

EFFECTIVE JUDICIAL REVIEW

A CORNERSTONE OF GOOD
GOVERNANCE

法律

Edited by

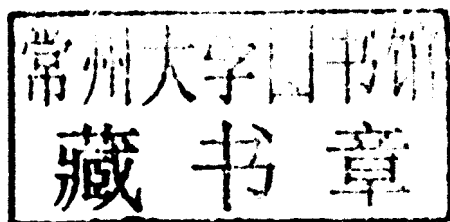
Christopher Forsyth, Mark Elliott,
Swati Jhaveri, Anne Scully-Hill,
and Michael Ramsden

OXFORD

Effective Judicial Review

A Cornerstone of Good Governance

Edited by
CHRISTOPHER FORSYTH
MARK ELLIOTT
SWATI JHAVERI
MICHAEL RAMSDEN
and
ANNE SCULLY-HILL



OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan Poland Portugal Singapore
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© the several contributors, 2010

The moral rights of the authors have been asserted

Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

First published 2010

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press,
or as expressly permitted by law, or under terms agreed with the appropriate
reprographics rights organization. Enquiries concerning reproduction
outside the scope of the above should be sent to the Rights Department,
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloguing in Publication Data

Effective judicial review: a cornerstone of good governance /
edited by Christopher Forsyth... [et al.].

p. cm.

Includes index.

ISBN 978-0-19-958105-4

1. Judicial review. 2. Judicial review of administrative acts.

3. Political questions and judicial power. 4. Constitutional courts.

I. Forsyth, C. F.

K3175.E34 2010

347'.012—dc22

2009053035

Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India
Printed in Great Britain
on acid-free paper by
CPI Antony Rowe Ltd

ISBN 978-0-19-958105-4 (Hardback)

1 3 5 7 9 10 8 6 4 2

‘Although defeats in judicial reviews can be hard to swallow immediately, I am convinced, and I know that conviction is shared by many of my colleagues in the government, that the commitment to the high standards of legality, reasonableness and fairness, and the metamorphosis brought about by judicial discipline at times, will improve public administration, and will make Hong Kong a better society and home for our next generation. Effective judicial review is and remains a corner stone for good governance in Hong Kong.’

The Hon. Wong Yan Lung, SC, JP, Secretary for Justice of the HKSAR addressing the conference on ‘Effective Judicial Review: A Cornerstone of Good Governance’ on 11 December 2008.

List of Contributors

Professor Jaime Arancibia, Professor of Constitutional and Administrative Law at Universidad de los Andes (Chile)

The Hon. Mr Justice Bokhary, Permanent Judge of the HKSAR

The Rt. Hon. Lord Brown of Eaton-under-Heywood, Lord of Appeal in Ordinary, UK House of Lords (now Justice of the Supreme Court of the UK)

Professor Peter Cane, Professor of Law at the Australian National University

Sir Robert Carnwath, Lord Justice of Appeal, Court of Appeal of England and Wales

Professor Johannes Chan, SC, Barrister-at-law, Professor and Dean, Faculty of Law, University of Hong Kong

Professor Paul Craig, Professor of English Law at St John's College, University of Oxford

Mr Mark Daly, Partner, Barnes & Daly, Hong Kong SAR

Emma Dring, Barrister, Lincoln's Inn

Mr Philip Dykes, QC, SC, Barrister, Chambers of Denis Chang SC, HKSAR

Dr Mark Elliott, Senior Lecturer in Law at the University of Cambridge

Professor Christopher Forsyth, Barrister, Atlas Chambers, London, Professor of Public and Private International Law of University of Cambridge

Mr Richard Gordon QC, Barrister, Brick Court Chambers, London, and Honorary Visiting Professor at the Chinese University of Hong Kong Faculty of Law

Professor Carol Harlow, Professor Emeritus at the London School of Economics & Political Science

Professor He Haibo, Tsinghua University Law School

Professor Cora Hoexter, Professor of Law at University of the Witwatersrand, Johannesburg

Mr Benedict Lai, Law Officer (Civil Law) of the Department of Justice of the HKSAR

The Rt. Hon. Sir John Laws, Lord Justice of Appeal, Court of Appeal of England and Wales

The Hon. Chief Justice Andrew Kwok-nang Li, Chief Justice of the HKSAR

Professor Martin Loughlin, Professor of Public Law at the London School of Economics & Political Science

Professor JS Lubbers, Faculty Fellow in Law and Government at American University's Washington College of Law

The Hon. Mr Justice Ma, Chief Judge of the High Court, HKSAR

Professor Janet McLean, Professor of Law and Governance, University of Dundee

Dr. Anthony Neoh SC, JP, Barrister of the HKSAR

Mr Nigel Plemming QC, Barrister, 39 Essex Street, London

Professor Paul Rishworth, Professor and Dean of the Faculty of Law at the University of Auckland

Professor Cheryl Saunders, Laureate Professor at the University of Melbourne

Professor Shimon Shetreet, Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Professor Kevin Stack, Professor of Law at Vanderbilt University School of Law

Professor Mark Walters, Professor and Associate Dean (Graduate Studies and Research) in the Faculty of Law at Queen's University

Professor Sir David Williams QC, Emeritus Vice-Chancellor and Emeritus Professor of the University of Cambridge

The Rt. Hon. Lord Woolf of Barnes, Non-Permanent Judge of the HKSAR and Former Lord Chief Justice of England and Wales

