College of Business, Legal Information Clinic

HIGHLIGHTS OF U.S. SUPREME COURT CIVIL RULINGS 2018-2019 TERM

SUMMARY

The U.S. Supreme Court 2018-2019 Term had seventy-two (72) appeals; six were per curiam (the court acting collectively) reversals, leaving sixty-six (66) argued cases before the justices. Of the seventy-two (72) cases, twenty-five (25) were affirmed and forty-seven (47) were reversed. While many commentators speculate Justice Kavanaugh's appointment hearings impacted the court's docket, there were still many significant decisions this term. In addition, many of the rulings have invoked discussion on future application of stare decisis, plaintiffs seeking legal redress in state courts in lieu of federal courts, and the Courts overall exercise of judicial restraint this term.

The below are summaries of civil cases only. A complete summary of all cases can be obtained directly from the COB Legal Information Clinic upon written request.[1]

ADVERTISEMENT

PDR Network LLC v. Carlton & Harris Chiropractic, Inc., 139 S.Ct. 2051 (2019).

A question arose whether lower federal courts were bound under the Hobbs Act by an FCC order that "unsolicited advertisement" under the Telephone Consumer Protection Act provision prohibiting unsolicited advertisement by fax or faxes that offered a free good or service. The Supreme Court remanded question to lower court to determine the issue.

ANTITRUST

Apple v. Pepper, 139 S.Ct. 1514 (2019).

After Apple began selling iPhone, it set up an app store where consumers could buy apps which could send messages, take photos, watch videos, order food, purchase tickets and others. The apps were manufactured by third parties, and the prices were set by the manufacturers, with Apple keeping 30% of the selling price. The Supreme Court held that consumers may sue Apple directly for monopolization under the antitrust laws since the customers were direct purchasers of the apps.

BANKRUPTCY

Mission Product Holdings, Inc, v. Tempnology LLC, 139 S.Ct. 1652 (2019).

A trademark owner licensed use of its trademark to a third party. While the license was in force, the owner filed for bankruptcy and tried to cancel the trademark license agreement. The Supreme Court held that even though Bankruptcy Act allows a debtor to reject any executory contract, the license agreement remains in force and the licensee can continue to use the trademark. **Taggart v. Lorenzen, 139 S.Ct. 1795 (2019).**

At the close of bankruptcy proceedings, the court typically enters an order releasing the debtor from liability for most prebankruptcy debts. This discharge order bars creditors from attempting to collect any debt covered by the order. If a creditor nevertheless tries to collect on the debt, the Supreme Court held that the creditor can be held in civil contempt if there is no fair ground of doubt as to whether the order barred the creditor's conduct.

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COMMERCE CLAUSE

Tennessee Wines and Spirits Retailers Association v. Thomas, 139 S.Ct. 2449 (2019).
The state of Tennessee required any applicant for a retail liquor store license to have Tennessee residency for two years. The Supreme Court held that the requirement violated the Commerce Clause and the 21st Amendment was inapplicable.

CONSTITUTIONAL AMENDMENT CHALLENGES

FIRST AMENDMENT

Manhattan Community Access Corporation v. Hallack, 139 S.Ct. 1921 (2019).
A private non-profit corporation, Manhattan Community Access Corporation, controls the public access channels in New York City. While a private entity may qualify as a state actor, it can do so only if it exercises "powers traditionally exclusively reserved to the State." The Supreme Court held that the operation of public access channels on a cable system have not traditionally and exclusively performed by government. Thus, the corporation is not a state actor bound by the First Amendment.

American Legion v. American Humanist Association, 139 S.Ct. 2067 (2019).
Local town had erected large Latin Cross to commemorate soldiers killed during World War I and contains to maintain cross. The Supreme Court held that town's action was not an establishment of religion. Four considerations favor the town's retention of the monument: (1) age of monument; (2) as time goes by, purposes of retaining the monument multiply; (3) the message of the monument may evolve; (4) removing the monument no longer appears like a neutral governmental action.

***Rucho v. Common Cause*, 139 S.Ct. 2484 (2019).**
The Supreme Court held that party gerrymandering of electoral districts is a political question which the courts cannot examine. The Court relied upon the standard in *Vieth v. Jubelirer*, 542 U.S. 276 (2004) which requires that any standard must be grounded "in a limited and precise rationale" and be "clear, manageable and politically neutral." None of the suggested standards meet that test.

