

CURRENT AWARENESS BULLETIN

October- December 2018



COUNCIL OF LEGAL EDUCATION NORMAN
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INTRODUCTION

This publication is designed to inform users of acquisitions by the library within the stated period, and will appear quarterly until further notice.

Under **TREATISES, DIGESTS, ETC.**, the classification number for the location of the publication on the shelves, is included to the right of the listing.

Under **LEGISLATION**, the abbreviation “G.S.” means - Jamaica Gazette Supplement Bills and Acts.

Judgments are arranged by country, then listed alphabetically by names of parties, followed by the court and date of decision. Abbreviations for the courts are as follows:

- P.C. Privy Council
- C.A. Court of Appeal
- S.C. Supreme Court
- R.C. Revenue Court
- F.C. Full Court

Jamaican judgments have been broadly classified to facilitate the user. Headings are indicated in bold letters appearing after the date of decision for each judgment.

Publications of other Caribbean territories are included as and when received.

Comments: As we begin to adapt to the new normal, John Gould asks whether it’s time to adopt a new approach to ethics

Specialist: Employment Ian Smith takes a gender at short, precise, but nonetheless important aspects of both common & statutory

Procedure and Practice: Standard of Proof **Adrian Keane** considers jurors should be given a fuller & more accurate direction before returning their verdict.

Inside Court: Law Digest

Profession: Expert Witness- Expert witnesses at a conference with counsel- a practical guide- compiled by Mark Solon.

conversion in the digital age

OCTOBER 2018 – DECEMBER 2018

JUDGMENTS

A v R

JMCA 25.06.2018

CRIMINAL LAW-Murder

ALLEN, Patrick v Theresa Allen

JMCA 08.06.2018

PROCEDURAL APPEAL – (Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

AREM, Elain v Vivienne Ancilin Myrie

JMSC 11.04.2018

CANCELLATION OF TRANSFER – fraud – authenticity of signature – forgery – knowledge of forgery

AUSTIN, Dale v The Solicitor General and The Permanent Secretary of the Ministry of Justice

JMSC 04.01.2018

JUDICIAL REVIEW – Application for leave – Whether recommendation reviewable – whether solicitor General properly appointed

BELL, Lloyd v Alcar Construction & Haulage Co. and Deon Barker

JMSC 10.01.2018

NEGLIGENCE – Motor vehicle collision – personal injury – whether contributory negligence – Whether res ipsa loquitur applies – damages

BLAKE, Kemoy v Hugh Levy and Catherine Levy

JMSC 09.04.2018

NEGLIGENCE – Liability – Credibility

BOGLE, Constantine D. v Dean Ripton Jones and Franklyn Holness and Marval Pitter and The Attorney General of Jamaica

JMSC 20.03.2018

ELECTION PETITION – Whether candidate eligible for election – meaning of ‘has resided’ in area for twelve months immediately preceding day of election – Whether candidate is public officer within the meaning of Section 3 of Civil Service Establishment Act – Effective date of resignation – Repudiatory breach of employment contract – Whether candidate resigned from job before date of local government election

BROWN, Kenyatha v R

JMCA 28.05.2018

CRIMINAL LAW- (a) unfair trial; (b) incompetence of counsel; (c) insufficient evidence to warrant a conviction; and (d) miscarriage of justice.

BROWN, Milton t/a Karnack Hardware v The Commissioner General (formerly The Commissioner of Taxpayer Appeals)

JMRC 18.05.2018

REVENUE APPEALS – Time within which to bring Appeal in Revenue Court expired – Application for leave to Appeal to the Court of Appeal – Principles to be considered in granting permission to Appeal to the Court of Appeal

BROWN, Nate v R

JMCA 20.03.2018

CRIMINAL LAW-Criminal Offence-Unlawful wounding

BRYAN, Marjorie v Claudette Buchanan-Burgess

JMSC 17.04.2018

NEGLIGENCE – Pedestrian hit by wing mirror of motor car whilst using roadway – Duty of care – Contributory negligence – Quantum of damages

CAMPBELL, Glenford v R

JMCA 16.03.2018

CRIMINAL LAW-Corruption-breaches of the road traffic act- corruptly accepting \$3,500.00 as a gift

