



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
13 May 2016

Library News

Lyrical Lunchtimes at the Law Library

BottledSnail Productions and the Law Library of Victoria invite you to attend Lyrical Lunchtimes at the Law Library.

BottledSnail Productions presents the second in its series of lunchtime classical concerts, featuring performances by string trio Eliza Elliott, Rohan Phelps and Giselle Campanaro, flute duo by Jennifer Lindstrom and Mary Sheargold accompanied by Paul Glass, Ellen Guilfoyle on cello and Craig Doherty on piano.

The next performance will be held on Thursday 19 May at 1.15pm in the Supreme Court Library.

All are welcome, entry is free and there is no need to register.

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

Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016



Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone 03 9603 6282 for details.

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New Books

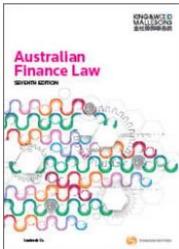
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/

No image
available

Minter Ellison, *Insurance Contracts Act Handbook: an Annotated Version of the Insurance Contracts Act 1984*

9th ed, Minter Ellison, NSW, 2016

Call number: 346.086 INT.9 (Supreme Court Library, County Court Library, Magistrates' Court Library and VCAT Library)



Stumbles, John (ed) and King & Wood Mallesons, *Australian Finance Law*

7th ed, Thomson Reuters, NSW, 2016

Call number: 346.07 AUS.7 (Supreme Court Library)

Legislation

Victorian Bills

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

- [Land \(Revocation of Reservations - Regional Victoria Land\) Bill 2016](#)
- [Primary Industries Legislation Amendment Bill 2016](#)
- [State Taxation and Other Acts Amendment Bill 2016](#)

Victorian Assents

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

- [Consumer Acts and Other Acts Amendment Act 2016](#) No. 23/2016
- [Health Complaints Act 2016](#) No. 22/2016
- [National Electricity \(Victoria\) Further Amendment Act 2016](#) No. 24/2016
- [Occupational Licensing National Law Repeal Act 2016](#) No. 25/2016
- [Rooming House Operators Act 2016](#) No. 26/2016



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 @lawlibraryvic #argus1916

Legislation

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:

- *Occupational Licensing National Law Repeal Act 2016* No. 25/2016
 - This Act came into operation on 11 May 2016 (VGG S139 10.05.2016)
- *Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Act 2016* No. 17/2016
 - This Act (except sections 10(2), 15 and 16) came into operation on 4 May 2016 (VGG S131 03.05.2016)

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:

- *Magistrates' Court (Outworkers) Rules 2016* No. 41/2016 (VGG S133 04.05.2016)
- *Sentencing Amendment Regulations 2016* No. 38/2016 (VGG S130 03.05.2016)

High Court Cases

CONSTITUTIONAL LAW - Election of Senators - Validity of provisions of Commonwealth Electoral Act 1918 (Cth) as amended by Commonwealth Electoral Amendment Act 2016 (Cth) - Whether provisions for voting above or below dividing line on ballot paper prescribed more than one method of choosing Senators contrary to s9 of Constitution - Whether indicating vote for party or group above dividing line contrary to requirement in s7 of Constitution that Senators be "directly chosen by the people" - Whether prescription of "Droop quota" resulted in effective disenfranchisement - Whether instructions on ballot paper infringed implied freedom of political communication or system of representative government.

WORDS AND PHRASES - "above the line", "ballot paper", "below the line", "directly chosen by the people", "dividing line", "Droop quota", "free and informed vote", "group voting ticket", "method of choosing senators", "preferential voting".

CONSTITUTION - s7, s9 and s24.

COMMONWEALTH ELECTORAL ACT 1918 (CTH) - s4(1), s123, s124, s126, s168, s169, s209(1), s210, s214, s214A, s239, s268, s268A, s269, s272 and s273.

Day, Robert John v Australian Electoral Officer for the State of South Australia & Anor; Madden, Peter James & Ors v Australian Electoral Officer for the State of Tasmania & Ors

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

13/05/2016

CRIMINAL LAW - Sentencing - Manslaughter - Excessive self-defence - Where deceased a police officer - Where appellant taken to have shot deceased in honest but mistaken belief that deceased was person posing as police officer with intent to rob appellant - Whether sentencing judge erred in assessment of objective gravity of offence by taking into account absence of circumstance which if present would render subject offence a different offence - Relevance of R v De Simoni (1981) 147 CLR 383.

CRIMINAL LAW - Sentencing - Totality principle - Where appellant convicted of manslaughter and wounding with intent to cause grievous bodily harm - Whether open to sentencing judge to impose wholly concurrent sentences - Whether appellate court erred in partially accumulating sentences - Whether sentence imposed manifestly inadequate.

WORDS AND PHRASES - "accumulation", "concurrency", "De Simoni principle", "manifestly inadequate", "objective gravity", "totality".

CRIMES (SENTENCING PROCEDURE) ACT 1999 (NSW) - s3A(a), s21A(1).

Nguyen, Philip v The Queen

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

04/05/2016

LEGAL PRACTITIONERS - Negligence - Advocate's immunity from suit - Advice given out of court - Where advice given by advocate led to agreed settlement of proceedings - Where terms of settlement reflected in consent orders made by court and court's noting of agreement - Where negligence proceedings issued in respect of advice - Whether advocate immune from suit.

HIGH COURT - Stare decisis - Whether *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 and *Giannarelli v Wraith* (1988) 165 CLR 543 should be reconsidered.

WORDS AND PHRASES - "advocate's immunity", "collateral attack", "consent orders", "finality", "intimately connected", "judicial determination", "judicial power", "statement of agreed facts".

CIVIL PROCEDURE ACT 2005 (NSW) - s90, s133(1).

UNIFORM CIVIL PROCEDURE RULES 2005 (NSW) - Pt 36.

Attwells, Gregory Ian & Anor v Jackson Lalic Lawyers P/L

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

04/05/2016

NEGLIGENCE - Duty of care - Scope of duty of care - Where solicitor received instructions from testator to prepare a will - Where entirety of testator's estate was to pass to respondent - Where testator's daughter brought successful proceedings under Testator's Family Maintenance Act 1912 (Tas) ("TFM Act") for provision out of testator's estate - Whether duty of care owed by solicitor to testator extended to advising testator of possible steps to avoid exposing testator's estate to a claim under TFM Act.

NEGLIGENCE - Duty of care - Existence of duty of care - Whether solicitor owed duty of care to intended beneficiary under testator's will - Whether *Hill v Van Erp* (1997) 188 CLR 159 applied - Whether interests of testator coincident with interests of intended beneficiary.

NEGLIGENCE - Causation - Whether, but for solicitor's failure to give advice, respondent would have received entirety of testator's estate - Whether relevant loss is a loss of chance.

WORDS AND PHRASES - "coincident", "duty of care", "interests of the intended beneficiary", "interests of the testator", "loss of a chance", "testamentary intention".

Badenach, Robert & Anor v Calvert, Roger Wayne

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

11/05/2016

WORKERS COMPENSATION - Where employee vaccinated in course of employment and later felt unwell, described as "vertigo" - Where evidence did not establish nature and incidents of any physiological or psychiatric change - Whether employee suffered "injury" within meaning of s4(1) of Safety, Rehabilitation and Compensation Act 1988 (Cth).

WORDS AND PHRASES - "ailment", "disease", "disturbance of the normal physiological state", "injury", "injury (other than a disease)", "physiological change", "psychiatric change", "sudden or identifiable".

