



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
1 April 2016

## Library News

### Judging for the People: Honouring 175 Years of the Supreme Court in Victoria

Presented by the Royal Historical Society of Victoria (RHSV), this conference and exhibition will bring together stories about the judges of the Supreme Court, the developing role of the Court and the rule of law, key decisions, the changing nature of jurisdictions, legal education and the buildings and libraries that have featured throughout its history. Registrations for this conference close 5pm, 6 April.

See the RHSV website for more information:

<http://www.historyvictoria.org.au/rhsv-conference-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: 175<sup>th</sup> Anniversary of the Supreme Court of Victoria

This year marks the 175th anniversary of the Supreme Court of Victoria.

To commemorate this event, an exhibition showcasing historical items of significance are on display in the Supreme Court Library.

Free history and heritage tours of the Supreme Court and the Library exhibition are available during April.

Bookings are essential:

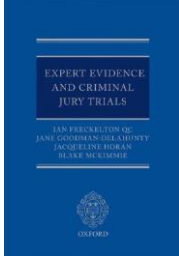
<http://www.eventbrite.com/e/supreme-court-of-victoria-history-and-heritage-tour-tickets-22676559199>

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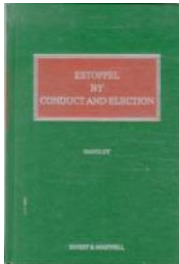
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# New Books

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/)



Freckelton, Ian R, et al, *Expert Evidence and Criminal Jury Trials*  
Oxford University Press, Oxford, 2016  
347.067 FRE (County Court Library)



Handley, K R, *Estoppel by Conduct and Election*  
2<sup>nd</sup> ed, Sweet & Maxwell, London, 2016  
346.02 HAN (Supreme Court Library and VCAT Library)



Sourdin, Tania, *Alternative Dispute Resolution*  
5<sup>th</sup> ed, Thomson Reuters, NSW, 2016  
347.9409 SOU.5 (Supreme Court Library)



## EXHIBITIONS IN THE LIBRARY

### Argus from 100 years ago

The Supreme Court Library has the Argus newspaper from 1916 on display.

The page is turned daily and provides an insight into what was happening 100 years ago to the day.

A snapshot is provided via the Law Library of Victoria Twitter account. You can follow these tweets via #argus1916.

# Legislation

## Victorian Bills

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

- [Education and Training Reform Amendment \(Miscellaneous\) Bill 2016](#)
- [Livestock Disease Control Amendment Bill 2016](#)
- [Serious Sex Offenders \(Detention and Supervision\) Amendment \(Community Safety\) Bill 2016](#)
- [Witness Protection Amendment Bill 2016](#)

## Victorian Assents

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

- [Delivering Victorian Infrastructure \(Port of Melbourne Lease Transaction\) Act 2016](#) No. 10/2016

## Proclamations

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

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

There have been no Victorian Acts that have come into operation by forced commencement since the last Library Bulletin.

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

- [Supreme Court \(Appeals to the Court of Appeal and Other Amendments\) Rules 2016](#) No. 14/2016 (VGG S63 18.03.2016)
- [Magistrates' Court General Civil Procedure \(Miscellaneous Amendments\) Rules 2016](#) No. 17/2016 (VGG S67 23.03.2016)

# High Court Cases

There have been no High Court cases since the last Library Bulletin.

# Victorian Supreme Court Cases

## Court of Appeal

CRIMINAL LAW - Appeal - Conviction - Incest and indecent assaults - Conduct of defence counsel - Forensic decision to allege collusion between complainant and mother - Duties of counsel - Absence of instructions or evidence of collusion - No rational forensic benefit for pursuing explanation of collusion - Warning by trial judge that such cross examination would likely result in introduction of prejudicial bad character evidence - Failure to sufficiently challenge trial judge's view - Evidence of bad character admitted - Failure of judge to preclude admission of irrelevant prejudicial evidence - Substantial miscarriage of justice - Appeal allowed - Retrial ordered.

***Allen, Nicholas (a pseudonym) v The Queen***

Maxwell P, Redlich JA, and Priest JA

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

31/03/2016

CRIMINAL LAW - Appeal - Conviction - Occupational health and safety - Duty to ensure safe workplace 'so far as reasonably practicable' - Duty to provide safe system of work - Duty to provide necessary induction, training, supervision - Collapse of pile-driving machine - Procedures for erection of machine not followed - Risk of collapse - Whether identified measures would have eliminated or reduced risk - Whether measures reasonably practicable - Whether duties of induction/training/supervision subject to 'reasonable practicability' qualification - Causation - Death of worker - Whether proof of causal connection required - Verdicts not unsafe - Leave to appeal refused - Occupational Health and Safety Act 2004 s20, s21, s23, s33(2).