CHEN-YOUNG, Paul and Ajax Investments Limited and Domville Limited v Eagle Merchant Bank Jamaica Limited and Crown Eagle Life Insurance Company Limited and The Attorney General for Jamaica

JMCA 26.04.2018

BANKING-Damages

CHUNG, Gloria and Amanda Chung and Mark Chung v Michael Chung and Mikol Investments Limited

JMSC 03.04.2018

CIVIL PROCEDURE AND PRACTICE– Defendants’ notice of application to vary/set aside order or for an extension of time to comply with order – Rules 42.10(1), 26.1(7) and 28.7(1) (2)(a) and (b) of the Civil Procedure Rules – Claimants’ Notice of Application to strike out defence – Rules 28.14(2) and 26.3(1)(a) of the Civil Procedure Rules

COLLEY, Courtney Oneil v Karen Janice Silvera Colley

JMSC 02.03.2018

MAINTENANCE – maintenance of child who is not a minor – Division of matrimonial property – Family home constructed on land belonging to other family members – Maintenance Act, sections 2,8(1) – Property (Rights of Spouses) Act, Sections 2,6, 13

COMMUNITY MEDICAL Services Limited v The Medical Associates Hospital and Conrad George

JMCC 08.01.2018

COMPANY LAW – Civil procedure – Summary judgment application – Whether claimant has real prospect of success

CRANSTON, Caren v Tamazine Samuels and Gairy Toorie

JMSC 27.04.2018

EQUITY – Whether claimant has an equitable interest in property – Proprietary estoppel – Whether claimant’s evidence is hearsay evidence – Part 30 of the Civil Procedure Rules 2002

DALLAS, Vera (by her attorney Elmeda Robinson v L.P. Martin Company Limited (trading as L.P. Martin Funeral Home)

JMSC 11.05.2018

DAMAGES – Assessment – Default judgment – Deceit – Negligence – Causation – Damages for emotional distress – Mistreatment of body – Inability to ascertain cause of death – Lack of closure

DARLINGTON, Shielnile v Saint Ann's Bay Hospital and North East Regional Health and The Attorney General's Department
JMSC 25.01.2018

MEDICAL NEGLIGENCE – Whether the defendants failed to ensure the safe delivery of the claimant's baby – Whether the treatment of the claimant and her baby fell below the standard expected of a reasonably competent hospital staff

DAVIDSON, Leopold v Tafari Wallace
JMSC 20.04.2018

ASSESSMENT OF DAMAGES – Quantum – Medical evidence

DENNIS, Richard v Raymond Hew
JMSC 28.03.2018

CONTRACT – Illegality – Whether contract illegal by virtue of statute – Contract – Fraud – Whether claimant induced by fraud – Civil procedure – Pleadings – Amended particulars of claim filed without permission of the court – Whether properly before the court

DIAH, Albert v R
JMCA 16.03.2018

CRIMINAL LAW-INDECOM prosecution Power-Firearms handling Protocol-Failure to comply with lawful Requirement-Prejudicial Evidence-Manifestly excessive sentence

DOUGLAS, Janet v R
JMCA 16.02.2018

CRIMINAL LAW- 18 wounds to upper body, nine of which were stab wounds to lungs, heart, pulmonary artery and abdominal cavity-murder

Dunbar, Millard v St. Catherine Co-operative Credit Union Ltd.
JMCC 18.01.2018

MORTGAGE – foreclosure – whether notice of foreclosure sent by registered letter must actually be received by the addressee for the service to be valid contract – formation – agreement to negotiate – whether binding contract unjust enrichment – whether proper exercise of right to foreclosure can amount to unjust enrichment

EATON, Noel v Michelle Fenton and William Fenton
JMSC 01.05.2018

CIVIL PROCEDURE AND PRACTICE– Striking out statement of case – whether claim is statute bar – Rule 26.3(1) of the Civil Procedure Rules; Limitation of Actions Act

EDWARDS, Alfred Samuel and Ian Harriott and Rupert Brown and Shane Brown and Patrick Patterson and Marcus Stewart and Sinclair McDonald and The Saint Thomas Parish Council v Tropiaca Mushrooms Limited and Mossmans Peak Farms Limited

JMCA 16.02.2018

PROPERTY LAW-Land Ownership Dispute- Farmers' appeal- Stay of proceedings- Reserved road. Adverse Possession-Iron gate.

