



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
4 March
2016

Library News

Concerts in the Library

The Law Library of Victoria in collaboration with BottledSnail Productions will be resuming the series of lunch time concerts in 2016.

These concerts will be held in the Supreme Court Library over lunch time on the third Thursday of every month. The first concert will be held on Thursday 21 April at 1pm. These events are free and all are welcome to attend.

Further details and a concert program will be released on our website soon <http://lawlibrary.vic.gov.au/>

ComLaw to become the Federal Register of Legislation

Legislative changes, which commence on 5 March, will establish a single Federal Register of Legislation which combines the content of ComLaw, the Federal Register of Legislative Instruments (FRLI) and the Acts database into a single register.

The address for this website will be <https://www.legislation.gov.au> . Any bookmarks or links you may have to the current ComLaw website will be redirected automatically and, if you have subscribed to ComLaw's free notification service, you will not need to reset your password.

As part of this change, this website will be unavailable on Saturday March 5 from 7am for the implementation of the new site. See www.comlaw.gov.au for more details.

SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at llv@courts.vic.gov.au

EXHIBITION: OPENING OF THE LEGAL YEAR

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

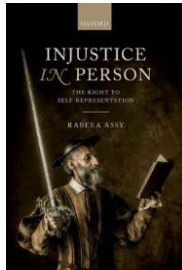
The display outlines the history of the Opening of the Legal Year and includes pictures, articles and a judicial robe.

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New Books

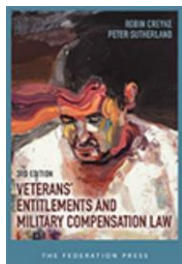
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/



Assy, Rabeea, *Injustice in Person: The Right to Self-Representation*
Oxford, United Kingdom, 2015
Call number: LS 347.05 ASS (Supreme Court Library)

No image
available

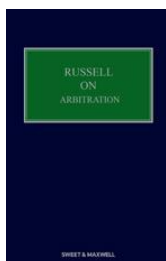
Colin, Sara, *Boundaries and Easements*
6th ed, Sweet and Maxwell, London, 2015
Call number: 346.0435 SAR.6 (Supreme Court Library)



Creyke, Robin and Sutherland, Peter, *Veterans' Entitlements and Military Compensation Law*
3rd ed, Federation Press, NSW, 2016
Call number: 343.011 CRE.3 (Supreme Court Library)



O'Neill, P. T. and Woloniecki, J. W., *The Law of Reinsurance in England and Bermuda*
4th ed, Sweet and Maxwell, London, 2015
Call number: 346.0860122 ONE.4 (Supreme Court Library)



Sutton, David, Gill, Judith, Gearing, Matthew and Russell, Francis, *Russell on Arbitration*
24th ed, Sweet and Maxwell, London, 2015
Call number: 347.4109 RUS.24 (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 200th 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:

- [Corrections Amendment \(No body, no parole\) Bill 2016](#)
- [Fines Reform and Infringements Acts Amendment Bill 2016](#)
- [Parliamentary Budget Officer Bill 2016](#)
- [Sex Offenders Registration Amendment Bill 2016](#)
- [Upholding Australian Values \(Protecting Our Flags\) Bill 2015](#)

Victorian Assents

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

- [Assisted Reproductive Treatment Amendment Act 2016](#) No.6/2016
- [Kardinia Park Stadium Act 2016](#) No. 7/2016

Proclamations

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

The following Victorian Act proclamations have been made since the last Library Bulletin:

- [Local Government Amendment \(Improved Governance\) Act 2015](#) No. 53/2015
 - Sections 4, 5, 8, 10, 12, 14-55, 57-63, 66-76, 78-89 and 92-96 came into operation on 1 March 2016 (VGG S25 23.02.2016)
- [Gambling Legislation Amendment Act 2015](#) No. 58/2015
 - Part 4 of this Act comes into operation on 2 March 2016 (VGG S34 01.03.2016)

Legislation

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

- *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* No. 61/2014
 - Sections 4 to 99, 153, 154, 161-163, 165-170 and 173 came into operation by forced commencement on 1 March 2016 (s. 2(3))
- *Public Health and Wellbeing Amendment (Hairdressing Registration) Act 2015* No. 11/2015
 - All sections of this Act came into operation by forced commencement on 1 March 2016 (s. 2)

