

Court of Appeal Sitting

British Virgin Islands

15th January 2007

Coram: His Lordship, the Hon. Mr. Michael Gordon, QC – Justice of Appeal (President)
His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Application

Devin Maduro v The Queen
Criminal Appeal No.3 of 2005

Appearances:

Appellant: Unrepresented
Respondent: Mr. Terrence Williams - DPP

Issues: Murder
Application for an adjournment.

Result: Matter adjourned to the next sitting of the Court of Appeal in the British Virgin Islands.

Reason: Application by the Appellant requesting adjournment to seek leave to amend his grounds of appeal and to obtain Legal Aid.

Application

Magdaline Rhymer v Calvin Todman and Joyce DelaMOS (nee Todman)
Civil Appeal No.8 of 2006

Appearances:

Appellant: Mr. Gerard Farara, Q.C.
Respondent: Mrs. Benedicta Samuels-Richardson

Issues: Application for an adjournment to the next sitting of the Court in the British Virgin Islands.

Result: Matter adjourned to next sitting of the Court.

Reasons: Record filed on 3rd January 2007.
Matter listed before timelines outlined in Civil Procedures Rules have run.

Application

Edison Aguilar Segundo et al v The Attorney General and The Commissioner of Police

Magisterial Criminal Appeal No.01 of 2004

Appearances:

Applicant/
Appellant: Mr. Herbert McKenzie
Respondent: Mr. Terrence Williams, Director of Public Prosecution

Issues:

Unlawful possession of controlled drug.
Application for an adjournment.

Result:

Matter adjourned to the next sitting of the Court of Appeal in the British Virgin Islands.

Reason:

Matter assigned late to the Legal Aid lawyer, Mr. Herbert McKenzie.

Application

Thomas Townsend et al v Persistence Holdings Ltd.

Civil Appeal No.8 of 2004

Appearances:

Appellant - Mr. Sydney Bennett, QC
Respondent - Mr. Gerard Farara, QC

Issues:

Application for final leave to appeal to Her Majesty in Council

Result:

Final leave granted.

Reason:

All requirements have been fulfilled.
No objection from the other side.

Application

Bettito Frett v Allen Wheatley et al

Civil Appeal No.2 of 2008

Appearances:

Appellant/
Respondent: Mrs. Lorna-Shelley-Williams with her Mrs. Tana'ania Small-Davis
Applicant/
Respondent: Mr. Terrence Neale for Allen Wheatley, Wesley Penn and National Education Services Co. Ltd.
Respondent: Mr. Steven Elliott with Mr. Michael Pringle for Mr. John Schultheis

Issues:

Negligence – damages

Costs

**Application for Leave to Appeal to Her Majesty in Council
Application for a Stay of Execution**

Results:

1. Application for a stay refused.
2. Conditional leave to appeal to Her Majesty in Council granted.
3. Usual conditions to be fulfilled.

Reason: No good grounds for a stay revealed.

Application

**Lyra Farrington v The Personal Representative of the Estate Alec Mathavious
(deceased) et al**
[High Court Civil Appeal No. 27 of 2006]

Appearances:

Respondent/Appellant - Applicant/ Respondents	Ms. Cheryl Richards Mrs. Tana'ania Small-Davis
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Issue: Application for Notice of Appeal to be struck out.

Result: Decision reserved.

Reason: Written judgment to be delivered.

Judgment - Dominica

Judgment delivered by: Hon. Justice of Appeal Mr. Denys Barrow, SC

**National Commercial Bank of Dominica, Minister for Finance and Economic
Planning, Attorney General of the Commonwealth of Dominica v Julius Corbette**
[Civil Appeal No. 12 of 2006 - Dominica]

Appearances:

Applicant:	Mr. Sydney Bennett, QC holding for Mr. Joffrey Harris, SC for the first Appellant and Gerard Farara, QC holding for Mr. Anthony Astaphan for the second Appellant
Respondent:	Mr. Jack Husbands holding for Mr. Marcel Commodore

Issues:

1. Wrongful dismissal.
2. Whether the Claimant's performance was in breach of the expressed or implied terms of his contract of employment
3. Whether the Claimant's recommendation for dismissal was unfair and biased.

4. Whether the Minister was biased when making his decision to dismiss the Respondent.
5. Whether the Minister's decision to dismiss the Respondent was wrong.
6. Counter Notice: Was the Respondent given sufficient time in which to respond to the allegations and recommendations made against him.

