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# This term's Privy Council commercial law cases

**Article by David Bowden**

**This term's commercial law cases for the Judicial Committee of the Privy Council**  
*January to April 2017*

There are 10 cases that the Privy Council will hear between January and April 2017 which will be of interest to commercial law practitioners. These cases cover hardy perennials such as tax and procedural matters arising in civil litigation.

Perhaps anticipating just how bad the weather was going to be this winter in Britain, 5 of the Justices have decided to hear a block of cases from the Bahamas. They are going to hear these in late February and sit in the Court of Appeal for the Commonwealth of the Bahamas rather than their usual home in London.

They are a number of interesting seasonal cases they will hear including:

- Can Muslims exercise a right to excuse themselves from Christian prayers?
- General damages in personal injury claims and whether the Judicial Study Board guidelines are too low, and
- Where an employee takes an extended period of absence during the summer, whether an employer can dismiss them or not.

There are a couple of unusual cases too such as:

- Unjust enrichment and breach of fiduciary duty, and
- Cross border enforcement of orders made to confiscate the proceeds of serious crimes such as drug trafficking, and
- Where the boundaries properly lie where both a breach of contract and a breach of duty in tort is alleged.

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**1. University of Technology Jamaica v. Industrial Disputes Tribunal**

**What are the relevant agreed facts?**

Miss Carlene Spencer was employed by the university from October 2004. Miss Spencer filled in an application form to take a leave of absence, but neither signed it nor submitted it to her supervisor for approval. She was subsequently absent from work. Her supervisor located the form, signed it, and delivered it to the Human Resource department. The university was unable to make contact with Miss Spencer for the entirety of her absence. An investigation took place, following which she was charged with an unauthorised absence of 34 days. An internal disciplinary hearing took place on 3 April 2007. It concluded that Miss Spencer's leave had not been authorised and her supervisor's signature did not constitute retroactive approval. The internal tribunal dismissed Miss Spencer.

Miss Spencer's trade union initiated proceedings in relation to her dismissal in the IDT. During the hearing the IDT refused to order Miss Spencer to produce her passport. The IDT found that Miss Spencer had been unjustifiably dismissed and ordered her restatement.

The University applied for judicial review of the IDT's decision. It obtained an order for the production of her passport. This showed that she had left Jamaica before she had initially proposed to take leave. She had not seen a local doctor as she had testified before the IDT.

**What are the issues for the Privy Council?**

1. Whether the IDT may have regard to matters of which the employer was unaware at the time of the dismissal and which could not form part of the reasons for dismissal.
2. Whether, in cases of dismissal for misconduct, the IDT's role is to determine whether the misconduct occurred or whether the employer had a justifiable basis for believing that it had.
3. What is the correct standard of proof to be used by the IDT in disputes over dismissals for misconduct?
4. Whether the IDT may substitute its discretion for that of the employer.

The Jamaica Employers Federation has intervened in this appeal.

**What country or territory does this case come from?**

Jamaica.

**Who will hear the case?**

Lady Hale DPSC, Lords Kerr, Clarke, Wilson and Lord Reed JJSC.

**When it is listed for and for how long?**

24 January 2017 for 1 day.

**What happened in the Court of Appeal?**

On 12 October 2012 the Court of Appeal (Justice of Appeal Panton, Dukharan and Brooks) reversed the decision of the judicial review judge and reinstated the IDT award - **[2012] JMCA Civ 46**

**What happened in the lower courts?**

On 23 April 2010 Mr Justice Mangatal granted judicial review and quashed the IDT's award.

**Does the law in England and Wales differ to any significant extent?**

The case was decided on the basis of Jamaica's Labour Relations and Industrial Disputes Act 1976. Although there are some overlaps with English law it is clear that the wording of the Act in critical places differs.

**What could be the implications of its ruling?**

It seems a harsh result that an employee was dismissed for taking an absence of 5 weeks when it appears her line manager either agreed to it or acquiesced in it. Whether some other remedy was open to the employer such as not paying wages for the absence and a final written warning would also seem to have been a possible remedy open to the employer. It will be attractive to the Judicial Committee to want to respect the original decision of the fact finding tribunal.