CRIMINAL LAW - Practice and procedure - Pleading - Particulars - Occupational health and safety - Charge alleged breach of general safety duty - Particulars alleged three separate breaches of specific duties - Joinder of separate allegations undesirable - Inscrutability of guilty verdict - Implications of joinder for sentencing and conviction appeals discussed - Occupational Health and Safety Act 2004 s33(2).

CRIMINAL LAW - Occupational health and safety - Risk-based offences - Objective gravity - Occurrence of death or injury irrelevant to criminal liability - Little relevance to offence gravity - Directly relevant to impact on victims - Sentencing Act 1991 s3.

**Sentence appeal - Vibro-Pile**

CRIMINAL LAW - Appeal - Sentence - Occupational health and safety - Failure to ensure safe system of work - Failure to provide necessary induction, training and supervision - Conviction after trial - Aggregate fine of \$100,000 - Whether manifestly inadequate - Serious breaches - Significant safety risk - General deterrence - Victim's family affected as 'direct result' - Fine inadequate - Appeal allowed - Resentenced to fines of \$250,000 (Charge 3) and \$500, 000 (Charge 4) - Occupational Health and Safety Act 2004 s21, Sentencing Act 1991 s3.

**Sentence appeal - Frankipile**

CRIMINAL LAW - Appeal - Sentence - Occupational health and safety - Failure to ensure safe system of work - Failure to provide necessary induction, training and supervision - Conviction after trial - Aggregate fine of \$350,000 - Whether manifestly inadequate - Serious breaches - Significant safety risk - General deterrence - Victim's family affected as 'direct result' - Fine inadequate - Appeal allowed - Resentenced to fines \$250,000 (Charge 1) and \$500,000 (Charge 2) - Occupational Health and Safety Act 2004 s21, Sentencing Act 1991 s3.

WORDS AND PHRASES - 'reasonably practicable', 'victim'.

***Director of Public Prosecutions [DPP] v Vibro-Pile (Aust) P/L***

***Director of Public Prosecutions [DPP] v Frankipile Australia P/L***

***Vibro-Pile (Aust) P/L v The Queen***

Maxwell P, Redlich JA, and Whelan JA

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

24/03/2016

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of child under 16 - Tendency evidence - Corroboration - Alibi evidence - Whether fresh evidence - Whether miscarriage of justice - Appeal dismissed.

***Gentry, Lucas (a pseudonym) v The Queen***

Maxwell P, Santamaria JA, and Beale JA

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

23/03/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Dangerous driving causing death (two charges) - Dangerous driving causing serious injury (two charges) - Sentenced to five year Community Correction Order, with conditions requiring 500 hours of community work, supervision and treatment - Whether manifestly inadequate - Objective gravity of offending high - Devastating consequences - Moral culpability - Offender's impaired cognitive function - Judge found 'low level culpability' - Finding not challenged - Delay - Originally charged with culpable driving - Plea to lesser charges belatedly accepted - Offender lost opportunity for Youth Justice Centre order - Sentence manifestly inadequate - Residual discretion - Special circumstances - Appeal dismissed.

CRIMINAL LAW - Trial - Evidence - Expert evidence - Dangerous driving causing death - Dangerous driving causing serious injury - Accused's state of mind in issue - Expert evidence filed by prosecution and defence - County Court judge ordered experts to confer - Joint report prepared - Prosecutor accepted plea to lesser charges - Practice Direction No 2 of 2014 - Expert Evidence in Criminal Trials para 10.2.

***Director of Public Prosecutions [DPP] v Borg, Stephen***

Maxwell P, Weinberg JA, and Priest JA

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

23/03/2016

CRIMINAL LAW - Appeal - Sentence - Culpable driving causing death (three charges) - Negligently causing serious injury (three charges) - Reckless conduct endangering life (one charges) - Category of offending - Offences at upper end of range of seriousness - Behaviour 'entirely conscious and deliberate' - Current sentencing practice - Dangerousness informed by extent of risk - Sentences on individual charges not manifestly excessive - Totality principle not infringed - Application for leave to appeal refused - R v Towle (2009) 54 MVR 543 followed.

