



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
8 July
2016

Library News

Legal Luminaries and their Books Friday 22 July, 1-2.00pm

The Law Library of Victoria is delighted to welcome three eminent legal professionals to a special event held in the iconic Supreme Court Library, where they will share their tales and passions of books:

- **The Honourable Justice Mark Weinberg**, Supreme Court of Victoria, Court of Appeal.
- **His Honour Judge Frank Gucciardo**, County Court of Victoria.
- **Mr James Merralls**, AM QC, Victorian Bar.

Dr Sue Reynolds, Senior Lecturer at RMIT University will moderate the discussion, which is hosted as part of Melbourne Rare Book Week.

Bookings are required for this free event. For details and to register visit <http://www.lawlibrary.vic.gov.au/events>.

Lyrical Lunchtimes in the Law Library

The Law Library of Victoria and BottledSnail Productions invite you to enjoy a lunchtime classical concert series. Take a seat or simply wander the beautiful library surrounds to enjoy this music.

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

SAVE THE DATE:

- ❖ Thursday 18 August, 1.15pm
- ❖ Thursday 15 September, 1.15pm
- ❖ Thursday 20 October, 1.15pm

SUBSCRIBE TO THE LIBRARY BULLETIN

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

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



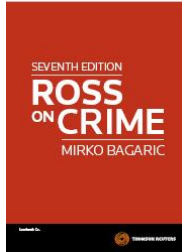
Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone 03 9603 6282 for details.

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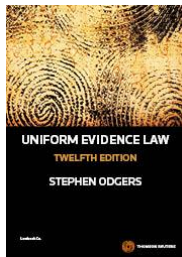
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New Books

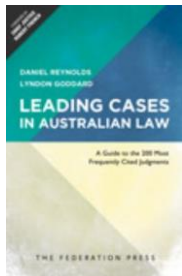
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/



Bagaric, Mirko, *Ross on Crime*
7th ed, Lawbook Co., NSW, 2016
Call number: 345 ROS.7 (County Court and Magistrates' Court Libraries)



Odgers, Stephen, *Uniform Evidence Law*
12th ed, Lawbook Co., NSW, 2016
Call number: 347.06 ODG.12 (County Court, Magistrates' Court, and VCAT Libraries)



Reynolds, Daniel, *Leading cases in Australian law : a guide to the 200 most frequently cited judgments*
The Federation Press, NSW, 2016
Call number: 349.94 REY (Supreme Court Library)



Sappideen, Carolyn, *Macken's law of employment*
8th ed, Thomson Reuters (Professional), 2016
Call number: 344.011 MAC.8 (County Court Library)



Legislation

Victorian Bills

No Victorian Bills received a second reading since the last Library Bulletin.

Victorian Assents

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

- [Appropriation \(2016-2017\) Act 2016 No. 35/2016](#)
- [Appropriation \(Parliament 2016-2017\) Act 2016 No. 36/2016](#)
- [House Contracts Guarantee Repeal Act 2016 No. 37/2016](#)
- [Justice Legislation \(Evidence and Other Acts\) Amendment Act 2016 No. 38/2016](#)
- [Rural Assistance Schemes Act 2016 No. 39/2016](#)
- [State Taxation and Other Acts Amendment Act 2016 No. 40/2016](#)
- [Treasury and Finance Legislation Amendment Act 2016 No. 41/2016](#)

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

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

- *Appropriation (2016-2017) Act 2016* No. 35/2016
 - Sections 1-10 of this Act came into operation on 28 June 2016 (VGG S203 28.06.2016)
- *Consumer Acts and Other Acts Amendment Act 2016* No. 23/2016
 - Sections 30(1), 31 of this Act came into operation on 1 July 2016 (VGG S204 28.6.2016)
- *Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016* No.10/2016
 - Sections 94(1)(a), 99-102, 123-130, 154 of this Act came into operation by forced commencement on 1 July 2016 (VGG S177 07.06.2016)
- *Justice Legislation Further Amendment Act 2016* No. 3/2016
 - Sections 4-6, 8 and 13 of this Act came into operation on 1 July 2016 (VGG S204 28.06.2016)
- *Relationships Amendment Act 2016* No.4/2016
 - Sections 1-5, 7-10 of this Act came into operation on 1 July 2016 (VGG S177 07.06.2016)

