



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
19 August  
2016

## Library News

### Lyrical Lunchtimes in the Law Library

The Law Library of Victoria and BottledSnail Productions welcome you to enjoy the lunchtime classical concert series.

Take a seat or simply wander the beautiful Library surrounds to enjoy this music. All are welcome, entry is free and there is no need to register.

### Future Dates - Lyrical Lunchtimes in the Law Library

- 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 [lv@courts.vic.gov.au](mailto: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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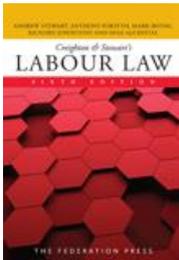
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## New Books

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

No image  
available

Gray, Anthony, *Criminal Due Process and Chapter III of the Australian Constitution*  
Federation Press, NSW, 2016  
Call number: 347.9407 GRA (Supreme Court Library)



Stewart, Andrew, et al. *Creighton & Stewart's Labour Law*  
6<sup>th</sup> ed, Federation Press, NSW, 2016  
Call number: 344.01 CRE.6 (Supreme Court Library)

No image  
available

Seymour, John, *Children, Parents and the Courts: Legal Intervention in Family Life*  
Federation Press, NSW, 2016  
Call number: 346.017 SEY (Supreme Court Library)

# Legislation

## Victorian Bills

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

- [Crimes Amendment \(Carjacking\) Bill 2016](#)
- [Local Government Amendment Bill 2016](#)
- [Melbourne and Olympic Parks Amendment Bill 2016](#)
- [National Domestic Violence Order Scheme Bill 2016](#)
- [Police and Justice Legislation Amendment \(Miscellaneous\) Bill 2016](#)

## Victorian Assents

No Victorian Acts were assented to since the last Library Bulletin.

## Proclamations

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



## 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

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# High Court Cases

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

# Victorian Supreme Court Cases

## Court of Appeal

ACCIDENT COMPENSATION - Appeal from refusal of application for leave to commence proceedings to recover pecuniary loss damages - Factual issues raised below regarding 'suitable employment' and permanency of loss of earning capacity - Whether reasons of primary judge adequate - Reasons not adequate - Leave to appeal granted and appeal allowed - Remitted to County Court - Accident Compensation Act 1985 s5, s134AB(16)(b), s134AB(19), s134AB(37), s134AB(38)(b), s134AB(38)(c), s134AB(38)(e), s134AB(38)(f), s134AB(38)(g)

***Harris, Brian v DJD Earthmoving P/L***

Warren CJ and Cavanough AJA

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

08/08/2016

ACCIDENT COMPENSATION - Workplace accident - Serious injury application - Lumbar spine injury - Initial injury organically based - Development of non-organic features - Disentangling physical causes of impairment from psychological causes of impairment - Application relying upon paragraph (a) of definition of 'serious injury' - Whether judge considered applicant's alternative paragraph (a) case - Applicant's alternative paragraph (a) case not duly addressed - Leave to appeal granted - Appeal allowed - Application under paragraph (a) of definition of serious injury remitted for rehearing and determination - Accident Compensation Act 1985, s134AB.

ACCIDENT COMPENSATION - Workplace accident - Serious injury application - Mental or behavioural disturbance or disorder - Whether permanent severe mental or permanent severe behavioural disturbance or disorder established - Application relying on paragraph (c) of definition of 'serious injury' if application under paragraph (a) not accepted - Judge rejected applicant's alternative paragraph (c) case - No error in judge's rejection of applicant's alternative paragraph (c) case - Accident Compensation Act 1985, s134AB.

