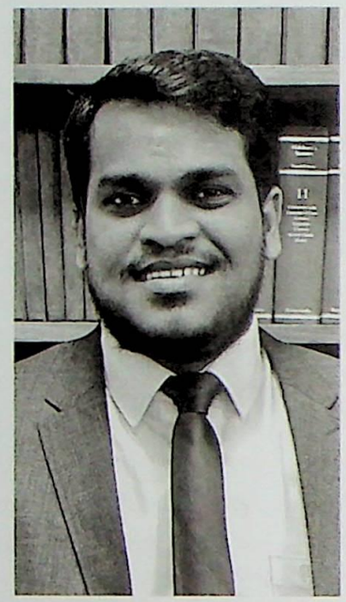
Summarised Selected Judgments of the Supreme Court of Sri Lanka up to October 2025-Part I



V. Kamal Ahamed
LL.B (Hons.) (Col.) LL.M (OUSL)
Attorney-at-Law | Former Research Officer, Court of Appeal of Sri Lanka
Lecturer, Faculty of Law, University of Colombo kamal@law.cmb.ac.lk

Contract Law and Banking Law

1. Pallocci Donatella and Another v. Yamuna Kanthi Stein (S.C. Appeal No. 08/2017, decided on 03.04.2025).

Contract law – Frustration or impossibility of performance – English law and Roman-Dutch law – The doctrine of frustration in English law applies to both physical impossibility and legal impossibility – Doctrine of impossibility in Roman-Dutch law (clausula rebus sic stantibus: "things thus standing") – Similarities between the two doctrines discussed [Nuclear Fuels Corporation of SA (Pty) Ltd v. Orda AG 1996 (4) SA 1190 (A) at 1214C] – Distinction between the two legal systems to be maintained – Whether the parties had allocated the risks arising from the supervening event.

Per Hon. Janak De Silva, J.

> *"In English law, the rule is that court starts with the contract and remains with the contract throughout, looking exclusively at it to ascertain what the effect of any supervening conditions should be in law.*

On the contrary, in Roman-Dutch law, Court begins by implying a term into the contract exempting a party from liability when through no fault of his own the contract becomes impossible of performance. Thereafter, the Court looks to the contract, to see how that implied term should be applied in regard to the specific facts of the particular contract involved. In other words, in Roman-Dutch law, the rule is that impossibility of performance does in general excuse the performance of a contract unless the particular circumstances of the case, the nature of the contract and the nature of the impossibility invoked by the defendant displaces the general rule."[pp. 13-14]

"...In Punchisingho v. De Silva [38 NLR 416] it was held that a tenant is entitled to a full or partial refund of rent in cases where a vis major or casus fortuitus has prevented him from using the property for the purposes for which it was leased, either completely or to a significant extent. The decision was based on the common law principle that a tenant is entitled to remission of rent either wholly or in part where he has been prevented either entirely or to a considerable extent from making use of the property for the purposes for which it was let, by some vis major or casus fortuitus, provided always that the loss of enjoyment of the property is the direct and immediate result of the vis major or casus fortuitus, and is not merely indirectly or remotely connected therewith. [p. 19]

2. *Upali Seneviratna v. Suduwadewage Dinapala (S.C Appeal 223/2017, decided on 07.03.2025).*

Contract Law – Verbal brokerage agreement – Failure to pay full broker's fee – Objection for lack of original documents – Offer, acceptance, and consideration proved – Valid contract notwithstanding alleged agency – Absence of reply to letter of demand – Novation – Defendant ordered to pay costs equivalent to five times the total costs of all three courts.

Per Hon. E.A.G.R. Amarasekara, J.

"When the Plaintiff closed his case, reading in evidence the documents marked P1 to P4, no objection had been reiterated. It appears when the matter was in appeal, originals of the said marked documents were not in the brief. However, once a document is marked, it becomes part of the brief. If the Appellant wanted the originals to be before the Appellate Court, he should have asked to reconstitute the Appeal brief with the originals. However, the Judgment of the High Court clearly indicates that copies were available and Parties agreed to proceed with the appeal in the absence of the originals. Now, the Appellant should not be allowed to say that the originals are not available. On the other hand, whatever recorded in evidence with regard to said documents can be considered as there is no challenge to what has been recorded in evidence." [p. 6]

"...The attempts of the Defendant were to delay the enjoyment of the fruits of victory by the Plaintiff. In such a situation it is not unreasonable to consider exemplary costs. Therefore, this Court decides that the Plaintiff is entitled to five times the costs of all three courts." [p. 12]

3. *Distilleries Company of Sri Lanka PLC v. Censtar International (Pvt) Ltd (SC CHC Appeal 31/2009, decided on 07.10.2025).*

Contracts – Sale of goods – Acknowledgment of debt – Essentials of contract – Offer, acceptance, consideration, and intention to create legal relations – Consensus ad idem – Written undertaking and effect of letter admitting liability – Alleged tripartite agreement – Absence of written evidence – Payment to third party and discharge of liability – Requirement of proof – Under-invoicing with supplier and its irrelevance to enforceability – Counterclaim for defective and delayed deliveries – Failure to prove loss or damage – Change of trial judge – Validity of judgment delivered by successor judge – No prejudice caused – Allegation of double payment unsustainable – Commercial contracts and enforceability despite collateral irregularities.

Per Hon. K. Kumudini Wickremasinghe, J.

"...the mere presence of offer and acceptance does not, of itself, suffice to constitute a valid and enforceable contract. The law further requires additional elements such as consideration or causa, an intention to create legal relations, compliance with any prescribed form, and the legal capacity of the parties. Yet, even the concurrence of all these essentials does not invariably guarantee the validity of the agreement. Where

the transaction is tainted by vitiating factors such as duress, the purported contract cannot, in law, be regarded as binding" [p. 15]

4. *Dedigama Group Private Limited v. Nagoda Manalage Piyasena and Another (S.C. Appeal No. 49/2017, decided on 08.10.2025).*

Contract Law – Agreement to sell immovable property – Specific performance – Roman-Dutch law principles – Condition precedent – Deposit of balance purchase price – Readiness and willingness to perform – Exceptio non adimpleti contractus – Discretionary remedy.

Per Hon. Janak De Silva, J.

"Accordingly, a party ready and willing to perform their contractual obligations has a prima facie legal right to specific performance against the other party, subject only to the discretion of the Court in the interests of justice." [p. 12]

"A plaintiff who has failed to perform his obligation, which is conditional to requiring the defendant to perform his obligation, will not be granted the remedy of specific performance. The civil law recognized this principle through the exceptio non adimpleti contractus ("exception of non-performance of contract") which was available against a party claiming performance who had himself not performed [Voet 19.1.23]." [p. 13]

5. *Anthony Saliya Godwin Ranasinghe v. Warnasirige Sinharage Paul Jayantha De Silva (S.C. (C.H.C.) Appeal No. 17/2014, decided on 03.10.2025).*

Lease Agreement – Motor vehicle financing – Default and surrender – Guarantee – Principal debtor and surety – Joint and several liability – Demand – Validity and waiver of objection – Arbitration clause – Scope and applicability confined to lessor and lessee – Liability of guarantor excluded – governing law: Roman-Dutch Law – Distinction between guarantee and suretyship – Evidence Ordinance, sections 90A and 90C – Admissibility of certified bankers' books – Probative value of statements of account – Jurisdiction – Patent and latent want – Submission and waiver.

Per Hon. Janak De Silva, J.

"None of the parties to this action is a bank. The Lease Agreement is not part of a banking transaction. Hence, the transaction between the parties in this action does not fall within Banks and Banking in Section 3 of the Civil Law Ordinance. The governing law of the Lease Agreement is Roman-Dutch law." [p. 7]

"...in Roman-Dutch law, a "guarantee" given by a guarantor to a promisee in relation to a promise by a third party to the promisee, does create an independent obligation to that of the debtor.

I must hasten to add that parties can by agreement determine the exact nature of the relationship between them notwithstanding the general definition given in the governing law to particular types of documents. Accordingly, the Guarantee must be examined to determine the rights and obligations of the parties." [p. 10]

6. *Ceyaki Shipping (Pvt) Limited v. Megafeeder (Pvt) Ltd (SC (CHC) Appeal No: 22/2013, decided on 25.09.2025).*

Sale of vessel – Advance payment – Refund of deposit – Mortgage payments to Bank of Ceylon – Charter hire profits – Burden of proof – Effect of admissions – Admissibility of affidavit evidence – No objection to affidavit evidence – Hearsay – Prescription Ordinance, section 7 and Section 8 – Contract for sale and agreement to sell – Delivery of goods – Shipping industry practice – Forfeiture of deposit – Reconventional claims for operational and resale losses.

Per Hon. Arjuna Obeyesekere, J.

"I must perhaps add that Section 151A introduced by the Civil Procedure (Amendment) Act, No. 8 of 2017 provides for the tendering of an affidavit as a substitute for the oral examination-in-chief of a witness and provides further that the opposite party is entitled to object to such affidavit being received, either on the inadmissibility of such evidence or a part of the evidence or on the inadmissibility or authenticity of any documents annexed to such affidavit. Section 151A(3) provides that in such event, the Court may make a ruling on such objection, prior to the witness being cross examined by the opposite party, thus making it clear that the Court is vested with a discretion whether to make a ruling at that stage or permit the witness to be cross examined,

and for a decision to be made thereafter." [para 40]

7. *Orient Finance PLC v. Mantrige Hector Lorence Dias and Another (S.C. (C.H.C.) Appeal No. 15/2007, decided on 23.09.2025).*

Contract law – Repudiation – Repudiation was after delivery and registration, thus ineffective – Purchase order – Delivery & registration – Undisclosed principal – Agent's right to Sue – Pleadings & consistency – Explanation 2 to section 150 of the Civil Procedure Code – Failure to lead evidence – Section 3 of the Evidence Ordinance.

Per Hon. Janak De Silva, J.

In Edrick De Silva v. Chandradasa De Silva (70 NLR 169) it was held that where the petitioner has led evidence sufficient in law to prove his status, i.e., a factum probandum, the failure of the respondent to adduce evidence which contradicts it adds a new factor in favour of the petitioner. There is then an additional "matter before the Court", which the definition in section 3 of the Evidence Ordinance requires the Court to take into account, namely, that the evidence led by the petitioner is uncontradicted. [p. 6]

8. *Lillie Rupasinghe v. Natchan Chandraras alias Kaththan Natchchan Chandroo (SC Appeal No. 67/2025, decided on 04.09.2025).*

Agreement to sell – Breach of contract – Failure to pay purchase price – Leave and license - Licensee's status – Ejectment of licensee – Licensor's ownership irrelevant – Estoppel under section 116 of the Evidence Ordinance – Approbation and reprobation - Jus retentionis – Counterclaim for damages – Burden of proof – Eviction ordered.

Per Hon. Sobhitha Rajakaruna J.

"Drawing on the precedents set forth in the referenced judgments, it is firmly established that when a claimant initiates an action based on a leave and license or landlord-tenant relationship, and proves that he is the licensor or landlord while the other party is his licensee or tenant, the claimant is entitled to eject the said other party in possession, regardless of whether he owns the property." [p. 11]

9. *Don Lalith Indralal Rajapaksha v. Kim Hyum Wook and Another (SC/CHC/Appeal No: 54/2017, decided on 01.08.2025).*

Contract law – Locus standi – Agent's right to sue – Real party in interest – Right of an agent to sue on a contract for disclosed principal – Breach of contract – Fraudulent documents – Jack Hunt v. R.C. Wright (Supreme Court of Iowa, United States, dated 17 November 1964) discussed and followed.

Per Hon. Sampath B. Abayakoon, J.

"I am of the view that the principles discussed in the above-mentioned case is directly applicable to the facts and the circumstances of the case under appeal.

It is abundantly clear that although the money had been transferred by a Korean company owned by the father of the plaintiff to the account of the 1st defendant for him to supply copper, the actual party in interest had been the plaintiff, and the actual transaction had been between the plaintiff and the 1st defendant.

Under the circumstances, it is my considered view that there exists no basis to argue that the plaintiff has no locus standi to sue the defendants in order to recover the money paid to the 1st defendant on the basis that he failed to abide by the agreement to export 15 tonnes of copper to Korea." [pp. 8-9]

10. *Ananda Wickremasinghe v. LOLC Finance PLC (SC/CHC/Appeal No: 26/2020, decided on 18.07.2025).*

Contract law – Valid contract – Loan agreement – Intention to create legal relations – Consensus ad idem – Duress/coercion – Failure to respond to business correspondence (LOD) – Objecting a document – Frivolous objections – Subject to proof – Interest calculation.

Per Hon. Arjuna Obeyesekere, J.

"[I] must state that objecting to every possible document marked by the opposing party without having any reason for doing so or moving that documents be marked subject to proof has now become a common practice and is one of the factors that have contributed to delays witnessed in our Courts. While Attorneys-at-Law must de-

sist from raising frivolous objections when documents are marked by the opposing Counsel, and while an application that a document be marked subject to proof must always be substantiated with reasons, the trial Judge too must insist on reasons being adduced if a party wishes to object to a document being marked and immediately decide on such objection. I am optimistic that this practice can be curtailed in cases where the pre-trial provisions introduced by the Civil Procedure (Amendment) Act, No. 29 of 2023 would apply." [p. 5]

11. *Gamini Seneviratne and Another v. Sampath Bank Limited (SC (CHC) Appeal No. 24/2008, decided on 08.07.2025).*

Suretyship and Guarantee (nature and distinction under Roman-Dutch law) – Beneficium ordinis seu excussionis – Liability of guarantors and the enforceability of renunciations of the right of excussion – Defence requiring creditor to exhaust remedies against principal debtor before suing surety – Renunciation of defences – Validity of express, general, and implied renunciation in guarantee agreements – Necessity to raise excussion defence initio litis (at the outset of litigation) – Interpretation of contractual terms reflecting parties' intent.

Per Hon. Arjuna Obeyesekere, J,

"Thus, irrespective of the terminology used, the essence of the arrangement is that the surety gives an undertaking to a third party [creditor] on behalf of another party [debtor] that it will perform the obligations owed by the debtor to the creditor in the event of the debtor not fulfilling its obligations to the creditor." [p. 8]

"The resultant position then is that under the Roman Dutch law, the creditor's first recourse is to the principal debtor, and the surety becomes liable only once the principal debtor has been excussed. Where that has not been done, and subject to certain limitations, the surety shall be entitled to take up the defence that the principal debtor be excussed prior to proceeding against the surety. What is significant however is that this defence can be renounced by the surety..." [p. 12]

"The defence of beneficium ordinis seu excussionis is therefore not an absolute prohibition that prevents a creditor from pursuing a surety prior to pursuing the principal debtor. It is only a dilatory plea, and must therefore be raised at the earliest stage of an action..." [p. 15]

12. *K.D.A. Hettiarachchi v. Ceylinco Insurance Company Limited (SC Appeal No: 166/2014, decided on 25.02.2025).*

Banking law – Construction contracts – Bonds and Guarantees – Conditional guarantee and unconditional or an 'on-demand' payable guarantee.

Per Hon. Arjuna Obeyesekere, J.

"In construction contracts, different types of security bonds and guarantees [which terms are used inter-changeably] are taken out by the contractor, usually with a bank or insurance company, for the benefit of and at the request of the employer, in a stipulated maximum sum of liability and enforceable by the employer in the event of the contractor's default, repudiation or insolvency. The structure of a performance bond can be moulded to support a number of different kinds of potential payment obligations. These bonds range from advance payment bonds or mobilisation bonds to secure the advance payment that is made to a contractor to enable the contractor to mobilise the work, to bonds that would secure the timely performance by the contractor as well as bonds that ensure the due completion of the works and bonds that ensure that all defects that occur during the defects liability period are rectified. The essential purpose of all these bonds is therefore to provide the employer with financial security in the form of cash payable by the bank for the contractor's failure to perform his obligation under the construction contract. In order to achieve this purpose, it is the responsibility of the employer to ensure that the relevant bond is worded accordingly." [p. 6]

"In determining whether a bond is conditional or otherwise, Court is concerned not with the nomenclature attached to it but with the contractual construction or interpretation of the bond or guarantee itself. While there are many variations of the two standard types of bonds, a great deal depends on the needs and the intention of the parties, with the wording of the guarantee reflecting such needs and intentions." [p.7]

See further: Alliansz Insurance Lanka Limited v. Lagan International Limited (SC/CHC/ Appeal No: 52/2007, decided on 25.02.2025).

13. *People's Bank v. Witharana Gamage Siriwardane and Another (SC/Appeal/20/2018, decided on 25.07.2025.*

Banking law – People's Bank (Amendment) Act, No. 32 of 1986 – Section 29P applications are part of execution proceedings and not fresh actions – Res judicata inapplicable to execution – Prior dismissal for non-production of the original certificate of sale not a decision on the merits – Certificate of sale under section 29N: vesting of title and conclusive proof – Orders nisi and absolute for possession – No requirement to reserve a right to re-file in execution – High Court's reliance on res judicata held to be erroneous.

Per Hon. A.H.M.D. Nawaz, J.

"It is trite law that applications under Section 29P of the People's Bank (as amended by No. 32 of 1986) are execution proceedings rather than substantive actions, and hence the plea of res judicata cannot be successfully maintained. The earlier case (DSP/74/2010) was dismissed solely due to a procedural lapse — failure to tender the original Certificate of Sale. No adjudication on the merits occurred. Accordingly, the dismissal of the said application cannot preclude the Petitioner from instituting a valid application upon rectifying the defect" [para 6]

14. *Y.B. Alecman v. Hapuarachchige Don Douglas Martin Appuhamy (SC Appeal No. 08/2014, decided on 30.05.2025).*

Contract law – Partnership agreement – Plea of non est factum – Burden of proof – Section 101 & 102 of the Evidence Ordinance – Whether a plea of non est factum is vitiated by the negligence or carelessness.

Per Hon. Arjuna Obeyesekere, J.

"Non est factum is a defence available to someone who has been misled into signing a document which is fundamentally different from what he or she intended to execute or sign. Accordingly, where the defence is established, the signing party may be able to escape the effect of the signature by arguing that the agreement was void for mistake." [p. 11]

"A person who has read the impugned document prior to signing as well as a person of sufficient understanding cannot rely on the defence of non est factum." [p. 15]

"The plea of justus error is stricter in its application than the plea of non est factum." [p. 16]

"The plea of non est factum is not available to a man who does not exhibit prudence or is negligent in his actions." [p. 17]

15. *D.N. Wijetunga v. T.C. Amarasekera (S.C. Appeal No. 89/2018, decided on 02.04.2025)*

Agreement to Sell – Lex commissoria – Right to rescind the contract upon other party's unwillingness to perform the bargain – Specific performance – Application of Roman-Dutch Law (mora: delay or default in performance) – Concept of "time being of the essence" – Extension of time – No party permitted to make at trial a case materially different from that pleaded – Section 150 of the Civil Procedure Code – Sections 23, 91 and 93 of the Evidence Ordinance – Parol evidence – Principle of waiver or release of obligation.

Per Hon. Janak De Silva, J.

"...Where any party to a contract fails to perform his part of the bargain within the time fixed for performance, he is said to be in default or mora." [p. 5]

"...mora does not by itself provide an innocent party the right to rescind from the contract under Roman-Dutch law. In order for mora to result in the right to terminate, time must be of essence of the agreement or must be made of essence by a proper notice." [p. 6]

"I have no doubt the same rationale is applicable where time was of essence of an agreement between parties from its inception, and later the time of performance was extended by parties. One party is entitled to make time of essence once again by giving due notice to the other party. Modern commercial requirements require parties to commercial transactions to have the freedom to continue with their commercial activities without being held for ransom by intransigent counterparts. That can only be done by recognizing the right of a party to make time of the essence of an agreement

once again by giving due notice to the other party." [p. 26]

"A party seeking to enforce specific performance of a contract should have been ready and willing to perform his part of the bargain by the time for performance..." [p. 27]

Writ/Judicial review

16. *Attorney General v. Sandresh Ravindra Karunanayake and others (SC/Appeal/104/2024, decided on 03.06.2025).*

Writ – Central Bank Bond Scam – Boundaries of judicial review – Application by suspect to quash information and indictment (CA/WRIT/441/2021) – Whether the Court of Appeal correctly quashed the information and indictment by way of certiorari – Distinction between "assertions", "observations" and "findings" of a Commission of Inquiry – Section 24 of the Commissions of Inquiry Act – Decisions relating to prosecutions not amenable to judicial review where the complaint may be addressed at trial – Avoidance of delay by collateral proceedings – Limits of judicial intervention in prosecutorial discretion – Writ will not issue where material facts are in dispute – Due process and the "no evidence" rule – Court to intervene only where the interests of justice demand – Judgment of the Court of Appeal dated 28.02.2023 set aside – Attorney-General's power to file indictment before Trial-at-Bar under section 450(4) of the Code of Criminal Procedure Act – Prosecutorial discretion – Nature, scope, and judicial control – Discretion neither absolute nor unfettered – Courts to exercise caution in review of prosecutorial discretion.

Per Hon. Justice Mahinda Samayawardhena, J.

