

COURT OF APPEAL

LEADING CASES

2005 – 2006

ASYLUM AND IMMIGRATION

Even though the jurisdiction of the Immigration Appeal Tribunal was more flexible than that of the appellate courts, in relation to an appeal by the Secretary of State, even if an obvious point had been missed, it would nonetheless be wrong to allow it to be taken for the first time on appeal if it depended on the finding of further facts that were left uncertain by the decision. If the facts were clear then it was the duty of the tribunal to ensure that the correct legal test was applied.

([A \(Iraq\) v Secretary of State for the Home Department](#) [2005] EWCA Civ 1438)

A person who could *voluntarily* return in safety to the country of his nationality was not a refugee, notwithstanding that on a *forced* return he would be at risk. Neither section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002 nor Article 33 of the Convention relating to the Status of Refugees 1951 (United Nations) demonstrated the contrary.

([AA and LK v Secretary of State for the Home Department](#) [2006] EWCA Civ 401)

Unless an asylum appeal was remitted by what was the Immigration Appeal Tribunal for reconsideration on a very specific and limited basis, under paragraph 14.11 of the Practice Direction of April 4, 2005, there was no assumption that the immigration judge could not hear evidence or go behind an adjudicator's findings of credibility made in favour of an asylum seeker.

([Ahmed v Secretary of State for the Home Department](#) [2006] EWCA Civ 300)

The Secretary of State appealed from a decision by an Adjudicator finding that returning GH to Afghanistan would breach Article 3 ECHR. The Immigration Appeal Tribunal found, despite the fact that this point was not raised in the Secretary of State's grounds of appeal, that the Adjudicator had applied the wrong test. As the Immigration Appeal Tribunal could only entertain an appeal on a point of law it was necessary for a point of law to be discernible in the grounds of appeal when the permission to appeal was given. The IAT's decision was quashed.

([GH \(Afghanistan\) v Secretary of State for the Home Department](#) [2005] EWCA Civ 1603)

The Court interpreted the transitional provisions contained in Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005 and paragraph 14(11) of the Practice Direction of April 4, 2005. Where an asylum claim was remitted to an adjudicator and, prior to the hearing, statutory changes occurred to the immigration appellate authorities and the matter was heard by an immigration judge, the immigration judge was right to express limits to his jurisdiction and to reconsider only the matter remitted to him and not consider the claim afresh.

[\(Mogos v Secretary of State for the Home Department](#) [2006] EWCA Civ 611)

An Australian citizen, who had been seized in Afghanistan, was being held at Guantanamo Bay. He satisfied the conditions for British citizenship by descent from his mother under the British Nationality Act 1981. His conduct, allegedly training with terrorists in Afghanistan, could not constitute disloyalty or disaffection towards the United Kingdom, for the purposes of the section 40(3)(a) of the 1981 Act, as at the relevant time he was not a citizen and owed no duty to the UK.

[\(R \(on the application of Hicks\) v Secretary of State for the Home Department](#) [2006] EWCA)

N claimed that he had an enforceable legitimate expectation that the Secretary of State would apply his Third Country Family Links Policy as it stood before it was revised and consider his claim substantively in the UK. As the Secretary of State acted upon his own interpretation of the policy honestly and consistently and as N had made no reliance whatever on the policy until after the relevant decision had been made, there was no abuse of power and no legitimate expectation had been generated. In legitimate expectation cases the underlying principle is that where a public authority had issued a promise or adopted a practice that represented how it proposed to act in a given area, the law required the promise or practice to be honoured unless there was a good reason not to do so. This is a requirement of good administration, by which public bodies ought to deal in a straightforward and consistent manner with the public.

