, on request of petitioner’s wife, police officers conducted welfare check on petitioner – Where petitioner agreed to go to hospital for psychiatric evaluation on condition officers did not confiscate his firearms – Where, after petitioner left, officers entered home and seized firearms – Where petitioner sued, claiming officers entered home and seized firearms without warrant, in violation of Fourth Amendment – Where First Circuit held exception to Fourth Amendment in *Cady v Dombrowski*, 413 US 433, for warrantless search of vehicles while undertaking community caretaking functions also extended to warrantless search of homes – Whether *Cady v Dombrowski* justified warrantless search of homes when undertaking community caretaking functions.

Held (9:0): Vacated and remanded.

Corporations

Goldman Sachs Group Inc & Ors v Arkansas Teacher Retirement System & Ors

Supreme Court of the United States: [Docket No. 20-222](#)

Judgment delivered: 21 June 2021

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

Catchwords:

Corporations – Shareholder actions – Material misrepresentations and omissions – Price impact presumption – Where respondent shareholders sued petitioner alleging petitioner maintained artificially inflated stock price by making false and misleading generic statements about ability to manage conflicts – Where market found out and stock price dropped, causing respondents losses – Where, in *Basic Inc v Levinson*, 485 US 224, Supreme Court held investors entitled to rely on presumption market stock price reflects all of company's public statements, including misrepresentations – Where respondents sought class action certification – Where District Court certified class because petitioner failed to rebut presumption by showing alleged misrepresentations had no price impact – Where Second Circuit affirmed decision – Whether generic nature of alleged misrepresentations relevant to price impact inquiry – Whether petitioner has burden of persuasion to prove lack of price impact.

Held (5:4): Vacated and remanded.

Hsin Chong Construction Company Limited (in liquidation) v Build King Construction Limited

Hong Kong Court of Final Appeal: [\[2021\] HKCFA 14](#)

Judgment delivered: 13 May 2021

Coram: Cheung CJ, Riberio, Fok PJJ, Tang and Gummow NPJJ

Catchwords:

Corporations – Winding-up – Void transactions – Where s 182 of *Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)* provided after winding-up petition presented, transaction disposing of company property presumptively void unless court grants validation order – Where parties entered into joint venture agreement, which provided one

party may exclude other party if other party insolvent – Where winding-up petition presented against appellant – Where respondent exercised option to exclude appellant – Where parties entered into supplementary agreement where respondent paid money to appellant's sister company in exchange for appellant's residual rights and interests – Where respondent sought to validate this transaction – Where Court of First Instance made validation order on basis transaction not disposition of appellant's property and respondent breached no duty – Where Court of Appeal held no ground to interfere with Court of First Instance's discretion to make validation order – Whether transaction disposition of property or discharge of obligations under joint venture agreement – Whether relevant to s 182 respondent breached no duty – Whether transaction void.

Held (5:0): Appeal allowed.

Courts

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 & Ors

Constitutional Court of South Africa: [\[2021\] ZACC 18](#)

Judgment delivered: 29 June 2021

Coram: Khampepe ADCJ, Jafta, Madlanga, Majiedt, Mhlantla JJ, Pillay AJ, Theron J, Tlaletsi AJ and Tshiqi J

Catchwords:

Courts – Contempt of court – Where, in *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* [2021] ZACC 2, Constitutional Court ordered respondent to attend and give evidence to Commission – Where respondent did not attend Commission as ordered – Where Commission launched contempt of court proceedings – Whether respondent guilty of contempt of court – If so, what is appropriate sanction.

Held (9:0): Leave to appeal granted; appeal allowed.

Sherman Estate & Anor v Donovan & Anor

Supreme Court of Canada: [\[2021\] SCC 25](#)

Judgment delivered: 11 June 2021

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

Catchwords:

Courts — Open court principle — Sealing orders — Discretionary limits on court openness — Important public interest — Privacy — Dignity — Physical safety — Where unexplained deaths of prominent couple generated intense public scrutiny and prompted trustees of estates to apply for sealing of probate files — Whether privacy and physical safety concerns advanced by estate trustees amount to important public interests at such serious risk to justify issuance of sealing orders.

Held (7:0): Appeal dismissed.

Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral & Anor v Aga & Ors

Supreme Court of Canada: [\[2021\] SCC 22](#)

Judgment delivered: 21 May 2021

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

Catchwords:

Courts — Jurisdiction — Where religious organization expelled members from congregation — Where expelled members brought action challenging expulsions — Whether action raised legal right giving superior court jurisdiction to review expulsions — Whether written constitution and bylaws of religious organization contractually binding and enforceable.

Held (9:0): Appeal allowed.

