## **Cases and Materials Relating to Corruption**

# **CUMULATIVE SUBJECT INDEX FOR VOLUME 2**

### ADMINISTRATIVE LAW

Application for judicial review -- Order 53 -- Powers of the High Court -- Admissibility of viva voce evidence -- Basic principles to be applied

Chiluba v Attorney General Supreme Court of Zambia (2003)

Issue 4 p.43

Judicial review -- Application for orders of certiorari and mandamus -- Circumstances when such orders can be made

Chiluba v Attorney General Supreme Court of Zambia (2003)

Issue 4 p.43

Rules of statutory construction -- Literal rule -- Circumstances when court may adopt a different construction

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

Statutory interpretation -- Public Service Act -- Prohibition on spouse of "public servant" being member of gaming board -- Meaning of "public servant" -- Whether ordinary meaning to be attached to "public servant"

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

Statutory interpretation -- Ambiguity in anti-corruption statute -- Whether court may look at the legislative history of a statute to aid interpretation

United States of America v Kay and Murphy

United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

Statutory interpretation -- Whether court should adopt a liberal construction of anti-corruption legislation

Special Investigating Unit v Nadasen
Supreme Court of South Africa (2001)

Issue 1 p.24

Statutory interpretation -- Ambiguity in anti-corruption statute -- Whether appropriate for court to consider title of statute to help resolve ambiguities

United States of America v Kay and Murphy

United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

Whistleblowing -- Application for a protection visa - review of decision of Refugee Review Tribunal -- Consideration of circumstances in which exposure of corruption or "whistleblowing" can give rise to a well founded fear of political persecution -- Whether the material and evidence before the Tribunal raised a case of political persecution

### **CONSTITUTIONAL LAW**

## Constitutional Law -- "Overbreadth" of provision -- Meaning of concept

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

Constitutionality of the appointment of a serving judge to head an anti-corruption commission South African Association of Personal Injury Lawyers v Heath & Others (Constitutional Court of South Africa, 2000) Issue 1 p.7

Freedom of expression -- Scope of the right -- Constitution of Grenada, section 10 -- Criminal libel -- Criminal Code of Grenada, section 252(2) -- Whether crime of libel inconsistent with constitutional right to freedom of expression -- Principles of interpretation to be adopted Worme and Grenada Today Limited v Commissioner of Police

Judicial Committee of the Privy Council (2004)

Issue 4 p.65

Presumption of innocence -- Burden of proof -- Whether prosecution to prove publication of the defamatory matter made "unlawfully" -- Constitution of Grenada, section 8(2)

Worme and Grenada Today Limited v Commissioner of Police Judicial Committee of the Privy Council (2004)

Issue 4 p.65

Parliament -- Scope of power to lift immunity from prosecution on former president for alleged corruption -- Constitution of Zambia, article 43(3)

Chiluba v Attorney General Supreme Court of Zambia (2003)

Issue 4 p.43

Parliament -- Whether court may review decision of the National Assembly to remove the immunity from prosecution of a former president -- Section 34 National Assembly (Powers and Privileges) Act

Chiluba v Attorney General Supreme Court of Zambia (2003)

Issue 4 p.43

Right to be heard -- Whether article provides right for former president to be heard by the National Assembly -- Constitution of Zambia, article 43(3)

Chiluba v Attorney General Supreme Court of Zambia (2003)

Issue 4 p.43

Search and seizure – Power to authorise search and seizure warrants for purposes of a "preparatory investigation" – Whether power contravened constitutional right to privacy - Principles of constitutional interpretation to be applied

Investigating Directorate: Serious Economic Offices v Hyundai and Another Constitutional Court of South Africa (2000)

Issue 2 p.48

Whether court may review the decision of the National Assembly to remove the immunity from prosecution of a former president -- Section 34 National Assembly (Powers and Privileges) Act Chiluba v Attorney General

Supreme Court of Zambia (2003)

Issue 4 p.43

# Whether provision reasonable and justifiable in an open and democratic society -- Constitution of South Africa, section 36(1)

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

### **CRIMINAL LAW**

# Bribery -- Representation agreement -- Factors to be considered when determining genuineness of agreement

Acres International v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.44** 

# Bribery -- Representation agreement -- Factors to be considered when determining genuineness of agreement

Lahmeyer International GmbH v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.70** 