CRIMINAL LAW - Appeal - Sentence - Mitigating factors - Risk of deportation - Whether changes to Migration Act 1958 (Cth) capable of constituting 'fresh evidence' - Whether changes to Ministerial Directions capable of constituting 'fresh evidence' - Whether mandatory cancellation with option for revocation materially different risk - Risk remains matter of speculation - Expectations of the Australian community - No different sentence required - Guden v The Queen (2010) 28 VR 288 - R v Tabone (2006) 167 A Crim R 18 - Darcie v The Queen [2012] VSCA 11 - Migration Act 1958 (Cth) s501(3A), 501CA.

***Da Costa, Nei Lima v The Queen***

Maxwell P, Redlich JA, and Priest JA

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

21/03/2016

CRIMINAL LAW - Application to admit new evidence on appeal against sentence - Applicant's symptoms of bowel condition existing at time of sentence but not brought to attention of sentencing judge - Whether it would make prison more burdensome for applicant - Uncertain diagnosis - New material not sufficiently compelling to demonstrate miscarriage of justice - Application dismissed.

CRIMINAL LAW - Appeal - Sentence - Four charges of sexual penetration with a child under 16 - Whether manifestly excessive - Two victims - Voluntary disclosure - Prosecution for offences against first victim would not have proceeded apart from the disclosure - R v Ellis (1986) NSWLR 603 applied - Sentence not manifestly excessive - Appeal dismissed.

***Roper, David v The Queen***

Whelan JA and Coghlan JA

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

23/03/2016



CRIMINAL LAW - Application to admit new evidence on sentence appeal - Pregnancy and birth of child in custody - Fact of applicant's pregnancy not known to sentencing judge at time of sentence - Applicant convicted of drug-related offences - Applicant likely to be deported to China on release from prison - Applicant anxiety in relation to deportation and consequences of returning to China - Applicant isolated from family - R v Nguyen [2006] VSCA 184 applied - New evidence revealed true significance of burden of applicant's imprisonment at time of sentence - Application granted - Applicant re-sentenced.

***Dong, Bing Yao v Director of Public Prosecutions (Cth) [DPP]***

Whelan JA and Coghlan JA

[\[2016\] VSCA 51](#)

23/03/2016

CRIMINAL LAW - Attempt to import a border controlled precursor - Admissibility of evidence - Coincidence evidence - Evidence of earlier attempted importations by co-accused - Text messages to applicant concerning earlier importation - Whether probative - Whether probative value outweighed prejudicial effect - Coincidence evidence crystallised as relationship evidence - Harriman v The Queen (1989) 167 CLR 590 applied - Application for leave to appeal against conviction granted - Appeal dismissed.

***Nessim, Milad v The Queen***

Osborn JA, Whelan JA, and Beach JA

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

21/03/2016

CRIMINAL LAW - Crown Appeal - Sentence - Murder - Brutal attack on former partner - Use of a weapon - Respondent suffered from Post-Traumatic Stress Disorder as a result of traumatic upbringing in Sudan - Whether sentencing judge erred in finding limited remorse - Whether sentence manifestly inadequate - Sentence of 18 years and 6 months' imprisonment with non-parole period of 14 years and 6 months not manifestly inadequate - Appeal dismissed.

***Director of Public Prosecutions [DPP] v Daing, Isac Ayoul***

Maxwell P, Weinberg JA, and Priest JA

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

31/03/2016

CRIMINAL LAW - Conviction - Application for leave to appeal - Appeal - Importing a commercial quantity of a border controlled drug - Elements of the offence - Intentional fault elements - Whether jury verdict was unreasonable and unsatisfactory - Whether it was open to jury to infer that accused had intention to import substance in question - Not open to jury to infer that accused had intention to import - Application for leave to appeal granted - Appeal allowed - Conviction set aside - Judgment and verdict of acquittal entered - Criminal Code (Cth), s307.1.

CRIMINAL LAW - Conviction - Appeal - Importing commercial quantity of border controlled drug - Intentional fault elements - Jury directions - Inferential path of reasoning - Whether reasoning in Kural v The Queen (1987) 162 CLR 502 applicable to a charge of importing a commercial quantity of a border controlled drug contrary to s307.1 of the Criminal Code (Cth) - Criminal Code (Cth), s3.1, s3.2, s4.1, s5.1, s5.2, and s307.1.