[\(R \(on the application of Nadarajah and Anr\) v Secretary of State for the Home Department](#) [2005] EWCA Civ 1363)

On the evidence, an asylum adjudicator had been entitled to conclude that women and girls in Ethiopia constituted a particular social group for the purpose of claiming asylum under the Convention relating to the Status of Refugees 1951. It did not matter that the circumstances differed from those in Pakistan as considered by the House of Lords *Islam v Secretary of State for the Home Department* (1999) 2 W.L.R. 1015. The social group in question had to exist independently of the persecution and could not be defined by the fact of persecution. However, discrimination against

women, coupled with some degree of state involvement in such discrimination could result in them constituting a particular social group. Discrimination need not be embodied in law if there was in practice a lack of state protection.

[\(RG \(Ethiopia\) v Secretary of State for the Home Department](#) [2006] EWCA Civ 339)

The Court of Appeal had an inherent jurisdiction to order the Secretary of State to refrain from removing an appellant in an asylum case between the time when an out of time application for permission to appeal (and for an extension of time), was filed and the time when the application for permission to appeal was determined. Otherwise the whole purpose of the appeal would be nullified. In exercising this jurisdiction the Court would require a strong case from the appellant that he was likely to achieve ultimate success on appeal before it would justify such an exceptional course. Technically this would no constitute a stay but an order preserving the status quo until the court made determined the application.

[\(YD \(Turkey\) v Secretary of State for the Home Department](#) [2006] EWCA Civ 52)

The test, as formulated in *N v Secretary of State for the Home Department* (2005) UKHL 31, (2005) 2 A.C. 296, whether an immigrant's Article 3 ECHR rights would be breached, was that there had to be exceptional circumstances to prevent a removal. This is a matter for the judgement of the tribunal. Failure to accept that a case was exceptional did not amount to an error of law unless the tribunal had rejected a plain, obvious and uncontroversial issue that took the case out of the limitations in *N*.

[\(ZT v Secretary of State for the Home Department](#) [2005] EWCA Civ 1421)

ELECTORAL AND CONSTITUTIONAL LAW

Prospective electoral candidates (for the Respect Party) did not, on the evidence, have a legitimate expectation that the returning officer in local elections due to occur in May 2006 would examine their nomination papers for errors (in this case, making use of the old electoral register). Hence, the lower court erred in ordering that a forthcoming local election be countermanded and there be a fresh election. However, the officer had breached the Local Elections (Principal Areas) Rules 1986 by failing to examine the nomination papers as soon as was reasonably practicable. The elections were governed by the Representation of the People Act 1983 and as that Act was silent as to the availability of judicial review during the course of an election, it should only be available extremely rarely.

[\(Begum and ors v Returning Officer for the London Borough of Tower Hamlets](#) [2006] EWCA Civ 733)

EMPLOYMENT LAW

The burden of proving indirect sex discrimination lay on the person asserting its existence. However, the Employment Tribunal had to provide a safeguard and was under an obligation to ensure that the statistics provided by the parties were valid and not fortuitous, and to ensure that the employee did not identify a comparator group that was artificial and limited.

([Cheshire and Wirral Partnership NHS Trust v Abbott and others](#) [2006] EWCA Civ 523)

The Employment Appeal Tribunal was not entitled to consider a point of law not advanced before the employment tribunal in the absence of exceptional circumstances and where success on the point on appeal would have required the case to be remitted for further consideration by the tribunal. Such a point was not to be taken merely because it seemed to be, or was even shown to be, a good one.

([Leicester County Council v Unison](#) [2006] EWCA Civ 825)

The Court gave further guidance as to how employment tribunals should go about determining whether the legal consequences of the arrangements between worker, employment agency and end user included an implied contract of employment between the worker and the end user. Such circumstances are generally known as “triangular cases”. The requirement for mutuality of obligation could be satisfied where the obligation to remunerate did not lie on the person having control of the worker's work so long as the remuneration was being provided by the employer albeit indirectly.

([Muscat v Cable and Wireless plc](#) [2006] EWCA Civ 220)

An employee, dismissed after he was elected as a councillor for the British National Party, had not been dismissed "on racial grounds" for the purpose of section 1(1)(a) of the Race Relations Act 1976, even though his employer had taken into account racial considerations. The ratio in *Showboat Entertainment Centre Ltd v Owens* (1984) I.C.R. 64 which prohibited an employer treating a employee less favourably on account of a third person's race did not embrace a situation in which an employer, who was not pursuing a policy of race discrimination, or who was pursuing a policy of anti-race discrimination.