TENTH AMENDMENT

Department of Commerce v. New York, 139 S.Ct. 2551 (2019).
The Department of Commerce wished to add question about citizen status to all persons for the 2020 census. The Supreme Court held that the Department's explanation for adding the 12 question did not permit meaningful judicial review. The original explanation given, namely that the Department of Justice needed the information to enforce the Voting Rights Act, was not accepted by the Court.

ELEVENTH AMENDMENT

Franchise Tax Board of California v. Hyatt, 139 S.Ct. 1485 (2019).
The Eleventh Amendment prohibits anyone from suing a State in federal court. In *Nevada v. Hall*, the Court held that a state may be sued in the state courts of another state. The Supreme Court overruled *Nevada v. Hall* and held that States cannot be sued in private actions in the courts of other states. This was one of two cases illustrating the court's willingness to overrule prior legal precedent.

FIFTH AMENDMENT

Knick v. Township of Scott, Pennsylvania, 139 S.Ct. 2162 (2019).
The Supreme Court had held in a number of cases that a "taking" of property occurs only when all remedies in state court have been exhausted. See *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). The Supreme Court overruled that decision and held that the property owner has an actionable claim against the State when the taking occurs. This is another case overruling prior precedent.

DUE PROCESS

North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust, 139 S.Ct. 2213 (2019).
The State of North Carolina attempted to collect taxes on trust money due a North Carolina resident but not actually paid to the resident. The Supreme Court held that the in-state residence of a trust beneficiary does not supply the minimum connection with the State to support the State's imposition of a tax on Trust income. The law violated the Due Process clause.

EQUAL PROTECTION

Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780 (2019).
The State of Indiana prohibited incineration of fetal remains along with surgical byproducts after an abortion. It also imposes other restrictions on disposal of fetal remains. The Supreme Court held that the Indiana law did not impose an undue burden on a woman's right to obtain an abortion

CONSUMER RIGHTS

Obduskey v. McCarthy & Holthus LLP, 139 S.Ct. 1029 (2019).
A law firm wrote a letter demanding that a home owner pay certain mortgage debts owed to a mortgage loan servicer. The debtor then commenced an action under the Fair Debt Collection Practices Act which requires any "debt collector" to verify the exact amount of the alleged debt. The Supreme Court held that the law firm engaged in a non-judicial foreclosure proceeding is not a "debt collector" within the meaning of the law.

Merck Sharp & Dohms Corp. v. Albrecht, 139 S.Ct. 1668 (2019).
A drug manufacturer did not include a warning on its label about certain problems that could arise with respect to use of its drug. The manufacturer presented these issues to the FDA with a request to change the label. The Supreme Court held that a court must decide whether FDA would have approved the label change. If it would not have approved the change, then federal law controls and no state claim can be brought.

COURTS, COSTS, CIVIL PROCEDURE, AND ARBITRATION

Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S.Ct. 524 (2019).
The parties had signed an arbitration agreement that gave the arbitrator complete power to decide the issues, except when an injunction is sought. The Supreme Court held that once the parties agree, then the arbitrator must decide the question of arbitrability.

Lambs Plus, Inc. v. Varela, 139 S.Ct. 1407 (2019).
An employee brought putative class action against his employer based on the employer's negligence in protecting employees tax information from a hacker. The district court issued an order compelling class-wide arbitration. The Ninth Circuit upheld the order, holding that the question of class wide arbitration was ambiguous, not totally silent, and therefore *Stolt-Nielsen S.A. v. AnimalFarms Int'l Corp*., 5550 U.S. 662 (2010) did not apply. That case held that silence on the question of class certification in an arbitration agreement precluded such certification. The Supreme Court held that class certification cannot be ordered on the basis of ambiguity in the arbitration contract.

Nutraceutical Corporation v. Lambert, 139 S.Ct. 710 (2019).
The Plaintiffs moved for class certification. The motion was granted by the district court. The defendants then made a new motion to decertify the class. That new motion was granted. The Plaintiffs then moved for reconsideration and then filed an appeal. However, the appeal papers were filed after the 14-day requirements of Rule 23(f), of the Fed. R. Civ. Proc. The Supreme Court held that the appeal was filed too late, and the procedural rule is not subject to equitable tolling.