EDWARDS, Lascene v R
JMCA 19.05.2018

CRIMINAL LAW-Death by Suicide-Murder

Ennis, Lambert v R
JMCA 15.01.2018

CRIMINAL LAW-Malicious Destruction of Property

FOOTE, Donovan v JMMB Merchant Bank Limited (Formerly Capital & Credit Merchant Bank Limited)
JMSC 31.01.2018

EFFECT OF CONSENT JUDGMENT ON MORTGAGEE'S POWER OF SALE – Mortgage – Execution of power of sale – Mortgagee's duty to mortgagor – Appropriate test for execution of sale – Interest on mortgage debt

FRAY, Raquel v Sergeant Jeffery Amos and The Attorney General of Jamaica and The Transport Authority
JMSC 04.05.2018

TRESPASS TO PROPERTY – Seizure of motor vehicle – Detinue – Conversion – The Road Traffic Act

GAYLE-HENRY, Sylvia v Lloyd Gayle and Cedric Gayle
JMCA 09.02.2018

INTERPRETATION OF WILL – whether wife had life interest – whether subsequent devise void for repugnancy – section 23 of the wills act

GEDDES, Margie v McDonald Milligen
JMCA 23.03.2018

**REMEDIES - Enforcement of Judgment - Application to vary ex-parte provisional charging order - Whether property can be subject of order
Company Law - Lifting the corporate veil - Principles to be applied.
Legal Profession - Whether bill of costs is the proper procedure to make a claim based on quantum meruit - Restitution - Procedure to be followed in making a quantum meruit claim based on unjust enrichment.**

GENTLES, Dahlia v Mark Gentles
JMSC 20.03.2018

MAINTENANCE ACT – spousal maintenance – Condition precedent to maintenance order – Whether the obligation to maintain spouse activated

GOWDIE, Huey v R
JMCA 04.05 2018

CRIMINAL LAW-Murder

GRANT, Owen and Israel Transport & Equipment Company Limited v Herbert Hartwell and Stephen Moodie
JMCC 26.04.2018

INSOLVENCY – Procedure for application for receiving order – Whether previous failure to enforce judgment precludes application for receiving order – Whether stale dated judgment can ground application for receiving order – Whether failure to pay debt to single debtor can establish that debtor has ceased to meet liabilities generally as they become due. Conditions for appointment of Government Trustee – The Insolvency Act, 2014

GRANT, Steven v R
JMCA 15.06.2018

CRIMINAL LAW-Criminal Offence-Murder-Self defense

Green, Byron v Desnoes & Geddes Limited (t/a Red Stripe)
JMSC 01.05.2018

CIVIL PRACTICE AND PROCEDURE – Notice of application to amend name of defendant – Notice of application for security for costs – Rules 24.2 and 24.3 of the Civil Procedure Rules – Whether claimant ordinarily resident outside jurisdiction

GREEN, Stephenson v June Green
JMSC 11.04.2018

WHETHER DEFENDANT A LICENSEE – Whether there is evidence capable of supporting finding that defendant is a licensee who has acquired a proprietary interest – Whether evidence to support finding that property is family home

GUYAH v Commissioner of Customs and another
UKPC 14.05.2018

INJUNCTION - Application to restrain the 1st and 2nd Defendants, from employing any person, to occupy the post of Director, Contraband Enforcement Team, Level 9 - Whether Injunction should be granted in the circumstances - Whether the Applicant has a legitimate expectation and right of entitlement to the post of Deputy Chief Executive Officer - Border Protection, Level 10 - Contravention of Section 13, Part 1(a) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 - Part 23 of the United Nation's Universal Declaration of Human Rights - Application for Injunction refused - Declarations as prayed denied.