SAFETY - Rehabilitation and Compensation Act 1988 (Cth), s4(1), s14(1).

Military Rehabilitation and Compensation Commission v May, Benjamin James Edward

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

11/05/2016

Victorian Supreme Court Cases

Court of Appeal

ADMINISTRATIVE LAW - Application for leave to appeal on a question of law - Decision of the Victorian Civil and Administrative Tribunal - Requirements of statutory cause of action - Causation - Procedural fairness - Misapprehension of facts - Leave to appeal refused - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148 - Water Act 1989 (Vic) s157 - Supreme Court Act 1986 (Vic) s 14C.

WATER LAW - Claim that reverse flow from a drain under the control of the Authority caused flooding and damage to land - Whether the Authority responsible for damage to land by flooding - State Rivers and Water Supply Commissioner v Crea [1980] VR 513 considered.

Patsuris, Tom v Gippsland and Southern Rural Water Corporation

Tate JA, Kyrou JA, and Garde AJA

[\[2016\] VSCA 109](#)

13/05/2016

CONTRACT - Commercial leases and licences - Interpretation - Respondent leased sites to applicant to operate service stations and convenience stores - Proposed assignment of lease to third party and concurrent lease by third party in favour of respondent - Effect of concurrent lease to confer right on respondent to use and occupy leased area at end of Lease - Lease stated '[a]fter the date of this Lease and until the Lease comes to an end, [the respondent] may not grant to any person any right to use or occupy and part' of leased area without applicant's prior written consent - Whether clause prohibited grants made during term of lease but taking effect after end of lease - Relevance of context and purpose where text said to be unambiguous.

CONTRACT - Interpretation - Agreement provided that party could assign 'all or any part' of certain rights and obligations - Whether 'all or any part' identified minimum content of obligations that could be assigned - Appeal dismissed.

Eureka Operations P/L v Viva Energy Australia Ltd

Santamaria JA, Ferguson JA, and McLeish JA

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

10/05/2016

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Joint criminal enterprise - Sentence of six years and nine months imprisonment with a non-parole period of four years and six months - Parity - Whether disparity of sentence - Whether trial judge had improper regard to s6AAA declaration of co-accused - Complaint regarding s6AAA declaration not made out - Disparity of sentence made out - Seriousness of offending among co-accused equal - Sentence imposed on appellant too severe - Appeal allowed - Appellant resentenced to five years and six months imprisonment with a non-parole period of three years - Crimes Act 1958, s77(1).

Perri, Armando Domenico v The Queen

Priest JA, Coghlan JA, and Kyrou JA

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

05/05/2016

CRIMINAL LAW - Application for leave to appeal against compensation order - Child sexual abuse over sustained period in family situation - Multiple victims - Discount of 25 per cent applied to compensation that would otherwise have been ordered - Total compensation ordered approximately \$376,000 leaving applicant with residual assets of approximately \$300,000 - Amount ordered in excess of amounts claimed by two claimants - Whether sufficient regard had to applicant's circumstances including his age (over 60), prospect of future employment and financial circumstances - Amount of compensation ordered not excessive - Any practice of routinely applying discount of 25 per cent (or any other figure) should cease - Each case to be considered on its own facts - Application for leave dismissed - *RK v Mirik and Mirik* (2009) 21 VR 623 considered, Sentencing Act 1991 s85B.

Kelley, Rodney (a Pseudonym) v R1 (a Pseudonym) & Ors

Beach JA and Ferguson JA

[\[2016\] VSCA 90](#)

06/05/2016

CRIMINAL LAW - Case Stated - Murder - Duress - Crimes Act 1958 s 9AG(2)(a) to (c) - Meaning of 'reasonable belief' - Whether objective, subjective or partially objective and subjective test - Amendment to s9AG by Crimes Amendment (Abolition of Defensive Homicide) Act 2014 - Relevance of section 3220 of amending Act to construction of s9AG(2) - 'Reasonable' belief to be assessed by reference to a reasonable person possessed of the characteristics of the accused that might have affected accused's appreciation of circumstances - Whether conduct is reasonable response to threat to be determined by reference to the circumstances as a reasonable person, possessing personal characteristics of the accused, would have perceived them - Family violence - Victorian Law Reform Commission, Defences to Homicide: Final Report 2004, discussed.

Director of Public Prosecutions [DPP] v Parker, Donna (a Pseudonym)

Redlich JA, Osborn JA, and Priest JA

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

10/05/2016

CRIMINAL LAW - Conspiracy to import a commercial quantity of a border controlled drug contrary to Criminal Code 1995 (Cth) - Whether Crown must prove intention to import commercial quantity - Special liability provisions of the Code as to proof of the quantity of the drug - Absolute liability - Sections 11.5(1), 307.(1), 11.5(7A) Criminal Code 1995 (Cth) - *R v LK*; *R v RK* (2010) 241 CLR 177; *Franze v The Queen* [2014] VSCA 352; *Luong v DPP* (2013) 279 FLR 453; *Papadimitrou v The Queen* (2011) 214 A Crim R 50, considered.

CRIMINAL LAW - Defence counsel informing trial judge Azzopardi direction not required - *Azzopardi v The Queen* (2001) 205 CLR 50 - Whether trial judge still obliged to give direction to avoid a substantial miscarriage of justice - Jury Directions Act 2013 s15 - Whether discernible objective forensic advantage in not seeking direction - *Knowles (a pseudonym) v The Queen* [2015] VSCA 141, applied - Leave to appeal refused.

Le, Thi Quyen v The Queen

Weinberg AP and Redlich JA

[\[2016\] VSCA 100](#)

10/05/2016

CRIMINAL LAW - Conviction - Application for leave to appeal against conviction - Charges of incest, assault, indecent act with child under 16 and indecent act with child aged 16 or 17 under care, supervision or authority - Jury address - Rhetorical question by prosecutor 'Why would you not accept her?' - Judge's charge to jury - Whether judge's summary of prosecutor's address was erroneous - Use of expression 'Why would she lie?' - Redirection sought by trial counsel - Redirection given - *Palmer v The Queen* (1998) 193 CLR 1 referred to - Application for leave to appeal refused.

Glover, Dean (a Pseudonym) v The Queen

Osborn JA, Beach JA, and McLeish JA

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

05/05/2016

CRIMINAL LAW - Interlocutory Appeal - Charges in relation to multiple sex offences against six separate complainants on same indictment - Coincidence evidence - Trial judge ruled evidence not cross-admissible and ordered six separate trials - Basis of ruling identifiable dissimilarities - Appeal by Crown - Analysis of offending against each complainant unduly detailed - Basic underlying unity for allegations in relation to three complainants - Features of alleged offending significant and distinctive - Charges in relation to three complainants cross-admissible - Trials in relation to same three complainants capable of being heard together - Appeal allowed in part.

Director of Public Prosecutions [DPP] v Alexander, Bobby (a Pseudonym)

Weinberg AP, Coghlan JA, and Ferguson JA

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

06/05/2016

CRIMINAL LAW - Interlocutory application for leave to appeal - Sexual penetration of child under 16 (three charges) and sexual penetration of 16 or 17 year old child under care, supervision, or authority (three charges) - Jury unable to reach verdict on any charge at three previous trials for same charges - Prosecution seeking fourth trial - Same audio visual evidence led at each trial - Whether an abuse of process - Trial judge refused to grant permanent stay of proceedings - Whether trial judge influenced by impermissible factors - Specific error - Leave to appeal granted - Appeal allowed - Decision of trial judge set aside - Remitted for rehearing by different judge

Clark, Brent v The Queen

Weinberg AP, Ashley JA, and Coghlan JA

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

10/05/2016

CRIMINAL LAW - Sentence - Aggravated burglary - False imprisonment - Appeal by Director of Public Prosecutions - Sentence of Community Correction Order for five years - Conditions imposed - Sentence manifestly inadequate - Residual discretion not exercised - Appeal allowed - Respondent re-sentenced to total effective sentence of four year's imprisonment - Non-parole period two years.

