



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
18 March  
2016

## Library News

### Farewell to Library staff member, Michelle Bendall

Michelle Bendall, our longest serving staff member, will be leaving the Law Library to take up the role of Law Librarian at Deakin University, based at the Burwood campus. Michelle's last day with the Library will be 24 March. We acknowledge the extraordinary contribution that Michelle has made to the Court, the judicial officers and the legal profession during her time with the Library. We wish her all the very best in her future endeavours.

### Celebrating 175 years of the Supreme Court of Victoria

April 2016 marks the 175<sup>th</sup> anniversary since Judge Willis arrived in Melbourne as the first sitting Supreme Court Judge. To mark this event, a new book is soon to be published titled *Judging for the People: Honouring 175 Years of the Supreme Court in Victoria*. There will also be a number of events to mark this occasion, such as:

- Supreme Court Library Exhibition - April-May 2016
- Opening of the Supreme Court Library exhibition, 31 March 2016 with guest speaker Dr Andrew Lemon. This event is a free public event, but registrations are essential:  
<http://www.eventbrite.com/e/launch-of-the-supreme-court-of-victoria-175th-anniversary-exhibition-tickets-22675977459>
- Free History & Heritage tours of the Supreme Court and the Library exhibition during April, bookings essential:  
<http://www.eventbrite.com/e/supreme-court-of-victoria-history-and-heritage-tour-tickets-22676559199>
- RHSV Exhibition & Conference 9 April 2016, details:  
<http://www.historyvictoria.org.au/rhsv-conference-2016>

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### EXHIBITION: OPENING OF THE LEGAL YEAR

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

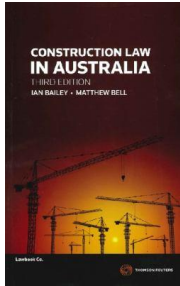
The display outlines the history of the Opening of the Legal Year and includes pictures, articles and a judicial robe.

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# New Books

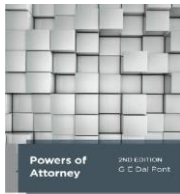
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: [https://courts.sdp.sirsidynix.net.au/client/en\\_AU/llv/](https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/)



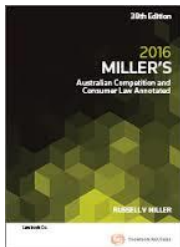
Bailey, Ian and Bell, Matthew, *Construction Law in Australia*  
3<sup>rd</sup> ed, Thomson Reuters, 2011  
Call number: 343.078624 BAI.3 (VCAT Library)



Cremean, Damien, Whitten, Michael and Sharkey, Michael, *Brooking on Building Contracts: the Law and Practice Relating to Building and Engineering Agreements*  
5<sup>th</sup> ed, Lexis Nexis Butterworths, 2014  
Call number: 343.0786928 BRO.5 (Supreme Court Library) and 346.02 BRO.5 (VCAT Library)



Dal Pont, G E, *Powers of Attorney*  
2<sup>nd</sup> ed, Lexis Nexis Butterworths, 2015  
Call number: 346.029 DAL.2 (Supreme Court Library)



Miller, Russel V, *Miller's Australian Competition and Consumer Law Annotated*  
38<sup>th</sup> ed, Thomson Reuters, 2016  
Call number: 343.07 MIL.38 (Supreme Court Library and VCAT)

# Legislation

## Victorian Bills

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

- [Confiscation and Other Matters Amendment Bill 2016](#)
- [House Contracts Guarantee Repeal Bill 2016](#)
- [Treasury and Finance Legislation Amendment Bill 2016](#)

## Victorian Assents

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

- [Children Legislation Amendment Act 2016](#) No. 8/2016
- [Education and Training Reform Amendment \(Victorian Institute of Teaching\) Act 2016](#) No. 9/2016

## Proclamations

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

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

- [Kardinia Park Stadium Act 2016](#)
  - This Act came into operation on 16 March 2016 (VGG S55 15.03.2016)

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

- [Children Legislation Amendment Act No. 8/2016](#)
  - Part 1 (ss. 1 and 2) came into operation by forced commencement on 15 March 2016 (s 2(1)). All other sections except for section 21 came into operation on 16 March 2016 (s. 2(3))
- [Education and Training Reform Amendment \(Victorian Institute of Teaching\) Act No. 9/2016](#)
  - All sections of this Act except Part 3 (sections 14 to 17) came into operation on 16 March 2016 (s. 2(1))



## 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.

## High Court Cases

REAL PROPERTY - Resumption of land - Leases - Where registered lease expressed to confer interest over specified lot of land that was later amalgamated with adjacent lot - Where land previously part of adjacent lot resumed by local council - Whether lessee's interest extended to entire amalgamated lot upon registration of plan of subdivision under Land Title Act 1994 (Q) - Whether lessee had compensable interest in resumed land under Acquisition of Land Act 1967 (Q), s12(5).

REAL PROPERTY - Leases - Retail leases - Construction and interpretation - Whether necessary to construe lease otherwise than in accordance with natural and ordinary effect of its terms.

STATUTES - Interpretation - Function of definition clause - Whether definition of "Common Areas" in retail shop lease inconsistent with definition of "common areas" in Retail Shop Leases Act 1994 (Q), s6. WORDS AND PHRASES - "common areas", "interest in land", "outgoings", "plan of subdivision", "registered lease", "registration of an instrument", "resumed land", "retail shop lease", "retail shopping centre".

ACQUISITION OF LAND ACT 1967 (Q), s2, s12(5).