([Redfearn v Serco](#) [2006] EWCA Civ 659)

The Court, departing from one of its earlier decisions (on the basis that it conflicted with subsequent House of Lords authority) held that it was absurd to believe that Parliament could seriously have intended to afford protection to the employee only in respect of acts done during the existence of the employment contract, but not to extend protection to events occurring after termination. The protection of an employee from any detriment done to him in retaliation for his or her sex, race, disability or whistle-blowing was a concept that was common to the Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and Employment Rights Act 1996. Further, ([Woodward v Abbey National plc](#) [2006] EWCA Civ 822)

FAMILY LAW

The prohibition on publication under section 97 in the Children Act 1989 ceased to have effect when proceedings under that Act came to an end. However, a judge was not precluded from making an order so as to protect the child's privacy under Article 8 ECHR (such as an injunction or an order prohibiting identification of the child that continued beyond the end of proceedings).

([Clayton v Clayton](#) [2006] EWCA Civ 878)

Once the district judge had decided that, in the circumstances, the marital assets should be split 57:43, she should have shared the parties' pension rights in those proportions by a pension sharing order, the pensions being in payment, and then shared the remaining property in the same proportion.

([Martin-Dye v Martin-Dye](#) [2006] EWCA Civ 681)

The Court gave guidance on the Child Abduction and Custody Act 1985, incorporating the 1980 Hague Abduction Convention and Council Regulation (EC) No. 2201/2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in matter of Parental Responsibility. On the facts of the case, the policy of the Hague Convention, buttressed by the provisions of Brussels II Revised (Council Regulation (EC) (No 1347 / 2000) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters), powerfully outweighed the fact that the defence set out in Article 13 of the Abduction Regulation raised by the child in question was made out.

([Vigreux v Michel](#) [2006] EWCA Civ 630)

HEALTH AND SAFETY

The appellant companies claimed damages for damage to property and loss of profit suffered as a result of fires in their premises, alleging that the fires had been caused by defective machinery supplied by the respondents in breach of the Supply of Machinery (Safety) Regulations 1992 and section 47(2) of the Health and Safety at Work etc. Act 1974. The general enabling words in the preamble to the 1992 Regulations did not invoke the enabling power contained in section 15(1) of the 1974 Act (as, *inter alia*, they were expressly made pursuant to section 2(2) of the European Communities Act 1972). Hence the Regulations had not been made under the 1974 Act.

([Vibixa Ltd v Komori UK Ltd and Ors](#) [2006] EWCA Civ 536)

HOUSING – LANDLORD AND TENANT

The Court gave guidance as to how to decide between competing claims for possession of property under section 82 of the Housing Act 1985 and the right to buy under section 118 of that Act. The Act itself gave rise to the clash of the competing claims and provided no warrant for giving precedence to the claim for possession and was silent as to the effect of an outstanding claim for possession on the landlord's obligation to grant an interest in the property. The conflict was not to be resolved by a race to judgment. Rather, given the absence of express statutory guidance giving precedence to either claim, the court should hear both claims at the same time and carry out a balancing exercise by considering each claim on its facts and merits.

([Basildon District Council v Wahlen](#) [2006] EWCA Civ 326)

The appellant lessee claimed that it was entitled to set off claims it had against its former landlord against rent due to the assignee of the reversion. In this case, the effect of the assignment was governed by section 3 of the Landlord and Tenant (Covenants) Act 1995. Even though the contractual nature of leases had recently become more prominent, the fact remained that it was still an interest in land and the right to recover rent should be an incident of the reversion and have different features from the right to recover a debt unassociated with any interest in land. Hence, a lessee was not entitled to set off a claim for damages against the original freeholder for defective construction of the building against post-assignment rent due to the assignee of the freehold.