Following is a selection of Victorian Statutory Rules that have been proclaimed to commence since the last Library Bulletin:

- *Children, Youth and Families (Children's Court Family Division) (Amendment No. 5) Rules 2016* No. 7/2016 (VGG S30 26.02.2016)

High Court Cases

CONTRACT - Construction of terms - Where contract used statutory term "gaming operator's licence" - Where contract provided for payment to respondent if "new gaming operator's licence" issued to person other than respondent - Where statutory scheme amended so gaming operator's licence could no longer be issued - Meaning of "new gaming operator's licence" - Whether payment due.

CONTRACT - Construction of terms - Context and purpose - Where commercial context regulated by statutory regime - Where letter from member of Executive annexed to contract - View of reasonable business people.

CONTRACT - Construction of terms - Whether pre-existing contractual right operated independently of statutory right on same subject matter - Whether pre-existing contractual right discharged or abrogated by subsequent legislative enactment.

WORDS AND PHRASES - "gaming machine entitlement", "gaming operator's licence", "new gaming operator's licence".

GAMBLING MACHINE CONTROL ACT 1991 (Vic), Pt 3.

GAMBLING REGULATION ACT 2003 (Vic), Pts 4 and 4A of Ch 3.

State of Victoria v Tatts Group Limited

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

02/03/2016

CRIMINAL LAW - Evidence - Unsworn evidence - Where respondent convicted following trial in Supreme Court of the Australian Capital Territory of commission of act of indecency in presence of daughter, R - Where R six years old when giving evidence - Where R's evidence received unsworn under s 13(3) of Uniform Evidence legislation - Where ex tempore reasons of pre-trial judge suggested reversal of presumption of competence to give sworn evidence - Where respondent agreed to be bound by pre-trial judge's ruling under s 13(3) - Whether pre-trial judge failed to apply s 13 - Whether open to pre-trial judge to be satisfied s 13(3) test met - Whether R's unsworn evidence wrongly admitted.

CRIMINAL LAW - Evidence - Jury directions - Where audiovisual recording of child witness' unsworn evidence tendered at trial - Where respondent requested trial judge direct jury that evidence unsworn - Whether Uniform Evidence legislation required direction - Whether common law required direction to avoid perceptible risk of miscarriage of justice - Whether adequate directions given.

WORDS AND PHRASES - "competence", "evidence of a kind that may be unreliable", "evidence of children", "obligation to give truthful evidence", "perceptible risk of a miscarriage of justice", "presumption of competence", "reliability", "sworn evidence", "unsworn evidence".

CRIMES ACT 1900 (ACT), s61(1).

EVIDENCE ACT 2011 (ACT), s12, s13, s21, s165, s165A, Sched 1.

EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1991 (ACT), s70.

The Queen v GW

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

02/03/2016

STATUTES - Interpretation - Where conjoined "wagering licence" and "gaming licence" issued under statutory scheme - Where statute provided for payment on "grant of new licences" - Where statutory scheme amended so no new wagering licence and gaming licence could be issued - Whether "grant of new licences" confined to grant of new wagering licence and gaming licence - Whether payment due.

Statutes - Interpretation - Context - Relevance of legislative history - Relevance of commercial context.

STATUTES - Interpretation - Principle of legality - Whether principle engaged where nature of right is contingent and interest to be protected is limited.

WORDS AND PHRASES - "gaming licence", "gaming machine entitlement", "grant of new licences".

GAMBLING REGULATION ACT 2003 (Vic), Pt 4A of Ch 3, Pt 3 of Ch 4, s4.3.4A, s4.3.12.

Tabcorp Holdings Limited v State of Victoria

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

02/03/2016

Victorian Supreme Court Cases

Court of Appeal

CONTRACT - Long term farm lease - Planning scheme restrictions prevented freehold sale - Parties entered into 99 year lease for total rental of \$70,000 paid in full at commencement of lease - Clause 13 referred to intention of lessor to sell and lessee to purchase freehold for consideration of \$70,000 - Clause 4 provided that lessee to pay 'all rates taxes assessments and outgoings whatsoever ~~excepting land tax~~ - payable by the ~~Landlord or tenant~~' - Construction - Whether regard may be had to struck out words - Whether cl 4 ambiguous - Whether cl 13 shows intention to replicate sale and purchase - Commercial sense - Appeal allowed.

