

Use of foreign case law: The Netherlands

Helsinki, October 2017

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Dutch Supreme Court

Civil law vs common law

Civil law (based on ancient Roman law) = codified:

- judicial decisions framed by codified set of laws
- judges task: - establish facts of a case
 - apply the provisions of the applicable code

Common law (based on British middle aged system) = not or less codified

- based on precedent judicial decisions
- judges task: - determining relevant precedents
 - determining appropriate sentence

Netherlands: civil law

Legislative supremacy of the parliament, so

- judge decides on basis of legal codes and jurisprudence based on those codes. Foreign court ruling are none of these.
- Dutch constitution prohibits a judicial review of laws and treaties against the Constitution (article 120)

however:

- treaty above law: laws are to be reviewed against international treaties (art. 94 Constitution)

Foreign court decisions: problems

- Diversity in tax systems: hardly ever for domestic cases
- Insufficient knowledge of foreign legal systems and case law
- Finding comparable cases
- Language problems
- Ex officio?

“Domestic” case. European Patent Office

- High court The Hague on invalidity allowance (September 23, 2015, ECLI:NL:GHDHA:2015:152)
- State secretary rests his case because Bundesfinanzhof decided accordingly (November 11, 2015, nr. I R 28/14)
- Supreme court on partial compensation for pensioners (February 10, 2017, ECLI:NL:HR:2017:204)
- Identical: Bundesfinanzhof July 7, 2015 (nr. I R 38/14). Case pending before Bundesverfassungsgericht.

International: treaties

- Art 31-33 Vienna convention on the law of treaties
- Common interpretation OECD model tax convention
- Prevention of conflict of qualification.
- Legal certainty for companies and civilians
- Tax treaty case law database IBDF

Netherlands Supreme Court I (ECLI:NL:HR:1999:ZC3702)

- Tax treaty Netherlands-Germany, art. 10:
Taxation by residence state if the employee stays “temporarily in total not more than 183 days in the working state”.
- Supreme Court: temporarily has independent meaning
- Non temporarily for instance: short stay before or after a substantial stay in working state – or otherwise (see OECD Commentary 1992: 183 days in any twelve month periode).
- Not mentioned: Bundesfinanzhof (July 10 1996, nr. I R 4/96): temporarily/vorübergehend has no independent meaning.

Netherlands Supreme Court II (ECLI:NL:HR:2004:AF7812)

- Ontslagvergoeding/severance payment at termination international employment (Netherlands/Belgium/Luxemburg)
- Supreme Court: Allocation to various countries based on reference period of history of employment (termination year plus 4 preceding years).
- Condition for taxability in other country: part referring to other country is charged to former ex-employer in that country.
- Bundesfinanzhof : no employment income but loss of source of income: restarticle, taxable in state of residence.

List of countries represented in the Tax Treaty Case Law Database

Argentina

Australia

Austria

Belgium

Bermuda

Bolivia

Botswana

Brazil

Canada

Cayman Islands

China

Cyprus

Czech Republic

Denmark

Estonia

Fiji

Finland

France

Germany

Greece

Hungary

India

Indonesia

Ireland

Israel

Italy

Japan

Jersey

Kazakhstan

Korea (Rep.)

Liechtenstein

Luxembourg

Malaysia

Mexico

Netherlands

New Zealand

Norway

Philippines

Poland

Portugal

Romania

Russia

Singapore

Slovak Republic

Solomon Islands

Spain

Sweden

Switzerland

Thailand

Turkey

United Kingdom

Unites States

Uruguay

Zimbabwe

International Case Law – Taxation

Subscription Resources

Free Resources

Australia

New Zealand

Europe (EU)

- European Court of Justice

United Kingdom

- United Kingdom, Northern Ireland, England and Wales, Scotland, Ireland and Europe (Court of Justice of the European Communities & European Court of Human Rights)

United States

- US Supreme Court
- FindLaw
- Google Scholar

Canada

- Supreme Court of Canada
- Federal Court of Canada
- Federal Court of Appeal
- Tax Court of Canada
- CanLII (English)

India

- Supreme Court of India

Japan (in English)

- Supreme Court of Japan

SAFLII

- Botswana, East Africa, Lesotho, Malawi, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe

WORLDLII

- Hong Kong, Australasia, UK & Ireland, England and Wales, Ireland, Northern Ireland, Scotland, International bodies (including ICJ, WTO, UN Committees, NAFTA), Pacific Islands, South Africa

COMMONLII

- Commonwealth countries (including Singapore and Malaysia)

Subscription Resources

International

[International Tax Law Reports](#) (Lexis Nexis AU)

Australian

[Australian Tax Cases](#) (CCH)

[Australian Tax Reports](#) (Thomson Reuters)

US

[WestLaw Thomson Reuters](#) (in general for searchable US Case law including tax cases)

UK

[WestLaw UK](#) (in general for searchable UK Case law including tax cases - go to CASES tab)

Free Resources

Australia

AustLII

[AustLII Advanced search](http://www.austlii.edu.au/forms/search1.html) (<http://www.austlii.edu.au/forms/search1.html>)



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Advanced Search

you are here: [AustLII](#) >> Advanced Search

search for legal material **not on AustLII** use [WorldLII](#).

Enter search query:

Find

[\[Help\]](#) [\[Search operators\]](#)

Select the AustLII Database(s) to search:

All AustLII Databases	^
All Legislation Databases	
All Case Law Databases	
All Journals Databases	
All Secondary Materials Databases (includes journals)	
Commonwealth: All Primary Materials	
Commonwealth: All Legislation	
Commonwealth: All Cases	
Commonwealth: Bills	
Commonwealth: Bills Explanatory Memoranda	
Commonwealth: Bills Digests	
Commonwealth: Consolidated Acts	
Commonwealth: Consolidated Regulations	
Commonwealth: Legislation Tables	
Commonwealth: Numbered Acts	

▼

[Federal Court of Australia](http://www.fedcourt.gov.au/digital-law-library/judgments/search) (<http://www.fedcourt.gov.au/digital-law-library/judgments/search>)

Construct search: e.g. double taxation in CATCHWORDS

The screenshot shows the Federal Court of Australia Digital Law Library search interface. At the top, there is the court's logo and name, along with navigation links for 'Going to Court' and 'Online Services'. Below this is a main navigation bar with categories: ABOUT US, SERVICES, LAW & PRACTICE, FORMS, FEES & COSTS, COURT CALENDAR, and DIGITAL LAW LIBRARY. The 'Digital Law Library' section is active, showing a breadcrumb trail: Home > Digital Law Library > Judgments > Search. A sidebar on the left lists various content types: Judgments (with sub-links for Latest, Search, High Court special leave, Summaries, FAQs), Judges' Speeches, Annual Reports, Library, Videos, Seminars, and Glossary. The main content area is titled 'Judgments Search' and features a 'Search by:' section with several input fields: Court (set to 'All'), Case Name/ MNC (with example 'eg. Rafferty Madgwicks OR 2012 FCA 67'), Judge (with example 'eg. Keane Edmonds Perram'), Reported Citation (with example 'eg. 195 FCR 260'), File number (with example 'eg. NSD 1788 of 2011'), and NPA (FCA 2016-) (set to 'All'). Below these fields are expandable sections: '+ Full Text & Proximity', '+ Date', and '- Legislation, Cases Cited & Catchwords'. The last section is expanded, showing input fields for Legislation (example 'eg. fair work act OR fair work 134'), Cases Cited (example 'eg. Roadshow ilNet'), and Catchwords (example 'double taxation').

FEDERAL COURT OF AUSTRALIA

Going to Court Online Services

ABOUT US SERVICES LAW & PRACTICE FORMS, FEES & COSTS COURT CALENDAR DIGITAL LAW LIBRARY

Digital Law Library You are here: [Home](#) > [Digital Law Library](#) > [Judgments](#) > [Search](#)

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> Search
High Court special leave
Summaries
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Judgments Search

Search by:

Court

Case Name/ MNC

Judge

Reported Citation

File number

NPA (FCA 2016-)

+ Full Text & Proximity

+ Date

- Legislation, Cases Cited & Catchwords

Legislation

Cases Cited

Catchwords

New Zealand

NZLII

[Advanced search](#) (eg FIND: THIS PHRASE: double taxation - [select] ALL CASE LAW DATABASES)

<http://www.nzlii.org/form/search/search1.html>



[\[NZLII\]](#) [\[Databases\]](#) [\[WorldLII\]](#) [\[Feedback\]](#) [\[Help\]](#)

Search NZLII

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To search for legal material **not on NZLII** use [WorldLII](#).