Table of Cases

Australia

Akers v Minister for Immigration and Ethnic Affairs (1985) 9 ALN 13	253
Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321	76, 136–137, 253, 254
Boilermakers' case <i>see</i> R (Boilermakers' Society of Australia) v Kirby	
Brian Lawlor Automotive and Collector of Customs, Re (1978) 1 ALD 167	129, 131
Bushell v Repatriation Commission [1992] HCA 47, 175 CLR 408	150
Collector of Customs (NSW) v Brian Lawlor Automotive Pty Ltd (1979) 2 ALD 1	131
Drake v Minister for Immigration and Ethnic Affairs ('Drake No 1')	
(1979) 2 ALD 60	129, 253
Drake v Minister for Immigration and Ethnic Affairs, Re ('Drake No 2') (1979)	
2 ALD 634	130
Evans v Friemann (1981) 35 ALR 428	76
FAI Insurances v Winneke (1982) 151 CLR 342	77
Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2007) 230 CLR 89	67
General Newspapers Pty Ltd v Telstra Corporation Ltd (1993) 45 FCR 164	76
Griffith University v Tang (2005) 221 CLR 89	76
GTE (Australia) Pty Ltd v Brown (1986) 76 ALR 221	253
Ha v New South Wales (1997) 189 CLR 465	368
Hickman <i>see</i> R (Fox and Clinton) v Hickman	
Kioa v West (1985) 159 CLR 550	75
Lange v ABC (1997) 189 CLR 520	63
Minister for Immigration and Ethnic Affairs v Pochi (1980) 4 ALD 139	127
Minister for Immigration and Multicultural Affairs, ex p Applicant S20/2002,	
Re [2003] HCA 30, (2003) 198 ALR 59	75, 78, 91, 92, 254
Minister for Immigration, Local Government and Ethnic Affairs v Pashmforoosh (1989)	
18 ALD 77	253
Minister of Immigration and Ethnic Affairs v Pochi (1980) 4 ALD 139	127
NEAT Domestic Trading Pty Ltd v AWB Ltd (2003) 216 CLR 277	76
New South Wales Attorney-General v Quin [1990] 170 CLR 1	259
North Sydney Municipal Council v Hunglen Pty Ltd (1992) 74 LGRA 313	140
Osmond <i>see</i> Public Service Board of New South Wales v Osmond	
Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476	62, 73
Public Service Board of New South Wales v Osmond (1986) 159 CLR 656	79
R (Boilermakers' Society of Australia) v Kirby (1956) 94 CLR 254	64
R (Fox and Clinton) v Hickman (1945) 70 CLR 598	63
Wakim, Re (1999) 198 CLR 511	63, 71, 72, 74
Waterford v Commonwealth (1987) 163 CLR 54	253
White v Director of Military Prosecutions [2007] HCA 29 (unreported)	64

Canada

Alberta Union of Provincial Employees v Lethbridge Community College [2004]	
1 SCR 727	307
ATCO Gas and Pipelines Ltd v Alberta (Energy and Utilities Board) [2006] 1 SCR 140	308

Baker v Canada (Minister of Citizenship and Immigration) [1999] 2 SCR 817	305
Barrie Public Utilities v Canadian Cable Television Association [2003] 1 SCR 476	307
Bibeault case <i>see</i> UES Local 298 v Bibeault	
Blanchard v Control Data Canada Ltd [1984] 2 SCR 476	305, 309
Canada (Attorney General) v Mossop [1993] 1 SCR 554	306, 310
Canada (Attorney General) v Public Service Alliance of Canada [1991] 1 SCR 614	305
Canada (Director of Investigation and Research) v Southam Inc [1997] 1 SCR 748	305, 306
Canadian Broadcasting Co v Canada (Labour Relations Board) [1995] 1 SCR 157	307
Canadian Union of Public Employees Local 963 v New Brunswick Liquor Corporation	
[1979] 2 SCR 227	304, 305
Chamberlain v Surrey School District No 36 [2002] 4 SCR 710	307
Chieu v Canada (Minister of Citizenship and Immigration) [2002] 1 SCR 84	307
Crevier v Attorney General of Quebec [1981] 2 SCR 220	303
CUPE case <i>see</i> Canadian Union of Public Employees Local 963 v New Brunswick Liquor Corporation	
Dayco (Canada) Ltd v CAW-Canada [1993] 2 SCR 230	310
Dr Q v College of Physicians and Surgeons of British Columbia [2003] 1 SCR 226	306, 315
Dunsmuir v New Brunswick [2008] 1 SCR 190	300–301, 308
Edward and Edward (1987) 39 DLR (4th) 654	368
Jacmain v Attorney General of Canada [1978] 2 SCR 15	304
KVP Co Ltd v McKie [1949] SCR 698	199–200
MacMillan Bloedel v Simpson [1995] 4 SCR 725	303
Manitoba Language Rights, Re [1985] 1 SCR 721 (1995)	
19 DLR (4th) 1	366–367, 368, 369, 406
Nanaimo v Rascal Trucking Ltd [2000] 1 SCR 342	307
Pasiechynk v Saskatchewan (Workers Compensation Board) [1997] 2 SCR 890	316
Pezim v British Columbia (Superintendent of Brokers) [1994] 2 SCR 557	305
Pushpanathan v Canada (Minister of Citizenship and Immigration) [1998] 1 SCR 982	306
R v Borling [1966] 2 OR 121	303
R v Oakes [1986] 1 SCR 103, (1986) 26 DLR (4th) 200	265
R v Swain [1991] 1 SCR 933	406
Saint John Pension Board v New Brunswick (Superintendent of Pensions) (2006)	
269 DLR (4th) 620	308
Schacter v Canada [1992] 2 SCR 679	406–407
Service Employees International Union Local No 333 v Nipawin District	
Staff Nurses Association [1975] 1 SCR 382	304
Three Rivers Boatman Ltd v Canada Labour Relations Board [1969] SCR 607	301
Toronto v CUPE Local 79 [2003] 3 SCR 77	315
Toronto Newspaper Guild v Globe Printing [1953] 2 SCR 18	302
UES Local 298 v Bibeault [1988] 2 SCR 1048	303, 305, 307, 308
United Taxi Drivers Fellowship of Southern Alberta v Calgary [2004] 1 SCR 485	307
Voice Construction Ltd v Construction & General Workers Union Local 92 [2004]	
1 SCR 609	307
Willis v McCruer (2005) 55 U Toronto LJ	315
Woodward Estate v Minister of Finance [1973] SCR 120	302
China	
Chen Yingchun case	401
Chengdu Erjie Hotel v Chengdu Wuhou District Construction Quality Inspection	
Station (2006) Cheng Xing Zhong 191	397