***Zhang, Fang Mei v Joy Foods Australia P/L***

Redlich JA, Beach JA, and Cavanough AJA

[\[2016\] VSCA 199](#)

12/08/2016

COSTS - Appeal allowed in relation to the sequence in which applications for exclusion from orders restraining property and applications for forfeiture of that property should be heard and determined under the Proceeds of Crime Act 2002 (Cth) - Whether successful appellant should be awarded costs of the application for leave to appeal and the appeal where the litigation was a 'test case'

***Commissioner of the Australian Federal Police v Zhang, Heng Jie and Shen, Ying [No 2]***

Tate JA, Priest JA, and Beach JA

[\[2016\] VSCA 191](#)

08/08/2016

CRIMINAL - Appeal - Conviction - Indecent act with child under 16 - Whether verdict unsafe and unsatisfactory - Whether evidence of very young complainant fundamentally contradictory - Whether evidence of older sister undermined in cross-examination - Relevant passage in cross-examination to be assessed as a whole and in light of all the evidence - Conviction reasonably open to jury - Application for leave to appeal refused. CRIMINAL - Appeal - Conviction - Evidence - Cross-examination - Breach of rule in *Browne v Dunn* (1893) 6 R 67 - Failure to put to witnesses account to be given by the applicant - Inability to recall witnesses - Trial judge accepted submission of defence counsel that no direction should be given - No direction given to jury to redress unfairness to prosecution - Jury question - Whether question revealed that issue of 'fairness' had arisen in jurors' minds - Answer given by trial judge agreed upon by counsel - No exception taken by defence counsel - No application to discharge jury - No miscarriage of justice - Leave to appeal granted - Appeal dismissed - *R v SWC* (2007) 175 A Crim R 71 distinguished.

***Mitchell, Gerald v The Queen***

Maxwell P, Whelan JA, and McLeish JA

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

11/08/2016

CRIMINAL LAW - Appeal - Interlocutory appeal - Ruling before trial as to admissibility - Applicant charged with drug and firearm offences - Evidence of previous misconduct - Evidence ruled relevant to applicant's state of mind - Whether leave to appeal should be granted - Whether exclusion of evidence would 'eliminate or substantially weaken the prosecution case' - Relevance and probative value not yet settled pending trial - Leave to appeal refused - Criminal Procedure Act 2009 s295(3)(a), s297 - *ZL v The Queen* (2010) 208 A Crim R 325, applied.

***Russell, Joseph (a pseudonym) v The Queen***

Maxwell P, Whelan JA, and McLeish JA

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

11/08/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Rape (9), threat to kill (2), threat to inflict serious injury, theft, intentionally causing serious injury, possess drug of dependence (2) - Sentence of 17 years' imprisonment, non-parole period of 13 years - Individual rape sentences of eight years - Whether sentence manifestly inadequate - Objective gravity of offending - Sustained, violent, worst category offending - Severe impact on victim - Offender affected by methylamphetamine - Whether psychological difficulties contributed - Fresh evidence on resentencing - Appeal allowed - Respondent resentenced to 23 years' imprisonment with non-parole period of 17 years - Sentencing Act 1991 s6B, s6D, s6E.

***Director of Public Prosecutions v Granata, Alifo Anthony***

Maxwell P, Redlich JA, and Osborn JA

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

08/08/2016

CRIMINAL LAW - Appeal - Sentence - Cultivation of commercial quantity of narcotic plant (cannabis) - Theft of electricity - Trafficking in drug of dependence - Total effective sentence 3y 6m, sentence 2y 6m on charge of cultivation of commercial quantity of cannabis - Whether manifestly excessive - Evidence indicating offender's role akin to that of principal - No attempt by offender to contest characterisation of role - Current sentencing practice for comparable offending - Need for consistency in sentencing crop sitters and principals - Sentence not outside range - Appeal dismissed - Drugs, Poisons & Controlled Substances Act 1981 s72A.

CRIMINAL LAW - Mitigating factors - Risk of deportation - Illegal resident - Expired visa at time of sentence - Difficulty drawing comparison to cases involving offender with existing visa - No error in not taking risk of deportation into account - *Guden v The Queen* (2010) 28 VR 288; *Da Costa Junior v The Queen* (2016) 74 MVR 489; *Konamala v The Queen* [2016] VSCA 48; *Schneider v The Queen* [2016] VSCA 76, discussed - Migration Act 1958 (Cth) s41, s501, s501CA.