Corruption -- "Any agent who accepts any advantage on account of his showing or having shown favour or disfavour to any person in relation to his principal's affairs or business" -- Whether phrase covers acceptance of past favours -- Prevention of Corruption Ordinance section 9(1)(b)

Launder v HKSAR

Hong Kong Court of Final Appeal

(2001)

Issue 5 p.27

## Corruption -- Whether offence involves element of dishonesty

The Queen v Leolahi

(Court of Appeal of New Zealand, 2000)

**Issue 1 p.63** 

### **Criminal libel -- Constitutionality of offence**

Worme and Grenada Today Limited v Commissioner of Police

Judicial Committee of the Privy Council (2004)

**Issue 4 p.65** 

# Evidence -- Admissibility -- Evidence of payments by other contractors to intermediary -- Whether evidence against the appellant

Lahmeyer International GmbH v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.70** 

## Jurisdiction of court to entertain the appeal -- Constitution of Niue, article 55A(2)(d)

Lakatini v The Police

Court of Appeal of Niue (1995)

Issue 5 p.41

# Mens rea -- Offence of "corrupt use of official information" -- Whether accused must know the information obtained "in a criminal manner"

The Queen v Leolahi

Court of Appeal of New Zealand, 2000

**Issue 1 p.63** 

# Misdirection by trial judge -- Failure of defence to object to directions at the trial -- Whether a bar to an appeal

Launder v HKSAR

Hong Kong Court of Final Appeal (2001)

Offence of official corruption -- Scope of phrase "holder of any office ... in the service of Her Majesty"-- Whether an Assemblyman or a Minister is "in the service of Her Majesty" -- section 180 Niue Act 1966

Lakatini v The Police

Court of Appeal of Niue (1995)

Issue 5 p.41

Presumption of innocence -- Burden of proof -- Whether prosecution to prove publication of the defamatory matter made "unlawfully" -- Constitution of Grenada, section 8(2)

Worme and Grenada Today Limited v Commissioner of Police Judicial Committee of the Privy Council (2004)

Issue 4 p.65

Right to freedom of expression -- Scope of the right -- Whether crime of libel inconsistent with constitutional right to freedom of expression -- Principles of interpretation to be adopted --Constitution of Grenada, section 10 -- Criminal Code of Grenada, section 252(2)

Worme and Grenada Today Limited v Commissioner of Police

Judicial Committee of the Privy Council (2004)

**Issue 4 p.65** 

Scope of the offence bribery of foreign public officials -- Meaning of the phrase "in order to assist in obtaining or retaining business" -- Whether offence extended to bribing customs officials for purposes of reducing customs duties and sales taxes -- Foreign Corrupt Practices Act

United States of America v Kay and Murphy

United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

## Sentence -- Appropriate procedure for determining sentence for corporation

Lahmeyer International GmbH v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.70** 

"State official" -- Meaning of -- Whether includes public officer seconded to a statutory body Sole v The Crown

Court of Appeal of Lesotho (2003)

Issue 3 p.11

Voters -- Acceptance of bribe from parliamentary candidate -- When act constitutes criminal liability

Ah Him v Amosa

Supreme Court of Samoa (2001)

Issue 1 p.46

## **ELECTORAL MALPRACTICE**

Electors -- Acceptance of bribe from parliamentary candidate -- When criminal liability established

Ah Him v Amosa

Supreme Court of Samoa (2001)

Issue 1 p.46

Gifts -- Presenting gifts to supporters by parliamentary candidate -- When a corrupt practice

Ah Him v Amosa

Supreme Court of Samoa (2001)

**Issue 1 p.46** 

## **EVIDENCE AND PROCEDURE**

Admissibility -- Evidence of payments by other contractors to intermediary -- Whether evidence against the appellant

Acres International v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.44** 

Application to re-open defence case -- Applicable principles

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Burden of proof -- Criminal libel -- Presumption of innocence -- Whether prosecution to prove publication of the defamatory matter made "unlawfully"

Worme and Grenada Today Limited v Commissioner of Police

Judicial Committee of the Privy Council (2004)

**Issue 4 p.65** 

Circumstantial evidence -- Rule in R v Blom -- Principles of inferential reasoning -- When to be applied

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

**Corroboration -- Whether recipient of bribe can corroborate the evidence of another bribee** *Ah Him v Amosa* 

Supreme Court of Samoa (2001)