Guangdong Province Drug Materials Company (DMC) v People's Republic of China Department of the Treasury (DOT), 1999 Yue Gao Fa Xing Zhong 22	387
Hubei Runhai Real Estate Development LLC (RRED) v Yichang City Bureau of Urban Planning (2005) Yi Xing Zhong 3	397
Lanzhou Changde Commodity Development Department of Gansu Province v Lanzhou Municipality of Gansu Province (2000) 1 Supreme People's Court Gazette 142	394
Liu Yanwen v Peking University (PKU), 1999 Hai Xing Chu 103	390, 391–394, 396, 398, 399, 401
Pingshan County Bureau of Labor and Employment v Pingshan Bureau of Local Taxation (1997) 2 Supreme People's Court Gazette 71	385–386
Qiao Zhanxiang v Department of Railway (2001) Gao Xing Zhong 39	399
Song Lili v Suqian Construction Bureau of Jiangsu Province (2004) 1 Supreme People's Court Gazette 33	394
Sun Shou-chih's case (1796) HAHl 9.18/13a	173
Tian Yong v University of Science and Technology Beijing (USTB) (1999) 4 Supreme People's Court Gazette 139	388–390, 391, 392, 394, 396, 398, 401
Wang Changbin v Wuhan University of Technology (WHUT), Jiangnan Times, 2 May 2002	390
Yimin Corporation v People's Government of Zhoukou City (2005) 8 Supreme People's Court Gazette 23	397
Zhang Chengyin v Xushou Municipality of Gansu Province (2005) Supreme People's Court Gazette 43	394–398, 398, 399
Zhang Zhenlong v Xuzhou City Bureau of Education (2005) 50 Selection from People's Court Cases 170	396

European Court of Human Rights (ECtHR)

A v United Kingdom, App No 3455/05, 19 February 2009	96
Albert and Le Compte v Belgium, Series A No 58, (1983) 5 EHRR 533	261
Brannigan v United Kingdom (1994) 17 EHRR 539	266, 279
Bryan v United Kingdom (1995) 21 EHRR 342	97, 261
Castells v Spain (1992) 14 EHRR 445	284
Chahal v United Kingdom (1996) 23 EHRR 413	96–97
Handyside v United Kingdom (1979–80) 1 EHRR 737	278
James v United Kingdom (1986) 8 EHRR 123	266
Marcks v Belgium (1979) 2 EHRR 330	368
Olsson v Sweden (1989) 11 EHRR 259	266
Salesi v Italy (1998) 26 EHRR 187	97
Tsfayo v United Kingdom [2009] 48 EHRR 18	97, 261–262

European Court of Justice (ECJ)

R (Bidar) v Ealing London Borough Council, Case C-209/03	368
R (Federation Europeene de la Sante Animale) v Ministry of Agriculture, Fisheries and Food, Case C-331/88, [1991] 1 CMLR 507	265

Fiji

Republic of Fiji v Prasad [2001] 2 LRC 743	403
--	-----

Hong Kong

A (Torture Claimant) v Director of Immigration [2008] 4 HKLRD 752	411
A, F, AS and YA v Director of Immigration, CACV 314-317/2007	414