Gee Dee Nominees P/L v Ecosse Property Holdings P/L

Santamaria JA, Kyrou JA, and McLeish JA

[\[2016\] VSCA 23](#)

04/03/2016

CRIME - Sentence - Multiple electronic commerce-based fraud offences, identification fraud offences and perjury offence - Total effective sentence of four years nine months' imprisonment with two years six months' non-parole period imposed - Whether manifestly excessive - Applicant between 17 and 20 years of age at time of offending - Full restitution of monies lost made by applicant - Excellent prospects of rehabilitation - Crown conceded manifest excess - Application for leave to appeal granted - Appeal allowed - Re-sentenced to one year imprisonment with three year Community Correction Order.

Boyton, Joash v The Queen

Whelan JA and Santamaria JA

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

22/02/2016

CRIMINAL LAW - Appeal - Conviction - Trial of sexual offences - Complainant deceased - Hearsay - Whether complainant's evidence in committal proceedings admissible - Whether probative value of evidence is outweighed by danger of unfair prejudice - Whether common law unfairness discretion applies - Evidence Act 2008, s65 and 137 - Haddara v The Queen (2014) 43 VR 53.

CRIMINAL LAW - Appeal - Conviction - Trial of sexual offences - Character in a particular respect - Applicant had prior convictions for violence offence but none for sexual offences - Whether judge erred in permitting prosecution to lead evidence of prior convictions for violence if character put in issue - Evidence Act 2008, s110 - Bishop v The Queen (2013) 39 VR 642.

CRIMINAL LAW - Appeal - Conviction - Rape - Complainant deceased - Whether verdict unsafe and unsatisfactory.

Omot, Luka v The Queen

Redlich JA, Priest JA, and Beach JA

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

03/03/2016

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Intentionally causing injury - Incorrect maximum term of imprisonment - Sentencing judge referred to incorrect maximum term for intentionally causing injury when sentencing the appellants - Whether error could have materially affected sentences imposed - Whether different sentences should now be passed - Appeals dismissed.

Ritchie, Robert Raymond v The Queen; Harrison, Simon Trent

Bongiorno JA and Beach JA

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

04/03/2016

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Theft - Common assault - Breach of Family Violence Intervention Order - Aggregate sentence of 5 years' imprisonment with non-parole period of 3 years - Totality - Manifest excess - Totality principle not infringed - Sentence not manifestly excessive - Appeal dismissed

Whiteford, Benn Arthur v The Queen

Bongiorno JA and Beach JA

[\[2016\] VSCA 26](#)

04/03/2016

CRIMINAL LAW - Application for leave to appeal - Sentence - Aggravated burglary, conspiracy to commit aggravated burglary and theft - Sentenced to 2 years' imprisonment and 3 year community correction order with conditions - No non-parole period fixed - Statutory requirement to fix non-parole period - Sentencing discretion miscarried - Resentenced to 22 months' imprisonment and 3 year community correction order with conditions - Sentencing Act 1991 s11.

CRIMINAL LAW - Sentence - Community correction order - Combination sentence - Whether non-parole period should be fixed with community correction order - Sentencing Act 1991 s11, s44 - Boulton v The Queen [2014] VSCA 342; Deng-Mabior v The Queen [2015] VSCA 179; Baldwin v The Queen [2015] VSCA 299.

Debono, Michael v The Queen

Weinberg JA and McLeish JA

[\[2016\] VSCA 16](#)

19/02/2016

CRIMINAL LAW - Conviction - Appeal - Evidence - Cross-examination - Rule in Browne v Dunn (1893) 6 R 67 - Failure to put to complainant later contradictory account given by the applicant - No instructions given by applicant to counsel regarding contradictory account - Applicant resiled from some contradictory evidence during cross examination - No exception to cross-examination taken by defence counsel - No breach of Browne v Dunn - Leave to appeal refused.