Director of Public Prosecutions v Salih, Deren

Ashley JA, Coghlan JA, and Ferguson JA

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

13/05/2016

CRIMINAL LAW - Sentence - Application - Applicant pleaded guilty to intentionally causing serious injury and armed robbery - Two victims - 'Glassing' type offence relating to one victim - Broken bottle thrust into face of victim causing laceration and facial scarring - Applicant sentenced to 22 months' imprisonment and a three year Community Correction Order with conditions - Whether injury suffered during the offending might be seen as a form of 'extra-curial punishment' going in mitigation of sentence - Whether imposition of adult imprisonment was manifestly excessive - Application for leave to appeal refused.

Sianas, Dean v The Queen

Osborn JA and Priest JA

[\[2016\] VSCA 84](#)

27/04/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Applicant convicted of 62 charges of wrongful conversion and false accounts pursuant to s91(1)(a)(i) and s 91(1)(a)(ii) of the Estate Agents Act 1980 - Total effective sentence three years and four months' imprisonment with non-parole period of 20 months - Applicant maintained he intended to repay funds taken - 62 separate victims - Offending involved using trust monies received from clients - General deterrence, punishment and denunciation important sentencing considerations - Sentence not manifestly excessive - Application for leave to appeal refused

Brancatella, Anthony Vito v The Queen

Weinberg AP and Coghlan JA

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

06/05/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Young offender - Charges of armed robbery (2), theft (3), obtaining a financial advantage by deception (3), arson (1) and committing an indictable offence while on bail (2) - Sentence of 27 months detention in youth justice centre - Whether sentence of 27 months detention in youth justice centre manifestly excessive - Not arguable that sentence manifestly excessive - Application for leave to appeal refused.

Clayton, Leo (a Pseudonym) v The Queen

Beach JA and Ferguson JA

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

06/05/2016

CRIMINAL LAW - Sentence - Crown appeal - Respondent convicted on first indictment of making explosive substance with intent to endanger life or cause really serious injury to property; knowingly possessing explosive substances for unlawful object; and possessing drug of dependence - Convicted on second indictment of prohibited person possessing firearm (eight charges); prohibited person possessing silencer; and possessing ammunition without licence and storing insecurely - Guilty pleas - Sentenced to 20 months' imprisonment on first indictment and aggregate sentence of 18 months' imprisonment with 12 month Community Correction Order (CCO) on second indictment - Cumulation - Total effective sentence 23 months' imprisonment in combination with 12 month CCO - Possession of firearms for purpose of criminal activity - *Berichon v The Queen* (2013) 40 VR 419 applied - Sentence imposed on second indictment manifestly inadequate - Appeal allowed - CCO imposed below set aside - Substituted CCO of four years with 400 hours community service effective from date of original sentence.

CRIMINAL LAW - Sentence - CCO - whether appropriate to fix a sentence of imprisonment of just below 2 years in order to avoid the limitations of s44(1) of the Sentencing Act 1991 - *DPP v Grech* [2016] VSCA 98 approved.

Director of Public Prosecutions [DPP] v Basic, Dennis

Weinberg AP, Redlich JA, and Ferguson JA

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

10/05/2016

CRIMINAL LAW - Sentence - DPP appeal - Dangerous driving causing death (1 charge) - Dangerous driving causing serious injury (2 charges) - Aggregate sentence of 21 months' imprisonment coupled with CCO of 2 years - Whether sentence manifestly inadequate - Youthful offender - Powerful mitigatory considerations - Sentence not manifestly inadequate - Concession on plea that sentence within range - Director's appeal dismissed.

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Dangerous driving causing death (1 charge) - Dangerous driving causing serious injury (2 charges) - Aggregate sentence of 21 months' imprisonment coupled with CCO of 2 years - Whether sentence manifestly excessive - Whether sentencing judge erred in concluding that sentence of detention in youth justice centre not open - Complaint that sentence manifestly excessive not reasonably arguable - Complaint of error not reasonably arguable - Not reasonably arguable that any different sentence should be imposed - Application for leave to appeal refused.

Director of Public Prosecutions [DPP] v Sismanoglou, Stephen

Sismanoglou, Stephen v The Queen

Weinberg AP, Beach JA, and Ferguson JA

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

02/05/2016

CRIMINAL LAW - Sentence - Intentionally causing serious injury - Whether sentence manifestly inadequate - Victim a stranger to offender - Offender using wooden stake to strike victim - Assault continued after victim was unconscious - Victim on crutches - Sentence of 12 months imprisonment combined with three year community correction order - Over 600 days pre-sentence detention declared - Appeal allowed - Offender resentenced to 12 months imprisonment - Community corrections order increased to five years.

CRIMINAL LAW - Sentence - Interaction of community corrections orders and non-parole period - Not permissible to exercise discretion not to declare pre-sentence detention to avoid effect of legislative requirement to set non-parole period - Boulton v The Queen [2014] VSCA 342 considered - R v Hutchison [2015] VSCA 405 considered - Sentencing Act 1991 s11, s18, s44(1), s44(3).

Director of Public Prosecutions [DPP] v Grech, Steven Kevin

Weinberg AP, Ashley JA, and Ferguson JA

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

10/05/2016

CRIMINAL LAW - Sentence - Rape - Whether sentence manifestly excessive - Leave to appeal granted - Appeal allowed with respect to total effective sentence - Appellant re-sentenced.

Coronado, Cristian Andres v The Queen

Osborn JA and Priest JA

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

29/04/2016

CRIMINAL LAW - Sentence - Six charges of rape - Intentionally Cause Injury - Offending over sustained period - Victim was wife - Impact of delay - Anomalies in individual sentences imposed - Anomalies affecting total effective sentence - Sentence manifestly excessive - Leave to appeal granted and appeal allowed - Appellant re-sentenced.

Johns, Sam (a Pseudonym) v The Queen

Weinberg AP, Ashley JA, and Ferguson JA

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

10/05/2016

CRIMINAL LAW - Sentencing - Application for leave to appeal - Appeal - Theft - Obtain financial advantage by deception - Delay - Circumstances and effects of five year delay - Whether trial judge misapprehended explanation for delay - Delay no fault of the applicant - Youthful offender - Anxiety and depression aggravated by delay a material consideration and additional punishment - Application for leave to appeal granted - Appeal allowed - Resentenced.

Marasco, Francesco Anthony v The Queen

Osborn JA and Priest JA

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

27/04/2016

DEFAMATION - Appeal - Imputations - Whether imputations conveyed - Whether imputation that plaintiff was a brothel madam was conveyed - Imputation conveyed - Application for leave to appeal granted - Appeal allowed.

DEFAMATION - Cross-appeal - Whether imputation found to have been conveyed was defamatory of the plaintiff - Imputation that 'Plaintiff runs a venue in which police give secret tip-offs to members of outlaw motorcycle gangs that hinder police investigations and frustrate search warrants' held to be defamatory of the plaintiff - Application for leave to cross-appeal granted - Cross-appeal dismissed.