Anderson Asphalt Ltd and others v The Secretary of State for Justice [2009] HKLRD 215 . . .	334
Attorney General of Hong Kong v Lee Kwong Kut [1993] AC 951	417
Attorney General of Hong Kong v Reid [1994] 1 AC 324	238
Building Authority v Appeal Tribunal (Buildings), HCAL 3/2005, HKCFI 1123	246, 257
Capital Rich Development Ltd v Town Planning Board [2007] 2 HKLRD 155.	363
Catholic Diocese of Hong Kong v Secretary of Justice [2007] 4 HKLRD 483	418
Chan Tin Shi v Li Ting Sung [2005] 1 HKC 1	372
Chan Wa Chung v Secretary for Justice, HCAL 38/1998.	362
Cheng Chung Kiang (transliteration) v Securities and Futures Commission, CACV 236/2002	378
Chit Fai Motors Co Ltd v Commissioner for Transport [2004] 1 HKC 465.	363–364, 365
Ch'Ng Poh v The Chief Executive of the Hong Kong Special Administrative Region, HCAL 182/2002	403, 405–406
Chu Hoi Tak v Secretary for Home Affairs, HCAL 87/2007	361, 374
CP Ships USA LLC v Chief Executive of the Hong Kong Special Administrative Region, CACV 204/2007	362–363
D v Director of Social Welfare, HCAL 163/2005.	414
Democratic Party, The v Secretary for Justice, HCAL 84/2006.	374
Director of Lands v Yin Shuen Enterprise (2003) 6 HKCFAR 1	334
Dragon House Investment Ltd v Secretary for Transport (2005) 8 HKCFAR 668	334
FB and others v The Director of Immigration and the Secretary for Justice, HCAL 51/2007	414
Flag case (1999) 2 HKCFAR 442.	172
Free Assembly case (2005) 8 HKCFAR 229	172
G and family v Director of Social Welfare, HCAL 31/2006	414
Hang Wah Chong Investment Co Ltd v Attorney General [1981] 1 WLR 1141	334
Happy Pacific Ltd v Commissioner of Police, HCAL 115/1999.	362
Harbour Protection case <i>see</i> Society for the Protection of the Harbour Ltd v Chief Executive of the Hong Kong Special Administrative Region in Council	
Harvest Good Development Ltd v Secretary for Justice, HCAL 32/2008	372
Hong Kong Special Administrative Region (HKSAR) v Chan Kau Tai [2006] 1 HKLRD 4000.	366
Hong Kong Special Administrative Region (HKSAR) v Hung Chan Wa and Atsushi Asano [2006] HKEC 183	367, 368, 369, 370
Hong Kong Special Administrative Region (HKSAR) v Lam Kwong Wah and another (2005) FACC 4/2005.	405
Hong Kong Special Administrative Region (HKSAR) v Li Man Tak [2005] HKEC 1309 . . .	366
Hong Kong Special Administrative Region (HKSAR) v Mo Yuk Ping [2005] HKEC 1318 . .	366
Hung Chan Wa <i>see</i> Hong Kong Special Administrative Region (HKSAR) v Hung Chan Wa and Atsushi Asano	
Koo Sze Yiu v Chief Executive of the Hong Kong Special Administrative Region (2006) 9 HKCFAR 441	366, 367, 369, 370–371, 403–404, 406, 407, 435
Lau Kwong Yung and others v Director of Immigration [1999] 3 HKLRD 778, (1999) 2 HKCFAR 300	361, 367
Lee Miu Ling v Attorney General of Hong Kong (1995) 5 HKPLR 585	377
Leonard, Sean v Commissioner of Police, CACV 239/2007.	376
Leung v Secretary for Justice [2006] 4 HKLRD 211	363, 364, 365, 376–377, 435
Leung Kwok Hung v Chief Executive of the Hong Kong Special Administrative Region, CACV 73 and 87/2006	435
Leung Kwok Hung v Chief Executive of the Hong Kong Special Administrative Region, HCAL 107/2005	435

Leung Kwok Hung v Clerk to the Legislative Council, HCAL 112/2004.....	374
Link-REIT case	374
Lo Siu Lan v Hong Kong Housing Authority [2005] 3 HKLRD 257.....	361
Lui Tat Hang Louis v Post-Release Supervision Board, HCAL 154/1999	364
N and family v Director of Social Welfare, HCAL 25/2006.....	414
Ng Ka Ling and others v Director of Immigration [1999] 1 HKLRD 315, [1999] 1 HKC 291	174, 404
Nguyen Ho v Director of Immigration [1991] 1 HKLR 576.....	256
PCCW-HKT Telephone Ltd v Telecommunications Authority [2005] 3 HKLRD 235	362
Po Fun Chan v Winnie Cheung [2008] 1 HKLRD 319, [2007] 5 HKC 145.....	359–360, 361
Queen's Pier case <i>see</i> Chu Hoi Tak v Secretary for Home Affairs	
R v Kwok Hing Man (1994) 4 HKPLR 186	369
R v Sin Yau-ming [1992] 1 HKCLR 127.....	417
Raider Ltd v Secretary of State for Justice (2000) 3 HKCFAR 309.....	334
Rank Profit Industries v Director of Lands [2009] 1 HKLRD 177	334
Raza, Julita F v Director of Immigration, HCAL 101/2003.....	362
Rediffusion (Hong Kong) Ltd v Attorney General of Hong Kong [1970] AC 1136, [1970] HKLR 231	174, 180, 364, 417
Rule Nisi for a Certiorari [1907] HKLR 126	435
RV v The Director of Immigration and the Secretary for Justice, HCAL 2/2008	414
Secretary for Justice v Michael Reid Scott [2005] 3 HKLRD 88	418
Secretary for Justice v Shum Chiu [2006] HKEC 2335	366
Secretary for Security v Sakthevel Prabakar, FACV 16/2003.....	414
Sin Kam Wah and Lam Chuen Ip v HKSAR, FACC No 14 of 2004	239
Sino Asia Investment Ltd v Secretary for Justice, HCAL 37/1998	362
Smart Gain Investments Ltd v Town Planning Board, HCAL 12/2006, [2007] HKEC 1964.....	245–246
Society for the Protection of the Harbour Ltd v Chief Executive of the Hong Kong Special Administrative Region in Council [2003] 3 HKLRD 960	372, 374
Solicitor v Law Society (2003) 6 HKCFAR 570.....	186
Tang Nin Mun v Secretary for Justice [2000] 2 HKLRD 324.....	375
Ying Ho Co Ltd v Secretary for Justice [2005] 1 HKLRD 135.....	334
Yuen Ken Yeu v Attorney General of Hong Kong [1988] 1 AC 175.....	377–378

Israel

Al-Asad v Minister of Interior, HC 2/79; 34(1) PD 505.....	195
Asli v Jerusalem District Commissioner, HC 541/83; 37(4) PD 837	195
Elbinger v State of Israel [1975] 6 Labour Reports 416	201
Jadallah and others v Commander of the Detention Centre in the Russian Compound, HC 8405/90 (unpublished)	195
Schnitzer v Chief Military Censor, HC 680/88; 424(4) PD 639	195