ACTS INTERPRETATION ACT 1954 (Q), s36. LAND TITLE ACT 1994 (Q), s12, s49, s49A, s50, s64, s65, s182, s183, s184, Sched 2.

RETAIL SHOP LEASES ACT 1994 (Q), s3, s5, s6, s7(1), s8, s19, s20, s38(2), s40(1), Pt 3 Div 2, Schedule.

***Moreton Bay Regional Council v Mekpine P/L***

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

10/03/2016

STATUTORY INTERPRETATION - Independent Broad-based Anti-corruption Commission Act 2011 (Vic) ("IBAC Act") - Investigation by Independent Broad-based Anti-corruption Commission into allegations of assault and human rights violations by officers of Victoria Police - Where appellants were police officers suspected of involvement in alleged assault - Where appellants summoned to give evidence at public examination - Whether power to hold examination under Pt 6 of IBAC Act exercisable in relation to persons who have not been, but may be, charged with offence relating to subject matter of examination.

STATUTORY INTERPRETATION - Common law rights - Whether s144 of IBAC Act abrogates privilege against self-incrimination.

WORDS AND PHRASES - "abrogate", "companion principle", "compulsory examination", "police personnel misconduct", "principle of legality", "privilege against self-incrimination".

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011 (VIC), s5, s8, s15, s42, s84(2), s120, s144.

***R & Anor v Independent Broad-Based Anti-Corruption Commissioner***

[\[2016\] HCA 8](#)

10/03/2016

# Victorian Supreme Court Cases

## Court of Appeal

ACCIDENT COMPENSATION - Respondent granted leave to commence common law proceedings - Judge below satisfied that injury 'serious' - Respondent crushed by forklift in the course of employment - Respondent suffers ongoing back pain - Whether sufficient identification of injury - Whether sufficient reasons given - Whether injury 'serious' - Whether judge below properly assessed significance of retained abilities of the respondent in considering whether the injury was 'serious' - Decision to grant leave was open and accorded with the evidence - Decision was not 'plainly wrong' - Application for leave to appeal refused.

***Wesfarmers Ltd v Lloyd, Robert***

Tate JA, Osborn JA, and Santamaria JA

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

15/03/2016

ADMINISTRATIVE LAW - Validity of general meeting of the Framlingham Aboriginal Trust where a quorum not present - Requirement for a quorum is one-half of the persons entitled to vote at the meeting who are residents of the reserve on the day the meeting is called - Whether Supreme Court has the power under the Aboriginal Lands Act 1970 to dispense with the quorum requirement - Whether Court's discretionary power enlivened in the circumstances of the case - Frustration of previous orders of the Court - Different judge made supplemental orders - Orders take effect as orders of the Court - Whether rights under the Charter of Human Rights and Responsibilities affected - Aboriginal Lands Act 1970, s23(4) and 27 - Charter of Human Rights and Responsibilities, s19(2)(d) and 32(1) - Leave to appeal granted - Appeal dismissed.

***Clark-Ugle, Geoffrey (Possum) v Clark, Aaron, Clark, Jeremy, Chatfield, Tim; Minister for Aboriginal Affairs (Intervenor)***

Tate JA, Ferguson JA, and McLeish JA

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

17/03/2016

APPLICATION FOR GROSS COSTS - Rule 63.07 Supreme Court (General Civil Procedure) Rules 2015.

***Wieland, David Charles and Goldberger, David v Texxcon P/L (ACN 120 272 880); Nominexx P/L (ACN 121 396 503) and Texxcon P/L (ACN 120 272 880) v Wieland, David Charles and Goldberger, David (No 2)***

Wood AsJ

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

18/03/2016

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Indecent act with a 16 or 17 year old child under care, supervision or authority - Applicant was previously principal of complainant's school - Sexual acts occurred after accused had resigned as principal - Whether victim remained under accused's 'care, supervision or authority' - Applicant found guilty of three charges but acquitted of 14 others - Whether verdicts inconsistent - Crimes Act 1958 s49(1) and 49(4).

***Lydgate, Thomas (a pseudonym) v The Queen (No. 2)***

Redlich JA, Whelan JA, and Priest JA

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

09/03/2016



CRIMINAL LAW - Appeal - Sentence - Trafficking methamphetamine - Trafficking simpliciter - 'High end' offence - Three years and nine months' imprisonment - Sentencing error - Judge relied on incorrect facts - Crown concession - Whether different sentence should be imposed - Role - Delay - Rehabilitation - Community protection - Public interest in continued rehabilitation - Fairness - Resentenced to three years' imprisonment wholly suspended - Drugs, Poisons and Controlled Substances Act 1981 s71AC, Criminal Procedure Act 2009 s281.

***Fattah, Mohamed Abdul v The Queen***

Maxwell P, Redlich JA, and Priest JA

[\[2016\] VSCA 43](#)

18/03/2016

CRIMINAL LAW - Application for leave to appeal against sentence - Parity - No arguable basis that principle infringed - Obvious significant material differences between the co-offenders which required pronounced disparate treatment - Relativity between sentences properly reflects the extent of the inequality between co-offenders - No justifiable objective sense of grievance - Manifest excess - Application of Verdins principles - Armed robbery, Recklessly causing serious injury - Total effective sentence 4 years 9 months - Non-parole period 3 years - Leave refused.

