

**IN THE COURT OF APPEAL CIVIL DIVISION
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

B E T W E E N:-

SANDY MITCHELL

First Appellant

- and –

WILLIAM SAMPSON

Second Appellant

- and -

LESLIE WALKER

Third Appellant

- v-

IBRAHIM AL-DALI

First Respondent

- and –

KHALID AL-SALEH

Second Respondent

- and –

COLONEL MOHAMED AL SAID

Third Respondent

-and-

PRINCE NAIF

Fourth Respondent

APPELLANTS' ADDITIONAL NOTE

1. The US Supreme Court has recently handed down 3 decisions of *peripheral* relevance to the matters under consideration in this appeal and the associated appeal of Ron Jones v Saudi Arabia and Another. We draw these authorities to the Court's attention but in light of the current state of proceedings and the tangential relevance of the cases we do not seek to advance any additional submissions.
2. In the case of Republic of Austria et al v Altman 541 U.S. ___ (2004) the Court was concerned with a case arising out of a claim for the return of valuable artworks that had been taken during the Nazi annexation of Austria. The Republic of Austria had sought to rely upon the doctrine of state immunity. The issue before the Supreme Court was whether the Foreign Sovereign Immunities Act of 1976 had retrospective effect and in particular whether the plaintiff could rely upon the statutory exemption for immunity in cases involving "*rights in property taken in violation of international law*".
3. The Opinion of the Court was delivered by Stevens J (in which O'Connor, Scalia, Souter, Ginsburg and Breyer JJ joined. Kennedy J filed a dissenting opinion with which Rehnquist CJ and Thomas J joined.

4. The Opinion of the Court emphasised the narrowness of the issues that they had decided and held that the 1976 Act should be deemed to have retrospective effect thus enabling the plaintiff to continue with her claim.
5. On the 29th June 2004 the Supreme Court handed down a judgment in the case of Sosa v Alvarez-Machain 542 US __ (2004). This case concerned the application of the Alien Tort Claim Act (ACTA). It will be recalled that this was the statute upon which many of the US authorities relied upon by the Appellants were founded.
6. Before the Supreme Court the Respondents (joined by the US Justice Department and an amicus brief from the UK Department of Constitutional Affairs) argued that the Act was of no application in the modern world and should be confined to those acts considered to be in ‘breach of the law of nations’ at the time the Act was passed by Congress in 1789, i.e. piracy and attacks upon ambassadors.
7. The Opinion of the Court was delivered by Souter J, which was in part unanimous and in part and joined by other members of the Court (see Syllabus p.5).
8. The majority decision is that the ATCA is applicable to actions considered by contemporary society to be “a breach of the law of nations” and is not limited to the 1789 historical context (pages 30-1, 35-7). *Filartiga* was cited with approval. The Court cautioned against a wide definition of “a breach of the law of nations” and held that to amount to such they must be clearly recognised as resting “*on a norm of international law accepted by the civilized world and defined with a specificity comparable to the features of the 18th century paradigms we have recognised*”
9. In the case of Soza the Court did not accept that the act of cross-border abduction amounted to a breach of customary international law and his claim fell on the facts (44-45).

10. The Court of Appeal's attention is also drawn to the concurring Opinion of Breyer J who sets out:
 - a. How the principle of comity is not impacted where the subject matter concerns wrongs attracting universal jurisdiction;
 - b. How there is little theoretical or practical difference between universal criminal jurisdiction and universal tort jurisdiction.

11. For the sake of completeness we also draw to the Court of Appeal's attention the recent decision of the US Supreme Court in Rasul et al v George W Bush et al 542 __ (2004) which primarily concerned the rights of Guantanamo detainees to seek writs of habeas corpus. The Opinion of the Court makes express reference to the right of the detainees to bring actions for damages under the provisions of the ACTA ((pages 16-17).

12. A copy of this Note will be provided to all the parties and interested parties in the Appeal of Ron Jones v Saudi Arabia & Another.

EDWARD FITZGERALD QC
RICHARD HERMER

6TH JULY 2004
DOUGHTY STREET CHAMBERS
LONDON