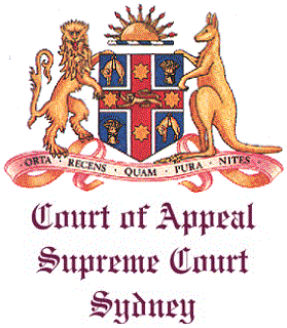

Decisions of interest

19 November 2018 – 17 December 2018

Summaries of recent decisions of the New South Wales Court of Appeal, other Australian intermediate appellate courts, Asia Pacific appellate courts and other international appellate courts, with the aim of collecting and promoting awareness and accessibility of particularly significant recent decisions.

Contents

New South Wales Court of Appeal decisions of interest

1. **Constitutional law: inconsistency; corporations: voluntary administration**

   Banerjee v Commissioner of Police **[2018] NSWCA 283**

   Decision date: 22 November 2018

   Bathurst CJ; Beazley P; Basten JA

   The applicants were the administrators of a company which, before it went into voluntary administration, provided security services to the government and other organisations. In order to operate that business, the company was required to hold a master security licence under the *Security Industry Act 1997* (NSW) (**the Act**). By virtue of the Act and the Security Industry Regulation 2016 (NSW), cl 13(3), the respondent was required to revoke the company's master licence upon the company entering voluntary administration. The practical effect of revocation was to prevent the company (and thus its administrators) from carrying on its primary business. The administrators commenced proceedings in the Equity Division, contending that the operation of the Act and cl 13(3) was inconsistent with the *Corporations Act 2001* (Cth), Pt 5.3A ("Administration of a company's affairs with a view to executing a deed of company arrangement"). Sackar J stated a separate question and ordered that the proceedings be removed to the Court of Appeal for determination. The question was: "*Whether clause 13(3) of the Security Industry Regulation 2016 (NSW), in its operation pursuant to sections 15(4) and 26(1A) of the Security Industry Act 1997 (NSW), is inconsistent with the provisions of Part 5.3A of the Corporations Act 2001 (Cth) and therefore invalid or inoperative to the extent of any inconsistency by reason of s 109 of the Commonwealth Constitution.*"

   Held:

- The Court answered the question in the negative and remitted the matter back to the Equity Division. For the purposes of s 109 of the Constitution, inconsistency arises where, either expressly or by implication, a Commonwealth law provides for an immunity from a class of state laws, which immunity would be qualified, altered or impaired by the operation of a state law within that class: [22].

- The *Corporations Act*, Part 5.3A, revealed no intention to confer on a company under administration, or the administrators of that company, immunity from the operation of state laws, beyond any immunity found within the Part's express terms: [39]. The Part's purpose, identified in s 435A, was entirely consistent with the carrying on of the company's business under administration being subject to the general laws of the State: [32]. The *Corporations Act* conferred no broad power on the administrators to carry on the company's business; security licences were not a form of property caught by the protection provided by the *Corporations Act*, s 440D; and provisions in Pt 7.6 expressly envisaged that licences necessary for the carrying on of a business might be terminated where a company enters administration: [33]; [36]-[37].

2. **Equity: trusts, powers of trustees, *Trustee Act 1925* (NSW), s 81**

***Cisera v Cisera Holdings Pty Ltd* [2018] NSWCA 286**

Decision date: 26 November 2018

Bathurst CJ; Beazley P; White JA

The applicants were members of the beneficial class of a trust, and the directors of the trustee, Cisera Holdings Pty Ltd. The Trust Deed, made on 23 August 1974, had a vesting date of no later than 1 January 2024. The applicants sought an order under the *Trustee Act 1925* (NSW), s 81(1), to provide for the extension of the vesting date of the trust, or that would allow the trustee to extend the vesting date of the trust. At the time of the hearing the members of the beneficial class were the applicants, and the wife of the second applicant. However, the Trust Deed provided that the second applicant's children would be members of the beneficial class if their father pre-deceased them before the vesting date. The applicants' deposed that at the time of the current likely vesting date there would be a significant capital gains tax liability and that they were concerned that the assets would vest solely in the second applicant's children. The primary judge dismissed the summons, holding that s 81 did not provide the power to extend the vesting date of a trust and that the orders sought were not 'expedient'. He relied upon the decision of *Re Dion Investments Pty Ltd* (2004) 87 NSWLR 753; [2014] NSWCA 367. The key issues on appeal were (i) whether *Re Dion Investments* was correctly decided; (ii) whether *Re Dion Investments* could be distinguished in the present case; and (iii) whether the proposed amendments to the trust would be expedient.

