



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
19 February  
2016

## Library News

### Exhibitions in the Library

There are a number of exhibitions on in the Supreme Court Library at present. We have a display celebrating the Opening of the Legal Year, artefacts and books to celebrate the 200th birthday of Sir William Foster Stawell on show, the Argus from 100 years ago, and Magna Carta essays written by Melbourne Law School students.

You are welcome to view these displays - the Library is a great place to bring visitors.

### Supreme Court Library closing early, Thursday 25 February

The Supreme Court Library is closing at 5.30pm on Thursday 25 February. See our website for details of our opening hours:  
<https://lawlibrary.vic.gov.au/our-location>

### Upcoming public lecture: Judicial Independence and Court Governance

Presenter: Fulbright Specialist Professor Ingo Keilitz  
Date: Monday 7 March 2016  
Time: 5:30pm - 7:00pm  
Location: Sir Zelman Cowen Centre, Level 2, Room 2.10, City Queen Campus, Victoria University, 295 Queen St, Melbourne

RSVP: Contact Sean Mulcahy by phone on 03 9919 1289 or by email on [sean.mulcahy@vu.edu.au](mailto:sean.mulcahy@vu.edu.au) by 29 February 2016.

### SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at [lv@courts.vic.gov.au](mailto:lv@courts.vic.gov.au)

### EXHIBITION: OPENING OF THE LEGAL YEAR

The Supreme Court Library has an exhibition on the Opening of the Legal Year.

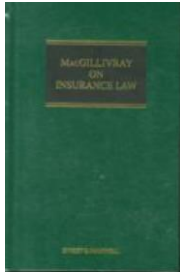
The display outlines the history of the Opening of the Legal Year and includes pictures, articles and a judicial robe.

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# New Books

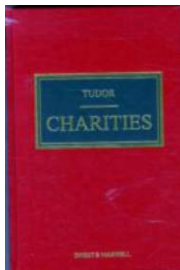
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: [https://courts.sdp.sirsidynix.net.au/client/en\\_AU/llv/](https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/)



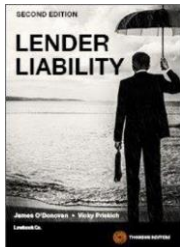
Birds, John, Linch, Ben and Milnes, Simon, *MacGillivray on Insurance Law*  
13<sup>th</sup> ed, Sweet & Maxwell, London, 2015  
Call number: 346.086 MAC.13 (Supreme Court Library)



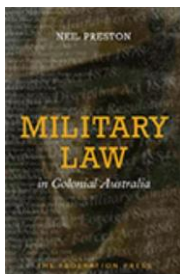
Freckleton, Ian and Cockroft, Kerry, *Indictable Offences in Victoria*  
6<sup>th</sup> ed, Thomson Reuters, NSW, 2016  
Call number: 345.05 FRE.6 (Supreme Court Library, County Court Library,  
Magistrates' Court Library)



Henderson, William, Fowles, Jonathan and Smith, Julian, *Tudor on Charities*  
10<sup>th</sup> ed, Sweet & Maxwell, London, 2015  
Call number: 346.064 TUD.10 (Supreme Court Library)



O'Donovan, James and Priskich, Vicky, *Lender Liability*  
2<sup>nd</sup> ed, Thomson Reuters, NSW, 2016  
Call number: 346.077 ODO.2 (Supreme Court Library)



Preston, Neil, *Military Law in Colonial Australia*  
The Federation Press, NSW, 2016  
Call number: 343.01 PRE (Supreme Court Library)



## EXHIBITIONS IN THE LIBRARY

### Chief Justice Stawell Exhibition

The Supreme Court Library has on display some books and artefacts to celebrate the 200<sup>th</sup> birthday of Chief Justice Sir William Stawell. Pick up the “11 things you didn’t know about Sir William Stawell” handout during your visit to the Library.

# Legislation

## Victorian Bills

The following Victorian Bills received a second reading since the last Library Bulletin.

- [Children Legislation Amendment Bill 2016](#)
- [Crimes Legislation Amendment Bill 2016](#)
- [Health Complaints Bill 2016](#)
- [Victoria Police Amendment \(Merit-based Transfer\) Bill 2016](#)

## Victorian Assents

The following Victorian Acts were assented to since the last Library Bulletin:

- [Bail Amendment Act 2016](#) No. 1/2016
- [Drugs, Poisons and Controlled Substances Amendment Act 2016](#) No. 2/2016
- [Justice Legislation Further Amendment Act 2016](#) No. 3/2016
- [Relationships Amendment Act 2016](#) No. 4/2016
- [Road Legislation Amendment Act 2016](#) No. 5/2016

## Proclamations

There have been no Commonwealth Act proclamations since the last Library Bulletin.