Results:

1. Appeal allowed.
2. Judgment in the Court below is set aside.
3. Judgment entered dismissing the Respondent's claim against Defendants for damages for wrongful dismissal.
4. Prescribed costs awarded to the Bank and the Minister in the court below in the sum of \$79,790.00.
5. Prescribed costs awarded to the bank in this Court in the sum of \$53,193.33.
6. Counter notice dismissed.

Reasons:

1. Satisfactory performance or compliance cannot be a matter for a Court to judge since the law lays down no standards of performance or compliance by which a test can be applied. Performance and compliance must be matters for the opinion of those under whom an employee works.
2. The trial Judge did not consider the material that comprised the allegations against the Respondent or the Minister's consideration of this material. The steps the Minister took after arriving at his decision makes untenable the suggestion that the Minister simply rubber stamped the decision of the Chairman. In fact the Minister had warned the Respondent about his decision before the Board made its recommendation. The Minister was in a position to form and did form an independent opinion for himself of the performance and compliance of the Respondent.
3. The trial Judge misdirected himself in law in considering the wrong questions. The correct exercise would have been to consider whether the Minister honestly and on reasonable grounds, formed the opinion that the Respondent failed or neglected, or was unable to perform his duties and comply with directions and instruction.
4. The Respondent fully responded in writing to the allegation, was able to discuss the matter with the Minister and was given the opportunity to expand on what he wrote. He actually received two extensions of time within which to respond. The Respondent was not adversely affected by the limit on the time in which he was required to respond.

High Court Civil Appeal

Commonwealth Trust Limited v Oxus Gold Pl, Norox Mining Company Limited
Civil Appeal No. 33 of 2006

Appearances:

Appellant: Mr. Daniel Wise
Respondent: Mr. Steven Elliott with him Mr. Michael Pringle

Issue: Commercial – Norwich Pharmacal/ Bankers Trust Order

Result: Matter removed from the list.

Reason: Consent order to be filed.

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC – Chief Justice (Ag.)
His Lordship, the Hon. Mr. Michael Gordon, QC – Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Application

Michael Smith Jr. et al v Linton Wheatley and MacFred Wheatley
Civil Appeal No. 04 of 2005

Appearances:

Appellant: Mrs. Benedicta Samuels-Richardson holding for Sir Richard Cheltenham, QC
Respondent: Mr. John Carrington

Issues: Application to adjourn the matter to the next sitting of the Court of Appeal.

Results:

1. Application for adjournment refused.
2. Matter stands dismissed for want of prosecution.
3. Cost to the Respondent agreed at \$3,500.00.

Reasons: Sir Richard Cheltenham, QC not present. He was not properly retained. Mrs. Samuels-Richardson not prepared to argue the matter.
Application for an adjournment objected to by Mr. Carrington. Appellants have not properly prosecuted the Appeal. It would not be appropriate to adjourn this matter.

Coram: His Lordship, the Hon. Mr. Michael Gordon, QC – Justice of Appeal (President)
His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Judgment delivered by: His Lordship, the Hon. Mr. Michael Gordon, QC – Justice of Appeal (President)

Judgment – St. Lucia

C. J. Touring Service et al v St. Lucia Air and Sea Ports Authority and Classic Transportation Incorporated v St. Lucia Air and Sea ports Authority
Civil Appeals No. 23 and 24 of 2006 – St. Lucia

Appearances:

Appellant: Mr. Sydney Bennett, QC holding for Mr. Horace Fraser
Respondent: Mr. Gerard Farara, QC holding for Mr. Hilford Deterville, QC

- Issues:**
1. Injunction - Interpretation of Section 90 of the Saint Lucia Air and Sea Ports Authority Act, No. 10 of 1953 ("The Act")
 2. Whether Section 90 of the Act applies to proceedings for judicial review.
- Preliminary Applications:
3. Application by the Appellants for re-designation of 1st and 4th Appellant
 4. Application by the Respondent to exclude pages from the record.
- Results:**
1. Application to redesignate the 1st and 4th Appellant granted.
 2. Pages requested to be excluded expunged for the record, save and except pages 13 – 18 inclusive which were properly before the Court.
 3. Appeal dismissed with costs to the Respondent to be calculated in accordance with CPR Part 65.
- Reasons:**
1. The Respondent would in no way be prejudiced by the re-designation.
 2. Appellants conceded that all documents sought to be excluded, save pages 13 – 18, should be expunged.
 3. The learned Trial Judge was right in determining as she did, that absent the required Notice as set out in section 90 of the Act, the proceedings were a nullity.
 4. Judicial review derives from the inherent jurisdiction of the court and is to be distinguished from remedies granted by the constitution. Therefore, section 90 of the Act also applies to such a proceeding.