CRIMINAL LAW - Conviction - Appeal - Evidence - Character evidence in a 'particular respect' - s110 Evidence Act 2008 - Miscarriage of justice due to defence counsel's failure to adduce evidence of good character - Hajar v The Queen [2015] VSCA 233; Knowles v The Queen [2015] VSCA 141, discussed - No miscarriage of justice where rational explanation for conduct of counsel existed.

Parsons, Terrence (a pseudonym) v The Queen

Maxwell P, Redlich JA, and Priest JA

[\[2016\] VSCA 17](#)

23/02/2016

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Applicant pleaded guilty to aggravated burglary and recklessly causing serious injury - Co-offender pleaded guilty to aggravated burglary and common assault - Applicant sentenced to 5 years' imprisonment with non-parole period of 2 years and 8 months - Co-offender sentenced to 3 months' imprisonment followed by CCO of 3 years - Parity - Whether parity principle infringed - Significant difference in roles and circumstances of offending - Significant differences in criminal histories - Parity complaint not reasonably arguable - No arguable error in sentence imposed - Application for leave to appeal refused.

Anthony, David v The Queen

Redlich JA and Beach JA

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

01/03/2016

CRIMINAL LAW - Sentence - Rolled-up charges of theft spanning 131 offences - Applicant stole money from her employers - Total effective sentence of 15 months' imprisonment with a community correction order for 12 months - Outstanding subsequent offending in New South Wales by applicant of similar nature - Subsequent offending unproven but admitted by applicant at the plea hearing - Whether judge erred in assessing remorse, general and specific deterrence having regard to subsequent offending - No error in sentencing judge's approach - Application for leave to appeal dismissed.

Bellizia, Michelle v The Queen

Whelan JA and Santamaria JA

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

29/02/2016

PRACTICE AND PROCEDURE - Application for leave to appeal - Application for adjournment - Adjournment refused - No instructions to appear on application for leave to appeal - Application for leave to appeal dismissed without adjudication on the merits.

Rukaj, Sokol v Commonwealth Insurance Ltd (ACN 067 524 216)

Whelan JA and Ferguson JA

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

18/02/2016

PRACTICE AND PROCEDURE - Applications to amend leave to appeal applications and for extension of time - Applications for stay of costs orders made below - Risk of bankruptcy leading to frustration of any appeal if costs orders executed - Undertakings proffered and accepted not to execute costs orders pending the hearing and determination of the application for leave to appeal and any consequent appeal.

Montclare, John v Metlife Insurance Ltd (ACN 004 274 882) and Rivkin Direct Insurance Agencies P/L (ACN 073 632 292)

Tate JA and Osborn JA

[\[2016\] VSCA 18](#)

18/02/2016

PRACTICE AND PROCEDURE - Stay - Application for a stay of a judgment allowing solicitor to tax costs - Application for leave to appeal yet to be heard - Whether prejudice suffered by the applicant if judgment not stayed - Whether prejudice to respondent if execution of judgment not permitted - Application refused.

PRACTICE AND PROCEDURE - Security for costs - Application for security for costs - No apparent material assets - Frequent previous security for costs orders made - Application granted.

Bodycorp Repairers P/L (ACN 068 589 408) v Oakley Thompson & Co P/L (ACN 092 053 239)

Tate JA and Osborn JA

[\[2016\] VSCA 19](#)

18/02/2016

Commercial Court

CORPORATIONS - Application to set aside statutory demand pursuant to sections 459G and 459H of Corporations Act 2001 (Cth) by reason of alleged genuine dispute - Directors of plaintiff involved in oppression proceedings relating to the firstnamed plaintiffs' affairs - One director seeks leave to make application to set aside demand on firstnamed plaintiff's behalf while other director contends there is no dispute in respect of the debts the subject of the demand - Leave granted to director pursuant to section 237 of Corporations Act 2001 (Cth) to bring application to set aside demand - Plaintiff fails to discharge onus as to the existence of genuine dispute or offsetting claim - Application dismissed.

Resdal Corp P/L (ACN 119 629 944) and Naumovski, Vlado v Zest Accounting Group P/L (ACN 113 203 937)

Gardiner AsJ

[\[2016\] VSC 54](#)

24/02/2016

MORTGAGE - Judgment debt - Fraud - Registered mortgage secured against the defendant's property - Where the defendant denies granting the property as security nor signing the mortgage - Where original applications and letters of offer were lost by the plaintiff - Whether fraud brought home to the bank - Where judgment debt was upheld previously - Where all moneys mortgage secured the judgment debt - Transfer of Land Act 1958 s42, s76 and s78.