SENTENCING - Principles - Current sentencing practice ('CSP') - Consistency in sentencing - Jurisdiction of appellate court to correct CSP - Not limited to where determinative of appeal - Not limited to Crown appeal - Role of CSP in providing yardstick for range of sentences - Fairness as a matter of judicial discretion in not re-sentencing prisoner according to proposed increase in sentences - CSP for cultivation of commercial quantity of narcotic plant - Sentences in upper category of seriousness unduly low - Compressed range of sentences for mid-range offending - Current sentencing inadequate - Need for higher sentences for mid-range offending - *Hogarth v The Queen* (2012) 37 VR 658; *Ashdown v The Queen* (2011) 37 VR 341; *Harrison v The Queen* (2015) 74 MVR 58; *Winch v The Queen* (2010) 27 VR 658; *DPP v Werry* (2012) 37 VR 524; *Poyner v The Queen* (1986) 66 ALR 264; *R v Pidoto* (2006) 14 VR 269, *Nguyen v The Queen* [2010] VSCA 127, discussed.

CONSTITUTIONAL LAW - 'Matter' as federal requirement for jurisdiction - Limitation of 'matter' not applicable to State courts - *DPP v Werry* (2012) 37 VR 524, discussed - Australian Constitution.

***Nguyen, Nam Son v The Queen***

Redlich JA, Tate JA, and Whelan JA

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

11/08/2016

CRIMINAL LAW - Appeal - Sentence - Respondent pleaded guilty to trafficking in cocaine - Sentenced to 3-year community correction order requiring 150 hours of unpaid community work, supervision, drug and mental health assessment and treatment, and residential drug rehabilitation - Whether sentence manifestly inadequate - Compelling evidence of rehabilitation - Sentence lenient but within range - Appeal dismissed.

***Director of Public Prosecutions v Apostolopoulos, Panayiotis***

Weinberg JA, Beach JA, and McLeish JA

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

17/08/2016

CRIMINAL LAW - Conviction - Application for leave to appeal - Applicant convicted of one charge of persistent sexual abuse of a child under the age of 16 - Whether verdict unreasonable or could not be supported having regard to the evidence - Whether verdict unsafe or unsatisfactory - Reasonably open to jury to have been satisfied beyond reasonable doubt of applicant's guilt - Application for leave to appeal against conviction refused.

***Badem, Nesim (a pseudonym) v The Queen***

Warren CJ, Weinberg JA, and Priest JA

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

17/08/2016

CRIMINAL LAW - Interlocutory appeal - Pending trial for a sexual offence - DNA evidence - Whether probative value of evidence outweighed by risk of unfair prejudice - Evidence ruled inadmissible - Judge's refusal to certify under s295(3) of the Criminal Procedure Act 2009 - No error in judge's refusal to certify.

***Director of Public Prosecutions v Wise, Dan (a pseudonym)***

Warren CJ, Weinberg JA, and Priest JA

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

21/07/2016

CRIMINAL LAW - Sentence - Stalking, recklessly causing injury, aggravated burglary, indecent assault (2 charges), rape, and breaching intervention order (2 charges) - Sentenced to total effective sentence of 7 years and 6 months with non-parole period of 5 years - New evidence - Application for an extension of time within which to seek leave to appeal against sentence - Application for extension of time based on new evidence about applicant's psychiatric condition - New material not sufficiently compelling to demonstrate miscarriage of justice if applicant not permitted to rely upon it - No reasonable prospect that Court of Appeal would impose less severe sentence in any event - Application for extension of time refused.

***Burns, Glen (a pseudonym) v The Queen***

Whelan JA and Beach JA

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

11/08/2016

NEGLIGENCE - Appeal - Application for leave to appeal - Applicant employed by respondent as security officer at airport - Alleged negligence against employer in respect of three separate incidents - Trial judge not satisfied incidents occurred as claimed by applicant - Not satisfied any breach of duty of care by respondent - Refusal by trial judge of application for adjournment - Failure by respondent to call particular witness - Whether explanation by respondent for absence of witness contradicted - Whether relevant documents not available to applicant - Whether trial judge's factual findings supported by evidence - Whether credibility findings by judge consistent - Application for leave to appeal dismissed.