Held:

- The Court granted leave to appeal and dismissed the appeal. *Re Dion Investments* was correctly decided. The s 81(1) power must be exercised by only granting specific powers relating to the management and administration of the trust property as seen to be expedient. The orders sought that the trustee be empowered and authorised to manage and administer the trust property beyond the 'Terminal Date' specified in the trust deed was in substance an application for an order to vary the terms of the trust by varying the definition of the Terminal Date: [65]-[66].

- The reasoning and effect of the decision in *Re Dion Investments* was not confined to the particular matter primarily in issue in that case as to whether s 81(1) authorised the making of an order giving the trustee a general power of amendment of the trust deed. The Court disapproved of decisions which had found in s 81 an authority to alter the trusts on which trust property was held which would have been beneficial to the interests of the beneficiaries, or to the fulfilment of the trust purpose, but which were not concerned with the management or administration of the trust assets: [68].

- Had the issue arisen, there would be no basis for interfering with the primary judge's assessment that it was not expedient to make the orders sought: [73].

3. **Torts: negligence, duty to warn of obvious risk, public authorities**

Kempsey Shire Council v Five Star Medical Centre Pty Ltd **[2018] NSWCA 308**

Decision date: 13 December 2018

McColl JA; Basten JA; Simpson AJA

Dr Alterator, the respondent's directing mind, flew the respondent's aircraft to Kempsey Aerodrome. On landing in the early afternoon, the aircraft collided with a kangaroo. The respondent brought proceedings against the appellant (**Council**), which owned and controlled the aerodrome. The primary judge held that the Council had breached its duty of care to aerodrome users by: (a) not issuing a notice to airmen (**NOTAM**) stating that kangaroo incursions onto the aerodrome had increased to dangerous levels; and (b) not erecting a kangaroo-proof fence around the aerodrome. At the time of the accident, Dr Alterator was aware of a warning published online by Airservices Australia (**AA**) in the En Route Supplement Australia (**ERSA**) Notice for the aerodrome, reading "1. Kangaroo hazard exists". Per the *Civil Liability Act 2002* (NSW) (**CLA**), s 5H, a defendant does not owe a duty of care to a plaintiff to "*warn of an obvious risk*", unless, *inter alia*, "*the plaintiff has requested advice or information about the risk from the defendant*": s 5H(2). Section 42 provides principles that apply in determining whether a public authority has a duty of care or has breached it, including that the functions the authority is required to exercise "*are limited by the financial and other resources that are reasonably available*" to it for the purpose of doing so: s 42(a), and "*the general allocation of those resources by the authority is not open to challenge*": s 42(b). The issues on appeal were, with respect to breach (a), whether the breach was a failure to warn of an obvious risk, so that liability was precluded by s 5H; and with respect to (b), whether a finding of breach should have been made, given s 42(b).

Held:

- The Court allowed the appeal (Simpson AJA dissenting). The respondent should have been, and was, aware of the obvious risk of colliding with a kangaroo on the runway at Kempsey Aerodrome whilst landing. It was not possible on the evidence to conclude there was a heightened level of risk at the time of the accident, such that it did not fall within the accepted obvious risk: [33]-[34].

- Section 5H(2) was not engaged (*contra* Simpson AJA, [106]-[107]). Though the ERSA and NOTAM contained information provided by the Council, each appeared on a website operated by AA. Accessing a website could not be said to constitute a "*request*" to third parties who provided information to the service provider: [36]. Simpson AJA held that the s 5H(1) 'defence' should be rejected because the breach was not a "failure to warn", but a "failure to provide information": [110]-[111].

- The Council's operation of the airfield engaged s 42(a); and even if it did not, s 42(b) was engaged. The Council did not have available resources to build a fence, without reducing funds allocated to other purposes. Section 42(b) precluded a finding of breach, when a decision to take the relevant precaution required assessment of conflicting demands on the Council's budget: [55]; [58]; [64].