Biestek v. Berryhill, 139 S.Ct. 1148 (2019).
A Social Security claimant applied for disability benefits. At a hearing before an administrative judge, an expert testified about the number of jobs the claimant could still perform. That testimony was based on the expert's own market surveys. The expert would not make those surveys available to claimant's counsel. The Supreme Court held that the failure to produce the surveys did not undermine the expert's testimony which the Court found to be "substantial."

Cochise Consultancy, Inc. v. United States, ex rel Hunt, 139 S.Ct. 1507 (2019).
The three-year limitations period in a claim under the False Claim Act, begins to run when the "official of the United States charged with responsibility to act . . . knew or should have known the relevant facts." The Supreme Court held that limitations rule applies even if the United States is not a party and the "official" cited in the law is not the relator who brought the action.

Smith v. Berryhill, 139 S.Ct. 1765 (2019).
Claimant had applied for supplemental security income. After various administrative appeals, the claimant appealed to the Appeals Council. That board dismissed the appeal as untimely. The Supreme Court held that even denial of an untimely appeal is a final decision subject to judicial review.

The Dutra Group v. Batterton, 139 S.Ct. 2275 (2019).
Federal courts apply general maritime law to suits where injury occurs because of unseaworthiness. The Supreme Court held that punitive damages are not awardable in such cases.

EMPLOYMENT

Parker Drilling Management Services v. Newton, 139 S.Ct. 1881 (2019).
The Outer Continental Shelf Lands Act commands that federal law applies to all activities on the outer continental shelf and state law applies "only to the extent that they are applicable and not inconsistent with" other federal law. The Supreme Court held that the Fair Labor Standards Act covers the field and state law was inapplicable.

Mount Lemmon Fire District v. Guido, 139 S.Ct. 22 (2018).
Under the Age Discrimination Employment Act (ADEA), only employers hiring twenty or more employees are subject to the law. The law also covers "State or Political subdivisions of the State." The question arose whether the twenty- employee requirement applies to political subdivisions, such as a small fire department in Arizona. Based on the wording of the governing statute, the Supreme Court held that ADEA is applicable to any political subdivision regardless of the number of employees in that subdivision.

Fort Bend County Texas v. Davis, 139 S.Ct. 1943 (2019).
Under Title VII, a complainant must file a charge with the E.E.O.C. before he or she can file an action in federal court. In this case, the complainant filed a charge asserting sexual harassment and retaliation. She was then fired for not working on Sunday. She then attempted to amend the E.E.O.C. charge by writing "religion" on a form called an "intake questionnaire." The district court dismissed the religion claim since it had never been filed with the E.E.O.C. The Supreme Court held that the charge-filing requirement with the E.E.O.C. is not jurisdictional.

ENVIRONMENT

Weyerhaeuser Company v. United States Fish and Wildlife Service, 139 S.Ct. 361 (2018).

The Endangered Species Act imposes special restrictions on land that is a critical habitat for an endangered species. The EPA can make such a designation only if the land is in fact a habitat for that species. The EPA has discretion whether or not to make such a designation and that decision is subject to judicial review. The Supreme Court held that the lower court should consider whether the EPA's decision to make the designation was arbitrary, capricious or an abuse of discretion.

***Sturgeon v. Frost*, 139 S.Ct. 1066 (2019).**

The Alaska National Interest Lands Conservation Act set aside 104 million acres for preservation purposes. The law allowed the National Park Service to establish rules covering activity within the new area. The Service issued one rule prohibiting the plaintiff from operating his hovercraft above certain "public lands." The Supreme Court held that the Nation River within the new area were not a "public land" subject to the new rules.

FOREIGN SOVEREIGN IMMUNITIES ACT

Jam v. International Finance Corp., 139 S.Ct. 759(2019).

Local residents in India near a power plant sued the international organization that financed the development of the plant because of pollution coming from the plant. They sued in an American court. The organization sought immunity under the International Organizations Immunity Act, 22 U.S.C. §288a(b). That law gave international organizations the same immunity enjoyed by foreign states under the Foreign Sovereign Immunities Act. At the time that the IOIA was passed, the FSIA gave foreign governments almost absolute immunity. But the FSIA law was subsequently interpreted to eliminate that absolute immunity. The Supreme Court held that the IOIA must be interpreted in accordance with the current interpretation of the FSIA, not the interpretation when the law was originally passed.

Republic of Sudan v. Harrison, 139 S.Ct. 1048 (2019).