***Galea, Daniel v The Queen (application for leave to appeal against sentence determined by a single judge pursuant to s315 of the Criminal Procedure Act 2009)***

Redlich JA

[\[2016\] VSCA 40](#)

10/03/2016

CRIMINAL LAW - Interlocutory appeal - Intentionally causing injury - Evidence - Witnesses - Meaning of 'unfavourable' - Whether evidence given by witness is unfavourable to party calling witness - Judge not required to determine facts likely to be established by preponderance of evidence - Whether case of party clearly identifiable - Observations in Queen v Kneebone (1999) 47 NSWLR 450 concerning 'case theory' distinguished - Leave to cross-examine - Discretion to give leave to cross-examine - Evidence Act 2008, s38, 192 and 192A.

CRIMINAL LAW - Practice - Interlocutory appeal on question of evidence other than admissibility - Section 295(3)(b) Criminal Procedure Act 2009 - Observations in CGL v DPP (2010) 24 VR 482 applied.

***Director of Public Prosecutions [DPP] v Garrett, Casey (a pseudonym)***

Maxwell P, Redlich JA, and Beach JA

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

07/03/2016

CRIMINAL LAW - Interlocutory appeal - Pending trial for sexual offences - Judge's refusal to grant leave to compel production of confidential communication pursuant to s32C of the Evidence (Miscellaneous Provisions) Act 1958 - Judge's refusal to certify under s295(3) of the Criminal Procedure Act 2009 - No error in judge's refusal to certify.

***Todd, Oliver (a pseudonym) v The Queen Upper Murray Centre Against Sexual Assault (Intervening): Upper Murray Centre Against Sexual Assault (Intervening)***

Weinberg JA, Whelan JA, and Priest JA

[\[2016\] VSCA 29](#)

03/03/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Knowingly dealing with proceeds of crime - Sentence of 12 months' imprisonment - Whether sentencing judge erred in assessing gravity of offending - Error contended for by applicant not reasonably arguable - Whether sentence manifestly excessive - Not reasonably arguable that sentence manifestly excessive - Application for leave to appeal refused.

***Waterman, Alon v The Queen***

Bongiorno JA and Beach JA

[\[2016\] VSCA 32](#)

08/03/2016

CRIMINAL LAW - Sentence - DPP Appeal - Manifest Inadequacy - Convictions for using a listening device, assault, false imprisonment, threat to kill, damaging property and possession of unregistered firearm against domestic partner - Respondent on parole for violence offences - Respondent with traumatic background suffering from PTSD - Sentenced in County Court to total effective sentence of 5 months imprisonment combined with 18 month CCO - Gravity of offending mischaracterised - Offending too serious for CCO - Numerous past breaches of non-custodial dispositions - Sentence manifestly inadequate - Not a case for exercise of residual discretion to decline to intervene - Appeal allowed - Respondent re-sentenced to total effective sentence of 3 years 6 months with 2 years 3 months non-parole.

***Director of Public Prosecutions [DPP] v Natoli, Mark***

Osborn JA, Whelan JA, and Beach JA

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

11/03/2016

CRIMINAL LAW - Sentencing - Verdins principles - Causal link between mental condition and offending - Alleged failure to afford procedural fairness - Alleged manifest excess - Leave to appeal refused - Verdins v R (2007) 16 VR 269.

***Flood, Paul v The Queen***

Bongiorno JA and Beach JA

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

15/03/2016



EQUITY & TRUSTS - Constructive Trust - Family farming enterprise involving parents and two sons - Parents told sons that farming properties would be left to them if adequate provision could be made for their siblings from 'off farm' assets - Failure of joint endeavour when falling out with one son - Provision not yet made for siblings - Whether son has a proprietary interest in farming land based on principles in *Muschinski v Dodds* (1984) 160 CLR 583 or proprietary estoppel - No departure from representation - No unconscionable retention of benefit - *Muschinski v Dodds* (1984) 160 CLR 583; *Baumgartner v Baumgartner* (1987) 164 CLR 137; *Sidhu v Van Dyke* (2014) 251 CLR 505.

PARTNERSHIP - Properties registered in name of two partners - Properties included as assets in partnership accounts - Accounts altered to remove properties from partnership accounts - No agreement that properties were brought into partnership - Properties not assets of partnership - Partnership Act 1958 (Vic) s24(1).

PARTNERSHIP - Taking of accounts - During partnership arrangement that accounting matters would be dealt with informally - Partnership dissolved by agreement on basis that no formal taking of accounts to be undertaken - No order for taking of accounts to be made - Partnership Act 1958 (Vic) s48.

*Sobey, Andrew Geoffrey v Sobey, Geoffrey Keith, Sobey, Jennifer Mary, Sobey, James Stuart & Caverndale P/L (ACN 086 924 950)*

Tate JA, Santamaria JA, and Ferguson JA

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

15/03/2016

INJUNCTIONS - Interlocutory injunction - Freezing order - Injunction over life insurance proceeds pending trial - Trust property - Application for leave to appeal against order permitting access to life insurance proceeds - Interlocutory order - Prima facie case - Protection of trust property - Recoverability of trust property - Discretionary judgment - *Foskett v McKeown* [2001] 1 AC 102; *Metropolitan Petar v Macedonian Orthodox Community Church St Petka Inc* [2006] NSWCA 277; and *Palmer v MacDonnell Shire Council* (2011) 29 NTLR 90 referred to - Application for leave to appeal refused.

*Distinctive FX P/L (ACN 075 098 609) & Ors v Van Der Slot, Elizabeth Anne*

Beach JA and McLeish JA

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

11/03/2016

PRACTICE AND PROCEDURE - Application for security for costs - Equivocal evidence as to impecuniosity - Delay in bringing application - Genuinely arguable question of law of public importance - r64.38(2) of the Supreme Court (General Civil Procedure) Rules 2015 - Application dismissed.