Australian and New Zealand Banking Group Ltd (ACN 005 357 522) v Loftus, Michael David

Cameron J

[\[2016\] VSC 58](#)

26/02/2016

PRACTICE AND PROCEDURE - Leave to amend statement of claim - Extent to which plaintiff can depart from indorsement on writ - *Renowden v McMullin* (1970) 123 CLR 584 - Supreme Court (General Civil Procedure) Rules 2015 Order 14, Order 36.

Willmott Forests Ltd (ACN 063 262 650) (Receivers and Managers Appointed) (In Liquidation) v Armstrong Dubois P/L (ACN 088 038 831)

Derham AsJ

[\[2016\] VSC 61](#)

01/03/2016

PRACTICE AND PROCEDURE - Security for costs - Delay - Satisfactory explanation for delay - Security ordered for limited past costs because of delay.

PRACTICE AND PROCEDURE - Security for costs - Security ordered for future costs - No stultification of proceedings.

Oswal, Radhika Pankaj v Australia and New Zealand Banking Group Ltd (ACN 005 357 522) & Ors

Oswal, Pankaj v Carson, Ian Menzies & Ors

Yara Pilbara Fertilisers P/L (ACN 095 441 151) v Oswal, Pankaj & Ors

Sifris J

[\[2016\] VSC 52](#)

24/02/2016

Common Law Division

COSTS - Costs of trial - Claim for an adjustment order under s45(1) of the Relationships Act 2008 (Vic) and claim for interest in properties pursuant to an express and/or constructive trust - Plaintiff by counterclaim successful in obtaining adjustment order - Defendants by counterclaim unreasonably denied the existence of the domestic relationship - Plaintiff by counterclaim forced to additional cost and expense by reason of the defendants by counterclaim's denial of the relationship - Sections 23 and 29 of the Civil Procedure Act 2010 (Vic) considered.

COSTS - Calderbank offers by defendants by counterclaim - Whether unreasonable for plaintiff to reject the offers - Relevant factors - Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2) [2005] 13 VR 435 applied - Magnitude of discrepancy between amount of offer and outcome of trial a relevant factor.

COSTS - Relevance of breaches of the Civil Procedure Act 2010 (Vic) to the exercise of discretion as to costs.

LEGAL PRACTITIONERS - Lien over proceeds of any settlement or judgment in favour of former solicitor - *Firth v Centrelink* (2002) 55 NSWLR 451 and *Simpson v Rowe* [2011] VSC 149 applied.

Grech, Stephen Phillip and Grech, Jelvie v Deak-Fabrikant, Larissa, Registrar of Titles; Deak-Fabrikant, Larissa (Plaintiff by Counterclaim) v Grech, Stephen Phillip and Grech, Jelvie (First and Second Defendants by Counterclaim), Grech, Paul (Third Defendant by Counterclaim) (No 4)

Daly AsJ

[\[2016\] VSC 35](#)

10/02/2016

COSTS - Following unsuccessful application for judicial review under Order 56 of the Supreme Court (General Civil Procedure) Rules 2005 (see *Webb v Secretary to the Department of Justice* [2015] VSC 616) - Whether costs should follow the event - Whether defendant breached the overarching obligation to use reasonable endeavours to resolve the dispute by agreement - Whether plaintiff reasonably attempted to resolve the dispute by agreement - No breach by the defendant of the overarching obligation - No reason to displace the settled practice that costs should follow the event - Supreme Court Act 1986, s24 - Civil Procedure Act 2010, s22.

Webb, Gregory Robert v Secretary to the Department of Justice (No. 2)

Derham AsJ

[\[2016\] VSC 70](#)

03/03/2016

JUDICIAL REVIEW AND APPEALS - Appeal from Magistrate - Magistrates' Court Act 1989 (Vic) s109 - Whether the order of the Magistrate final or interlocutory - Consider legal not practical effect of the orders - *Neuss v Magistrates' Court of Victoria and anor* [2013] VSC 326, *DPP v Sabransky* [2002] VSC 143 and *Director of Public Prosecutions v Moore* (2003) 6 VR 430 considered - Magistrates' Court proceeding could be reinstated - Order for summary judgment interlocutory - *JBS Southern Aust Pty Ltd v Westcity Grove Holdings Pty Ltd & Ors* [2011] VSC 476, *Schiffer v Pattison* (2005) 143 FCR 328 and *Kowalski v MMAL Staff Superannuation Fund Pty Ltd* (2009) 178 FCR 401 considered - Order striking out proceeding interlocutory - Appeal dismissed.