"The Attorney General is entitled to rely on the material collected in the course of the Commission of Inquiry in formulating charges against the petitioner, in terms of section 24 of the Commissions of Inquiry Act." [p. 11]

"[N]evertheless, the decision to indict must be made by the Attorney General independently and upon a careful evaluation of the available evidence. However, on the facts and circumstances of this case, the Court of Appeal overstepped the boundaries of its writ jurisdiction when it quashed the indictment against the petitioner on the ground that there was insufficient material and evidence." [p. 13]

"...another error committed by the Court of Appeal was its failure to give due consideration to the non obstante clause at the beginning of section 24 of the Commissions of Inquiry Act, which reads: "Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979, or any other law..." In my view, the Court of Appeal did not properly appreciate the significance of this clause. Far from limiting the Attorney General's discretion, this part of section 24 reinforces and expands it. The discretionary power conferred on the Attorney General under the Code of Criminal Procedure Act or any other law remains unaffected by the latter part of section 24. That latter part merely provides an additional tool in the Attorney General's prosecutorial arsenal. However, the Court of Appeal appears to have focused solely on this additional tool, disregarding the broader discretionary framework preserved by the non obstante clause." [p. 50]

17. *M.A. Sumanthiran and Another v. Returning Officer, Manthai West Pradeshiya Sabha and others (SC Writ 09/25, decided on 04.04.2025) with S.C. Writ Application No. 43/25 and S.C. Writ Application No. 57/25.*

Election Law – Article 140 of the Constitution and Article 104H – Rejection of nomination papers by the Returning Officer – Decision not made by the Election Commission – Whether jurisdiction lies with the Supreme Court or the Court of Appeal – Section 31(2) of the Local Authorities Elections Ordinance – Scope of supervisory jurisdiction – Interpretation of constitutional and statutory provisions governing election disputes.

.Per Hon. S. Thurairaja, PC J.

"Very clearly, as the proviso hereto sets out, this Court only exercises writ jurisdiction with respect to such categories of matters that are expressly vested upon it by law, whereas writ jurisdiction in general is vested with the Court of Appeal." [para 7]

"As it is amply clear from the above judgment, acts of the Commissioner of Elections himself—let alone that of his subordinate officers—are not always referable to the Commission itself.

Where the Commissioner or any other offi-

cer (such as Returning Officers) exercises powers vested by law in such office they hold, writ jurisdiction in respect of such acts remain with the Court of Appeal, unaffected by the provisions of Article 104H of the Constitution. We see no reason to deviate from this five-judge bench decision of this Court." [para 28 and 29]

18. *Dilani Nima Nanayakkara v. Buddhist and Pali University of Sri Lanka, and others (SC Appeal No: 86/2009, decided on 11.09.2025).*

Administrative Law – University employment – Resignation of employee – Withdrawal of resignation – University Grants Commission Establishments Code – Sections 4.5, 4.6, 4.7 – Requirement of appointing authority's approval – Acknowledgement of consequences – Irrevocability of resignation once accepted – Procedural compliance – University Council powers.

Per Hon. Shiran Gooneratne, J.

"Upon the Petitioner's submission of the Letter of Resignation dated 27/07/2006, the University was required to ensure compliance with Section 4.6 of the Universities Establishments Code. In fulfilment of this requirement, the Petitioner was formally notified in writing of the legal and administrative consequences of her resignation through the document marked R5a. This notification expressly set out the irreversible nature of the resignation once accepted, including the forfeiture of any right to revert to her post and the inability thereafter to withdraw the resignation." [p. 16]

"In all the above circumstances, this Court finds that the Buddhist and Pali University acted in conformity with the statutory provisions of the governing statute and the Establishments Code of the University Grants Commission and the Higher Educational Institutions/Institutes. The Petitioner's letter dated 22/08/2006 (P9), seeking to withdraw her resignation and requesting re-employment, was duly placed before the Council at its 258th meeting held on 29/08/2006. Upon due consideration of all relevant material, the Council resolved to accept the Petitioner's resignation and to reject her request for withdrawal and re-employment." [para 25]

Law of Property

19. *Mohamed Ismile Safeer Mohomed v. Sulaiman Lebbe Nizzamdeen and Another (S.C. Appeal No: 192/2015, decided on 04.04.2025).*

Tenancy agreement – Sub-letting – Section 10(2) of the Rent Act, No. 7 of 1972 – Unauthorized sub-letting of business premises – Prima facie proof of sub-letting – Exclusive possession as an indicator of sub-tenancy – Burden of proof – Once sub-letting is established, burden shifts to tenant to explain nature of occupation by alleged sub-tenant – EQD report and expert analysis – Acceptance of expert opinion – Admissibility of unchallenged documents.

Per Hon. Sampath B. Abayakoon, J.

"It is my considered view that the plaintiff, being the landlord, has established on balance of probability, a prima facie case of sub-letting of the premisses bearing both the assessment numbers by the 1st defendant to the 2nd defendant without permission. I find that the learned High Court Judges of the Provincial High Court of the Western Province holden in Colombo had no legally tenable basis to hold that the plaintiff has failed to prove the tenancy between himself and the 1st defendant, and to hold that considering the question of sub-letting would not arise.

It is well settled law that once the sub-letting is established, the burden shifts to the tenant to explain the nature of the occupation by the alleged subtenant." [p. 12]

20. *Abdul Cader Sabura Umma v. Puvenesweri Krishnamoorthi and others (SC/Appeal/112/2014, decided on 10.10.2025).*

Landlord and tenant – Rent Act, No. 7 of 1972, section 22(6) – Termination of tenancy – Validity of notice to quit – Requirement of one year's notice – Condition precedent to maintainability of action – Reasonable requirement – Arrears of rent – Tenancy not excluded from Rent Act – Denial of title by tenant – Approbate and reprobate – Abuse of process – Section 34 of the Civil Procedure Code –Trust and Redemption of Property – Failure to discharge obligation before instituting action – Consistency of Pleadings.

Hon. Mahinda Samayawardhena, J.

"The plaintiff expressly admitted that she gave only one month's notice of termination. As rightly decided by both Courts below, the plaintiff did not give one year's notice of termination before she filed the action on reasonable requirement. It is well settled that the notice of termination stipulated under the Rent Act constitutes a condition precedent to the institution of an action, and failure to give the requisite notice is fatal to its maintainability. On the unique facts and circumstances of this case, the plaintiff cannot succeed in this action." [p. 5]

21. *Ranabahu Mudiyanselage Senarath Bandara Ranabahu v. Ranabahu Mudiyanselage Ranjith Jayatissa (SC Appeal No: 67/2019, decided on 23.10.2025).*

Land Development Ordinance – State land permits – Priority of permits – Rights of permit-holders – Ownership vs. possession – Declaratory relief – Whether permit-holder entitled to declaration of ownership – Entitlement to possession under permit – Consequential right of ejectment against trespasser – Principle of granting lesser relief where greater relief sought – Defective pleadings – Correction by framing of issues

Per Hon. Arjuna Obesekera, J.

"The Plaintiffs are not entitled in law to a declaration of title and/or to the ownership of the lands referred to in Permit Nos. 48445 and 63161. However, the Plaintiffs are entitled to possess the said lands by virtue of and in accordance with the terms and conditions of the said permits and to a consequential order to eject the Defendant from the said lands."" [p. 14].

22. *Siyambalagahagedara Mohammed Nuhuman Abdul Cader v. Sinnan (SC Appeal No: 43/2015, decided on 18.07.2025).*

Rei vindicatio action – Identification of corpus – Burden of proof – Onus probandi incumbit ei qui agit – The burden of proof lies upon the party who institutes the action – Failure to identify the corpus fatal to rei vindicatio – Whether the High Court, while dismissing the plaintiff's action for non-identification of the corpus, could nevertheless grant relief to the defendant – The Supreme Court answered in the negative.

Per Hon. Arjuna Obeyesekere, J.

"[A]t the heart of a rei vindicatio action is the complaint of a party that he has title to a land but that possession of that land is with another. Hence the relief sought for a declaration of title to such land and the eviction of the person who is in possession of the said land. As pointed out in Pinto and others v Fernando and others [BALJ 2024/2025 Vol XXVII 474], "In order to succeed in a rei vindicatio action, first and foremost, the plaintiff shall prove his ownership to the property. If he fails to prove it, his action shall fail. This principle is based on the Latin maxim "onus probandi incumbit ei qui agit", which means, the burden of proof lies with the person who brings the action."

"...The consequence is that the defendant can continue to occupy the said land that was the subject matter of the action. In the absence of a specific finding with regard to the title of the defendant, the dismissal of the plaintiff's action does not mean that the defendant has title to such land or that the Court has recognised the title of the defendant. While a defendant in a rei vindicatio action can file a cross claim, the onus is on the defendant to establish his title to the land, and that he has better title than the plaintiff or that his title is superior to that of the plaintiff. However, as in this case, where the case of the Plaintiffs is dismissed on the basis that the land has not been identified, the question of the Defendant having title to the said land simply cannot arise. In any event, the Defendant has admitted that he purchased the corpus only after action was filed in the District Court, and with his claim based on prescriptive title having been rejected, the Defendant did not have title at the time of the institution of the action." [pp. 5-6]

23. *Murugesu Sunderalingam v. Thuraiappah Surendran (SC/APPEAL/138/2015, decided on 11.10.2025).*

Land ownership – Declaration of title – Rei vindicatio action – Ejectment – Bona fide and mala fide possessor – Civilis possessio – Roman-Dutch law classifies improvements into three categories: necessary improvements (impensae necessariae), useful improvements (impensae utiles), and ornamental improvements (impensae voluptuariae) – Compensation for improvements.

Per Hon. Maninda Samayawardhena, J.

"...In the present case, the defendant has been in unlawful occupation at least since 1993. The defendant, not being a bona fide possessor beyond the period of permissive occupation, cannot compel the plaintiff to accept or pay for the so-called useful improvements. As the plaintiff does not desire to retain the improvements, the defendant's entitlement, even assuming arguendo that he were to be regarded as a bona fide possessor, extends only to the ius tollendi—the right to remove the improvements—provided that such removal can be done without causing material injury to the land. Equity cannot be invoked to shield a wrongdoer or to impose an unwarranted burden upon the true owner." [p. 8]

24. *Ratnavali Chandrika Haegoda v. M. Gunaratne Perera and others (S.C. Appeal No. 60/2004, decided on 21.03.2025).*

Declaration of title – Co-ownership – Appellant claiming an undivided 1/8th share of the corpus – Due execution and authenticity of deed – Sections 67, 68 and 70 of the Evidence Ordinance – Notary Public called but attesting witnesses not examined – Section 154A of the Civil Procedure Code – Priority by registration under Section 7(1) of the Registration of Documents Ordinance – Applicability of registration priority to co-owned property – Plea of prescription – Valuable consideration – Necessity to put contradictory position to a witness in cross-examination – Section 3 of the Evidence Ordinance – Trial confined to pleaded issues – New arguments cannot be raised at the appellate stage.

Per Hon. Janak De Silva, J.

"Where a party derives title from both a deed as well as prescription, although his deed may have been registered later, his prescriptive title remains unaffected if he can establish prescriptive title against the other party who claims priority by registration." [p. 12]

"...the statement in the attestation clause of a deed of sale on whether valuable consideration passed or not is not conclusive on that issue. Similarly, the statement of the vendor in the deed that valuable consideration was received is also not conclusive. A court must consider all the attendant circumstances before concluding whether or not there was valuable consideration." [p.14]

"The established common law rule is that where a party intends to lead evidence that will contradict or challenge the evidence of an opponent's witness, it must put that evidence to the witness in cross-examination. It is essentially a rule of fairness. A witness must not be discredited without having had a chance to comment on or counter the discrediting information. It also gives the other party notice that its witness' evidence will be contested and further corroboration may be required." [p. 15]

25. *Mohammed Khan Abdul Kuthoos v. Hameed Ibrahim Nachchiya and others (SC Appeal No. 242/2014, decided on 16.06.2025) (Seven-Judges bench)*

Rei vindicatio action – Application of Roman-Dutch and South African law – Identification of corpus – Discrepancy between lot numbers not fatal – Proof of title and possession – Burden of proof – Surveyor's evidence and documentary consistency-Substitution of parties – "Live party" – Validity of appeal – Naming of deceased in the caption – Doctrine of live party – Curability of procedural defects – Section 770 of the Civil Procedure Code – Notice and representation of substituted plaintiffs – Procedural irregularity versus jurisdictional error – Land Development Ordinance – State land held on permit – Succession and entitlement.

Per Hon. Arjuna Obeyesekere, J

"The only issue is whether there was a "live party" before the High Court. In this regard, I must reiterate that the Plaintiff was substituted before the District Court with the Substituted Plaintiffs and for all intents and purposes the proper party to the appeal could only have been the said Substituted Plaintiffs and not the deceased Plaintiff. In other words, the "live party" in this case are the Substituted Plaintiffs. The fact that the notice of appeal and the petition of appeal does not refer to the Substituted Plaintiffs but instead refers only to the deceased Plaintiff does not, in my view, mean that the appeal was prosecuted against the deceased Plaintiff for the reason that the deceased Plaintiff had been substituted by then." [p. 13]

"If I am to relate these summary findings to this case, the Plaintiff passed away

while the case was proceeding before the District Court and substitution had taken place immediately thereafter, of the Substituted Plaintiffs, thus making the Substituted Plaintiffs the "live party" to the action. The failure to name the Substituted Plaintiffs in the notice of appeal and the petition of appeal is a defect that is curable..." [p. 40]

26. *Harischandra Senarathne Bulathsinhala v. Piyasena Hapuarachch and others (SC Appeal No: 09/2020, decided on 17.10.2025).*

Civil Procedure – Execution of decree – Section 325 of the Civil Procedure Code – Resistance to writ of possession – Party not joined in original action – Independent title and possession – Effect of surveyor's reports – Failure to disclose necessary parties – Judgment debtor and third-party possessor – Revisionary jurisdiction of Court of Appeal – Proper scope of inquiry under section 325 – Irreparable prejudice from dispossession – Affirmation of appellate court – Appeal dismissed.

Per Hon. A.L. Shiran Gooneratne, J.

"Section 325 of the Civil Procedure Code empowers the Court, upon obstruction to the execution of a decree, to inquire into the matter and determine whether such obstruction is occasioned by a person claiming under the judgment debtor, or by a person asserting an independent right. Where the obstruction is found to be by a person claiming under the judgment debtor, the Court is empowered to remove such obstruction and place the decree-holder in possession." [at para 9]

27. *Kamal Kumara Gokarella v. Bhadra Kumari Gokarella (SC/Appeal No. 27/2020, decided 30.10.2025).*

Deed of gift and transfer – Capacity of executant – Mental and physical incapacity – Allegation of fraud – Standard of proof in civil fraud – Evidence of attestation – Burden of proof – Prescription of action – Presumption of due execution – Family arrangement.

Per Hon. M. Sampath K. B. Wijeratne J.

"In my view, the Plaintiff-Appellant has not established the physical and mental incapacity of the deceased executant to the higher standard of proof required. Consequently, the Plaintiff-Appellant has failed to prove the allegation of fraud in relation to the execution of the two impugned deeds, Nos. 14370 and 14371. Accordingly, the said deeds must be regarded as valid in law." [p. 11]

28. *Dassanayake Mudiyanselage Antony v. Mohamed Saheed Mahomed Abdulla (SC Appeal No: 27/12, decided on 27.10.2025).*

Possession of immovable property – Section 66(1)(b) of the Primary Courts' Procedure Act – Breach of peace as a jurisdictional prerequisite – Affidavits and police complaints as evidence – Utility bills and assessment receipts: evidentiary value – Civil dispute versus preventive jurisdiction – Concurrent findings of the Trial Court and High Court – Appellate restraint – Scope of intervention by the Court of Appeal – Standard for interference with findings of fact – Temporary and provisional nature of orders under section 66.

Per Hon. Sampath B. Abayakoon, J.

"...It is my view that once a Court decides that there was a breach of the peace or likelihood of breach of the peace, the question of possession needs to be decided in the overall context of the matter before the Court, and having considered all the relevant documents. It is clear that the applicant-respondent has sold the property to the respondent-appellant for a valuable consideration. Although he has claimed that it was sold only as a security, there is no basis to accept such a contention." [p. 15]

"It is my view that an order made by a Primary Court in terms of section 66 of the Act serves only as a temporary order until the parties go before a competent Court and resolve their dispute. It is the Judge of the original Court who would have the best opportunity of deciding the matter as the parties are before the Court and has the opportunity of inquiring into the matter and listening to the submissions of the parties. I am of the view that an appellate Court should intervene into a decision of an original Court only if it can be concluded that the decision has been reached without considering the material placed before the Court and had come to a finding not supported by facts and circumstances." [p. 16]

29. *Kariyawasam Majuwanage Prabath Chaminda Perera v. Bandara Kalu Thanthrige Dona Mala Kanthi Perera and Another (S.C. Appeal 189/2015, decided on 24.10.2025).*

Civil Procedure – Revocation of gift on grounds of gross ingratitude – Substitution after death of sole plaintiff – Section 395 of the Civil Procedure Code – Action in personam and action in rem – Litis contestatio – Survival of cause of action – Fraudulent alienation – Stage of pleadings and framing of issues – English law and Roman Dutch law – Common law of Sri Lanka – Indigenous common law – Kodeeswaran v. The Attorney General – Timex Garments (Private) Limited v. The Commissioner General of Labour and Others – Common law and constraints the jurisdiction's legislative power.

Per Hon. Sobhitha Rajakaruna, J.

"[T]he common law of any jurisdiction, or its foundational principles, cannot impose constraints on that jurisdiction's legislative power. I take the view that the common law principles or concepts of Roman-Dutch law should be utilised in a case to adjudicate the rights of the parties when they have no conflicts with the existing legislation passed by the Parliament, and only if the provisions of such legislation are not adequate to resolve the question under such laws or construing prevailing laws. It is often seen that some parties of cases scrupulously gather up from every remote corner, the most obsolete decisions or principles and present them as embedded in our common law. A jurisprudence that disregards explicit and unequivocal statutory mandates in favour of such remnants, without adducing any reasons, proves detrimental to the legal framework. Such an exercise occasionally undermines some dazzling principles of the Roman-Dutch law, which need to be made use of in adjudicating disputes as exigencies demand."

"When examining the legal framework in Sri Lanka, it is observed that the provisions of Section 392 of the CPC should be considered as the direct law that applies to the principal issues of the case in hand. The primary mandate of Section 392 of the CPC entails assessing whether the cause of action survives, thereby determining if the proceedings abate upon the demise of the plaintiff or defendant. In a parallel vein, the CPC, in its Section 760A, governs circumstances arising from the death or change of status of a party to an appeal. Moreover, Section 347 of the CPC declares that in cases where there is no respondent named in the petition of application for execution, if more than one year has elapsed between the date of the decree and the application for its execution, the court shall cause the petition to be served on the Judgment-debtor, and shall proceed thereon as if he were originally named respondent therein. The administrator of a deceased plaintiff's estate, whose death occurred after the judgment in the proceedings, must seek substitution as plaintiff under Section 339 of the CPC." [p. 13]

30. *Polwatte Telebulgalage Wimalarathne v. Nainakadayalage Amaradasa and others (S.C. Appeal 73/2012, decided on 04.06.2025).*

Co-ownership and declaratory relief – Co-ownership sufficient to maintain action for declaration of title – Partition not a prerequisite – Party seeking greater relief may be granted lesser relief if entitled – Jus superficiarium – Co-owner may sue trespasser alone for declaration of undivided share, ejectment, and damages.

Per Hon. Murdu N.B.Fernando, PC. CJ. (as she then was)

"...as observed in the case of Hariette v. Pathmasiri (Supra), since this Court recognizes the right of a co-owner to sue a trespasser to have his title to an undivided share declared, I am of the view that there is merit in the submissions of Dr. Coorey, the learned Senior Counsel for the Appellant, that the Appellant should be granted a declaratory order in relation to co-own the subject land. Thus, and for that reason too, I would answer the questions of law in favour of the Appellant and allow the appeal" [p. 14] ***Hewa Dewage Josalin and others v. Nawalage Winson Cooray and others (S.C. Appeal 43/2016, decided on 23.05.2025).***

Servitude – Right of way – Actio negatoria and actio confessoria – Prescription – Way of necessity – Indivisibility of servitudes – Burden of proof – Defendants' failure to prove key elements (ownership of dominant tenements and way of necessity)

Per Hon. E.A.G.R. Amarasekara, J.

"This Court is of the view that the Defendants who claimed that there is a right of way over the property of the Plaintiffs failed in proving such right that exists over the Plaintiffs' property. As there is a presumption against the existence of a servitude and it is the burden on the party who claims the existence of a servitude to prove such existence of a servitude, even though there may be minor errors in the reasoning of the learned District Judge, the learned District Judge's final conclusion to grant relief as prayed for by the Plaintiffs is correct and must stand..." [p. 23]

31. *Wattewa Kankanamge Sirisena v. Wattewa Kankanamge Siripala (SC Appeal No. 25/2012, decided on 08.07.2025).*

Land Settlement Ordinance, No. 20 of 1931 – Validity of settlement orders published posthumously – Title dispute – Whether a discrepancy in the name ("watta" vs. "wattewa") invalidates settlement – Inheritance and partition – Devolution of title to heirs when settlement is finalized after the original claimant's death – Conclusive proof – Legal effect of gazetted settlement orders under section 8 of the Ordinance – Factual identity – Judicial determination of identity despite name variations in official documents.

Per Hon. Arjuna Obeyesekere, J.

"The purpose of entering into an agreement as provided for in Section 5(4)(c) is to recognise the claim of the person who responds to a Settlement Notice and is proof that the claimant shall be declared by a Settlement Order to be made under Section 5(5) at the end of the statutory scheme to be entitled either wholly or in part to any land specified in the settlement notice. Thus, there is a nexus that is established between such agreement and the Settlement Order that is to be made and published on a future date, with the Settlement Order having the ultimate force of law." [p. 14]

"Thus, the entitlement of a claimant to a particular land which is recognised through an agreement is formalised by the publication of a Settlement Order, vesting such land absolutely in such claimant, with such Order receiving the legal sanctity referred to in Section 8." [p. 15]

32. *Sinnalebbei Maraikar Mohamed Kaasim v. Athamlebbe Seiynutheen (S.C. Appeal No. 157/2014, decided on 25.07.2025).*

Rei vindicatio action – Identification of the land – Land permit for cultivation – Whether the Plaintiff fabricated documents or used undue influence to obtain his permit – The Plaintiff was granted ejectment but not a declaration of title – State land ownership.

Per Hon. Achala Wengappuli, J.