*Australian Dream Homes P/L v Stojanovski, Ilija & Stojanovski, Zagorka*

Santamaria JA and McLeish JA

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

11/03/2016

PROCEDURE - Courts and judges generally - Jurisdiction of State courts to determine standing of parties - Respondent's standing depended upon application of provisions of Bankruptcy Act 1966 (Cth) - Trustee in bankruptcy not party to proceeding - State courts had jurisdiction to determine respondent's standing as not exercise of jurisdiction 'in bankruptcy' - Bankruptcy Act 1966 (Cth) s27 - *Scott v Bagshaw* (2000) 99 FCR 573; *Meriton Apartments Pty Ltd v Industrial Court of New South Wales* (2008) 171 FCR 380.

PROCEDURE - Standing of discharged bankrupt - Property purchased with compensation payment arising from back injury - Property subsequently held on express trust for purchaser - Trustees breached trust obligations - Purchaser made bankrupt - Standing of discharged bankrupt to bring claim for breach of trust - Claim for breach of trust property acquired with 'protected money' and not divisible property - Discharged bankrupt has standing to pursue claim for breach of trust - Bankruptcy Act 1966 (Cth) s58(1), 116(1), 116(2)(g), (n), 116(3) - *Re Iskenderian; Ex parte Iskenderian Bros Pty Ltd* (1989) 21 FCR 363 - Application for leave to appeal dismissed.

***Jakimowicz, Patricia Anne v Jacks, John Michael***

Warren CJ, Tate JA, and Ferguson JA

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

17/03/2016

WILLS AND ESTATES - Forfeiture rule - Appellant convicted of defensive homicide of husband - Appellant principal beneficiary under husband's will - Whether rule flexible in nature - Whether rule equitable in nature - Authorities on operation of rule to manslaughter reviewed - Nature and scope of rule discussed - *Helton v Allen* (1940) 63 CLR 691 and *Troja v Troja* (1994) 33 NSWLR 268 considered - Cases of manslaughter to be considered on case-by-case basis - In circumstances of this case, appellant not entitled to benefit from the death she caused - Rule applies to prevent appellant from inheriting - Appeal dismissed.

***Edwards, Jemma Elizabeth v State Trustees Ltd (ACN 064 593 148), Edwards, Megan; Day Jeannie Elizabeth; Peter MacCallum Cancer Institute***

Whelan JA, Santamaria JA, and Kyrou JA

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

10/03/2016

## Commercial & Equity Division

NEGLIGENCE - Solicitor - Alleged breach of retainer - Where client wound up in insolvency on presumption under Corporations Act 2004 (Cth) s459C(2)(a) - Client failed to compromise or set aside a statutory demand - Company in fact solvent - Alleged failure to advise on the effect of statutory demand lapsing - Solicitor's failure to appear or otherwise organise representation for plaintiffs at adjourned hearing of winding up application.

NEGLIGENCE - Advocates' immunity - Whether conduct of solicitor out of court affected conduct of the case in court.

NEGLIGENCE - Causation - Wrongs Act 1958 (Vic) s51 - Whether solicitor's conduct contributed to losses sustained by reason of the winding up.

TRADE PRACTICES - Misleading and deceptive conduct - Whether conduct of solicitor was "in trade or commerce".

DAMAGES - Substantial losses suffered due to winding up - Whether lost opportunity established - Contributory negligence.

PROPORTIONATE LIABILITY - Solicitor a principal or employee of each defendant firm consecutively during relevant period - Assessment of proportionate liability as between defendants for plaintiffs' loss.

***Dual Homes Victoria P/L & Ors v Moores Legal P/L & Pilley McKellar P/L***

John Dixon J

[\[2016\] VSC 86](#)

10/03/2016

## Commercial Court

ADMINISTRATIVE LAW - Judicial review - Adjudication Determination under Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether Adjudication Determination reviewable for jurisdictional error.

BUILDING AND CONSTRUCTION - Building and Construction Industry Security of Payment Act 2002 (Vic) - Payment claim - Whether construction work sufficiently identified - Whether adjudication application made pursuant to the Act

***Krongold Constructions (Aust) P/L v SR & RS Wales P/L & King, Navid***

Vickery J

[\[2016\] VSC 94](#)

11/03/2016

AMENDMENT OF PLEADING - Objection to proposed amendments to pleading which plead rectification and misleading and deceptive conduct - Where pleading is defective - Estate agent arguably failed to comply with the statutory requirements in the Exclusive Sales Authorities - Estate Agent Act 1980 s49A, s50 - Whether illegality precludes the Court from granting the equitable remedy of rectification - Where pleadings are defective - Objection affirmed - Leave granted to replead.

PLEADING STRIKE OUT - Application of the defendants seeking to strike out part of the amended statements of claim by the plaintiffs which plead rectification and misleading and deceptive conduct - Whether the amended statements of claim should be struck out - Supreme Court (General Civil Procedure) Rules 2005 r23.02 - Estate agent arguably failed to comply with the statutory requirements in the Exclusive Sales Authorities - Estate Agent Act 1980 s49A, s50 - Whether illegality precludes the Court from granting the equitable remedy of rectification - Where pleadings are defective - Pleadings struck out in part - Leave granted to replead.

