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International Law

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Executive Summary (1 minute read)

Southwind v Canada (SCC) - aboriginal law - fiduciary duty - equitable compensation - claim arising from flooding of The Lac Seul First Nation reserve following completion of dam under agreement between Canada, Ontario and Manitoba - erroneous assessment of equitable compensation - appeal allowed.

Americans for Prosperity Foundation v Bonta; Thomas More Law Center v Bonta (SCOTUS) - charitable organisations - requirement of disclosure of donors' identities to state Attorney General's office was 'facially invalid' - Ninth Circuit's judgment reversed - cases remanded.

HKSAR v Leung Chung Hang Sixtus (HKCFA) - criminal law - unlawful assembly - appellant convicted for taking part in unlawful assembly contrary to ss18(1) & (3) Public Order Ordinance (Cap. 245) - appellant appealed - 'certified question of law' - offence's 'mental element' - certified question of law answered - appeal dismissed.

Harcus Sinclair LLP & Anor v Your Lawyers Ltd (UKSC) - contract - undertakings - restraint of trade - 'non-compete undertaking' given by one law firm to the other law firm was not unenforceable as unreasonable restraint of trade and was not a solicitor's undertaking - appeal allowed.

BE obo JE v MEC for Social Development, Western Cape (ZACC) - negligence - applicant injured when beam of 'wooden swing structure' collapsed on her whilst she was playing at school - Minister was not delictually liable - judgment of Supreme Court of Appeal upheld.

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Summaries With Link (Five Minute Read)

Southwind v Canada [2021] SCC 28

Supreme Court of Canada

Wagner CJ; Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin & Kasirer JJ.

Aboriginal law - fiduciary duty - equitable compensation - claim arising from flooding of The Lac Seul First Nation reserve following completion of dam under agreement between Canada, Ontario and Manitoba - appeal concerned equitable compensation's evaluation for loss of lands which were flooded - whether trial judge erred equitable compensation's assessment - whether erroneous reliance on 'general principles of expropriation law' in valuation of loss and conclusion that compensation 'would not be assessed at a higher value than the minimum required under an expropriation' - 'duty to preserve the interest to the greatest extent possible' - 'lost opportunity to negotiate a surrender' of the land's highest value - held: appeal allowed - equitable compensation award set aside - Federal Court to reassess award.

[Southwind](#)

Americans for Prosperity Foundation v Bonta; Thomas More Law Center v Bonta 594 U.S. ____ (2021)

Supreme Court of the United States

Roberts CJ; Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh & Barrett JJ

Charitable organisations - requirement of disclosure of donors' identities to state Attorney General's office - petitioners were tax-exempt charities which solicited contributions in California - in order to preserve anonymity of donors, petitioners had not filed 'unredacted Schedule Bs' - Attorney General threatened to suspend petitioners' registrations and to fine them for the non-compliance - petitioners alleged their rights under First Amendment and donors' rights were violated by requirement to disclose - 'First Amendment right to free association' - charities' supervision - whether 'disclosure requirement' was 'facially invalid' - 'exacting scrutiny' - 'narrowly tailored' - held: disclosure requirement facially invalid - Ninth Circuit's judgment reversed - cases remanded.

[Americans for Prosperity](#)

HKSAR v Leung Chung Hang Sixtus [2021] HKCFA 24

Hong Kong Court of Final Appeal

Roberts CJ; Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh & Barrett JJ

Criminal law - unlawful assembly - appellant convicted for taking part in unlawful assembly contrary to ss18(1) & (3) Public Order Ordinance (Cap. 245) - appellant appealed - 'certified question of law': "Which alternative set out in *Kulemesin v HKSAR* (2013) 16 HKCFAR 195 shall be applicable in relation to the 'likely to cause any person reasonably to fear' limb of the offence created by section 18 of the Public Order Ordinance (Cap. 245)?" - offence's 'mental element' - whether appellant's appeal 'must be dismissed regardless of the answer' to certified question of law - held: certified question of law answered - appeal dismissed.

[HKSAR](#)

Harcus Sinclair LLP & Anor v Your Lawyers Ltd [2021] UKSC 32

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Hamblen & Lord Burrows

Contract - undertakings - restraint of trade - proceedings arising from litigation 'concerning diesel emissions from vehicles manufactured by Volkswagen' - appeal's 'central issue' was whether 'non-compete undertaking' given by one law firm to the other law firm concerning 'contemplated group litigation' was unenforceable for being an 'unreasonable restraint of trade' - appeal also concerned issue whether 'undertaking was a solicitor's undertaking' and, if it was, whether it was enforceable against the solicitor who gave it on his firm's behalf and against the law firm - held: non-compete undertaking not unenforceable as unreasonable restraint of trade - non-compete undertaking was not a solicitor's undertaking - appeal allowed.

[Harcus Sinclair](#)

BE obo JE v MEC for Social Development, Western Cape [2021] ZACC 23

Constitutional Court of South Africa

Mogoeng CJ; Jafta J, Khampepe J, Madlanga J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ & Tshiqi J

Negligence - applicant injured when beam of 'wooden swing structure' collapsed on her whilst she was playing at school - applicant suffered injuries including severe brain injury and was 'severely and permanently disabled' - proceedings concerned issue whether respondent Minister 'should be held delictually liable' for damages - whether elements of 'delictual liability', namely 'wrongfulness, negligence and causation' were proved - whether Minister had 'legal duty' to prevent harm to applicant - whether Minister had duty 'to inspect playground equipment' or ensure children's safety 'on a daily basis' - held: Minister did not have duty - judgment of Supreme Court of Appeal upheld.

[BE obo JE](#)

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