Find **Enter search query:**
[\[Help\]](#) [\[Search operators\]](#)

Select the NZLII Database(s) to search:

- All NZLII Databases
- All Legislation Databases
- All Case Law Databases
- All Journals Databases
- All Secondary Materials Databases
- New Zealand: All Primary Materials
- New Zealand: All Legislation
- New Zealand: All Cases

Europe

European Court of Justice (<http://curia.europa.eu/juris/recherche.jsf?cid=527046>) [NOTE: This site works better using Firefox browser than Explorer]

Construct search: Example

Documents = Documents published in the ECR : Judgments - Orders - Opinions of the Court - Decisions (Review procedure) – Opinion
[Documents must be chose from a defined list of subjects]

The screenshot shows the 'InfoCuria - Case-law of the Court of Justice' search interface. A 'Documents' dialog box is open, allowing the user to select document types. The dialog box has a title bar with a close button. It contains the following options:

- Select all
- Documents published in the ECR
 - Judgments
 - Orders
 - Opinions of the Court
 - Decisions (Review procedure)
 - Opinion
 - Views
 - Summaries and reviews
 - Information (on unpublished decisions)
- Documents not published in the ECR
 - Judgments
 - Orders
 - (dropdown menu)
 - Decisions (Review procedure)
- Notices published in OJ
 - Cases brought
 - Cases closed

Below the document type selection, there are date and time filters:

- from [] to [] (dd/mm/yyyy)
- last 8 days last month last year last 5 years
- on [] (dd/mm/yyyy)

At the bottom of the dialog box, there are 'Enter' and 'Cancel' buttons.

The background interface shows search criteria for 'Case status' (All case), 'Court' (All), 'Case number', 'Name of the parties', 'Documents' (All), 'ECLI' (ECLI:EU), 'Text', 'Period or date' (Date of de...), and 'Subject-matter'.

Text = "Taxation Convention" "double taxation"

Subject-matter = "Taxation" *[subject must be chose from a defined list of subjects]*

The screenshot shows the CURIA search form interface. The browser address bar displays "curia.europa.eu/juris/recherche.jsf?cid=527046". The page title is "InfoCuria - Case-law of the Court of Justice". The language is set to "English (en)".

The search form includes the following fields and options:

- Case status:** All cases, Cases closed, Cases pending
- Court:** All, Court of Justice, General Court, Civil Service Tribunal
- Case number:** [] (ex: C-17/05; 17/05)
- Name of the parties:** []
- Documents:** Documents published in the ECR : Judgments - Orders - Opinions of the Court - Decisions (Review procedure) - Opinion
- ECLI:** ECLI:EU:
- Text:** "Taxation Convention" "double taxation"
- Period or date:** Date of delivery, from [] to [] (dd/mm/yyyy), last 8 days, last month, last year, last 5 years, on [] (dd/mm/yyyy)
- Subject-matter:** "Taxation"
- Procedure and result:** []
- References to case-law or legislation:** Search in Grounds of judgment, Operative part, Opinion, Category: []
- Systematic classification scheme:** [], Include earlier/new scheme
- Formation of the Court:** []
- Judge-Rapporteur:** []
- Advocate General:** []
- Source of a question referred for a preliminary ruling:** []
- Authentic language:** Language of the case, Language of the Opinion

Buttons for "Clear fields" and "Search" are present at the top right and bottom right of the form.