***Oliver Hume (Australia) P/L (ACN 068 318 712) v Land Source Australia P/L (ACN 132 726 151) (No. 2): Oliver Hume (Australia) P/L (ACN 068 318 712) & Oliver Hume Real Estate Group P/L (ACN 158 513 190) v Elysian Group P/L (ACN 114 025 204) & Woodman, Heath Adam: Oliver Hume (Australia) P/L (ACN 068 318 712) & Oliver Hume Real Estate Group P/L (ACN 158 513 190) v CA & CA Ballan P/L (ACN 006 578 972) & Ballan, Adam***

Cameron J

[\[2016\] VSC 72](#)

11/03/2016

BANKING - Facility Agreement between Investec Bank (Australia) Ltd and Beyond Sportswear International Ltd - Plaintiff seeks recovery against first defendant pursuant to Guarantee - Whether Guarantee binding following novation of the Facility Agreement from Beyond Sportswear International Ltd to BSI 2 Ltd - Whether Guarantee binding following assignment of the Facility Agreement, Novated Facility Agreement and Guarantee from Investec Bank (Australia) Ltd to plaintiff.

***Investec Australia Finance P/L (ACN 161 468 131) (formerly Investec Australia Loans Management P/L) v Butterss, Roderick Damien Joseph & Savage, Robert John***

Digby J

[\[2016\] VSC 80](#)

07/03/2016

CONTRACT - Sale of businesses - Common mistake - Rectification - Construction of the contract - Alleged breaches not established - Variation - Breach - Loss not established - Whether further adjustments to purchase price required.

***ACN 006 577 162 P/L (formerly Harrop Engineering Australia P/L) as trustee for the Harrop Family Trust & Ors v Beauville P/L (ACN 134 196 080) & Ors***

Elliott J

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

08/03/2016

CONTRACT - Sale of Land - Sale of lot on an unregistered plan of subdivision - Construction of terms - Contract contained a special condition specifying date when contract could be terminated if plan of subdivision not registered - Whether the contract could be terminated unilaterally or whether mutual agreement is required - Whether the special condition is ambiguous - Reference to text, context and purpose to aid construction - Alternatively, whether the special condition should be rectified.

CONTRACT - Sale of Land - Sale of lot on an unregistered plan of subdivision - Planning permit required that agreements with relevant authorities for the provision of services to each lot be entered into before the plan of subdivision could be registered - Contract obliged the purchaser to use its best endeavours and do all things reasonably required to expedite and procure the registration of the plan of subdivision - Contract obliged the vendors to use their best endeavours to co-operate with the purchaser and do all acts and things necessary to give effect to the approval of the plan of subdivision - Whether vendors or purchaser were required to enter into agreements and pay fees and bonds for the establishment or provision of services.

CONTRACT - Sale of Land - Best endeavours clause - Whether the vendors were in breach of their obligation to use best endeavours - Plan of subdivision was not registered by date specified in contract - Effect of delay - Whether vendors are disentitled from terminating the contract.

***In the matter of an Application pursuant to section 49(1) of the Property Law Act 1958: Bisognin, Gino Andrew & Bisognin, Leah Joan v Hera Project P/L (ACN 163 685 041)***

Sloss J

[\[2016\] VSC 75](#)

04/03/2016

CORPORATIONS - Corporations Act 2001 (Cth) - Setting aside statutory demand - Genuine dispute - Genuine dispute about breach of consultancy agreement giving rise to an offsetting claim - s459H - Failure to particularise offsetting claim other than by director's statement; limitation of liability clause in consultancy agreement - Whether there is 'a serious question to be tried' or 'an issue deserving of a hearing' or 'a plausible contention requiring investigation'.

***In the matter of Valleyarm Digital Ltd (ACN 143 359 568): Valleyarm Digital Ltd v Shanaaz Peake***

Randall AsJ

[\[2016\] VSC 98](#)

15/03/2016

CORPORATIONS - Liquidation - Liquidator seeks directions for approval of compromises - Section 511 Corporations Act 2001 (Cth) - Compromises desirable - Directions given and compromises approved.

LIQUIDATION - Authority to enter into settlement agreements - Performance involves a period exceeding three months - Section 447(2B) Corporations Act - Compromise desirable - Authority given and direction made.

LIQUIDATION - Whether settlement sums have priority in liquidation - Section 556(1)(a) Corporations Act - Settlements constitute expenses properly incurred in realising or getting in property of company in liquidation - Priority accorded.

LIQUIDATORS - Conflict of interest - Whether liquidators have a conflict of interest having acted on erroneous legal advice causing some loss - No conflict in continuing to act - All stakeholders fully informed and no objection received - Liquidators did all that was reasonably necessary to resolve the conflict - No further action required.

***In the matter of Warehouse Sales P/L (in liquidation) (ACN 004 678 997) & WHS2 P/L (in liquidation) (No. 2)***

***Lewis, Darren Michael & Templeton, Damian John in their capacity as joint and several liquidators of Warehouse Sales Ltd (in liquidation) & WHS2 P/L (in liquidation) v LG Electronics Australia P/L & Ors***

Sifris J

[\[2016\] VSC 63](#)

04/03/2016

CORPORATIONS - Scheme of arrangement - Section 411(1) Corporations Act 2001 (Cth) - Demerger by scheme of arrangement and capital reduction - Scheme approved.

***In the matter of National Australia Bank Ltd ACN 004 044 937 v National Australia Bank Ltd ACN 004 044 937***

Sifris J

[\[2016\] VSC 62](#)

04/03/2016

COSTS - Discontinuance of proceeding in circumstances where effluxion of time rendered otiose much of the relief sought - Court's discretion as to costs - Whether discontinuance was an 'effective surrender' - Consideration of parties' respective obligations under s24 of the Civil Procedure Act 2010 (Vic) - Each party to bear own costs.