DEFAMATION - Damages - Need for damages to be re-assessed - Whether proceeding should be remitted to Trial Division for assessment of damages - Matter not remitted - Assessment of damages - Aggravated damages - No entitlement for aggravated damages established - Imputations seriously defamatory - Vindication - Reparation for harm - Consolation for distress, upset and injury to feelings - Two publications, articles and broadcast - Assessments of damages in sum of \$150,000 for articles and in sum of \$100,000 in respect of relevant parts of broadcast - Defamation Act 2005, s34, s38 and s39.

Hardie, Raelene v The Herald and Weekly Times P/L and Rule, Andrew

Ashley JA, Tate JA, and Beach JA

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

13/05/2016

PRACTICE AND PROCEDURE - Unrepresented litigant - Application for leave to appeal - Registrar refused to accept documents for filing - Application to direct Registrar to accept documents for filing - Documents not complying with rules or practice directions - Documents difficult to understand - Defective documents - No prospect that applicant will prepare documents that comply with rules and practice directions - Directions - Efficient future conduct of proceeding - Re Klement [2011] VSCA 40 applied - Registrar directed to accept document for filing - Directions given for future conduct of proceeding - Supreme Court (General Civil Procedure) Rules 2015, r64.15(5)(b), r64.27(3), r64.40 and r64.43(5). PRACTICE AND PROCEDURE - Appeal from an associate judge to a judge - Appeal by way of rehearing - Appeal not confined to errors of law - Hou v Westpac Banking Corporation [2014] VSCA 57 referred to.

Djime, Hamadou v Le, Matthew

Beach JA

[\[2016\] VSCA 105](#)

11/05/2016

STATUTORY INTERPRETATION - Assistance for victims of crime - Loss of earnings - Applicant previously received payments in respect of lost earnings from Transport Accident Commission - Whether cap on assistance for loss of earnings applies before deductions made for compensation received from other sources - Victims of Crime Assistance Act 1996 s8, s16, s50, s62.

STATUTORY INTERPRETATION - Presumption that word used throughout statute has consistent meaning - Strength of presumption - Presumption yields to considerations of context - Lygon Nominees Pty Ltd v Commissioner of State Revenue (Vic) (2007) 23 VR 474, 482 [31] applied.

Pham, Francis Ngoc Huong v Victims of Crime Assistance Tribunal and Attorney-General for the State of Victoria

Tate JA, Ferguson JA, and McLeish JA

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

13/05/2016

TAXATION - Land tax - Whether purchaser under a contract of sale of land deemed to be the owner of the land for the purposes of assessment of land tax - Purchaser permitted to occupy the land to perform construction works under a separate heads of agreement before balance of purchase price paid - Whether such occupation amounted to 'possession' under s15 of the Land Tax Act 2005 - Proposition for which *Highlands Ltd v Deputy Federal Commissioner of Taxes (SA)* (1931) 47 CLR 191 stands - *Cam & Sons Pty Ltd (in vol liq) v Commissioner of Land Tax (NSW)* (1965) 112 CLR 139, *H C Sleigh Ltd v Commissioner of Land Tax (NSW)* [1961] NSWLR 1132 and *E Long & Co Pty Ltd v Commissioner of Land Tax (NSW)* [1968] 2 NSWLR 143 discussed - *Rhodes v Commissioner of Taxes (NZ)* (1910) 29 NZLR 725 and *Yule v Commissioner of Taxes (NZ)* [1918] NZLR 890 considered - Land Tax Act 2005 s15.

Kameel P/L (ACN 006 636 442) v Commissioner of State Revenue

Warren CJ, Tate JA, and Whelan JA

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

02/05/2016

TRUSTS - Construction of trust deed - Definition of 'Beneficiaries' - Whether classes of beneficiaries in definition mutually exclusive - Whether deed of variation replaced trust deed as distinct from varying it - Whether effect of deed of variation was to exclude applicant as a beneficiary altogether or merely as a member of one class of beneficiaries such that he remained a beneficiary by coming within another class of beneficiaries - Principles for construing trust instruments, including interrelationship between a trust deed and a deed of variation - Application for leave to appeal granted but appeal dismissed.

Schreuders, Marius Jan v Graniflora Nominees P/L

Kyrou JA, Ferguson JA, and McLeish JA

[\[2016\] VSCA 93](#)

06/05/2016

Commercial Court

CONTRACT - Whether parties intended a loan agreement, mortgage and guarantee and indemnity to be legally binding.

EVIDENCE - Failure of plaintiff to call the accountant who the plaintiff alleged witnessed the agreement - *Jones v Dunkel* applied - More readily drawing inferences that otherwise open.

In the matter of Line Accord P/L (ACN 106 210 244): Line Accord P/L (ACN 106 210 244) v Minken P/L (in liquidation) & Ors

Masterplan Properties P/L v The Registrar of Titles & Ors

Robson J

[\[2016\] VSC 203](#)

02/05/2016

CORPORATIONS - Appointment of receivers - Validity of appointment - s416A and s1322(4) of the Corporations Act 2001 (Cth).

CONTRACT - Assignment of debt - Whether charge also assigned - s134 of the Property Law Act 1958 (Vic).

Native Bond P/L (Controller Appointed) & Anor v Cant, Anthony Robert & Ors

Judd J

[\[2016\] VSC 206](#)

05/05/2016

CORPORATIONS - Oppression - Two siblings shareholders in a company itself a shareholder in joint venture - Profits of joint venture diverted into personal account of one of the shareholders - Oppressive conduct pursuant to s232 and s233 of the Corporations Act 2001 (Cth) - Consideration of s180 and s181 of the Corporations Act 2001 (Cth).

In the matter of B Personal P/L (ACN 094 972 246)

Bilsborough, Johann Christopher v Bilsborough, Shane Alexander, Clark, Fiona Anne and S B Group International P/L

Robson J

[\[2016\] VSC 211](#)

03/05/2016

CORPORATIONS - Winding Up - Group of Companies - Liquidator seeks directions for approval to pool assets and liabilities of associated companies - Section 511 and 477A Corporations Act 2001 (Cth) - Pooling desirable - Directions given and orders made - Dean-Willcocks v Soluble Solution Hydroponics Pty Ltd (1997) 42 NSWLR 209.

In the matter of Koko Black Group P/L (Administrators Appointed) ACN 113 603 357 (ATF Koko Black Coburg Unit Trust) and the other Koko Black Group Companies Listed in Schedule 1

Algeri, Salvatore and Kanevsky, Glen in their capacities as joint and several administrators of Koko Black Group P/L (administrators appointed) ACN 113 603 357 (ATF Koko Black Coburg Unit Trust) and the other Koko Black Group Companies Listed in Schedule 1 v Koko Black Group P/L (administrators appointed) ACN 113 603 357 (ATF Koko Black Coburg Unit Trust)

Sifris J

[\[2016\] VSC 190](#)

06/05/2016

COSTS - Civil Procedure Act 2010 - Application for an order that legal practitioners pay costs - Principles to be applied - Overarching obligations - Proper basis to make application.

LEGAL PRACTITIONERS - Civil Procedure Act 2010 - Overarching obligations - Application for costs against.