***Taseska, Silvana v MSS Security P/L***

Weinberg JA, Hansen JA, and Kaye JA

[\[2016\] VSCA 193](#) First Revision: 12 August 2016

12/08/2016

NEGLIGENCE - Workplace injury - Contribution between defendants - Worker's foot caught by a hazard created by an unguarded handrail at a swimming pool following a fall - Employer of injured worker and owner of the premises both found to be negligent at trial - Employer also operator and manager of the premises under contract with the owner - Contribution between defendants determined to be equal in remitted trial - Whether judge erred in not being able to determine the cause of the worker's fall - Whether judge erred in not finding the employer had a greater liability to contribute - Whether test in *Podrebersek v Australia Iron & Steel Pty Ltd* (1985) 59 ALR 529 properly applied - Whether delegation of duty by owner to operator and manager - Whether concurrent obligations on defendants for the safety and maintenance of the premises including the identification and remediation of hazards with respect to the state of the premises - Whether judge erred in not taking adequate account of reliance by the owner on the operator's expertise - Whether judge took account of all the evidence - Leave to appeal granted - Appeal dismissed.

COSTS - Whether judge erred in refusing to award indemnity costs as a result of rejection of a Calderbank letter and an Offer to Contribute - Whether rejection of the offers reasonable in all the circumstances at the time - Whether judge erred in finding offers premature - Leave to appeal refused.

***Nillumbik Shire Council v Victorian YMCA Community Programming P/L; Victorian YMCA Community Programming P/L v Nillumbik Shire Council***

Tate JA, Osborn JA, and Santamaria JA

[\[2016\] VSCA 192](#)

11/08/2016

PRACTICE AND PROCEDURE - Originating Motion - Defendant seeks summary judgment - Summons short-served and plaintiff objected - Return date 'administratively adjourned' by Judge's associate without consent of plaintiff - No application in Trial Division to set aside irregular service or irregular adjournment - Summons heard by Associate Judge - Plaintiff did not appear - Proceeding dismissed - Appeal to Judge dismissed - Application for leave to appeal alleging the summons and order for adjournment nullities and seeking setting aside of orders - Prejudice - Supreme Court (General Civil Procedure) Rules 2015, rules 2.01(1) and (2), 2.03, 22.18(4), 46.06(2).

JUDICIAL REVIEW - Originating Motion - Application for leave to appeal - Self-represented Plaintiff - To set aside summary changes proven in Magistrates' Court - In part seeking to contest findings - Desiring to recover damages but not claimed in the originating motion - Supreme Court (General Civil Procedure) Rules, O 56.

CRIMINAL PROCEDURE - Summary offences - Time of commencement of proceeding - Whether within 12 months after offence - Whether charges were issued by Registrar of Magistrates' Court - Criminal Procedure Act 2009, s6, s7, s12, s13 and s399 - Magistrates' Court Criminal Procedure Rules 2009, rules 8(1) and (2), and 10.

***Djime, Hamadou v Le, Matthew***

Weinberg JA, Hansen JA, and Kaye JA

[\[2016\] VSCA 202](#)

19/08/2016

TAXES AND DUTIES - Imposition of duty on registration of vehicles - Applicant unsuccessfully claimed vehicles exempt because sole or primary purpose of registration was for sale of vehicles and/or use as demonstrator vehicles - Commissioner's determination confirmed by Victorian Civil and Administrative Tribunal - Appeal on question of law - Vehicles part of fleet of courtesy vehicles provided to customers while their own vehicle was serviced - Courtesy vehicles were part of applicant's sales strategy - Vehicles ultimately sold - Applicant's primary purpose in registering vehicles was for provision of alternative transport for service customers not for their sale or use as demonstrator vehicles - Purpose to be determined by reference to objective facts and subjective intention - Leave to appeal granted - Appeal dismissed - Duties Act 2000 s231(2)

***Mercedes-Benz Australia/Pacific P/L v Commissioner of State Revenue***

Tate JA, Beach JA, and Ferguson JA

[\[2016\] VSCA 194](#)

11/08/2016

## Commercial Court

CORPORATIONS - Application to set aside a statutory demand by reason of alleged genuine dispute pursuant to s459G and 'for some other reason' pursuant to s459J(1)(b) of the Corporations Act 2001 (Cth) - Related companies carried on farming business which conducted running account between them whereby one company paid expenses on behalf of the other which were brought to account in the annual financial statements of the two companies - Structure set up for tax minimisation purposes, asset protection and management of cash flow - Plaintiff contended that entries in accounts were only book entries and were not intended to reflect creation of a real liability - Amount demanded appeared as current liability in draft accounts for company - Accounts for previous years signed by director of both companies identified the liability as a current liability in plaintiff's financial records and in current assets in defendants financial statements - Finding that no genuine dispute as to debt demanded nor was there 'some other reason' why the demand should be set aside.