The following Victorian Acts came into operation by forced commencement since the last Library Bulletin:

- [Bail Amendment Act](#) No. 1/2016
  - Part 1 of this Act came into operation on 17 February 2016 (s. 2(1))
- [Road Legislation Amendment Act](#) No. 5/2016
  - Part 1, sections 13, 27 and 38 came into operation on 17 February 2016 (s. 2(1))

## High Court Cases

PRACTICE AND PROCEDURE - High Court of Australia - Enforcement of judgments - Remittal of matters - Costs - Ex parte application for remedies for enforcement of judgment of High Court under s77M of Judiciary Act 1903 (Cth) - Costs order in special leave application - Writ for levy of property and garnishee order - Judgment debtor claimed set-off for costs to be taxed in proceedings in Federal Court of Australia - Whether claim for remedies for enforcement of costs order should be remitted to Federal Court.

PRACTICE AND PROCEDURE - High Court of Australia - Ex parte application - Material non-disclosure on application for writ for levy of property - Whether writ should be set aside.

JUDICIARY ACT 1903 (CTH), s39B(1A)(c), s44, s77M.

***Aristocrat Technologies Australia P/L & Ors v Allam, Riad & Ors***

[\[2016\] HCA 3](#)

17/02/2016

PROCEDURE - Joinder of third parties - Where liquidators of company brought action in Supreme Court of Victoria against company directors for order under s588M(2) of Corporations Act 2001 (Cth) - Where liquidators sought to join third party insurer after directors' claim for professional indemnity rejected - Where directors not in position to challenge denial of liability under contract of insurance - Whether Supreme Court had jurisdiction to join third party insurer and grant declaratory relief in relation to private insurance contract between directors and third party insurer.

JURISDICTION - Federal jurisdiction - Meaning of matter - Meaning of justiciable controversy. WORDS AND PHRASES - "declaratory relief", "federal jurisdiction", "joinder", "justiciable controversy", "matter", "privity", "real interest".

CONSTITUTION, s76(ii).

BANKRUPTCY ACT 1966 (CTH), s117

CORPORATIONS ACT 2001 (CTH), s562, s588G, s588M(2)

JUDICIARY ACT 1903 (CTH), s39(2), s79

SUPREME COURT ACT 1986 (VIC), s36

SUPREME COURT (GENERAL CIVIL PROCEDURE) RULES 2005 (VIC), r9.06

***CGU Insurance Limited v Blakeley, Ross, Ryan, Michael & Olde, Quentin as Joint and Several Liquidators of Akron Roads P/L (In Liquidation) & Ors***

[\[2016\] HCA 2](#)

11/02/2016

# Victorian Supreme Court Cases

## Court of Appeal

ACCIDENT COMPENSATION - Transport accident - Application for leave to appeal against orders made by a County Court judge refusing leave to commence proceedings for serious injuries - Aggravation of a pre-existing neck injury resulting from two separate accidents - Applicant and his wife gave viva voce evidence - Clinical notes and medical reports prepared by applicant's long-term treating general practitioner tendered by applicant - General practitioner not called - Inconsistencies between the evidence of the applicant and his wife and the clinical notes and medical reports of practitioner - Attention drawn to inconsistencies at commencement of proceedings - Applicant not questioned about inconsistencies in evidence in chief or cross examination - Whether the judge erred in rejecting the evidence of the applicant and his wife on the basis of the clinical notes and medical reports - Rule in *Browne v Dunn* (1894) 6 R 67 not infringed - Forensic decision by applicant's counsel not to call practitioner or seek explanation for inconsistencies from applicant - *Watkins v Valley View Poultry Pty Ltd* [1995] NSWCCA 496, *WAQ v Di Pino* [2012] QCA 283 followed - Whether the judge's reasons were inadequate - Test for leave to appeal from an order of the County Court - Application for leave to appeal refused - Transport Accident Act 1986 s93; Supreme Court Act 1986 s14C.

***Philippiadis, Gregory v Transport Accident Commission***

Redlich JA, Kyrou JA, and Ginnane AJA

[\[2016\] VSCA 1](#)

11/02/2016

ARBITRATION - Enforcement of foreign award - Public policy ground for refusing enforcement - Whether enforcement of a foreign award that allows for double recovery would be contrary to public policy - Discretion to enforce where enforcement otherwise contrary to public policy - Role of the courts - International Arbitration Act 1974 (Cth) s8(2), s8(7)(b) - UNCITRAL Model Law on International Commercial Arbitration, art 36(1)(b)(ii) - Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art V(2)(b).

EQUITY - Rescission of contract for the purchase of shares for fraudulent misrepresentation - Meaning of rescission - Whether consequential orders required to effect restitution - Revesting of equitable ownership of shares - *Alati v Kruger* (1955) 94 CLR 216 - *Kramer v McMahon* [1970] 1 NSW 194.