HALL, Lincoln v R
JMCA 16.03.2018

CRIMINAL LAW-Murder

HARRIOTT, Ewin v R
JMCA 28.05.2018

CRIMINAL LAW-Criminal offence- sexual intercourse with a person under the age of 16 years- buggery- grievous sexual assault

HARRIS, Celestine v Henry Harris
JMSC 26.01.2018

MATRIMONIAL PROPERTY – Relationship commenced when parties were 16 and 18 years old respectively – Both participated in development of a Pharmaceutical business – Company – Unequal number of shares – Property purchases in husband’s sole name – Funds from company used to purchase property – Common intention – Whether property beneficially owned jointly in equal shares

HAY, Manfas v Clover Thompson and Jonathan Prendergast
JMSC 22.02.2018

CLAIM FOR RECOVERY OF POSSESSION AND FOR DAMAGES FOR TRESPASS – Proceedings brought by Fixed Date Claim Form – Defence of adverse possession – Procedural objection – Whether proceedings ought to have been commenced by means of Claim Form – Whether conversion of proceedings appropriate

HENDRICKS, Anthony v Commissioner of Customs
JMCA 28.05.2018

WRONG PROCEDURE BEFORE THE COURT

HIGGINS, Marlan (Executor of estate of Egbert Higgins) v Paul Reid and William Hinds
JMCA 09.03.2018

LAND LAW- striking out their defences.

HINDS, Norton Wordworth and Phillip Feanny Paulwell and Colin Randolph Campbell and Robert Dixon Pickersgill and Portia Lucretia Simpson-Miller v The Director of Public Prosecutions
JMCA 08.06.2018

CONSTITUTIONAL LAW - fundamental rights and freedoms - mutual legal assistance in criminal matters - request of foreign state for taking of evidence from witnesses in jamaica - witnesses refusing to co-operate - application of central authority for order for witnesses to give evidence on oath - order granted - whether order an abuse of process - whether order breached constitutional rights of witnesses - right to equitable and humane treatment -right to be free from discrimination

on political grounds - right to fair hearing - right to due process - the mutual assistance (criminal matters) act 1995, ss. 6; 9; 16; 20 (1); 20(2); 20(3); 21; 25 (2); 25 (3) - the mutual assistance (criminal matters) (foreign states) order, 2007; the charter of fundamental rights and freedoms (amendment) act, 2011, ss, 13 (3) (h); 13 (3) (h) (i) (ii); 16 (2); 16 (3); 19 (1); 19 (3)

HUGH-SAM, Suzette Ann Marie v Quentin Ching Chong Hugh Sam
JMCA 04.05.2018

MAINTENANCE - spousal maintenance; application made before grant of decree nisi; whether final maintenance order can be made; lump sum and periodic payment orders; Matrimonial Causes Act SS.20 and 22; Maintenance Act SS.5 and 14(4).

ISP FINANCE Services Limited v EW Abrahams and Sons Limited
JMCA 29.01.2018

ASSIGNMENT OF DEBT – Whether there can be an assignment of the value of items to be sold pursuant to a consignment agreement where there is no sale - Whether acknowledgment and promise to pay on a Notice of Assignment constitutes an irrevocability liability.

JAMAICA EDIBLE Oils & Fats Co. Ltd. v M.S.A. Tire (Jamaica) Limited and Jeane Lavan
JMCA 23.04.2018

LANDLORD AND TENANT - Leases - Claim for rent and mesne profits - Under lease created in breach of Head lease - Whether Under lease valid and enforceable - Tenancy at sufferance - Use and occupation of demised Property-Recovery of Possession

JAMAICA INFRASTRUCTURE Operators Limited and United Management Services Limited v Dwayne McGaw
JMCA 02.02.2018

SECURITY FOR COST

JAMAICA PUBLIC Service Co. Ltd. v Lethe Estate Limited
JMCA 12.06.2018

LAND LAW - Easement - Validity Way leave agreement - Effect of non-registration - Electric Lighting Act s.41 Trespass to land- Acquiescence - Damages Company law - whether the veil of incorporation ought to be lifted Interest - whether interest at a commercial rate ought to be awarded Rule 26.1 (7) of the Civil Procedure Rules, 2002 - Application to vary order or revoke order - draft judgment - overriding objective