New Zealand

Attorney General v Moroney [2001] 2 NZLR 652.....	256
Daganayasi v Minister of Immigration [1980] 2 NZLR 130	255
Dunne v Canwest TVWorks Ltd [2005] NZAR 577, HC.....	115–116, 116, 117
Hawkins v Minister of Justice [1990] 3 NZLR 486	256
Hosking v Runtig [2003] 3 NZLR 385, NZCA.....	104
Lange v Atkinson [1998] 3 NZLR 424, NZCA.....	104
Lewis v Wilson & Horton Limited [2000] 3 NZLR 546	256

Mangu v Television NZ Ltd [2006] NZAR 299, HC.....	116, 117
New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries [1988] 1 NZLR 544	255, 256
Police v Alexander (1998) 4 HRNZ 632, NZCA	117
Ransfield v The Radio Network Ltd [2005] 1 NZLR 233, HC	114–115, 115, 116, 117
Taylor v New Zealand Poultry Board [1964] 1 NZLR 394.....	426
South Africa	
Administrator, Transvaal v Traub, 1989 (4) SA 731 (A)	55
Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs, 2004 (4) SA 490 (CC)	53, 54, 56
Boesak v Minister of Home Affairs, 1987 (3) SA 665 (C).....	50
Carephone (Pty) Ltd v Marcus NO, 1999 (3) SA 304 (LAC).....	57
Central Road Board v Meintjes (1855) 2 Searle 165.....	44
Chirwa v Transnet Ltd, 2008 (4) SA 367 (CC)	59
Commissioner of Customs and Excise v Container Logistics (Pty) Ltd, 1999 (3) SA 771 (SCA).....	49
Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council, 1999 (1) SA 374 (CC).....	47, 50, 53, 57, 254
Grey's Marine Hout Bay (Pty) Ltd v Minister of Public Works, 2005 (6) SA 313 (SCA).....	53, 54, 55, 56
Johannesburg Consolidated Investment Co Ltd v Johannesburg Town Council, 1903 TS 111	44
Johannesburg Municipal Pension Fund v City of Johannesburg, 2005 (6) SA 273 (W).....	58
Klein v Dainfern College, 2006 (3) SA 73 (T)	56
Mafongosi v United Democratic Movement, 2002 (5) SA 567 (Tk)	58
Minister of Health v New Clicks South Africa (Pty) Ltd, 2006 (2) SA 311 (CC).....	54
Minister of Law and Order v Hurley, 1986 (3) SA 568 (A)	44
National Education Health and Allied Workers Union v University of Cape Town, 2003 (3) SA 1 (CC).....	59
Nel v Le Roux NO, 1996 (3) SA 562 (CC)	50
Nel NO v The Master, 2005 (1) SA 276 (SCA)	56
New Clicks South Africa (Pty) Ltd v Tshabalala-Msimang NO, 2005 (2) SA 350 (C)	54, 58, 59
Pepcor Retirement Fund v The Financial Services Board, 2003 (6) SA 38	254–255
Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa and others, 2000 (2) SA 674 (CC)	49, 51, 57, 59, 254
President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC) (SARFU case)	47, 50, 53, 57
S v Mhlungu, 1995 (3) SA 867 (CC).....	48
SARFU case <i>see</i> President of the Republic of South Africa v South African Rugby Football Union	
Sebenza Forwarding & Shipping Consultancy (Pty) Ltd v Petroleum Oil and Gas Corporation of SA (Pty) Ltd t/a Petro SA, 2006 (2) SA 52 (C).....	56
Sidumo v Rustenburg Platinum Mines Ltd, 2008 (2) SA 24 (CC).....	57, 58, 59
Taylor v Kurtstag NO, 2005 (1) SA 362 (W).....	56
Walele v City of Cape Town 2008 (6) SA 129 (CC).....	54
Zantsi v Council of State, Ciskei, 1995 (4) SA 615 (CC).....	48
Zondi v MEC for Traditional and Local Government Affairs, 2005 (3) SA 589 (CC)	56