([Edlington Properties Ltd v JH Fenner & Co Ltd](#) [2006] EWCA Civ 403)

HUMAN RIGHTS

Recent migrants from other countries who shared the desire to bury their loved ones in their country of origin (in accordance with Muslim practice) were not a group requiring protection under Article 14 ECHR. Hence the Secretary of State's refusal to allow claims for funeral payment in respect of their deceased partners under the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 (which allows for payment for funeral expenses where a funeral was held in the UK or in certain cases in the European Economic Area states) did not amount to discrimination under Article 14.

[\(Esfandiari and ors v Secretary of State for Work and Pensions](#) [2006] EWCA Civ 282)

The Appellant, a dual British and Iraqi national, was detained by British forces in Iraq on the basis that his internment was necessary for imperative reasons of security in Iraq. He was not entitled to the rights to liberty guaranteed by Article 5 of Schedule 1 to the Human Rights Act 1998 as those rights had been qualified by United Nations Security Council Resolution 1546 (which gave the multinational force the power to intern people for imperative reasons of security and that power embraced people of every nationality whose internment was deemed necessary for imperative reasons of security).

[\(R \(on the application of Al-Jedda\) v Secretary of State for Defence](#) [2006] EWCA Civ 327)

Iraqi citizens shot dead by British soldiers in their homes or in the street in Iraq during the British occupation did not come within the scope of the European Convention on Human Rights 1950 nor the Human Rights Act 1998 because their deaths occurred outside the jurisdiction of the United Kingdom. Even though the UK was an occupying power within the meaning of the Article 42 of the Hague Regulations and the 1949 Fourth Geneva Convention, it was impossible to hold that the UK was in effective control of Basrah for the purposes of the Human Rights Convention jurisprudence. However, the death of an Iraqi citizen in the custody of British forces in Iraq came within the scope of the Convention and of the Act as falling within the jurisdiction of the UK.

[\(R \(on the application of Al-Skeini and ors\) v Secretary of State for Defence](#) [2005] EWCA Civ 1609)

Members of the Countryside Alliance claimed that the prohibition of hunting with dogs of certain wild mammals under the Hunting Act 2004 infringed a number of ECHR rights (Articles 8 and 11 and Article 1 of the First Protocol). Other appellants contended that the ban infringed their rights under the free movement of goods (Article 28) and free movement of services (Article 49) under the EC

Treaty (Nice). It had been within the rational, proportionate and democratic competence of Parliament to enact the 2004 Act and the Act did not infringe EC law or the ECHR.

([R \(on the application of the Countryside Alliance and ors\) v HM Attorney General](#) [2006] EWCA Civ 817)

INSOLVENCY

The Appellant, a limited liability partnership, carried on the business of advertising in taxi cabs. The Respondents were three of the founder members of the partnership and members of its board. The rule in *Foss v Harbottle* (1843) 2 Hare 461 did not apply to the limited liability partnership. Further, the appellant's appointment of administrative receivers of a limited liability partnership was prohibited by section 72A of the Insolvency Act 1986 and thus invalid, because in the circumstances the exception in section 72E of the 1986 Act to the general prohibition did not apply.

([Feetum and others v Levy and others](#) [2005] EWCA Civ 1601)

LEGAL PROFESSION

The first appellant appealed against the disallowance of her solicitors' costs by reason of their failure, when recommending after-the-event (ATE) insurance, to inform her whether they had an interest in doing so, in breach of the Conditional Fee Agreements Regulations 2000 reg.4(2)(e)(ii). The second appellant appealed against a decision that the conditional fee agreement (CFA) that he had entered into was unenforceable by reason of his solicitors' failure, in breach of reg.4(2)(c) of the 2000 Regulations, to inform him whether they had considered that he had relevant before-the-event (BTE) insurance cover. When determining whether a solicitor had failed to satisfy a condition referred to in section 58(3) of the Courts and Legal Services Act 1990 it was not necessary to consider whether the client had suffered actual prejudice. It made no difference whether non-compliance was an innocent mistake or the result of negligence or bad faith or between those that caused prejudice and those that did not.