JOHNSON, Allan Adolphus v Kathleen Kelly-Johnson
JMCA 29.01.2018

NOTICE OF APPLICATION FOR COURT ORDERS FILED PURSUANT TO RULE 26.5 AFTER STRIKING OUT OF DEFENDANT’S STATEMENT OF CASE – Whether application permitted to claim in notice of application for items which were not claimed in the Fixed Date Claim Form – No supporting evidence in affidavit in support of Fixed Date Claim Form – Evidence contained in affidavit in support of notice of application

JOHNSON, Charles Henry v The General Legal Council (Ex Parte Ferdinand Britton
JMCA 29.01.2018

DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL- guilty of professional misconduct for having been in breach of canon IV(r) of the Legal Profession (Canons of Professional Ethics) Rules in that: (i) he failed to deal with a client's business with all due expedition; and (ii) he failed to provide his client with all information on the progress of a matter with due expedition when reasonably required to do so.

KANDEKORE, Lijysu M. v COK Sodality Co-Operative Credit Union Limited and Deidre Daley and
Donnovan Ward
JMCA 09.03.2018

**APPLICATION FOR INTERIM ORDER FOR RETURN OF SEIZED CAR WHICH WAS SECURITY FOR
A LOAN – Order sought would contain both mandatory and prohibitory aspects – Construction of
Loan Agreement and Bill of Sale – Factors to be taken into account in determining whether or not
to grant order**

KHEMLANI, Raju v Suresh Khemlani
JMCC 04.01.2018

CIVIL PROCEDURE AND PRACTICE – Costs appeal – Rule 65.28 – Whether appeal within time

KHIATANI Jamaica Limited and Sunil Khiatani and Sheila Khiatani v Sagicor Bank Jamaica Limited
JMCC 07.03.2018

**MORTGAGE – Mortgagee exercising power of sale – Whether in breach of duty to mortgagor –
What is nature and extent of duty owed by mortgagee to mortgagor – Whether continuing with
agreement already entered into can amount to breach of duty to mortgagor**

LAWRENCE, Gertude v Joseph Lawrence
JMCC 23.03.2018

**CIVIL PROCEDURE AND PRACTICE – Consent order – Application to enforce – Whether death of
applicant seven months after order a supervening event which undermined or invalidated the
basis on which the consent order was entered into**

**EVIDENCE – Determining the underlying assumption or basis on which a consent order was
entered into – Whether conduct of respondent in devising property to children by will sufficient
evidence to determine the underlying assumption or basis of consent order**

LAWRENCE-AUSTIN, Carol Ann v The Assets Recovery Agency
JMCC 16.01.2018

**CIVIL PROCEDURE AND PRACTICE – Stay of proceedings – Principles to be applied – Exercise of
Court's discretion and balancing of competing interests of the parties – Whether risk of
inconsistent judgments can provide a basis for a stay**

LETHE ESTATE LIMITED and Great River Rafting and Plantation Tour Limited v Jamaica Public Service
Company Limited
JMCC 23.02.2018

**LAND LAW – Easement – Validity-Wayleave agreement – Effect of non registration – Electric
Lighting Act s. 41-Trespass to land – Acquiescence – Damages**

**COMPANY LAW – Whether the veil of incorporation ought to be lifted-Interest – Whether interest
at a commercial rate ought to be awarded-Rule 26.1(7) of the Civil Procedure Rules, 2002 –
Application to vary order or revoke order – Draft judgment – Overriding objective**

LEWIS, Tyrone Sean and Annette Jean Blount and Courtney George Lewis v National Commercial Bank
Jamaica Limited
JMCC 23.03.2018

**APPLICATION FOR SUMMARY JUDGMENT – Applicable legal principles – Burden of proof –
Mortgagor and mortgagee – Privity of contract – Negligence – Breach of fiduciary duty – unjust
enrichment**

Manor Court Limited v The Ministry of Labour & Social Security and The Industrial Disputes Tribunal
JMCC 25.04.2018

**CIVIL PROCEDURE AND PRACTICE-Civil Procedure Rules – Rule 56.3(1) – Application for leave to
apply for judicial review – Threshold for granting leave – Arguable ground with a realistic prospect
of success**

MARTIN, Anthony v Eric Bucknor and Jamaica Public Service Company Limited
JMCA 29.01.2018

Negligence – Foreseeability – Occupier’s Liability – Breach of statutory duty – Volenti non fit injuria – Distinction between visitor and trespasser.

