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## OVERVIEW: JURISDICTION AND DEVOLUTION ISSUES

Sondre Torp Helmersen

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### 1 Introduction

In the 2012–2013 legal year, eight cases from the Supreme Court concerned jurisdiction and devolution issues. Three concerned the competencies of devolved legislatures, two the right to appeal from Scottish courts, and three the jurisdiction of English courts.

### 2 Devolved competencies

In *Local Government Byelaws (Wales) Bill 2012—Reference by the Attorney General for England and Wales*,<sup>1</sup> the question raised was whether clauses 6 and 9 of the Local Government Byelaws (Wales) Bill 2012 (Wales) were in conformity with the Government of Wales Act 2006.<sup>2</sup> These clauses removed the need for consent by the Secretary of State for Wales to the adoption of Welsh byelaws under certain enactments, and allowed Welsh ministers to add to the list of such enactments. In two separate opinions, the Supreme Court unanimously upheld both clauses.<sup>3</sup>

*Imperial Tobacco Limited v The Lord Advocate (Scotland)*<sup>4</sup> concerned the conformity of the Tobacco and Primary Medical Services (Scotland) Act 2010 s 1 and 9 with the Scotland Act 1998.<sup>5</sup> The sections prohibit the display of tobacco products and the sale of tobacco from vending machines. The 1998 Act reserves ‘the sale and supply of goods to consumers’ and ‘product safety’ to the UK Parliament. The Supreme Court unanimously upheld both provisions.<sup>6</sup>

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<sup>1</sup> [2012] UKSC 53.

<sup>2</sup> *Ibid.*, para 1 (Lord Neuberger).

<sup>3</sup> *Ibid.*, paras 66 (Lord Neuberger) and 101 (Lord Hope).

<sup>4</sup> [2012] UKSC 61.

<sup>5</sup> *Ibid.*, para 1 (Lord Hope).

<sup>6</sup> *Ibid.*, para 46 (Lord Hope).

In *Salvesen v Riddell, Lord Advocate intervening (Scotland)*<sup>7</sup> the appellant argued that s 72 of the Agricultural Holdings (Scotland) Act 2003 was contrary to Article 1 Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR)<sup>8</sup>. Under the Scotland Act 1998 s 29, this would place it outside the competence of the Scottish Parliament.<sup>9</sup> Section 72 allowed two partners in a partnership, who had leased Salvesen's farm from the previous landlord, to become joint tenants.<sup>10</sup> The Supreme Court found a violation of A1P1 ECHR, but suspended the effect of its finding.<sup>11</sup>

### 3 Appeals from Scotland

*O'Neill v Her Majesty's Advocate (No 2) (Scotland); Lauchlan v Her Majesty's Advocate (Scotland)*<sup>12</sup> was brought by two defendants who in 2010 were found guilty of murder by the High Court of Justiciary in Glasgow.<sup>13</sup> They alleged that their cases had suffered from delay and bias sufficient to lead to a violation of Article 6 ECHR.<sup>14</sup> This raised 'devolution issues' under the Scotland Act 1998 Sch 6 Para 13, which, under the Scotland Act 2012 s 36(4), were 'compatibility issues' appealable to the Supreme Court under the Scotland Act 1998 s 288AA.<sup>15</sup> The Court unanimously however found no violation of the ECHR in either case.<sup>16</sup>

In *Apollo Engineering Ltd v James Scott Ltd (Scotland)*,<sup>17</sup> the appellant sought to appeal two decisions from the Court of Session.<sup>18</sup> The Supreme Court unanimously allowed the appeal against the dismissal of the case, distinguishing the case from *John G McGregor (Contractors) Ltd v Grampian Regional Council*.<sup>19</sup> The Court considered this 'a judgment on the whole merits of the cause'.<sup>20</sup>

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<sup>7</sup> [2013] UKSC 22.

<sup>8</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 262.

<sup>9</sup> *Ibid*, para 2 (Lord Hope).

<sup>10</sup> *Ibid*, para 5 (Lord Hope).

<sup>11</sup> *Ibid*, para 58 (Lord Hope).

<sup>12</sup> [2013] UKSC 36.

<sup>13</sup> *Ibid*, para 1 (Lord Hope).

<sup>14</sup> *Ibid*, para 3 (Lord Hope).