United Kingdom

[BAILII](http://www.bailii.org/form/search_cases.html) (http://www.bailii.org/form/search_cases.html)

Jurisdictions: United Kingdom, Northern Ireland, England and Wales, Scotland, Ireland and Europe (Court of Justice of the European Communities & European Court of Human Rights)

Construct search:

(e.g. Exact phrase: double taxation; All of these words: convention) (select courts)



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Case Law Search

You are here: [BAILII](#) >> Case Law Search
URL: http://www.bailii.org/form/search_cases.html

[Basic Search](#) | [Legislation Search](#) | [Other Materials Search](#) | [Advanced Search](#) | [Multidatabase Search](#)

Citation:	<input type="text"/>	e.g. [2000] 1 AC 360	<input type="button" value="Search"/>
Case name:	<input type="text"/>	e.g. barber v somerset	
All of these words:	<input type="text" value="convention"/>	e.g. breach fiduciary duty	
Exact phrase:	<input type="text" value="double taxation"/>	e.g. parliamentary sovereignty	
Any of these words:	<input type="text"/>	e.g. waste pollution radiation	
Advanced query: [Help]	<input type="text"/>	e.g. pollut* and (nuclear or radioactiv*)	
Optional dates:	From <input type="text"/> To <input type="text"/>	Enter as yyyy, yyyyymm, or yyyyymmdd	
Sort results by:	<input type="radio"/> Date <input type="radio"/> Jurisdiction <input type="radio"/> Title <input checked="" type="radio"/> Relevance		
Highlight search terms in result:	<input checked="" type="radio"/> Yes <input type="radio"/> No		
To limit jurisdictions, use tick-boxes below:			

United Kingdom: Courts

- House of Lords
- Supreme Court
- Privy Council

United Kingdom: Tribunals

- Asylum and Immigration Tribunal
- Immigration and Asylum (AIT/IAC) Unreported Judgments
- Upper Tribunal (Administrative Appeals Chamber)
- Upper Tribunal (Tax and Chancery Chamber)
- Upper Tribunal (Immigration and Asylum Chamber)

England and Wales: Courts

- House of Lords
- Supreme Court
- Privy Council
- Court of Appeal
 - Court of Appeal (Civil Division)
 - Court of Appeal (Criminal Division)
- High Court
 - Administrative Court
 - Admiralty Division

Scotland: Courts

- House of Lords
- Supreme Court
- Privy Council
- Scottish Court of Session
- Scottish High Court of Justiciary
- Scottish Sheriff Court
- Scottish Information Commissioner
- Scottish Sheriff Appeal Court (Criminal Division)
- Scottish Sheriff Appeal Court (Civil Division)

United States

US Supreme Court

[Advanced search](https://www.supremecourt.gov/search_center.aspx) (https://www.supremecourt.gov/search_center.aspx)

Construct search:
(eg "double taxation")



The screenshot shows the search interface of the US Supreme Court website. At the top left is the Supreme Court seal. To its right is the text "SUPREME COURT OF THE UNITED STATES". A search bar contains the text "Search Site for..." with a magnifying glass icon. Below the search bar is a "SEARCH TIPS" link. A navigation menu includes "OPINIONS", "FILING & RULES", "ORAL ARGUMENTS", "CASE DOCUMENTS", "NEWS MEDIA", and "ABOUT THE COURT". Below the menu is a large photograph of the Supreme Court building with cherry blossoms in the foreground. To the left of the search filters is a decorative golden circular emblem. The search filters are arranged in a grid:

<input checked="" type="checkbox"/> Opinions	<input checked="" type="checkbox"/> Bound Volumes	<input type="checkbox"/> Argument Transcripts	<input type="checkbox"/> Argument Audio
<input checked="" type="checkbox"/> Court Orders	<input type="checkbox"/> Day Calls	<input type="checkbox"/> Counsel Listings	<input type="checkbox"/> Hearing Lists
<input type="checkbox"/> Speeches	<input type="checkbox"/> Press Releases	<input type="checkbox"/> Media Advisories	<input type="checkbox"/> Questions Presented
<input type="checkbox"/> Rules of the Court	<input type="checkbox"/> Journals		

At the bottom, there is a search bar with the text "Search for: 'double taxation'", a "Search" button, and a "Clear" button.

FindLaw (<http://caselaw.findlaw.com/>)

(Free searchable database of appellate decisions for (at least) the last 15 years. Back to 1760 for Supreme Court decisions)
Select Court and search each individually

US Courts of Appeals - Opinions & Resources

- [United States Supreme Court](#)
- [U.S. 1st Circuit Court of Appeals](#)
- [U.S. 2nd Circuit Court of Appeals](#)
- [U.S. 3rd Circuit Court of Appeals](#)
- [U.S. 4th Circuit Court of Appeals](#)
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- [U.S. 10th Circuit Court of Appeals](#)
- [U.S. 11th Circuit Court of Appeals](#)
- [U.S. D.C. Circuit Court of Appeals](#)
- [U.S. Federal Circuit Court of Appeals](#)

[Google Scholar](http://scholar.google.com/advanced_scholar_search) (http://scholar.google.com/advanced_scholar_search)

Google Scholar provides a US case law search facility. From the Advanced Search Screen, you can limit your search to a particular court.