**2. Akita Holdings v. Attorney General for Turks & Caicos Islands**

**What are the relevant agreed facts?**

Mr Hanchell is a Belonger (a citizen of the Turks & Caicos Island) and was from 2003-8 a Government minister. In November 2004 the Government granted him a Conditional Purchase Lease ('CPL') over four parcels of land. The CPL entitled Mr Hanchell to buy the land at a discount on condition that he carried out stipulated developments. Mr Hanchell substantially undertook that development and subsequently the right to buy the land was transferred to the Akita Holdings.

In December 2006 Akita Holdings acquired the freehold title to the land, paying only \$75,200 of the \$150,400 purchase price because of the discount. The purchase price had been set in reference to a 1998 valuation of the land at \$150,400. Before Akita Holdings bought the Land, Mr Hanchell had obtained a private appraisal that valued the land at \$500,000. Mr Hanchell he did not tell the Turks & Caicos Island Government about this higher valuation. Once Akita Holdings bought the land it continued to develop it.

**What are the issues for the Privy Council?**

1. Whether an owner of land transferred at an undervalue in breach of fiduciary duty may elect between:

- following the land and its improvements in the hands of the knowing recipient, and
- tracing the value of the underpayment into the land and its improvements.

2. If a claimant can trace value into land, whether the knowing recipient can be required to be pay by way of profit a proportionate share of the land and improvements.

**What country or territory does this case come from?**

Turks & Caicos Island

**Who will hear the case?**

Lord Neuberger PSC and Lords Kerr, Sumption, Reed and Carnwath JJSC.

**When it is listed for and for how long?**

1 February 2017 for 1 day.

### **What happened in the Court of Appeal?**

On 30 September 2014 the Court of Appeal presided over by Chief Justice Goldbrough allowed the Attorney General's appeal and found that Mr Hanchell had been unjustly enriched by his dealings in the land.

### **What happened in the lower courts?**

On 19 July 2013 Madame Justice Margaret Ramsay-Hale dismissed the claim against Hanchell for unjust enrichment.

The Attorney General had alleged that Hanchell and his company Akita Holdings were unjustly enriched by benefits received from land (at the South Dock Road headquarters of Caicos Oil) being transferred to them by the Crown which was obtained at an undervalue, or alternatively, that Hanchell and his company were in knowing receipt of the land which was transferred to it in breach of a fiduciary duty.

She noted that the primary issue which she had to resolve was whether Mr Hanchell acquired the land at an undervalue because it was that particular allegation that essentially underlies both the claim of unjust enrichment and the claim for knowing receipt. Ruling in Mr Hanchell's favour, the judge stated that the Attorney General failed in the claim he brought against Mr Hanchell and his company for '*knowing receipt of trust property in respect of the land*'. The judge ruled:

*'The Crown's case is that Mr. Hanchell breached his fiduciary duty by taking a lease of Crown Land for a value which he knew, or ought to have known, was wrong and that the Akita (Holdings) received the property with the knowledge of his breach. For the reasons which I have already given, I am not prepared to make such a finding.'*

She added:

*'My finding with respect to Mr. Hanchell's knowledge of the undervalue is not affected by the valuation of 2006 in which Mr. Alwell expresses the opinion that the Land's value had increased to \$600,000. The value he ascribes to the land is still not based on any comparable evidence of value. In my view, in the absence of any comparables or any evidence of sales indicating strong or rising demand for land in the area for commercial purposes which could account for the increase in value, the Court should be slow to dismiss Mr. Hanchell's evidence that he believed the increase in the value to be attributable to his own investment in the Land.'*

### **Does the law in England and Wales differ to any significant extent?**

This would appear to be an application of the rules on breach of fiduciary duty and unjust enrichment which are the predominantly the same in common law jurisdictions.

### **What could be the implications of its ruling?**

There is a clearly a political angle to this case which does seem to have influenced the way the case was handled below. The trial judgement of Ramsay-Hale J is very short but the Court of Appeal is much more detailed. As the trial judgement is so short, it may not be enough to convince the Judicial Committee that the increase in the land value was because of Mr Hanchell's investment and works on the land or not. It will be interesting to see what the Judicial Committee rules on tracing in this case and whether that merely represents a restatement of existing principle or any extension of them. In the Court of Appeal both sides were represented by English QCs.