**Issue 1 p.46** 

Disclosure of evidence to defence -- Application by defence for disclosure of documents -- Alleged failure to receive all relevant documents -- Whether a miscarriage of justice -- Principles to be applied

The Queen v Dawson

Court of Appeal of New Zealand (2004)

**Issue 4 p.33** 

Expert witness -- Refusal of the trial judge to permit accused to call expert witness -- Whether constituting a misdirection

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Indictment -- Retrospective operation and constitutionality -- Criminal Procedure and Evidence (Amendment) Act 2001

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Investigation undertaken by private individual -- Whether police under an obligation to ensure impartial and objective assessment of the evidence before commencement of criminal proceedings

The Queen v Dawson

Court of Appeal of New Zealand (2004)

**Issue 4 p.33** 

Jurisdiction -- No evidence that corrupt agreement made in Lesotho -- Whether jurisdiction established where the harmful effect occurred within Lesotho -- Evidence required to prove harmful effect

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Loss of evidence by prosecution -- Approach to be taken by the court -- Duty placed on prosecution to provide explanation

The Queen v Dawson

Court of Appeal of New Zealand (2004)

**Issue 4 p.33** 

Right to silence -- Evidential value -- Whether drawing of an adverse inference from silence of accused unconstitutional

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Right to remain silent -- Applicant summoned for questioning by National Prosecuting Authority into allegations of corruption -- Constitutionality of power to question any person believed able to furnish any information -- National Prosecuting Authority Act 32 of 1998

Shaik v Minister of Justice and Constitutional Development and Others

Constitutional Court of South Africa (2003)

Issue 5 p.48

Search warrant -- Scope of statutory powers of Independent Commission Against Corruption to issue a search warrant

Commissioner of the Independent Commission Against Corruption v Ch'ng Poh Judicial Committee of the Privy Council (1997)

Issue 1 p.41

Search and seizure powers – Power to authorise search and seizure warrants for purposes of a "preparatory investigation" – Whether power contravened constitutional right to privacy - Principles of constitutional interpretation

Investigating Directorate: Serious Economic Offices v Hyundai and Others

Constitutional Court of South Africa (2000)

**Issue 2 p.48** 

## INDICTMENT

Sufficiency of indictment -- Crown unable to supply detailed information about time and place of corrupt bargain

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Sufficiency of indictment -- Whether indictment needs to go further than "tracking" the language of the statute -- Foreign Corrupt Practices Act

United States of America v Kay and Murphy

United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

#### **INSOLVENCY**

Authority to institute proceedings -- Striking out of new matter in replying affidavit deemed to have been received for employer

Ganes & Ganes v Telecom Namibia Limited

Supreme Court of Appeal of South Africa (2003)

# Bribes or secret commissions received by employee in course of employment -- Whether deemed to have been received for employer

Ganes & Ganes v Telecom Namibia Limited
Supreme Court of Appeal of South Africa (2003)

I ssue 5 p.63

### **JURISDICTION**

Jurisdiction -- No evidence that corrupt agreement made in Lesotho -- Whether jurisdiction established where the harmful effect occurred within Lesotho -- Evidence required to prove harmful effect

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

### **MUTUAL ASSISTANCE**

Mutual assistance request to Canada from Russia to obtain documents in pursuance of a corruption investigation -- Whether documents could be sent in the following circumstances: (a) where they were not specifically referred to in the request; (b) where the documents might relate to offences that were the subject of an amnesty order in the requesting state; (c) where some documents were or may not be not relevant to the investigation

In re Pokidyshev and Rodionov

Court of Appeal for Ontario (1999)

Issue 2 p.34

Effect of failure by requesting country to specify type of legal assistance required

In re Pokidyshev and Rodionov

Court of Appeal for Ontario (1999)

**Issue 2 p.34** 

## ORGANISATION AND POWERS OF ANTI-CORRUPTION COMMISSIONS

Appointment of a serving judge to head an anti-corruption commission -- Whether constitutional South African Association of Personal Injury Lawyers v Heath & Others

Constitutional Court of South Africa (2000)

Issue 1 p.7

Statutory interpretation of anti-corruption legislation -- Whether court should adopt a liberal construction

Special Investigating Unit v Nadasen Supreme Court of South Africa (2001)

**Issue 1 p.24** 

Search warrant -- Scope of statutory powers of Independent Commission Against Corruption to issue a search warrant