***In the matter of Wild Juice P/L (ACN 084 725 539) between Wild Juice P/L (ACN 084 725 539) v GW & R Mould P/L (ACN 004 606 686)***

Gardiner AsJ

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

05/08/2016

CORPORATIONS - External administration - Application by liquidators of responsible entity of managed investment scheme for remuneration - Further application - Whether liquidators entitled to be reimbursed for costs and remuneration incurred in defending legal proceedings commenced against them personally.

***In the matter of Traditional Values Management Ltd (in liquidation) (ACN 055 106 100) Handberg, Geoffrey Niels and Morgan, Brent Leigh (in their capacity as joint and several Liquidators of Traditional Values Management Limited (in liquidation) (ACN 055 106 100)) v Traditional Values Management (in liquidation) (ACN 055 106 100) (No 3)***

Gardiner AsJ

[\[2016\] VSC 475](#)

12/08/2016

INTERLOCUTORY INJUNCTION - Injunction refused - No triable issue - No irreparable harm - Balance of convenience does not favour grant of injunction - Orders made to protect the position of third party students pending hearing and determination of the trial or further order.

CONTRACT - Offer stipulated method by which the offer could be accepted by the conduct of the offeree - Test to determine assent objective - Assent to an offer resulting in a binding contract may be inferred from the context - Conduct of offeree explicable by its contractual obligations to third parties - No assent resulting in a binding contract.

***Australian Institute (Vic & Tas) P/L (ACN 092 728 937) v Australian Institute of Fitness (NSW) P/L & Ors (According to the Schedule)***

Vickery J

[\[2016\] VSC 362](#)

17/06/2016

PRACTICE AND PROCEDURE - Application for declaratory relief - Application for injunctive relief - Whether Contract of Insurance is a contract of insurance in accordance with s93 of the Building Act 1993 (Vic) - Whether Contract of Insurance together with Contract Endorsement is a contract of insurance in accordance with s93 of the Building Act 1993 (Vic) - You v Thomas [2014] VSC 255, considered.

***Colonial Range P/L (ACN 070 855 220) v CES-Queen (Vic) P/L (ACN 153 232 663) and Delta P/L (ACN 007 069 794)***

Digby J

[\[2016\] VSC 494](#)

05/08/2016

PRACTICE AND PROCEDURE - Discovery and inspection - Discovery of documents under r29.08 and r29.09 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) (the 'Rules') - Discovery of documents under s55(1) of the Civil Procedure Act 2010 (Vic) - Whether or not all relevant documents discovered progressively subject to a valid claim for privilege - Management order made for a consolidated affidavit of documents to include the contentious documents be filed and served - Potential for appointment of Special Referee pursuant to O 50 of the Rules - Referee may determine and report on whether or not Plaintiffs have a valid claim for privilege of large number of documents.

***WTE Co-Generation P/L (ACN 142 284 820)***

***Visy Energy P/L (ACN 115 133 321) v RCR Energy P/L (ACN 080 753 680); RCR Tomlinson P/L (ACN 008 898 486) (No 2)***

***RCR Energy P/L (ACN 080 753 680) (Plaintiff by Counterclaim) v WTE Co-Generation P/L (ACN 142 284 820) (First Defendant by Counterclaim) Visy Paper P/L (ACN 005 803 234) (Second Defendant by Counterclaim)***

Vickery J

[\[2016\] VSC 443](#)

05/08/2016

PRACTICE AND PROCEDURE - Discovery and inspection of documents - Client legal privilege - Waiver of privilege - Issue waiver - Inspection of document the subject of claim of privilege - Application equivalent to objection raised to inspection of documents produced on subpoena - Whether privileged communications likely to have affected party's relevant state of mind - Circumstances in which appropriate to inspect privileged communication under the Evidence Act 2008 (Vic) s133 - Evidence Act 2008 (Vic) s122 and s133 - Vic Hotel Pty Ltd v DC Payments Australasia Pty Ltd [2015] VSCA 101; Council of the NSW Bar Association v Archer (2008) 72 NSWLR 236; Mullett v Nixon [2016] VSC 129.