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

- *House Contracts Guarantee Repeal Act 2016* No. 37/2016
 - Sections 1-9 of this Act came into operation by forced commencement on 29 June 2016 (s. 2)
- *Rural Assistance Schemes Act 2016* No. 39/2016
 - Sections 1-34 of this Act came into operation by forced commencement on 30 June 2016 (s. 2)
- *State Taxation and Other Acts Amendment Act 2016* No. 40/2016
 - Sections 13, 45-47 deemed 30 June 2014 (s. 2(2))
 - Section 44 deemed 1 July 2015 (s. 2(4))
 - Sections 1, 2, 14-19, 21-31, 48-53 came into operation on 29 June 2016 (s. 2(1))
 - Part 2 (ss 3-10), Part 3 Division 1 (ss 11, 12), Part 7 (ss 32-43) came into operation on 1 July 2016 (s. 2(5))
- *Treasury and Finance Legislation Amendment Act 2016* No. 41/2016
 - Part 2 (Section 3) and Part 3 (Section 4) of this Act came deemed 1 July 2014 (Section 2(2))
 - Sections 1, 2, 5-7 of this Act came into operation by forced commencement on 29 June 2016 (Section 2(1))

Victorian Supreme Court Cases

Court of Appeal

CORPORATIONS - Winding up - Appellant foreign company - Respondents applied to wind up Appellant in Australia - Appellant filed petition for voluntary bankruptcy in United States under Chapter 11 of United States Code after application made for winding up - Supreme Court of Victoria found main centre of Appellant's interests was in Australia - Court refused application to recognise Chapter 11 proceeding under the Model Law (given force in Australia by the Cross-Border Insolvency Act 2008) - Pre-requisites for recognition as foreign main or non-main proceeding not satisfied - Issue whether requirement in s581 Corporations Act 2001 to act in aid of and be auxiliary to foreign court obliged Court to refuse to wind up Appellant - Section 581 requires Court to consider what aid it should properly give - Aid here involved exercise of discretion under s583 Corporations Act as to whether to wind up Appellant - Court to weigh up relevant matters to determine whether winding up order should be made when Chapter 11 proceeding on foot - No error identified - Appeal dismissed - Corporations Act 2001 s581(2), s583; Cross-Border Insolvency Act 2008; Model Law; Hughes & Others v Hannover Ruckversicherungs-Aktiengesellschaft [1997] BCC 921 considered.

Legend International Holdings INC (ARBN 120 855 352) (in liquidation) v Indian Farmers Fertiliser Cooperative Ltd & Kisan International Trading FZE

Whelan JA, Beach JA, and Ferguson JA

[\[2016\] VSCA 151](#)

30/06/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Incest, sexual penetration of child under 16 - Offending against daughters of de facto partner - Resultant pregnancy of 13-year-old victim - Subsequent termination of pregnancy - Total effective sentence 5y 6m, sentence 3y 6m on charge involving pregnancy - Whether manifestly inadequate - Pregnancy as aggravating factor - Current sentencing practice for comparable offending - Need for consistency of sentencing - Sentence lenient but not outside range - Appeal dismissed - Sentencing Act 1991 s5(2)(b) - Crimes Act 1958 s44.

CRIMINAL LAW - Offences - Characterisation - Incest - Sexual penetration an act of violence - Not inherently less serious than rape - Presumption of harm - Clarkson v The Queen (2011) 32 VR 361, discussed - Crimes Act 1958 s44.

SENTENCING - Principles - Current sentencing practice - Incest - Incest involving dependent child - Mid-range seriousness - Whether current sentencing practice reflects objective gravity and moral culpability - Whether current sentencing practice consistent with maximum penalty - Current sentencing inadequate - Need for higher sentences - Hogarth v The Queen (2012) 37 VR 658; Ashdown v The Queen (2011) 37 VR 341; Harrison v The Queen (2015) 74 MVR 58, discussed - Crimes Act 1958 s44.

Director of Public Prosecutions [DPP] v Dalgliesh, Charlie (a Pseudonym)

Maxwell ACJ, Redlich JA, and Beach JA

[\[2016\] VSCA 148](#)

29/06/2016

CRIMINAL LAW - Appeal - Sentence - Statutory murder - Crown appeal - Offender stabbed victim during armed robbery - Offender on parole - Sentence of 20 years' imprisonment - Whether manifestly inadequate - Whether intent relevant - Whether drug intoxication aggravating feature - Prevailing view that statutory murder less serious than common law murder - Cumulation - Whether armed robbery sentence should have been cumulated - Relevance of position adopted by Crown on plea - Current sentencing practices - Sentence reasonably open - Crown appeal dismissed - Crimes Act 1958 s3A.