<sup>15</sup> *Ibid*, paras 9 and 11 (Lord Hope).

<sup>16</sup> *Ibid*, para 58.

<sup>17</sup> [2013] UKSC 37.

<sup>18</sup> *Ibid*, paras 7–9 (Lord Hope).

<sup>19</sup> [1991] SC (HL) 1; *Apollo Engineering*, paras 10–15 (Lord Hope).

<sup>20</sup> *Ibid*, para 27 (Lord Hope).

## 4 Jurisdiction of English courts

*Secretary of State for Foreign and Commonwealth Affairs v Yunus Rahmatullah*<sup>21</sup> concerned Mr Rahmatullah, an individual who was captured by UK forces in Iraq, transferred to US custody, and then held in prison in Afghanistan without trial.<sup>22</sup> Unusually, he claimed *habeas corpus* despite being outside the Court's jurisdiction. Three Justices subsequently held that a writ could nonetheless be issued,<sup>23</sup> but that a rejected UK request to the US was sufficient to satisfy the right.<sup>24</sup> Two Justices dissented, in particular over the sufficiency of the request and also of the response.<sup>25</sup>

In *VTB Capital plc v Nutritek International Corp.*,<sup>26</sup> the appellant sued four other companies for fraud,<sup>27</sup> raising the question of whether English courts were the appropriate forum. The case was governed by English law and certain agreements had English jurisdiction clauses, but the relevant facts were connected to Russia.<sup>28</sup> In three concurring opinions the Supreme Court held that England had not been shown to be the correct forum.<sup>29</sup> The possibility of piercing the corporate veil was also rejected,<sup>30</sup> and a freezing order was lifted.<sup>31</sup> Two justices dissented, holding that England was an appropriate forum for the action to be brought.<sup>32</sup>

*Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP*<sup>33</sup> concerned an arbitration agreement that stipulated England as the relevant arbitral venue.<sup>34</sup> The appellant had suggested arbitral proceedings in Kazakhstan but none had yet been initiated.<sup>35</sup> The question that was appealed to the Supreme Court was whether the English Courts could prevent such proceedings from occurring.<sup>36</sup> The Court unanimously held that proceedings

<sup>21</sup> [2012] UKSC 48.

<sup>22</sup> *Ibid.*, paras 3–5 (Lord Kerr).

<sup>23</sup> *Ibid.*, paras 45–64 (Lord Kerr) and 122–3 (Lord Carnwath and Lady Hale, diss).

<sup>24</sup> *Ibid.*, paras 76 and 85 (Lord Kerr), 107 (Lord Phillips), and 108 (Lord Reed).

<sup>25</sup> *Ibid.*, paras 116–32 (Lord Carnwath and Lady Hale, diss).

<sup>26</sup> [2013] UKSC 5.

<sup>27</sup> *Ibid.*, paras 1–3 (Lord Mance).

<sup>28</sup> *Ibid.*, paras 45–66 (Lord Mance).

<sup>29</sup> *Ibid.*, paras 71 (Lord Mance), 98–112 (Lord Neuberger), and 151 (Lord Wilson).

<sup>30</sup> *Ibid.*, paras 72 (Lord Mance), 148 (Lord Neuberger), and 158 (Lord Wilson).

<sup>31</sup> *Ibid.*, para 73 (Lord Mance), 150 (Lord Neuberger), and 159 (Lord Wilson).

<sup>32</sup> *Ibid.*, paras 236 (Lord Clarke, diss) and 242 (Lord Reed, diss).

<sup>33</sup> [2013] UKSC 35.

<sup>34</sup> *Ibid.*, para 7 (Lord Mance).

<sup>35</sup> *Ibid.*, para 4 (Lord Mance).

<sup>36</sup> *Ibid.*, para 18 (Lord Mance).

were barred.<sup>37</sup> The Arbitration Act 1996 was found to have no bearing on the matter.<sup>38</sup> An anti-suit injunction issued under the Senior Courts Act 1981 s 37 was thus legal and proceedings in a foreign State contrary to the arbitral agreement could be barred.<sup>39</sup>

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<sup>37</sup> *Ibid*, para 61 (Lord Mance).

<sup>38</sup> *Ibid*, para 60 (Lord Mance).

<sup>39</sup> *Ibid*, para 62 (Lord Mance).