***Patrick Stevedores Operations (No 2) P/L (ACN 056 292 687) v Port of Melbourne Corporation (ACN 195 188 658) (No 2)***

***Port of Melbourne Corporation (ACN 195 188 658) (Plaintiff by Counterclaim) v Patrick Stevedores Operations (No 2) P/L (ACN 056 292 687) (Defendant by Counterclaim)***

Derham AsJ

[\[2016\] VSC 467](#)

09/08/2016

PRACTICE AND PROCEDURE - Originating motion - Application under Order 54 Supreme Court (General Civil Procedure) Rules 2005 - Section 63 of the Trustee Act 1958 - concerning the exercise of trustees' powers to dispose of land the subject of a trust - Summons pursuant to r27.07(a) of the Rules, further or alternatively pursuant to the inherent jurisdiction of the Court - Application to strike out affidavit material as irrelevant and scandalous - Potential relevance of material deposed to an affidavit filed in other proceedings.

***Sweeney, William Joseph & Anor (according to attached Schedule of Parties) v Sweeney, Charles Augustine & Ors (according to attached Schedule of Parties)***

Digby J

[\[2016\] VSC 483](#) First Revision: 16 August 2016

15/08/2016

SUMMARY JUDGMENT - Recovery of land - Application for adjournment refused - Whether necessary to plead and prove that the plaintiff has given notice of default and that the defendant has failed to remedy the default - Commonwealth Bank of Australia v Jackson and anor (1992) V Conv R 54-447 considered - Wren Close Nominees Pty Ltd v McCulloch [2002] VSC 138 and National Australia Bank Ltd v Lawrence [2011] VSC 556 considered - Held that it is necessary to plead and prove these matters where the mortgage requires a notice of default and gives a right to the mortgagor to remedy the default within a certain period - Leave to amend the statement of claim granted - Summary judgment given.

***Credit Union Australia Ltd v Parkhouse, Deborah May***

Lansdowne AsJ

[\[2016\] VSC 462](#)

05/08/2016

## Common Law Division

COSTS - Application for admission of informal codicil to probate - Where further evidentiary requirements of the Court not met - Application referred to Registrar of Probates for grant of will without informal codicil - Plaintiffs sought costs of application to propound informal codicil out of the estate - Whether usual order as to costs should apply - Exceptions to the usual order as to costs in probate litigation - Whether the litigation is the fault of the deceased - Reasonableness of the plaintiff in making the application - No evidence of testamentary intention and other matters - No duty to propound an informal document - Plaintiffs' reasonable professional fees to make inquiries into and investigate the evidence for the application be paid out of the estate otherwise plaintiffs to bear own costs - *Mitchell v Gard* (1863) 3 Sw & Tr 275; (1863) 164 ER 1280 - *Re Hodges* (1988) 14 NSWLR 698

***Norgard, John Alexander Nicholas and Tillyard, Dalton Robin Walter***

McMillan J

[\[2016\] VSC 480](#)

12/08/2016

COSTS - Set-off of costs against judgment - Set-off costs against other award of costs - Senior counsel fees - Self-represented litigant.

SOLICITOR'S LIEN - 'Fruits of judgment' lien - Subsequent application for lien - Equitable principles - Discretion - Accident Compensation Act 1985 (Vic) s134AB(30).

***Taseska, Silvana v MSS Security P/L (Costs Ruling)***

J Forrest J

[\[2016\] VSC 433](#)

18/08/2016

DEFAMATION - Pleadings - Application to strike out amended statement of claim - Application for summary judgment - Imputations - Whether article is capable of conveying meaning relied upon - No reasonable prospect of success in establishing article conveys plaintiff's asserted imputation.