***Afford, Steven Lakamu Siosuia v The Queen; Director of Public Prosecutions for the Commonwealth of Australia [DPP] v Afford, Steven***

Maxwell P, Priest JA, and Beach JA

[\[2016\] VSCA 56](#)

24/03/2016

CRIMINAL LAW - Interlocutory appeal - Indictment charging applicant with rape more than 30 years ago - Application for permanent stay - Circumstantial case - Evidence - Evidence of matters not available - DNA evidence - Evidence of alleged admissions - Evidence of continuity of custody of samples tested for DNA - Quality of evidence capable of being given on the issue of continuity of custody of samples - Forensic disadvantage - Whether forensic disadvantage capable of remedy by appropriate warnings and directions to jury - Whether prosecution of applicant involved level of unfairness requiring permanent stay - No error in trial judge's refusal to order stay - Application for leave to appeal refused.

***Nelson, Douglas (a pseudonym) v The Queen***

Osborn JA, Whelan JA, and Beach JA

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

24/03/2016

CRIMINAL LAW - Sentence - Appeal - Armed robbery and recklessly causing injury - Mitigating factors - Risk of deportation - Whether taken into account - Whether changes to Migration Act 1958 (Cth) fresh evidence - Whether judge took into account risk of deportation - No error - Leave to appeal refused - *Guden v The Queen* (2010) 28 VR 288 applied - *Lima Da Costa Junior v The Queen* [2016] VSCA 49 followed - Migration Act 1958 (Cth) s501(3A), s501CA.

***Konamala, Hajaruban v The Queen***

Maxwell P, Redlich JA, and Priest JA

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

21/03/2016

PRACTICE AND PROCEDURE - Appeal - Application for leave to appeal - Application for extension of time within which to seek leave to appeal - Stay - Application for stay of trial judge's orders pending hearing of applications and appeal - Whether appeal would be rendered nugatory - Applicant's position protected by undertaking - Application for stay refused.

***Deak-Fabrikant, Larissa v Grech, Stephen Phillip & Grech, Jelvie & Grech, Paul & Registrar of Titles***

Priest JA and Beach JA

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

21/03/2016

PRACTICE AND PROCEDURE - Interlocutory appeal - Admissibility of evidence - Tendency evidence - Evidence Act 2008 s97 - Whether state of mind on previous occasions relevant as evidence other than tendency evidence - Whether context and motive evidence admissible for purpose other than tendency purpose - *O'Leary v The King* (1946) 73 CLR 566, *Elomar v The Queen* [2014] NSWCCA 303; *Leonard v R* (2006) 67 NSWLR 545; *R v Adam* (1999) 106 A Crim R 510, discussed - Evidence admissible for purpose other than tendency reasoning - Application for leave to appeal refused.

***Higgins, Oscar (a pseudonym) v The Queen***

Redlich JA, Weinberg JA, and Osborn JA

[\[2016\] VSCA 47](#)

18/03/2016

## Commercial Court

CORPORATIONS - Administrators seeking directions from the Court in relation to disposing of property of the company under administration and dealing with sale proceeds - Corporations Act 2001 (Cth), s442C and s447D.

CORPORATIONS - Vesting of security interest in personal property - Meaning of 'security agreement' and 'came into force' - Effect of assignment on vesting - Interpretation of the timeframe - Corporations Act 2001 (Cth), s588FL.

CONTRACT - Competing contracts - 'Battle of the forms' - Which set of terms applies.

CONTRACT - Conditions as to formation - Conditions as to performance.

PERSONAL PROPERTY SECURITIES - Defendants registered their interests on the Personal Property Securities Register - Whether security interests perfected by registration - Were registrations in time - Personal Property Securities Act (2009) (Cth), s267.

***In the matter of Carpenter International P/L (administrators appointed) (ACN 165 690 657)***

***Donnelly, Matthew James, Hodgson, David Mark and Hewitt, Andrew Steward Reed in their capacities as joint and several administrators of Carpenter International P/L (administrators appointed) (ACN 165 690 657) & Carpenter International P/L (administrators appointed) (ACN 165 690 657)***

Cameron J

[\[2016\] VSC 118](#)

24/03/2016

COSTS - Security for costs - Amount of security to be provided - Broad brush approach  
Oswal, Radhika Pankaj and Australia v New Zealand Banking Group Ltd (CAN 005 357 522) & Ors; Oswal, Pankaj v Carson, Ian Menzies & Ors (Security for costs - State 2)

Sifris J

[\[2016\] VSC 119](#)

31/03/2016

PRACTICE AND PROCEDURE - Extending validity of writ - Reasonable steps to serve - Other good reason.