"double taxation"



Articles (include patents) Case law

New! Query suggestions for detailed queries

Stand on the shoulders of giants

Canada

Supreme Court of Canada

- [Advanced Search](https://scc-csc.lexum.com/scc-csc/en/d/s/index.do) (https://scc-csc.lexum.com/scc-csc/en/d/s/index.do)

Judgments of the Supreme Court of Canada by lexum FRANÇAIS

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Decisions - Advanced Search

Show less fields ^

Full text search X

Case name, Citation(s), Case number

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Federal Court of Canada

- [Advanced Search \(http://decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?col=54\)](http://decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?col=54)



Federal Court

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CANADA

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Decisions - Advanced Search

Show less fields ^

Full text search

Case name, Citation, File numbers

Date between and

Parties

Court (s) Database

RESET SEARCH

Federal Court of Appeal

- [Advanced Search](http://decisions.fca-caf.gc.ca/fca-caf/en/d/s/index.do?col=53) (<http://decisions.fca-caf.gc.ca/fca-caf/en/d/s/index.do?col=53>)



Federal Court
of Appeal

Cour d'appel
fédérale



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The Court
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Decisions - Advanced Search

Show less fields ^

Full text search

Case name, Citation, File numbers

Date between and

Parties

Court (s) Database

Tax Court of Canada

- [Advanced Search \(http://decision.tcc-cci.gc.ca/tcc-cci/en/d/s/index.do?col=52\)](http://decision.tcc-cci.gc.ca/tcc-cci/en/d/s/index.do?col=52)



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Tax Court of Canada

www.tcc-cci.gc.ca

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Judgments - Advanced Search

Show less fields ^

Full text search X

Case name, Citation, File numbers

Date between and

Judges and Taxing Officers

Court (s) Database X

Subjects

[CanLII](#) (English) [Contains decisions from all of the above Courts of Canada and others – see list on [Scope](#) link below graphic]




CanLII Français | English
The Canadian Legal Information Institute






"double taxation" x ?

Case name, legislation title, citation or docket ?

Noteup: cited case names, legislation titles, citations or dockets ? q




[All CanLII \(623\)](#) [Cases \(520\)](#) [Legislation \(103\)](#) [Secondary sources \(0\)](#)

All jurisdictions ▾ All courts and tribunals ▾ Any date ▾ By Relevance ▾   

lexbox  Save this query  Set up alert feed  Email this query  Run a saved query ▾  Browse Lexbox ▾

- [Prévost Car Inc. v. Canada](#), [2010] 2 FCR 65, 2009 FCA 57 (CanLII) — 2009-02-26
Federal Court of Appeal — Canada (Federal)
term beneficial owner — bénéficiaire effectif — bilateral conventions — shareholders — rate of withholding

[...] Income Tax — International tax treaties — Convention between Canada and the Kingdom of the Netherlands for the Avoidance of **Double Taxation** and the Prevention of Fiscal Evasion with Respect to Taxes
[...] Construction of Statutes — Interpretation of term "beneficial owner" in Convention between Canada and the Kingdom of the Netherlands for the Avoidance of **Double Taxation** and the Prevention of Fiscal Evasion [...] Convention between Canada and Sweden for the Avoidance of **Double Taxation** and the Prevention of Fiscal Evasion with Respect to Taxes on Income, S.C. 1997, c. 38, Sch. I. [...]

cited by [14 documents](#)   
- [Yue-Pang Tsui v. Canada \(National Revenue\)](#), 1994 CanLII 7032 (CA CITT) — 1994-05-26
Canadian International Trade Tribunal — Canada (Federal)
housing rebate — double taxation — third of the estimated — entitled — house