Commissioner of the Independent Commission Against Corruption v Ch'ng Poh Judicial Committee of the Privy Council (1997)

**Issue 1 p.41** 

### PROCEEDS OF CRIME

Proceeds of crime -- Respondent applying fugitive disentitlement doctrine and seeking to register foreign restraint order in England -- Whether contrary to the interests of justice to do so -- Whether contrary to the right to a fair trial to do so -- Test to be applied

Government of the United States of America v Barnette and Another

House of Lords (2004)

Right to a fair trial -- European Convention on Human Rights, article 6 -- Whether article 6 protection applicable to enforcement of foreign judgment made in non-convention State

Government of the United States of America v Barnette and Another

House of Lords (2004) Issue 5 p.72

### **SENTENCING**

Co-accused -- Non-custodial sentence imposed -- Whether court should take this into account when considering length of sentence

R v Bush

Court of Appeal (Criminal Division)(2003)

Issue 5 p.85

**Corporation -- Appropriate procedure for determining sentence** 

Acres International v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.44** 

Corruption -- Payment of £700,000 to products manager of an international company in return for contracts -- length of sentence

R v Myatt and Winkles

Court of Appeal (Criminal Division)(2004)

Issue 5 p.89

Deterrent sentence -- Need to take into account both aggravating and mitigating features

Acres International v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.44** 

Deterrent sentence -- Senior customs official pleading guilty to corruption -- Need for deterrent sentence -- Whether custodial sentence appropriate -- High level of trust and systematic course of corruption as aggravating factors -- Effect of failure of trial judge to address expressly the mitigating factors

The Queen v Nua

Court of Appeal of New Zealand (2001)

Issue 2 p.68

Mitigating factors -- plea of guilty and accused of previous exemplary character -- effect on length of sentence

R v Myatt and Winkles

Court of Appeal (Criminal Division)(2004)

Issue 5 p.89

Sentence -- Aggravating features -- Gross abuse of trust over a period of six years -- Effect on length of sentence

R v Bush

Court of Appeal (Criminal Division)(2003)

Issue 5 p.85

Sentence -- Council officer soliciting payments in return for placing company on list of approved contractors -- £40,000 received over six year period -- Length of sentence

R v Bush

Court of Appeal (Criminal Division)(2003)

Issue 5 p.85

Use of concurrent and consecutive sentences on different counts -- When appropriate

Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

### STATUTORY CONSTRUCTION

Ambiguity in anti-corruption statute -- Whether court may look at the legislative history of a statute to aid interpretation

*United States of America v Kay and Murphy*United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

Ambiguity in anti-corruption statute -- Whether appropriate for court to consider title of statute to help resolve ambiguities

United States of America v Kay and Murphy
United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4

Literal rule -- Circumstances when court may adopt a different construction

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

Principles of constitution interpretation -- Right to freedom of expression -- Scope of the right -- Whether crime of libel inconsistent with constitutional right to freedom of expression -- Constitution of Grenada, section 10 -- Criminal Code of Grenada, section 252(2)

Worme and Grenada Today Limited v Commissioner of Police Judicial Committee of the Privy Council (2004)

**Issue 4 p.65** 

Whether court should adopt a liberal construction of anti-corruption legislation

Special Investigating Unit v Nadasen Supreme Court of South Africa (2001)

**Issue 1 p.24** 

## **WORDS AND PHRASES**

Scope of phrase "holder of any office ... in the service of Her Majesty"-- Whether an Assemblyman or a Minister is "in the service of Her Majesty"

Lakatini v The Police

Court of Appeal of Niue (1995)

Issue 5 p.41

"Public servant" -- Public Service Act -- Prohibition on spouse of "public servant" being member of gaming board -- Meaning of "public servant" -- Whether ordinary meaning in the Public Service Act to be attached to "public servant"

Poswa v Member of the Executive Council responsible for Economic Affairs Environment and Tourism Supreme Court of Appeal of South Africa (2001) Issue 5 p.5

"State official" -- Meaning of -- Whether includes public officer seconded to a statutory body Sole v The Crown

Court of Appeal of Lesotho (2003)

**Issue 3 p.11** 

Meaning of the phrase "in order to assist in obtaining or retaining business"

United States of America v Kay and Murphy

United States Court of Appeals, Fifth Circuit (2004)

Issue 4 p.4