Application

VI Investment Ltd. v American International Bank Ltd. (In Receivership)
Civil Appeal No. 32 of 2006

Appearances:

Respondent/Applicant:	No appearance
Applicant/Respondent:	Dr. Joseph Archibald, QC

Issues: Application for leave
Oral Application to strike out Appeal for want of prosecution

Result: Matter struck out for want of prosecution

Reason: No appearance by the Applicant.

Judgment – St. Vincent & Grenadines

Randolph M. Howard v Aubrey Monroe
Civil Appeal No. 4 of 2006

Delivered by: His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal

Appearances:
 Appellant: Mr. Sydney Bennett, QC holding for Mr. Stanley John
 Respondent: Mr. Paul Webster, QC holding for Mr. Joseph Delves

Issues: Proprietary estoppel
 Equity
 Whether the Judge misdirected himself when he decided to order the transfer of the property to the Respondent.

Result: Appeal dismissed
 Costs to the Respondent in the sum of \$5, 280.00 being two thirds of the cost awarded below.

Reason: The appropriate order to make was for the minimum equity that would do justice to the Respondent. In this case the deceased specifically promised the Respondent the absolute ownership of the property and it is clear that the respondent had an equity to that extent. The Respondent has a firm basis in law for claiming the property should go to him. Apart from the provision in the later will, the Appellant and the beneficiaries have none. The consequence of holding the deceased to her promise is, in the circumstances of this case, for the freehold to be transferred to the Respondent.

Judgment – St. Lucia

Richard Frederick v Owen Joseph, Ferguson Joseph, Jonathan Joseph, Magdalene Joseph
 Civil Appeal No. 32 of 2005

Delivered by: His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal

Appearances:
 Appellant: Mr. Paul Webster, QC holding for Mr. Alvin St. Clair
 Respondent: Mr. John Carrington holding for Mr. Dexter Theodore

Issues:

1. Appeal to the full Court
2. Leave to amend the Notice of Appeal
3. Extension of time to file and serve the Record of Appeal
4. Whether the application in the Court of Appeal to set aside the High Court Judge's order was the correct procedure.
5. Whether a second application to extend time was the correct procedure where the first application had been dismissed for want of prosecution.
6. Whether relief should be granted where there was so inordinate a delay in bringing the application.

Results:

1. The decision of the single Judge of the Court of Appeal is upheld.

2. The Application to vary or discharge the order refusing an extension of time for filing the Record of Appeal is dismissed.
3. Appeal dismissed.
4. Cost to the Respondents in the sum of \$1,000.00.

Reasons:

1. The application to set aside the High Court Judge's order was a wholly incorrect procedure especially so in the face of an existing appeal. Further, unless the Court of Appeal reverses the decision of the High Court it remains binding on the Appellant who is therefore not allowed to assert that the decision is a nullity and has no effect. If the Appellant fails to prosecute an appeal and obtain an order reversing the High Court decision, then the decision stands.
2. The second application to extend time was an abuse of the process of the Court. The filing of an identical application to one already dismissed for want of prosecution is improper. Rather an application to restore the dismissed application with a supporting affidavit outlining the reasons why the application had not been prosecuted should have been made.
3. The applications should have been made promptly and there must be a good explanation for the failure of the litigant to comply with the rule. Neither precondition was satisfied. Further it is fair to deny relief to a litigant who deliberately or intentionally defaults because such conduct is not mere technical non-compliance but an abuse of process.
4. The substantive appeal can not proceed without a Record of Appeal.