PRACTICE AND PROCEDURE - Substituted service.

***Global Investments Ltd v Babcock & Brown LP & Ors***

Randall AsJ

[\[2016\] VSC 107](#)

18/03/2016

PRACTICE AND PROCEDURE - Interest - Whether the loss of chance damages discounted back to date of breach included any amount for "loss or damage to be incurred or suffered after the date of the award" - Supreme Court Act 1986 s60(1) and s60(3)(b).

***North East Solution P/L (ACN 129 466 851) v Masters Home Improvement Australia P/L (formerly Shellbelt P/L) (ACN 21 066 891 307) & Woolworths Ltd (ABN 88 000 014 675) (No. 2)***

Croft J

[\[2016\] VSC 87](#)

18/03/2016

## Commercial & Equity Division

COSTS - Costs of proceeding following trial - Defendants successful on some discrete issues - Discretionary considerations - Plaintiffs recover 70% of costs - No new point of principle - Chen & Ors v Chan & Ors [2009] VSCA 233 applied.

***Dual Homes Victoria P/L & Ors v Moores Legal P/L & Pilley McKellar P/L (Costs Ruling)***

John Dixon J

[\[2016\] VSC 113](#)

24/03/2016

## Common Law Division

ACCIDENT COMPENSATION ACT - Section 138 indemnity proceeding - Section 138(3)(b) - formula - assessment of Factor X - determination of liability - extent to which each defendant liable - causation - foreseeability - contributory negligence.

***Victorian Workcover Authority v Probuild Constructions (Australia) P/L & Ors***

Zammit J

[\[2016\] VSC 102](#)

23/03/2016

ADMINISTRATIVE LAW - Judicial review - Workers' compensation - Medical panel - Alleged inadequacy of reasons - Reasons not inadequate - Proceeding dismissed - Accident Compensation Act 1985, s5, s93C - Workplace Injury Rehabilitation and Compensation Act 2013, s274, s313.

***Dias, Vanessa v Oakleigh Centre Industries; Associate Professor Gibbons, Peter as Deputy Covenor of Medical Panels pursuant to the Accident Compensation Act 1985; Medical Panel (constituted by Gallachio, Anthony (Dr.), Hayman, Brendan (Dr.), Carson, James (Dr.), Pianta, Robert and Simm, Rodney)***

Cavanough J

[\[2016\] VSC 115](#)

23/03/2016

ADMINISTRATIVE REVIEW - Relief sought by interlocutory mandatory injunctions that effectively make a merits decision - Application brought by prisoner - Denial of prisoner's application for repair of in-cell computer, reinstatement of scanning facility, provision of supervised email facility - Reviewable decision or error in it not clearly identified - No serious question identified - Balance of convenience not in favour of relief sought - Application refused.

***Rich, Hugo v Howe, Jonathan (in his capacity as the General Manager of HM Prison Barwon & for Corrections Victoria)***

John Dixon J

[\[2016\] VSC 88](#)

07/03/2016

APPEAL - Entitlement to payments under Accident Compensation Act - Appeal from Magistrates' Court - Error of law - Whether reasons of Magistrate adequate - Relevant Considerations - Appeal allowed - Remit to Magistrates' Court - Magistrates' Court Act s109 - Accident Compensation Act s82, s93.

***Hettiarachchi, Pathmal v Royal Automobile Club of Victoria (RACV) Ltd***

J Forrest J

[\[2016\] VSC 97](#)

30/03/2016

CAVEAT - Application for summary removal - Plaintiff contracted for sale of land with consent of registered first mortgagee - Substantial shortfall for first mortgagee - Sale at arm's length and above valuation - Property subject to a registered second mortgage and four caveats claiming interests as chargees - Second mortgagee entered default judgment against plaintiff and refuses to discharge its mortgage and one caveator refuses to withdraw caveat interests to allow sale to be completed - No power to order summary removal of a registered mortgage - Futile to order summary removal of caveat - s90(3) Transfer of Land Act 1958 (Vic).

PRACTICE AND PROCEDURE - Stay on execution of warrant for possession sought - r66.16 Supreme Court (General Civil Procedure) Rules 2005 (Vic).