***Gutnick, Joseph Isaac & Anor v Indian Farmers Fertiliser Cooperative Ltd & Anor***

Warren CJ, Santamaria JA, and Beach JA

[\[2016\] VSCA 5](#)

09/02/2016

CRIMINAL LAW - Appeal - Interlocutory appeal - Incest, indecent act with child under 16 - Admissibility of evidence - Application to have entire record of interview excluded - Evidence Act 2008 s55, s56, s90, s135, s136, s137 - Criminal Procedure Act s464A(2) - Admissions made by applicant in record of interview - Failure of investigating official to put specific allegations to applicant in record of interview not sufficient to have record of interview excluded in its entirety - No error by trial judge in ruling record of interview admissible - Leave refused.

CRIMINAL LAW - Appeal - Interlocutory appeal - Application for permanent stay of some charges - Severance of charges ordered by trial judge - No error - Leave refused.

***Sanders, Russell (A Pseudonym) v The Queen***

Redlich JA, Priest JA, and Santamria JA

[\[2016\] VSCA 6](#)

10/02/2016

CRIMINAL LAW - Interlocutory Appeal - Hearsay - Trial of sexual offences - Complainant deceased - Whether complainant's evidence in committal proceedings admissible - Evidence of complainant's psychiatric condition became known after committal - Whether probative value of evidence is outweighed by danger of unfair prejudice - Whether common law unfairness discretion applies - Evidence Act 2008, s65 and s137 - Haddara v The Queen (2014) 43 VR 53.

***Luna, Johnny (a pseudonym) v The Queen***

Redlich JA, Priest JA, and Beach JA

[\[2016\] VSCA 10](#)

19/02/2016

CRIMINAL LAW - Sentence - Application for an extension of time to apply for leave to appeal against sentence - Delay of more than four years - Explanation for delay unsatisfactory - Merits of proposed appeal - No reasonable prospect of success of proposed appeal - Application refused.

***Evans, Paul (a pseudonym) v The Queen***

Redlich JA and Beach JA

[\[2016\] VSCA 11](#)

18/02/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Intentionally causing serious injury - Glassing - Sentence of 5 years imprisonment with non-parole period of 3 years - Prior convictions for violence - Relevance of general deterrence - Serious example of serious offence - Manifest excess - Not reasonably arguable that sentence manifestly excessive - Alleged errors in trial judge's reasons not reasonably arguable - Application for leave to appeal refused.

***Gumwel, Koyock v The Queen***

Redlich JA and Beach JA

[\[2016\] VSCA 14](#)

18/02/2016



CRIMINAL LAW - Sentence - Incest - Intellectually disabled aboriginal offender with disadvantaged background - Incest with adult biological daughter - Single incident - No familial relationship between offender and complainant until just before offending - Sentence of four years with a two year non-parole period - Principles in *R v Verdins* and *Muldrock v The Queen* concerning intellectual disability - Sentencing judge wrongly treating *Verdins* and *Muldrock* as standing for different principles - Pre-decisional exchange between sentencing judge and counsel revealing error - Leave to appeal granted and appeal allowed on basis of specific error - Resentencing discretion enlivened - Appellant resentenced to three years imprisonment with an 18 month non-parole period - *R v Verdins* (2007) 16 VR 269 - *Muldrock v The Queen* (2011) 244 CLR 120 - Crimes Act 1958, s44(1).

***Ryder, Paul v The Queen***

Whelan JA and Cavanough AJA

[\[2016\] VSCA 3](#)

05/02/2016

MISLEADING AND DECEPTIVE CONDUCT - Appointment of applicant to office of mining warden by respondents - Whether respondents engaged in conduct liable to mislead as to term and nature of employment - Alleged misleading conduct comprising written and oral representations and silence - Fair Trading Act 1999 (Vic) s13 - Appeal dismissed.

EMPLOYMENT LAW - Duty to afford procedural fairness and good faith implied in contract of employment - Wide scope of statutory power and contractual right to terminate employment - Whether respondents breached and/or repudiated contract by manner of and grounds for termination of employment - Whether failure to give adequate notice of proposed reasons for termination and opportunity to respond - No breach or repudiation of contract by respondents - Adequate notice of proposed reasons for termination and opportunity to respond given - Mineral Resources (Sustainable Development) Act 1990 (Vic) - Public Administration Act 2004 (Vic) - *Barratt v Howard* (2000) 96 FCR 428 - *Jarratt v Commissioner of Police for New South Wales* (2005) 224 CLR 44 - Appeal dismissed.

PRE-TRIAL RULINGS - Pre-trial ruling made permitting solicitors on record for applicant to cease to act - Pre-trial ruling made setting aside subpoenas served by the applicant - Prejudicial effect of pre-trial rulings - No error in permitting applicant's solicitors to cease to act - No error in setting subpoenas aside - No prejudice shown in pre-trial rulings - Supreme Court (General Civil Procedure) Rules 2005 (Vic) - *Investec Bank Australia Ltd v Mann* [2012] VSC 81 - *House v The King* (1936) 55 CLR 499 - Appeal dismissed.