[...] At the hearing, however, the appellants abandoned that contention and essentially claimed that, since the purpose of the new housing rebate was to avoid **double taxation** and because they were [...] 2) the amount that represents the discrepancy between the two taxes prior to the deduction of the FST rebate, i.e. \$6,672.49, which difference, they said, amounts to **double taxation**. [...] During cross-examination, Mr. Tsui admitted that the appellants received \$7,345.00 as a GST rebate, but maintained that they are still entitled to \$1,722.34 to

For [Scope of Databases](#) (see <https://www.canlii.org/en/databases.html>)

India

[Supreme Court of India](http://supremecourtindia.nic.in/judgments) (<http://supremecourtindia.nic.in/judgments>)

Construct search: (Free Text search of Judgments - e.g. double taxation)



SUPREME COURT OF INDIA

॥ यतो धर्मस्ततो जयः ॥

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- + Calendar
- + E-Committee
- + Mediation

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Enter Text				From Date	To Date	Status	
double taxation				01-01-2000	12-08-2017		Search
Vs / 05-11-2003							
C.I.T,DELHI Vs ATUL MOHAN BINDAL / 24-08-2009							
DIRECTOR OF INCOME TAX (IT) - I Vs A.P. MOLLER MAERSK A/S / 17-02-2017							
DIRECTOR OF INCOME TAX, NEW DELHI XVII Vs SOFEMA SA, NEW DELHI / 26-08-2008							
DY. COMMNR. OF INCOME TAX,INDORE Vs M/S TRIPTI TRADING AND INVESTMENT. LTD. / 09-03-2017							
DY. COMMNR. OF INCOME TAX, UJJAIN Vs M/S TORQUOISE INVESTMENT & FINANCE LTD. / 20-02-2008							
FORMULA ONE WORLD CHAMPIONSHIP LTD Vs COMMISSIOER OF INCOME TAX, INTERNATIONAL TXATION-3 DELHI & ANR / 24-04-							
GVK INDS. LTD & ANR Vs THE INCOME TAX OFFICER & ANR / 18-02-2015							
JOSHI TECHNOLOGIES INTERNATIONAL INC Vs UNION OF INDIA & ORS. / 14-05-2015							
LARSEN & TOUBRO LIMITED Vs ADDITIONAL DY.COMMR.OF COMMRL.TAXES &ANR / 05-09-2016							

[Japan](#) (in English)

[Supreme Court of Japan](http://www.courts.go.jp/app/hanrei_en/search) (http://www.courts.go.jp/app/hanrei_en/search)

Supreme Court of Japan 最高裁判所

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文字サイズ調整 小 中 大

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Case Number	Year	Code	Number
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Bench	<input type="checkbox"/> Grand	<input type="checkbox"/> Petty	
Key Word	<input type="text" value="double taxation"/>		
Original Court	<input type="text"/>	<input type="text"/>	court <input type="text"/> branch

SEARCH

All of the translations of judgments on this website are unofficial. The Supreme Court of Japan assumes no responsibility for the accuracy of the translations.

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Southern African nations

[SAFLII](http://www.saflii.org/cgi-bin/search.pl) (<http://www.saflii.org/cgi-bin/search.pl>)

Jurisdictions: Botswana, East Africa, Lesotho, Malawi, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe

[Select jurisdiction (hold down CONTROL KEY to select multiple jurisdictions) and construct search]



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Search SAFLII Databases

Enter search query:

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Find:
 using autosearch
 this Boolean query
 any of these words
 all of these words
 this phrase
 this case name
 this legislation title
 this judge

Select the SAFLII Database(s) to search:

- SAFLII: All Databases
- Angola: Angola Numbered Acts
- Botswana: Court of Appeal
- Botswana: High Court
- Botswana: Industrial Court
- East Africa: Court of Appeal
- East African Court of Justice
- Lesotho: Court of Appeal
- Lesotho: High Court
- Lesotho: Labour Court

Note: You can search **multiple databases** at once by holding down the **Ctrl** key on your keyboard (on an Apple computer, use the **Apple** key instead) and then click the database name for each database you want to include in your search. (**Unix users beware:** multiple selections occur by default).

Other multi jurisdictions

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Advanced Search

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[Select ALL CASE LAW, or ALL SUPERIOR COURTS, or ALL NATIONAL HIGHEST COURTS]



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- Africa: South Africa: All Cases

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