Criminal Law

Director of Public Prosecutions v Ziegler & Ors

Supreme Court of the United Kingdom: [\[2021\] UKSC 23](#)

Judgment delivered: 25 June 2021

Coram: Lord Hodge, Lady Arden, Lord Sales, Lord Hamblen and Lord Stephens

Catchwords:

Criminal law — Defences — Lawful excuse — European Convention of Human Rights (ECHR) — Freedom of expression — Freedom of peaceful assembly — Where appellants took part in protest by blocking highway — Where appellants charged with wilful obstruction of highway, contrary to s 137(1) of *Highways Act 1980* (UK) — Where appellants acquitted on basis appellants had lawful excuse because exercising ECHR rights of freedom of expression and freedom of peaceful assembly — Where Divisional Court

held lower court failed to balance interests of appellants with interests of members of public using highway – Whether exercise of ECHR rights lawful excuse – Whether police actions proportionate to appellants' exercise of ECHR rights.

Held (3:2): Appeal allowed.

Greer v United States; United States v Gary

Supreme Court of the United States: [Docket No. 19-8709; 20-444](#)

Judgment delivered: 14 June 2021

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

Catchwords:

Criminal law – Plain error review – Mens rea – Where in *Rehaif v United States*, 588 US ____, Supreme Court held for offence of felon-in-possession, prosecution must prove defendant not only knew they possessed firearm but also knew they were felon while in possession of firearm – Where, prior to *Rehaif*, Greer and Gary separately convicted of felon-in-possession – Where Greer convicted in jury trial and jury not instructed it had to find he knew he was felon – Where Gary pled guilty but not informed jury would have had to find he knew he was felon – Where both appealed on basis of *Rehaif* error – Where Eleventh Circuit rejected Greer's appeal on basis no plain error in verdict – Where Fourth Circuit allowed with Gary's appeal on basis error in mens rea element is structural error requiring automatic reversal – Whether *Rehaif* error requires defendant to demonstrate plain error on appeal or requires automatic reversal.

Held (8:1): No. 19-8709 affirmed; No. 20-444 reversed.

Terry v United States

Supreme Court of the United States: [Docket No. 20-5904](#)

Judgment delivered: 14 June 2021

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

Catchwords:

Criminal law – Sentencing – Mandatory minimum sentence – Sentence reduction – Where Congress passed *Fair Sentencing Act 2010*, which increased quantity of crack cocaine needed to trigger mandatory minimum sentence, and *First Step Act 2018*, which made changes retroactive and permitted persons to apply for resentencing under *Fair Sentencing Act* –

Where petitioner convicted of possession with intent to distribute unspecified amount of crack – Where petitioner not sentenced based on quantity of crack and mandatory minimum not applied – Where petitioner sought resentencing on ground he was convicted of crack offense modified by *Fair Sentencing Act* – Where District Court denied request and Eleventh Circuit affirmed – Whether crack offender eligible for sentence reduction under *First Step Act* even if offense did not trigger mandatory minimum sentence.

Held (9:0): Affirmed.

Borden v United States

Supreme Court of the United States: [Docket No. 19-5410](#)

Judgment delivered: 10 June 2021

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

Catchwords:

Criminal law – Violent felony – Mens rea – Recklessness – Where *Armed Career Criminal Act* provided 15-year mandatory minimum sentence for persons found guilty of illegally possessing firearm who have three or more prior convictions for violent felony – Where offense “violent felony” if involves use of physical force against another – Where, in *Leocal v Ashcroft*, 543 US 1, Supreme Court held offense involving mens rea of negligence not violent felony – Where petitioner pleaded guilty to being felon in illegal possession of firearm – Where petitioner had three prior convictions and one involved reckless aggravated assault – Where District Court applied mandatory minimum sentence and Sixth Circuit affirmed – Whether offense with mens rea of recklessness “violent felony”.

Held (5:4): Reversed and remanded.

Van Buren v United States

Supreme Court of the United States: [Docket No. 19-783](#)

Judgment delivered: 3 June 2021

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

Catchwords:

Criminal law – Computer fraud and abuse – Definition of “exceeds authorised access” – Where §1030(a)(2) of *Computer Fraud and Abuse Act 1986* subjects to criminal liability persons who intentionally access

computer without authorisation or exceeds authorised access – Where “exceeds authorised access” defined in §1030(e)(6) to mean access to computer with authorisation and use access to obtain information accessor not entitled to obtain – Where petitioner former police officer used own valid credentials on patrol car computer to access licence plate information in exchange for money – Where petitioner charged with violation of §1030(a)(2) and convicted – Where petitioner unsuccessfully appealed to Eleventh Circuit – Whether definition “exceeds authorised access” applied only to those who obtained information to which their computer access not extend – Whether “exceeds authorised access” extended to those who misused computer access they already had.

Held (6:3): Reversed and remanded.