ACN 005 490 540 P/L & Anor v Robert Frederick Jane P/L (ACN 167 419 516) & Anor

Judd J

[\[2016\] VSC 217](#) (Revised 6 May 2016)

02/05/2016

COSTS - Non-associated third party payer sought information from solicitors for purpose of determining whether to apply for costs review - Solicitors provided redacted invoices for entries subject to claims for legal professional privilege - Sufficient information provided - Legal Profession Practice Act 2004 s3.4.2A(1), s3.4.38(7), s3.4.45; Supreme Court Act 1986 s36; Supreme Court (General Civil Procedure) Rules 2015 r32.05.

Reardon v Hall & Wilcox

McDonald J

[\[2016\] VSC 188](#)

03/05/2016

COURTS AND JUDGES - Apprehended bias - Principles - *AJH Lawyers Pty Ltd v Careri* - Fair-minded lay observer - Cumulative approach - Judicial conduct - Multiple hearing dates - Exchanges between bench and counsel - Regularisation of affidavit - Application dismissed. ***Bridge Bar Investments P/L (ACN 154 906 377) v McMurray, Bryn and Dog at the Bridge P/L (ACN 161 759 959) & Ors***

Almond J

[\[2016\] VSC 224](#)

10/05/2016

INSURANCE - Directors and Officers liability policy - Formal investigation relating to conduct of insured and others - Insured attended interview by investigative body and produced his mobile phone for forensic examination - Insured had responsible legal advice that investigative body had acted beyond its powers - Insured unsuccessfully challenged the legality of the investigation by Court proceedings - Insured claimed indemnity under policy for legal representation expenses of challenge to investigation - Whether legal representation expenses incurred 'on account of' attendance at interview or production of mobile phone - Whether investigation constituted a demand for 'non-pecuniary relief' or 'a proceeding' against the insured for an alleged Wrongful Act (as defined) - HELD: Insured not entitled to indemnity. Proceeding dismissed.

WORDS AND PHRASES - 'on account of', 'non-pecuniary relief', 'proceeding'.

Hird, James Albert v Chubb Insurance Company of Australia Ltd (ABN 69 003 710 647)

Hargrave J

[\[2016\] VSC 174](#)

03/05/2016

INTEREST - Contract - Provision for interest on debts due and payable - Contract applied. COSTS - Trial - Plaintiffs partially successful - Unmeritorious claims - Unmeritorious defences - Apportionment - Offers of compromise - Judgment not more favourable to plaintiffs than defendants' offer - Supreme Court Act 1986 (Vic), s24(1) - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r26.08(3). STAY - Application to stay judgment refused - Supreme Court Rules, r66.16.

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 (No 2)

Elliott J

[\[2016\] VSC 106](#)

18/03/2016

LEASES AND TENANCIES - Construction of a commercial lease - Law Institute of Victoria standard form lease - Whether landlord required to improve the leased premises by extending passenger lifts - Terms requiring landlord to consult with tenant.

LEASES AND TENANCIES - Repudiation - Whether failure to pay rent amounts to repudiation - Distinction between breach of an essential term and repudiation at common law - *Shevill v Builders Licensing Board* (1982) 149 CLR 620 - *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* (1985) 157 CLR 17 - *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* [2010] NSWCA 268 - *World Best Holdings Ltd v Sarker* (2010) 14 BPR 27,549.

LEASES AND TENANCIES - Equitable jurisdiction to grant relief against forfeiture - Effect of grant of relief against forfeiture - *Shiloh Spinners Ltd v Harding* [1973] AC 691 - *Legione v Hateley* (1983) 152 CLR 406.

CONTRACT - Good faith - No bad faith where party otherwise fulfilling its obligations - Duty to cooperate - Entitlement to act in a party's own commercial interests.

CONTRACT - Repudiation - Whether pleading that another party has repudiated and seeking a declaration of termination amounts to repudiation - Importance of context and considering all the circumstances of the case - *Woodar Investment Development Ltd v Wimpey Construction UK Ltd* (1980) 1 WLR 277 - *DTR Nominees Pty Ltd v Mona Homes Pty Ltd* (1978) 138 CLR 423 - *Sopov v Kane Constructions Pty Ltd* (2007) 20 VR 127.

Impact Funds Management P/L (ACN 138 179 914) (as Trustee for IIG 401 Collins Trust) v Roy Morgan Research Ltd (ACN 007 092 944) & Ors

Croft J

[\[2016\] VSC 221](#)

10/05/2016

MORTGAGES - Payment of money secured by other mortgagee - Amount due - Construction of loan and security documents - Transfer of Land Act 1958 (Vic), s87.

TPC (VIC) P/L v NWC Finance P/L & Anor

Elliott J

[\[2016\] VSC 117](#)

23/03/2016

PRACTICE AND PROCEDURE - Application to join parties under s24AL of the Wrongs Act 1958 (Vic) - Whether joinder is required - Joinder of a company in liquidation - Leave to proceed against a party in liquidation under s500(2) of the Corporations Act 2001 (Cth).

Timbercorp Finance P/L (in liquidation) (ACN 054 581 190) v Ehrenreich, Steven & Lonsdale Financial Group Ltd (ACN 006 637 225)

Judd J

[\[2016\] VSC 208](#)

05/05/2016

PRACTICE AND PROCEDURE - Payment claim of a sub-contractor under a construction contract unpaid - Entry of judgment under s28R Building and Construction Industry Security of Payment Act 2002 (Vic) (the 'Act') - Application for judgment under O 10 Magistrates' Court (Miscellaneous Civil Procedure) Rules 2010 (Vic) - Certified Extract of order made failed to record or evidence a judgment for a debt due of the unpaid portion of the amount payable to the applicant - Certified Extract did not record a judgment made under s28R of the Act or under O 10 of the Magistrates' Court (Miscellaneous Civil Procedure) Rules 2010 (Vic).

Raw Build P/L (ACN 159 255 142) v JBK Industries P/L (ACN 106 713 115) and Hapgood, Richard (in his capacity as adjudicator in an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic))

Vickery J

[\[2016\] VSC 242](#)

03/05/2016

PRACTICE AND PROCEDURE - Whether the Court best assisted by an assessor or special referee - Reference by the Court to a special referee - Observations on the operation of Order 50 of the Supreme Court (General Civil Procedure) Rules 2015 - Reference opposed - Referee not appointed - Appointment of assessor opposed - Function of assessor - Assessor appointed - Supreme Court Act 1986 (Vic), s77 - Civil Procedure Act 2010 (Vic), s65M.

Construction Engineering (Aust) P/L v Adams Consulting Engineering P/L

Vickery J

[\[2016\] VSC 209](#)

26/04/2016

TRUSTS - Appointment of new trustee - Validity of purported appointment of trustee by one of several appointors - Acceptance of or disclaimer of appointment by appointor - Evidence of acceptance of appointment by appointor by conduct in the absence of evidence of express acceptance or express disclaimer of appointment.

ACN 005 490 540 P/L (ACN 005 490 540) & Mainline Transport P/L (ACN 006 154 150) v Robert Frederick Jane P/L (ACN 167 419 516) & Jane, Robert Frederick

Croft J

[\[2016\] VSC 219](#)

12/05/2016

Common Law Division

COSTS - Appeal from an order of the Magistrates' Court of Victoria under s272 of the Criminal Procedure Act 2009 - Appeal successful - Respondent ordered to pay 80% of the appellant's Supreme Court of Victoria costs - Criminal Procedure Act 2009 s408.

Kartawidjaja, Anni v Rowe, Donna (Costs)

T Forrest J

[\[2016\] VSC 234](#)

11/05/2016

COSTS - Probate costs rules - Contested probate proceeding - Where parties sought costs to be paid out of the estate - Whether proceeding caused by conduct of testator or was adversarial litigation - Whether reasonable grounds for investigation into circumstances of making of will - Where costs should follow the event.