Victims of the bombing of the USS Cole brought an action against the Republic of Sudan under the Foreign Sovereign Immunities Act, which requires that service on the foreign government be made by sending mail to the "head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3). The mailings were sent to the Minister of Foreign Affairs at the embassy of the government in Washington. Sudan claimed they should have been sent to the foreign affairs office in the capital of the Sudan. The Supreme Court held that the service to the embassy was proper.

GOVERNMENTAL IMMUNITY

Thacker v. Tennessee Valley Authority, 139 S.Ct. 1435 (2019).

A boater drove his boat into a submerged power line operated by the TVA. He sued for negligence. Under its governing statute, the TVA could "sue or be sued." Other laws seemed to grant it immunity for governmental functions based on discretionary functions. The Supreme Court held that if the act giving rise to the suit is commercial in nature, then immunity was inapplicable.

IMMIGRATION

***Nielsen v. Preap*, 139 S.Ct. 954 (2019).**

Federal immigration law allows the Secretary of Homeland Security to arrest and hold a deportable alien, pending a removal decision. The laws generally give the Secretary the discretion to detain the alien or to release him on bond or parole. Another provision allows the Secretary to arrest and deport certain very dangerous aliens when the alien is released from jail" on other charges. Those very dangerous aliens cannot be released until a determination is made on removal. Certain aliens who were not immediately arrested upon their release from jail, argue that the strict requirements could not be applied to them since they were not immediately detained by immigration officials after

their release from criminal custody. The Supreme Court rejected their claim and held that aliens could be rearrested at any time.

INTELLECTUAL PROPERTY

Helsinn Healthcare S.A., 139 S.Ct. 628 (2019).
The American Invents Act (AIA) prohibits an invention from being patented if the invention was "on sale" or if the invention was "in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention." The inventor had sold the product to a third party under a confidentiality agreement that required it not to disclose the contents of the new invention. The Supreme Court held that the invention was still "on sale." Therefore, the patent was invalid.

Rimini Street, Inc. v. Oracle USA, Inc., 139 S.Ct. 873 (2019).
The Copyright law permits for payment of "full costs" to a prevailing party, 17 U.S.C. §505. Federal procedural law provides that the payment of "costs" to any prevailing party in a federal action includes, filing fees, trial transcripts, duplication costs, fees for experts appointed by the Court. The Court held that "full costs" under Copyright law encompasses only those costs allowed by the general federal statute.

Fourth Estate Public Benefit Corporation v. WallStreet.com. LLC, 139 S.Ct. 881 (2019).
Under the federal copyright law, no civil action can be commenced unless and until a copyrighted work is "registered." Registration occurs when a party files the necessary application, submits the fee and the Copyright Office approves the registration. The usual time for approval is seven months. An applicant can request accelerated review by the Copyright Office by paying an extra fee. In addition, in some limited circumstances, an action can be commenced without actual registration. The lower courts had held that an action can be commenced if the applicant has simply filed the registration and paid the required fee. The Supreme Court ruled that the statute requires actual registration before an action can be commenced.

Return Mail, Inc. v. United States Postal Service, 139 S. Ct.1853 (2019).
The patent law allows a "person" to challenge the validity of a patent after it has been issued. These administrative proceedings take place before the Patent Trial and Appeal Board. The United States Postal Service tried to challenge the validity of a patent dealing with undeliverable mail. The Supreme Court held that the postal service is not a "person" eligible to use these administrative appeals.

***Iancu v. Brunetti*, 139 S.Ct. 2294 (2019).**
Trademark applicant sought to register F.U.C.T. Registration was refused on the ground that the mark was "immoral" or "scandalous." Following its decision in *Matal v. Tan*, 137 S.Ct. 1744 (2017) where the Court struck down the provision barring registration of an "disparaging" term, the Court held that the prohibition violated the First Amendment. Federal law unconstitutional under the First Amendment.

MEDICARE

Azar v. Allina Health Services, Inc., 139 S.Ct. 1804 (2019).
Federal law requires that notice to the public be given when the government wishes to establish or change a "substantive legal standard" affecting Medicare benefits. The Supreme Court held that when the government changed the formula for determining the Medicare fraction used by hospitals, it was required to afford parties notice and comment on the new rule.

PREEMPTION

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***Dawson v. Steager*, 139 S.Ct. 6 (2019)**

A West Virginia law taxes the pensions of former federal employees but does not tax the pensions of former state employees. The Supreme Court held that the law violated the intergovernmental tax immunity statute (4 U.S.C. § 111).