([Garrett v Halton Borough Council](#) [2006] EWCA Civ 1017 and [Myatt and others v National Coal Board](#) [2006] EWCA Civ 1017)

The barristers on each side of a personal injuries claim belonged to the same chambers as the recorder, who was their head of chambers. The fact that a party has agreed to a recorder continuing to hear an action in circumstances where the recorder's professional connection with the other party might have precluded him from sitting as a judge in the case, does not amount to waiver of his right to complain of bias as the decision was not made freely and was not made with knowledge of all the relevant information. It could not be said that a fair trial was put at risk where a recorder was the

head of chambers of the barristers appearing before him as this was at odds with the high professional standards observed by the Bar.

[\(Smith v Kvaerner Cementation Foundations Ltd \(Bar Council Intervening\)](#) [2006] EWCA Civ 242)

MEDICAL LAW

The Appellant had been denied funding by the respondent for treatment for breast cancer with an unlicensed drug (Herceptin). The respondent's policy to refuse funding for treatment with an unlicensed drug save where exceptional personal or clinical circumstances could be shown was irrational. This was because it was not possible to envisage any exceptional circumstances given the way the policy had been formulated and applied; the policy was in practice a complete refusal of assistance, and as such would be irrational because it was sought to be justified not as a complete refusal but as a policy of exceptionality.

[\(R \(on the application of Rogers\) v Swindon NHS Primary Care Trust](#) [2006] EWCA Civ 392)

PERSONAL INJURY

A road traffic accident case was assigned to the multi-track with a time estimate for trial of two days. The accident was at low velocity. The defendant obtained expert evidence that such an accident could not result the injury allegedly suffered by the claimant and thus claimed that the claimant was making a fraudulent claim and put him to strict proof. The case was correctly assigned to the multi-track given the fraud allegation, which was a matter to be taken seriously. The practice in low velocity impact litigation of requiring the defence to include a substantive allegation of fraud or fabrication was not necessary. It was sufficient to set out fully any facts from which the defence would be inviting the judge to draw the inference that the claimant had not in fact suffered the injuries he asserted.

[\(Kearsley v Klarfeld](#) [2005] EWCA Civ 1510)

Pleural plaques caused by negligent exposure to asbestos, which are evidence of exposure to asbestos but do not threaten or lead to other asbestos induced conditions, were insufficiently serious to give rise to a cause of action in negligence simply because they carried a risk of subsequent significant injury and gave rise to consequent anxiety. A claimant could not recover damages for a free-standing psychiatric injury caused by the fear of contracting the disease.

[\(Rothwell v Chemical & Insulating Co Ltd and Anr and Ors](#) [2006] EWCA Civ 27)

PLANNING

The local authority had obtained a planning injunction against the appellant under section 187B of the Town and Country Planning Act 1990, restraining occupation of a plot of land belonging to the appellant's son (who had been refused planning permission to use it as a gypsy caravan site). The Court held that as the appellant had become an occupier of the land after the injunction was granted, it was not necessary to apply the balancing exercise set out in *South Buckinghamshire DC v Porter (No.1)* [2003] UKHL 26 to establish whether the injunction should be applied to the appellant at all. The principles of *Porter* only applied at the point where a court was considering an original application for an injunction against known defendants, or an application for the variation or setting aside of an existing injunction.

([South Cambs v Gammell](#) [2005] EWCA Civ 1429) ([Bromley BC v Maughan](#) [2005] EWCA Civ 1429)

POLICE

A police officer's power under section 30(6) of the Anti-social Behaviour Act 2003 to "remove" a person under 16 to his place of residence was not permissive but coercive. However, an officer exercising that power was not free to act for a purpose other than that for which the power was conferred.