CRIMINAL LAW - Appeal - Sentence - Statutory murder, armed robbery (3) - Total effective sentence 27 years' imprisonment, non-parole period 23 years - Totality - Whether excessive cumulation of sentences on unrelated armed robberies - Offences committed on parole - Time served prior to release on parole - Whether relevant - No breach of totality principle - Leave to appeal refused - DPP v Oksuz [2015] VSCA 316 applied.

CRIMINAL LAW - Sentencing - Sentencing principles - Assessment of offence gravity - Assessment of offender culpability - Statutory murder - Act of violence causing death - Act committed 'in the course or furtherance' of foundational offence - Prevailing view that statutory murder less serious than common law murder, and offender culpability lower - Established practice of imposing lower sentences - Whether killing must be proved to have been unintentional - Whether intent relevant - Prevailing view erroneous - Current sentencing practice inadequate - Intent relevant to seriousness and culpability - Whether sentence on foundational offence should be cumulated - Current practice not to cumulate - Practice should change - Crimes Act 1958 s3A.

Director of Public Prosecutions [DPP] v Perry, Gavin: Perry, Gavin v The Queen

Maxwell ACJ, Redlich JA, and Whelan JA

[\[2016\] VSCA 152](#)

01/07/2016

CRIMINAL LAW - Crown appeal - Sentence - Murder by husband of wife - Marriage breakdown - Victim asleep in own home - Multiple stab wounds to upper body - Respondent had consumed sleeping tablets containing doxylamine - Effect upon mental state - Adjustment disorder - Post-traumatic stress disorder - No history of violence - Remorse not 'of significant level' - Plea of not guilty - Sentence of 18 years' imprisonment with 14 year non-parole period manifestly inadequate - Re-sentenced to 21 years' imprisonment with non-parole period of 16 years.

Director of Public Prosecutions [DPP] v Browning, Brian Robert

Weinberg JA, Whelan JA, and Kaye JA

[\[2016\] VSCA 153](#), 1st Revision: 5 July 2016: [93]

04/07/2016

CRIMINAL LAW - Customs offence - Customs Act 1901 (Cth) s233BABAD(2) - Applicant convicted on one charge of defraud revenue and one charge of attempt to defraud revenue - Tobacco importation - Applicant freight forwarder alleged member of syndicate - Proof that applicant knew consignments contained tobacco - Proof that applicant knew of intention to defraud revenue - Circumstantial prosecution case - Inferences - Whether certain facts indispensable intermediate facts in prosecution case - Judge's directions to jury - Jury Directions Act 2015 (Vic) s61, s62 - Whether provisions of Victorian Act precluded from application in trial of federal indictable offence by s80 of Constitution (Cth).

SENTENCE - Total effective sentence of 24 months' imprisonment to be released after serving 15 months on recognisance for a period of two years - Whether sentence manifestly excessive.

Young, David William v The Queen

Ashley JA, Whelan JA, and Kaye JA

[\[2016\] VSCA 149](#)

28/06/2016

CRIMINAL LAW - Jurisdiction - Appeal from County Court - Community Correction Order imposed in County Court in disposition of appeal against sentence from Magistrates' Court - Contravention of Community Correction Order - Community Correction Order cancelled - Offender resentenced - Sentencing Act 1991 s83AS(1)(c) - Whether County Court exercising 'original jurisdiction' - County Court exercising 'original jurisdiction' - Right of appeal governed by Criminal Procedure Act 2009 s278.

CRIMINAL LAW - Appeal - Sentence - Contravention of Community Correction Order - Offender resentenced - Trespass x 3 - Total effective sentence 13 months' imprisonment, non-parole period 6 months - Maximum term of imprisonment imposed on one count - Whether excessive cumulation of sentences on unrelated trespass - Principle of totality breached - Sentence manifestly excessive - Appeal allowed - Resentenced to 6 months' imprisonment.