PRACTICE AND PROCEDURE - Summary judgment application - No real prospect of success - Granted - Civil Procedure Act 2010 s62, s63 and s64 - *Barrow v The Herald & Weekly Times Pty Ltd* [2015] VSC 263.

***Pham, Quan v Legal Services Commissioner (ABN 66 489 344 310)***

Keogh J

[\[2016\] VSC 450](#)

05/08/2016

LIMITATION OF ACTIONS - Personal injury - Application to bring claim for common law damages out of time - Substantial delay - Prejudice - Fair trial - Limitation of Actions Act 1958 (Vic) s23A - Application refused.

***Sparkes, Paul Darren v Hylemit P/L***

J Forrest J

[\[2016\] VSC 453](#)

12/08/2016

NEGLIGENCE - Duty of care - Breach of duty - First defendant seeking contribution from second defendant - Whether second defendant, when performing work on first defendant's premises, should have foreseen the risk of, and taken precautions to avoid the possibility of, injury to the plaintiff - Location of electrical wiring on premises would not have been suspected by a qualified electrician acting reasonably - Risk not foreseeable - Claim for contribution dismissed.

***Notman, Carli Louise v Wesfarmers Ltd and Floyd Industries P/L***

Keogh J

[\[2016\] VSC 457](#)

05/08/2016

NEGLIGENCE - Workplace injury - Psychiatric injury - Employee complaints to employer of overwork and stress - Failure to reasonably act on complaints - Interaction between stress and overwork and psychiatric injuries - Reasonable foreseeability - Duty to take reasonable care to avoid any foreseeable risk of psychiatric injury - Scope of employer's duty to prevent psychiatric injury - Breach of common law duty - Koehler v Cerebos (Australia) Ltd (2005) 222 CLR 44 - Taylor v Haileybury ('Taylor') [2013] VSC 58 - Johnson v Box Hill Institute of TAFE [2014] VSC 626 - Lerner v George Weston Foods Ltd [2014] VSCA 62 - Doulis v State of Victoria [2014] VSC 395.

***Roussety, Joseph v Castricum Brothers P/L***

Zammit J

[\[2016\] VSC 466](#)

18/08/2016

PAYMENT OUT FROM FUNDS IN COURT - Competing claims by former husband and wife following payment in by mortgagee of balance proceeds of sale of former matrimonial home - Plaintiff wife the former registered proprietor - Family law orders providing for payment of \$30,000 to wife then transfer of home or balance proceeds after sale to husband - Whether orders created an equitable interest for husband or a mere equity - Held that each party acquired an equitable interest - Priority established by family law orders - Whether there is a factual basis to postpone wife's priority under the orders to the husband's interest - No factual basis established for such postponement - Whether such postponement is possible as a matter of law given the constitutional issues that would arise if the priority established by the family law orders was sought to be disturbed by application in this Court briefly discussed - Family Law Act 1975 (Cth) s79, s79A.

***In the matter of the application by Karayilmaz, Yasemin under section 77 of the Transfer of Land Act 1958 (Vic) and section 69 of the Trustee Act 1958 (Vic): Karayilmaz, Yasemin v Karayilmaz, Uygur***

Lansdowne AsJ

[\[2016\] VSC 463](#)

05/08/2016

PRACTICE AND PROCEDURE - Subpoena - Confidential exhibit - Inspection of document - Doctor and patient - Disclosure of patients' names - Statutory interpretation - Plain and ordinary meaning - Right to privacy - Unlawful or arbitrary interference - Charter of Human Rights and Responsibilities Act 2006 s6, s7, s13, s32 - *Momcilovic v The Queen* (2011) 245 CLR 1; *Slaveski v Smith* (2012) 34 VR 206.

HUMAN RIGHTS - Charter of Human Rights and Responsibilities Act 2006 (Vic) - Applicability - Statutory interpretation - Plain and ordinary meaning - Health information - Information acquired in attending the patient - Information necessary to prescribe or act for patient - Health Records Act 2001 s3(1), s7, s21, Schedule 1 Health Privacy Principles 2.1 and 2.2 - Evidence (Miscellaneous Provisions) Act 1958 s28(2) - *National Mutual Life Association of Australasia Ltd v Godrich* (1909) 10 CLR 1 - *Elliot v Tippet* (2008) 20 VR 195 - *PQ v Australian Red Cross Society* [1992] 1 VR 19.