([R \(on the application of W\) v Commissioner of Police for the Metropolis](#) [2006] EWCA Civ 458)

POLITICAL DEMONSTRATIONS

Haw had been demonstrating on Parliament Square since June 2001, living on the pavement, protesting about government policy in Iraq. Section 132(1) of the Serious Organised Crime and Police Act 2005 provided that a person who carried on a demonstration in the designated area was guilty of an offence if when the demonstration started, appropriate authorisation had not been given. The Court held the parliamentary intention behind this section was clearly to regulate all demonstrations whenever they began (even prior to the coming into force of the Act) and, given the statutory framework, any other conclusion would be irrational.

([R \(on the application of Haw\) v Secretary of State for the Home Department and Anr](#) [2006] EWCA Civ 532)

PRACTICE AND PROCEDURE

Charlton had admitted liability in a personal injury claim in an open letter, but subsequently withdrew that admission following the issue of proceedings. The Court held that CPR rule 14.1 did not cover pre-action admissions of liability. The CPR were principally concerned with the regulation of cases after an action was started. An admission of liability before an action was brought could not be equated with an admission of "the truth of the whole or any part of another party's case" because a party's "case" was not formulated until the claim form was prepared, and a person did not ordinarily become a party until legal proceedings had been commenced.

([Sowerby v Charlton](#) [2005] EWCA Civ 1610)

A local authority made a pre-action admission of liability in respect of a personal injury claim made against it by one of its employees. The local authority referred the case to its loss adjusters who investigated and then informed the claimant that liability would not be in issue. When the claimant issued proceedings, the local authority filed a defence denying liability. For the local authority's withdrawal of its pre-action admission of liability to amount to an abuse of the process or an obstruction of the just disposal of the case within CPR r.3.4(2)(b), it was necessary to prove that the defendant had acted in bad faith.

([Walley v Stoke On Trent City Council](#) [2006] EWCA Civ 1137)

The Appellant brought a claim against the respondent local authority for failing to discharge its statutory duty under the Defective Premises Act 1972. During the trial the local authority made a submission of no case to answer; the trial judge accepted this submission and entered judgment against the appellant. The Court of Appeal accepted jurisdiction on the basis that a decision made in the defendant's favour by a circuit judge at the trial of an action in the multi-track on a submission of no case to answer, when the defendant had not been put to his election, was a "final decision" for the purposes of the Access to Justice Act 1999 (Destination of Appeals) Order 2000. It went on to find that the trial judge had been guilty of a serious procedural irregularity in failing to put the defendant local authority to its election before entertaining its submission that there was no case to answer.

([Graham v Chorley Borough Council](#) [2006] EWCA Civ 92)

LIMITATION PERIODS

H, X and Y claimed for damages for the psychiatric harm they had suffered as a consequence of sexual abuse to which they were exposed during their school days with the respondent local authorities. A appealed against a decision that her claim for damages for attempted rape against the respondent sex offender was statute barred. As it was bound by *Stubbings v Webb* (1993) AC 498, the Court held that although most claims for damages for physical or psychiatric injury had an extendable three-year limitation period from the date of the claimant's knowledge, claims for damages arising out of an intentional sexual assault had a non-extendable six-year limitation period from the date of the assault.

([A v Iorworth Hoare](#) [2006] EWCA Civ 395; [H v Suffolk County Council v Secretary of State for Constitutional Affairs](#) [2006] EWCA Civ 395 and [X & Y v London Borough of Wandsworth](#) [2006] EWCA Civ 395)

The appellant employer was held liable by consent for personal injury suffered by one of its employees at work and sought a contribution from primary contractors. The appellant was not out of time within the meaning of section 10 of the Limitation Act 1980 in making its claim under the Civil Liability (Contribution) Act 1978 for contribution against the respondent companies. The judgment or award referred to in section 10(3) of the 1980 Act as setting the relevant date for the running of time against a tortfeasor who sought contribution under the 1978 Act was a judgment or award that ascertained the quantum, and not merely the existence, of the tortfeasor's liability.