INJUNCTION - Mandatory injunction for removal of a registered mortgage sought in aid of claim of conspiracy to inflict economic harm on plaintiff - No serious question to be tried - Discretionary considerations - Evidence insufficient to warrant mandatory injunction - Application dismissed and summons on originating motion refused.

EVIDENCE - Correspondence between parties marked "without prejudice" - Whether implied waiver of confidentiality - No exceptions applicable - Evidence of settlement discussions excluded - s131 Evidence Act 2008 (Vic).

***GNI Enterprises P/L v The Registrar of Titles for Victoria & Ors***

John Dixon J

[\[2016\] VSC 95](#)

09/03/2016

COSTS - Application for gross sum costs order - Principles applying - Defendant an undischarged bankrupt - Appropriate discount - r63.07 Supreme Court (General Civil Procedure) Rules 2015 (Vic).

***Butler, Francis Kevin & Ors v JSL Racing P/L (ABN 668 018 293 505)***

John Dixon J

[\[2016\] VSC 110](#)

07/03/2016

COSTS - Solicitor and client - Application for itemised bill under Legal Profession Act 2004 (Vic) - Whether agreeing to receive discounted sum on an ascertainable date in satisfaction of claim for legal costs amounted to an accord and satisfaction which extinguishes client's rights of review under Part 3.4 of the Legal Profession Act 2004 (Vic) - Construction of agreement - *Gadens Lawyers v Beba Enterprises Pty Ltd* [2012] VSC 519, *Beba Enterprises Pty Ltd v Gadens Lawyers* (2013) 41 VR 590 and *GLS v Goodman* [2015] VSC 627 applied - Parties reached an accord and satisfaction.

CONTRACT - Solicitor and client - Whether applicant prohibited from requesting an itemised bill if parties reached an accord and satisfaction - Legal Profession Act 2004 (Vic) s3.4.36 - Implied term - *Hawkins v Clayton* (1988) 164 CLR 539 applied - Interests of justice - *Beba Enterprises Pty Ltd v Gadens Lawyers* (2013) 41 VR 590 applied - Applicant precluded from requesting an itemised bill. COSTS - Whether extension of time required for Applicant to commence Costs Court proceedings - Legal Profession Act 2004 (Vic) s3.4.38 (6) - Length of delay and explanation for delay - Prejudice to applicant - Extension would be granted.

***Able Demolitions amd Excavations (ACN 005 639 449) v Barry Kenna & Co (ABN 70 502 885 982)***

Daly AsJ

[\[2016\] VSC 96](#)

17/03/2016

LEGAL PRACTITIONERS - Roll of practitioners - Removal of name - Whether defendant a fit and proper person to practise law - Defendant guilty of misconduct at common law and professional misconduct under the Legal Profession Act 2004 with significant dishonesty and deception of beneficiaries for personal gain - Name removed - Legal Profession Act 2004 s4.4.3(1)

***In the matter of the Legal Profession Act 2004 (Vic)***

***Victorian Legal Services Commissioner v Rhoden, Philip Hamilton***

John Dixon J

[\[2016\] VSC 67](#)

02/03/2016

MENTAL HEALTH ACT 2014 (VIC) - Whether the imposition of a smoke free policy was within the statutory power of a hospital.

TOBACCO ACT 1987 (VIC) - Whether there is an implied statutory right to smoke.

CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 (VIC) - Whether a smoking ban engaged an involuntary patient's human rights to be treated with dignity under s22(1), appropriately for a person who has not been convicted under s22(3), and/or not to be subjected to compulsory medical treatment under s10(c) - Whether a person found not guilty by reason of insanity is 'detained without charge' within the meaning of s22(3) - Whether a hospital, in adopting a smoke free policy, had given proper consideration to relevant human rights in accordance with s38(1).

***De Bruyn, Robert Peter (by his Litigation Guardian, Gary Michael De Bruyn) v Victorian Institute of Forensic Mental Health***

Riordan J

[\[2016\] VSC 111](#)

22/03/2016

NEGLIGENCE - Contribution between defendants - employee on building site - contribution between employer' head contractor and subcontractors - scope of duty owed by head contractor and subcontractors - contract between defendants - breach of statutory duty - apportionment between defendants - contribution from other tortfeasors - Wrongs Act 1985 (Vic) Part IV.