MCCARTHY, Roger v Peter Calloo
JMCA 23.02.2018

DAMAGES-Special Damages-Costs-Damages for Assault-General damages for negligence

MCCORKELI, Joelle v Jamaica Urban Transit Co. Ltd. and Osmond Beersingh
JMCA 19.02.2018

NEGLIGENCE – Motor vehicle collision – Child claimant – Whether the accident was caused by the negligence of the defendant’s agent and/or servant – Whether accident caused or contributed to by the claimant – General damages – Anxiety disorder – Special damages

MCLAUGHIN, Charles v Sherrie Grant and Collin Smith and First Caribbean International Bank (Jamaica) Limited
JMCC 30.05.2018

STRIKING OUT – Application by first defendant – Further amended particulars of claim – No leave to file obtained – Whether new cause of action – Whether limitation bar – CPR Rules 20.4; 26.3 and 26.9

MCLEOD, Courtney v R
JMCA 25.05.2018

CRIMINAL LAW-Criminal Offence-Wounding with intent-grievous bodily harm-anger management treatment

MEEKS, Victoria Marie v Jeffery William Meeks
JMCA 09.03.2018

APPLICATION FOR RELIEF FROM SANCTIONS – Rule 26.8 of the Civil Procedure Rules (CPR) – Matrimonial property dispute

MILLS, Tyianna (an infant who sues by her father, Joshua Mills) v Sheldon Forrester and Halway Graham
JMCA 31.05.2018

NEGLIGENCE – Motor vehicle/pedestrian collision – duty of road users to each other – Standard of care of driver to child road user

<THE> MINISTRY OF FINANCE AND The Jamaica Constabulary Force and The Attorney General of Jamaica v Winsome Bennett
JMCA 09.03.2018

DECLARATION FOR ENTITLEMENT TO WIDOW’S PENSION – Section 62 of the Constabulary Force Act – Whether the Claimant is entitled to widow’s pension – Whether a widow is a person legally married to the deceased – Status of Children Act - Equality of children regardless of parents being married - Reformative legislations – Shift from Literal Statutory Interpretation - Purposive approach in Statutory Interpretation - Spouse include unmarried persons in common law unions – The ordinary meaning and popular sense of the word widow include a common law spouse.

MOORE, Balvine v Marcia Andrea Mills and Bilton Brown
JMCA 27.03.2018

APPLICATION TO SET ASIDE DEFAULT JUDGMENT – Defendant filed an acknowledgement of service but failed to file defence – Whether, there is good reason for the delay – Whether information contained in acknowledgement of service amounts to an admission of the claim – Whether the defence has a real prospect of success. Rule 1.1, 1.2, 13.3, 13.4, 13.5, 13.6

MORGAN'S HARBOR LTD. (In receivership) v Lashmont Financial Services Ltd. and Myles McClymont
JMCC 12.02.2018

INSOLVENCY - Convertible debenture – Appointment of joint receiver – Managers by debenture holder – Duty of receiver – Managers to the debenture holder in the exercise of the power of sales under the convertible debenture – Whether receiver – managers in breach of duty – Termination by the debenture holder of the receiver – Managers at the point of their exercising their power of sale – Whether any basis exist upon which receiver – Managers may refuse to accept termination – Duty of debenture holder – Whether debenture holder in breach of duty – Whether a court of equity can invalidate the termination of the receiver – Managers by the debenture holder

MOSSELL (JAMAICA) Limited v Cable & Wireless Jamaica Limited
JMCC 09.01.2018

CIVIL PROCEDURE AND PRACTICE – Costs appeal – Whether costs order can be used as basis to claim Attorney at Law and own client costs

Murray, Karin v Clough Long and Company
JMSC 29.01.2018

BILL OF COST – retainer agreement – Disputed attorney's fees – refusal by attorney to have bill of cost taxed – Whether court has jurisdiction to refer bill to Registrar of the Supreme Court for taxation after limitation period – Legal Profession Act Section 24(4)

Myers, Phillip George v Janet Palmer-Myers and Kevin Palmer and Kenton Palmer
JMSC 29.03.2018