## **3. Grove Park Developments v. Mauritius Revenue Authority**

### **What are the relevant agreed facts?**

Grove Park Developments was involved in a construction project. Condition 2 of a Certificate of Registration, obtained from the MRA stated that if the taxpayer failed '*to satisfy the condition relating to the completion of 50 million Rupees of construction works... on or before 30 June 2011*', the MRA would notify the 2<sup>nd</sup> respondent. This was intended to ensure that fiscal exemptions were not made available to the taxpayer in the event of it not having complied with the conditions.

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On 30 May 2011 the MRA requested the taxpayer to submit a Quantity Surveyor's report certifying the progress of works and costs of construction works by 15 July 2011 at the latest. On 21 July 2011 the taxpayer submitted a report giving a breakdown of 58,887,569,30 Rupees including materials on site in this total. The MRA replied by letter of 16 September 2011 ('the MRA Decision') that the value of materials on site could not be included in the total costs of construction at 30 June 2011 and that in such circumstances the 2<sup>nd</sup> respondent would be informed that it had not complied with the conditions laid down in 161A(28)(b) of the Income Tax Act.

Consequently, the 2<sup>nd</sup> respondent sent a letter on 28 October 2011 to the taxpayer requiring it to pay Registration Duty, Land Transfer Tax together with a fine. The 2<sup>nd</sup> respondent requested that the total amount 45,285,600 Rupees (approximately £880,000) be paid by 15 November 2011.

**What are the issues for the Privy Council?**

1. The principles applicable to judicial review.
2. Whether the taxpayer is entitled to an exemption from Registration Duty and Land Transfer tax.
3. The interpretation of statutes conferring protection against arbitrary or excessive interference with rights to property.

**What country or territory does this case come from?**

Mauritius

**Who will hear the case?**

Lord Neuberger PSC, Lords Wilson, Sumption, Carnwath and Lord Hodge JJSC.

**When it is listed for and for how long?**

8 February 2017 for 1 day.

At the end of the appellant's oral submissions, Lord Neuberger said the Judicial Committee did not need to hear oral submissions from counsel for the MRA.

**What happened in the Court of Appeal?**

The taxpayer issued a claim to judicially review the decision of the Assessment Review Committee which was dismissed.

**What happened in the lower courts?**

The taxpayer unsuccessfully filed representations before the Assessment Review Committee challenging the MRA decision.

**Does the law in England and Wales differ to any significant extent?**

The precise terms of the legislation in Mauritius differs from its English equivalent. The principles applicable to judicial review are broadly the same however.

**What could be the implications of its ruling?**

This would appear to be quite fact specific and determined under the local laws of Mauritius. It will be useful however to see what the Judicial Committee says about the arbitrary or excessive interference with rights to property point and compare that with the jurisprudence on the corresponding provisions under the 1<sup>st</sup> protocol of the European Convention on Human Rights

**4. Scott v. Attorney General of the Bahamas**

**What are the relevant agreed facts?**

In December 1998, Mr Scott was assaulted by members of the Royal Bahamas Police Force. He suffered multiple injuries in consequence including:

- paraplegia,
- concussion,
- headaches,
- loss of sexual sensation,
- inability to control his bowel or bladder,
- dizziness, and
- pain in his left ear.

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The issue of liability was determined in his favour in January 2010.

At an assessment hearing in 2012 he was awarded a total of \$886,089.52 in damages. \$257,000.00 comprised general damages for pain, suffering and loss of amenities. 5% of the total award (\$38,553.98) was deducted to reflect disabilities benefits paid to Mr Scott.

**What are the issues for the Privy Council?**

The proper approach to the assessment of general damages for pain, suffering and loss of amenities, in particular whether damages assessed by reference to the English Judicial Studies Board Guidelines ('the JSB Guidelines') should be adjusted upwards to reflect the higher cost of living in the Bahamas.

Mr Scott submits that the Court of Appeal erred in:

- failing to adjust the award upwards from the amount set by the JSB Guidelines so as to reflect the higher cost of living in the Bahamas,
- only awarding damages for his head injury close to the middle of the scale of the JSB Guidelines,
- equating his claimed loss of sexual sensation with injury to his reproductive system, and
- holding that his inability to control his bowel or bladder was as a result of his paraplegia rather than because of direct injury to those organs.