Nicholls, Michael v The Queen

Weinberg JA and Whelan JA

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

23/06/2016

CRIMINAL LAW - Statutory interpretation - Case stated - Drug importation - Border controlled drug - Drug analogue - Methylone - Whether analogue of methcathinone - Provision contains scientific terms - Whether 'addition' used in technical or ordinary sense - Ordinary English word - Presumption that ordinary meaning intended - Presumption not rebutted by context - Whether subsequent amendment affects interpretation - Criminal Code Act 1995 (Cth) s314.4, Criminal Procedure Act 2009 s302, s305-s306.

CRIMINAL LAW - Practice and procedure - Case stated - Questions reserved - Judge made findings of fact - Evidence also included in stated case - Appeal court consideration limited to facts as found - Evidence erroneously included - Criminal Procedure Act 2009 s302, s305-s306.

WORDS AND PHRASES - 'addition', 'by the addition of', 'chemical derivative'

The Queen v AL [A.L.] (a Pseudonym)

Maxwell P, Weinberg JA, and Kyrou JA

[\[2016\] VSCA 156](#)

07/07/2016

PRACTICE AND PROCEDURE - Costs - Indemnity costs - Offer to compromise appeal proceeding - Whether offer unclear - Whether refusal of offer unreasonable - Offeree's prospects of success at time of offer - Extent of compromise offered - Indemnity costs ordered - Supreme Court (General Civil Procedure) Rules 2005 r26.12.

Marriner, David Wellesley & Ors (According to the attached Schedule) v Australian Super Developments P/L (No 2)

Tate JA, Kyrou JA, and Ferguson JA

[\[2016\] VSCA 150](#)

29/06/2016

PRACTICE AND PROCEDURE - Criminal proceeding - Interlocutory appeal - Application to review judge's refusal to certify pursuant to Criminal Procedure Act 2009, s296 - Application referred by Registrar to Court for dismissal under rule 2.13(1)(b) of the Supreme Court (Criminal Procedure) Rules 2008 - Application manifestly hopeless - Application dismissed.

Bryant, Aaron (a Pseudonym) v The Queen

Redlich JA and Priest JA

[\[2016\] VSCA 147](#)

10/06/2016

PRACTICE AND PROCEDURE - Procedural orders and directions made by Judicial Registrar pursuant to r64.42(1) of the Supreme Court (General Civil Procedure) Rules 2015 - Application made under r64.42(8) to set aside orders and directions - Application refused.

Giza, Richard v Waybecca P/L

Kyrou JA

[\[2016\] VSCA 155](#)

05/07/2016

Commercial Court

CORPORATIONS - Corporations Act 2001 (Cth) - Application to set aside statutory demand pursuant to s459G of Corporations Act 2001 (Cth) by reason of alleged dispute and offsetting claims - alleged dispute and offsetting claims found not to be genuine - proceeding dismissed.

In the matter of Brandon Industries (Vic) P/L (ACN 074 414 074): Brandon Industries (Vic) P/L (ACN 074 414 074) v V Locker P/L (ACN 159 347 912)

Gardiner AsJ

[\[2016\] VSC 373](#)

01/07/2016

ROADS - Laneway - Where laneway abuts the plaintiffs' land - Where plaintiffs' land serviced by an easement of carriageway over laneway - Where defendants treat the laneway as a public road - Whether laneway is a road or a public highway within the meaning of the common law - Whether the laneway is a road within the meaning of the Local Government Act 1989 or the Road Management Act 2004 - Whether laneway is used by the public 'as of right' - Permanent Trustee Company of New South Wales Limited v Campbelltown Municipal Council (1960) 105 CLR 401 - R v Oxfordshire County Council; Ex parte Sunningwell Parish Council [2000] 1 AC 335 - Local Government Act 1989, s3, Division 2 of Part 9 - Road Management Act 2004, s3, s8, s9, s11, s17, s37, cl14 of Schedule 5.

Anderson, John Raymond & Anderson, Demitra v City of Stonnington & Victorian Rail Track

McMillan J

[\[2016\] VSC 374](#)

01/07/2016

Common Law Division

ADMINISTRATIVE LAW - Judicial review - Procedural fairness - Diagnosis that could not reasonably be anticipated - Panel's reasons for opinion quashed - Medical questions remitted for reconsideration by fresh panel - Supreme Court (General Civil Procedure) Rules 2015, O 56; Workplace Injury Rehabilitation and Compensation Act 2013, s274(1)(b).