JUDICIAL REVIEW AND APPEALS - No error of law - Matters not raised in written and/or oral submissions before the Magistrate - Whether Magistrates' Court had jurisdiction to hear the matter - Dispute over who had right to possession of the certificate of title not possession of the land itself - Whether second to fourth defendants had standing - Whether solicitor had a general lien - Bona fide claim - Triable issues - Summary judgment application unlikely to have been successful - Obligations under the Civil Procedure Act 2010 (Vic).

COSTS - Magistrates Court General Civil Procedure Rules 2010 (Vic) r63.15 - External/supervening events rendered proceeding futile - *Soteriadis v Nillumbik Shire Council* [2015] VSC 363, *Ferny Sky Pty Ltd & Ors v Capital Finance Australia* [2006] VSC 366 and *Jeruth Pty Ltd v Haybale Pty Ltd* [2004] VSC 319 applied.

JUDICIAL REVIEW AND APPEALS - Procedural fairness - Magistrate did not take into account irrelevant matters - Appellant represented by counsel in Magistrates' Court proceeding - Judicial officers' obligations under the Civil Procedure Act 2010 (Vic) to efficiently deal with disputes.

PRACTICE AND PROCEDURE - Overarching obligation not to make a claim without a proper basis - Civil Procedure Act 2010 (Vic) s18 - Award of costs against legal representatives exercised cautiously - *Dura Australia Constructions Pty Ltd v Hue Boutique Living Pty Ltd* [2014] VSC 400 applied - Proceeding reasonably brought - Appeal dismissed.

SAM Law P/L (formerly Matisi Moors Pty Ltd) (ACN 140 917 362) v ADZ Homes P/L (ACN 124 135 280) & Ors (according to the attached schedule)

Daly AsJ

[\[2016\] VSC 41](#)

29/02/2016

PRACTICE AND PROCEDURE - Appeal from a decision of an Associate Justice - Whether error in granting summary judgment - No real as opposed to fanciful prospect of success - *Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd* [2013] VSCA 158 applied - Appeal dismissed.

Djime, Hamadou v Le, Matthew

Zammit J

[\[2016\] VSC 48](#)

19/02/2016

PRACTICE AND PROCEDURE - Application to adjourn trial - Fourth occasion of adjournment of trial and second application to adjourn current date for trial - First adjournment application of current trial date refused and leave to appeal the refusal also refused - Applicant seeking opportunity to further investigate by examinations pursuant to s180 Proceeds of Crime Act 2002 (Cth) - Applicant unable to properly present his case without conducting such examinations - Relevant considerations discussed - Waste or inefficient use of judicial resources - Significant part of delay attributable to the Applicant's failure to conduct timely investigations - Non-compliance with earlier case management directions - Explanation for delay unsatisfactory - Application to adjourn the trial refused. PROCEEDS OF CRIME - Application for forfeiture orders - Applications for exclusion from restraining order - Proceeds of Crime Act 2002 (Cth), s5, s49, and s180.

The Commissioner of the Australian Federal Police v Dong Hua International Investments P/L (ACN 129 088 348) and Zhou, Yuhong (No. 3)

John Dixon J

[\[2016\] VSC 56](#) (revised 24 February 2016)

23/02/2016

PRACTICE AND PROCEDURE - Pleadings - Application for leave to file and serve a further amended statement of claim - Claims for damages for malicious prosecution and misfeasance in public office - Pleading of mental state required to establish a tenable claim - Whether causes of action pleaded have any real prospect of success - Civil Procedure Act 2010 s63.

COSTS - Application for gross sum costs order - Principles applying - s65C Civil Procedure Act 2010, r63.07 Supreme Court (General Civil Procedure) Rules 2015.