Virginia Uranium Inc. v. Warren, 139 S.Ct. 1894 (2019).
A uranium company wanted to mine uranium in Virginia; however, the state prohibited this type of mining. The mining company claimed that the Atomic Energy Act preempts the state law. But the Supreme Court held that the AEA had no language with reference to preemption nor does it say anything about state mining of uranium. Therefore, there was no field or conflict preemption.

Washington State Department of Licensing v. Cougar Den, Inc., 139 S.Ct. 1000 (2019).
The State of Washington imposed taxes on "motor vehicle fuel importers" who bring large quantities of fuel into the State by "ground transportation." The Yakima Nation does import large quantities of fuel for their gas stations within the reservation. The Supreme Court held that the treaty with the Yakimas, which entitled them to travel upon all public highways, preempted state law.

PRIVACY

***Frank v. Gaos*, 139 S.Ct. 1041 (2019).**
Various users of Google sued the company because it revealed information about how the user had arrived at the search, namely how the user arrived at the webpage by searching for particular terms. The plaintiffs claimed that transmittal of such information violated the Stored Communications Act, which prohibited any electronic service from "knowingly divulg[ing] to any person or entity the contents of a communication while in electronic storage by that service." The Supreme Court held that under its decision in *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), plaintiffs did not suffer a concrete injury allowing them to sue.

Food Marketing Institute v. Argus Leader Media, 139 S.Ct. 2356 (2019).
An organization requested information under the Freedom of Information Act relating to how individual grocers responded to requests from recipients of the SNAP program. Some grocers complained that the information was confidential and should not be disclosed. The Supreme Court held that so long as the information is customarily and actually treated as private, the information is "confidential" under the FOIA and does not have to be disclosed.

SOCIAL SECURITY

Culbertson v. Berryhill, 139 S.Ct. 517 (2019).
Under the Social Security Act, attorneys are entitled to a fee consisting up a maximum of 25% of past due Social Security benefits accruing to their clients if those benefits were improperly withheld by the government. The Supreme Court held that the 25% fee applies only for legal work before a court and not for previous legal work before the Agency.

SECURITIES

Lorenzo v. Securities and Exchange Commission, 139 S.Ct. 1094 (2019).
A banker had emailed investors about a pending debenture but it omitted information indicating that the intangible assets had been devalued. The banker was then sued by SEC. The banker argued that he did not make any false or misleading statement himself so he was not subject to the law. The Supreme Court held that if a person disseminates false or misleading statements made by a third party, he is still subject to the law.

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TAXATION

BNSF Railway Company v. Loos, 139 S.Ct. 893(2019).

A railroad worker successfully sued railroad for damages under the Federal Employees Liability Act as a result of an injury. The damages included wages for lost working time. The railroad wished to withhold taxes from the lost working time wages awarded, claiming that the deduction was required by the Railroad Retirement Tax Act. The Supreme Court upheld the tax deduction. Even though the Internal Revenue Code excluded personal injury damages from federal income taxation, the Court held that that exemption did not cover damages from the Federal Employees Liability Act.

TORTS

Air and Liquid Systems Corp., v. Devries, 139 S.Ct. 986 (2019).

Widows of various naval veterans brought actions against various manufacturers of engines and other equipment, based on the claim that the equipment included asbestos which caused the veterans to develop cancer. The Supreme Court upheld the claims, declaring that a manufacturer has a duty to warn if it has reason to know that the intended product is likely to be dangerous for its intended uses.

TREATY

Herrera v. Wyoming, 139 S.Ct. 1686 (2019).

The 1868 treaty between Wyoming and the Crow Tribe provided that tribe members would have the right to hunt on the "unoccupied" lands of the United States "so long as game may be found thereon." The Supreme Court held that the treaty still controls even after Wyoming became a State. It also held that the term "unoccupied" means free of residence by non-tribal members. Thus, the tribe members could still hunt on the land.

VOTING

Virginia House of Delegates v. Bethune-Hill, 139 S.Ct. (2019).

A three-judge district court examined the redrawn districts for the State Senate and House and held that the districts were racially gerrymandered in violation of the Fourteenth Amendment. The Attorney General of the State did not file an appeal from the three- judge district court decision. But the House of Delegates itself tried to file an appeal. The Supreme Court held that the House did not have standing to appeal noting that "[t]his Court has never held that a judicial decision invalidating a state law. . . inflicts a discrete cognizable injury on each organ of government that participated in the laws passage."