**What country or territory does this case come from?**

The Commonwealth of the Bahamas.

**Who will hear the case?**

Lords Mance, Kerr, Sumption, Reed and Hughes JJSC.

**When it is listed for and for how long?**

20 February 2017 for 1 day.

**What happened in the Court of Appeal?**

On 2 March 2015 the Court of Appeal (Mrs Justice Allen P, Justices of Appeal John and Conteh) allowed Mr Scott's appeal in part – [www.courtsofappeal.org.bs/download/037516600.pdf](http://www.courtsofappeal.org.bs/download/037516600.pdf) . It increased the award of general damages to \$325,000.00 and restored the \$38,553.98 which had been deducted.

**What happened in the lower courts?**

On 24 September 2013 Assistant Registrar Charlton made an award of general damages of \$257,000 for pain, suffering and loss of amenity.

**Does the law in England and Wales differ to any significant extent?**

As the Bahamas has adopted the JSB Guidelines, the only significant difference is whether there should be any uplift to reflect the higher cost of living there.

**What could be the implications of its ruling?**

The issues in relation to general damages here are common to all personal injury claims. The points in relation to the damage inflicted by the police to his bowel and bladder being the direct cause of his inability to control them and this requiring a separate head of loss rather than being aggregated with general damages for paraplegia is interesting. It will be tempting for the Judicial Committee to allow something extra on this because this sort of additional damage will not be present in all paraplegia cases.

**5. Commodore of the Royal Bahamas Defence Force v. Laramore**

**What are the relevant agreed facts?**

Laramore enlisted as a member of the Royal Bahamas Defence Force ('RBDF') in November 1984. For many years the RBDF in the course of ceremonies and parades, including morning and evening Colours Parades, had included the saying of Christian prayers. From 1993, a Temporary

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Memorandum provided that those members of the RBDF who were of religious beliefs other than Christianity might leave the parade (fall out) for the prayers' duration, and then quickly return (fall in) on the prayers' completion.

In 2006 by a further Temporary Memorandum number 27/06 this arrangement was revoked and it was provided that all personnel should remain present for the conduct of prayers during ceremonial parades. On 24 April 2007 Laramore requested to be '*exempted from all Christian activity in the RBDF and other religion other than Islam as it is known that I am a believer in Islam.*'

On 25 and 2 April 2007 Laramore dismissed himself from the parade when prayers were about to take place, and refused to return to formation upon being so instructed. He was charged with 2 offences of disobedience to standing orders.

**What are the issues for the Privy Council?**

The appeal concerns the scope of the protection for Freedom of Conscience afforded by article 22 of the Constitution of the Commonwealth of the Bahamas.

**What country or territory does this case come from?**

The Commonwealth of the Bahamas.

**Who will hear the case?**

Lords Mance, Kerr, Sumption, Reed and Hughes JJSC.

**When it is listed for and for how long?**

21 February 2017 for 1 day.

**What happened in the Court of Appeal?**

On 24 July 2014 the Court of Appeal (Mrs Justice Allen P, Justices of Appeal John and Conteh) decided by a majority (with the President dissenting) that CRBD interfered with Laramore's ability to fulfil the ordinary obligations of the Muslim faith by requiring him to remain on formation during prayers instead of allowing him to fall out - [www.courtsofappeal.org.bs/download/095086300.pdf](http://www.courtsofappeal.org.bs/download/095086300.pdf). The Court of Appeal upheld the decision of the lower court.

**What happened in the lower courts?**

On 9 April 2013 the Chief Justice of the Bahamas granted a declaration in Laramore's favour that Temporary Memorandum No 27/06 was unconstitutional and therefore null & void and of not effect.

**Does the law in England and Wales differ to any significant extent?**

There is no written constitution in England and Wales. In coming to their decision in the Court of Appeal of the Bahamas, the judges considered not only cases from the Bahamas or the Judicial Committee but also those from Strasbourg and the House of Lords.