Sargent, Gary Craig v Disler, Peter (Professor) & Ors (According to the attached Schedule)

McDonald J

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

24/06/2016

JUDICIAL REVIEW - Medical Panel opinion and reasons - Certiorari - Supreme Court (General Civil Procedure) Rules 2015, O 56 - Jurisdictional error - Procedural fairness - Opinion quashed.

Mackinlay, Peter v Corlett, Russell & Ors (according to the attached schedule)

J Forrest J

[\[2016\] VSC 376](#)

07/07/2016

NEGLIGENCE - Duty of care - Motor vehicle accident caused solely by negligence of defendant, son of the plaintiff - Duty to avoid injury to oneself - Psychiatric injury of mother after learning of son's death - Loss and damage - Whether duty of care owed by son to mother - Immediate victim and secondary victim - Whether sufficient proximity between accident and psychiatric reaction of plaintiff - Section 93 Transport Accident Act 1986 - Kuhl v Zurich Financial Services Australia Ltd, Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288, King v Philcox and formulation of the duty of care - Dulieu v White & Sons - Mount Isa Mines Ltd v Pusey, Jaensch v Coffey, Annetts v Australian Stations Pty Ltd, Gifford v Strang Patrick Stevedoring Pty Ltd and claims for psychiatric injuries involving immediate and secondary victims.

PROCEDURE - Pleadings - Application to strike out statement of claim - Whether facts alleged in statement of claim sufficient to found duty of care.

Homsj, Iman (by her Litigation Guardian Salimeh Adams) v The Estate of Mahmoud Homsj

J Forrest J

[\[2016\] VSC 354](#)

28/06/2016

PRACTICE AND PROCEDURE - Application for a separate trial of a question - Supreme Court (General Civil Procedure) Rules 2015, r47.04.

Frilay, Vincent Gerard (by Noel Gregory Thomas as his administrator appointed under section 43 of the Guardianship and Administration Act 1986) v Walsh, Jillian Joy & Walsh, Allan Frederick

McMillan J

[\[2016\] VSC 368](#)

27/06/2016

PRACTICE AND PROCEDURE - Pleadings - Group proceedings - Christmas Island Detention Centre - Application by the plaintiff to amend Statement of Claim - Decision of the Minister for Immigration and Border Protection - Whether a pleading in respect of a migration decision made in accordance with the Migration Act 1958 (Cth) can be maintained in the action - Statutory duty - Migration Act 1958 (Cth) s5, s474 and s484 - Rule 23.01 Supreme Court Rules - Strike out of statement of claim, or parts of it.

AS [A.S.] (by her litigation guardian Marie Theresa Arthur) v Minister for Immigration and Border Protection & Commonwealth of Australia & International Health and Medical Services P/L & Serco Australia P/L (Ruling No 4)

J Forrest J

[\[2016\] VSC 351](#)

30/06/2016

PRACTICE & PROCEDURE - Extension of orders sought by administrator ad colligenda bona pursuant to liberty to apply - Orders sought to allow sale of deceased property with vacant possession - Re Porteous deceased [1949] VLR 383 - Dowdle v Hillier (1949) 66 WN (NSW) 155.

Kempson, Peter Ruston (as administrator of the estate of Genevieve Davison) v Davison, Marc Dominic

McMillan J

[\[2016\] VSC 366](#)

27/06/2016

PROPERTY LAW - Restrictive covenant - Principles of construction - Not to erect any dwelling house other than one having walls of brick or stone - Not to be more than one storey in height - Determination of preliminary question - Does the building that is being constructed on the defendant's property breach the covenant - No breach established - Jacobs v Greig [1956] VLR 597; Ferella v Otvosi (2005) 64 NSWLR 101; Westfield Management Limited v Perpetual Trustee Company Limited (2007) 233 CLR 528; Big River Paradise Ltd v Congreve [2008] NZCA 78; Phoenix Commercial Enterprises Pty Ltd v City of Canada Bay Council [2010] NSWCA 64; Prowse v Johnston & Ors [2012] VSC 4.

Clare, Rusell Maynard & Ors (according to the Schedule attached) v Bedelis, Eva

Derham AsJ

[\[2016\] VSC 381](#)

07/07/2016

Costs Court

COSTS - Legal practitioner's bills - Review of bills - Discretionary considerations - Whether just and fair to extend time to review bills - Legal Profession Act 2004 s3.4.38(6).