United Kingdom

- A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68 (Belmarsh Prison Case) 28, 29, 196, 212, 266, 271, 272, 275
- A H (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, [2008] 1 AC 678 154
- Able (UK) Ltd v HM Revenue and Customs* [2007] EWCA Civ 1207, [2008] STC 136 160
- AG (policies; executive discretions; Tribunals powers) Kosovo* [2007] UKAIT 00082 133
- Aga Khan v The Jockey Club* [1993] 1 WLR 909 335
- Akae v Secretary of State for the Home Department* [2005] EWCA Civ 947, [2005] Imm AR 701 154
- Ambard v Attorney General* [1936] AC 322 184
- Anisimic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 31, 247, 262, 263, 302, 303, 304, 305, 308, 432
- AP case see Secretary of State for the Home Department v AP*
- Apollo Ltd v Independent Television Companies Association Ltd*, CO/1140/86 290
- Arif Mohammed (Financial Services and Markets Tribunal case 2005)* 349
- Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 53, 130, 131, 264, 266, 288–289, 290, 299, 337, 339, 342, 428, 437, 441
- Aston Cantlow v Wallbank* [2003] UKHL 37, [2004] 1 AC 546 102, 112–113
- Attorney General v De Keyser's Royal Hotel* [1920] AC 5 25
- Attorney General v Fulham Corporation* [1921] 1 Ch 440 424
- Attorney General v Jonathan Cape Ltd* [1976] QB 752 428, 429, 430
- Attorney General v Ryan* [1980] AC 718 249
- Baldwin (Financial Services and Markets Tribunal case 2006)* 349
- Bancoult see R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs*
- Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19, [2007] 1 WLR 1420 . . . 38, 273, 284
- Bellinger v Bellinger* [2003] AC 467 407
- Belmarsh Prison case see A v Secretary of State for the Home Department*
- Beynon v Customs and Excise Commissioners* [2004] UKHL 53, [2005] 1 WLR 86 160
- Bradley v The Jockey Club* [2004] EWHC 2164 (QB); [2005] EWCA Civ 1056 335
- Bultitude v Law Society* [2004] EWCA Civ 1853 346
- Bunney v Burns Anderson Plc* [2007] EWHC 1240 (Ch) 345
- Burgess v Office of Fair Trading* [2005] CAT 25 343
- Burmah Oil Company (Burma Trading) Ltd v Lord Advocate* [1965] AC 75 199–200
- Bushell case*, Vaughan 135 185
- Cadogan Estates v Sportelli* [2007] EWCA Civ 1042 155
- Camelot case see R (Camelot Group Plc) v National Lottery Commission*
- Campaign for Nuclear Disarmament v The Prime Minister* [2002] EWHC 2777 (Admin) . . . 365
- Case of Proclamations* (1611) 12 Co Rep 74 25, 181
- Caswell v Dairy Produce Quota Tribunal* [1990] 2 AC 738 366
- CCSU see Council of Civil Service Unions v Minister for the Civil Service*
- CICB case see R (A) v Criminal Injuries Compensation Board*
- Commendams case*, Hob 140 181
- Company, In re a* [1981] AC 374 152
- Connelly v Director of Public Prosecutions* [1964] AC 1254 185
- Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279 153–154, 160
- Council for the Regulation of Healthcare Professionals v The General Medical Council and the Nursing and Midwifery Council (NMC)* [2004] EWCA Civ 1356 351

Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.	25, 28, 29, 77, 78
Cozens v Brutus [1973] AC 854	158
Cream v General Medical Council [2002] EWHC 436 (Admin)	340
Croft v Dunphy [1933] AC 156.	174
Datafin <i>see</i> R (Datafin plc) v Panel on Take-overs and Mergers	
David v General Medical Council [2004] EWHC 2977 (Admin)	340
Davidson (Financial Services and Markets Tribunal case 2006)	349
De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69	265
Denbigh High School case <i>see</i> R (S Begum) v Governors of Denbigh High School	
Dr Bentley's case (1723) 1 Strange 557.	433
E v Secretary of State for the Home Department [2004] EWCA Civ 49, [2004] QB 1044	92, 251, 252, 254, 256, 257, 258, 262
Ealing London Borough Council v Race Relations Board [1972] AC 342	364
Eastham v Newcastle United Football Club Ltd [1964] Ch 413.	365
Edwards v Bairstow [1956] AC 14.	154, 158
English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409.	345
Entick v Carrington (1765) 19 St Tr 10	30, 32
Eurolife (Financial Services and Markets Tribunal case 2002).	349
F (Mental Patient: Sterilisation), Re [1990] 2 AC 1	403
Farrakhan <i>see</i> R (Farrakhan) v Secretary of State for the Home Department	
Five Knights case (1627) 3 State Trials 1.	182
Flaherty v National Greyhound Racing Club [2005] EWCA Civ 1117	335
Folkestone Corporation v Brockman [1914] AC 338.	249
Fox Hayes (Financial Services and Markets Tribunal case 2007)	349
G v Secretary of State for the Home Department [2005] EWCA Civ 265, [2004] 1 WLR 1349	152
Garnett v Ferrand (1827) 6 B & C 611	184
General Electric Co Ltd (GEC) v Price Commission [1975] ICR 1	290
Ghaidan v Godin-Mendoza [2004] UKHL 30, [2004] 2 AC 5	23
Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112	364
Gillies v Secretary of State for Work and Pensions [2006] UKHL 2, [2006] 1 WLR 781	148
Gorringe v Calderdale Metropolitan Borough Council [2004] 2 All ER 326	335
Government of Bermuda v Office of Communications [2008] EWHC 2009.	341
Grayan Building Services Ltd, In re [1995] Ch 241	158
Great North Eastern Railway Ltd v Office of Rail Regulation [2006] EWHC 1942 (Admin)	336, 341
Grundy (Teddington) Ltd v Plummer [1983] IRIR 98.	155
Gupta v General Medical Council [2001] UKPC 61, [2002] 1 WLR 1691	340, 345
Hardial Singh <i>see</i> R (Singh, Hardial) v Governor of Durham Prison	
Hardy v Pembrokeshire County Council and others [2006] EWCA Civ 1008	341
Hinchy v Secretary of State for Work and Pensions [2005] UKHL 16, [2005] 1 WLR 967 ...	154
Hoodless and Blackwell (Financial Services and Markets Tribunal case 2003).	349
Hooper v Secretary of State for Work and Pensions [2007] EWCA Civ 495, The Times 27 June 2007	150, 154
Huang v Secretary of State for the Home Department [2007] UKHL 11, [2007] 2 AC 167	41, 92, 93, 133, 214
International Transport Roth GmbH v Secretary of State for the Home Department [2003] QB 728	211, 212, 214
Jabre (Financial Services and Markets Tribunal case 2006)	349