"It is trite law that, in a rei vindicatio action, it was for the Plaintiff to establish the identity of the land to which he claims title, and that the Defendant is in its possession." [p. 5]

33. *Premawathie and Another v. Tuan Mansoor (SC/APPEAL/35/2021, decided on 31.07.2025).*

Rei vindicatio action – Prescriptive – Adverse Possession – Leave and License – Land Settlement Ordinance – Section 160 CPC – Estoppel (sections 115 and 116 of the Evidence Ordinance) – Permissive Possession.

Per Hon. A.H.M.D. Nawaz, J.

"It is trite law that in a rei vindicatio action, the burden rests on the plaintiff to prove title to the property in dispute, regardless of any deficiencies in the defendant's case. In evaluating whether the plaintiff has discharged this burden, the defendant's case may become relevant—particularly where facts emerging from the defendant's evidence, whether alone or in conjunction with other established facts, support or confirm the plaintiff's assertion of title. Such facts may relate to the existence, non-existence, nature, or extent of any right, liability, or disability asserted or denied in the proceedings." [para 3]

34. *Mohamed Sufian Mohamed Faumi v. P.A. Sunila Kanthi Perera (S.C. Appeal No: 82/2017, decided on 21.03.2025).*

Landlord and tenant – Rent Act No. 7 of 1972 – Termination of tenancy – Contracting out of statutory protection – Agreement to vacate – Validity of settlement before Rent Board – Statutory protection of tenant – Section 22 of the Rent Act – Ejectment of tenant – Voluntary surrender of premises – Contract outside the Rent Act and its enforceability.

Per Hon. Sampath B. Abayakoon, J.

"It is the considered view of this Court that since the tenant has refused to voluntarily handover the premises to the landlord, the only manner under which he can be ejected from the premises would be under the provisions of section 22 of the Rent Act, and not by coming before the District Court on the basis of an agreement reached by the parties, where the tenant has agreed to vacate, but refused to do so." [p. 8]

35. *Kalidasage Kanchana Dilruksha Wijewardena v. Danee Kadinappuli Piyasiri Manawasinghe (SC/APPEAL/95/2021, decided 14.03.2025).*

Land ownership – Prescriptive possession – Declaration of title – Adverse possession – Overt act – Evidentiary value of documents – Indecent and scandalous questions to the witness – Importance of preservation of human dignity – Section 150, 151 and 152 of the Evidence Ordinance and section 176, 177 of the Civil Procedure Code.

Per Hon. Mahinda Samayawardhena, J.

"Given the facts and circumstances, the 1st defendant's exclusive possession of the land—without paying rent or acknowledging the title of any other party—for over 40 years prior to the institution of the action entitles him to claim prescriptive title to the land." [p. 15]

"Indecent and scandalous questions intended to insult or annoy witnesses are prohibited. It is the duty of the trial Judge to control the proceedings and ensure that the trial is conducted in accordance with the law, while maintaining the dignity and decorum of the court." [p. 11]

36. *D.S. Kumarasinghe v. Konara Mudiyanselage Piyadasa (SC/APPEAL/66/2022, decided on 05.03.2025).*

Declaration of title and ejectment of defendants – Duty of vendor upon transferring a immovable property – Vendee's right to sue for damages – The delivery of possession is not an indispensable requirement to pass title to the vendee – Even if an owner never had possession of a land in question it would not be a bar to a vindicatory action.

Per Hon. Mahinda Samayawardhena, J.

"The part quoted from the Deed does not make it a conditional transfer. The vendor has thereby only reiterated her common law obligation to warrant and defend the title in express terms. Upon the execution of a Deed of Transfer of immovable property in accordance with the law, title vests in the vendee, irrespective of whether possession is physically delivered. Consequently, the vendee inter alia acquires the right to institute legal proceedings for the ejectment of any party in possession of the land who lacks a lawful entitlement to remain. In this whole process, it is the duty of the vendor to warrant and defend the title of the vendee. If the vendor fails to discharge this duty when he is called upon to do so, the vendee can sue the vendor for damages" [pp. 3-4]

37. *Dewrage Punchihamy and Another v. Kalappu Arichchi Liyanage Somawathie (SC/APPEAL/132/2018, decided on 05.03.2025).*

Declaration of title and ejectment of defendants – Identification of boundaries to the land – Prescriptive title – Adverse passion – South African position discussed – Adverse possession is not synonymous with possession acquired or maintained through violent acts – Undisturbed and uninterrupted possession by a title adverse to or independent .

Per Hon. Mahinda Samayawardhena, J.

"In old deeds prepared without survey plans, it is quite common to identify boundaries using natural or physical features such as ditches, streams, bunds and trees. A boundary need not necessarily be a man-made wall or fence. Whether a discernible boundary exists is purely a question of fact to be determined based on the unique facts and circumstances of each case..." [p. 5]

"It must be emphasised that possession is not synonymous with possession acquired or maintained through violent acts. Even assuming, for the sake of argument, that it were, a possessor who resorts to violence cannot claim prescriptive title, as such possession would not be undisturbed and uninterrupted for the requisite period. The necessity of resorting to violence itself indicates that the possession has been subject to disturbance and interruption." [p. 7]

38. *W. Arthur Deepal Peiris v. Ranil Perera (SC/Appeal/37/2014, decided on 20.02.2025)*

Servitude – Natural flow of rainwater – Jus fluminis – Rights and duties of adjoining landowners – Prescription – Roman-Dutch law principles – Partition decree – Extinguishment of servitudes under Partition Law – Acquisition of servitude by prescription – Lower tenement's obligation to receive natural water flow – Obstruction of natural drainage – Meaning of "encumbrance" in sec. 48(1) of the Partition Law, No. 21 of 1977 – "Encumbrance" includes servitudes – Servitude to discharge rain water (ius fluminis) – Servitude by prescription – Urban development and modification of land – Right to discharge rainwater – Balance between property development and natural servitude – Importance of amicable solutions.

Per Hon. Mahinda Samayawardhena, J.

"Under Roman law and Roman-Dutch law, the possession of predecessors in title could be relied upon by a person who claims a prescriptive title. This principle continues under the Prescription Ordinance. Section 3 of the Prescription Ordinance allows a party to tack on to his possession the possession of "those under whom he claims" to satisfy the required ten-year period of possession..." [p. 4]

"The principle that a lower property is bound to receive water from an upper property implies that no person is entitled to interfere with the natural flow of water by altering its direction, increasing its volume or force, or concentrating it through the use of any artificial structure..." [pp. 11-12]

39. *Letchumy Suntharanathan v. Sellathangam Logitharajah (SC/Appeal194/2014, decided on 19.02.2025).*

Declaration of title – Ejectment – Leave and licence – Burden of proof – Possession and occupation – Prescription and adverse possession – Co-ownership and entitlement to undivided share – Section 3 of the Prescription Ordinance – Requirements for prescriptive title – Credibility and demeanour of witnesses – Appellate interference with findings of fact – Writing of judgment – Lack of analysis by appellate court (High Court) – Error of law in granting ejectment without declaration of title – High Court misdirection – District Court judgment restored.

Per Hon. Mahinda Samayawardhena, J.

"The judgment of the High Court lacks any analysis of the evidence led at the trial. At one point, it merely reiterates the well-established legal principle that a co-owner may institute an action to have his undivided share declared and to seek the ejectment of a trespasser. The District Judge has not stated anything contrary to that principle in the judgment. What the District Judge states is that the plaintiff is not the sole owner of the land, which is correct. The High Court does not explain the applicability of this principle to the facts of the case or make a determination on that matter. As I stated previously, the High Court only orders ejectment of the defendant without any finding on the soil rights. Reiterating well-established legal principles and citing judicial precedent in a judgment serves no purpose unless their relevance to the facts of the case is properly articulated." [p. 5]

40. *Gunaratne and others v. Land Reform Commission and others (S.C. Appeal No: 162/2013, decided on 08.09.2025).*

State Lands (Recovery of Possession) Act – Land Reform Commission – powers of Competent Authority – Quit notices – Vesting and statutory lease – Ownership dispute – Writ jurisdiction not applicable – Disputed facts – Alternative remedy – Compensation under section 12 of the Act.

Per Hon. Sampath B. Abayakoon, J.

"It is my considered view that the appellants who are seeking to claim ownership of the land have the option of going before a competent Court, where the said Court could have gone into their claim of ownership, and the claim of the State in terms of the Land Reform Law in deciding the matter. Apart from the above remedy, the petitioners will also have the remedy of filing action against the State in terms of section 12 of the State Land (Recovery of Possession) Act even if they were ejected from the land." [p. 14]

41. *Pathirana Arachchige Vipulasiri Ariyawansa v. Matarage Dona Kusumawathie (SC Appeal No: 153/2018, decided on 11.09.2025.*

Title to land – Competing deeds – Prior registration – Constructive trust – Declaration of title – Ejectment –

Cause of action – Relief not expressly prayed for – Section 33 CPC – Section 207 CPC – Multiplicity of actions – Finality of litigation (reipublicae ut sit finis litium)– Estoppel – Appellate jurisdiction – Appeal dismissed – Plaintiff's title and possession affirmed.

Per Hon. A.L. Shiran Gooneratne, J.

"The Code of Civil Procedure discourages multiplicity of action as it places an undue burden on the parties, consume judicial time, and may lead to conflicting decisions. As expressed in the common law interest reipublicae ut sit finis litium (it is in the public interest that litigation should come to an end) therefore, Courts must endeavor as much as practicable to dispose the dispute between the parties with a finality." [para 26]

42. *Abayagunasekera v. Malkanthi and others (S.C. Appeal No: 126/2015, decided on 04.09.2025).*

Declaration of title – Deed of transfer and mortgage – Section 92 Evidence Ordinance — Parole evidence rule – constructive trust – Laesio enormis – Prescription Ordinance, section 10 – Limitation period – Bona fide purchaser – Subsequent purchaser not bound – Knowledge of true value – Delay and waiver – Vindicatory action – Outright sale — certainty of transactions.

Per Hon. Sampath B. Abayakoon, J.

"In my view, the only way the defendants could have challenged the said deed of transfer would have been by pleading that although a deed of transfer was executed, the real purpose was not to pass beneficial interest of the property, but only as a security for a loan, by claiming the benefits of a constructive trust in terms of section 83 of the Trusts Ordinance.

I find that what the defendants have done in this action had been to make mere oral statements as to the intention of the parties, or to claim that the full consideration was not passed despite the fact that the deed of transfer speaks otherwise. It is my considered view that if a deed of transfer can be allowed to be challenged in the manner in which the Court held in favour of the defendants, there can be no certainty in such transactions. At no point in the answer of the defendants or by way of issues, the defendants have claimed a constructive trust" [pp. 12-13]

Trust

43. *Subramaniam Ramasamy and Another v. Soundararajan (SC/APPEAL/14/2024, decided on 27.08.2025.*

Religious and Charitable Trusts – Hereditary temple trust – Appointment of trustees – Attorney of trustee – Sections 75 and 76 of the Trusts Ordinance – Scope of beneficiary applications – Doctrine of approbation and reprobation – Estoppel – Validity of relinquishment and revocation of Power of Attorney – Role of courts in summary procedure.

Per Hon. Mahinda Samayawardhena, J.

"It is undisputed that the successive trustees permanently resided in India, and that the Trust Deed expressly provides for the appointment of a person in Sri Lanka as an Attorney to manage the affairs of the Kovil and its temporalities. In that context, the fact that Krishnamoorthy, as Attorney, managed the Kovil to the best of his ability while the trustee remained abroad, cannot, in itself, justify a claim to trusteeship either by him or by those supporting him. The Attorney functions solely as the representative of the trustee in Sri Lanka and is empowered to act only on behalf of the trustee in the management and administration of the Kovil and its temporalities. His authority is entirely derivative and does not confer upon him any independent right or claim to the office of trustee." [p. 8]

44. *Iyathurai Kulenthiran and Another v. Iyathurai Perinpanayagam (SC/Appeal/148/2018, decided on 04.07.2025).*

Constructive Trust – Consideration provided by another – Sections 5(2), 83 and 84 of the Trusts Ordinance – Money-lending transaction – Movable property as trust property – The transaction between the 1st Appellant and the Respondent held to be a money-lending arrangement and not a trust – The 2nd and 3rd Appellants failed to establish that the bus was held in trust for their benefit, as they did not directly contribute to the purchase consideration – Supreme Court exercised its discretion to amend the caption to correctly identify the Appellant parties.

Per Hon. S. Thurairaja, PC J.

"...a trust can be created in relation to movable property where certain conditions

are met. However, the question placed before this Court is not whether a trust in relation to movable property can be created under Section 5 of the Trust Ordinance, but whether learned Judges of the High Court erred in their analysis of Section 5." [para 35]

45. *Herath Mudiyanselage Priyanthi Winifreda vs Senarath Abeysiri Yamilawatte Panilatenna and Another (SC Appeal No. 89/2017, decided on 24.06.2025).*

Constructive trust – Outright transfer – Attendant circumstances – Sections 91 and 92 of the Evidence Ordinance – Sections 83, 84, 98 of the Trusts Ordinance – Prevention of Frauds Ordinance – Parol evidence – Beneficial interest – Sham transaction – Loan secured by immovable property – Reconveyance of property – Bona fide purchaser – Admission under section 58 of the EO – Section 65 and 66 of the Trust Ordinance: remedies to the beneficiaries.

Per Hon. K. Kumudini Wickremasinghe, J

"It is well accepted that a beneficiary under a trust has a personal remedy against a trustee for loss caused by a breach of the trust. Section 65 (1) of the Trust Ordinance provides an additional remedy to a beneficiary to follow the trust property into the hands of a third party where trust property has been disposed of by the trustee. This section enacts that where property comes into the hands of a third party inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust. Though the remedy available to the beneficiary is merely a declaration, this would effectively prevent the third party (transferee) from exercising his proprietary rights in respect of the property. It is significant that Section 66 (1) makes provisions for a third party to obtain the property free of the trust on proof of certain circumstances. This section lays down that nothing in Section 65 (1) entitles the beneficiary to any right in respect of the property in the hands of a transferee who in good faith for consideration purchases the property without notice of the trust either when the purchase money was paid or when the conveyance was executed." [p. 23]

46. *Ceylinco Securities and Financial Services Ltd (now Nation Lanka Finance PLC) v. Watawala Kankanamlage Mahesh Padmakumara and others (SC/APPEAL/191/2018, decided on 22.05.2025).*

Constructive trust (presumption) – Rights of the bona fide purchaser – Section 98 of the Trust Ordinance – Evidence of attesting witnesses.

Per Hon. Mahinda Samayawardhena, J

"More importantly, in the attestation, the notary in a separate paragraph further states that "I further certify and attest that the consideration herein mentioned was not paid in my presence." He does not state that the vendor and/or vendee claimed the consideration was paid previously. There is no evidence before Court that the 1st defendant purchased the property for valuable consideration. None of the witnesses gave any evidence regarding the consideration.

In accordance with section 98 of the Trusts Ordinance, "the rights of transferees in good faith for valuable consideration" remain unaffected. However, upon reviewing the evidence, I am not satisfied that the conditions of good faith and valuable consideration have been established to the satisfaction of the Court. Therefore, the 1st defendant's claim to protection under section 98 of the Trusts Ordinance cannot be upheld." [p. 6]

47. *Malagodage Thilakeratne v. Malagodage Iranganie and Another (SC Appeal No. 169/15, decided on 28.02.2025).*

Constructive Trust – Sections 5(3), 83, 84 of the Trusts Ordinance – Money-lending transaction – Transfer of property between siblings – Oral promise to reconvey – Estoppel: section 92 of the Evidence Ordinance – Attendant circumstances – Burden of proof under Sections 101–103 of the Evidence Ordinance – Non-payment of consideration – Trust not established.

Per Hon. S. Thurairaja PC J (for the majority)

"In spite of this general infirmity associated with informal promises to reconvey, a party may lead evidence of such a promise for the purpose of establishing a trust governed either by Section 5(3) or Chapter IX

of the Trust Ordinance. If not, as has been previously observed by this Court, said provisions of the Trust Ordinance effectively becomes nugatory." [para 24]

"The evidence of the Plaintiff-Appellant-Respondent with regard to the agreement to reconvey is probable, consistent and has been corroborated by two witnesses. There is no more than a bare denial by the 1st Defendant-Respondent-Petitioner-Appellant in this regard. As such, I am of the view that the Plaintiff-Appellant-Respondent has proved the existence of an agreement to reconvey on a balance of probability.

However, evidence of such an agreement per se is not sufficient to establish a constructive trust. There must be other attendant circumstances which indicates the establishment of a constructive trust." [para 36-37]

Constructive trust – Resulting trust – Sections 83 and 84 of the Trusts Ordinance – Indian position on constructive trusts and "obligations in the nature of trusts" examined – Automatic and presumed resulting trusts – Attendant circumstances and intention of parties – Transfer between siblings without consideration – Non-payment of purchase price as indicative circumstance – Legal and equitable ownership distinguished – Burden of proof and evidentiary presumptions – Sections 101, 106 and 114 of the Evidence Ordinance – Application of the '51 per cent test' for balance of probabilities discussed in Davies v. Taylor [1972] 3 WLR 801 (HL) – Duty to cross-examine and necessity to put one's case to the witness – Rule in Browne v. Dunn (1893) 6 R 67 (HL) – Failure to cross-examine leading to adverse inference – Resulting or constructive trust imposed under section 83 in favour of transferor.

Per Hon. A.H.M.D. Nawaz, J (dissenting opinion)

"Since it was the 1st Defendant asserting the payment, and the Plaintiff was asserting a negative—namely, non-payment—it is trite law that the Plaintiff cannot be called upon to prove a negative. Based on the rule of Roman Law - 'ei incumbit probatio, qui dicit, non qui negat' - the burden of proving a fact rests on party who substantially asserts the affirmative of the issue and not upon the party who denies it, for a negative does not admit of direct and simple proof. see the Indian case of Ranutrol Industries Limited v. Mr. Nauched Singh and Anr." [para 88]

"On the facts of the case a resulting trust arises on the basis of the common intention of the parties and there is no doubt that the brother was well aware that the property must be returned to the sister. In the circumstances, I hold quite compellingly that a declaration of trust must be made in favour of the Plaintiff and the 1st Defendant must be ordered to return the property back to the sister, as it is inequitable for the 1st Defendant to appropriate and convert it illegally as his own". [para 101]

PARTITION

48. *Senanayaka Amarasinghe Mohotti Appuhamilage Sumanawathi and others v. Subasinghe Dissanayaka Appuhamilage Piyaseeli and others (SC Appeal No: 248/2017, decided on 29.09.2025).*

Partition action – Ownership of land – Proof of deed – Section 68 Partition Law – Section 68 and 69 pf the Evidence Ordinance – Prevention of Frauds Ordinance – Due execution of deed – Attestation and notary's clerk evidence – Receipt of consideration – Admissibility of documents – Waiver of objections – Civil Procedure Code Amendment Act No. 17 of 2022 – Credibility of witness and party conduct – Impeachment of deed.

Per Hon. K. Kumudini Wickremasinghe, J.

"In the circumstances, I am of the view that reliance on the provisions of the Partition Law alone cannot suffice to impeach a deed without proper procedural compliance. It is well-established that an objection to documentary evidence must be taken not only at the time of tender but also maintained until the close of the case; failure to do so renders such objection of little avail as set out by the provisions of the civil procedure code. The Appellants contended that by virtue of section 25(2) of the Partition Law, a party seeking to challenge the validity of a deed is required to do so expressly by way of a statement of claim and by raising an appropriate issue, for it is only then that the Court is properly seized of the dispute. I am of the view that the section of the new amendment to the Civil Procedure code set out above that is applicable to the present case is Section 3 (a) (i) as the Appellant's

counsel failed to reiterate his objections at the end of the Respondent's case." [pp. 17-18]

49. *Saddatissa Athukorala v. Mohamed Hussain Mohamed Mubarak and others (SC Appeal No. 17/ 2018, decided on 19.09.2025).*

Partition Law – Sections 25, 26, 36, 75(1) and 79 of the Partition Law, No. 21 of 1977 – Section 207 of the Civil Procedure Code – Res judicata – Cause of action and issue estoppel Finality of the legal process – Functus officio – Maintainability of a second partition action after dismissal of the first for failure to prove title or identify corpus – Meaning of "decree" under the Partition Law – Dismissal without interlocutory or final decree.

Per Hon. Sobhitha Rajakaruna J.

"Finality is a fundamental and universally accepted requirement in judicial proceedings. Without it, the same issue or the cause of action could be endlessly relitigated, preventing resolution. The overarching principle of functus officio is central to determining whether parties should be limited to a single opportunity to litigate. Anyhow, I am of the view that when applying functus officio, the aim of the court should be to ensure finality while maintaining fairness in judicial proceedings..." [p. 16]

50. *Udage Arachchige Sirimal Kanthi Wickramasinghe and others v. Malawi Pathirennehelage Vajira Malkanthi (S.C. Appeal No. 211/2015, decided on 25.07.2025).*

...ion Law, No. 21 of 1977, Sections 26(2)(g) and 68 ...vidence Ordinance, Sections 68 and 90 – Admissibility and proof of deeds – Presumption of due execution of documents over thirty years old – Burden of proof where forgery is alleged – Effect of failing to call attesting witnesses – Prescriptive title among co-owners; requirement of ouster – Abandonment of prescriptive claim – Whether dismissal of plaintiff's case for want of proof of title was justified – High Court's power to draw presumption under Section 90 of the Evidence Ordinance..

Per Hon. Achala Wengappuli, J.

"In relation to the instant appeal, the genuineness of the deed 1V1 could be assessed by applying one of the ways, as identified by Coomaraswamy, i.e. by assessing the circumstantial evidence arising from the intrinsic evidence of the contents or by presumptions. The presumption that can be drawn in the circumstances adverted to in the preceding chapters in terms of Section 90 of the Evidence Ordinance was not rebutted by any of the 2nd to 6th Defendants and the trial Court should have accepted that evidence in the investigation of the title in relation to the 1st Defendant and allocated shares accordingly. In Sangarakkita Thero v Buddharakkita Thero (1951) 53 NLR 457, Rose CJ observed (at p.459) where the relevant witnesses were called " [T]here is, of course, a presumption that a deed which on its face appears to be in order has been duly executed, and it seems to me that the mere framing an issue as to the due execution of the deed, followed in due course by a perfunctory question or two on the general matter of execution, without specifying in detail the omissions or irregularities which are relied upon, is insufficient to rebut that presumption."