Senwedi v The State

Constitutional Court of South Africa: [\[2021\] ZACC 12](#)

Judgment delivered: 21 May 2021

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

Catchwords:

Criminal law — Sentencing – Non-parole period – Retrospectivity – Where applicant convicted of murder and sentenced to life imprisonment with 25-year non-parole period on 14 May 2002 – Where, at time of conviction and sentencing, maximum non-parole period 20 years – Where applicant applied to Supreme Court of Appeals for reconsideration of conviction and sentence pursuant to s 17(2)(f) of *Superior Courts Act 10 of 2013* – Where reconsideration application dismissed because submitted prior to *Superior Courts Act* coming into operation – Where s 276B of *Criminal Procedure Act 51 of 1977* provides maximum non-parole period of 25 years and commenced operation on 1 October 2004 – Whether refusal by Supreme Court of Appeals to hear application violated right to equal protection – Whether s 276B of *Criminal Procedure Act* applies retrospectively - Whether court erred in imposing 25-year non-parole period.

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

Edwards v Vannoy

Supreme Court of the United States: [Docket No. 19-5807](#)

Judgment delivered: 17 May 2021

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

Catchwords:

Criminal law – Criminal procedure – Retroactive application of new rule – Federal collateral review – Jury unanimity rule – Where 11 of 12 Louisiana jurors found petitioner guilty of some serious crimes and 10 jurors found petitioner guilty of other crimes – Where at time of conviction, Louisiana law permitted non-unanimous jury verdicts if at least 10 of 12 jurors returned guilty verdict – Where petitioner exhausted avenues for direct review – Where Supreme Court in *Ramos v Louisiana*, 590 US ____, overturned precedent in *Apodaca v Oregon*, 406 US 404, and held state jury must be unanimous to convict for serious crimes – Where petitioner applied for federal collateral review, relying on jury unanimity rule in *Ramos* to overturn conviction – Whether Fifth Circuit denied claim – Whether *Ramos* new rule of criminal procedure – Whether *Ramos* applies retroactively on federal collateral review.

Held (6:3): Affirmed.

R v GF

Supreme Court of Canada: [\[2021\] SCC 20](#)

Judgment delivered: 14 May 2021

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

Catchwords:

Criminal law — Sexual assault — Consent — Capacity to consent — Where complainant testified to incapacity to consent due to intoxication and to having expressed non-consent to sexual activity — Where accused convicted of sexual assault at trial but Court of Appeal ordered new trial — Whether trial judge required to address consent and capacity to consent separately when both at issue — Whether trial judge's reasons sufficient — *Criminal Code*, RSC 1985, c C-46, ss 265(3) , 273.1.

Held (8:1): Appeal dismissed.

R v CP

Supreme Court of Canada: [\[2021\] SCC 19](#)

Judgment delivered: 7 May 2021

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

Catchwords:

Criminal law — Appeals — Unreasonable verdict — Where accused young person convicted of sexual assault by judge sitting alone — Where accused appealed conviction on basis verdict unreasonable — Where conviction affirmed by majority of Court of Appeal — Whether verdict unreasonable.

Constitutional law — *Charter of Rights* — Right to liberty — Fundamental justice — Right to equality — Young persons — Appeals to Supreme Court of Canada — Where accused young person convicted of sexual assault — Where majority of Court of Appeal affirmed conviction but one judge dissented — Where young person filed appeal as of right to Supreme Court under s 691(1)(a) of *Criminal Code* — Where s 37(10) of *Youth Criminal Justice Act* stated that no appeal lies to Supreme Court unless young person granted leave to appeal — Whether s 37(10) of *Youth Criminal Justice Act* infringes young person's right to equality and right not to be deprived of liberty except in accordance with principles of fundamental justice — *Canadian Charter of Rights and Freedoms*, ss 1, 7, 15 — *Youth Criminal Justice Act*, SC 2002, c 1, s 37(10).

Held (8:1): Appeal dismissed.

Environmental Law

Hollyfrontier Cheyenne Refining LLC & Ors v Renewable Fuels Association & Ors

Supreme Court of the United States: [Docket No. 20-472](#)

Judgment delivered: 25 June 2021

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

Catchwords:

Environmental law – Renewable fuel refinery exemption – Extension – Where 42 USC §7545(o) required most domestic refineries to blend renewable fuels into fuels produced and provided exemption for small refineries until 2011 – Where §7545(o)(9)(A)(ii) allowed Environmental Protection Agency (EPA) to “extend” exemption for at least two years, if renewable fuel requirement would impose disproportionate economic hardship – Where §7545(o)(9)(B)(i) provided small refineries may at any time petitioner for “extension” of exemption for reason of disproportionate economic hardship – Where petitioner small refineries initially received exemption under §7545(o)(9)(A)(ii), saw it lapse, and then later petitioned for exemption under §7545(o)(9)(B)(i) – Where EPA granted extensions and respondent renewable fuel producers objected – Where Tenth Circuit vacated EPA decision – Whether petitioners eligible for “extension” despite original exemption lapsed.

Held (6:3): Reversed.