APPEAL - Rehearing - Review of findings of fact based on trial judge's assessment of credibility of witnesses - Power of appellate court to set aside findings - Trial judge concluded applicant unsatisfactory witness - Whether judge erred in findings of credit - No error in trial judge's findings of credit - *Box Hill Institute of TAFE v Johnson* [2015] VSCA 245 - Appeal dismissed.

***Swindells, Andrew Hyde v State of Victoria and Batchelor, Peter***

Warren CJ, Tate JA, and Santamaria JA

[\[2016\] VSCA 9](#)

16/02/2016



PRACTICE AND PROCEDURE - Application for leave to appeal against orders and rulings made during pre-trial directions - Order made by consent that parties jointly prepare binding forensic report - Report exhibited to affidavit filed before trial - Whether report admitted into evidence in the trial - Whether question of admissibility into evidence yet arisen.

PRACTICE AND PROCEDURE - Trial judge ruled that applicant precluded from preparing further report - No application for leave to appeal against ruling - No application for extension of time for application for leave to appeal - Whether collateral challenge available - Supreme Court (General Civil Procedure) Rules 2015 r64.36.

PRACTICE AND PROCEDURE - Applicant filed affidavit deposing matters conflicting with binding report - Whether conflicting parts of affidavit properly struck out.

PRACTICE AND PROCEDURE - Procedural fairness - Whether pre-trial orders and rulings deny applicant opportunity for fair trial - Application for leave to appeal refused.

***Ruschinek, Berek v Tiernan, Damien***

Warren CJ, Ferguson JA, and McLeish JA

[\[2016\] VSCA 7](#)

16/02/2016

PRACTICE AND PROCEDURE - Application for leave to appeal against orders of associate judge dismissing appeal from Magistrates' Court - Magistrate ordered applicant to pay amounts owing pursuant to levies imposed by respondent - Limited evidence regarding raising of levies by directors of respondent - Whether magistrate entitled to rely upon evidence.

PRACTICE AND PROCEDURE - Procedural fairness - Applicant not given opportunity to raise formal defence to amended claims of respondent - Effect of amendments to reduce amount of claim against applicant - Whether applicant denied procedural fairness - Whether magistrate gave adequate reasons.

***Sullivan, Anthony v Greyfriars P/L***

Whelan JA, Ferguson JA, and McLeish JA

[\[2016\] VSCA 12](#)

18/02/2016

PRACTICE AND PROCEDURE - Application for leave to appeal - Interlocutory decision on questions of practice and procedure - Discretionary interlocutory decision on question of practice and procedure - Application for leave to appeal from decision refusing to adjourn trial - Fourth trial date - Application for leave to appeal decision refusing to make examination orders under the Proceeds of Crime Act 2002 (Cth) where examinations would necessitate vacation of fourth trial date - No material error in trial judge's exercise of discretion - Judge entitled to weigh in the balance the allocation of 3 previous trial dates and setting aside of multiple days of court time - Application for leave to appeal refused.

PROCEEDS OF CRIME - Application for forfeiture orders - Applications for exclusion from restraining order - Applications for exclusion from forfeiture order - Applications for examination orders - Proceeds of Crime Act 2002 (Cth), s5, s49, s180, s180A, s180B and s180E.

***The Commissioner of the Australian Federal Police v Dong Hua International Investments P/L and Zhou, Yuhong***

Redlich JA, Priest JA, and Beach JA

[\[2016\] VSCA 15](#)

19/02/2016

PRACTICE AND PROCEDURE - Refusal of application for leave to amend statement of claim - Applicable test - Section 63(1) of the Civil Procedure Act 2010 - 'No real prospect of success' - Application for leave to appeal refused.

PRACTICE AND PROCEDURE - Proposed amendments alleged declaration by trustee that certain individuals had no interest in trust was invalid - Individuals had disclaimed their interests - Whether disclaimer deprived children of those individuals from taking share of trust fund on vesting day - Whether disclaimer rendered validity of the declaration moot - Construction of relevant clause - Real prospect of success - Application for leave to appeal granted in respect of proposed amendments - Appeal allowed.

PRACTICE AND PROCEDURE - Proposed amendments alleged conflict of interest by virtue of two directors of trustee being workplace subordinates of beneficiary - Trust deed authorised trustee to exercise powers and discretions notwithstanding that trustee or director had a personal interest in result - Application for leave to appeal refused in respect of proposed amendments.

***Mandie, Edward Nicholas v Memart Nominees P/L***

Kyrrou JA, Ferguson JA, and McLeish JA

[\[2016\] VSCA 4](#)

05/02/2016

### Commercial Court

CORPORATIONS - Scheme of Arrangement - Approval of Scheme - Discretion - Corporations Act 2001 (Cth) s411.