Judgment - Antigua**Shoppers Pharmacy Limited v Philmore Jarvis**

Civil Appeal No. 21 of 2005

Delivered by:

His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Appearances:

Appellant: Mr. Jack Husbands holding for Mr. William Archibald
 Respondent: Mr. Paul Webster, QC holding for Mr. Jason Martin

Issues:

1. Industrial Court
2. Wrongful Dismissal
3. Contract – repudiation, uncertainty of agreement
4. Anticipatory Breach
5. Damages

Results:

1. Appeal allowed.
2. Judgment of the Industrial Court set aside.
3. No award as to costs.

Reasons:

1. Repudiation: The Appellants agreed to amend the term in the agreement regarding fulltime employment of the Respondent. There was no act of

- repudiation on the part of the Respondent.
2. Anticipatory breach: The Respondent did not abandon his employment and he did not behave in a manner which showed he intended to breach his contract. The elements of anticipatory breach could not be satisfied.
 3. Uncertainty: The terms of the contract around which the new offer of part time employment was to be based were never settled and the new contract was therefore void for uncertainty and otherwise incomplete. The result is that the Respondent could not claim compensation for wrongful dismissal. The Industrial court erred in awarding damages to the Respondent for compensation for wrongful dismissal.

Judgment – Saint Lucia

Delivered by: His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Gerald Joseph v The Queen
Criminal Appeal No. 2 of 2006

Appearances:

Appellant: Mr. Hayden St. Clair Douglas holding for Mr. Shawn Innocent
Respondent: Mr. Terrence Williams, Director of Public Prosecution holding for Mrs. Victoria Charles-Clark, Director of Public Prosecution

Issues:

Criminal
Indecency upon a female aged 12 years old.
Appeal against conviction and sentence
Whether the accused was deprived of an opportunity for trial – no legal representation – discussion of Robinson and Hinds cases
Directions on identification evidence
Recent complaint
Good character directions

Results:

1. Appeal allowed.
2. Conviction quashed, sentence set aside
3. Retrial ordered.

Reasons:

1. The right to legal representation is not an absolute right. In this case the trial judge went to great lengths to assist the Appellant throughout the trial. She assisted him with cross examination and ensured that due process was observed during the course of the presentation of the evidence. The trial reflects a process that was markedly more reflective of a fair trial than Robinson, which was a case of greater complexity.
2. Identification directions: The trial Judge gave very adequate Turnbull directions to the jury but erred by failing to give the mandatory warnings which Sections 102(2) and 102(3) of the St. Lucia Evidence Act stipulate. It is not obligatory for a trial judge to give the warning stipulated under Section 136 if he or she has good reasons for not giving it. In this case there is no sufficient basis present

that should have precluded the trial judge from giving the warnings under Section 136(2).

3. The issue of recent complaint does not arise in this case, no evidence was led that brought it into consideration.
4. Credibility was an important consideration in this case. This was an appropriate case for a good character direction.
5. It is not possible to tell here how giving the necessary directions would have influenced the jury.

Judgment – St. Lucia

Theibert Edwards v The Queen

Criminal Appeal No. 3 of 2006

Delivered by: Hon. Justice of Appeal Mr. Michael Gordon, QC

Appearances:

Appellant: Mr. Hayden St. Clair Douglas holding for Mr. Shawn Innocent
 Respondent: Mr. Terrence Williams, Director of Public Prosecution holding for Mrs. Victoria Charles-Clarke, Director of Public Prosecution

Issues:

1. Dangerous driving
2. Causing death by dangerous driving
3. Appeal against sentence
4. Interpretation of Section 73 of the Motor Vehicle Road Traffic Act No. 10 of 2003 (The Act) and Section 1197 of the Criminal Code – inconsistent provision relating to sentence.
5. Constitution – Whether the mandatory sentence in Section 73 of the Act constitutes inhuman and degrading punishment.

Results:

1. Conviction affirmed.
2. Sentence varied from 5 years imprisonment to a fine of \$4,000.00.
3. Fine to be paid within sixty (60) days of today's date. In default, imprisonment for one (1) year.
4. No further disqualification from driving beyond date of judgment.

Reasons:

1. The applicable rule of interpretation in this case is that to the extent that there are provisions in an earlier Act which are inconsistent with a later Act, the provisions of that later legislation will override the earlier. Further, an accused person is entitled to every advantage offered by law. Where two or more conclusions are maintainable, the one more favourable to the accused is preferred. Following this interpretation the Criminal Code (the later Act) restores the discretion of the Court to sentence a person to payment of a fine rather than to a term of imprisonment of not less than five years. However, because the Act was amended in 2006 (including Section 73) the amended Act now post dates the Criminal Code. A consideration of the Constitutional ground becomes