This observation made by the Rose CJ, has a direct relevance to the instant appeal. The trial Court already determined that the 2nd to 6th Defendants have failed to impeach the genuineness of the deed 1V1, which they sought to achieve by doing nothing, other than simply objecting to its reception as evidence and that too, as a mere tactical tool, to gain an advantage over the other litigants. In my view, adoption of this approach to determine the genuineness of the deed would not offend the Explanation to Section 154(3) of the Civil Procedure Code, which deals with the first question referred to in that section." [p. 13]

51. *Maddage Semapala v. Devika Weerakoon and others (SC Appeal No. 154/2012, decided on 23.07.2025).*

Partition Action – Deed Interpretation – Courts must discern the grantor's intent from the deed's language, avoiding absurdity – Burden of Proof – Appellant failed to substantiate claims of inheritance – Answering the issues: Non-answering of issues did not prejudice the Appellant, as the judgment comprehensively addressed all disputes.

Hon. Murdu N.B. Fernando, PC. CJ (as she then was)

"It is also observed that the learned trial judge, though he did not re-produce the issues or answer the issues one by one, in a twelve page judgement, has considered each and every link of the pedigree and thereby answered all points of contention in the body of the judgement. Based upon such entitlement, the learned trial judge referred the distribution and devolment of the shares, on all parties entitled to the shares in partitioning the land referred to in the plaint." [p. 12]

"Whilst I appreciate the judicial dicta laid down in the above referred judgements, that it is the duty of the judge to answer all issues raised at the trial and that bare answers to issues without reasons are not in compliance with the requirements of Section 187 of the Civil Procedure Code, upon reading of the instant trial court judgement, it is evident that the learned trial judge, has reviewed and examined the eleven points of contention. These points of contention are all in connection with the pedigree and devolution of title and share distribution. In the light of the totality of evidence led, the trial judge has considered each and every deed marked and produced. Thus, in my view, the learned trial judge has come to a correct finding in relation to share devolution." [p. 13]

52. *Karunanayaka Gurunnanselage Somathilaka v. Wilson Eheliyagoda and others (S.C. Appeal No. 17/2012, decided on 11.06.2025).*

Partion action – Examination of title under sections 25 and 26 of the Partition Law, No. 21 of 1977 – Land Settlement Ordinance, sections 8 and 9(2) – Roman-Dutch law maxim exceptio rei venditae et traditae – Requirement of traditio (delivery/possession) and effect of later-acquired title – Registration: first registration determines proper folio; effect of instruments registered in different folios – Competing chains of title – Settlement Order does not extinguish rights conveyed by earlier sale satisfying traditio; "free of encumbrances" in Section 8 construed – Court of Appeal correct to reject trial court's approach; re-trial order set aside – Plaintiff's partition action dismissed.

Per Hon. Achala Wengappuli, J.

"...the order of re-trial made by the Court of Appeal becomes a fruitless exercise, which consume valuable time of the trial Court for the reason that, if the Plaintiff had no valid title to the corpus, then he is not capable of maintaining a partition action in respect of the same. Thus, his action ought to be dismissed. This is more so, since the only substantive relief sought by the 2nd and 3rd Defendants too was the dismissal of the Plaintiff's action. Therefore, this Court sets aside the segment of the judgment of the Court of Appeal, by which it ordered that the instant matter be remitted back to the District Court for consideration of the validity of the claim of acquisition of a prescriptive title to the corpus by the two Defendants. I am in full agreement with the rest of the judgment and its conclusion to set aside the judgment of the District Court, delivered in favour of the Plaintiff." [pp. 30-31]

53. *Malani Chandralatha v. Ampe Mohottige Podihamine (SC/Appeal/99/2016. Decided on 14.05.2025)*

Partition action – Section 70 of the Partition Law – Non-prosecution of partition actions – Duty of the parties and the judge – Section 337 of the Civil Procedure Code – 'Executable decree' – Whether an interlocutory decree (dividing the shares) in a partition action an executable decree.

Per Hon. Mahinda Samayawardhena, J.

"A dismissal of a partition action for want of prosecution is a rare occurrence. For practical purposes, all parties in a partition action are plaintiffs. A party who appears as a defendant today may take steps as a plaintiff tomorrow, to prosecute the action to finality. If that party fails to do so with due diligence, the Court may permit any other defendant to continue the prosecution of the action. The judgment in a partition action is, in essence, the result of a collective effort by the plaintiff, the defendants, and the District Judge." [pp. 4-5]

"Although the 2(b) defendant heavily relies on section 70(2), the provisions of section 70(2) must be read subject to section 70(1), and not in isolation. Section 70(1) is not confined to the original plaintiff. It applies to any party— whether plaintiff or defendant—who undertakes to prosecute the action. If such a party fails to take steps for a period of two years, dismissal of the action

is not automatic. In the first place, an application must be made to Court by a party to the action or by any person claiming an interest in the land to be partitioned, by way of motion with notice to the other parties. Upon hearing the parties, the Court "may dismiss" the action only "if it is satisfied that dismissal is justified in all the circumstances of the case." [vide p. 5]

"Section 337(1) applies only to an executable decree. An Interlocutory Decree in a partition action is not an executable decree; it merely determines, inter alia, the undivided shares of the parties in the corpus. It is only the Final Decree of Partition that is executable. In the present case, the plaintiff never sought to execute the Interlocutory Decree." [p. 7]

54. *Mohammed Faiys Mufeez Arfath v. Selladore Pathmanathan and Another (SC/Appeal/148/2023, decided on 03.05/2025).*

Partition action – Short ex parte judgment – Judgment limited to three simple sentences, does not constitute a judgment in the eyes of the law – Sections 85 and 187 of the Civil Procedure Code – A final decree entered in a partition action cannot be challenged collaterally – Section 48 and 49 of the Partition Law.

Per Hon. Mahinda Samayawardhena, J.

"The purported ex parte judgment of the District Court, limited to three simple sentences, does not constitute a judgment in the eyes of the law. It blatantly violates sections 85 and 187 of the Civil Procedure Code.

More importantly, a final decree entered in a partition action cannot be challenged collaterally. Section 48 of the Partition Law underscores the finality and conclusiveness of partition decrees while providing limited circumstances under which they may be challenged (Fernando v. Marsal Appu (1922) 23 NLR 370, Mohamedaly Adamjee v. Hadad Sadeen (1956) 58 NLR 217, Madurapperuma v. Wijesundara [2019] 1 Sri LR 512). Additionally, section 49 of the Partition Law allows for the recovery of damages if there was a failure to name a person as a party to the action. In appropriate cases, the invocation of revisionary jurisdiction presents another popular avenue for challenging partition decrees. The appellant has not directly challenged the partition decree through any of these methods." [p. 4]

Pleadings, Amendment of Pleadings

55. *Rajapaksha Appuhamilage Lionel Ranjith v. Suraweera Arachchige Dona Leelawathi and others (SC/Appeal/100/2020, decided on 14.05.2025).*

Pleading – Role of the judge – Amendment of pleadings: section 93 of the Civil Procedure Code – Amendment of pleadings after the case is fixed for pre-trial conference – Defendants filed amended answers on the pre-trial date and the District Judge rejected them – High Court of Civil Appeal allowed the Defendants' appeal and directed the District Judge to accept the amended answers – Plaintiff appealed to the Supreme Court – Addition, deletion, misjoinder and non-joinder of parties and causes of action – Laches as an equitable defence – Negligence and mistake – Rules 10 and 15 of the Supreme Court Rules (Duty of the Attorney-at-Law to exercise due diligence) – Access to justice – Case management.

Per Hon. Mahinda Samayawardhena, J.

"Under the present law, amendments are permitted only before the day first fixed for the pre-trial conference of the action, except in exceptional circumstances falling within section 93(2)." [p. 7]

"Once the plaint or answer is filed, the Court may, ex mero motu, return it for amendment without accepting it. Sections 46 and 77 of the Civil Procedure Code are relevant in this regard." [p. 8]

"Section 93(1) applies when an application to amend pleadings is made by a party before the day first fixed for pre-trial of the action or, as amended by Act No. 29 of 2023, before the day first fixed for pre-trial conference of the action." [pp. 10-11]

"Once pleadings are accepted, the Court cannot, ex mero motu, amend pleadings. Only a party to the action may make such an application, in the presence of, or with reasonable notice to, all other parties to the action. The Court must first hear the parties before making a decision." [p. 11]

"The law is now settled that the provisions of section 93(2) of the Civil Procedure Code are intended to address amendments to pleadings after the day first fixed for pre-trial conference of the action, arising from unforeseen circumstances." [p. 27]

"When compared with other common law jurisdictions, it is evident that Sri Lanka adopts a more stringent approach to the amendment of pleadings. However, recent global trends indicate a gradual shift in the same direction" [p. 31]

"[T]hese developments across jurisdictions reflect a growing recognition that belated applications for amendment of pleadings can undermine timely justice and burden the system. The emphasis is increasingly on balancing individual fairness with the effective functioning of the justice system, reinforcing the principle that access to justice includes not only the right to be heard, but also the right to timely resolution." [p. 38]

See further, on the duty of due diligence of an Attorney-at-Law in civil proceedings: M.H. Saman Wijesekera and Another v. People's Bank (SC Appeal No. 191/2017, decided on 30.10.2023).

Civil Procedure – Appeal dismissed for non-appearance – Failure of both appellant and attorney to appear – Application to re-list – Duty of the court to consider merits under section 769(2) of the Civil Procedure Code – Meaning of "hearing" under section 769(1) – Negligence of Attorney-at-law imputable to client – Absence of sufficient cause for default – Standard of due diligence – Judicial discretion in reinstatement – Responsibility of legal representatives – Interest of justice.

Per Hon. K. Kumudini Wickremasinghe, J.

"In the present case, the reason that the attorney was out of Badulla on the day that the case was taken cannot under any circumstance be excused. Therefore, I am of the opinion that every 'calling date' of a case must be considered as a date for 'hearing' under Section 769 (1) of the Civil Procedure Code and the second question of law must also be answered in negative." [p. 13]

56. *Hapu Arachchige Ariyadasa v. Wariyapperuma Appuhamillage Prematileke (SC/Appeal/231/2017, decided on 29.07.2025).*

"Judgment" – Section 774(2) of the Civil Procedure: points for determination, decision and reasons – Section 187 of the Civil Procedure Code: requirements for a trial judgment – Appellate court may adopt and approve trial judge's reasoning – Failure to answer some issues not fatal if reasons appear in the judgment – Issues must reflect the real controversy between parties – Pleadings and prior admissions – Proviso to article 138(1) of the Constitution: no reversal unless prejudice or failure of justice is shown.

Per Hon. Mahinda Samayawardhena, J.

"In order to constitute a valid judgment, it is not sufficient merely to repeat the cases advanced by the contending parties and state the final decision. The court must clearly identify the actual points for determination, record its findings on each such point, and, most importantly, set out the reasons that underpin those findings. A judgment that fails to disclose the reasons for the decision is no judgment in the eyes of the law" [p. 7]

"Where the points in contest or the issues have been considered and addressed with reasons in the body of the judgment, the failure to answer certain issues, or the answering of some issues in a manner inconsistent with such findings, does not, per se, vitiate the judgment..." [p. 9]

"However, what has been stated herein should not be construed as a licence to disregard the mandatory requirements set out in section 187 and section 774(2) of the Civil Procedure Code. The applicability of the proviso to Article 138(1) of the Constitution must be determined by the appellate court, having regard to the particular facts and circumstances of each case" [p. 16]

"In the present case, while it appears that the learned District Judge inadvertently failed to answer certain issues, it is evident that such omission has not prejudiced the plaintiff's substantial rights nor has it resulted in a failure of justice" [p. 16]

57. *Uthuwan Pathirannehelage Karunadasa v. E.M. Kamalawathi and others (SC Appeal No. 35/2024, decided on 07.07.2025).*

Amendment of decree – Accidental slip or omission – Conformity of decree with judgment – Section 189 of

the Civil Procedure Code – District court may amend a decree to add consequential relief necessary to give effect to the judgment.

Per Hon. P. Padman Surasena, J. (as he then was)

"I am also of the view that the learned District Judge, by his order dated 29-04-2021, rightly allowed the application of the Plaintiffs to amend the decree to include the land in extent of 14.62 perches, instead of the land in extent of 10.625 perches in accordance with Section 189 of the Civil Procedure Code..." [p. 11]

Jurisdiction of the Provincial High Courts of Civil Appeal

58. *Jinasena (Pvt) Ltd. v. L.S.I. Fernando (SC Appeal No. 30/2023, decided on 03.07.2025).*

Provincial High Court of Civil Appeal Jurisdiction "within the province" (sections 3 and 5A(1) of Act No. 19 of 1990) – Whether Colombo Provincial High Court of Civil Appeal had jurisdiction over a revision from the Wattala Labour Tribunal – Absence of territorial allocation rules among PHCs – Forum shopping/bench hunting: need to prevent abuse – Forum conveniens and administrative transfer – Gazette Extraordinary No. 1679/40 (10.11.2010) - Judicial zones as guide – Distinguishing the broad reading in Jayaseeli v. Dayawathi; Alignment with JMC Jayasekara Management Centre v. CGIR – Appeal allowed pro forma – Revision directed to Gampaha Provincial High Court of Civil Appeal.

Per Hon. Sobitha Rajakaruna, J.

"I take the view that adopting strict and literal interpretation of Sections 3 and 5A (1) of the said Act No. 19 of 1990, which suggests that an order or judgement from a court of first instance in a Province can be challenged in any High Court within that same Province, will foster 'forum shopping'/ 'bench hunting'; lead to an imbalanced workload; cause inconvenience to litigants; create jurisdictional ambiguity; and result in administrative disarray. Additionally, 'forum shopping'/ 'bench hunting' may erode judicial impartiality and foster perceptions of bias. If the appellate and revisionary work is not systematically assigned, the High Courts face disproportionate caseloads, aggravating the delays in many pending cases. Such interpretation as mentioned above will eventually hamper the structure of the Court system amplified through the orders made by the relevant Minister demarcating judicial zones etc. Hence, adopting the rationale expressed above, it could be advocated that the forum conveniens for the appeal in this situation would be the Provincial High Court of the Western Province holden in Gampaha [based on the Gazette Notification No. 1679/40 dated 10.11.2010 (as amended)" [pp. 12-13]

"I take the view that when an appeal or a revision application is irregularly filed, such a case should be administratively transferred to the relevant Provincial High Court within the respective Province, following (a) the reasons adduced in this Judgement and (b) the Order (as amended) published in the Gazette Extraordinary No.1679/40 dated 10.11.2010." [p. 13]

Arbitration

59. *Sinhaputhra Finance PLC (and now LOLC Finance PLC) v. Chandrapatti Mohottilage Mahanthe Gedara Chndrarathna Banda (SC/Appeal 08/2021, decided on 01.07.2025).*

Arbitration Act No. 11 of 1995 – Commercial Disputes – Section 32(1) of the Arbitration Act – Arbitration Award – Finality and enforcement under the Act – Jurisdictional error – High Court's lack of authority to set aside award without section 32 application – Time-barred challenge – Failure to file section 32 application within 60 days – Improper invocation to circumvent arbitration procedures – Factual Disputes – Non-justiciability in enforcement proceedings – Primacy of arbitral autonomy and limited judicial intervention – Section 839 of the Civil Procedure Code – No re-examination of (primary) facts.

Per Hon. S. Thurairaja, PC J.

"In view of the foregoing, this Court is compelled to conclude that the High Court has erred in interfering with the arbitral award in the absence of an application under Section 32(1) of the Arbitration Act. Accordingly, this Court takes the view that the learned High Court Judge had no jurisdiction to set aside the arbitral award in the course of determining the appellant's

application made under section 31 (1) of the Act to enforce the arbitral award." [para 34]

"In any event, at the time of making the application in question, the Respondents could not have maintained an application under Section 32(1) of the Act to set aside the arbitral award, as such an application would have been time-barred. Section 32(1) clearly stipulates that an application to set aside an arbitral award must mandatorily be made within sixty days of the party concerned receiving the arbitral award." [para 35]

"In the present case, the Respondents failed to act within this prescribed period. The judgment enforcing the arbitral award was delivered by the Commercial High Court on 8th December 2017, whereas the Respondents filed their application by way of Petition and Affidavit only on 1st October 2018-approximately 297 days later." [para 37]

60. *Sri Lanka Ports Authority v. Daya Constructions (Private) Limited (S.C. (Appeal) No. 35/2012, decided on 14.05.2025).*

Arbitration – Enforcement of arbitral award – Section 31(1) of the Arbitration Act, No. 11 of 1995 – Necessity of a formal application for enforcement – Section 32(1): setting aside of award – Distinct and exclusive jurisdictions – Section 40: petition and affidavit procedure – Enforcement cannot be granted through a prayer in statement of objections – section 35(1): consolidation of applications to enforce and set aside – Lack of jurisdiction of High Court to enforce award in a section 32 proceeding – Appeal allowed; enforcement order set aside; award not enforceable without proper section 31 application.

Per Hon. Janak De Silva, J.

"The Act was enacted inter alia to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Convention). Article III of the Convention embodies the pro-enforcement policy of the Convention. The final text of Article III achieved a balance solution that permits each Contracting State to apply its own national rules of procedure to the recognition and enforcement of foreign arbitral awards, while guaranteeing that such recognition and enforcement will comply with a number of fundamental principles. The first principle is that, while the recognition and enforcement of foreign arbitral awards under the Convention shall be conducted "in accordance with the rules of procedure of the territory where the award is relied upon", the "conditions" under which recognition and enforcement of foreign awards can be granted are exclusively governed by the Convention [UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), 2016 Edition, page 77]." [pp. 5-6]

61. *Softlogic Finance PLC v. Kollurage Priyanka Don Kollurage (SC Appeal No. 43/2024, decided on 24.07.2025).*

Arbitration – Enforcement of Arbitral Award – Application under Section 31 of the Arbitration Act – No Application to set aside award – Objections limited to procedural compliance – Party autonomy – Minimal curial intervention – Fraud allegations – High Court's jurisdiction – Authenticity of award and agreement – Judicial error in requiring additional documents.

Per Hon. Arjuna Obeyesekere, J.

"The Act does not confer a party dissatisfied by an arbitral award a right of appeal against such award. The Act however contains provision that enable such a party to make an application to the High Court to set aside the award on limited grounds specified in the Act - vide Section 32. The Act also provides for the party in whose favour the award has been made to make an application to enforce the award and sets out the very limited circumstances in which enforcement may be refused - vide Section 31. These are the only remedies that are provided to both parties post award in an arbitration conducted in Sri Lanka.

I must also state that Section 40(1) sets out the procedure that must be followed when making an application under the Act to the High Court inclusive of applications under Sections 31 and 32. Section 40(2) provides that, "upon the petition and affidavit being presented to the court it shall by order appoint a day for the determination of the matter of the petition and grant the parties named as respondents to the petition a date to state their objections, if any, ...". Thus,

once an application is made, the respondent is entitled to notice of such application and the right to state its objections to such application, with the scope of such objections in an application for the enforcement of an award dependant on whether the party against whom the award is sought to be enforced has acted in terms of Sections 32." [p. 6]

Law of Delict

62. *Siril Jayawardena Karunaratne v. Nisha Kanthi Peiris (SC/Appeal: 123/2019, decided on 31.10.2025).*

Actio Injuriarum – Malicious Prosecution – Animus Injuriandi – Reasonable and probable Cause – Malice – Private Plaint – Section 73, Primary Courts Procedure Act – Acquittal on technicality – Abuse of process – Burden of proof – Good Faith – Vindication of rights – Action failed.

Per Hon. Hon. A.L. Shiran Gooneratne, J.

"Under the Roman-Dutch law, the concept is not confined to the strict elements of malicious prosecution as developed under English law. It is sufficiently flexible to encompass claims founded upon any misuse or abuse of the legal process. Cooray v Fernando [1941] 42 NLR. 329, distinguishes Roman-Dutch law from English law, noting that the former allows actions for malicious proceedings beyond formal prosecutions, including maintenance claims and other civil processes." [p. 6]

63. *Dr. Prathap Ramanujam v. Athauda Arachchige Patrine Dilrukshi Dias Wickremasinghe (S.C. Appeal No. 88/2024, decided on 04.06.2025).*

Injuria – Deprivation of opportunities for career progression – Article 61A of the Constitution – Jurisdiction of the District Court – Whether Article 61A ousts the jurisdiction of the Courts to adjudicate upon a 'decision' or 'order' of the Public Service Commission – Qualified and absolute immunity – Constitutional ouster clause – Distinction between immunity and ouster – Official act vs. private act – Marginal notes.

Per Hon. Achala Wengappuli, J.