***Just Group Ltd (ACN 096 911 410) v van Dyk, Joseph & Pepkor South East Asia P/L (ACN 081 408 791) & Best & Less P/L (ACN 003 724 696)***

Sloss J

[\[2016\] VSC 66](#)

23/02/2016

INSURANCE - Non disclosure - Property comprising land and residential buildings purchased by insured with intention to demolish buildings and build new family residence when circumstances permitted - Property leased in meantime - Insured did not disclose intention to demolish buildings when effecting property insurance - Fire at property during policy period - Whether intention to demolish relevant to the insurer's risk and ought to have been disclosed - Whether insurer would have declined risk on any terms if intention disclosed - Held: material non-disclosure relevant to risk and insurer's liability under policy should be reduced to nil - Insurance Contracts Act 1984 (Cth) s21, s28.

INSURANCE - Misrepresentation - Question in insurance proposal as to whether insured property 'to be demolished' - Proposed insured intended to demolish when circumstances permitted - Whether insured's answer 'no' contained representation that he did not intend to demolish - Whether representation false - Held: answer wrong and amounted to misrepresentation at inception of policy - Whether misrepresentation a continuing representation on later renewals of policy - Held: representation continued at later renewal - Fire at property during policy period - Whether insurer would have declined risk on any terms if question answered correctly - Held: insurer's liability under policy should be reduced to nil - Insurance Contracts Act 1984 (Cth) ss 26, 28; *Limit No 2 Ltd v AXA Versicherung AG* [2009] Lloyd's Rep I.R. 396, 403 [26], 403-4 [27]; *FAI v McSweeney & Ors* (1999) 10 ANZ Ins Cases 61-443 at 75,052-4; Sutton on Insurance Law Thomson Reuters, 4th ed, Volume 1, 618-9 [7.940], 622-3 [7.960], considered.

***Bergman, Ari Braham v CGU Insurance Ltd ACN 004 478 371***

Hargrave J

[\[2016\] VSC 81](#)

09/03/2016

### Common Law Division

COSTS - Application by plaintiffs for indemnity costs - Defendant engaged in unreasonable and inappropriate conduct - Special circumstances warranting an order that defendant pay plaintiffs' costs on an indemnity basis - Civil Procedure Act 2010, s29; Supreme Court (General Civil Procedure) Rules 2015, r46.04(1).

***Jeffrey, David & Curnow, Thomas v Giles, Virginia (No. 3)***

McDonald J

[\[2016\] VSC 78](#)

11/03/2016

DISCOVERY - Pre-action discovery from prospective defendant - Application granted in part - Exercise of discretion on costs of such applications and costs of compliance with discovery order - Whether adversarial rule that costs of application should follow the event - Reasonableness of resistance to application - Adversarial rule not applied - Consideration of the approach of deferring the costs and expenses of compliance with discovery order to any substantive action commenced subsequently - Approach of deferring such costs not followed - Supreme Court (General Civil Procedure) Rules 2015, r32.05, r32.11

***Guest, Peter Bentley v Guest, Verna Anne & Walsh, Peter John (No. 2)***

Mukhtar AsJ

[\[2016\] VSC 76](#)

07/03/2016



EQUITY - Application to set aside settlement agreement - Execution of agreement on advice of Solicitor engaged by plaintiff - Alleged unconscionable conduct - Plaintiff claimed special disadvantage due to intoxication by reason of medication taken - Whether special disadvantage known to the defendant - Whether defendant took unconscionable advantage of plaintiff - Allegation of undue influence by plaintiff's solicitor - Solicitor not a party to the transaction or this proceeding - The principles relating to undue influence not applicable in the circumstances - Application dismissed *Commercial Bank of Australia Ltd v Amadio*, (1983) 151 CLR 447 *Kakavas v Crown Melbourne Limited* (2013) 250 CLR 392 *Blomley v Ryan* (1956) 99 CLR 362 *Turner v Windever* [2003] NSWSC 1147 (approved on appeal *Turner v Windever*, [2005] NSWCA 73 at [2]).

***Owerhall, Eerik Juhani v Bolton & Swan P/L (ACN 153 647 360)***

Derham AsJ

[\[2016\] VSC 91](#)

11/03/2016

JUDICIAL REVIEW - Opinion of Medical Panel - Meaning of 'incapacity' - Consent orders sought by worker and employer quashing opinion on basis that it contained a jurisdictional error - Court satisfied that order should be made - Opinion quashed - Questions referred to new Panel - Indemnity certificate for costs granted - Accident Compensation Act 1985 (Vic) s5 and 93.

***Walsh, Christopher (Dr) v Boys, Jenyce & Ors (according to the attached schedule)***

Ginnane J

[\[2016\] VSC 74](#)

07/03/2016

JUDICIAL REVIEW - Review of sentence imposed by Magistrates' Court - Offender sentenced to 6 months' detention in youth justice centre and 15-month CCO - Sentencing Magistrate erred in imposing combined youth justice centre order and CCO on single charge - Sentencing Magistrate erred in having regard to date of parole - Requirement that CCO must commence within 3 months unable to be given effect - Offender turned 21 while serving sentence - Sentence substituted - CCO re-instated to commence immediately - No order as to costs - Sentencing Act 1991 (Vic) s5(2AA)(a), s7, s32(1), s38(2), s44(1), s104(1).