- necessary.
2. Parliament is competent to set mandatory minimum sentences, subject to the duty of the Courts to evaluate whether such laws contravene the constitution. Each such law must be examined by the Courts to see whether the fundamental rights and freedoms are observed or contravened. Section 73 (2) (a) is in breach of Section 5 of the Constitution in that the mandatory minimum sentence of five years imprisonment for the crime of causing death by dangerous driving constitutes inhuman and degrading punishment. Nevertheless, the strong signal sent by Parliament of its view of the seriousness of the offence of causing death by dangerous driving can not be ignored. In the circumstances, the Courts must give efficacy to the mood of Parliament as expressed through legislation. Therefore, unless good reason or special circumstances exist, an offender convicted of causing death by dangerous driving must expect a custodial sentence on conviction.
 3. The Court has two alternatives, either remit the case to the High Court for sentencing or sentence the Appellant itself. Having requested and received a report from the Probationary Services Department, this court is in as good a position as the High Court to exercise its discretion in relation to sentence.

Barrow JA dissenting:

1. Mandating that imprisonment shall be for a minimum term is not the same as mandating that there shall be a sentence of imprisonment. The word "liable" contains a concession which in the present case is to exercise the discretion of a fine created by Section 1197 of the Code. The trial Judge erred in concluding that she did not have a discretion and was bound to pronounce a term of imprisonment.
2. Parliament is competent to require the imposition of a sentence for a term that would otherwise be inappropriate. Parliament in this case has not, by Section 73 (2) of the Act, removed the decision of what sentence to impose from the discretion of the sentence. Rather it has limited the range of custodial sentence, if the sentencer decides to impose such a sentence. For this reason, no constitutional issues arise. The right of Parliament to set minimum sentences must not only be recognized, it must be respected.
3. In exercising the sentencing power that this Court is called upon to exercise, a custodial sentence of not less than 5 years should be imposed.

16th January, 2007

Coram:

His Lordship, the Hon. Mr. Brian Alleyne, SC – Chief Justice (Ag.)
 His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
 His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

Application

The Attorney General v Edward Brewley

Criminal Appeal No. of 2005

Appearances:

Appellant: Mrs. Grace Henry-McKenzie
 Respondent: No appearance

Issue:

Application for leave to appeal.
 Unlawful sexual intercourse with a girl of or under the age of thirteen years.

Results:

1. Matter adjourned to a teleconference before a single judge of the Court of Appeal.
2. Date to be fixed by the Chief Registrar and parties notified accordingly.

Reason:

Uncertain whether the Respondent had been served.

High Court Criminal Appeal

Clinton Hamm v The Queen
 Criminal Appeal No. 3 of 2006

Appearances:

Appellant: Mr. St. Clair Douglas with Mr. Kevon Swan
 Respondent: Mr. Terrence Williams, Director of Public Prosecution, with him Ms. Tiffany Scatliffe

Issues:

Murder
 No case submission
 Joint enterprise
 Circumstantial evidence

Results:

1. Leave granted to add two new grounds of appeal.
2. Matter adjourned to Wednesday 17th day of January 2007.

Reasons:

1. No objection to the additional grounds from the other side.
2. Continuation of hearing.

High Court Criminal Appeal

Selena Varlack v The Queen
 Criminal Appeal No. 4 of 2006

Appearances:

Appellant: Mr. Richard Rowe with Ms. Anthea Smith
 Respondent: Mr. Terrence Williams, Director of Public Prosecutions with him Ms. Tiffany Scatliffe

Issues:

Murder
 No case submission

Circumstantial evidence
Character directions

- Results:**
1. Leave granted to amend the submission at skeleton page 7 paragraph 8 to change the words "benefit of the doubt should be given to the defendant" to "if the jury are left with any degree of doubt ... then the case has not been proved" as stated at Tab 9 page 4.
 2. Leave granted to amend the skeleton submissions at page 19 to correct Ground 6 to read Ground 5.
 3. Matter adjourned to Wednesday 17th day of January 2007.

Reason: Continuation of hearing.

High Court Criminal Appeal

Lorne Parsons v The Queen
Criminal Appeal No.2 of 2006

Appearances:

Applicant: Dr. Henry Browne with him Mrs. Benedicta Samuels-Richardson
Respondent: Mr. Terrence Williams, Director of Public Prosecution with him Ms. Tiffany Scatliffe

Issues: Murder
No Case submission
Joint enterprise
Exclusive opportunity

Result: Matter adjourned to Wednesday the 17th day of January 2007.

Reason: Continuation of hearing.