Veall, Arthur Rowland v Veall, Kim Louise

McMillan J

[\[2016\] VSC 232](#)

13/05/2016

CRIMINAL LAW - Crimes mental impairment - Further review of non-custodial supervision order - Application for revocation of non-custodial supervision order - Whether applicant would be likely to endanger himself or others if order revoked - Application refused - Suppression order made - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) s31, s33, s39, s40 - Mental Health Act 2014 (Vic).

In the matter of a further review of a non-custodial supervision order pursuant to section 33(2) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997: In the matter of 'XY' [XY] (This proceeding is subject to a suppression order concerning the identification of the victim, the applicant and members of the families of the applicant and the victim)

Zammit J

[\[2016\] VSC 183](#)

28/04/2016

DEFAMATION - Assessment of damages following verdict of jury for plaintiff - Publication of defamatory statements on defendant's Internet website - plaintiff one of four police officers involved in death by shooting of boy aged 15 years - coronial inquiry exonerated plaintiff of personal responsibility - Defendant stated (among other things) that plaintiff had 'executed' the boy and 'gunned [him] down ... like he was a monster and a dangerous mongrel dog' - Very grave defamations about serving police officer - No mitigating circumstances - plaintiff feels intense distress, humiliation and embarrassment - Scope of publication not large - importance of vindication (nailing the lie) - Aggravated damages - Whether defendant's failure to apologise and retract and conduct of his defence improper and unjustified - Requirement for amount of damages to bear appropriate and rational relationship to harm sustained by plaintiff - Defamation Act 2005 (Vic) s34.

Dods, Colin v McDonald, Michael (No 2)

Bell J

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

06/05/2016

DEFAMATION - Internet website - trial by jury - defendant's application of no case to answer - whether website pages had been published inside limitation period - whether statements in pages had been communicated to and comprehended by at least one person other than plaintiff - inferring publication in Internet cases - evidence that subject of alleged defamation was matter of substantial public controversy and that searches on standard search engine listed defendant's website very highly - whether evidence, if accepted by jury, could properly support inference of publication to unidentified persons - other evidence of publication to one person (other than plaintiff) inside limitation period - person had previously read statements outside that period - whether one publication or two - whether, by maintaining website, defendant engaged in continuing act of publication to all persons, including previous readers - Defamation Act 2005 (Vic) s7(2) - Limitation of Actions Act 1958 (Vic) s5(1AAA).

Dods, Colin v McDonald, Michael (No 1)

Bell J

[\[2016\] VSC 200](#)

06/05/2016

DEFAMATION - Pleadings - Alternate Hore-Lacey imputations - Whether defendants' alternate pleaded imputations not substantially different from plaintiff's imputations - Defences - Contextual truth - Substantial truth - Further particulars of justification

Lee, Simon Spencer Reyner v Korean Society of Victoria Australia Inc (ACN A0026816E) & Ors (No. 3)

John Dixon J

[\[2016\] VSC 210](#) (revised 4 May 2016)

28/04/2016

EMPLOYMENT - Contract of employment - Non-solicitation clause operative upon termination of employment in any circumstances whatsoever - Whether clause inoperative where employee resigned - Whether clause invalid as unreasonable restraint of trade.

APPEAL - Nature of appeal under s109 of the Magistrates' Court Act 1989 - Appeal limited to questions of law in respect of matters determined by Magistrate - No argument before Magistrate that non-solicitation clause invalid as an unreasonable restraint of trade - Question of validity of non-solicitation clause to be determined upon remittal of proceedings to Magistrates' Court.

WP (Noble Park) P/L (ACN 105 075 170) v Issak, Muhummad Mateen

McDonald J

[\[2016\] VSC 205](#)

09/05/2016

ESTOPPEL - Promissory estoppel - Sale of land - Obligation to pay deposit - Default in payment of deposit and completion - Alleged unwritten pre-contractual assent by vendor's agent to defer deposit obligation until financing by syndicate - Production of unconditional contract by vendor for signing - Insertion of subject to finance clause by purchaser - Rejection of condition by vendor - Unconditional contract signed by purchaser - Estoppel case bound to fail - Default judgment for deposit not set aside.

Houlahan, Mark Anthony & Ors v Trentham Investment Management P/L & Saxon Herschel Nicholls

Mukhtar AsJ

[\[2016\] VSC 240](#)

12/05/2016

JUDICIAL REVIEW - Firearms - Application to be deemed not to be a prohibited person - Applicant subject to South Australian restraining order - Revocation of order - Whether applicant could apply for a declaration that he was not a prohibited person under the Firearms Act - Application dismissed - Firearms Act 1996 s3, s189; Summary Procedure Act 1921 (SA) s99(1); Intervention Orders (Prevention of Abuse) Act 2009 (SA) s26.

Pannach, Nicholas John v Chief Commissioner of Police

Ginnane J

[\[2016\] VSC 227](#)

12/05/2016

JUDICIAL REVIEW - Judicial review pursuant to order 56 of the Supreme Court (General Civil Procedure) Rules 2015 - Magistrates' Court Civil Procedure Rules 1989 (Vic) rr10.01, r10.02 - Order in default of defence - Whether plaintiff validly served interstate - Service and Execution of Process Act 1992 (Cth) - Whether magistrate's decision based on no evidence or so unreasonable that no reasonable decision maker could make such finding - Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 - Wednesbury unreasonableness - Scope of test - Minister for Immigration and Citizenship v Li and another [2013] 249 CLR 332 considered - Magistrate's finding that valid service effected a finding of fact open to be made on the evidence.

ADMINISTRATIVE LAW - Whether affidavit of service sufficient evidence of valid service in order to enliven Magistrates' Court's jurisdiction to enter default judgment - Whether jurisdictional fact - Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; Plaintiff M70 v Minister for Immigration and Citizenship (2011) 244 CLR 144 and Saville v Hallmarc Construction Pty Ltd [2015] VSCA 318 considered - Relevance of statutory framework - Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707 considered - Applicable test as to whether error as to jurisdictional fact - R v Connell, Ex Parte The Hetton Bellbird Collieries Ltd (1944) 69 CLR 407 and Minister for Immigration v Eshetu [1999] 197 CLR 611 considered - Availability of "illogicality and irrationality" as a ground for review - Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611 applied - Stringency of test - Minister for Immigration and Citizenship v Li and another [2013] 249 CLR 332 and Minister for Immigration and Border Protection v Stretton [2016] FCAFC 11 applied - Importance of proof of valid service - Evidence of valid service insufficient to enliven jurisdiction of Magistrates' Court to enter default judgment - Jurisdictional error - Default judgment set aside.

Lang, George v Carron Investments P/L (ACN 005 369 791) & The Magistrates' Court of Victoria

Daly AsJ

[\[2016\] VSC 165](#)

28/04/2016

JUDICIAL REVIEW - Road traffic offences - order of County Court of Victoria convicting and penalising plaintiff in respect of drink-driving offences - Plaintiff involved in collision and tested positive in preliminary breath test - Without being cautioned, she made incriminating admissions to police officers after that test and before evidentiary test - counsel for plaintiff objected to evidence of admissions on ground of being illegally obtained - Objection overruled by trial judge - Whether breach of rules of natural justice - Whether error of law - whether misconstruction of statutory provisions - Whether positive preliminary breath test meant officers were of belief that sufficient evidence existing to establish plaintiff had committed offence - Whether plaintiff thereby had to be cautioned before being questioned - 'belief' - Road Safety Act 1986 (Vic) s53, s55, Evidence Act 2008 (Vic) s138, s139(2).