Guam v United States

Supreme Court of the United States: [Docket No. 20-382](#)

Judgment delivered: 24 May 2021

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

Catchwords:

Environmental law – Compliance – Contribution and cost-recovery – Where, in 2004, Guam and Environmental Protection Agency (EPA) entered into consent decree that resolved litigation filed by EPA alleging violations of *Clean Water Act* by Guam in respect of Ordot Dump – Where consent decree required Guam to pay civil penalty and take certain actions, and stated compliance would constitute full settlement and satisfaction of *Clean Water Act* claim – Where, in 2017, Guam sued United States to recover costs of compliance from United States for its use of Ordot Dump, claiming “cost-recovery” pursuant to §107(a) of *Comprehensive Environmental Response, Compensation and Liability Act of 1980* (CERCLA) and “contribution” pursuant to §113(f) of CERCLA – Where DC Circuit rejected contribution claim because time-barred and rejected cost-recovery claim because party eligible for contribution claim cannot assert cost-recovery claim – Where, in Supreme Court, Guam now contends that it was never eligible for contribution claim – Whether 2004 consent decree gave rise to contribution claim – Whether Guam entitled to cost-recovery claim.

Held (9:0): Reversed and remanded.

Family Law

Colucci v Colucci

Supreme Court of Canada: [\[2021\] SCC 24](#)

Judgment delivered: 4 June 2021

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

Catchwords:

Family law — Support — Child support — Retroactive decrease — Rescission of arrears — Where father owed \$170,000 in child support arrears and sought retroactive decrease in child support and rescission of arrears — Where framework governing applications by payor parent to

retroactively decrease child support based on material change in circumstances — Where framework governing applications by payor parent for rescission of child support arrears based on current and ongoing inability to pay — *Divorce Act*, RSC 1985, c 3 (2nd Supp), s 17.

Held (9:0): Appeal dismissed.

Immigration

Johnson & Ors v Guzman Chavez & Ors

Supreme Court of the United States: [Docket No. 19-897](#)

Judgment delivered: 29 June 2021

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

Catchwords:

Immigration – Removal of aliens – Immigration detention – Where 8 USC §1226 provided Department of Homeland Security may detain alien pending decision on whether alien to be removed from United States – Where alien detained under §1226 may apply for release on bond or conditional parole – Where, if alien ordered removed, detention becomes mandatory until removal – Where §1231 provided if alien removed under that process and re-enters US without authorisation, that person faces reinstatement of prior removal order – Where respondents aliens removed and re-entered without authorisation – Where Department reinstated removal orders and detained respondents – Where respondents sought release on bond – Where petitioner refused to release respondents on basis respondents detained under §1231 not §1226 – Where respondents sought writs of habeas corpus – Where District Court entered summary judgment for respondents and Fourth Circuit affirmed – Whether §1231 or §1226 governs detention of aliens subject to reinstated orders of removal – Whether respondents entitled to release on bond.

Held (6:3): Reversed.

Sanchez & Anor v Mayorkas

Supreme Court of the United States: [Docket No. 20-315](#)

Judgment delivered: 7 June 2021

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

Catchwords:

Immigration – Lawful permanent resident – Temporary protected status – Unlawful entry – Where petitioner non-citizen entered United States unlawfully in 1997 – Where, in 2001, US Government granted petitioner temporary protected status (TPS) – Where, in 2014, petitioner applied to convert TPS to lawful permanent resident (LPR) status – Where US Citizenship and Immigration Services determined petitioner ineligible for LPS status because he entered US unlawfully – Where petitioner successfully challenged determination in District Court, which held TPS required treating petitioner as if he had been lawfully admitted – Where Third Circuit reversed – Whether TPS requires treatment of recipient as if they had been lawfully admitted – Whether TPS recipient who entered unlawfully eligible for LPR status.

Held (9:0): Affirmed.

United States v Palomar-Santiago

Supreme Court of the United States: [Docket No. 20-437](#)

Judgment delivered: 24 May 2021

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

Catchwords:

Immigration – Unlawful re-entry – Collateral challenge – Where respondent non-citizen convicted of felony DUI in 1988 – Where, at that time, conviction “aggravated felony”, subjecting non-citizen to removal from United States – Where non-citizen subjected to removal order and removed – Where in 2017, respondent found in United States and indicted on one count of unlawful re-entry under 8 USC §1326(a) – Where §1326(d) provided collateral challenge to original removal order may be made only if non-citizen demonstrates three conditions met: exhaustion of administrative remedies, exhaustion of judicial review remedies and order fundamentally unfair – Where respondent moved to dismiss indictment on ground prior removal invalid, based on precedent in *Leocal v Ashcroft*, 543 US 1, which held felony DUI not aggravated felony – Whether Ninth Circuit held respondent excused from proving exhaustion of administrative and judicial review remedies because removal order invalid – Whether invalidity of removal order excuses proof of statutory conditions in §1326(d) – Whether statutory conditions in §1326(d) mandatory.

Held (9:0): Reversed and remanded.