DIVISION OF MATRIMONIAL PROPERTY – The family home – Property other than the family home – Spouse's interest in property inherited by other spouse – Inherited property not transferred to spouse – Property registered in name of one spouse and another person

Myrie, Icilda and Donovan Baker and Tenloy Baker v Alice Fagon
JMCA 11.05.2018

CONSTITUTIONAL LAW-Recovery of Possession-Property-Damages

National Housing Trust v Treebros Holdings Limited
JMCA 22.03.2018

DAMAGES - Nuisance - Negligence - Trespass - Flood Water Act - Aggravated damages - Commercial interest - Special costs certificate -Indemnity costs

NEW FALMOUTH Resorts Limited v National Water Commission
JMCA 13.04.2018

CIVIL PRACTICE AND PROCEDURE — Non-compliance with order — Relief from sanctions — Unless order — Striking out of claim — Whether trial judge erred in refusing to grant relief from sanctions.

NICHOL, Keith v R
JMCA 05.03.2018

CRIMINAL LAW- Indecent assault upon a male

NISH, Derron v The Commissioner of Police
JMSC 26.01.2018

JUDICIAL REVIEW – Reviewing the hearing process of an inferior tribunal – Duty to Act fairly – What is fairness – Nature of duty to particularize grounds of claim – Certiorari – Legitimate expectation – Natural justice

O'CONNOR-REID, Hilary v Douet Guy Reid
JMSC 01.06.2018

WHETHER THE SUPREME COURT HAS JURISDICTION TO DECLARE A CONSENT ORDER A NULLITY.

OLIPHANT Williams, Ileen v Bernard Williams
JMJC 25.05.2018

**MATRIMONIAL PROPERTY – Family home acquired before the marriage by one party – Family home registered in the name of one party – Division of family home – Variation of the equal share rule – The Property (Right of Spouses) Act section 6, 7, and 14
Maintenance – Spousal maintenance – Whether threshold finding can be made – The Matrimonial Causes Act section 23 – The Maintenance Act sections 3(2), 4 and 14(4)**

PALMER, Dinsdale v Caricom Home Builders Company Limited and Devon Evans and Williams McKoy and Palmer
JMJC 22.01.2018

COSTS

PALMER, Jason v R
JMCA 22.01.2018
CRIMINAL LAW-Murder

PAYMASTER JAMAICA limited v The Postal Corporation of Jamaica
JMCA 16.02.2018

JUDICIAL REVIEW- Application for Leave – Public Sector procurement regulations 2008- whether procurement contract - whether alternate remedies available – whether legitimate expectation.

PERRY, Peter v Carol Baugh and Novado Wilson and Ann Marie Hibbert and Elaine Baugh and Sophia Campbell and Anetta Foster
JMCA 23.03.2018

LAND LAW-Eviction-Recovery of Possession-Limitations Act-Entrance to Property-Squatters

<THE> POLICE FEDERATION AND MERRICK WATSON (Chairman of the Police Officers Association) and The Special Constabulary Force Association and Delroy David (President of the United District Constables Association) v The Commissioner of the Independent Commission of Investigations and The Attorney General of Jamaica
JMCA 16.03.2018

CONSTITUTIONAL LAW. APPEAL-STAY OF EXECUTION-Declaratory orders- appeal to Her Majesty in Council- conditional leave to appeal, jurisdiction- stay of execution.

REGINA v Lenworth Howitt
JMJC 30.04.2018

DNA EVIDENCE ACT 2016 – Non-intimate sample sought from accused – Accused consented then withdrew consent to provide sample – Whether court order required for the taking of a non-intimate sample from an adult who does not consent – Whether sample can only be taken during the “investigative stage” before a defendant has been charged and placed before the court – Interpretation of Section 2, 15, 20 and 25 of the Act

<THE> REGISTRAR OF COMPANIES v Simultech (Jamaica) Limited
JMJC 09.05.2018

COMPANY LAW – Duty of company to file annual returns – Whether non-operational company obligated to file annual returns – Section 121 of the Companies Act

REID, Cyrus v JP Tropical Foods Limited
JMJC 13.03.2018

CIVIL PROCEDURE AND PRACTICE – Striking out statement of case – Whether claim is statute barred – Rule 26.3 (1) of the Civil Procedure Rules; Limitation of Actions Act – Rule 20.6 of the Civil Procedure Rules