4. **Damages: legal costs, exemplary damages; torts: wrongful arrest**

State of New South Wales v Cuthbertson **[2018] NSWCA 320**

Decision date: 17 December 2018

Beazley P; McColl JA; Basten JA; Meagher JA; Payne JA

Mr Cuthbertson alleged that in the early hours of the morning of 8 September 2013, he was assaulted and unlawfully restrained by a police officer, Senior Constable McArthur, whilst he was standing in the vestibule area of a train as it neared Eastwood Railway Station and then again, whilst on the platform. Arising out of the incident on the train and on the platform, Mr Cuthbertson was charged resisting arrest and assault in officer contrary to the *Crimes Act 1900* (NSW), s 58. He was convicted of both offences. The convictions were overturned on appeal to the District Court. Mr Cuthbertson subsequently brought proceedings against the State of New South Wales (the State) for wrongful arrest, false imprisonment, and assault/trespass to the person. The primary judge found that Mr Cuthbertson had been assaulted and wrongfully imprisoned; and him $92,856 in damages. This included $15,000 in aggravated and exemplary damages as a lump sum, and $45,500, being 50% of the legal costs incurred by Mr Cuthbertson in defending the criminal proceedings. The State sought leave to appeal against two aspects of the award of damages: (i) the award relating to legal costs incurred by Mr Cuthbertson in defending the criminal proceedings; and (ii) the combined award of $15,000 by way of aggravated and exemplary damages. The State contended that this Court's decision in *State of New South Wales v Koumdjiev* (2005) 63 NSWLR 353; [2005] NSWCA 247 was wrongly decided, to the extent it is authority for the proposition that a plaintiff is entitled to recover by way of damages in subsequent civil proceedings the costs incurred in successfully defending criminal proceedings.

Held:

- The Court granted leave and allowed the appeal, reducing Mr Cuthbertson's award to $31,000. The legal costs of defending a charge of 'resist arrest' were not the 'natural and probable consequence' of the wrongful arrest. The bringing of the prosecution was a different and separate process, of which there was no allegation of wrongful or tortious conduct on the part of the police. The decision of *Koumdjiev* should not be followed on that point: [44]-[47]; [135]-[137].

- Moreover, a party could not avoid the constraints on the circumstances in which costs may be awarded in criminal proceedings, per the *Crimes (Appeal and Review) Act 2001* (NSW), s 70. The clear legislative intention of s 70 was to limit the circumstances in which such costs may be awarded, and for the criminal appeal to be the forum in which that determination was made: [63]-[67]; [144]-[145].

- The award of exemplary damages should be set aside (*contra* Beazley P). Neither the primary judge's conclusion nor the factual findings demonstrated that the officer had showed a conscious and contumelious disregard for Mr Cuthbertson's rights. There was no error in the award of aggravated damages, Mr Cuthbertson should be awarded $7,500 in such damages: [124]-[125]; [152]-[158]; [165]-[169].

Other Australian intermediate appellate decisions of interest

5. **Representative proceedings: permanent stay of competing actions**

Perera v GetSwift Limited **[2018] FCAFC 202**

Decision date: 20 November 2018

Middleton J; Murphy J; Beach J

The three applicants, who were represented by three different law firms and supported by three different litigation funders, commenced three competing 'open' shareholder class actions against the respondent (**GetSwift**). The actions, being the Perera, McTaggart and Webb Proceedings, were filed within a short time of each other, in respect of substantially the same claims and group members. GetSwift argued before the primary judge that the Court should stay two of the open class actions as an abuse of process. The primary judge held that: only one proceeding should continue as an open class action in the long-term; this should be the Webb Proceeding; there was power in the circumstances to permanently stay the Perera and McTaggart Proceedings as an abuse of process; and it was appropriate to exercise the permanent stay power over any of the alternatives propounded by the parties, such as a temporary stay pending later declassing or class closure, immediate declassing or immediate class closure. The Perera and McTaggart applicants sought leave to appeal the permanent stay orders. Mr Perara also sought leave to appeal against: an injunction granted to restrain the solicitors for Mr Perera and 103 group members who had retained the firm from communicating with their clients who were also group members in the Webb Proceeding; and the common fund order made in the Webb Proceeding.

Held:

- The Court granted leave to appeal in part, dismissing the appeal against the permanent stay orders, but allowing the appeal against the solicitor restraint. It refused leave in relation to the common fund order: [12]; [295]-[296]; [326]-[330].

- A Court has power to order a permanent stay of one or more competing class actions whether in exercise of its inherent power, its express and implied powers to manage cases before it in the interests of justice and the parties; or in its equitable jurisdiction. Given the availability of the express and implied powers, it was strictly unnecessary to address the existence of power to stay through the prism of abuse of process. However, it was doubtful that the continuation of competing class actions, in the present context, amounted to such an abuse: [121]-[157].