Androvitsaneas, John v Tartaglia & Associates (A Firm)

Ginnane J

[\[2016\] VSC 361](#)

24/06/2016

Criminal Division

COURTS AND JUDGES - Open justice - Application for suppression order - Criminal proceedings - Bail application - Risk of interference with witnesses - Whether publication might exacerbate risk - Public interest in scrutiny of decisions - Need for fair and balanced reporting - Suppression order made - Open Courts Act 2013 s10-s14, s17-s19.

In the matter of the Bail Act 1977: In the matter of an Application by Williams, Joshua (a Pseudonym) (No 2)

Maxwell ACJ

[\[2016\] VSC 364](#)

24/06/2016

CRIMINAL LAW - Application for bail - Aggravated burglary - Intentionally cause injury - Assault with a weapon - Theft of motor vehicle - Offences committed while on bail - Show cause position - Child accused - No prior convictions - Bail refused.

In the matter of the Bail Act 1977: In the matter of an application for bail by EA [E.A.]

T Forrest J

[\[2016\] VSC 378](#)

01/07/2016

CRIMINAL LAW - Application for bail - Counts of theft of motor vehicle, theft, aggravated burglary, arson, assault police, resist arrest, reckless conduct endanger serious injury and other offences - Applicant seventeen years of age at the time of the offending - Applicant in show cause position - Extensive recent criminal history including breach of bail and parole conditions - Strong causal connection between offending and methylamphetamine abuse - Bail refused.

BH [B.H.] v The Queen

Keogh J

[\[2016\] VSC 369](#)

28/06/2016

CRIMINAL LAW - Attempted murder - No case submission - Circumstantial evidence - Whether intention to kill can be inferred - Criminal Procedure Act 2009 (Vic) s226(a).

Director of Public Prosecutions [DPP] v Byrne, Dwayne Michael No. 3

John Dixon J

[\[2016\] VSC 346](#)

15/06/2016

CRIMINAL LAW - Bail - Attempting to pervert the course of justice - Offence committed whilst on bail for serious drug offence - Applicant required to 'show cause' why detention not justified - Whether unacceptable risk - Bail granted - Bail Act 1977 s4(2)(d)(i), s4(4)(a). *In the matter of the Bail Act 1977: In the matter of an Application for Bail by Comeadow, Renee Sue*

Priest JA

[\[2016\] VSC 379](#)

05/07/2016

CRIMINAL LAW - Murder - Deceased allegedly pushed off balcony and fell to his death - Fitness to be tried - Each accused (and deceased) deaf - Two accused also intellectually disabled - One accused also of borderline intelligence and autistic - Each accused found by (separate) jury to be unfit to stand trial - Whether unfitness temporary or permanent - Each accused unlikely to become fit within next 12 months - Special hearing to be held - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), s6, s9(1), s11(4)(a) & s12(5). *The Queen v Fairest, Jake (Rulings - Fitness to be tried): The Queen v Fields, Georgia: The Queen v Toohey, Warwick*

Croucher J

[\[2016\] VSC 329](#)

01/07/2016

CRIMINAL LAW - Murder trial - Return of subpoena issued by DPP to psychologist to produce file note referred to in psychological report on accused - Report commissioned by accused's solicitor and served on DPP - File note contains instructions of accused - Accused objects to disclosure of file note to DPP - Whether file note must be produced pursuant to Practice Note No. 2 of 2014: Expert Evidence in Criminal Trials - Whether any client legal privilege over file note waived - Evidence Act 2008 (Vic), s117, s118, s119 & s122 & s131A - Criminal Procedure Act 2009 (Vic), s189.

The Queen v Sawyer-Thompson, Bonnie Kate (Ruling No 1)

Croucher J

[\[2016\] VSC 316](#)

23/05/2016

EVIDENCE - Admissibility - Picture identification evidence - Historical picture used in photoboard - Whether accused in police custody - Whether no significant change in the accused's appearance - Evidence Act 2008 (Vic) s115, Corrections Act 1986 (Vic) s6A, 6D.

Director of Public Prosecutions [DPP] v Byrne, Dwayne Michael No. 2

John Dixon J

[\[2016\] VSC 345](#)

08/06/2016

Practice Court

PRACTICE AND PROCEDURE - Application for leave to inspect a divorce file pursuant to r28.04(2)(b) of the Supreme Court (General Civil Procedure) Rules 2015.