17th January, 2007

Coram: Hon. Chief Justice (Ag.) Mr. Brian Alleyne, SC
Hon. Justice of Appeal Mr. Denys Barrow, SC
Hon. Justice of Appeal Mr. Hugh Rawlins

High Court Criminal Appeal

Lorne Parsons v The Queen
Criminal Appeal No.2 of 2006

Appearances:

Applicant: Dr. Henry Browne with him Mrs. Benedicta Samuels-Richardson
Respondent: Mr. Terrence Williams, Director of Public Prosecution

Issues: Murder

No Case submission
 Joint enterprise
 Exclusive opportunity

Result: Decision reserved.

Reasons: Written Judgment to be delivered.

High Court Criminal Appeal

Clinton Hamm v The Queen

Criminal Appeal No. 3 of 2006

Appearances:

Appellant: Mr. St. Clair Douglas with Mr. Kevon Swan
 Respondent: Mr. Terrence Williams, Director of Public Prosecution

Issues: Murder
 No case submission
 Joint enterprise
 Circumstantial evidence

Result: Decision reserved.

Reason: Written Judgment to be delivered.

High Court Criminal Appeal

Selena Varlack v The Queen

Criminal Appeal No.4 of 2006

Appearances:

Appellant: Mr. Richard Rowe with him Ms. Anthea Smith
 Respondent: Mr. Terrence Williams, Director of Public Prosecution with him Ms. Tiffany Scatliffe

Issues: Murder
 No case submission
 Circumstantial evidence
 Character directions

Result: Decision reserved.

Reason: Written judgment to be delivered.

Application

Marble Point Energy Ltd. v Multiperils International Inc.

BVIHAP No.35 of 2006

Appearances:

Applicant/ Mr. Steven Elliott with Mr. Michael Pringle
 Appellant:
 Respondent: Mrs. Tana'ania Small-Davis

Issue: Application for leave to appeal

Results: Matter stood down.
 Applicant to notify the Court if they wish to have the matter
 rescheduled for hearing.
 Costs to the Respondents agreed at \$3,000.00.

Reason: Applicant has decided to pursue other course of action before the High Court. The
 consequence of doing so at this stage is costs.

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC – Chief Justice (Ag.)
 His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal
 His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

High Court Civil Appeal

Valerie Sims v Audubon Holdings Ltd. and Norman Island Services Ltd.
 Civil Appeal No.15 of 2006

Appearances:

Appellant: Mr. Gerard Farara, QC with him Mrs. Tana'ania Small-Davis
 Respondent: Mr. Stephen Moverley Smith, QC with him Ms. Jessica Chappell and Ms. Hazel-Ann
 Hannaway

Issues: Property
 Contract – leasehold
 Assignment of rights
 Misrepresentation

Result: Matter adjourned to Thursday 18th January 2007.

Reason: Continuation of hearing.

High Court Civil Appeal

David Sims v Audubon Holdings Ltd. And Norman Island Services Ltd.
 BVIHAP Appeal No.14 of 2006

Appearances:

Appellants: Mr. Sydney Bennett, QC with him Mr. Richard Rowe

Respondent: Mr. Stephen Moverley-Smith, QC with him Ms. Jessica Chappell and Ms. Hazel-ann Hannaway

Issues: Property
Contract – leasehold
Assignment of rights
Misrepresentation

Result: Matter adjourned to Thursday 18th January 2007.

Reason: Continuation of hearing.

18th January, 2007

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC – Chief Justice (Ag.)
His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

High Court Civil Appeal

Valerie Sims v Audubon Holdings Ltd. and Norman Island Services Ltd.
Civil Appeal No.15 of 2006

Appearances:

Appellant: Mr. Gerard Farara, QC with him Mrs. Tana'ania Small-Davis
Respondent: Mr. Stephen Moverley Smith, QC with him Ms. Jessica Chappell and Ms. Hazel-Ann Hannaway

Issues: Property
Contract – leasehold
Assignment of rights
Misrepresentation

Result: Decision reserved.

Reason: Written judgment to be delivered.

High Court Civil Appeal

David Sims v Audubon Holdings Ltd. And Norman Island Services Ltd.
Civil Appeal No.14 of 2006

Appearances:

Appellants: Mr. Sydney Bennett, QC with him Mr. Richard Rowe
Respondent: Mr. Stephen Moverley-Smith, QC with him Ms. Jessica Chappell and Ms. Hazel-Ann Hannaway

Issues: Property
Contract – leasehold
Assignment of rights
Misrepresentation

Result: Decision reserved.