**What could be the implications of its ruling?**

The facts in this case appear quite innocuous but this is obviously a hot topic with the way France, the Netherlands, Belgium, Bulgaria and others have sought to ban the wearing of the niqab and burka in certain public places. This too is reminiscent in reverse of the case of the British Airways worker (Nadia Eweida) who wanted to wear a small cross on a necklace - [2013] ECHR 37. With one of President Trump's first executive orders seeking to ban travel from countries with a predominantly Muslim population, this could give the Judicial Committee with a golden opportunity to demonstrate how out of touch the USA is with the rest of the common law world.

**6. Oswald Archer & Rupert Watkins v. Fabian Investments Limited, Ginton, Maynard & Stubbs**

**What are the relevant agreed facts?**

A claim was brought by certain individuals and a Bahamas company Petroleum Products Limited ('Petroleum') that the individual plaintiffs were the beneficial owners of its shares. The defendants include Gulf Union Bank ('Gulf'). The individual plaintiffs bought Petroleum's shares with a loan from the Canadian Imperial Bank of Commerce ('CIBC'), which required as security the hypothecation of the shares. CIBC was later repaid, through new financing obtained from Gulf in the form of a mortgage and debenture (with a personal guarantee as security).

In error, CIBC delivered the Petroleum shares to Mr Maynard. The plaintiffs' repayments to Gulf fell into arrears, and a rescheduling agreement and personal guarantee were entered into. The individual plaintiffs agreed to assign their Petroleum share certificates to Gulf in support of the guarantee. After default under the rescheduling agreement, Gulf appointed Mr Maynard as receiver of Petroleum under the terms of its debenture. Gulf later sold the Petroleum shares to one of Fabian Investments Limited.

**What are the issues for the Privy Council?**

In the context of a dispute over the legal and beneficial entitlement to shares in a Bahamas company, these issues arise as to whether the Court of Appeal's

- findings against the Appellants were wrong where no defence or contradictory evidence was filed at first instance,
- approach to the evidence was wrong, including where it allowed submissions from the 4<sup>th</sup> respondent without considering his failure to file a defence or appear at first instance, and
- wrongly departed from the precedent of a previous Court of Appeal decision.

**What country or territory does this case come from?**

The Commonwealth of the Bahamas.

**Who will hear the case?**

Lords Mance, Kerr, Sumption, Reed and Hughes JJSC.

**When it is listed for and for how long?**

22 February 2017 for 1 day.

**What happened in the Court of Appeal?**

On 3 April 2013 The Bahamas Court of Appeal (Mrs Justice Allen P, Justices of Appeal Blackman and John) dismissed Archer and Watkin's appeal - [www.courtsofappeal.org.bs/download/000187500.pdf](http://www.courtsofappeal.org.bs/download/000187500.pdf). The Court of Appeal found that Fabian held both the legal and the beneficial title to the shares - Once the plaintiffs had defaulted on the rescheduling agreement, beneficial ownership vested in Gulf. Upon the conclusion of the sale of the shares from Gulf to Fabian, Fabian became the legal and beneficial owner of the shares.

**What happened in the lower courts?**

On 26 February 2009 Adderley J sitting in the Bahamas Supreme Court found that the individual plaintiffs were the legal owners of the shares, but held them on behalf of Fabian. Although the share certificates had never come into Gulf's possession, Gulf was entitled to specific performance of the share certificate assignment contract, so that on the date of the rescheduling agreement a beneficial interest passed to Gulf and Mr Maynard held the shares to Gulf's order. Gulf had the right to sell the shares to Fabian under an implied power of sale upon the plaintiffs' default, but the necessary steps had not been taken to register Fabian as shareholder.

**Does the law in England and Wales differ to any significant extent?**

This appears to be an appeal on procedural grounds in the way that the Court of Appeal treated certain matters below. Although the precise rules may differ in their wording to the Civil Procedure Rules 1998, the approach taken by a trial court where there is no appearance or defence filed is very similar.



**What could be the implications of its ruling?**

It would seem the appellants having lost at trial and on first appeal face a very tall order in persuading the Judicial Committee that they are right. Although the facts are interesting in relation to corporate finance, it would seem this appeal will be disposed of fairly swiftly on procedural grounds.

**7. Attorney General of the Bahamas v. Samuel Knowles and A1 Car Rentals Limited**

**What are the relevant agreed facts?**

Mr Knowles, a drug dealer, was convicted in the US and had a confiscation order made against him there. The Attorney General with the support of a US federal prosecutor, sought to have the confiscation order registered in The Bahamas under the Bahamian Proceeds of Crime Act ('POCA') in order to enforce the order there.