Jain v Trent Strategic Health Authority [2007] EWCA Civ 1186; affirmed by House of Lords [2009] 2 WLR 248	335
Kashmiri <i>see</i> Huang v Secretary of State for the Home Department	
Kay v Lambeth London Borough Council [2006] UKHL 10, [2006] 2 AC 465	108, 109, 266, 282
Kaydanyuk v Secretary of State for the Home Department [2006] EWCA Civ 368	252
Kerr v Department for Social Development [2004] UKHL 23, [2004] 1 WLR 1732	150
The King v Justices of Newcastle (1830) Draper 204	300–301
Kleinwort Benson Ltd v Lincoln County Council [1999] 2 AC 349	367
Laker Airways v Department of Trade [1977] QB 643	338
Langford v Law Society [2002] EWHC 2802	346
Law Society v Salisbury [2008] EWCA Civ 1285	346
Legal & General (Financial Services and Markets Tribunal case 2005)	349
Liversedge v Sir John Anderson and another [1942] AC 206	182, 408, 412, 432
London and Clyderide Estate Ltd v Aberdeen District Council [1979] 3 All ER 876	425
M v Home Office [1994] AC 377	87
M v South West London and St George's Mental Health NHS Trust, Re [2008] All ER (D) 63	341
Mahmood [2001] 1 WLR 840	440
Mahon v Air New Zealand Ltd [1984] AC 808	249
Mass Energy Ltd v Birmingham City Council [1994] Env LR 298	341
Matrix Churchill trial	175
Matthews v Ministry of Defence [2002] EWCA Civ 773, [2002] 1 WLR 26	23
Meadow v General Medical Council [2006] EWCA Civ 1390, [2007] QB 462	340, 355
Mercury Communications Ltd v Director General of Telecommunications [1996] 1 All ER 575	335, 336–337
Miftari v Secretary of State for the Home Department [2005] EWCA Civ 481	156
Modahl v British Athletics Federation (unreported) 28 July 1997	335
Modahl v British Athletics Federation [2001] EWCA Civ 1447, [2001] 1 WLR 1192	335
Mongan v Department for Social Development (Northern Ireland) [2005] NICA 16	150
Moyna v Secretary of State for the Home Department [2003] UKHL 44, [2003] 1 WLR 1929	157–159
MT (Algeria) v Secretary of State for the Home Department [2007] EWCA Civ 808, [2007] HRLR 41	252
Mullins v Appeal Board of the Jockey Club [2005] EWHC Civ 1117	335
Mullins v The Jockey Club (No 2) [2006] EWHC 986 (QB)	335
N (Kenya) v Secretary of State for the Home Department [2004] INLR 612	411
Nagle v Fielden [1966] 2 QB 633	335
Nahal v Law Society [2003] EWHC 2186 (Admin)	346
Napp Pharmaceutical Holdings Ltd v Director-General of Fair Trading [2002] EWCA Civ 796, [2002] 4 All ER 376	154
National Health Service Trust v Bland [1993] AC 789	364
National Westminster Bank plc v Spectrum Plus Ltd [2005] 2 AC 680	368, 369, 381
Newfield v Law Society [2005] EWHC 765 (Admin)	346
Nipa Begum v Tower Hamlets London Borough Council [2000] 1 WLR 306	252, 258
Office of Fair Trading v IBA Health Ltd [2004] EWCA Civ 142, [2004] 4 All ER 1103	160
O'Kelly v Trusthouse Forte [1984] QB 90	157, 158
O'Reilly v Mackman [1983] 2 AC 237	247, 262, 303
O'Rourke v Camden London Borough Council [1999] AC 188	335
Parker (Financial Services and Markets Tribunal case 2006)	349
Parliamentary Privilege Act 1770, Re [1958] AC 331	179

Pearlman v Governors of Harrow School [1979] QB 56	303, 305
Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001] EWCA Civ 595, [2002] QB 48	111–112, 333
Preiss v General Dental Council [2001] 1 WLR 1926	340
Prohibitions del Roy (1607) 12 Co Rep 63	25, 181
Prolife Alliance case <i>see</i> R (Prolife Alliance) v British Broadcasting Corporation	
Puhlhofer v Hillingdon London Borough Council [1986] 1 All ER 467	424
R v Goldstein [1983] 1 WLR 151	297
R v London and Continental Stations [2004] EWHC 1447 (Admin), (2004) ACD 13	336
R v Marsham [1892] 1 QB 371	247
R v Nat Bell Liquors Ltd [1922] AC 128	249, 302
R v Shayler [2002] UKHL 11, [2003] 1 AC 2	28, 29
R (A) v Canons Park Mental Health Review Tribunal [1995] QB 60	365
R (A) v Criminal Injuries Compensation Board [1999] 2 AC 330	250, 251
R (A) v London Borough of Croydon [2008] EWCA Civ 1445	247–248
R (Action against Medical Accidents) v General Medical Council, February 2009	338
R (Aga Khan) v Disciplinary Committee of the Jockey Club [1993] 1 WLR 909	333
R (Al Harson) v Home Secretary [2002] 1 WLR 545	424
R (Albatros Warehousing BV) v London Metal Exchange Limited, 30 March 2000 (unreported)	333
R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23, [2003] 2 AC 295	41, 97, 250–251, 261, 262, 282
R (Animal Defenders International) v Secretary of State for Culture, Media and Sport [2008] UKHL 15, [2008] 1 AC 13	41, 282, 284
R (Argyll Group Plc) v Monopolies and Mergers Commission [1986] 1 WLR 763	366
R (Ashworth Hospital Authority) v Mental Health Review Tribunal [2001] EWHC Admin 901	149
R (Association of British Travel Agents) v Civil Aviation Authority [2006] EWCA 1356	338
R (Assura Pharmacy Ltd) v NHS Litigation Authority [2007] EWHC 289	252
R (B) v Cambridge Health Authority [1995] 2 All ER 1	38
R (Baiai and another) v Secretary of State for the Home Department (Nos 1 and 2) [2007] EWCA Civ 478, [2008] QB 143	266
R (Baker) v First Secretary of State [2003] EWHC 2511 (Admin)	266
R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL 61, [2008] 3 WLR 9	25, 28, 29
R (Beer, trading as Hammer Trout Farm) v Hampshire Farmers' Market Ltd [2004] 1 WLR 233	333
R (Beeson) v Dorset County Council [2002] EWCA Civ 1812, [2003] HRLR 11	261
R (Birmingham City Council) v Birmingham City Juvenile Court [1988] 1 WLR 337	365
R (Briggs) v Lloyd's of London [1993] 1 Lloyd's Rep 176	334
R (Brind) v Secretary of State for the Home Department [1991] 1 AC 696	268
R (Bull) v Radio Authority [1996] QB 169	247
R (Camelot Group Plc) v National Lottery Commission (2001) EMLR 3	337, 342
R (Cellcom) v Director General of Telecommunications (1999) COD 105	335
R (City Hook Ltd and others) v Office of Fair Trading and others [2009] EWHC 57 (Admin)	339
R (Clays Lane Housing Co-Operative Ltd) v The Housing Corporation [2004] EWCA Civ 1658, [2005] 1 WLR 2229	266
R (Coughlan) v North and East Devon Health Authority [2001] QB 213	259
R (Daly) v Secretary of State for the Home Department [2001] UKHL 26, [2001] 2 AC 532	265, 440