Reason: Written Judgment to be delivered.

High Court Civil Appeal

IPOC International Growth Fund Limited v LV Finance Group Limited
Civil Appeal No.30 of 2006

Appearances:

Appellant: Mr. Peter McDonald Eggers
Respondent: Mr. Richard Millet, QC with him Mr. Jeffrey Elkinson

Issues: Commercial
Enforcement of Convention Awards
Preliminary Objection:
Whether the decision appealed, which was made by Olivetti J on 31st October 2006 was a final order or an interlocutory order and whether leave to appeal should have been sought.

- a. Whether the decision not to allow the “Ugarte Affidavit” to be relied upon was a separate and interlocutory matter.
- b. Whether there could be an appeal against this decision since no formal order was made.

Results:

1. Decision on preliminary objection reserved.
2. Matter adjourned to 19th January 2007.

Reasons: Oral decision to be given on preliminary objection.
Continuation of hearing.

High Court Criminal Appeal

William Penn v The Queen
Criminal Appeal No.1 of 2006

Appearances:

Appellants: Dr. Joseph S. Archibald QC
Respondent: No appearance

Issues: Criminal – Burglary

Result: Matter adjourned.
Parties to be notified of the date and place of hearing by the Chief Registrar.
Possibility of hearing in St. Kitts to be considered.

Reason: **Insufficient time to hear this matter during the current sitting.**

19th January, 2007

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC – Chief Justice (Ag.)
His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

High Court Civil Appeal

Hinch Invest and Finance S.A. v Ansis Sormulis
Civil Appeal No.26 of 2006

Appearances:

Appellants: Mr. John Carrington
Respondent: Ms. Willa Liburd

Issues: Commercial – Injunction

Results: Matter adjourned.
Parties to be notified of the date and place of hearing by the Chief Registrar.
Possibility of hearing in St. Kitts to be considered.

Reason: Insufficient time to hear this matter during the current sitting.

High Court Civil Appeal

Pentium Bvi Limited v The Bank of Bermuda Limited
Civil Appeal No.31 of 2006

Appearances:

Appellants: Mr. Stephen Moverley-Smith, QC
Respondent: Mr. Jeffrey Elkinson

Issues: Commercial – fraudulent instructions to bank.

Results: Matter adjourned.
Parties to be notified of the date and place of hearing by the Chief Registrar.
Possibility of hearing in St. Kitts to be considered.

Reason: Insufficient time to hear this matter during the current sitting.

High Court Civil Appeal

IPOC International Growth Fund Limited v LV Finance Group Limited
Civil Appeal No.30 of 2006

Appearances:

Appellant: Mr. Peter McDonald Eggers
Respondent: Mr. Richard Millet, QC with him Mr. Jeffrey Elkinson

Issues:

Commercial
Enforcement of Convention Awards
Preliminary issues:

Whether the decision made by Olivetti J appealed on 13th October 2006 was a final order or otherwise and leave to appeal should have been sought.

- a. Whether the decision not to allow the "Ugarte Affidavit" was a separate and interlocutory order.
- b. Whether there could be an appeal against the decision since no formal order was made.

Results:

1. Preliminary objection overruled and hearing of the appeal continues.
2. Decision reserved on the substantive appeal.

Reasons:**Preliminary Issues:**

The applicable test is the application test. In fact the decision disposed of the issue brought on the fixed date claim form supplemented by the ex parte application. The decision was a final order or decision.

The decision made in relation to the refusal to have IPOC rely on the "Ugarte Affidavit" was made in the course of the matter even though there was no formal order. It is not necessary to have a formal order as long as there is a decision against which you will appeal. The order is a part of the decision against which the appeal was made.

Written judgment to be delivered.

High Court Civil Appeal

Pacific Electric Wire & Cable Company Limited v Texan Management Limited et al
Civil Appeal No.19 of 2006

Appearances:

Appellants: Mr. Gerard Farara, QC
Respondent: Mr. Paul Webster, QC

Issues:

Commercial – forum non conveniens. Fraud.

Results:

Application and substantive appeal adjourned.
Parties to be notified of the date and place of hearing by the Chief

Registrar.
Possibility of hearing in St. Kitts to be considered.

Reason:

Insufficient time to hear this matter during the current sitting.