"Not only the President of the Republic is conferred with immunity, of course subject to the certain limitations, there are certain other individuals and public bodies too who were granted such immunities by specific statutory provisions enacted for the said purpose. Article 111K conferred immunity to the members of the Judicial Service Commission and several others, who are specified in that Article, from any legal proceedings by stating that no suit or proceeding shall lie against them for any lawful act done in good faith in the performance of their duties. Similarly, the judicial acts too are made immune from litigation process..." [p. 22]

"The Plaintiff, in instituting action before the District Court, was acting under a mistaken perception that it was the individual decisions of the Defendants (which she alleges as taken in mala fide) that resulted in her interdiction from the public service and the eventual placement of her on compulsory leave, which, in my opinion, could be not be accepted as a correct proposition both factually and legally...." [p. 44]

"In terms of Article 61A, the District Court is clearly deprived of its ordinary jurisdiction to maintain the Plaintiff's action against the members of the PSC and the question of the legality of the said action proceeding along notwithstanding the fact that leave was granted on the question of jurisdiction too must be determined against her. If the District Court has no jurisdiction to entertain such an action, there is no question of continuing with the same, even if the High Court of Civil Appeal directed the original Court to do so. In any case, I do not think the High Court of Civil Appeal acted correctly in that instance, when it made the direction under Section 755(5) of the Civil Procedure Code, as that Section caters to a totally different scenario." [p. 60]

64. *B.J. International Pvt Ltd v. National Medicines Regulatory Authority (SC/CHC/Appeal/38/2022, decided on 21.05.2025).*

Negligence and malice – Action for damages against a statutory authority – Delay in issuing import licences for medical devices – National Medicines Regulatory Authority Act No. 5 of 2015, section 143(2) – Statutory immunity for acts done in good faith – Whether an action based on malice (dolus) maintainable – Distinction between culpa (negligence) and dolus (malice) – Requirement to plead and prove malice with particularity – Liability of statutory bodies – Vicarious liability for malicious acts of servants – Absence of identified wrongdoer – Want of cause of action – Jurisdiction of Commercial High Court – Affirmation of dismissal of action.

Per Hon. A.H.M.D. Nawaz, J.

"No averment has been made in the pleadings, nor has any issue been raised, identifying any particular individual within the Defendant's legal entity as having maliciously or wrongfully caused the alleged delay in the grant of licences. A bare allegation of malice directed at a corporate entity, without specifying the individuals - the directing minds or agents who are said to have committed the impugned acts, is insufficient. In the absence of such identification and without establishing a delictual nexus between those individuals and the statutory body, the claim cannot be sustained." [p. 8]

65. *Batuwanthudawa Kankanamge v. Muthuwahandi Lamber and others (SC APPEAL No. 167/2018, decided on 19.02.2025).*

Negligence – Vicarious liability – Fatal accident – Death of passenger due to terrorist bomb explosion inside passenger bus – Liability of bus owner, driver, and conductor – Duty of care during period of terrorist threat – Failure to follow security instructions – Employment of unlicensed and inexperienced conductor – Direct and vicarious negligence – Calculation of damages – Pecuniary loss to dependants – Life expectancy – Whether damages awarded by District Court excessive – Revision of quantum of compensation – Appeal partly allowed.

Per Hon. E.A.G.R. Amarasekara, J.

"...the age of the 1st Plaintiff-Respondent as at the time of the death of the deceased was about 58 years and the age of the 2nd Plaintiff-Respondent was about 61 years. If it is considered that, in general, life expectancy in this country is 70 years, the pecuniary loss due to the death of the deceased for the 1st Plaintiff-Respondent would last for 12 years and for the 2nd Plaintiff-Respondent would last for 9 years. As per the evidence, the mentally retarded brother's (3rd Plaintiff-Respondent) age at the time of the death of the deceased was about 17 years and if it is considered that the deceased, if lived, could have looked after the said brother till the deceased normally retires from service at the age of 60, the pecuniary loss to the brother would last for about 37 years." [p. 11]

66. *Francis Milton Kevin Noronha v. Diesel & Motor Engineering Co. Ltd (SC/CHC/APPEAL/39/2014 with SC/CHC/Appeal/39A/2014, both decided on 23.05.2025).*

Negligence – Duty of care – Motor vehicle entrusted for repairs – Damage caused by employee's negligence within employer's premises – Vicarious liability – Liability of employer for negligent acts of employee in the course of employment – Quantum of damages – Method of assessment – Whether entire cost of vehicle recoverable or limited to cost of restoration – Mitigation of damages – Proof of special damages and consequential loss – Market value and replacement cost – Legal interest – Right to return of damaged vehicle or its value.

Per Hon. E.A.G.R. Amarasekara, J.

"On that basis the learned Judge had come to the conclusion that the total damage is around Rs. 61 million. It must also be kept in mind that basically the Court has to decide the rights of the parties as at the date of the Plaint. However, in my view, there is an error in calculation of damage to the vehicle in terms of the total expenses borne by the Plaintiff on the vehicle. Calculation of damages in that way may be correct if there is a finding that the vehicle was condemned fully or that it cannot be handed over to the Plaintiff after full restoration due to a fault of the Defendant at the date of the Plaint. As per the evidence at page 139 of the brief, it appears that the damaged vehicle is still at the Defendant's workshop. It must be noted that the damaged vehicle is the property of the Plaintiff, if he left it at the place of the Defendant, owing to the fact there was no settlement after the accident, any deterioration that may occur due to that cannot be accrued to the Defendant, as, subject to claiming damages for any harm caused, it is the responsibility of Plaintiff to take care of his property if it was not going to be re-

paired by the Defendant according to his terms. The Plaintiff cannot be allowed to take up a position that until the Defendant agrees to his terms, the damaged vehicle should remain at the workshop of the Defendant and the Defendant should be responsible for any deterioration till the dispute is resolved." [pp. 8-9]

67. *Udaya Athula v. Wadutantirage Verjiniya Shirani Fernando and others (SC Appeal No. 143/2018, decided on 25.03.2025)*

Aquilian action – Death by negligence – Wrongfulness – Elements – Dependent's action – Damages – Contributory negligence – Section 3 of Contributory Negligence and Joint Wrongdoers Act, No. 12 of 1968 and its application in dependent actions cases – "Neighbour principle" established in Donoghue v. Stevenson – Boni mores test – Relevancy of defendant's (criminal) guilty plea – Calculation of damages – It is not proper to reduce the compensation on a point not raised or argued by the parties.

Per Hon. K. Kumudini Wickremasinghe, J.

"It is quite clearly established as a principle of Roman Dutch Law that the family of the deceased can still bring an action regardless of contributory negligence on the part of the deceased, if the negligence has caused the death of the deceased." [p. 14]

Per Hon. E.A.G.R. Amarasekera, J.

"Then it is clear as per the Roman-Dutch Law, our Common Law, contributory negligence of the deceased cannot be used to defeat or reduce a claim made by the dependents of the deceased based on a cause of action accrued to the dependents, themselves. This may not be so, if they have been substituted to the claim of a deceased plaintiff, or they claim their compensation as part of one that should be accrued to the deceased estate or the dependents are vicariously liable for the alleged acts of the deceased. The present case at hand is one filed on a cause of action accrued to the dependents which caused pecuniary loss to them due to death of the deceased for which the Negligence of the Defendant contributed." [p. 22]

68. *Weerasinghe Kankanamge Weerasinghe v. Ratnasiri and Another (S.C. Appeal No. 62/2014, decided on 30.10.2025).*

Aquilian action – Acid attack – Private defence and self-defence – Distinction between Penal Code, sections 89, 90, 92(4) and Aquilian liability – Wrongfulness as essential element – Comparative jurisprudence (South African law) – Boni mores test – Justification in civil delict – Burden of proof on defendant – Requirements of lawful defence: aggressor, necessity, proportionality – Excessive force –– Evidence Ordinance ss. 41A(2), 102, 114(f) – Appellate review of factual findings – Role of trial judge in credibility assessment – Appeal dismissed.

Per Hon. Janak De Silva, J.

"...the right of private defence expounded in the Penal Code and the right of private defence available as a defence to an Aquilian action must not be equated." [p. 7]

"It is trite law that, under any perspective of the fundamental elements of an Aquilian action, the wrongfulness of the defendant's conduct is invariably recognized as an essential requirement." [p. 8]

"In a Lex Aquilian action, the Respondent is not liable to pay damages if the Respondent can justify his actions as being lawful. Where the act of the Respondent is one made in the exercise of his right of private defence, it must be established that the defence was directed against the aggressor, that the defence was necessary to protect the threatened right and the act of defence was not more harmful than is necessary to ward off the attack." [p. 14]

69. *De Alwis v. Sandanayake and Another (SC/APPEAL/76/2017, deiced on 13.06.2025).*

Accident – Negligence – Vicarious liability – Employer-employee relationship admitted – Ex parte judgment – Burden of proof – In an ex parte trial, the plaintiff need only establish a prima facie case – Minimal evidence required – Relevance of criminal conviction – Defendant driver pleaded guilty in the Magistrate's Court – Doctrine of res ipsa loquitur.

Per Hon. Mahinda Samayawardena, J.

"Merely because the driver of the other bus pleaded guilty to the charge of negligent driving—knowing well that the court would

impose only a nominal fine of Rs. 1,500— the 1st defendant cannot be exonerated, particularly when he did not contest the plaintiff's assertion that he too was liable for negligent driving." [pp. 5-6]

70. *Colombo Municipal Council and Another v. Sarosha Mandika Wijeratne (SC Appeal 117/2016, decided on 21.02.2025).*

Aquilian action – Negligence – Vicarious liability – Liability of employer for acts of employee – Course of employment – Unauthorized or prohibited acts – Master and servant relationship – Application of the maxim res ipsa loquitur – Issues and pleadings – Absence of issue on contributory negligence – Section 75(d) of the Civil Procedure Code – Contributory negligence as a specific defence – Requirement to plead and raise as an issue – 'All-or-nothing approach', 'last opportunity', and 'proximate cause' discussed – Section 3(1) of the Contributory Negligence Act – Power to apportion damages only when contributory negligence is specifically pleaded.

Per Hon. Janak De Silva, J.

"Notwithstanding this academic debate, it can be safely said that the maxim [res ipsa loquitur] does not relieve the plaintiff of the burden of proving negligence. Neither does it raise any legal presumption in his favour. It applies to the method by which a plaintiff can advance an argument for purposes of establishing a prima facie case to the effect that in the particular circumstances the mere fact that an accident has occurred raises a prima facie factual inference that the defendant was negligent. How cogently those facts speak for themselves will depend on the facts and circumstances of each case..." [p. 31]

71. *Gunawathi v. Anuradha Lakmini (SC Appeal No: 143/2017, decided on 20.06.2025).*

Motor accident – Damages – Interest on decreed sums – Section 192 of the Civil Procedure Code – Judicial discretion in awarding interest – Compensation for litigation delays – Equity – Section 34 of the Indian Civil Procedure Code (1908) cited – Whether the learned judges of the High Court erred in rejecting the statement of objections filed by the defendant – Whether the grant of interest was proper when there was no pronouncement on interest in the judgment.

Per Hon. K. Kumudini Wickremasinghe, J.

"Section 192(1) confers a substantive and continuing discretion upon the court to award interest, not merely as a procedural formality, but as a measure of economic justice and fairness to compensate a party who has been kept out of money due to delay in payment. The purpose of this discretion is to prevent unjust enrichment and to ensure that the value of money is preserved, particularly in commercial and monetary claims. The presumption in Section 192(2), that a decree silent on post-decree interest amounts to a refusal, should not be applied inflexibly. Courts must have the flexibility to interpret their own judgments in light of the full record and context. Where the decree includes interest, and there is no express or implied refusal in the judgment, it can be argued that the court intended to exercise its discretion affirmatively, especially when interest is justified by statute, contract, mercantile custom, or equity." [at p. 11]

Fundamental Rights

72. *Ayumi Kalpana Manawadu v. University of Peradeniya and others (S.C. (F.R) Application No. 130/2016, decided on 16.10.2025).*

Universities Act – Statutes and Regulations – Primacy of Statute – Academic awards – "E.O.E. Pereira Gold Medal" (University of Peradeniya) – Scholastic and extra-mural excellence – Criteria for selection – Supplementary guidelines and marking schemes – Procedural impropriety – Faculty Board and Senate – Selection panel composition – Deviation from prescribed scheme – Interview not conducted but marks allocated – Arbitrariness – Legitimate expectation – Transparent and consistent evaluation – Equality before the law – Article 12(1) of the Constitution – Time-bar under Article 126(2) – Quashing of award.

Per Hon. Janak De Silva, J.

"The allocation of marks for an interview that was never held is manifestly unreasonable and arbitrary. To award a candidate the full 10 marks, while another received only 8, despite no interview being conducted, is a decision no reasonable authority could have made. To award additional marks under this head, even for a legitimate achievement such as a faculty prize, is to alter the purpose of the category and

to blur the boundaries of assessment. While it may be desirable to recognise unaccounted achievements, doing so under the guise of "interview marks" is both arbitrary and unreasonable. If prizes or awards merited recognition, they should have been expressly incorporated into the scheme, rather than accommodated in an improvised and inconsistent manner. Such an approach undermines the integrity and transparency of the process and taints the entire process." [p. 52]

"In the academic context, we are cautious before interfering with qualitative judgments but will intervene where the decision is manifestly arbitrary or lacks any rational basis..." [p. 53]

"Universities, in conferring medals of this nature, must ensure that criteria are transparent, uniformly applied, and publicly available in advance. This Court therefore strongly recommends that the University of Peradeniya takes appropriate steps to formulate and publish clear regulations governing the award of the E.O.E. Pereira Gold Medal, so that future recipients are selected through a process that is fair, consistent, and beyond reproach..." [p. 56]

73. *Vithanage Sunil v. L.P.B. Samarasinghe, Inspector of Police, The Officer-in-Charge, Kottawa Police Station and others (S.C. (FR) No. 259/2016, decided on 10.10.2025).*

Torture – Cruel, inhuman and degrading treatment – False arrest – Arbitrary detention – Fabricated charges – Police misconduct – Equality before the law – Article 11 – Article 12(1) – Article 13(1) of the Constitution – Medical evidence – Eyewitness corroboration – Compensation – Personal liability of police officers – Supreme Court ordered the 1st to 6th Respondents to pay compensation of Rs. 1,000,000 personally, holding them individually liable for the violation of the petitioner's fundamental rights.

Per Hon. Menaka Wijesundera, J.

"According to the Police B Report submitted in this matter, it is noted that the Police had received information regarding the suspect. The said report fails to disclose the nature of the information received and due to its vague nature, it cast's a doubt on the veracity of the information received..."

"I am of the opinion that the sequence of events, including the failure to produce the Petitioner before the JMO immediately after arrest, the contradictory medical reports and the corroborative affidavits of eyewitnesses, casts significant doubt on the veracity of the version set out in the Police B Report. While the report suggests that the Petitioner was lawfully apprehended with heroin in his possession, the surrounding circumstances strongly suggest that there is good reason to doubt the validity of the report." [p. 8]

74. *Ven. Welimada Dhammadinna Bhikkhuni v. Sarath Kumara, Commissioner General, Department of Registration of Persons and others (SC/FR/218/2013, decided on 16.06.2025).*

Right to equality – Article 12(1) – Religious freedom - Article 14(1)(e) – Bhikkhuni ordination controversy – Legitimate expectation – Judicial review of religious practices – Buddhist Temporalities Ordinance – Discrimination based on gender and religious Identity – Article 9 (protection of Buddhism) – Supreme Court jurisdiction in ecclesiastical matters.

Per Hon. E.A.G.R. Amarasekara, J.

"One may argue whether the Bhikkhunis and Bhikkhus are of a same kind and represents the opposite gender of the same is a matter to be decided by an ecclesiastical body and not by Courts as it relates to religious functions performed by them. However, even if they are of a different kind, it does not vitiate the fact that when a Buddhist Bhikkhu, who is revered by the Society, applies for a NIC his status as Bhikkhu is accepted and included in the said Identity Card, but when a female, even if she is supposed not belong to the same kind as of a Bhikkhu, but is revered as a Bhikkhuni, applies for a NIC, her status is not accepted to include in the Identity Card. It appears that what was suggested to be done was to include 'Sil Matha', which may not give the same identity as a Bhikkhuni thereby causing an identity issue as to the status. This appears to be a result of the applicant being a female." [p. 12-13]

"It is obvious that if the 1st Petitioner was a male, she would not have faced these difficulties. She had been deprived being recognized as a Bhikkhuni when in fact, she

is a Bhikkhuni as per the Rangiri Dambulu Buddhist Chapter which she belonged to and is recognized by the Government.

Hence, it is clear that her rights protected under Article 12(1) of the Constitution has been violated by the acts and conduct of the 1st Respondent." [p. 15]

75. *Manimandre Arachilage Suneetha Kalyani de Silva and others v. S.J.B. Suwaris, Officer-in-Charge, Police Station, Walasmulla [S.C. (F.R.) Application Nos: 119/2015, 120/2015, 121/2015 and 122/2015, decided on 21.05.2025].*

Articles 10, 12(1), 12(2), 14(1)(e) of the Constitution – Freedom of thought, conscience, and religion – Freedom to manifest and propagate religion – Jehovah's Witnesses – Religious community service – Door-to-door preaching and dissemination of beliefs – Whether propagation amounts to worship, observance, practice or teaching – Religious intolerance and public hostility – Duty of the State to ensure religious pluralism and protection of minority faiths – Equal protection before the law – Non-discrimination on the ground of religion – Constitutional guarantee of freedom of religion and belief – State neutrality and tolerance in matters of faith-Articles 12(1), 13(1), 14(1)(a) of the Constitution – Unlawful arrest and detention – Violation of personal liberty – Section 32 of the Code of Criminal Procedure Act – Absence of reasonable suspicion – Arrest without lawful authority – Role of Police and Grama Niladhari – Abuse of power under colour of office – Freedom of expression and peaceful conduct – Restrictions under Article 15 – Procedural fairness and accountability – State responsibility for arbitrary action – Declaration of infringement and award of compensation.

Per Hon. Janak De Silva, J.

"...the external manifestation of thought, conscience and religion can impinge on individual rights and thus can be regulated in wider interest." [p. 14]

"[A]lthough Article 10 goes on to state that the freedom of thought, conscience and religion includes the freedom to have or to adopt a religion or belief of one's choice, the other constituents of this freedom does not include external manifestation of one's thought, conscience or religion." [p. 15]

"The fundamental right recognized by Article 10 does not empower a person to state freely what one's thoughts are, including proclaiming his belief. Should external manifestation of the fundamental rights guaranteed by Article 10 form part of such right, it is illogical to recognize only the proclamation of one's belief. Manifestation of all thought, conscience and religion must also be recognized. Such recognition of an absolute fundamental right will have far reaching consequences on the dignity and reputation of other persons as well as leading to public disquiet when such right is exercised on religious matters." [p. 16]

"It is clear that Article 14 (1)(e) covers the external manifestation of a citizen's religion or belief. However, it does not extend to every form of manifestation. It secures only the manifestation, in public or private, through "worship", "observance", "practice" and "teaching". The issue for determination is whether propagation of the religion of the Petitioners which they were involved in on the day of the incident falls within one or more of these modes of external manifestation of their religion or belief." [p. 26]

"Section 32 of the Code specifies several instances where any Police Officer may without an order from a Magistrate and without a warrant arrest any person. None of these sub-sections empowers a Police Officer to arrest a person hoping to find evidence of the commission of any offence through a subsequent investigation. Even if the 1st Respondent had found such evidence through a subsequent investigation, the arrest is illegal." [p. 22]

76. *H.T.A. Ariyaratne and Another v. Jayantha Wickremarathne and Others (SC (FR) Application No: 123/2009, SC Minutes of 21.03.2025).*

Articles 11, 12(1), and 14(1)(g) of the Constitution – Complaint by Attorneys-at-Law against police officers – Allegation that the police failed to take action regarding a fire at the Petitioner's office – Whether the Petitioner's right to the equal protection of the law under Article 12(1) was infringed by the failure of the police to act – Section 109(5)(a) of the Code of Criminal Procedure Act, No. 15 of 1979 – Duty of police officers to conduct fair and timely investigations – Abuse of authority and neglect of official duty – Professional responsibility and proper use of privileges afforded to Attorneys-at-Law – Protection of professional independence – State accountability for inaction of law enforcement officers.

Per Hon. Arjuna Obeyesekere, J.

"...Just as much as Police Officers must act with courtesy to all those visiting a police station, an Attorney-at-Law must also bear in mind that he or she cannot use his or her professional status and privilege to impose unnecessary demands on those serving in a Police Station." [p. 13]

"It is indeed a very sad situation as far as law enforcement in this Country is concerned if Police Officers are to adopt such a lackadaisical approach towards their statutory duties. The complainants were Attorneys-at-Law who had the ability to come before this Court and complain. It is not a privilege that a majority of the citizens of this Country can afford, and I fear to think of what the position might be of such majority." [p. 17]

"It is not that I do not appreciate that it may not be possible to apprehend the offenders in each and every complaint. However, it shall be the basic responsibility of a Police Officer to conduct a fair and impartial investigation without sabotaging the investigation at the first available opportunity..... I am therefore of the view that the inaction on the part of the 11th Respondent who functioned as the Officer-in-Charge of the Ragama Police Station to investigate in terms of the law the complaint of the 1st Petitioner has resulted in the violation of the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution." [pp. 17-18]

77. ***Sachith Prabath Wijeratna v. Police Inspector B.S. Chandrasiri, Crime Branch, Police Station, Anuradhapura and others (SC/FR/365/2020, decided on 10.02.2025).***

ticle 11 – Torture in police custody – Human dignity nd integrity – Strong medical evidence – standard of proof in a fundamental rights application – Reasonable suspicion or a reasonable complaint or credible information of the commission of an offence – False allegation (and B report) on possession of heroin – Petition allowed.

Per Hon. Mahinda Samayawardhena. J.

"People cannot be arrested on unfounded suspicion. In the instant case, there was no justification for the arrest of the petitioner. This is precisely why he was produced before the Court on an entirely unrelated charge of possessing heroin, despite having been taken into police custody (based on the evidence presented before this Court) for alleged burglary. This also explains why the 1st respondent visited the petitioner at the hospital, where he was receiving treatment for police assault, to express regret, claiming it was a case of mistaken identity, and offering to withdraw the false charge on the condition that the petitioner refrains from pursuing the matter further..." [p. 15]

"It is significant to note that instances of torture in police custody almost always involve suspects from marginalized or vulnerable backgrounds, such as the poor and powerless. Such treatment is unheard of in cases involving individuals accused of high-profile white-collar crimes or those with significant social, economic or political influence." [p. 23]

78. ***W.B. Inoka Nadishani and Another v. K.D. Somapala Senior Superintendent of Police and others (SC FR 155/2009, decided on 04.04.2025).***

Article 11 and 12(1) of the Constitution – Freedom from torture – Section 23 and 95 of the Code of Criminal Procedure Act – Human dignity – Dasavidha-rājadhamma or the 'Ten Royal Virtues' – Hinduism and Ahimsa paramo dharmah – Use of force per se does not amount to cruel inhuman or degrading treatment, consistently insisting upon a 'minimum level of severity' – European Convention on Human Rights referred.