- There was no material error in the primary judge deciding to stay two of the three class actions in the circumstances of the case, or in selecting the Webb Proceeding to continue: [163]; [272]-[273]. The Court reiterated that there was no 'one size fits all' approach to managing competing actions, and discussed the key considerations and issues that a court must grapple with in undertaking a selection process such as that used in the present case: [274]-[282].

6. **Torts: malicious conduct of police officers; damages**

The State of Western Australia v Cunningham (No 3) **[2018] WASCA 207**

Decision date: 23 November 2018

Buss P; Murphy JA; Pritchard JA

In November 2008, Dr Cunningham and Ms Atoms (**the plaintiffs**) stopped to assist some young people outside a hotel in Fremantle. Officers arrived at the scene, and the plaintiffs were ultimately tasered, handcuffed, arrested, and charged with obstructing police. The charges were later dismissed. The plaintiffs brought proceedings against the officers and the State, alleging battery, false imprisonment, misfeasance in public office, and malicious prosecution. The primary judge found in their favour. She entered judgment against all defendants in relation to each plaintiff, with awards of $110,304.10 (Dr Cunningham) and $1,024,882.11 (Ms Atoms). On appeal, the State challenged the primary judge's finding that it was jointly liable to pay compensatory and/or aggravated damages, in circumstances where her Honour had also made findings of malice. The State argued that the general principle of solidary liability should give way to the *Police Act 1982* (WA) (**the Act**) s 137(5), such that the damage caused by acts done with malice should be apportioned from damage caused by acts without malice, and a separate judgment given against the State in the apportioned sum. Section 137(5) provides that the State is "*liable for a tort that results from*" acts done by members of the police force, without corruption or malice, in purported performance of their functions. Section 137(3) provides that "*an action does not arise in tort*" against police officers who act without corruption or malice in performance of their functions. The officers brought a cross-appeal contingent on the State succeeding.

Held:

- The Court dismissed the appeal and the cross-appeal. On its proper construction, ss 137(3) and (5) did not evince an intention to alter the common law rule of solidary liability as would otherwise apply to the State's liability under s 137(5). There was no reason to suppose the legislature intended to introduce a regime to apportion damages between officers who were liable under the common law and not protected by s 137(3); and the State whose liability arose under s 137(5): [158].

- There was no basis for reading a negative command into s 137(5) to the effect that the State 'was not liable for a tort' that "*result*[*ed*] *from*" anything done by a police officer with corruption or malice: [160]. The State had erroneously equated an order that the Crown compensate a plaintiff for the whole of the loss or damage sustained as a result of a tort committed by a police officer, with the imposition of liability on the Crown for other torts committed by police officers with malice or corruption which may also have been a cause of the same damage: [205].

- There was no, or no successful, challenge to the findings that various non-malicious tortious acts by officers were causes of Ms Atoms' back and psychiatric injuries; and of Dr Cunningham's psychiatric injuries. The state was liable for damages awarded as compensation in respect of those injuries: [162]-[163].

Asia Pacific decisions of interest

7. **Competition law: anti-competitive conduct, price fixing**

Commerce Commission v Lodge Real Estate Limited **[2018] NZCA 523**

Decision date: 23 November 2018

Asher J; Brown J; Gilbert J

Lodge and Monarch (with their directors, **the respondents**) were major real estate agency companies in Hamilton. Agencies listed properties on specialist websites, including 'Trade Me', which provided a standard listing service at a capped monthly subscription fee per agency office. In 2013, Trade Me introduced a new fee structure, proposing a single fee for each standard residential listing. This meant that companies faced major cost increases. The Commission alleged that the Hamilton agencies reached an oral agreement that they would withdraw their listings on Trade Me, with further listings to be funded by the vendor or individual agent. It brought proceedings claiming the agencies had breached the *Commerce Act 1986* (NZ) (**the Act**), ss 27 and 30, by coming to an arrangement or understanding with the purpose or effect of fixing, controlling, or maintaining the price for real estate sales or advertising services. The primary judge found that, although there was such an arrangement or understanding, it did not have the requisite purpose or effect. The key issues on appeal were whether the respondents had entered into the arrangement as found; and whether the primary judge had erred in finding that arrangement did not have price fixing as its purpose or likely effect.