APPEAL - Question of law - Appeal dismissed - Criminal Procedure Act 2009 (Vic) s272(1)

In the Matter of an appeal on a question of law pursuant to s272 of the Criminal Procedure Act 2009 between Director of Public Prosecutions (on behalf of Bell, Helen; Forrest, Travis Mark; Hall, Kevin Alexander; Trice, Donald Patrick; Rhodes, Gavin Mark & Pardo, Ben) and Jordan, Blair Lincoln: In the Matter of an application pursuant to s104 of the Sentencing Act 1991 between Director of Public Prosecutions (on behalf of Bell, Helen; Forrest, Travis Mark; Hall, Kevin Alexander; Trice, Donald Patrick; Rhodes, Gavin Mark & Pardo, Ben) v ***Jordan, Blair Lincoln and The Magistrates' Court of Victoria***

Jane Dixon J

[\[2016\] VSC 55](#)

23/02/2016

PRACTICE AND PROCEDURE - Non-publication order - Order intended to protect safety of person now deceased - Plaintiff's application for further non-publication order - Whether necessary to prevent real and substantial risk of prejudice to the proper administration of justice in defamation proceeding - Whether non-publication order should be continued with extended content or be revoked - Whether general broad suppression order should be made - Discretionary considerations - Plaintiff's application refused - Open Courts Act 2013 s13, 14, 15 and 18.

***Madafferi, Antonio v The Age Company P/L (ACN 004 262 702) & Ors (No. 2)***

John Dixon J

[\[2016\] VSC 103](#)

17/03/2016

TRUSTS - Power of the Court to vary trust - Where plaintiffs seek variations to trust deed - Where defendants consent to proposed variations - Where interests of potential unborn beneficiaries affected by proposed variations to trust deed - Trustee Act 1958, s63A - *George v Kollias and Ors* [2007] VSC 46 - *Thomas Hare Investments v Hare* (2012) 34 VR 656 - *Alan Synman Family Trust* [2013] VSC 364 - Trustee Act 1958, s63 - *Riddle v Riddle* (1952) 85 CLR 202 - *Royal Melbourne Hospital v Equity Trustees Limited* (2007) 18 VR 469 - *Re Barns* [2011] VSC 314 - *Re Dion Investments Pty Ltd* (2014) 87 NSWLR 753.

PRECEDENT - stare decisis - Where decision of a single judge of same superior court - Supreme Court of Victoria - *Colonial Foundation Ltd v Attorney-General* [2007] VSC 344 - *Re Barns* [2011] VSC 314.

PRECEDENT - Principle of comity - Where decision of intermediate appellate court in Supreme Court of New South Wales - Interpretation of statutory provision - Where equivalent statutory provision but not uniform national legislation - *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 - *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259 - *Re Dion Investments Pty Ltd* (2014) 87 NSWLR 753.

***W E Pickering Nominees P/L (ACN 007 817 825) as trustee of the W E Pickering Family Trust & Ors v Pickering, Jacqueline Robyn & Ors***

McMillan J

[\[2016\] VSC 71](#)

04/03/2016

## Costs Court

APPLICATION TO REVIEW DECISION OF JUDICIAL REGISTRAR IN PARTY PARTY TAXATION - Refusal of adjournment - Standing of former solicitor to prosecute taxation of former client's party entitlement to costs where equitable right over costs judgment.

***Maisano, Anunziato Enzo (also known as Michael Maisano and Michael Mason) v Body Corp Repairers P/L (ACN 068 589 408) & Oakley Thompson & Co P/L (ACN 092 053 239) (No. 2)***

Wood AsJ

[\[2016\] VSC 92](#)

11/03/2016

PRACTICE AND PROCEDURE - Review of costs by Judicial Registrar pursuant to Order 63.56.2 - Costs registrar's exercise of discretion not to reduce costs pursuant to Order 63.85.

***Laro-Bashford, Adam & Ors v Mihos, George***

Gourlay JR

[\[2016\] VSC 77](#)

07/03/2016

### Criminal Division

CRIMINAL LAW - Application for bail - Applicant initially charged on summons with offences alleging violence against former partner - Charges withdrawn after complainant made a "statement of no complaint" - Complainant subsequently alleged applicant threatened to harm her unless she withdrew allegations - Applicant then charged with attempting to pervert course of justice, family violence charges revived and new charges of family violence laid - Complainant subsequently alleged applicant raped her at the same time as the incidents giving rise to the first set of family violence charges - Whether applicant in a "show cause" position - Whether applicant, if granted bail, would present an unacceptable risk of offending and/or of interfering with a witness - Residence - Community support - Strong work history - Bail ultimately not opposed by Director - Bail granted.

***In the matter of an application for bail by Tamo, Merime: Tamo, Merime v Director of Public Prosecutions [DPP]***

Croucher J

[\[2016\] VSC 89](#)

04/03/2016

CRIMINAL LAW - Application for bail - Incite to murder - Threat to kill - Stalking - Show cause situation - Unacceptable risk - Application refused - No point of principle

***In the Matter of the Bail Act 1977 and In the Matter of an Application for bail by Natale, Rocco***

Jane Dixon J

[\[2016\] VSC 83](#)

11/02/2016

CRIMINAL LAW - Bail - Show cause - Bail granted - Stringent conditions

***In the Matter of the Bail Act 1977 and In the Matter of an application for bail by Williamson, James Norman***

Jane Dixon J

[\[2016\] VSC 69](#)

25/02/2016

CRIMINAL LAW - Manslaughter - Sentence indication - Meaning of 'sentence of imprisonment that commences immediately' - Pre-sentence detention - Criminal Procedure Act 2009 s 207.