***In the Matter of Great Southern Managers Australia Ltd (In Liquidation) ACN 083 825 405: Great Southern Managers Australia Ltd (In Liquidation) ACN 083 825 405 and Ors (being the Liquidators)***

Croft J

[\[2016\] VSC 38](#)

12/02/2016

CORPORATIONS - Winding up - Statutory demand - Corporations Act 2001 (Cth) s583 - Whether a company under the Corporations Act 2001 (Cth) Pt 5.7 can challenge a wind up even though it has complied with a statutory demand - Proper law of the contract - Statute barred - Extension of time - Acknowledgment of the debt in writing - Solvency - Estoppel - Application dismissed.

***Cato Brand Partners P/L v Air India Ltd***

Efthim AsJ

[\[2016\] VSC 28](#)

05/02/2016

DECLARATORY RELIEF - Jurisdiction - Discretion - Circumstances where properly exercised - Effect of consent - Fire Services Levy Monitor Act 2012 (Vic), s26, s31, s102 and s105 - Supreme Court Act 1986 (Vic), s36.

***Director of Consumer Affairs Victoria v Mecon Insurance P/L & Anor***

Elliott J

[\[2016\] VSC 42](#)

12/02/2016

JOINT VENTURE - Taking of final accounts - Unsubstantiated expenditure - Determination of items in dispute - Content of fiduciary duty - Net assets to be applied first to defendant's equity and then to plaintiff's equity.

***R K Property Holdings P/L (ACN 120 088 959) v Bcool P/L (ACN 077 803 162) and Bcool P/L (ACN 077 803 162) (Plaintiff by Counterclaim) v RK Property Holdings P/L (ACN 120 088 959) (First Defendant by Counterclaim) and Kukas, Robert (Second Defendant by Counterclaim)***

Almond J

[\[2015\] VSC 754](#)

21/12/2015

PRACTICE & PROCEDURE - Application for additional security for costs - Civil Procedure Act 2010, s7(1), s8(1) and s65C(1)

***Camping Warehouse Australia P/L (Formerly Mountain Buggy Australia P/L) (ACN 097 355 578) v Downer EDI Ltd (ACN 003 872 848)***

Digby J

[\[2016\] VSC 29](#) First Revision: 8 February 2016; [12]

04/02/2016

PRACTICE & PROCEDURE - Application for judicial directions in respect of the executors participation in an application for leave to appeal - Supreme Court (General Civil Procedure) Rules 2005, order 54.02(1)

***Fast, John Claude, Schoenfeld, Michael and Brown, Philip Carey (as executors of the will and trustees of the estate of Irvin Peter Rockman, deceased)***

Digby J

[\[2015\] VSC 780](#)

23/10/2015

PRACTICE & PROCEDURE - Application to lift permanent stay - No relevant change of circumstance - Application refused.

***Break Fast Investments P/L (ACN 090 648 990) v Gravity Ventures P/L(ACN 107 651 507) & Ors (according to the attached Schedule) (No 2)***

Judd J

[\[2016\] VSC 30](#)

09/02/2016

PRACTICE & PROCEDURE - Freezing Order - Exercise of discretion - High degree of caution required - Degree of risk that judgment or prospective judgment will not be wholly satisfied - Effect of defendant's conduct rather than purpose may be relevant - Other elements required under Order 37A Supreme Court (General Civil Procedure) Rules 2015.

***Brunswick Zhang P/L (ACN 608 071 996) v Australia Dayu Trading P/L (ACN 150 772 419)***

Digby J

[\[2015\] VSC 782](#)

16/12/2015

PRACTICE & PROCEDURE - Preliminary discovery - Whether applicant had made reasonable inquiries - Whether sufficient information available to applicant - Order made for preliminary discovery subject to confidentiality regime - Supreme Court (General Civil Procedure Rules) 2015, r32.05

***B J Bearings P/L (ACN 154 303 152) v Whitehead, William Robert & Ors (in accordance with the attached Schedule)***

Hargrave J

[\[2016\] VSC 44](#)

11/02/2016

TAXATION - Growth Areas Infrastructure Contribution - GAIC - GAIC levy - Excluded subdivisions of land - Sequential subdivisions - Purpose of subdivision - Planning and Environment Act 1987, Pt 9B, s201RF - Commissioner of State Revenue v Challenger Property Nominees Pty Ltd (2006) 63 ATR 65 - R & R Fazzolari Pty Ltd v Parramatta City Council (2009) 237 CLR 603.

WORDS AND PHRASES - Meaning of "purpose".