Moir, Suzanne v Stokes, Joshua James & County Court of Victoria

Bell J

[\[2016\] VSC 218](#)

11/05/2016

JUDICIAL REVIEW AND APPEALS - Application for leave to appeal from Magistrates' Court of Victoria under s109 Magistrates' Court Act 1999 (Vic) - Order 58 Supreme Court (General Civil Procedure) Rules 2015 - Whether question of law - Whether appeal grounds arguable - Whether terms of contract unconscionable - Appeal dismissed pursuant to r58.10(8).

Guissine, Natan v Silver Top Taxi Service P/L (ACN 004 213 969)

Derham AsJ

[\[2016\] VSC 225](#)

13/05/2016

NEGLIGENCE - Alleged work injury - Compensation paid - Indemnity sought - Common law - No point of principle - Accident Compensation Act 1985 s138.

Victorian Workcover Authority v Lindsay Australia Ltd (ACN 061 642 733)

Bongiorno JA

[\[2016\] VSC 196](#)

29/04/2016

NEGLIGENCE - Workers compensation - Payment by Victorian Workcover Authority - Indemnity from tortfeasor/employer - Calculation pursuant to s318 Accident Compensation Act 1986 - Whether value of 'Factor C' an integral part of Plaintiff's case

Victorian Workcover Authority v Lindsay Australia Ltd (ACN 061 642 733) (Ruling No 1)

Bongiorno JA

[\[2016\] VSC 195](#)

11/03/2016

PRACTICE AND PROCEDURE - Subpoenas - Application to set aside - Rule 42.04(1) of Supreme Court (General Civil Procedure) Rules 2005 (Vic) - Whether legitimate forensic purpose exists - Whether subpoenas are vexatious, oppressive or an abuse of process of Court - Whether subpoenas are a breach of overarching obligations pursuant to s16, s19, s20 and s24 of the Civil Procedure Act 2010 (Vic).

Melbourne City Investments P/L (ACN 161 046 304) v Myer Holdings Ltd (ACN 119 085 602)

Derham AsJ

[\[2016\] VSC 239](#)

13/05/2016

SUCCESSION - Administrators and executors - Alleged malfeasance by executor - Parties consented to be bound by forensic report - Whether beneficiary permitted to challenge report - Civil Procedure Act 2010 - Application refused - Whether breach of fiduciary duty by delay in transferring final assets of estate while proceedings unresolved - No breach of fiduciary duty.

Ruschinek, Berek v Tiernan, Damien (who is sued as Executor of the Will of Schaja Ruschinek, Deceased)

Bongiorno JA

[\[2016\] VSC 197](#)

05/05/2016

Costs Court

COSTS - Application to review costs - Whether respondent's bills are lump sum bills or itemised bills - Re Taylor, Stileman & Underwood [1891] 1 Ch 590 - Malleon Stawell and Nankivell v Williams (1930) VLR 410 - Stevens v Keogh (Unreported, Supreme Court of Victoria, McDonald J, 3 December 1996) - Clayton Utz Lawyers v P&W Enterprises Pty Ltd [2011] QDC 5 - Legal Profession Act 2004, s3.4.38 - Supreme Court Act 1986, s 17D - Supreme Court (General Civil Procedure) Rules 2005, r63.42.

Smoel, Kerryn Linda and Wooster, Susan Carolyn (in their capacity as trustees of the Morris Family Superannuation Fund) v Piper Alderman (No 2)

McMillan J

[\[2016\] VSC 237](#)

13/05/2016

Criminal Division

CRIMINAL LAW - Attempt to obtain financial advantage by deception - Application to bank for financial facilities for a group of companies - No case submission - Whether open to jury to conclude that steps taken to obtain finance sufficient to constitute attempt.

Director of Public Prosecutions [DPP] v Iliopoulos, Steve; Bariamis, Bill; Iliopoulos, Peter (Ruling No 4)

Kaye JA

[\[2016\] VSC 133](#)

05/04/2016

CRIMINAL LAW - Bail - Applications for bail unopposed under agreed conditions - Applications allowed.

In the matter of the Bail Act 1977 (Vic)

In the matter of an Application for Bail by Dennaoui, Ali

In the matter of an Application for Bail by Dennaoui, Mohammed

In the matter of an Application for Bail by Fatfat, Mohamad

John Dixon J

[\[2016\] VSC 222](#)

06/05/2016

CRIMINAL LAW - Bail - Multiple violence offences - Show cause situation - Applicant an unacceptable risk - Bail refused.

In the matter of the Bail Act 1977 (Vic) v In the matter of an application for bail by German, Konstantin

Coghlan JA

[\[2016\] VSC 207](#)

31/03/2016

CRIMINAL LAW - Evidence - Trial adjourned through no fault of parties - Application by prosecution to take evidence before trial from witness with pre-arranged travel plans - Application opposed - Interests of justice - Discretionary considerations - Criminal Procedure Act 2009 (Vic) s198, 232.

Director of Public Prosecutions [DPP] v Byrne, Dwayne Michael

John Dixon J

[\[2016\] VSC 216](#) (revised 6 May 2016)

04/05/2016

CRIMINAL LAW - Evidence - Witnesses brought together by police to 'brainstorm/workshop' guilt of accused - Unreliability of evidence of witnesses - Unreliability direction - Evidence Act 2008 (Vic) s165(1).

Director of Public Prosecutions [DPP] v Iliopoulos, Steve; Bariamis, Vasilis; Iliopoulos, Peter (Ruling No 5)

Kaye JA

[\[2016\] VSC 177](#)

05/04/2016

CRIMINAL LAW - Obtaining a financial advantage by deception - Accused alleged to engage in deceptions to obtain bank finance for employer - Admissibility of evidence - Use by accused of employer funded credit card for personal expenditures - Large sums deposited by employer into accused's bank accounts used partly for personal expenditure - Whether relevant to motive - Whether probative value outweighs risk of prejudice - Whether introduction of evidence will result in undue waste of time - Evidence by accountant - Whether opinion - Whether based on expertise - Evidence Act 2008 s78, s79(1), s135, 137.

Director of Public Prosecutions [DPP] v Iliopoulos, Steve; Bariamis, Vasilis; Iliopoulos, Peter (Ruling No 2)

Kaye JA

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

15/02/2016

CRIMINAL LAW - Obtaining financial advantage by deception - Joinder of counts in one indictment - Severance.

Director of Public Prosecutions [DPP] v Iliopoulos, Steve; Bariamis, Vasilis; Iliopoulos, Peter (Ruling No 1)

Kaye JA

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

05/02/2016

CRIMINAL LAW - Obtaining financial advantage by deception - No case submission - Inferences.

Director of Public Prosecutions [DPP] v Iliopoulos, Steve; Bariamis, Bill; Iliopoulos, Peter (Ruling No 3)

Kaye JA

[\[2016\] VSC 132](#)

05/04/2016

CRIMINAL LAW - Sentence - Murder - Plea of guilty - Deceased run over by motor vehicle multiple times - Sentence to 19 years with non-parole period of 15 and a half years - No point of principle.