Held:

- The Court allowed the appeal and remitted the case for assessment of penalties. It upheld the primary judge's finding that the agencies had entered into an arrangement or reached an understanding that they would pass on or not absorb the costs of Trade Me's proposed fees: [52]; [69]-[70]. The Court held that there had to be an element of conditionality to found an arrangement or understanding, but there was no independent requirement of moral obligation: [65]; [68].

- The primary judge erred in finding that because there was discretion on the part of the agency and/or individual agent to fund the listing, there was no purpose or likely effect of fixing, controlling or maintaining the price. An absolute position as to price was not required for there to be anti-competitive conduct. Collusion on a start or 'offer' price may be enough. This was the case here, where the starting point was vendor funding: [83]-[89]. If an ability to depart from an understanding was fatal to the application of s 30, then it would be easy to evade by providing a reserved right of departure. This would be contrary to the section's purpose: [91].

- The primary judge was correct to reject the submission that the Trade Me fee was not a sufficiently significant proportion of the price of services provided by the Hamilton agencies to have the effect of fixing or controlling the price: [97]-[100].

8. **Trusts: deed of trust; misrepresentation, undue influence, unconscionability**

BOM v BOK and another appeal **[2018] SGCA 83**

Decision date: 29 November 2018

Leong JA; Chong JA; Ean J; Onn J; Loh J

The respondent's mother died, leaving in her will a testamentary trust over her assets, valued at around $54 million. Shortly afterwards, the respondent executed a deed of trust drafted by his wife, the first appellant, the effect of which was that the couple would hold all his assets on trust for their infant son, the second appellant. Their relationship later broke down and the respondent brought proceedings seeking to set aside the trust. He claimed that he executed the trust whilst grieving over his mother's death, and whilst being misled by his wife's representations that he could use his assets freely until his death. He also claimed that he would not have signed the deed if she and her father had not pressured him to sign it. The primary judge found in the respondent's favour, and set aside the deed of trust on the basis of misrepresentation, mistake, undue influence and unconscionability. The appellants appealed to the Singapore Court of Appeal.

Held:

- The Court dismissed the appeal. The primary judge correctly found that the respondent had no desire to divest himself of all assets and did not understand the trust's legal effect; and that his wife had made the representation: [63]; [69]; [88].

- The elements of misrepresentation had been satisfied. The wife had made a misrepresentation to the husband that the deed would only be effective on his death; knowing it was false, and made with the intention that he would rely on it to sign the deed. The respondent had acted on the misrepresentation, thinking that he would be free to use the assets, when it effectively stripped him of them: [91]. The deed was also correctly set aside for mistake, being the respondent's mistake as to the effect of the deed, as engendered by the misrepresentation: [92].

- Undue influence was not restricted to where the person exerting the influence was also the person benefitting from the voluntary disposition: [102]. Actual undue influence was made out: the question being whether the respondent was suffering from such acute grief as to be in a vulnerable state: [104]-[107]. However, the primary judge had erred in finding presumed undue influence: [108]-[113].

- Singapore should adopt a 'narrow' doctrine of unconscionability with modified elements, rather than the 'broad' doctrine in *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447. This modified doctrine would consider not just where the plaintiff was poor and ignorant, but other forms of physical, mental or emotional infirmity. If the infirmity was such as to acutely affect the plaintiff's ability to conserve their own interest, the defendant would then need to show the transaction was fair, just, and reasonable. Whether the transaction was undervalued, or the plaintiff lacked independent advice, were important but not determinative considerations. Unconscionability was made out in this case: [140]-[142]; [154].

Other international decisions of interest

9. **Statutory interpretation: principle of legality; human rights**

Secretary of State for Justice v MM **[2018] UKSC 60**

Decision date: 28 November 2018

Lady Hale; Lord Kerr; Lord Hughes; Lady Black; Lord Lloyd-Jones

Under the *Mental Health Act 1983* (UK) (**MHA**), a Crown Court may impose a hospital order, together with a restriction order, on a mentally disordered offender, if considered necessary to protect the public from serious harm. Only the Secretary of State or the FtT can discharge a patient. MM was detained under such orders, and apart from a brief conditional discharge in 2006-07, had remained in hospital ever since. In 2015, he applied to the relevant tribunal (**FtT**) for a conditional discharge. Two experts considered that MM could be safely released if a suitable care plan was in place. Any such plan was envisioned to involve such a level of restriction, supervision and monitoring as to be a deprivation of liberty under the European Convention on Human Rights (**ECHR**), Art 5. MM was prepared to consent to such conditions. The FtT ruled that, as a matter of principle, it would not be lawful to discharge MM on condition that he complied with a care plan that amounted to a breach of his liberty. This was overturned by the Upper Tribunal. On appeal, the Court of Appeal agreed with the FtT. The issue for the United Kingdom Supreme Court was whether the conditions imposed on a conditional discharge under the MHA could, if the patient consented, be such as would amount to a deprivation of liberty under Art 5.