***Frontlink P/L (ACN 074 034 496) v Commissioner of State Revenue***

Croft J

[\[2016\] VSC 25](#)

11/02/2016

### Common Law Division

ADMINISTRATIVE LAW - Judicial review - Medical Panel findings - Reasons of Medical Panel inadequate - Error on the face of the record - Entitlement of first defendant to indemnity certificate - Appeal Costs Act 1998, s3, s4; Supreme Court (General Civil Procedure) Rules 2015, O 56; Workplace Injury Rehabilitation and Compensation Act 2013, s3, s274.

***Petrogas P/L v Doolan, Shane & Ors (According to the schedule attached)***

McDonald J

[\[2016\] VSC 46](#)

16/02/2016

COSTS - Application by defendant under Civil Procedure Act 2010 to set aside costs order based on alleged breaches of the Civil Procedure Act 2010 - Defendant sought findings in respect of matters which were, or could have been, the subject of findings by trial judge who made original costs order - Not in the interests of justice to make orders under Civil Procedure Act 2010 in respect of matters which had been, or could have been, the subject of judicial determination - Application refused - Civil Procedure Act 2010 s18, s21, s22, s23, s24, s29; Defamation Act 2005 s40(2); Supreme Court Act 1986 s60(1); Supreme Court (General Civil Procedure) Rules 2005 r26.08(2)(b), r46.04(1).

***Jeffrey, David and Curnow, Thomas v Giles, Virginia (No 2)***

McDonald J

[\[2016\] VSC 2](#)

05/02/2016

COSTS - Non-party cost applications - Alleged breaches of overarching obligations under Civil Procedure Act 2010 (Vic) - Section 29 applications - Section 30 time limit not observed - Whether proceeding 'finalized' for the purposes of s30 - Section 29 application statute barred - No jurisdiction to make a s29 order - Inherent jurisdiction of the Court to make a non-party costs order - Section 24 Supreme Court Act 1986 - Knight v FP Special Assets Limited (1992) 174 CLR 178 considered and applied against one non-party - Rule 63.23 Supreme Court (General Civil Procedure) Rules 2005 (Vic) considered but not applied - Principles of Flower & Hart (a firm) v White Industries (Qld) Pty Ltd (1999) 87 FCR 134 on indemnity costs applied against one non-party.

**1165 Stud Road P/L (ACN 104 794 461) v Power, Robert James & Ors (No 2)**

Vickery J

[\[2015\] VSC 735](#)

18/12/2015

COSTS - Personal injury litigation - Whether trial judge should fix counsels' fees for attending judicial mediation - Judicial discretion regarding costs orders - Order fixing counsels' fees made - Supreme Court (General Civil Procedure) Rules 2015 r63.07.

**O'Brien, Timothy John v Greater Bendigo City Council; Lea, Jason Grant v Fosterville Gold Mine P/L**

J Forrest J

[\[2016\] VSC 33](#)

08/02/2016

DEFAMATION - Application for leave to amend pleading - Publication - Internet - Facebook posts and comments - Whether publication properly pleaded - Pleading of primary and subordinate publication against persons involved in administration or supervision of a Facebook page - No new point of principle.

**Von Marburg, Roland v Aldred, Ethan and Mourik, Pieter (No 2)**

John Dixon J

[\[2016\] VSC 36](#)

09/02/2016

GUARANTEE AND INDEMNITY - Construction of terms of guarantee - Whether the creditor was required to exhaust its remedies against the principal debtor before seeking to enforce the guarantee - Whether a clause governing the treatment of later receipts by the creditor from a liquidator after the guarantee obligation had crystallised affected the sum due and owing when an insolvency event occurred.

**Asset Flooring P/L v North, William John**

John Dixon J

[\[2016\] VSC 31](#)

11/02/2016

JUDICIAL REVIEW - Plaintiff seeks judicial review of County Court determination of an appeal against conviction in the Magistrates' Court - Alleges failure by the County Court judge to disclose his 'close friendship' with a magistrate who had previously made orders against the plaintiff in other proceedings - Plaintiff alleges being persecuted by police and that magistrate at the direction of ASIO - Informant seeks summary dismissal - No real prospect of success of any of the plaintiff's grounds - Summary dismissal ordered.

**Goldberg, David v Shenton, Brett and County Court**

Lansdowne AsJ

[\[2016\] VSC 21](#)

05/02/2016

PRACTICE & PROCEDURE - Adjournment of trial refused - Considerations relevant to the exercise of discretion - No new point of principle - Absence of plaintiff by counterclaim to prosecute at trial claims severed from other issues in the proceeding that have been resolved by judgment - Extant counterclaims dismissed - Civil Procedure Act, (2010), s7, s9, Supreme Court (General Civil Procedure) Rules, 2015 r 49.02

***Butler, Francis Kevin & Ors v JSL Racing P/L & Ors***

John Dixon J

[\[2016\] VSC 22](#)

02/02/2016

PRACTICE & PROCEDURE - Originating motion in Form 5B seeking judicial review - Hardiman letter from the County Court - Discussion as to the availability of default judgment - Supreme Court (General Civil Procedure) Rules 2015 rr5.02(2); 56.01(2); 45.03; 45.05.

