
Alien Tort Statute—Application to Corporations

Jesner v. Arab Bank, PLC, No. 16-499

The Alien Tort Statute (ATS) provides that United States district courts “shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Today, the Supreme Court held in a 5-4 decision that foreign corporations may not be defendants in suits brought under the ATS. Justice Kennedy delivered the lead opinion which spoke, in parts, for the five-Justice majority, and spoke, elsewhere, for a three-Justice plurality. In the portion of his opinion that was joined by a majority of the Court, Justice Kennedy concluded that the Court must exercise great caution when recognizing new forms of liability under the ATS. Extending the applicability of the ATS to foreign corporations, he found, would create the very diplomatic tension that the ATS was designed to prevent. Justice Thomas filed a short concurring opinion. Justices Alito and Gorsuch each filed opinions concurring in part and concurring in the judgment in part. Justice Sotomayor filed a dissenting opinion, which was joined by Justices Ginsburg, Breyer, and Kagan, that would have recognized foreign corporate liability under the ATS. Mayer Brown was among the counsel for Arab Bank in this litigation.