Per Hon. S. Thurairaja, PC J.

"The force used in effecting her arrest, grabbing her by the locks and the general manhandling once arrested, is no doubt intense. The question is, however, is it so severe that it amounts to torture. cruel, inhuman or degrading treatment. Considering the specific circumstances of the instant application, I am inclined to answer this question in the negative." [para 70]

79. ***R.P. Susil Priyankar Seneviratne v. P. Prasanna Karunajeewa, Thambuttegama Police Stattion and others (SC FR Application No: 690/2012, decided on 23.05.2025).***

Arrest without warrant: section 32 (1) (b) of the Code of Criminal Procedure Act (CCPA) and section 63 of the Police Ordinance – Torture: Article 11 – Article 12(1) – Police alleged that petitioner arrested due to an illegal procession and unlawful assembly – No summary of evidence against the petitioner in the 'B' report – Section 115 (1) of the CCPA – Reasonableness in suspecting a person before arrest.

Per Hon. K. Priyantha Fernando, J.

"I am of the view that there were no reasonable grounds to arrest the Petitioner and that unreasonable force was used in the process of arrest, whereby the Petitioner has not been arrested according to the due process provided by the law. Hence, I hold that the 1st – 7th Respondents have violated Article 13 (1) of the Constitution against the Petitioner." [para 44]

"As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case, considering the injuries, the discomfort and the losses that were suffered by the Petitioner due to the arbitrary acts of the Respondents, I order the 1st – 6th Respondents to pay a sum of Rs. 200,000 each, from their personal funds, totaling to Rs. 1.2 Million to the Petitioner within the period of three months from the date of this judgment." [para 54]

"Further, the Honourable Attorney General is directed to cause the conduct of a criminal investigation into the incident, upon the completion of which, consider the institution of criminal proceedings against the Respondents for having committed the offense of torture under the Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment Act No 22 of 1994" [para 55]

80. *Manoj Shamika v. Samantha Thushara, Traffic Branch Police Station, Kalutara South and others (SC/FR/ Application No. 626/2012, decided on 07.07.2025).*

Articles 11 and 12(1) – Police brutality – Torture, cruel, inhuman or degrading treatment – Assault by police officer; grievous injuries – Medical and DNA evidence – Unlawful use of force under colour of office – Quis custodiet ipsos custodies? ("who will guard the guardians") – State liability; compensation and costs under Article 126(4).

Per Hon. Murdu N.B. Fernando, PC. CJ (as she then was)

"Petitioner's narration is corroborated by the affidavit evidence tendered by his friend the pillion rider, to this Court. The affidavits of the Petitioner's mother and brother tendered to this Court and the photographs taken of the Petitioner in hospital tendered and produced with the petition further substantiate the injuries sustained by the Petitioner. None of these evidences have been challenged by the 1st to 3rd Respondents, except to say that the Petitioner was drunk and collided with a wall and sustained the said injuries. Thus, on a balance of probability I tend to believe the Petitioner's version that he was assaulted by the 1st Respondent with the helmet, on his neck and head, i.e., two hard blows which appear to be the 'grievous injuries caused by a blunt weapon', as reflected in the MLR." [pp. 6-7]

81. *Lokugamhewage Deepika Damayanthi v. Vasantha Kumara, OIC, Thihagoda Police Station (S.C. (FR) No. 276/2018, decided on 04.09.2025).*

Article 12(1) of the Constitution – Equality before the law and equal protection of the law – Alleged arbitrary and discriminatory conduct by police officers – Complaint of poisoning a well – Failure to conduct a fair and impartial investigation – Harassment and misuse of police authority – Bias and personal animosity influencing official action – Duties of police officers under Section 109(5)(a) of the Code of Criminal Procedure Act, No. 15 of 1979 – Duty to conduct timely and proper investigation – Role of the National Police Commission – Directions issued following disciplinary inquiry – Violation of directives and continued harassment – Abuse of power and mala fide conduct – Scope of judicial review under Articles 17 and 126 – Principle of reasonableness and non-arbitrariness in executive action – Equal protection and administrative fairness – Declaration of violation and directive for disciplinary inquiry.

Per Hon. Menaka Wijesundera, J.

"In conclusion, having considered the totality of the evidence and the material that has already been discussed above, it is clear that the 1st and 2nd Respondents

acted unreasonably by reporting it to court without having a proper investigation and referring the Petitioner to the Police even after withdrawing the case. After conclusion of the said inquiry, the Assistant Superintendent of Police has recommended charges against the 3rd Respondent regarding the false allegations made but the 1st Respondent has failed to take any steps.

I am of the view that the Petitioner has established that there was arbitrary, unreasonable, and discriminatory conduct by the 1st and 2nd Respondents." [p. 8]

82. *Sunil Abeysiri and others v. Sri Lanka Broadcasting Corporation and others (S.C.F.R. Application No: 327/2015, decided on 05.08.2025).*

Article 12(1) – One month rule – Article 126(2) – Section 14 of the Humna Rights Commission Act – Valid complaint to the Human Rights Commission within the prescribed time – Mere lodging/production of complaint is not sufficient – Locus standi of the Trade Union to file the petition under Article 126 – Suppression or misrepresentation of material facts.

"[A] petitioner must show evidence that the HRCSL has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate." [p. 14]

"I am of the view that the Petitioners can obtain the benefit of the complaints made to the HRCSL by the 6th and 11th Respondents for the purpose of Sections 13(1) and 14 of the HRCSL Act. I hasten to add that although a complaint made to the HRCSL by a trade union will suffice for the purpose of Section 14 of the HRCSL Act, a trade union does not have locus standi to maintain an application under Article 126(2) of the Constitution." [p. 17]

83. *Bamunu Arachchige Sadew Nethum and Another v. Akila Viraj Kariyawasam, Minister of Education (SC/FR/448/2019, decided on 25.07.2025).*

Article 12(1) of the Constitution – Equality before the law and non-discrimination – Admission to Grade 1 at Royal College, Colombo – Refusal to admit child under "close proximity" category – Circular No. 20/2019 and subsequent amendment dated 06.09.2019 – Arbitrary fixation of cut-off date (30.08.2019) for registration of lease agreements – Continuous residence within feeder area – Procedural legitimate expectation – Discriminatory application of amended criteria – Violation of right to education and equal opportunity – Administrative fairness and reasonableness – Duty of educational authorities to act in the best interests of the child – Breach of fair procedure and arbitrary exercise of administrative discretion – Infringement of fundamental rights under Article 12(1) – Direction to admit child to an appropriate grade at Royal College.

Per Hon. A.H.M.D. Nawaz, J.

"...This is a seemingly harmless way of saying that the wrong done to A cannot be redressed since if it is done the same wrong committed in respect of B, C and D also will have to be corrected. What principle of law, justice or common sense would support such a proposition is a matter that needs to be pondered, especially on the basis that this is a question of the entitlement of the citizen for education." [para 15]

84. *Karasinghe Arachchillage Ruwan Lasantha Deshapriya and others v. Institute of Valuers of Sri Lanka (SC/FR/372/2019, decided on 16.06.2025).*

Articles 17, 126 and 12(1) of the Constitution – Executive or administrative action – Whether the Institute of Valuers of Sri Lanka is an instrumentality or agency of the State – Institute of Valuers of Sri Lanka Law, No. 33 of 1975 as amended by Act No. 9 of 2019 – Ministerial appointments and control – Financial assistance from the Consolidated Fund – Application of the Public Corporations (Financial Control) Act – Deep and pervasive State supervision – Preliminary objections: executive or administrative action, time bar, necessary parties – Jurisdiction under Article 126.

Per Hon. A.H.M.D. Nawaz, J.

"It must be stated that the words "executive or administrative action" used in Articles 17 and 126 remain among "the great generalities of the Constitution" the content of which has been and continues to be supplied by this court from time to time. The various Articles in chapter III have placed responsibilities and obligations on the "State" vis-a-vis the individual to ensure constitutional protection of the individual's rights against the State, including the right to equality under Article 12 and most importantly, the enforce all or any of these fundamental rights against the "State" as described as "executive or administrative

action" in Articles 17 and 126 (2) of the Constitution." [para 6]

"The scope and range of Article 12 have been widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational action or inaction." [para 7]

85. *Wigneshwaran and Another v. Saseelan, Returning Officer, Point Pedro Pradesh Sabha and Others (SC/FRA/59/2025) with SC/FRA/60/2025, SC/FRA/65/2025, SC/FRA/68/2025, SC/FRA/69/2025 and SC/FRA/72/2025, decided on 04.04.2025).*

Constitution, Articles. 17, 126, 12(1), 12(2), 14(1)(a) – Local Authorities Elections Ordinance No. 53 of 1946, sections 28(2), 28(2A), 28(4), 28(4A), 31(1)(f), 31(2), 31(3) – Women's and youth quotas – Separate consideration of first and additional nominations – Gazette Extraordinary No. 2425/70 of 01.03.2025 – Youth candidates: certified birth certificates under section 56(1) Births and Deaths Registration Act No, 40 of 1975; attested photocopies insufficient – Seventh Schedule oath or affirmation: mandatory form and attestation – Defective oaths (no name or signature) incurable – Removal of candidate under section 31(3): effect on nomination list – Nomination valid only if quotas satisfied; otherwise rejected under section 31(1)(f) – Returning Officer's decision final under section 31(2) – Harmonious construction of statutes.

Per Hon. S. Thurairaja, PC J.

"...While a Justice of Peace, a Commissioner for Oaths or an Attorney-at-Law may attest a document as a "true copy", documents so attested does not amount to a "certified copy". A certified copy must be obtained from the custodian of the original and must be certified by someone who is authorised to so certify. In any event, the Petitioners of the instant application have submitted mere photocopies and such copies can no way amount to certified copies". [para 19]

"I am of the view that submitting a certified copy of the birth certificate or an affidavit certifying a youth candidate's age is a mandatory requirement, and this requirement cannot be satisfied by merely submitting a photocopy or a copy attested by a Justice of Peace." [para 21]

"I am of the view that a Commissioner for Oaths not placing his or her signature or an affirmant failing to place his or her name in an affidavit, as has happened in the instant applications, are not curable defects, thus leading to a manifest noncompliance with respect to the mandatory requirements set out in Local Authorities Elections Ordinance." [para 27]

"...the legislature very clearly prescribes the minimum percentage of youth candidates for both first and second nomination papers, whereas the minimum percentage of women candidates is clearly set out separately for the first and second nomination papers." [para 34]

"Where a nomination paper contains youth or women candidates over and above the bare minimum threshold and minimum number of youth and women candidate requirement is still satisfied despite any disqualification or removal of any candidate under Section 31(3), such nomination paper should not, and cannot in terms of the law, be rejected by virtue of Section 31(1)(f) of the Ordinance." [para 50]

86. *Madurapperumage Kanchana Priyadarshini Madurapperuma v. Kelum Sangeeth, Sub-Inspector of Police, Peliyagoda Special Crimes Operations Unit and Others (SC/FR/37/2020, decided on 18.03.2025).*

Articles 12(1), 13(1) and 13(2) of the Constitution – Arrest and detention – Detention Orders under the Poisons, Opium and Dangerous Drugs Ordinance, No. 17 of 1929, and the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 – Whether a valid Detention Order can be issued in the absence of a Minister of Defence – Section 9(1) of the PTA – Applicability of Sections 50 and 51 of the Nineteenth Amendment to the Constitution – Powers of the President under the Nineteenth Amendment – Ultra vires exercise of ministerial authority – Judicial custody or executive custody – Scope of Article 126 jurisdiction – Section 82 of the Poisons, Opium and Dangerous Drugs Ordinance – Distinction between arrest and continued detention – Violation of the Petitioner's rights under Articles 13(1), 13(2) and 12(1).

Per Hon. S. Thurairaja, PC J.

"...where the discretion of a judge is deprived by a statute, as the PTA does with

respect to Section 9 orders thereunder, it cannot be said that such detention was sanctioned by a judicial act. The Petitioner was not in judicial custody and it was the executive that had custody of the Petitioner. The detention, therefore, was by 'executive and administrative' action." [para 51]

"[I]t is now trite law that Article 12(1) encompasses a scope that extends well beyond the traditional notions of comparative equality and classification. It has been conceived as the antithesis of arbitrariness.21 In a consistent line of jurisprudence, this Court has interpreted Article 12(1) to contemplate the protection of the Rule of Law itself." [para 59]

87. *Gamlath Bandara Rathnasiri v. Soba Ranaweera, Inspector of Police, Police Station, Beruwala and others (SC (F/R) Application No. 110/2016, decided on 14.02.2025).*

Articles 12(1), 13(1) and 13(2) of the Constitution – Alleged unlawful arrest and detention – Offences Against Public Property Act, No. 12 of 1982 – Reasonable suspicion and lawful arrest – Section 32(1)(b) of the Code of Criminal Procedure Act (CCPA), No. 15 of 1979 – Reasonableness of suspicion: objective test – Detention beyond 24 hours – Section 37 of the CCPA – Judicial custody and remand under the Offences Against Public Property Act – Bail refused by Magistrate; revision allowed by High Court – Alleged fabrication of facts – No violation of Articles 13(1) or 13(2) established – Alleged discriminatory treatment and failure to act on complaint – Article 12(1): equal protection of the law – No unequal treatment proved.

Per Hon. S. Thurairaja, PC J.

"Section 37 imposes a mandatory duty on peace officers not to detain suspects in custody or confine them for a period not exceeding twenty-four hours, leaving out only a narrow margin of time, in view of the practicalities involved with the actual production of suspects before a judicial officer..." [para 40]

88. *P.W.T. Dhanushka v. C.D. Wickramaratne Inspector General of Police and Others (SC. FR. No. 170/2022, decided on 30.01.2025).*

Articles 11, 12(1), 13(1), 13(2), 13(3), 13(5), 14(1)(g) and 14(1)(h) of the Constitution – Arrest and detention under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 – Code of Criminal Procedure Act, No. 15 of 1979, Section 32(1)(b): "any cognizable offence" – PTA, Section 6(1): "any unlawful activity" – Interpretation of Section 31 of the PTA – Duty to produce suspect before a Magistrate: Section 7 – Exception under Section 7(1): when a valid Detention Order under Section 9(1) is issued within 72 hours of arrest – Validity of Detention Order: signature and authority – Article 44(3) of the Constitution – Whether the President was lawfully the Minister of Defence at the time of issue – Judicial custody or executive custody – Reasonable suspicion and objective test.

Per Hon. P. Padman Surasena, J. (as he then was)

"...One could observe that the threshold requirement under section 32(1)(b) of the Code of Criminal Procedure Act for the existence of 'a reasonable suspicion or being concerned of any cognizable offence' has been reduced under Section 6(1) of the PTA to a threshold requirement of the existence of 'a reasonable suspicion or being connected with or concerned in any unlawful activity'. The said "unlawful activity" could be any action taken or act committed by any means whatsoever, in the commission or in connection with the commission of any offence under this Act." [p. 7]

89. *Lakmali v. Ceylon Petroleum Corporation and others (SC (FR) Application No: 214A/2018, decided on 23.09.2025).*

Article 12(1) – Fair selection and promotion process – Requirement of transparency at all stages of recruitment – Frozen Criteria Principle: once applications are invited under a published scheme, the criteria must remain unchanged until the process is concluded – Altering the rules after receipt of applications amounts to "shifting the goalposts" and undermines fairness, equality, and transparency.

Per Hon. Arjuna Obeyesekere, J.

"The learned Senior State Counsel emphasised that the new scheme of allotting marks did not seek to discriminate the Petitioner in any manner. I must observe that the Petitioner has not made any specific allegation that P13 was introduced to penalize her or to favour others. Hence, I am in agreement with the submission of the learned Senior State Counsel that P13 was introduced by the 1st Respondent in good faith and not

with a view to penalizing the Petitioner or to grant an undue advantage to any other candidate." [para 25]

90. *Surangika Nalani v. Piyasiri Manawadu Acting Officer in Charge Terrorism Investigation Division, Boosa and others (SC/FR/Application No. 359/2016, decided on 16.10.2025).*

Articles 12(1), 12(2), 12(4), 14(1)(g) – Female police officer – Sexual harassment allegations – Inappropriate advances and lewd remarks by superior officer – Complaint disregarded by higher officers – Transfer on health grounds – Pregnancy and miscarriage – Departmental Order No. A.11 of Sri Lanka Police – Delay in approving transfer – Disciplinary inquiry and black mark – Arbitrary, capricious and unreasonable administrative action – Burden of proof in fundamental rights applications – Medical evidence and credibility – No substantial link between transfer delay and miscarriage – No sufficient evidence to meet the burden of proof required to establish a violation of fundamental rights – Application dismissed.

Per Hon. Sobhitha Rajakaruna, J.

"In terms of the Departmental Order No. A.11 ('2R3') of Sri Lanka Police, the officers are not entitled to transfer as a matter of right. The said document '2R3' stipulates 'privilege transfers' and 'transfers on health grounds'. In terms of Part IV(1) of the said '2R3', an officer wanting a transfer of health grounds may apply on Police Form 51, attaching a medical certificate from a medical officer. Such medical certificates should indicate reasons for recommending the transfer, specifically stating climate, etc" [p. 7]

91. *Vindani Priyadarshika v. Mangala Dehideniya Superintendent of Police and others (SC/FRA No. 293/2020, decided on 24.10.2025).*

Unlawful entry and search of residence – Article 12(1) of the Constitution – Equal protection of the law – Section 77(2) of the Poisons, Opium and Dangerous Drugs Ordinance – Warrantless search – Reasonable belief of narcotics offence – Balance between individual liberties and public interest – Credibility of police information – Bona fide police action – No arbitrariness, malice, or discrimination – No infringement of fundamental rights – Petition dismissed.

Per Hon. K. Priyantha Fernando, J.

"...this Court is of the view that the reasonableness of police action must be assessed in light of the circumstances prevailing at the time the decision was taken. When a police officer receives credible information of a serious offence such as the possession of large quantities of Heroine or any other narcotics, it is not only within his powers but indeed his duty to act expeditiously to prevent the commission of such offence and secure public safety. Section 77(2) of the aforesaid Ordinance empowers the police, in appropriate circumstances, to act without a warrant when there is reasonable belief that an offence under the Ordinance is being committed." [at para 19]

92. *Jayasingha Arachchige Shermila Priyadarshani Silva and Another v. UGC and others (SC FR Application No: 216/2020, decided on 09.07.2025).*

Ragging in universities – Equal protection under Article 12(1) of the Constitution – Social event organized by senior students – Incident at the University of Sri Jayawardenepura – Serious injuries to a first-year student – Accountability of university authorities – Failure to enforce restrictions on alcohol and event timing – University Grants Commission (UGC) oversight – Expansion of proceedings to include Vice Chancellors of all state universities – Reports on preventive measures submitted – Judicial directive to formulate consolidated anti-ragging guidelines – "Guidelines to Combat Ragging in Higher Educational Institutions" issued – Analysis of UGC Circulars No. 919, 946, 12/2019, and 04/2020 – Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No. 20 of 1998 examined – Systemic failures and weak enforcement – Institutional negligence and need for reform – Creation of victim support mechanisms and safe complaint procedures – Emphasis on accountability, reform, and eradication of ragging in higher education institutions.

Per Hon. Shiran Gooneratne, J.

"Systematic failure on the part of the universities in the implementation of Anti-Ragging procedures can be clearly observed, given the reports submitted by the respective universities. Despite the existence of various policies and legal frameworks aimed at preventing ragging in Sri Lankan universities, their implementation remains inconsistent and ineffective. The University Grants Commission (UGC) has issued multiple directives, including regulatory mechanisms and relief measures for

victims of ragging, having minimal or no avail." [p. 22]

93. *MV X-Press Pearl Marine Environmental Pollution Case (SC/FR Application No: 168/2021, 176/2021, 184/2021, & 277/2021, decided on 24.07.2025).*

Article 12(1) – Severe marine chemical catastrophes – Public Interest Litigation (PIL) – Transport Safety Investigations Act – Section 84B(1) of the Ports Authority Act – Private action & Directions to the private persons – Just and equitable remedy – Duties of public authorities and State officials – Directive principle in Article 27(14) of the Constitution – Economic and financial losses caused to fishing communities – Decision taken by the Attorney General to institute civil legal action against the X-Press Pearl group of companies in a Singapore court, as opposed to instituting action in the High Court of the Republic of Sri Lanka exercising Admiralty jurisdiction – Alleged agreement entered by the Attorney General regarding the issue (in Singapore) – Environmental pollution – International law – The Polluter Pays Principle – Rylands v. Fletcher (1868) [LR 3 HL 330] – Absolute liability – 'Continuing mandamus' in FR matters – Directing the establishment of such post-judgment mechanisms.

Per Hon. Yasantha Kodagoda PC J.