([Aer Lingus v Gildacraft and Anr](#) [2006] EWCA Civ 4)

REAL PROPERTY

The appellants applied to the county council for a modification order to add a public footpath to a map of public rights of way but the owners of the land had objected. The Court found that use of the footpath without interruption for 20 years, for the purposes of section 31(1) of the Highways Act 1980, could be satisfied even if the evidence from which it inferred that the owner had no intention to dedicate was not evidence of overt acts or acts communicated to or directed at users of a right of way. Further, it was not necessary for the owner to show that he did not have that intention continuously throughout the relevant 20-year period.

([R \(Godmanchester Town Council\) v Secretary of State for Environment, Food and Rural Affairs: R \(Leslie Ernest Drain\) v Secretary of State for Environment, Food and Rural Affairs](#)) [2005] EWCA Civ 1597)

TAX LAW AND VAT

An Irish company issued phonecards which were distributed by UK distributors. They are used to obtain telecommunications services from a company in Ireland. The general principles of the Sixth Council Directive 77/388 relating to avoidance of non-taxation, avoidance of double taxation and the prevention of distortion of competition were not relevant to this case. However the phonecards were essentially promises to supply services and the provisions of the Sixth Directive applied to that supply. The relevant supply was that to the UK traders. The place of supply under the Directive took precedence over the general rule in Article 9(1). There was no objection in principle to interpreting Schedule 10A of Value Added Tax Act 1994 so as to conform to the principles of the Directive. Consideration for the supply of a credit voucher (phonecard) was not to be disregarded in circumstances where no VAT would be accounted for on the subsequent supply of telecommunications services since it was contrary to the Directive for telecommunication services in the EU to be VAT free.

[\(Commissioners for Her Majesty's Revenue and Customs v IDT Card Services Ireland Ltd\)](#) [2006] EWCA Civ 29)

The appellant taxpayer's claim for repayment of input tax failed as it was outside the statutory three-year time limit for such claims. Regulation 29(1A) of the Value Added Tax Regulations did not include transitional arrangements allowing an adequate period after the enactment of the three-year time limit for lodging claims for repayment of input tax. It was thus to be disapplied in the case of person with an accrued right to deduct as incompatible with the principle of effectiveness.

[\(Fleming \(t/a Bodycraft\) v Commissioners of HM Revenue and Customs\)](#) [2006] EWCA Civ 70)

The dividends paid to a wife on her share in a husband-and-wife company were not income arising under a settlement as defined under section 660G(1) of the Income and Corporation Taxes Act 1988 because the payment of modest salaries to the husband and wife and the declaration of dividends were not part of an arrangement constituting a settlement. Whether there was a settlement depended on identifying the relevant arrangement and ascertaining whether at the time it was made it involved any element of bounty.

[\(Jones v Garnett \(HM Inspector of Taxes\)\)](#) [2005] EWCA Civ 1553)

TERRORISM

Purported non-derogating control orders made by the Secretary of State for the Home Department under section 2 of the Prevention of Terrorism Act 2005 were, in substance, actually derogating control orders. The Secretary of State had no power to make such orders. Further, cumulatively, the obligations imposed were so severe that they amounted to a deprivation of liberty contrary to Article 5 ECHR. The judge had the jurisdiction to quash those orders under section 3(12) of the 2005 Act rather than to modify the obligations.

([Secretary of State for the Home Department v JJ and Ors](#) [2006] EWCA Civ 1141); [R \(on the application of GG and ors\) v Secretary of State for the Home Department](#) [2006] EWCA Civ 1157)

Section 3 of the Prevention of Terrorism Act 2005 which enables the court to review the making of a non-derogating control order by the Secretary of State, complied with the requirements of Article 6(1) ECHR. Section 11(2) of the 2005 Act required the court, so far as it was able, to give effect to a controlled person's ECHR rights having regard to the state of affairs that existed at the time that the court reached its decision. Section 3(10) of the 2005 Act could not be read so as to restrict the court, when addressing a human rights issue, to a consideration of whether, when he made his initial decision, the Secretary of State had reasonable grounds for doing so. A purposive approach to section (10) allows the court to consider whether the continuing decision to keep the order in force was flawed.

([Secretary of State for the Home Department v MB](#) [2006] EWCA Civ 1140)