JUDICIAL REVIEW - summary dismissal - Appeal to County Court against sentence imposed by magistrate - Plaintiff says he signed an appeal against sentence only in error - County Court refused leave to appeal against conviction out of time - Plaintiff alleges the County Court acted at the instance of ASIO - Alleged fraud by Deputy Registrar of the Magistrates' Court in relation to the notice of appeal and collusion with prosecution - Other alleged errors of law and breaches of procedural fairness - All grounds summarily dismissed save for the assertion that the plaintiff was denied procedural fairness by the refusal of the Court to allow him to sit at the bar table - Criminal Procedure Act 2009 s263 - Civil Procedure Act 2010 ss62, 63 and 64.

***Goldberg, David v Stocker, Deryck Geoffrey; County Court***

Lansdowne AsJ

[\[2016\] VSC 20](#)

05/02/2016

PRACTICE & PROCEDURE - Pleadings - Application for leave to file and serve a further amended statement of claim - Claim for damages to reputation, lost income, and expenses of defending criminal proceedings sought for malicious prosecution and misfeasance in public office - Plaintiff bankrupt at material times - Whether causes of action pleaded are maintainable - Whether reputational damage to capacity to earn income is divisible amongst creditors - Whether claims are for a personal wrong done to the bankrupt - Bankruptcy Act 1966 (Cth) s58, s60(4), s116(1), s116(2)(c), s116(2)(g)

***Sheehan, Marshall v Brett-Young, Michael & Ors (No 3)***

John Dixon J

[\[2016\] VSC 39](#)

10/02/2016

PRACTICE & PROCEDURE - Vexatious litigant so declared pursuant to s21 of the Supreme Court Act 1986 - Applicant subject to a general litigation restraint order pursuant to s29, s91 and s102 of the Vexatious Proceedings Act 2014 - Application for leave to commence proceedings - Statutory requirements for leave to commence proceedings - Foreshadowed application for injunctive and declaratory relief in relation to decision to transfer and hold prisoners in more restrictive incarceration - Vexatious Proceedings Act 2014, s54(1) and s54(2), s55, s56 and s63 - Corrections Act 1986, s20, s21, s47, s50 and s53 - Corrections Regulations 2009, reg 27 - Operative decision most unlikely to be reviewable or susceptible of relief sought - Requirement for leave to commence proceedings not satisfied - Failure to discharge onus that there are reasonable grounds for the proposed proceeding and that the proposed proceeding is not a vexatious proceeding - Proceeding not materially different to recent prior application.

***Knight, Julian v Corrections Commissioner, General Manager, Port Phillip Prison & General Manager, Her Majesty's Prison Barwon***

Digby J

[\[2016\] VSC 50](#)

18/02/2016

STATUTORY INTERPRETATION - Statute conferring discretion on Victorian WorkCover Authority or self-insurer to terminate or not resume weekly payments - Whether the discretion in s114(2A) of the Accident Compensation Act 1985 confers on the Authority or self-insurer an entitlement not to resume weekly payments.

ACCIDENT COMPENSATION ACT 1985 - Whether the hearing by a court required to 'inquire into, hear and determine any question or matter' is a hearing de novo - Whether the court may re-exercise the insurer's discretion not to resume weekly payments under Accident Compensation Act 1985 s39, s43.

***The Salvation Army Southern Territory v Jarvis, Brett***

Riordan J

[\[2016\] VSC 34](#)

10/02/2016

## Costs Court

Application to review legal costs pursuant to s3.4.38(5) of the Legal Profession Act 2004 - Standing of applicant - Res judicata - Issue estoppel

***Deutsch, Erwin v Gleeson, Phillip***

Wood AsJ

[\[2016\] VSC 49](#)

12/02/2016



## Criminal Division

CRIMINAL LAW - Application for bail - Aggravated Burglary - Show cause situation - Whether unacceptable risk - Application refused - Bail Act 1977 (Vic) s4(2)(d), s4(3), s4(4) ***In the Matter of the Bail Act 1977 and In the Matte of an Application for bail by Khaia, Milad***

Jane Dixon J

[\[2015\] VSC 778](#)

23/11/2015

CRIMINAL LAW - Application for bail - Applicant, aged 22, charged with attempted murder by stabbing complainant multiple times - Whether applicant has shown cause why detention not justified - Whether applicant, if granted bail, would present an unacceptable risk of offending and/or of interfering with a witness - Extensive criminal history - Telephone calls by applicant concerning witness - Strength of propection case - Identity of assailant in issue - Delay - Residence - Family support - External support - Relative youth - Applicant failed to show cause - Respondent established unacceptable risk - Bail refused.