The Queen v Fogwell, Gavin William

Bongiorno JA

[\[2016\] VSC 220](#)

29/04/2016

CRIMINAL LAW - Sentencing - Causing serious injury intentionally - Prolonged assault on ex-partner - Offended whilst on parole for similar offending - Guilty plea - No genuine remorse - Post-traumatic stress-disorder, pathological jealousy and alcohol abuse - Total effective sentence of 7 years' imprisonment with a non-parole period of 4 years.

Director of Public Prosecutions [DPP] v Kong, Vanna

Hollingworth J

[\[2016\] VSC 154](#)

29/04/2016

CRIMINAL LAW - Evidence - Application by media for release of record of interview - Accused person declined to answer any questions - Accused later pleaded guilty to murder - Application refused - General principles relevant to such an application discussed - No admissible evidence contained in record of interview - No reliance placed on record of interview in trial judge's reasons for sentence - Section 464JB Crimes Act 1958.

The Queen v Reed-Robertson, Caroline

Lasry J

[\[2016\] VSC 236](#)

12/05/2016

CRIMINAL LAW - Sentence - Guilty Plea - Manslaughter - Criminal Negligence - Fail to render assistance at scene of accident - Pedestrian, motorcycle collision - Collision preceded by object being thrown at motorcycle - Intention when victim approached - Charges of possess drug of dependence - Possess prohibited weapon without approval - Remorse and Plea of guilty - Prospects of rehabilitation.

The Queen v Sheen, Mark

Lasry J

[\[2016\] VSC 235](#)

12/05/2016

PUBLIC LAW - Application for detention order - Whether respondent would be unacceptable risk of committing relevant offence if detention order were not made - 'Unacceptable risk' - Section 35(1) threshold test of unacceptable risk - Whether s36(1) assessed against existing circumstances - Respondent incarcerated at time of application - Respondent not currently at unacceptable risk of committing a relevant offence - Detention order not made - Application adjourned to date to be fixed - Serious Sex Offenders (Detention and Supervision) Act 2009 s4, s33, s35, s36.

In the matter of the Serious Sex Offences (Detention and Supervision) Act 2009

In the matter of an Application for a Detention Order

Director of Public Prosecutions [DPP] v AJP [A.J.P] (No 2)

Bongiorno JA

[\[2016\] VSC 198](#)

29/04/2016

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.

BUILDING CONTRACT - Payment claims - Conflicting evidence as to the identity of the parties to the “construction contract” to whom the claims related - Building and Construction Industry Security of Payment Act 2002 (Vic) - *Grave v Blazevic Holdings Pty Ltd* [2010] NSWCA 324 followed.

UBM Plastering Pty Ltd & Anor v. Idevelopment Group Pty Ltd

Judge Anderson

[\[2016\] VCC 458](#)

26/04/2016

BUILDING AND CONTRACT - Payment claim under the Building and Construction Industry Security of Payment Act 2002 (Vic) - Reference date under the contract for a “final claim” - Whether defective or incomplete work meant that the works had not reached completion - Whether construction work the subject of the final claim sufficiently identified.

Landmark Building Services Pty Ltd v. Tsekouras & Ors

Judge Anderson

[\[2016\] VCC 501](#)

02/05/2016

CONTRACT LAW - Whether plaintiff and defendant entered into a binding contract requiring defendant to fund the purchase price paid by plaintiff for a farm. Judgment: Court satisfied plaintiff entitled to call upon defendant to honour his undertaking to finance the totality of the purchase price of the property.

Constantino v Constantino

Judge Saccardo

[\[2016\] VCC 495](#)

29/04/2016

CONTRACT - Claim for outstanding loan payments in respect of franchise arrangement against franchisee/guarantors - Counterclaim for damages for wrongful termination where franchise agreement terminated for non-payment of electricity - whether franchisee liable for electricity - whether termination was otherwise wrongful - whether there was a breach of franchise agreement concerning the car wash at the site in terms of failure to maintain car wash equipment and/or car wash revenue entitlements and/or payment of commission - whether there was statutory unconscionability under section 21 Australian Consumer Law - quantum of plaintiff’s claim

United Petroleum Franchise Pty Ltd v Gold Fuels Pty Ltd

Judge Kennedy

[\[2016\] VCC 292](#)

29/04/2016

LIMITATION OF ACTIONS - Claim for Total and Permanent Disability Benefit under second defendant's Staff Superannuation Plan as prescribed by Superannuation Trust Deed - claim to Trustee of the Plan as a result of psychological condition - date cause of action arose - whether cause of action statute barred pursuant to Limitation Act 1969 (NSW)

Bailey & BT Funds Management Limited & Anor (Ruling)

Judge O'Neill

[\[2016\] VCC 352](#)

07/04/2016

PRACTICE AND PROCEDURE - Application for a stay of the proceeding - Appropriate court to determine the dispute - Policy of insurance entered into in New Zealand - Claim made relating to events occurring primarily in Victoria - Litigation against the insurer pursued pursuant to rights of subrogation or an assignment of rights - Whether "exclusive choice of court agreement" in the insurance policy determinative - Proceeding stayed - Section 20 Trans-Tasman Proceeding Act 2010 (Vic).

Australian Gourmet Pastes Pty Ltd v Endeavour Packaging Pty Ltd & Anor

Judge Anderson

[\[2016\] VCC 455](#)

22/04/2016

PRACTICE AND PROCEDURE - Claim for solicitor's costs - Statute of limitations - Whether cause of action accrued six years after the date of the last work performed as claimed in the bill of costs - Revised bill issued at a later date within the period of six years before the writ was issued - Whether reliance upon the revised bill of costs permitted - Cause of action vesting in trustee upon solicitor's bankruptcy - Whether causes of action relating to the claim for legal costs and a second claim had been assigned to the solicitor by his trustee in bankruptcy.

Sheehan v Dockerty & Ors

Judge Anderson

[\[2016\] VCC 500](#)

06/05/2016

PRACTICE AND PROCEDURE - Jurisdiction of the County Court - Claim by a trustee in bankruptcy for declaration that an interest in real property was held on trust by the defendant for the plaintiff and was therefore "divisible property" pursuant to section 58(1) of the Bankruptcy Act 1966 (Cth) - Whether the County Court had jurisdiction to determine the plaintiff's claim - Whether the Court was exercising "jurisdiction in bankruptcy" - *Jahimowicz v Jacks* [2016] VSCA 42 and *Turner v Gorkowski* [2014] VSCA 248 applied.

Cant v Magallanes

Judge Anderson

[\[2016\] VCC 454](#)

22/04/2016

TESTATOR'S FAMILY MAINTENANCE - Application for summary dismissal - whether plaintiff is an "eligible person" as defined in s90 of the Administration and Probate Act 1958 - relevance of Relationships Act 2008 - plaintiff and deceased separated - plaintiff continued to provide moral and practical support - whether property settlement just and adequate.

Doran v Forde (Ruling)

Judge Misso

[\[2016\] VCC 347](#)

07/04/2016

Articles

Aboriginals

Common law doctrines - Law of arrest - Principles - Claim for damages - Personal injuries - Claim for non-injuries - Absolute torts - Wrongful arrest - False imprisonment - Assault - Queensland Court of Appeal - Bulsey and Lenoy v State of Queensland - Queensland - Australia

Keim, S. "An indigenous person's home is their castle." (2016) 41(1) Alt L J 3-7.

Administrative Law

Freedom of information - Legislation review - CCTV footage - Freedom of Information Act 1982 (Vic) - Victoria - Australia
Keeping up with FOI. (2016) 90(5) LIJ 71.

Judicial power - Legislative power - Common law - South Australia v O'Shea - Australia
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