ROULSTON, Daniel v R
JMCA 31.01.2018
CRIMINAL LAW-Criminal Offence-Rape-Grievous sexual assault

ROUSSEAU, Ruth Ann v Raymond Rousseau
JMCA 18.01.2018
CIVIL PROCEDURE AND PRACTICE-Appeal – Application for extension of time to obtain leave to appeal – Application for leave to appeal

Russell, Anthony v R
JMCA 09.03.2018
CRIMINAL LAW-Murder

SAGICOR BANK Jamaica Limited v Taylor-Wright
UKPC 14.05.2018
BANKING-Fraud-Disputed Loan-forged promissory note

SCOTIA JAMAICA Building Society v Andrea Henry
JMCA 06.06.2018
CIVIL PROCEDURE AND PRACTICE – Setting aside default judgment – Whether the defendant has a real prospect of successfully defending claim – Rule 13.3 of the Civil Procedure Rules, 2002, (as amended 18 September 2006)

SCOTT, DAVE v Paramount Trading Jamaica Limited and Anthony Wallace
JMCA 13.04.2018
Negligence - Motor Vehicle Collision - Liability of parties – Contributory Negligence- Assessment of Damage

SHAW, Michael v R
JMCA 23.03.2018
CRIMINAL LAW-Criminal- acting contrary to section 14(1)(a) of the Corruption Prevention Act.

SHAW, Neil v Jamaica North Coast Limited
JMCA 04.05.2018
ADDITION AND SUBSTITUTION OF PARTIES – Whether party by virtue of his registered interest in a property as a mortgagee has a right to be added as party to a claim – Rules 19.3 and 19.4 of the Civil Procedure Rules considered – significance of relevant limitation period in the context of Rule 19.4 and the Limitation Act – Consolidation

SIMPSON, Joseph v R
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CRIMINAL LAW-Criminal Offence-Illegal Possession of Firearm-Shooting with intent

SMITH, Delevan and Kevin Mason and Oakland Nunes v R
JMCA 15.01.2018
CRIMINAL LAW-Criminal- illegal possession of firearm and robbery with aggravation

SMITH, Luke v Pahk Limited and Delano Smith
JMCA 10.01.2018
NEGLIGENCE – motor vehicle collision – personal injury – credibility – liability

SMITH-HEATH, Sophia v The Southern Regional Health Authority and The Attorney General of Jamaica
JMCA 04.04.2018
DAMAGES – Assessment of damages – Pain and suffering – Psychiatric injury – Handicap on the labour market – Future medical and nutritional care – Claimant contracted HIV while working

SMYTHE, Brian v R

JMCA 13.03.2018

CRIMINAL LAW-Criminal offence-murder-fresh evidence-gang war

SPAULDING, Ricardo and Anthony James v R

JMCA 06.02.2018

CRIMINAL LAW-Criminal Offence- Murder

STEWART, Paul v R

JMCA 15.01.2018

CIVIL PROCEDURE AND PRACTICE - Application for Court Orders – Striking out – Summary Judgment – Stamp Duty Act – Promissory Note

SWAPP, Elgin v The Attorney General of Jamaica and Superintendent Reginald Grant

JMSC 30.01.2018

FALSE IMPRISONMENT – malicious prosecution – Reasonable and probable cause – Whether the Captain of the ship is deemed to be in custody and control of the entire ship include its cargo

TANCOUR CONSTRUCTION Ja Ltd and Tyrone Sean Lewis, Annette Jean Blount, Courtney George Lewis, Tanya Ritch (T/A Lewis and Blount Construction Developers) v Registrar of Titles and Solid Engineering Limited and Paul Witter and Persons Unknown and Jamaica Redevelopment Foundation Inc
JMSC 17.05.2018

APPLICATION TO STRIKE OUT CLAIM AGAINST THE 1ST DEFENDANT – CPR 26.3(1) – Registration of Titles Act

TANNER, Mary Elaine (Executrix of the Estate of Donald Tanner) v Karlene Max Brown and Sophia Brown and Karl Anthony Brown and Radcliffe Brown (aka Raul Radcliffe Brown) and Jennifer Messado & Co.

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