R (Datafin plc) v Panel on Take-overs and Mergers [1987] QB 815	115, 290, 333, 334, 339, 341
R (Davis, Vivian John; Vevers, Rawdon Quentin and Gamwells, Colin Mark) v Financial Services Authority [2003] EWCA Civ 1128, [2004] 1 WLR 185	350
R (Director of Public Prosecutions) v Manchester Crown Court [1993] 1 WLR 1524	152
R (Eisai Ltd) v National Institute for Health and Clinical Excellence [2008] EWCA Civ 438, The Times, 7 May 2008	338
R (Else Ltd) v International Stock Exchange [1993] QB 534	290
R (Farrakhan) v Secretary of State for the Home Department [2002] EWCA Civ 606, [2002] QB 1391	29, 30, 282, 284
R (Ghosh) v Northumberland NHS Care Trust (2006) Lloyd's Rep Med 123	338
R (Gibb) v South Hams District Council [1995] QB 158	247
R (Grierson) v Office of Communications [2005] EWHC 1899 (Admin)	336, 339, 341
R (Griggs) v Financial Services Authority [2008] EWHC 2587 (Admin)	350
R (Guinness) v Panel on Take-overs and Mergers [1990] 1 QB 146	290
R (Gwynn) v General Medical Council (2008) LS Law Medical 112	338
R (Haile) v Immigration Appeal Tribunal [2001] EWCA Civ 663, [2002] Imm AR 170	246
R (Heather Moore & Edgecomb Ltd) v Financial Ombudsman Service Ltd [2008] EWCA Civ 642	344
R (Hubble) v Medical Appeal Tribunal (North Midland Region) [1958] 2 QB 228	150
R (Independent Financial Advisers Association) v Securities & Investment Board [1995] 2 BCLC 76	339
R (Interbrew SA) v Competition Commission [2001] EWHC 367 (Admin)	337
R (International Transport Roth GmbH) v Secretary of State for the Home Department [2002] EWCA Civ 158, [2003] QB 7	23
R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982, [2008] 1 WLR 2142	156
R (Khawaja) v Secretary of State for the Home Department [1984] AC 74	248
R (Lain) v Criminal Injuries Compensation Board [1967] 2 All ER 770	333
R (Lim) v Secretary of State for the Home Department [2007] EWCA Civ 773, [2008] INLR 60	248
R (London and Continental Stations and Property Ltd) v The Rail Regulator [2003] EWCA Civ 2607	290
R (Mahmood) v Secretary of State for the Home Department [2001] 1 WLR 840	269
R (Mitchell) v Secretary of State for the Home Department [2008] EWHC 1370	252
R (Moore) v Deputy Industrial Injuries Commissioner [1965] 1 QB 456	249
R (N) v M [2003] 1 WLR 562	341
R (Norwich and Peterborough Building Society Ltd) v Financial Ombudsman Service Ltd [2003] EWCA Civ 642, [2003] 1 All ER (Comm) 65	290, 345
R (Onibiyo) v Home Secretary [1996] QB 768	247
R (Oxford Study Centre Ltd) v British Council [2001] EWHC Admin 2007	334
R (Page) v Hull University Visitor [1993] AC 682	31, 247, 260, 262, 303
R (Panton) v Securities and Futures Authority (unreported) 20 June 1994	290, 336
R (Peacock) v General Medical Council (2007) LS Law Medical 284	338
R (Pharma Nord (UK) Ltd) v Medicines Control Agency [1998] 44 BMLR 41	290
R (Pinochet Ugarte) v Bow Street Metropolitan Stipendiary Magistrate (No 2) [1999] 1 All ER 577	424
R (Pretty) v Director of Public Prosecutions and Secretary of State for the Home Department (Intervener) [2002] 1 AC 800	364
R (Professional Counselling Aids Ltd) v Code of Practice Committee of the Association of British Pharmaceutical Industry [1990] 10 BMLR 21	334