***In the matter of an Application for Bail by Byrne, Dwayne: Byrne, Dwayne v Director of Public Prosecutions (DPP)***

Croucher J

[\[2015\] VSC 764](#)

01/12/2015

CRIMINAL LAW - Application for bail - Trafficking cannabis in a commercial quantity - Aggravated burglary - Using a firearm whilst a prohibited person - Reckless conduct endangering life - Cultivating cannabis - Theft - Dealing with property suspected to be the proceeds of crime - Exceptional circumstances - Prior convictions - Prospects of rehabilitation - Place for applicant in residential rehabilitation facility - Prospect for applicant to begin outstanding Community Corrects Order - Unacceptable risk - Bail refused.

***In the Matter of the Bail Act 1977 and In the Matter of an application for bail by Rajic, Frank***

T Forrest J

[\[2016\] VSC 27](#)

02/02/2016

CRIMINAL LAW - Bail - Applicant at risk of re-offending - Nature of instant offending not of high level of seriousness - Prosecution case weak - Conditions sufficiently address risk of re-offending - Applicant remanded for significant period - Bail granted.

***In the Matter of the Bail Act 1977 and In the Matter of an Application for bail by Taylor, Cindy Anne***

Jane Dixon J

[\[2015\] VSC 777](#)

24/09/2015

CRIMINAL LAW - Bail application - Alleged offending shortly after imposition of CCO and suspended sentence - Unacceptable risk of committing further offences - Application refused - No point of principle

***In the Matter of the Bail Act 1977 and In the Matter of an Application for bail by Repac, Alex***

Jane Dixon J

[\[2015\] VSC 779](#)

14/12/2015

CRIMINAL LAW - Crimes Compensation - Application for crimes compensation order pursuant to Sentencing Act 1991 s85B - Applicant the mother of murder victim.

***In the Matter of Section 85B of the Sentencing Act 1991***

***Cheng, Shui Ying v Zhuang, Huajiao***

Kaye JA

[\[2016\] VSC 24](#)

05/02/2016

CRIMINAL LAW - Sentence - Causing serious injury recklessly - Plea of guilty - Sentenced to 21 months' imprisonment and 24-month CCO

***Director of Public Prosecutions v Strange, Andrew Francis***

Jane Dixon J

[\[2016\] VSC 45](#)

12/02/2016

## Practice Court

ADMINISTRATIVE LAW - Judicial review - Breach of probation orders - Breach of youth supervision order - Sentenced for multiple offences to be served concurrently - Whether sentencing Magistrate erred in declaring separate periods of time of pre-sentence detention (PSD) - Whether sentencing Magistrate erred in failing to declare a total period of time as PSD - Timing of declaration of PSD - Children, Youth and Families Act 2005, s413 and s430P - Sentencing Act 1991, s18, s35.

***In the Matter of an appeal on a question of law pursuant to s430P of the Children, Youth and Families Act 2005: McGeehan, Yasmine v Abela, Mark & Ors (see attached Schedule of Parties)***

Digby J

[\[2015\] VSC 783](#)

02/11/2015

COSTS - Application to remove caveat - Caveat removed - Whether or not indemnity costs should be awarded - Costs awarded on the standard basis - Love v Kempton [2010] VSC 254.

***Yuksels Nominees P/L (ACN 006 261 810) v Nguyen, Joanne Thu and Registrar of Titles (Ruling No. 2)***

T Forrest J

[\[2016\] VSC 37](#)

11/02/2016

PROCEDURE - Confiscation of proceeds of crime - Application for restraining order, examination order and ancillary orders - Adjournment of applications - Form of notice - Manner in which notice given - Personal service - No order as to costs - Proceeds of Crime Act 2002 (Cth) s26(1), s26(4), s26(5), s33, s39(ca), s39(3A), s39(4A), s180, s182 - Supreme Court (Criminal Procedure) Rules 2008 (Vic) r6.04(3), r6.05, r6.06(3), r6.07, r6.09(2) - Acts Interpretation Act 1901 (Cth) s2, s28A - Judiciary Act 1903 (Cth) s79(1).

***In the Matter of the Proceeds of Crime Act 2002 (Cth) between The Commissioner of the Australian Federal Police v Kaur, Varinder and Singh, Harpal***

J Forrest J

[\[2016\] VSC 13](#)

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REAL PROPERTY - Caveat - Application for removal under Transfer of Land Act 1958, s90(3) - Piroshenko v Grojsman (2010) 27 VR 489, applied - Order that caveats be removed.

***Australian and New Zealand Banking Group Ltd v Annesley, Paul and Annesley, Sharlene and Carlton Ross & Associates P/L and Registrar of Titles***

Riordan J

[\[2015\] VSC 781](#)

17/12/2015 (ex tempore)

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**Robottom, J. Put it on the Bill. (2016) 166(7683) NLJ 12-13**

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