In the matter of Proceeding No. 1315 of 1953: In the matter of an Application pursuant to r 28.05(2)(b) of the Supreme Court (General Civil Procedure) Rules 2015

T Forrest J

[\[2016\] VSC 367](#)

27/06/2016

PRACTICE AND PROCEDURE - Inherent jurisdiction - Court's control of its processes in aid of the administration of justice - Restraining solicitors from acting - Applicant seeking injunction preventing opponent's solicitors from continuing to act - Relevant considerations - Kallinicos & anor v Hunt and ors (2005) 64 NSWLR 561, Grimwade v Meagher and ors [1995] 1 VR 446, Director of Public Prosecutions for Western Australia v Bennett & Co (2005) 151 A Crim R 516 followed - Circumstances of case not exceptional - No 'real and sensible' risk identified - Potential for prejudice to defendant substantial - Application dismissed.

Just Group Ltd (ACN 096 911 410) v Peck, Nicole

Keogh J

[\[2016\] VSC 375](#)

01/07/2016

PRACTICE AND PROCEDURE - Unrepresented litigant - Refusal by Prothonotary to seal a document as originating process - Proposed plaintiff seeking direction to Prothonotary to seal - Documents irregular in form - Application for a direction under r27.06(3) of the Supreme Court (General Civil Procedure) Rules 2015.

In a proposed proceeding - In the matter of an application by Selim Cokyavuz for a direction under r27.06(3) of the Supreme Court (General Civil Procedure) Rules 2015: Cokyavuz, Selim & Ors v Trush, Igor & Ors

T Forrest J

[\[2016\] VSC 370](#)

28/06/2016

PRACTICE AND PROCEDURE - Unrepresented litigant - Refusal by Prothonotary to seal a document as originating process - Proposed plaintiff seeking direction to Prothonotary to seal - Application for a direction under r27.06(3) of the Supreme Court (General Civil Procedure) Rules 2015.

In a proposed proceeding - In the matter of an application by Milan Tomasevic for a direction under r27.06(3) of the Supreme Court (General Civil Procedure) Rules 2015: Tomasevic, Milan v Tovey, Deanne & Ors

T Forrest J

[\[2016\] VSC 372](#)

29/06/2016

PROPERTY LAW - Application to remove caveat - Bankruptcy proceeding - Prima facie case not disputed - Balance of convenience in favour of the plaintiff - Caveat removed - Transfer of Land Act 1958 s89, s89A.

Sellers, Kenneth & Ruhe, Alice as trustees of the bankrupt estate of Stephen Terrence Dewar v Michael Faltermaier Lawyers

T Forrest J

[\[2016\] VSC 341](#)

16/06/2016

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.

CONTRACT - Sale of Land; Contracts for sale “off the plan” secured by cash deposits and bank guarantees; section 32 Statements provided with proposed plan of subdivision containing special conditions; apartments ultimately constructed according to later version of the plan; variations to subject lots; purported rescission by purchasers/defendants; claim for return of deposit plus interest and damages; operation of s9AC *Sale of Land Act*; whether variations materially affected the land; objective test; further breaches of special conditions claimed by purchasers; declaration sought by plaintiff/vendor to have rescinded; claim for retention of deposit and damages; apartments subsequently sold.

Ausgrand Pty Ltd v Stephanie Michele Freeland-Small & Anor

Judge Macnamara

[\[2016\] VCC 942](#)

1 July 2016

Articles

Aboriginal Law

Sui generis legislation - Protection - Indigenous knowledge - Indigenous culture - Legal history - International obligations - Australia

Stoianoff, N. and A. Roy. "Indigenous knowledge and culture in Australia - the case for sui generis legislation." (2015) 41(3) Mon U L R 745-784.

Constitutional Law

Constitutional amendment - Recognition - Local Government - Referendum - Proposal - Constitution, 1901 (Cth) ss 96,128 - Australia
Brown, A. and P. Kildea. "The referendum that wasn't: constitutional recognition of local government and the Australian federal reform dilemma." (2016) 44(1) Fed L Rev 143-166.

Constitutional reform - Devolution of legislative power - English votes - Recall of Members of Parliament - Scotland - England - UK

Twomey, A. "Recent constitutional reforms in the United Kingdom." (2016) 90(4) ALJ 223-226.

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