"...this Court has no hesitation to hold that the damage caused to the environment and the pollution which is still continuing and ongoing, has been caused entirely due to the XPress Pearl disaster and the X-Press Pearl group, consisting of the Owner, Operator(s), Master and Agent of the vessel X-Press Pearl, and thereby are solely responsible for such catastrophe." [para 474]

"...the decision taken by the Attorney General to institute civil legal action against the X-Press Pearl group of companies in a Singapore court, as opposed to instituting action in the High Court of the Republic of Sri Lanka exercising Admiralty jurisdiction, was an infringement of the Fundamental rights of the Petitioners and the others whom the Petitioners represent guaranteed under Article 12(1) of the Constitution." [para 543]

"...it is the considered view of this Court that such just and equitable directions may also be issued against Non-State actors whose unlawful or illegal conduct or omission is found to have been an impediment on the full enjoyment or exercise of Fundamental rights or resulted in an infringement of Fundamental rights." [para 582]

"The purpose of issuing a direction on such Non-State party (whose unlawful or illegal action or inaction is not causally linked to or rationally connected with an infringement of a fundamental right by executive or administrative action) is to remove any impediment that may exist and or to secure respect, advancement and protection and the full enjoyment of the Fundamental rights of the People." [para 583]

94. *Kulasuriya v. Air Marshal Harsha Abewickrama and others (SC FR Application No: 403/2015) with Danushka Mihiran v. Air Marshal Harsha Abewickrama and others (SC FR Application No: 404/2015, decided on 11.09.2025.*

Article 126(2) one-month time limit – Prescription – Jurisdictional bar – Human Rights Commission of Sri Lanka Act, section 13(1)– Pending inquiry requirement – Mere lodging of complaint insufficient – Vigilantibus non dormientibus jura subveniunt – Time-barred petitions – Preliminary objection upheld – Applications dismissed in limine.

Per Hon. A.L. Shiran Gooneratne, J.

"...the Petitioner has failed to establish that an inquiry was in fact pending before the Human Rights Commission. No documentation has been produced, and neither the original Petition nor the Amended Petition provides any clarification in this regard. Accordingly, this Court holds that the Petitioner cannot invoke the protection afforded by Section 13(1) of the Act. The burden of proving the applicability of the statutory exception lies squarely with the Petitioner, and that burden has not been discharged." [para 14]

95. *Kamaldeen Ilham Ahmed (Minor) and Another v. IP Weerakoon, Acting OIC, Hatharaliyadda Police Station and others (S.C. (F.R.) Application No. 87/2023, SC Minutes of 01.09.2025).*

Arrest and Torture – Minor arrested and tortured – Wrongful detention – Failure to follow procedure es-

tablished by law – Denial of access to mother – Mental torture to the mother – Infringement of Articles 11, 12(1), 13(1) & 13(2) of the Constitution – Compensation awarded – Directive to Police regarding access of parents to arrested minors.

Per Hon. Janak De Silva, J.

"While the Court is mindful of the symbolic impartiality represented by Lady Justice, the principle of human dignity requires that such instances of emotional trauma, particularly involving a minor and his parent, are not overlooked. The psychological impact on the 2nd Petitioner, arising from the events as presented, cannot be disregarded and must be acknowledged as part of the broader context of the 2nd Petitioners' grievance." [p. 6]

"According to the birth certificate of the 1st Petitioner (P1), he was 16 years (minor) at the material time. He had revealed this in his statement made to the Police. Yet the Police detained the 1st Petitioner in a cell along with another adult who was not a relative. Section 13 of the Children and Young Persons Ordinance prevents a child or young person from associating with an adult (not being a relative) who is charged with any offence while detained in a police station..." [p. 12]

"In the exercise of the just and equitable jurisdiction of this Court, I further direct the 4th Respondent, the Inspector General of Police to issue a direction to all Police Officers directing that when a minor is arrested, the mother or father (or in their absence a close relative) of the minor be granted access to the minor before he is produced before the Magistrate and in any event, within 6 hours of the arrest" [p. 13]

96. *Anil Prasanna Balalle, Attorney-at-Law and others v. Galgamuwa Pradeshiya Sabha, Office of the Pradeshiya Sabha, Galgamuwa and others (SC FR Application No: 275/2015, decided on 26.08.2025).*

Article 12(1) – Right to equality before the law – Article 14(1)(g) – Freedom to engage in lawful occupation, profession, trade, or business – Attorneys-at-Law practicing at Galgamuwa Magistrate's Court – Allocation of office space in building constructed by Galgamuwa Pradeshiya Sabha – Alleged arbitrary allocation without public notice – Failure to follow due procurement process – Preferential treatment to selected lawyers – Violation of equality clause – Negation of arbitrariness and unreasonableness – Public notice and transparency in dealing with state property – State accountability and procedural fairness – Equal protection and non-discrimination in administrative decisions – Scope of executive and administrative action under Article 17 and 126 – Remedies under Article 126(4) – Compensation and quashing of illegal contracts – Direction to Commission to Investigate Allegations of Bribery or Corruption (CIABOC) – Institutional integrity and enforcement of due process in local government administration.

Per Hon. K. Priyantha Fernando, J.

"Examining Article 12 (1) in the context of dealing with government property, the jurisprudence highlights the due process that ought to be followed in relation to procurement processes, and how every citizen has a reasonable expectation to be informed of matters of this sort. Transparency in process is of utmost importance in this endeavour..." [p. 11]

97. *Ambika Sathkunanathan v. Hon. Attorney General and others (SC/FR/246/2022 with SC/FR261/2022, SC/FR/262/2022, SC/FR/274/2022 and SC/FR/276/2022), decided on 23.07.2025.*

Emergency Regulations promulgated by former President (Mr. Ranil Wickremasinghe) – Article 12(1) of the Constitution – Section 5 of the Public Security Ordinance – Abuse of process – "Public emergency" – Article 155 of the Constitution – Whether the jurisdiction of the Supreme Court has been ousted in reviewing a Proclamation issued by the President under Section 2 of the Public Security Ordinance – No fact of which the Court will take judicial notice need be proved – Judicial notice and matters of public history – Sections 56 and 57 of the Evidence Ordinance.

Per Hon. Yasantha Kodagoda PC J.

"...there is no basis in law to conclude that the Acting President when making the Proclamation under section 2 of the PSO had acted objectively, in good faith, with due diligence, reasonably and without any arbitrariness. Conversely, in these circumstances, the irresistible inference is that the Acting President had acted without necessary objective consideration of all relevant factors, and had been unreasonable and

arbitrary in issuing the impugned Proclamation..." [para 126]

98. *K.H. Lasantha Goonewardena v. Monetary Board of Sri Lanka and Others (SCFR 388/2016, decided on 17.07.2025).*

Articles 12(1) and 14(1)(g) of the Constitution – Banking Act No. 30 of 1988 – "Fit and proper" criteria for Directors – Lankaputhra Development Bank – Appointment of Chairman and Board – Authority of the Secretary to the Treasury – Role of the Minister of Finance – Powers of the Monetary Board and Director of Bank Supervision – Compliance with Banking Directions No. 12 of 2007 – Refusal to approve appointment – Procedural fairness and right to be heard – Ultra vires administrative action – Institutional accountability – Alleged infringement of fundamental rights – Relief under Article 126(4).

Per Hon. Yasantha Kodagoda, PC J.

"Given the complexity of banking operations and their impact on the financial markets, the overall financial sector, economy of the country and the interests of the customers and other transacting parties of banks, those at the level of the Board of Directors and key management personnel must be persons with (i) a high degree of competence, as reflected by their qualifications, (ii) previous work exposure and (iii) experience. Furthermore, they must be persons of high integrity, moral standing and unblemished reputation. It is for this purpose that section 42(2) contains certain criteria based upon which the Director of Bank Supervision may determine whether a particular individual is a 'fit and proper person' to be appointed or function as a Director of a bank. Permitting a person who has lost his 'fit and proper' status to remain to function as a Director of a bank would be most undesirable and contrary to the interest of all stakeholders of banks and the Sri Lanka's public interest" [para 56]

99. *Ranawaka Aarachchige Gamini Jayarathne and Another v. S.M.L.R. Bandara OIC, Aralaganwila Police Station, Aralaganwila and others (Application No. SC FR 346/2018, decided on 03.07.2025).*

Articles 12(1), 13(1), 13(2), 14(1)(a) and 14(1)(b) of the Constitution – Right to equality, liberty, and freedom of expression and assembly – Protest by villagers at Kalukele, Polonnaruwa – Human–elephant conflict and inaction of authorities – Arrest and remand of protesters – Sections 95, 98, and 106 of the Code of Criminal Procedure Act – Magisterial orders restraining protest – Whether orders applicable to Petitioners – Lawfulness of arrest under Section 32(1)(b) – Scope of "unlawful assembly" and "wrongful restraint" – Procedural safeguards and proportionality in law enforcement – Magistrate's duty when ordering remand – Article 13(2) violation through arbitrary remand – Freedom to protest and democratic dissent – Balancing public order and constitutional rights – Declaration of infringement and award of compensation.

Per Hon. Yasantha Kodagoda, PC, J.

"...When exercising the de-facto composite fundamental right to protest and demonstrate, it is the duty of every person in Sri Lanka to inter alia be respectful of the rights and freedoms of others (including themselves) and not transgress the law of the land." [para 41]

"Law enforcement measures including the use of force as well as criminal justice measures such as causing the arrest of protesters should certainly not be aimed at or carried out with the motive of summarily punishing or harassing those who have engaged in an unlawful protest or demonstration. Should there have been a transgression of the law, the violators of the law should be dealt with strictly according to law, in good faith and in a proportional manner."[p. 44]

"...both when making an application to a Magistrate to issue an order either under section 98 or 106 of the CCPA, as well as when making an order as requested by the police, both the police as well as Magistrates must be acutely conscious of the de-facto fundamental right to protest and demonstrate, and should curtail it to the minimum extent possible and do so only in wider public interest and for the maintenance of public order." [p. 53]

100. *Elayadura Prasad Senadara De Silva and others v. Hon. Gamini Lokuge, Chairman, Committee to grant relief to employees subjected to Political Victimization in the Government and Semi-Government Sector and others (S.C. FR Application No. 45/2022, decided on 29.05.2025).*

Backdating the promotion of the police officers – Article 12(1) – Right to promotion – Legitimate promotion – Article 14(1)(g) and Article 16(1) of the Indian Constitution – Role of the Cabinet of ministers and the Public Service Commission (PSC) – History of the PSC discussed – Termination of the public servants – 17th Amendment to the Constitution – Role and powers of the Police Service Commission – Discretionary powers – 'Policy' decision by the cabinet.

Per Hon. M. Sampath K. B. Wijeratne J.

"The resulting position is that the Cabinet of Ministers were vested with the power to provide for and recommend all the matters of policy relating to public officers without the limitation of being "subject to the provisions of the Constitution". However, it is easily perceived that in a constitutional structure, no functionary of the state or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and it is also against the rule of law. It is presumed that even the discretionary powers conferred on executive in absolute and unfettered terms will necessarily and obviously be exercised reasonably and for the betterment of the public." [p. 26]

"The principle of equality can be considered as the 'jewel in the crown' of the fundamental rights chapter. Because, it is an inalienable universal principle embedded into our Constitution; the main legal source in the country, from which the legitimacy is derived to all the other legal instruments. In the instant case, the Petitioners mainly challenge the legitimacy of the promotion granted to a Respondent based on the Article 12(1) and 14(1)(g). Unfortunately, in the Sri Lankan context, there is no such direct fundamental right as a "right to promotion" nor does it extend to seniority. But, the 'legal right of the public officers to be considered for promotion subject to the doctrine of equality' has been emphasized by this Court several times". [p. 35]

Criminal Law and Procedure

101. *Punchi Hewage Samantha alias Mahathun v. Hon. Attorney General (S.C. Appeal No.168/2018, decided on 25.07.2025).*

Murder or Culpable Homicide – Sections 296 and 294 of the Penal Code – Sudden fight (exception 4 to section 294) – Requirement that both parties participate in the fight – Undue advantage – Burden of proof under section 105 of the Evidence Ordinance – Distinction between a "fight" and a "quarrel" – Unilateral violence does not constitute a sudden fight – Verbal abuse alone does not amount to a "fight" – Appeal dismissed and conviction affirmed.

Per Hon. Achala Wengappuli, J.

"In my view, the phrase "... in a sudden fight in the heat of passion upon a sudden quarrel", of the Exception 4 of Section 294 clearly envisages a situation, which started off perhaps with a mere verbal disagreement or an argument between rival parties which then takes a violent turn with sudden escalation of that 'quarrel' into a 'fight' during which exchange of physical blows or use of weapons occurs between them, resulting in the fatality in question. The start of the quarrel and its escalation into a fight must happen within a short duration of time. The emphasis placed by the Section on the progressive but sudden escalation of the intensity of the degree of passion with which the opposing parties acts in a quarrel culminating with the act or acts that results in the fatality could easily be discerned from the phrase "... in a sudden fight in the heat of passion upon a sudden quarrel". That seems to be the sequence events that envisaged by the Legislature in enacting Exception 4 in that form." [p. 33]

102. *Wanniarachchige Ranga Sampath Fonseka v. The AG (SC Appeal No. 36/2020, decided on 24.10.2025)*

Dangerous drugs – Possession and trafficking of heroin – Section 54A of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984 – Section 202 of the Code of Criminal Procedure Act No. 15 of 1979 – Rebuttal evidence – admissibility and procedural fairness – Dock statement – Evidentiary value, unsworn and not tested by cross-examination – Alibi defence – Requirement of early disclosure under section 126A of the Code of Criminal Procedure – Credibility of belatedly raised alibi – Fair trial principles – Waiver and estoppel arising from absence of objection to rebuttal.

Per Hon. Menaka Wijesundera, J.

"...the material revealed in a statement from the dock by an accused person should be considered as evidence subject to the

infirmities that it has not been cross-examined and that it was not made under oath. But nevertheless, it can be considered as evidence and be acted upon." [p. 6]

103. *Director General, Commission to Investigate Allegations of Bribery or Corruption v. Ravindra Karunanayake and Another (SC Appeal No. 61/2024, decided on 30.05.2025).*

Soliciting or accepting a gratification by a public servant – Section 19(c) of the Bribery Act, No. 11 of 1954 (as amended) – Whether a minister of the Cabinet of Ministers is a "public servant" – Legislative intent – Use of Hansard – United Nations Convention against Corruption – Preliminary objection that the Director-General of CIABOC was a necessary party – Whether an accused indicted before the High Court has a right of appeal against an interim order made by the High Court – Section 14(b) of the Judicature Act – Abuse of process.

Per Hon. Arjuna Obeyesekere, J.

"The mere fact that the Court of Appeal has forum jurisdiction does not enable it to entertain an appeal unless the person invoking such jurisdiction has been statutorily conferred a right of appeal to invoke such forum jurisdiction." [p. 21]

[Court's observation on section 14(b) of the Judicature Act]

"...Section 14(b) does not confer a right of appeal on an accused unless there is a conviction, which means there must be a judgment of the High Court convicting the accused for the right of appeal to be triggered in terms of the law. Anything short of a judgment convicting an accused will not give rise to a right of appeal on the part of such accused. The resultant position is that with the order of the High Court in this case being an interim order, the 1st and 2nd Accused did not have a right of appeal against such order and their applications to the Court of Appeal were therefore misconceived in law." [p. 23]

"The rationale for not granting an accused a right of appeal against each and every order delivered by the High Court prior to conviction is to ensure that proceedings are concluded expeditiously, effectively and efficiently. Furthermore, in terms of Section 333(1) of the Code of Criminal Procedure Act, the case record must be submitted to the Court of Appeal no sooner an appeal is filed..." [p. 24]

"I may also add that raising frivolous objections and thereafter invoking the appellate jurisdiction of either this Court or the Court of Appeal with a view of delaying the wheels of justice from turning is a phenomenon that has emerged within the criminal justice system in the recent past, and very unfortunately, is fast becoming a regular practice." [p. 25]

Also see: Thennakoonwela v. Director General, Commission to Investigate Allegations of Bribery or Corruption (SC/TAB/04/2023, decided on 07.10.2024).

104. *Patali Champika Ranawaka v. Attorney-General and others (SC Appeal No. 116/2022, 08.05.2025).*

Criminal proceedings – Appeal from the Court of Appeal – Estoppel – Issue estoppel – Res judicata – Cause of action estoppel and issue estoppel – Relevance of previous judicial proceedings – Sections 40–43 of the Evidence Ordinance – Autrefois acquit and autrefois convict – Magistrate's duty to frame the charge – No application for fresh evidence – Law enforcement and prosecutorial authorities must act in good faith, with due diligence, objectivity, and transparency, and maintain the highest degree of integrity.

Per Hon. Yasantha Kodagoda, PC, J.

"[E]ssentially, issue estoppel means that once a particular issue (as opposed to an entire cause of action or the commission of an offence) has been conclusively judicially decided upon in a legal proceeding, until the ensuing order is duly vacated or set aside by a higher judicial tribunal which exercises appellate or revisionary jurisdiction or by exercising the extraordinary jurisdiction of restitutio in integrum, the original judicial finding relating to such particular issue cannot be contested once again in subsequent judicial proceedings involving the same parties or their privies. In civil judicial proceedings, the doctrine of issue estoppel is aimed at ensuring finality in litigation, the avoidance of the emergence of contradictory judgments and conservation of judicial resources." [para 71]

"...according to Coomaraswamy, for the full recognition and application of the doctrine of issue estoppel, it would be necessary to first amend section 40 of the Evidence Ordinance in the manner recommended by the Law Reform Commission. Nevertheless, Coomaraswamy has expressed the view that even in the present status of the law, issue estoppel can be introduced to Sri Lanka's law under section 100 of the Evidence Ordinance, as it is a matter on which the Ordinance is silent..." [p. 78]

105. *Attorney General v. Wickramathilake Don Susantha Kumara (SC Appeal No. 159/23, decided on 13.06.2025).*

Sexual harassment – Section 345 of the Penal Code – Removal of a girl's underwear – Prosecution failed to prove the charge – Acquittal under section 200(1) of the Code of Criminal Procedure Act – No defence called – No proof of lack of consent – Sexual harassment under section 345 requires proof that the act was against the victim's will – Circumstantial evidence – Section 106 of the Evidence Ordinance – DNA evidence – Unnecessary remarks by the JMO in the medical examination report stating that "[the victim] was fleeing from a life-threatening situation before the accident; to ascertain this, further investigation is necessary" – Such remark or observation held to be surmise and conjecture by the Supreme Court.

Per Hon. E.A.G.R. Amarasekara, J.

"Can the mere presence of semen of the Accused on the undergarment establish assault or criminal force? The answer should be in the Negative. It needs some more facts to be proved. On the other hand, harassment and annoyance contemplated in the said Section cannot be established unless it is established that it was done without consent or against the wishes of the person who was subjected to the offense. Mere presence of semen does not establish a prima facie case against the Accused that it is a result of an act done against the Deceased's consent or wishes." [p. 9]

"It is not the function of a Criminal Court to call for defence to fill the gaps of the Prosecution. The charge has to be proved by the Prosecution, and to call for defence, there must be prima facie case for the prosecution. In the matter at hand, as discussed above, the Prosecution failed to prove the contents of the charge as well as the lack of consent or willingness of the Deceased for the alleged sexual act." [p. 11]

Family Law

106. *Siriwardhana Kasee Brahmana Ralalage Lalitha Kumari v. Rathnayake Mudiyanselage Sunil Rathnayake Kumbukulawa (SC/Appeal No. 74/2025, decided on 15.10.2025)*

Divorce – Constructive malicious desertion – Matrimonial fault – Adultery – Burden of proof – Balance of probability – Higher standard of proof for serious allegations – Relevancy of evidence – Birth certificate – Marriage Registration Ordinance, section 19 – Section 596, 597 and 602 of the Civil Procedure Code – Irretrievable breakdown of marriage – Innocent spouse.

Per Hon. M. Sampath K. B. Wijeratne, J.

"In the case of constructive malicious desertion, the spouse who is out of the matrimonial home must show that the other had acted with the intention of putting an end to the marriage and the burden of proving such to assert constructive malicious desertion is on the spouse who alleges constructive malicious desertion who in this case is the Plaintiff-Respondent husband." [p. 9]

"..I am of the view that even if adultery could be construed from circumstantial evidence, such must be founded on clear and cogent evidence sufficient to establish a higher degree of proof rather than mere assumptions." [p. 15]

Restitutio in integrum

107. *Nilantha Fernando v. Nilanthi Perera (SC/Appeal/65/2025, decided on 10.10.2025).*

Restitutio in integrum – Revision – Jurisdiction of the Court of Appeal – Jurisdiction confined to original matters from Provincial High Courts (PHC) – No appeal, revision or restitutio in integrum lies against appellate judgments of a PHC exercising civil appellate jurisdiction – Appeals from PHC Civil Appeal judgments lie directly to the Supreme Court with leave under sections 5C(1) and 9(a) of the High Court of the Provinces (Special Provisions) Act, as amended – Section 11(1) limits the Court of Appeal's power to matters arising under Article 154P(3)(a) and (4) of the Constitution – Arti-

cle 138 is enabling and does not itself create rights of appeal – Appellate routes are statutory and exclusive – Finality of litigation – Prohibition of forum shopping and creation of a third tier of appeal – Time bar: failure to file an appeal within 42 days – Belated application for revision or restitutio in integrum filed on the 44th day held incompetent – Purposive interpretation of constitutional and statutory provisions reaffirmed – Establishment and jurisdictional boundaries of Provincial High Courts.

Per Hon. Mahinda Samayawardhena, J.

"...I hold that the Court of Appeal has no jurisdiction, whether by way of final appeal, revision, or restitutio in integrum, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court." [p. 50]

108. *China Great Wall Hospital Private Limited v. Raguwan Sandanam (S.C. Appeal No. 59/2024, decided on 12.09.2025).*

Recovery of Possession of Leased Premises Act, No. 1 of 2023 – Section 11(2) – Refusal to grant further time to show cause – Decree nisi and decree absolute – Revision and restitutio in integrum under Article 138 of the Constitution – Jurisdiction of the Court of Appeal – Rules of natural justice – Audi alteram partem – Whether Section 11(2) abrogates the rule of natural justice – Literal rule of statutory interpretation – Limits of judicial power and legislative intent – Interpretation of statutes: jus dicere not jus dare – Alternative remedy under Section 16 of the Act – Exceptional circumstances for revision – Failure to satisfy statutory preconditions – Defendant's incarceration and alleged inability to give instructions – Filing of proxy while in custody – Validity of District Court's refusal to grant further time.