***Griffin, Denis Peter v Victorian Workcover Authority & Ors***

Zammit J

[\[2016\] VSC 101](#)

23/03/2016

PERSONAL INJURY CLAIM - Three periods of alleged injury - Proceeding commenced under the Wrongs Act 1958 (Vic) - Whether the proceeding should have been commenced under the Accident Compensation Act 1985 (Vic) - Application for summary judgment - Whether the proceeding has a real prospect of success - Civil Procedure Act 2010 (Vic) ss61 - 64 - O22 of the Supreme Court (General Civil Procedure) Rules 2015

***Spaleta, Irena v ANH Nominees P/L (ACN 005 796 378)***

Ierodionou AsJ

[\[2016\] VSC 104](#)

18/03/2016

PRACTICE AND PROCEDURE - Default judgment for possession of land and for debt - Warrant for possession in process of execution - Oral application by defendants for stay of execution and to set aside the judgment - Application refused - No new point of principle - r21.07, r66.16 Supreme Court (General Civil Procedure) Rules 2015.

***Kleinsman, Herman John Bernard***

***Legal Representative of Maria Hubertine Langner & Anor v Capri, Joseph & Ors***

John Dixon J

[\[2016\] VSC 82](#)

02/03/2016

PRACTICE AND PROCEDURE - Joinder of parties - Amendment of defence - Application by defendant invoking proportionate liability under Part IVAA of the Wrongs Act 1958 as a defence to add alleged concurrent wrongdoers as defendants - Whether evidence necessary to establish arguable case to permit joinder and amendment - Wrongs Act 1958 (Vic) Part IVAA, s 24AL - Supreme Court (General Civil Procedure) Rules 2015 Rule 9.06(b).

***Fabfloor (Vic) P/L (t/as Event Floor) & Ors v BNY Trust Company of Australia Ltd & Ors***

***Danfoss (Australia) P/L & Anor v BNY Trust Company of Australia Ltd & Ors***

John Dixon J

[\[2016\] VSC 99](#)

16/03/2016

PRACTICE AND PROCEDURE - Summary judgment - Hearing on merits appropriate - orders sought seeking that a solicitor be partially relieved from a private undertaking - No applicable principle identified

***Hycenko, Nicholas v Hrycenko, George (in his personal capacity as executor of the Estate of the late Ludmilla Hrycenko) & Hrycenko, Ludmilla***

Ierodiaconou AsJ

[\[2016\] VSC 112](#)

22/03/2016

## Criminal Division

CRIMINAL LAW - Ruling - Application by witnesses to give evidence by videolink - Evidence (Miscellaneous Provisions) Act 1958 s42E - R v Cox & Ors (Ruling No 6) (2005) 165 A Crim R - Application granted.

***The Queen v Maybus, Luke***

Beale J

[\[2016\] VSC 57](#)

25/02/2016

CRIMINAL LAW - Sentence - Assist offender (murder) - Offender was member of Bandidos outlaw motorcycle gang - Guilty plea - Undertaking to assist the prosecution in trial of co-accused - s325 Crimes Act 1958.

***The Queen v Girgis, Joseph***

Beale J

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

11/02/2016

CRIMINAL LAW - Sentence - Manslaughter - Theft - Arson - Late guilty pleas - Co-offenders pleaded guilty to manslaughter on the basis of different summaries of agreed facts - Varying prospects of rehabilitation - Membership of the Bandidos outlaw motorcycle gang relevant to specific deterrence - Comparable cases for manslaughter considered - R v Drummond [2013] VSC 104 - Crimes Act 1958 s74 - Crimes Act 1958 s197 - Sentencing Act 1991 s89(4).

***The Queen v Walker, John Peter; The Queen v Maybus, Luke Paul***

Beale J

[\[2016\] VSC 116](#)

18/03/2016

CRIMINAL LAW - Sentence - Murder - Robbery - Attempted theft - Rape - Pleas of guilty - Victims chosen at random - Remorse, absence of - Serious criminal history - Supervision order made pursuant to Serious Sex Offenders (Detention and Supervision) Act 2009 - Poor prospects of rehabilitation - Personality disorder - Principles in R v Verdins [2007] 16 VR 269 not enlivened - Serious violent offender - Sentencing Act 1991 - Community protection - Sentence of life imprisonment - Non-parole period - Considerations in fixing - Mercy.

***The Queen v Price, Sean Christian***

Lasry J

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