Patents

Minerva Surgical Inc v Hologic Inc & Ors

Supreme Court of the United States: [Docket No. 20-440](#)

Judgment delivered: 29 June 2021

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

Catchwords:

Patents – Infringement – Invalidity of patent – Assignor estoppel – Where inventor of device filed patent application and assigned application to his company, Novacept Inc – Where Patent and Trademark Office (PTO) issued patent – Where Novacept Inc acquired by respondent – Where inventor later developed improved device, obtained patent and assigned to petitioner – Whether respondent filed continuation application for original patent and sought to add claims for original device – Where, in application for added claim, respondent described device in broad terms – Where PTO issued altered patent to respondent – Where respondent sued petitioner for patent infringement – Where petitioner argued patent invalid because added claim did not match written description – Where respondent invoked assignor estoppel, which would prevent original applicant and assignor from impeaching patent validity – Where District Court and Court of Appeals agreed assignor estoppel barred petitioner’s invalidity defence – Whether assignor estoppel still good law – If so, whether assignor estoppel applies to bar petitioner’s defence, where defence applies to added claim and not original patent.

Held (6:3): Vacated and remanded.

Practice and Procedure

Transunion LLC v Ramirez

Supreme Court of the United States: [Docket No. 20-297](#)

Judgment delivered: 25 June 2021

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

Catchwords:

Practice and procedure – Standing – Concrete harm – Where petitioner credit reporting agency provided service which compares first and last name of individual with US Treasury Department Office of Foreign Asset Control list of terrorists, drug traffickers and other serious criminals – Where, if individual’s name matched, petitioner placed alert on credit report stating consumer’s name “potential match” to name on Department’s list – Where class of 8,185 individuals with alerts on their credit files sued petitioner under *Fair Credit Reporting Act* for failing to use reasonable procedures to ensure accuracy of credit files – Where 6,332

class members had alerts but credit report not provided to anyone during relevant time period – Where jury returned verdict for all class members and Ninth Circuit affirmed – Whether class members whose credit reports have alerts but not been provided to anyone have suffered concrete harm – Whether those class members have standing to seek damages against petitioner.

Held (6:3): Reversed and remanded.

California & Ors v Texas & Ors; Texas & Ors v California & Ors
Supreme Court of the United States: [Docket No. 19-840; 19-1019](#)

Judgment delivered: 17 June 2021

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

Catchwords:

Practice and procedure – Standing – Past or future injury – Case or controversy – Where *Patient Protection and Affordable Care Act* originally required most individuals to obtain minimum essential health insurance coverage and imposed monetary penalty on individuals who failed to do so – Where subsequent amendments set amount of penalty to \$0 – Where Texas, along with 19 other states, sought declaration and injunction that minimum coverage provision unconstitutional – Where District Court granted relief – Where California and 20 other states unsuccessfully appealed to Fifth Circuit on basis Texas lacked standing – Whether Texas can show past or future injury traceable to provision – Whether matter raises case or controversy – Whether Texas has standing to challenge minimum coverage provision.

Held (7:2): Reversed and remanded.

Nestle USA Inc v Doe & Ors; Cargill Inc v Doe & Ors
Supreme Court of the United States: [Docket No. 19-416; 19-453](#)

Judgment delivered: 17 June 2021

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

Catchwords:

Practice and procedure – Extraterritoriality – Alien torts – Where respondents individuals from Mali who alleged they were trafficked into Ivory Coast as child slaves to produce cocoa – Where respondents sued petitioners for aiding and abetting child slavery under *Alien Torts Statute*, which gave US courts jurisdiction to hear claims brought by aliens for

torts committed in violation of international law – Where petitioners not own or operate cocoa farms in Ivory coast but bought from them – Where respondents' injuries occurred overseas – Where District Court dismissed suit as impermissible extraterritorial application of *Aliens Tort Statute* – Where Ninth Circuit reversed decision on basis petitioner's operational decisions originated in US – Whether respondents' suit impermissible extraterritorial application – Whether injuries pleaded have sufficient connection to US.

Held (8:1): Reversed and remanded.

MediaQMI inc v Kamel & Anor

Supreme Court of Canada: [\[2021\] SCC 23](#)

Judgment delivered: 28 May 2021

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

Catchwords:

Practice and procedure – Civil procedure — Openness of court proceedings — Right to access court record — Discontinuance — Retrieval of exhibits — Where public body brought action against former manager alleging misappropriation of public funds — Where newspaper publishing company filed motion for access to sealed exhibits in court record — Where court authorised retrieval of exhibits because of discontinuance filed by public body before motion heard — Whether Superior Court judge obliged to decide application for access to court record before authorizing retrieval of exhibits — *Code of Civil Procedure*, CQLR, c C-25.01, arts 11, 108.

Held (5:4): Appeal dismissed.