Sheehan, Marshall v Brett-Young, Michael & Ors (No. 4)

John Dixon J

[\[2016\] VSC 53](#)

25/02/2016

TESTATOR'S FAMILY MAINTENANCE - Application by adult stepson for further provision - Whether deceased's responsibility to adult stepson discharged - Further provision ordered - Extent of provision - Administration and Probate Act 1958, s91.

TESTATOR'S FAMILY MAINTENANCE - Application by underage disabled step grandchild for further provision - Whether deceased had responsibility to provide for underage step grandchild - Where deceased contemplated setting up a trust for step grandchild - Where trust was not established - Further provision denied.

In the Matter of Part IV of the Administration and Probate Act 1958 and In the Matter of the Will and Estate of Black, John Niel (deceased)

Hunt, Madilyn Jayne (by her litigation guardian Hunt, Kathryn Jane) v Black, Eve Marie (in the Will called Cumming, Eve Marie) & Ors

Hunt, Carl Gerard v Black, Eve Marie (in the Will called Cumming, Eve Marie) & Ors Cameron J

[\[2016\] VSC 59](#)

26/02/2016

Criminal Division

CRIMINAL LAW - Sentence - Attempted murder - Prisoner shot deceased's body with belief deceased was still alive - Prisoner sentenced to eight years' imprisonment with a non-parole period of five years - R v Cengiz [1998] 3 VR 720 considered.

The Queen v Darrington, Daniel James

Coghlan JA

[\[2016\] VSC 60](#)

29/02/2016

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

YG [Y.G] (a pseudonym) v Abela, Mark & Ors

Digby J

[\[2015\] VSC 783](#) First Revision: 25 February 2016

02/11/2015

APPEAL - Leave to appeal from Victorian Civil and Administrative Tribunal decision - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1) - Declaration - Order requiring a landlord of premises to enter into a tenancy agreement pursuant to s232(1) of the Residential Tenancy Act 1997 (Vic) - Applications under s232(1) and s233(1) of the Residential Tenancy Act 1997 (Vic)

Tatana, Wirihana v Victorian Civil and Administrative Tribunal, The Director of Housing and The Commissioner of Police

Digby J

[\[2016\] VSC 73](#)

22/02/2016

PRACTICE AND PROCEDURE - Costs - Appeal from Costs Court.

Galbally & O'Bryan Lawyers (a firm) v Awadallah, Hassan

Cameron J

[\[2016\] VSC 68](#)

02/03/2016

County Court of Victoria Cases

Following is a selection of cases recently handed down in the County Court of Victoria. These cases have been selected for inclusion by the presiding judge. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction

ACCIDENT COMPENSATION - Transport accident; claim brought under s93 Transport Accident Act 1986 for serious injury as defined under s93(17) paragraphs (a) and (c); injury to right shoulder together with psychological trauma as a result of a motor vehicle accident in 2009; principles in *Richards v Wylie*, *Humphreys v Poljak* and *Petkovski v Galletti* applied

Millican v TAC

Judge Macnamara

[\[2016\] VCC 180](#)

11/2/2016

CONTRACT - Artist and manager; whether postponement of business meetings by manager pending decision on renewal of management contract amounting to repudiation or fundamental breach; election; construction of terms; calculation of commission and trailing commission on gross earnings; misleading and deceptive conduct alleged against manager preventing it relying on terms of contract.

Churchers Pty Ltd v Cosentino

Judge Macnamara

[\[2015\] VCC 1967](#)

09/12/2015

INTERLOCUTORY INJUNCTION - Agreement to enter into shares sale agreement - Agreement drafted as a deed but not executed by all parties - Part performance by payment of deposit - Whether share sale agreement entered into - Whether interlocutory injunction should be granted to restrain sale of shares to a third party - Plaintiff a Cypriot company with no assets in Australia - Whether plaintiff should provide security for the undertaking as to damages.

Anyoption Holdings Ltd v. Nurisvan Investment Ltd & Anor

Judge Anderson

[\[2015\] VCC 1872](#)

18/12/2015

Articles

Contract Law

Breach of contract - Damages - Termination - Robinson v Harman - Australia

Yin, K. When is termination of a breached contract a prerequisite for the recovery of damages? (2016) 41(2) Aust Bar Rev 179-199

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