**What are the issues for the Privy Council?**

Whether the Bahamian POCA requires a formal application to the Attorney General by a foreign state, before the Attorney General applies to the Supreme Court to register an external confiscation order made in the foreign state.

**What country or territory does this case come from?**

The Commonwealth of the Bahamas.

**Who will hear the case?**

Lords Mance, Kerr, Sumption, Reed and Hughes JJSC.

**When it is listed for and for how long?**

23 February 2017 for 1 day.

**What happened in the Court of Appeal?**

On 13 September 2013 the Bahamas Court of Appeal (Mrs Justice Allen P, Justices of Appeal John and Adderley) allowed Mr Knowles appeal from the Supreme Court - [www.courtsofappeal.org.bs/download/017007100.pdf](http://www.courtsofappeal.org.bs/download/017007100.pdf). The Court of Appeal overturned the registration on these bases:

- a procedure set out in subsidiary legislation had not been followed, and
- Mr Knowles' family members and A1 Car Rentals had not had an opportunity to defend the US proceedings.

**What happened in the lower courts?**

On 9 August 2011 Senior Justice Longley sitting in the Supreme Court of the Bahamas registered the preliminary order and judgement issued on 23 June 2008 by the US District of Southern Florida. The judgement sum was US\$13.9million.

**Does the law in England and Wales differ to any significant extent?**

There appears to be some critical differences to the way the Bahamian POCA is drafted to those provisions in the English POCA 2002.

**What could be the implications of its ruling?**

It will be tempting for the Judicial Committee to restore the first instance ruling and not allow Knowles to succeed (as he did in the Court of Appeal) on highly technical points. If they do otherwise, the danger is that sends out the wrong messages in relation to international law enforcement in relation to confiscating the proceeds of serious crimes.

**8. Junkanoo Estates Limited, Yuri Starostenko and Irina Tsareva-Starostenko v. UBS Bahamas Limited (in liquidation)**

**What are the relevant agreed facts?**

On 23 August 2012, UBS agreed to provide Junkanoo (a private investment company) with a credit facility in the sum of US\$1.4million. Junkanoo contends that UBS was bound as part of that agreement to manage a portion of the loan as an investment on its behalf. The loan was secured by means of a mortgage over the family home of Starostenko and Tsareva-Starostenko (the officers and directors of Junkanoo).

Following alleged breaches of the loan agreement by Junkanoo, the Supreme Court on 23 March 2015 ordered the appellants to pay the outstanding sum of money owed under the loan and, in default of payment, to give up vacant possession of their property. This was a summary judgment order.

Junkanoo contends that the Supreme Court failed to consider its defence before making this order. Their defence as set out in an affidavit dated 23 March 2015 (but apparently not considered by the Supreme Court), appeared to be that UBS failed to manage properly the investment portion of the loan. Junkanoo seeks special leave to appeal to the Privy Council against the Court of Appeal's decision.

**What are the issues for the Privy Council?**

Whether the Court of Appeal

- erred in refusing to consider Junkanoo's appeal against a summary judgment order on the basis that it had failed to first seek permission to appeal from the Supreme Court, and
- failed to accord due weight to the Junkanoo's claim that it was not afforded a sufficient hearing before the summary judgment order was made.

**What country or territory does this case come from?**

The Commonwealth of the Bahamas.

**Who will hear the case?**

Lords Mance, Kerr, Sumption, Reed and Hughes JJSC.

**When it is listed for and for how long?**

24 February 2017 for 1 day.

**What happened in the Court of Appeal?**

On 2 November 2015, the Court of Appeal (Mrs Justice Allen P, Justices of Appeal Adderley and Isaacs) acceded to UBS's preliminary objection to the Notice of Appeal Motion - [www.courtsofappeal.org.bs/download/078571600.pdf](http://www.courtsofappeal.org.bs/download/078571600.pdf). The Court of Appeal held that Junkanoo had failed to obtain permission to appeal against the summary judgment order from the Supreme Court. It ruled that this rendered the Notice of Appeal a 'nullity'. The Notice of Appeal was struck out and the application for a stay dismissed.