San Antonio v Hotels.com, LP & Ors

Supreme Court of the United States: [Docket No. 20-334](#)

Judgment delivered: 27 May 2021

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

Catchwords:

Practice and procedure – Costs – Supersedeas bonds – Where petitioner, acting on behalf of 173 Texas municipalities, awarded judgment in District Court against respondents – Where respondents obtained supersedeas bonds securing judgment debt to prevent execution of judgment pending appeal – Where Court of Appeals overturned decision of District Court – Where respondents filed bill of costs in District Court claiming premiums

paid on supersedeas bonds amounting to \$2.3 million, pursuant to Rule 39(e) of *Federal Rule of Appellate Procedure* – Where petitioner objected and applied to District Court to exercise discretion to deny or reduce those costs – Where District Court held it had no discretion to deny or reduce costs – Where Fifth Circuit affirmed – Whether District Court has discretion to deny or reduce costs under Rule 39.

Held (9:0): Affirmed.

Matthew & Ors v Sedman & Ors

Supreme Court of the United Kingdom: [\[2021\] UKSC 19](#)

Judgment delivered: 21 May 2021

Coram: Lord Hodge, Lady Arden, Lord Sales, Lord Burrows and Lord Stephens

Catchwords:

Practice and procedure – Limitation periods – Midnight deadline – Where appellants current trustees of trust and respondents former trustees until 2014 – Where trust shareholder of third party and third party issued misleading information in annual report and prospectus – Where valid claim could have been made against third party up to midnight on Thursday 2 June 2011 – Where respondents failed to make claim – Where, on Monday 5 June 2011, appellants commenced proceedings in negligence and breach of trust against respondents for failure to make claim against third party – Where *Limitation Act 1980* provided claims in negligence and breach of trust cannot be brought after expiration of six years after cause of action accrued – Where appellants submitted because cause of action accrued at midnight on Thursday 2 June 2011, Friday 3 June 2011 should be excluded in limitation period and therefore limitation period expired on Monday 7 June 2017 (because 3 June 2017 was Saturday and court office closed) – Where Court of Appeal disagreed and held Friday 3 June 2011 should be included in limitation period, therefore limitation period expired on Friday 2 June 2017 and appellants' claim statute-barred – Whether, where cause of action accrues at midnight, following day should be included or excluded in calculation of limitation period – Whether appellants' claim statute-barred.

Held (5:0): Appeal dismissed.

BP plc & Ors v Mayor and City Council of Baltimore

Supreme Court of the United States: [Docket No. 19-1189](#)

Judgment delivered: 17 May 2021

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

Catchwords:

Practice and procedure – Removal from state court – Review on appeal – Where respondents sued petitioners in Maryland state court – Where petitioners removed case to federal court on number of grounds, including 28 USC §1442 – Where District Court held removal not justified and remanded case to state court – Where, generally, orders remanding case not reviewable on appeal but 28 USC §1477(d) provided review available if case removed pursuant to §1442 – Where Fourth Circuit interpreted §1477(d) to authorise review of part of remand order deciding §1442 removal ground only and held it lacked jurisdiction to review all other grounds – Whether §1477(d) authorises review of entire case or only of part of case based on §1442 ground.

Held (7:1): Vacated and remanded.

Competition Commission v Beefcor Proprietary Ltd & Anor
Constitutional Court of South Africa: [\[2021\] ZACC 9](#)

Judgment delivered: 13 May 2021

Coram: Mogoeng CJ, Jafta, Khampepe, Madlanga, Majiedt, Mhlantla JJ, Pillay AJ, Theron J, Tlaetsi AJ and Tshiqi J

Catchwords:

Practice and procedure – Withdrawal of complaint – Reinstatement of matter – Where appellant initiated complaint against respondent, alleging breach of competition law – Where, prior to hearing before Competition Tribunal, appellant informed respondent it wished to engage in settlement negotiations – Where appellant filed notice of withdrawal to facilitate negotiations – Where negotiations failed – Where appellant filed application to reinstate proceedings before Tribunal – Where Tribunal held possible for appellant to reinstate withdrawn complaint, but found proper case for reinstatement not made out – Where appellant unsuccessfully appealed to Competition Appeal Court, which held withdrawal amounted to completed proceedings and appellant unable to reinstate same complaint – Whether withdrawn complaint completed proceedings – Whether withdrawn complaint may be reinstated.

Held (10:0): Appeal allowed.

Property Law

PennEast Pipeline Co LLC v New Jersey & Ors
Supreme Court of the United States: [Docket No. 19-1039](#)

Judgment delivered: 29 June 2021

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

Catchwords:

Property law – Federal eminent domain – Applicability to state-owned land – Where 15 USC §717f(h) allowed Federal Energy Regulatory Commission to issue certificate to companies to build interstate gas pipeline and authorised certificate holders to exercise federal eminent domain power to take property to build pipeline – Where petitioner certificate holder applied to exercise federal eminent domain powers over land owned by respondent state New Jersey – Where District Court granted request but Third Circuit vacated decision, holding clear words in statute needed to delegate certificate holders power to condemn state-owned land – Whether §717f(h) authorises certificate holder to condemn state-owned land.