Per Hon. Achala Wengappuli, J.

"The oral application of the Defendant seeking further time was made to Court not on the premise that it was not possible to obtain any instructions from him at all due to his incarceration, but because it was not possible to obtain "proper instructions". Although the Defendant was detained in Fiscal custody, he was not held incommunicado or was under a prohibition for an Attorney-at-Law to interview him after obtaining due approval. The mere inconvenience for the Attorney to obtain "proper instructions" from a client who was incarcerated, surely could not be considered as a valid basis to put the process of litigation constituted under the Act on hold. This contention is fundamentally flawed as what guarantee the Defendant had that he would be enlarged on bail within the next two weeks for his Attorney to obtain "proper instructions"." [p. 21]

Ethics of the Legal Profession

109. *Major W.W.M.L.S. Palipana v. Wasantha Wijewardane (SC Rule No: 12/2023, decided on 10.10.2025).*

Professional ethics – Non-return of client documents – Delay in refunding fees – Misconduct repeated – Disciplinary sanction from the Bar Association of Sri Lanka – Rule 10, 15, 16, 18, 18(a), 60, and 61 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules of 1988 – Section 42(2) of the Judicature Act – Recurrence of misconduct – The failure to act with diligence and honesty, particularly in fiduciary matters, is not a mere lapse, it is a betrayal of the professional oath – Respondent is removed from the Roll of the Attorneys-at-Law.

Per Hon. A. L. Shiran Gooneratne, J.

"This Court is compelled to reaffirm that the practice of law is not a privilege to be exploited for personal gain, but a solemn calling which demands accountability, transparency, and ethical fortitude. Where an Attorney-at-Law fails to adhere to these standards, disciplinary sanction is not only justified but essential to preserve the integrity of the profession and to maintain public confidence in the administration of justice." [para 22]

110. *W.S.B.S. Fernando, Registrar of the Court of Appeal v. Wickramage Don Dharmasiri Karunaratne (SC Rule No. 16/2023, decided on 06.08.2025).*

Section 42 of the Judicature Act – Obtaining case record for an undisclosed and surreptitious purpose – Removing two papers from case record – No plausible explanation given by the Respondent – Rule 60, 61 & 62 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988 – Disgraceful or dishonourable acts/behaviour by Attorneys-at-Law – Respondent

removed from office as an Attorney-at-Law.

Hon. P. Padman Surasena, C.J.

"It must be borne in mind that this Court admits and enrolls as Attorneys-at-Law in terms of Section 40 of the Judicature Act, only persons of good repute and of competent knowledge and ability. Such Attorneys-at-Law once enrolled cannot engage in any deceit, malpractice, crime or offence. It is a reasonable expectation of both the public and those involved in the administration of justice in the country. If an Attorney-at-Law is unable to maintain the expected standard, then such an Attorney-at-Law cannot be permitted to continue to function in that capacity any more. Section 42 has entrusted this Court with the responsibility of maintaining the aforesaid standards. Thus, this Court has a duty to take into consideration, the interests and aspirations of the general public that only persons of good repute and of competent knowledge and ability function as Attorneys-at-Law. It also has a duty to maintain the quality of the administration of justice, and the need to maintain the standards expected from the members of the legal fraternity when deciding the course of action it should take in a case of this nature." [p. 13]

111. Madarasinghage Chandradasa v. Dhammika Ambewela (SC Rule No. 04/2024, decided on 24.07.2025).

Deceit and malpractice and misappropriation of funds – Section 42(2) of the Judicature Act – Rules 60–61 of the Supreme Court (Conduct of Attorneys-at-Law) Rules, 1988 – No trust accounts – Failure to act diligently – Standard of proof: "comfortable satisfaction" (Daniel v. Chandradeva) – Aggravating factors – Respondent struck off the Roll of Attorneys-at-Law and permanently barred from notarial practice.

Per Hon. S. Thurairaja, PC, J.

"I must emphasise that keeping proper records of monies and other properties entrusted to an attorney by a client is not a mere nicety or a matter of convenience: It is an absolute bare minimum requirement expected of every attorney, irrespective of how experienced or inexperienced they might be." [para 58]

Contempt of Court

112. The Hon. AG v. Nagananda Kodituwakku (SC Contempt No: 01/2021, decided on 16.06.2025).

Contempt of Court – Supreme Court Jurisdiction – Article 105(3) of the Constitution – Case instituted prior to the enactment of the Tribunal or Institutions Act, No. 8 of 2024 – Scope of Jurisdiction – Contempt of Court as both a Common Law offence and an offence under written law.

Per Hon. A.H.M.D. Nawaz, J.

"En passant, it must be underscored at the very threshold that the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 could not have been intended to derogate from or affect the powers of the Supreme Court under Article 105(3) of the Constitution, which remains extant and unamended. Unlike other constitutional provisions—such as Article 138 —which is expressly made subject to law, Article 105(3) stands unqualified by such limitation." [para 7]

"As such, any attempt to alter or curtail the jurisdiction conferred by Article 105(3) would necessarily require a constitutional amendment—one that would be both express and apparent, including in the long title of the Act. No such express amendment was made by the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, which is, moreover, not declared to have retrospective effect." [para 8]

"Accordingly, we overrule the Respondent's objections premised on the alleged absence of a statutory definition and the purported want of legislative underpinning. This Court is vested with the inherent jurisdiction to punish for contempt summarily and retains the authority to determine the nature and character of conduct that amounts to contempt. A statutory enumeration of contemptuous acts must be construed as illustrative, not exhaustive" [para 34]

113. M.A. Sumanthiran v. Illukpitiyage Srinath Harshadewa Jayasena Illukpitiya Controller General of Immigration and Emigration (SC/Contempt/03/2025, decided on 23.09.2025).

Contempt of Court – Contempt of Court, Tribunal or Institutions of Justice Act – Willful disobedience of an order of the Court – Intention to bring the authority of the Court into disrespect or disregard – Punishment for contempt – Imprisonment – Sentencing policy and guidelines – Withdrawal of plea of guilty – Mitigating and aggravating factors.

Per Hon. Yasantha Kodagoda, PC, J.

"...Therefore, as the law stands today, Act No. 8 of 2024 does not provide for any restriction on the nature or extent of the punishment that may be imposed on a person found "guilty" of having committed contempt of court. On a consideration of a multitude of factors, this Court has formed the assumption that additional reasons which justify why there should not be any restriction placed in Court are that; (a) Article 105(3) which concurrently confers jurisdiction on the Supreme Court and the Court of Appeal to deal with instances of contempt of court, does not impose any restriction on the punishment that may be imposed on a person who has been found "guilty" of having committed contempt of court, and (b) the very nature of the circumstances that constitutes contempt of court are so varied and its impact and consequences can range from being minor to extremely serious, there can be certain instances of contempt of court which warrants in public interest the imposition of a very high (severe) punishment" [p. 43]

114. *M.B.A. Systems (Pvt) Ltd v. Virgina Perera and Another (SC/CHC/Appeal/18/2018, decided on 23.07.2025).*

Contempt jurisdiction of the Commercial High Court – Legislative history of the contempt jurisdiction explained – Whether the Commercial High Court has jurisdiction to punish for contempt arising from the alleged violation of interim orders issued under the Companies Act – The scope of contempt jurisdiction of High Courts under Article 154P of the Constitution and section 18 of the Judicature Act.

Per Hon. Mahinda Samayawardena, J.

""Contempt of court" may broadly be defined as any act or omission that interferes with or obstructs the due administration of justice, impairs or diminishes the authority and dignity of the court, or tends to undermine public confidence in the judicial process. It encompasses conduct committed both in the face of the court (in facie curiae) and out of court (ex facie curiae). The object of the contempt jurisdiction is not the vindication of the personal dignity of judges, but the preservation of judicial authority for the protection of the general public and the integrity of the administration of justice." [p. 5]

"According to section 18 of the Judicature Act, the High Court is vested with jurisdiction to try in a summary manner "any offence of contempt committed against or in disrespect of its authority". The phrase "any offence of contempt committed against or in disrespect of its authority" is couched in broad terms and encompasses both forms of contempt: in facie curiae and ex facie curiae." [p. 16]

"I hold that section 18 of the Judicature Act applies to offences of contempt committed against, or in disrespect of, the authority of any High Court, including the High Court established under Article 154P of the Constitution, whether such contempt is committed in facie curiae or ex facie curiae." [p. 43]

115. *The Registrar, Supreme Court of Sri Lanka v. Wickramage Don Dharmasiri Karunaratne (SC Contempt No: 09/2024, decided on 25.02.2025).*

Contempt of court committed by an Attorney-at-Law – Filing of a false and contemptuous affidavit before the Supreme Court – Contempt under sections 3(1)(a), 3(1)(b), 3(2)(c) and 3(2)(e) of the Contempt of Court, Tribunal or Institution Act, No. 8 of 2024 – Power of Court to remand under section 8(1)(a) – Opportunity to show cause under section 8(2) – Supreme Court's power to suspend an Attorney-at-Law pending final determination – Respondent pleads guilty to the charges – The age of the Respondent and the fact that he expressed remorse at the first available opportunity were taken into consideration.

Per Hon. Arjuna Obeyesekere, J.

"...The affidavit unduly challenges and seeks to interfere with the statutory authority of the Supreme Court to take disciplinary action against the Respondent, brings the Supreme Court and the system of administration of justice into disrespect, is not only an interference with the judicial

process in relation to the Rule matter but seeks to scandalise and lower the judicial authority and dignity of the Supreme Court, and can excite dissatisfaction in the minds of the public with regard to orders made by the Supreme Court." [p. 18]

"In view of the age of the Respondent and the fact that he has expressed remorse at the first available opportunity, I shall hold my hand from imposing a custodial sentence on the Respondent at this stage. However, taking into consideration the gravity and serious nature of the charge to which the Respondent has pleaded guilty, I impose on the Respondent a sentence of two years rigorous imprisonment suspended for a period of ten years, from the date of this judgment. In addition, a fine in a sum of Rs. 100,000 is imposed on the Respondent, with a default sentence of two years simple imprisonment. The fine shall be paid to the Registry of this Court within 90 days hereof." [p. 21]

Employment Law

116. *Nanayakkara v. North Central Provincial Road Passenger Transport Authority (SC Appeal No: 37/2023, decided on 10.10.2025)*

Unfair termination – Reinstatement and compensation – Industrial Disputes Act – Retirement age – Back wages – Gratuity – Just and equitable remedy.

Per Hon. Arjuna Obeyesekere, J.

"With the age of the Applicant not being a bar to the Applicant being reinstated, and with the Labour Tribunal not being concerned with any other ground that would make reinstatement inexpedient, there was no impediment to an order being made for the reinstatement of the Applicant. Thus, in my view, the Labour Tribunal erred when it refused to order the reinstatement of the Applicant on the basis of the age of retirement of the Applicant." [pp. 15-16]

117. *Peoples' Bank v. Shelton Anthoney Kahawe and Another (SC/Appeal/94/2022, decided on 06.06.2025).*

Termination – Employee's misconduct – Causing annoyance/unruly behaviour under the influence of liquor – Appeal to the High Court against the Labour Tribunal's order – Questions of law and fact – Appeal to the High Court from a Labour Tribunal lies only on a question of law – Labour Tribunal's order justifying termination affirmed – Court's power and duty to place the correct caption despite counsel's failure.

Per Hon. S. Thurairaja, PC J.

"Being disoderly under the influence of alcohol or drugs during working hours, especially whilst being deployed for a specific purpose, is most certainly sufficient to justify the termination of an employee's services. Needless to say, the actions such as intoxication, disruption and insubordination clearly violate the implied conditions of any form of employment. In the sectors such as banking, the aforementioned implied conditions of service carry even greater weight." [p. 8]

"As the aforementioned provision makes it amply clear, an appeal to the High Court from an order of a Labour Tribunal can only be made on a question of law. In line with the authorities cited above, an appellate court must not lightly disturb the factual finding of a Labour Tribunal. The Labour Tribunal not only has the opportunity to hear the testimonies and observe the mannerisms of witnesses, but it also has the opportunity to perform certain inquisitorial functions, and is therefore uniquely positioned to find and consider the factual circumstances surrounding a dispute." [p. 13]

118. *Fazal Hardware Pvt Ltd and Another v. Buwalu Patabandige Thilakasiri (SC Appeal No. 76/2022, decided on 18.02.2025).*

Termination of employment – Employee's intention to sever the employer-employee relationship (use of abusive and vituperative language towards a director of the appellant company/employer) – Voluntary abandonment of employment – Falsified evidence presented by the Ayurvedic physician – Labour Tribunal's failure to analyse the falsified evidence – Equity: clean hands doctrine – Falsus in uno, falsus in omnibus.

Per Hon. A.L. Shiran Gooneratne, J.

In this instance, the Applicants use of abusive and vituperative language towards a director of the Appellant company within

the bounds of his employment, goes beyond mere misconduct and reflects a deliberate intention to sever the employer-employee relationship. It is clear from the evidence that the Applicant has made an explicit declaration that he no longer wished to continue work with the Appellant company. During the argument with the director, the Applicant explicitly stated that he "did not want to work here anymore" and added that he "could find many other places to work for." This verbal admission is a clear and an unambiguous expression of his intention to sever the employer-employee relationship. Such a declaration made to a director, especially in the presence of fellow employees/ witnesses, cannot be considered as mere frustration or dissatisfaction. It is, rather a decisive indication of voluntary abandonment of employment. After making this declaration, he had slammed the vehicle key onto the table. These actions together, indicate a clear intention on the part of the employee to vacate his employment. [para 33]

119. *The Superintendent Troup Estate, Talawakelle and Another v. Ceylon Estate Staffs' Union (SC Appeal No. 152/2013, decided on 23.07.2025).*

Employment law – Unjust termination – Misconduct – Domestic inquiry – Burden of proof – Nemo debet bis vexari (no one should be punished twice for the same cause) – Employers can pursue both recovery of losses and disciplinary action – Loss of confidence – Reinstatement or compensation – While termination was unjust – Reinstatement was inappropriate due to the employee's admission of liability – Compensation alone was awarded.

Per Hon. Sobhitha Rajakaruna J.

"I hold the view that an employer is entitled to both, recover damages from an employee and terminate his/her employment on disciplinary grounds, provided all requisite legal and procedural conditions are fulfilled. Likewise, disciplinary action against an employee should be grounded in established misconduct, rather than whether the associated loss or damage has been recovered. An employee's civil liability and disciplinary proceedings against such employee may occur simultaneously, but are not mutually exclusive." [p. 7]

120. *Janaranjana v. The State Timber Corporation (SC/Appeal/139/2015, decided on 08.07.2025)*

Labour Tribunal – Compensation – Appellant not a permanent employee but engaged on an irregular appointment to a non-existent position on a contractual or casual basis – Just and equitable order – Reasonableness – Labour Tribunal not at fault for being guided by the specific reliefs sought by the employee in his application.

Per Hon. Mahinda Samayawardhena, J.

"...although section 31C of the Industrial Disputes Act empowers the Labour Tribunal to make "such order as may appear to the tribunal to be just and equitable", this does not entitle the Tribunal to make any order which it thinks fit. While no rigid rules can be laid down to define what constitutes a just and equitable order, it is well established that, although such an order need not strictly conform to legal principles, it must not be illegal, irrational or perverse. Depending on the unique facts and circumstances of each case, the Tribunal must exercise its discretion judiciously and make an order acceptable to both the employee and employer. It must never be one-sided or disproportionate." [p. 3]

121. *Hettiaratchi and another v. Pearl Weerasinghe, The Commissioner General of Labour and others (S.C. Appeal No. 37/2018, decided on 18.07.2025).*

Section 8 of the Payment of Gratuity Act No. 12 of 1983 – Revisiting administrative order – Powers of the Commissioner of Labour – Whether the Commissioner General of Labour (CGOL) has the power to revisit an order or decision previously made by him – Functus officio doctrine – Presumption of validity – Administrative action presumed valid unless or until set aside by a court – Fundamental mistake of fact – Section 18 of the Interpretation Ordinance.

Per Hon. Janak De Silva, J.

"Section 18 of the Interpretation Ordinance does not vest unfettered power to revisit any administrative or executive decision already made. There are no such powers in a modern democratic society. In my view, Section 18 permits any administrative or executive body to revisit its earlier decision only where the decision was made on a fun-

damental mistake of fact and that also only after giving a fair hearing." [p. 20]

"The CGOL may revisit a decision made by him where the decision was made on a fundamental mistake of fact or the decision was obtained by fraud. In the present case, the decision was not based on a fundamental mistake of fact. Neither was it obtained by fraud." [p. 23]

122. *Priyantha Serasundara and Others v. Commissioner General of Labour and others (SC Appeal No: 97/2018, decided on 31.07.2025).*

Industrial disputes – Trade dispute – Illegal strike – Collective agreement violations – Vacation of post – Intention to abandon employment – Employer ultimatums – Balance of employer-employee rights – Mutual obligations – Arbitrator's Jurisdiction.

Per Hon. S. Thurairaja, PC J.

"The development of strike action as a tool employed by the labour movement is rooted in socialist ideology, shaping labour laws and industrial relations, and assisting workers to secure better wages, working conditions and workers' rights. However, legal protection is afforded to a trade union and its members to engage in a legal strike in furtherance of a "trade dispute"..." [p. 133]

"In the development of legal principles surrounding a strike, judge-made law has established that conducting a strike for purposes other than an industrial dispute can render the strike unjustified, thereby providing the employer with the liberty to take appropriate action against such strikers..." [p. 141]

Tax Law

123. *Fonterra Brands Lanka (Private) Limited v. The Commissioner General, Department of Inland Revenue and others (SC Appeal 187/2014, decided on 26.09.2025).*

Inland Revenue Act No. 38 of 2000 – Assessment of income tax – Statutory time bar – Section 134(5) – Meaning of "assessment" – Requirement of notice of assessment within time – Validity of letter of intimation – Jurisdictional defect – Judicial review versus statutory appeal – Writ of Certiorari – Availability of writ despite alternative remedies – Estoppel and taxpayer's right to challenge – Ultra vires assessment – Certainty and finality in tax administration – Taxpayer safeguards.

Per Hon. S. Thurairaja, J.

"The legal authority to charge, levy and collect tax is a creature of statute, and when the legislature, in its wisdom, imposes a time-bar, it does so to provide certainty, finality, and a vested right to the taxpayer. The Respondent's defence, which hinges on the claim that an assessment can be secretly completed and then notified at its convenience, is a direct assault on these core principles."

"It is a fundamental precept of a just legal system that a public authority must act not only within its statutory mandate but also with transparency and accountability. To allow the state to hold taxpaying entities in a state of perpetual uncertainty, to keep a tax liability in a secret departmental file, and to issue a demand at its leisure would be to subvert the very purpose of the law." [para 32 and 33]

124. *The Commissioner General of Inland Revenue v. Stafford Motor Company (Private) Limited (SC Appeal No. 120/2021, decided on 07.07.2025).*

Section 163(5)(a)(i) of the Inland Revenue Act – Computation of time periods under statutes – Section 14(a) of the Interpretation Ordinance – No taxpayer can escape liability to income tax once a clear and unambiguous charging provision exists unless an equally clear exemption applies – Construction of statutory provisions pertaining to official action generally directory, not mandatory – Duty of the Tax Appeals Commission to deliver its determination within 270 days – Whether the time limit is directory or mandatory.

Per Hon. P. Padman Surasena, J. (as he then was)

"[I]t is clear that no taxpayer can escape taxation once a liability to income tax is found in the taxing statute in a clear and unambiguous manner unless such person can find an equally clear section which exempts such person from such liability to pay such tax" [pp.10-11]

See further: The Commissioner General of Inland Revenue v. Stafford Motor Company (Private) Limited (SC Appeal No. 55/2024, decided on 07.07.2025).

125. JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue (SC/Appeal/05/2021, decided on 05.03.2025).

Value Added Tax Act, No. 14 of 2002 – Section 43(1): recovery of tax in default as a fine – Section 42(6): recovery by seizure and sale – Distinction between the jurisdictions of the District Court and the Magistrate's Court – Section 19 of the Judicature Act – Gazette (Extraordinary) No. 1380/17 of 16.02.2005 – Territorial jurisdiction and subject-matter jurisdiction – Lack of jurisdiction of the District Court to recover tax in default as a fine – Effect of ultra vires and patent lack of jurisdiction – Prohibition on forum shopping and judge shopping – Interpretation of taxing statutes – Distinction between charging and machinery provisions – Machinery provisions to be liberally construed to give effect to legislative intent.

Per Hon. Mahinda Samayawardhena, J.

> *"[A]ccording to section 19 of the Judicature Act, every District Court shall, inter alia, have unlimited original jurisdiction in all revenue matters, except where original jurisdiction has been exclusively assigned to any other Court or authority by any written law." [p. 6]*

> *"In the interpretation of taxing statutes, when the issue pertains to charging provisions that impose tax liability, as opposed to machinery provisions that outline the procedure for quantification and enforcement of such liability, the Court must adhere strictly to the letter of the law rather than its spirit. If the language of a charging provision is clear and unambiguous, the Court is bound to give effect to it and cannot interpret the words differently on the basis that the literal interpretation does not reflect the real intention of Parliament. If the wording of a charging provision is ambiguous, permitting one interpretation favourable to the taxpayer and another to the tax collector, the Court should adopt the interpretation that favours the taxpayer until such ambiguity is resolved by legislative amendment. Conversely, when interpreting machinery provisions, a more liberal approach is warranted to give effect to the legislative intent. Machinery provisions are not subject to strict construction where such interpretation would defeat the purpose of the statute. If the language of a machinery provision is ambiguous, permitting one interpretation favouring the taxpayer and another favouring the tax collector, the Court should adopt the interpretation favouring the tax collector until the legislature resolves the ambiguity through an amendment." [pp. 21-22]*