On 6 June 2016, the Court of Appeal declined to hear renewed submissions on the matter from Junkanoo on the basis that it had already determined the matter.

**What happened in the lower courts?**

Junkanoo applied to the Supreme Court for a stay or variation of the summary judgment order (but not for permission to appeal). Mr Justice Evans sitting in the Supreme Court dismissed the application on 8 May 2015 on the basis that Junkanoo had already filed a Notice of Appeal Motion before the Court of Appeal, rendering the Supreme Court powerless. Evans J entered judgment against Junkanoo for \$920,164.87.

**Does the law in England and Wales differ to any significant extent?**

This appears to be an appeal on procedural grounds in the way that the Court of Appeal treated certain matters below. Although the precise rules may differ in their wording to the Civil Procedure Rules 1998, the approach taken by first instance court hearing a summary judgment application is very similar.

**What could be the implications of its ruling?**

Junkanoo needs to obtain special permission to bring this appeal. As it is an appeal on procedural grounds and given that the Court of Appeal upheld the Supreme Court ruling, it is doubtful the Judicial Committee will spend long on this.

**9. Beldiam Company Limited v. Peeters**

**What are the relevant agreed facts?**

These have not yet been published

**What are the issues for the Privy Council?**

These have not yet been published

**What country or territory does this case come from?**

Mauritius

**Who will hear the case?**

Lady Hale DPSC, Lords Kerr, Wilson, Sumption and Hughes JJSC

**When it is listed for and for how long?**

5 April 2017 for 1 day.

**10. Mediterranean Shipping Company SA v. Sotramon Limited**

**What are the relevant agreed facts?**

In 1998, Sotramon hired a crane, which was dispatched in 1999 by vessel by the Mediterranean Shipping Company ('MSC') to Felixstowe. Sotramon alleged that MSC failed to deliver part of the consignment - a 15 ton ballast - and in 2000 brought a claim against MSC for £115,295.84.

Jurisdiction was contested, and in the course of arguments, Sotramon amended the basis of its case from breach of contract to tort.

**What are the issues for the Privy Council?**

Whether the principle of non-cumulation of contractual and extra-contractual (tortious) liabilities prohibits the grounding of a claim on the basis of both contractual and tortious liabilities, and prohibits a plaintiff from opting between contractual and tortious liabilities.

**What country or territory does this case come from?**

Mauritius

**Who will hear the case?**

Lady Hale DPSC, Lords Kerr, Wilson, Sumption and Hughes JJSC.

**When it is listed for and for how long?**

6 April 2017 for 1 day.

**What happened in the Court of Appeal?**

On appeal, the Court of Civil Appeal quashed the judge's decision and ordered that the case be heard on the merits as an action based in tort.

**What happened in the lower courts?**

The trial court held that the claim could not be grounded in tort as a consequence of the terms of the contract of carriage and held that it was not empowered to hear the case as if the action was based on a breach of contract.

**Does the law in England and Wales differ to any significant extent?**

Mauritius is a common law country which has adopted the principles of contract and tort law. However this case is about the blurring of the boundaries (or otherwise) between these 2 things which is highly likely to be resolved in the same manner in both jurisdictions.

**What could be the implications of its ruling?**

This case represents a classic exposition of the civil law of obligations. Some law schools have attempted to teach contract and tort law together. However they are separate subjects and the damages awarded can be quite different for each. The ruling of the first instance court seems peculiar as the judge there seems to have decided not to hear the case whether pleaded in contract or tort. The Court of Appeal's judgement seems odd too because whilst it quashed the order it ruled that the judge below must hear the action in tort. As there was a written contract between the 2 parties, then that would seem the obvious basis of any claim. Whether there are any issues of limitation (bearing in mind the events happened nearly 20 years ago) is not clear.

**8 February 2017**

David Bowden is a solicitor-advocate and runs <a href="http://DavidBowdenLaw.com">David Bowden Law</a> which is authorised and regulated by the Bar Standards Board to provide legal services and conduct litigation. He is the cases editor for the Encyclopedia of Consumer Credit Law. If you need advice or assistance in relation to consumer credit, financial services or litigation he can be contacted at <a href="mailto:info@DavidBowdenLaw.com">info@DavidBowdenLaw.com</a> or by telephone on (01462) 431444.
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