

Friday, 30 August 2024

Weekly International Law Review

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Executive Summary (One Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd (UKSC) - Manchester Ship Canal company was not barred from bringing a common law damages claim for trespass and nuisance against a public utilities company that discharged raw, untreated and foul sewage into the canal from outfalls lawfully maintained by the sewerage authority

Lipton v BA Cityflyer (UKSC) - Passengers were entitled to compensation from airline for a flight cancelled due to pilot illness as the cancellation was not the result of unavoidable extraordinary circumstances

HABEAS CANEM

McGregor the puppy



Summaries With Link (Five Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd [2024] UKSC 22

Supreme Court of the United Kingdom

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Rose, Lord Richards

In a declaratory ruling, the Supreme Court was asked to decide whether the Manchester Ship Canal Company could bring a claim against the statutory sewerage authority for discharges of foul sewage into the canal. The defendant, United Utilities, was the statutory sewerage authority for North West England and owned about 100 outfalls from which treated sewage was discharged into the canal. However, sometimes untreated sewage was discharged into the canal as well. No allegation was made that the discharge of untreated sewage was caused by negligence. However, it could have been avoided through improved infrastructure. The High Court, upheld by the Court of Appeal, found that a canal owner could not bring a claim based on nuisance or trespass against a sewerage operator unless the discharge was the result of negligence or deliberate wrongdoing. The Supreme Court unanimously allowed the Canal Company's appeal. Sewerage is regulated by the *Water Industry Act 1991* and the Supreme Court held that nothing in the legislation permitted or authorised a sewerage authority to discharge foul water through outfalls. Inasmuch as the statute did not authorise the activity, common law remedies were available. The Court rejected the defence that the only way to avoid fouling the canal would be to construct sewerage infrastructure and that was a matter for Parliament. The Court found that there was nothing in the legislation indicating that Parliament intended to extinguish common law rights of action. While an injunction against further discharge presented questions relating to the process of regulatory approval for capital expenditures by the sewerage authority, that did not mean that common law-based awards for damages for invasion of property rights were precluded.

[Manchester Ship Canal Co](#)

[From Benchmark Friday, 30 August 2024]

Lipton v BA Cityflyer [2024] UKSC 24

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Sales, Lord Burrows, Lady Rose, Lady Simler

In January 2018, Mr and Mrs Lipton were booked on a flight from Milan to London which was cancelled because of pilot illness. The Liptons were re-booked and arrived in London 2.5 hours later than they were scheduled. They claimed compensation in the amount of EU250 as provided under European Law for cancelled flights. The airline denied the claim on the ground that European Law allowed a defence if the airline could show that the cancellation was the result of extraordinary circumstances which were unavoidable even if reasonable measures had been taken. The Liptons' claim was rejected by the County Courts but was upheld by the Court of Appeal. The airline appealed to the Supreme Court which unanimously dismissed the appeal and upheld the award to the plaintiffs. The Supreme Court decided two issues on appeal: (1) which law applied to the case and (2) whether pilot illness amounted to a defence under EU



law. As to the first issue, the underlying incident occurred prior to Brexit. but by the time the matter reached the Court of Appeal, the UK had left the EU. In a divided decision, the Court found that the pre-Brexit EU regulations applied under the *European Union Withdrawal Act 2018*, and that subsequent events did not extinguish the plaintiffs' cause of action. With respect to the second issue regarding the merits of the airline's defence, the Court held that the airline had the burden to prove that the non-appearance of the pilot fell within the category of extraordinary circumstances. The Court unanimously held that the non-appearance of a pilot due to illness was an inherent aspect of an airline's operations and could not be considered to be extraordinary. That the illness occurred outside of the workplace did not make the event any less inherent in the business of the airline.

[Lipton](#)

[From Benchmark Friday, 30 August 2024]

Poem for Friday

i carry your heart with me

by e.e. cummings (1894-1962)

i carry your heart with me (i carry it in
my heart) i am never without it (anywhere
i go you go, my dear; and whatever is done
by only me is your doing, my darling)

i fear

no fate (for you are my fate, my sweet) i want
no world (for beautiful you are my world, my true)
and it's you are whatever a moon has always meant
and whatever a sun will always sing is you

here is the deepest secret nobody knows
(here is the root of the root and the bud of the bud
and the sky of the sky of a tree called life; which grows
higher than soul can hope or mind can hide)
and this is the wonder that's keeping the stars apart

i carry your heart (i carry it in my heart)

Edward Estlin Cummings (e.e. cummings), an American poet, essayist and playwright was born on 14 October 1894 in Cambridge Massachusetts. His parents encouraged his creativity, and included in their circle of friends artists, philosophers and writers. Cummings's father was a professor at Harvard, and later a minister of the Unitarian church. Cummings wrote poetry from the age of 8. Cummings was an ambulance driver during the first world war. He was interned in a camp in Normandy in the first world war, for having expressed anti-war sentiments. During his life he wrote about 2900 poems. He returned to Paris many times throughout his life. It has been written of Cummings that "No one else has ever made avant-garde, experimental poems so attractive to the general and the special reader," and "Cummings is a daringly original poet, with more vitality and more sheer, uncompromising talent than any other living American writer."

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian parents. He trained at the Royal Central School of Speech and Drama in London. In the



UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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