Held (5:4): Reversed and remanded.

University of Johannesburg v Auckland Park Theological Seminary & Anor

Constitutional Court of South Africa: [\[2021\] ZACC 13](#)

Judgment delivered: 11 June 2021

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

Catchwords:

Property law – Lease – Personal rights – Assignment – Where applicant university entered into long-term lease with first respondent over certain property on university campus for use as seminary – Where lease required applicant to obtain permission from Minister of Education by giving Minister name of first applicant and purpose of leasing property, and permission granted – Where first applicant did not establish seminary on property but instead ceded rights under lease to second respondent by deed – Where second respondent established primary and secondary school on premises – Where applicant not informed of cession and considered rights in lease personal to first respondent – Where applicant considered first respondent repudiated lease, accepted repudiation, terminated lease and applied to court to evict respondents from property – Where High Court and Full Court held rights in lease personal to first respondent and could not be assigned – Where Supreme Court of Appeal disagreed and allowed respondents' appeal – Whether rights in lease personal to first respondent – Whether rights can be assigned or ceded.

Held (8:0): Leave to appeal granted; appeal allowed.

Cheung v Cheung & Ors

Hong Kong Court of Final Appeal: [\[2021\] HKCFA 19](#)

Judgment delivered: 27 May 2021

Coram: Cheung CJ, Ribeiro, Fok PJJ, Bokhary and Gummow NPJJ

Catchwords:

Property law – Equity – Proprietary estoppel – Detrimental reliance – Occupation rent – Partition and ouster – Where disputed land owned jointly owned by three brothers until their deaths – Where appellant administrator of estates of two younger brothers – Where respondents children and grandchildren of eldest brother – Where, since 1970, common understanding existed between three brothers and third respondent, such that third respondent could use disputed land and build house – Where third respondent carried out various building works on land – Where appellants brought action against respondents seeking injunction to enjoin further building works on land and to remove existing structures – Where respondents argued appellant estopped from claiming relief – Where respondents counterclaimed against appellant for one third of rental income of house built adjacent to disputed land, held as tenants-in-common, and respondents not ousted – Whether sufficient detrimental reliance by third respondent on common understanding prior to death of all three brothers – Whether respondents entitled to occupation rents even if no ouster – Whether equities favour payment of occupation rent.

Held (5:0): Appeal allowed.

Taxation

Clicks Retailers (Pty) Ltd v Commissioner for the South African Revenue Service

Constitutional Court of South Africa: [\[2021\] ZACC 11](#)

Judgment delivered: 21 May 2021

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

Catchwords:

Taxation – Income tax – Allowances – Sameness of contract – Where s 24C of *Income Tax Act 58 of 1962* provided taxpayer may defer paying tax on income if it accrues in terms of contract and contract requires income be used to finance future expenditure – Where applicant runs loyalty program – Where customer signs loyalty program contract which

renders customer eligible to earn vouchers in proportion to value of purchases made with applicant – Where applicant sought to claim s 24C allowance in respect of income generated through individual purchases made by loyalty program members – Where respondent disallowed allowance because income generated by individual purchase arose from different contract to expenditure obligation imposed by loyalty program contract – Where Tax Court allowed applicant’s appeal and Supreme Court of Appeal allowed respondent’s appeal – Whether income-producing contract and obligation-imposing contract “same” contract for purpose of s 24C – Whether applicant entitled to allowance.

Held (9:0): Leave to appeal granted; appeal dismissed.

Commissioners for Her Majesty’s Revenue and Customs v Tooth
Supreme Court of the United Kingdom: [\[2021\] UKSC 17](#)

Judgment delivered: 14 May 2021

Coram: Lord Reed, Lord Briggs, Lord Sales, Lord Leggatt and Lord Burrows

Catchwords:

Taxation – Re-assessment – Deliberate inaccuracy – Where, in 2009, respondent taxpayer filed tax return for 2007-08 tax year using software approved by appellant – Where respondent took part in tax avoidance scheme, creating employment losses to reduce tax liability – Where, due to technical issues, respondent unable to enter losses in box for employment loss – Where respondent advised by software engineers to enter loss in partnership loss box and give written explanation of what was done in separate box – Where appellant considered that tax avoidance scheme was ineffective but failed to open appropriate enquiry into respondent’s return – Where retrospective legislation subsequently passed, confirming avoidance scheme ineffective – Where appellant sought to re-assess respondent’s return by issuing discovery assessment on basis it contained deliberate inaccuracy regarding classification of employment losses – Where respondent successfully challenged appellant’s discovery assessment in Tribunal – Where appellant’s appeal to Court of Appeal dismissed – Whether discovery assessment validly made – Whether alleged inaccuracy in return deliberate.

Held (5:0): Appeal dismissed.