***The Queen v McLaughlin, Lisa Jane***

T Forrest J

[\[2016\] VSC 85](#)

04/03/2016

CRIMINAL LAW - Murder - Defence of mental impairment - Trial by judge - Directed that verdict of not guilty because of mental impairment be entered - Crimes (Mental Impairment Unfitness to be Tried) Act 1997 (Vic) s20(1)(b), s21(4)

***Director of Public Prosecutions v AH***

Jane Dixon J

[\[2016\] VSC 79](#)

24/02/2016

## 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.

**COSTS** - Deed of Settlement entered into in respect of solicitors' costs- Judgment entered by Judicial Registrar pursuant to the Deed- Application to file review of decision of Judicial Registrar under Rule 84.02 of the County Court Civil Procedure Rules 2008- whether rights and obligations under Deed of Settlement replaced rights under the Legal Profession Act 2004 - whether other grounds sustained- extension of time granted- decision of Judicial Registrar confirmed.

***K&L Gates Australia v Swindells***

Judge Kennedy

[\[2016\] VCC 173](#)

04/03/2016

**MORTGAGE** - Assignment of securities by bank to guarantor - Effectiveness of deed between the registered proprietor of a property and a company in liquidation which had guaranteed a bank loan to the registered proprietor - Payment by guarantor to the bank of the registered proprietor's indebtedness - Transfer of mortgage by the bank to the guarantor - Whether guarantor entitled to possession of the mortgaged property - Whether the registered proprietor held the property beneficially for a family trust.

***Helimount Pty Ltd (In Liq) v Cappola & Anor***

Judge Anderson

[\[2016\] VCC 201](#)

10/03/2016

**MORTGAGE** - Secured advances for development project - Default - Earlier judgment by consent in the Supreme Court - Later agreement for financier to continue providing loan advances - Whether parties still bound by terms of the mortgage - Whether financier bound to provide advances until completion of the project- Whether financier waived or was estopped from claiming interest - Whether part of the present action merged in the Supreme Court judgment.

***Statewide Secured Investments Pty Ltd v Cipcon Pty Ltd***

Judge Anderson

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

10/03/2016

# Articles

## Constitutional Law

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Constitutional amendment - Process - Procedures - Referendum - Scotland Act 1998 - UK

**Cram, I. Amending the Constitution. (2016) 36(1) Legal Studies 75-92**

## Courts

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Judges - Test for bias - Apprehended bias - Prejudgment - Commissioner Dyson Heydon - Royal Commission into Trade Union Governance and Corruption - Australia

**Floyd, L. Much ado about nothing: why accepting an invitation did not make Dyson Heydon AC, QC appear biased. (2016) ALJ 90(1) 38-43**

Language of law - Legal expressions - Latin - UK

**Justice McCloskey. Cur ad Vult - reserve thy judgment. [2016] (Feb) Counsel 32-34**

Open justice - Media - Freedom of speech - Internet - Blogging - Webcasting - Social media - Technology - WA - Australia

**Chief Justice W Martin. Judicial conference of Australia colloquium 2015: freedom of the press and the courts. (2015) Brief 43(2) 25-31**

## Criminal Law & Procedure

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Cyberhate - Hate crime - Social media - Big data - Computational criminology - Woolwich - Terrorist attacks - Research study - UK

**Williams, M and Burnap, P. Cyberhate on social media in the aftermath of Woolwich: a case study in computational criminology and big data. (2016) 56(2) Brit. J Criminol. 211-238**

Extended joint criminal enterprise - Subjective test - Objective test - State comparison - Inconsistency - Complicity - Criminal Code 1995 (Cth) - Commonwealth Criminal Code - Australia

**Stockdale, L. The tyranny of small differences: culpability gulf between subjective and objective tests for extended joint criminal enterprise in Australia. (2016) ALJ 90(1) 44-65**

Homicide - Child offenders - Suppression - Identity - Judicial discretion - R v DP & RP - NZ

**Lynch, N. Permanent name suppression for a child convicted of homicide. [2016] (February) NZLJ 13-15, 23**

Sentencing - Consistency - Sentencing statistics - Sentencing justice - Sentencing guidelines - Current sentencing practices - Sentencing disparity - R v Pham - High Court - Australia

**Justice Priest. Consistency in sentencing federal offenders. (2016) ALJ 90(1) 17-19**

## Practice & Procedure

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Appeals - Leave to appeal - Access to documents - Court records - Greer v Smith - NZ

**Beck, A. Judicial decisions with no appeal. [2016] (February) NZLJ 16-19**

Apprehended bias - Conflict of interest - Ibester v Knox City Council - Ebner v Official Trustee in Bankruptcy - High Court - Australia

**Felkel, A. A dog's life. (2016) LIJ 90(3) 48-51**

Common Law Improvement Project - Common Law Division - Case management - Supreme Court of Victoria - Victoria - Australia

**Justice Forrest. CLIP bears fruit. (2016) LIJ 90(3) 44-47**

## Property Law

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Conveyancing - Title insurance - Capped conveyancing insurance - Torrens system - Ontario - NZ - Australia

**Griggs, L. Accounting for risk: the advent of capped conveyancing title insurance. (2016) 24(3) APLJ 371-382**

Registration of title - Deeds register - Squatting - History - Research study - Public Records Office of Victoria - Land Act 1860 (Vic) - Duffy Act - Nicholson Act - Victoria - Australia

**Di Marco, E. The deeds registers of the colony of Victoria between 1858-1862: key historical sources for the local property market. (2016) 24(3) APLJ 425-439**