Held:

- The Court dismissed the appeal (Lord Hughes dissenting). The question was whether the words "*discharge … subject to conditions*" in s 42(2) and "*conditional discharge*" in s 73(2) included the power to impose conditions amounting to a deprivation of liberty under Art 5: [27].

- The power to deprive a person of their liberty was an interference with a fundamental right, such as to engage the principle of legality. Parliament was not asked to consider whether these very general provisions included a power to impose a different form of detention than that provided for in the MHA, without the equivalent prescribed criteria for detention or prescribed procedural safeguards. As a practical matter, the MHA conferred no coercive powers over conditionally discharged patients. A patient could withdraw their consent to the deprivation of liberty at any time and demand to be released: [31]-[32].

- Most critically, such a power would be contrary to the whole scheme of the MHA, which provided in detail for only two forms of detention (in a place of safety for under 36 hours, or in a hospital). There was no equivalent express power to convey a conditionally discharged restricted patient to the place where they were required to live, detain them, or retake them if they absented themselves: [33]-[36].

10. **Government: legislative competence of Scottish Parliament, 'Brexit'**

THE UK WITHDRAWAL FROM THE EUROPEAN UNION (LEGAL CONTINUITY) (SCOTLAND) BILL - A Reference by the Attorney General and the Advocate General for Scotland (Scotland) **[2018] UKSC 64**

Decision date: 13 December 2018

Lady Hale; Lord Reed; Lord Kerr; Lord Sumption; Lord Carnwath; Lord Hodge; Lord Lloyd-Jones

In March 2017, the UK Government introduced legislation to repeal the statute making it part of the European Union (**EU**), and ensure legal continuity within its constituent jurisdictions. After amendments supported by the Scottish Government were defeated, the Scottish Government introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (**the Scottish Bill**). It was passed in March 2018. Section 17 sought to make the consent of Scottish Ministers a pre-condition for the legal effect of certain future subordinate legislation made by UK Ministers after withdrawal from the EU on matters of retained EU law, which, if contained in a statute, would be within the Scottish Parliament's legislative competence. Section 33 and Sch 1 provided for the repeal of references to EU Law in the *Scotland Act 1998* (UK). Under s 29 of that Act, a provision will be outside the legislative competence of the Scottish Parliament if it relates to matters which are reserved to the UK Government; is in breach of the restrictions in Sch 4 (which protects certain UK enactments from being modified by Scottish Parliament), or is incompatible with EU law. Under s 33 of that Act, a reference was made to the UK Supreme Court on the question whether the Scottish Bill was within the Scottish Parliament's legislative competence. The UK Bill passed in June 2018 (**the UK Withdrawal Act**). It amended the *Scotland Act*, Sch 4, to include itself.

Held:

- The Scottish Bill as a whole was not outside the Scottish Parliament's legislative competence. It did not "*relate to*" relations with the EU (a reserved matter), but simply regulated the legal consequences in Scotland of the cessation of EU law as a source of domestic law: [26]-[27]; [33].

- Section 17 was outside the Scottish Parliament's legislative competence. Imposing this condition on the UK Parliament's law-making power would be inconsistent with the continued recognition, by the *Scotland Act*, s 28(7), of its unqualified legislative power: [52]. Section 33 and Sch 1 were not outside the Scottish Parliament's legislative competence: [79]. The Court rejected challenges to various provisions, as they would not take legal effect until provisions of EU law with which they were incompatible had ceased to have effect as a result of the UK withdrawal: [84]-[85].

- The Court could consider the effect of the UK Withdrawal Act on the legislative competence of the Scottish Parliament in relation to the Scottish Bill, notwithstanding that that Act had passed after the reference was made. The Court held that various provisions of the Scottish Bill in whole or part amounted to modifications of the UK Withdrawal Act, contrary to Sch 4: [97]; [98]-[124].