Hurstwood Properties (A) Ltd & Ors v Rossendale Borough Council & Anor
Supreme Court of the United Kingdom: [\[2021\] UKSC 16](#)

Judgment delivered: 14 May 2021

Coram: Lord Reed, Lord Hodge, Lord Briggs, Lord Kitchin and Lord Leggatt

Catchwords:

Taxation – Non-domestic rates – Rates avoidance scheme – Where s 45 of *Local Government Finance Act 1988* allowed local councils to charge non-domestic rates to “owners” of unoccupied commercial properties – Where “owner” defined as person entitled to possession of land – Where regulation 4(k) of *Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008* provided rates not charged where owner company being wound up – Where respondent companies registered proprietors of land – Where respondents participated in rates avoidance scheme by creating Special Purpose Vehicle (SPV), granting short-term lease over land to SPV such that SPV becomes “owner” and liable for rates, and then placing SPV into liquidation to escape rates liability – Where appellant councils sought to claim unpaid rates against respondents – Where Court of Appeal struck out local authorities’ claims – Whether leases effective to transfer entitlement to possession to SPVs – If not, whether respondents retain entitlement to possession.

Corporations – Corporate veil – Whether rates avoidance scheme abuse of separate legal personality of SPVs and justifies piercing of corporate veil.

Held (5:0): Appeal allowed.

Torts

Khan v Meadows

Supreme Court of the United Kingdom: [\[2021\] UKSC 21](#)

Judgment delivered: 18 June 2021

Coram: Lord Reed, Lord Hodge, Lady Black, Lord Kitchin, Lord Sales, Lord Leggatt and Lord Burrows

Catchwords:

Torts – Negligence – Professional negligence – Scope of duty of care – Where respondent doctor negligently advised appellant not carrier of haemophilia gene – Where, in reliance on advice, appellant gave birth to child – Where child subsequently diagnosed with haemophilia – Where, if appellant had known she was carrier, she would have undergone foetal testing when pregnant and, because test would have revealed foetus has haemophilia, appellant would have terminated pregnancy – Where child subsequently diagnosed with autism – Where appellant sued respondent for costs of raising child attributable to both haemophilia and autism – Where Court of Appeal held respondent only liable for costs associated with haemophilia – Whether costs associated with child’s autism within scope of respondent’s duty of care.

Held (7:0): Appeal dismissed.

Manchester Building Society v Grant Thornton UK LLP

Supreme Court of the United Kingdom: [\[2021\] UKSC 20](#)

Judgment delivered: 18 June 2021

Coram: Lord Reed, Lord Hodge, Lady Black, Lord Kitchin, Lord Sales, Lord Leggatt and Lord Burrows

Catchwords:

Torts – Negligence – Professional negligence – Scope of duty of care – Where appellant's accounts audited by respondent accountants – Where respondent negligently advised appellant that accounts could be prepared according to accounting method "hedge accounting" – Where appellant relied on advice and entered into long-term interest rate swap contracts to hedge against cost of appellant's mortgage business – Where accounts misstated capital position and appellants required to pay fee to break swap contracts early in order to maintain sufficient capital for regulatory requirements – Where trial judge and Court of Appeal held appellant held break fee outside of respondent's duty of care – Whether break fee loss within scope of respondent's duty of care.

Held (7:0): Appeal allowed.

Mahlangu & Anor v Minister of Police

Constitutional Court of South Africa: [\[2021\] ZACC 10](#)

Judgment delivered: 14 May 2021

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

Catchwords:

Torts – Unlawful imprisonment – Causation – Where applicants arrested by police without warrant and without reasonable suspicion – Where police assaulted and tortured applicants and obtained false confession from applicants – Where applicants first appeared in Magistrates' Court on 31 May 2005 and matter postponed fourteen times – Where applicants eligible to apply for bail but did not – Where applicants released on 10 February 2006 – Where applicants sought damages for unlawful imprisonment for whole of detention period – Where High Court held damages only available for time spent prior to court appearance, because postponements not respondent's fault – Where applicant's appeal to Full Court unsuccessful – Whether respondent liable for full detention period – Whether applicants' failure to apply for bail broke chain of causation.

Held (8:0): Leave to appeal granted; appeal allowed.

Trusts

Lambie Trustee Ltd v Addleman

Supreme Court of New Zealand: [\[2021\] NZSC 54](#)

Judgment delivered: 1 June 2021

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

Catchwords:

Trusts – Trustee duties – Disclosure of information – Legal advice – Legal professional privilege – Where respondent beneficiary of trust – Where appellant sole trustee of trust – Where respondent did not become aware of trust existence until 2001 – Where respondent sought disclosure of certain information from trustees, but did not receive information – Where respondent applied to High Court, which dismissed respondent's claim – Where Court of Appeal reversed judgment, ordering appellant to disclose all documents relating to financial statements, minutes of meetings, and any legal advice obtained by trustees and funded by trust – Whether legal professional privilege prevents legal advice obtained by trust from being disclosed – Whether Court of Appeal's orders to disclose legal advice extends to legal advice in connection with this litigation.

Held (5:0): Appeal dismissed.