***Tikiri P/L (trading as Bundoora Family Clinic) v Dr Fung, Siau (Susan)***

Ierodiaconou AsJ

[\[2016\] VSC 460](#) First Revision 15 August 2016

05/08/2016

PRACTICE AND PROCEDURE - Summary judgment - Whether statement of claim fails to disclose a reasonable cause of action and the defect cannot be cured by amendment - Whether proceeding should be dismissed because plaintiff failed to comply with an order to provide further particulars - Plaintiff amended statement of claim rendering particulars otiose - Whether claims in the proceeding are an abuse of process, and/or are frivolous, vexatious and embarrassing, and/or may prejudice and delay the fair trial of the proceeding - Whether further particulars should be ordered - Conspiracy to injure - Breach of fiduciary duty - Knowing receipt and knowing assistance *Barnes v Addy* claims - Claims between parties to failed joint venture - Civil Procedure Act 2010 s63, Supreme Court (General Civil Procedure) Rules 2015 r23.01, r24.02.

***Bridge Bar Investments P/L (ACN 154 906 377) & Anor v Dog at the Bridge P/L (ACN 161 759 959) & Ors (No 2)***

John Dixon J

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

05/08/2016

PROCEEDS OF CRIME - Proceeds of Crime Act 2002 (Cth) s19, s45, s49 - *Lee v DPP* (2008) 217 FLR 200 considered - Application for an order to cease the operation of a restraining order - Whether s45(2) of the Proceeds of Crime Act 2002 (Cth) applied to restraining orders under s19 of that Act - Property-based restraining orders - Suspect-based restraining orders - Subject matter jurisdiction.

***In the matter of the Proceeds of Crime Act 2002 (Cth)***

***In the matter of property suspected of being the proceeds of an indictable offence or an instrument of a serious offence***

***In the matter of applications by the Commissioner of the Australian Federal Police and by Thastahir, Shahul***

T Forrest J

[\[2016\] VSC 468](#)

12/08/2016

SUCCESSION LAW - Family provision - Testator's family maintenance - Whether adequate provision made for the plaintiff's proper maintenance and support by her deceased father - Plaintiff had acted as carer for her ill mother and brother over a number of years at father's request, including contributing financially to their welfare - Plaintiff's current financial situation comfortable - Plaintiff already the beneficiary of funds from her deceased father - Administration and Probate Act 1958 s91 - Blair v Blair (2004) 10 VR 69; Jones (a pseudonym) v Smith (a pseudonym) [2016] VSCA 178 cited - Application dismissed.

***In the matter of Part IV of the Administration and Probate Act 1958 In the matter of the Estate of Ligeti, Sandor George***

***Ligeti, Julia Clara v Ligeti, Maria (who is sued as the Executrix and Trustee of the Estate of Sandor George Ligeti, Deceased)***

Keogh J

[\[2016\] VSC 448](#)

05/08/2016

### Criminal Division

CRIMINAL LAW - Application for bail - Intentionally cause serious injury in circumstances of gross violence - Recklessly cause serious injury in circumstances of gross violence - Intentionally cause serious injury - Recklessly cause serious injury - Robbery - Prima facie entitlement to bail - Accused a New Zealand citizen - Strength of prosecution case - Bail granted with conditions.

***In the matter of the Bail Act 1977 and in the matter of an application for bail by Sefo, Joseph***

T Forrest J

[\[2016\] VSC 459](#)

04/08/2016

CRIMINAL LAW - Sentence - Attempted murder of spouse - Plea of guilty - Lack of prior criminal history - Severe depressive illness - Reasonable prospects of rehabilitation

***Director of Public Prosecutions v Boodhoo, Ramesh***

Jane Dixon J

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

04/08/2016

CRIMINAL LAW - Sentence - Early plea of guilty to manslaughter - Assault on elderly victim in course of burglary - Victim savagely beaten by co-accused and found dead one week later - No active participation in the assault - Attempts made to stop the assault - Severely disadvantaged background - Institutionalisation - Sexual and other abuse as a young child - Prior convictions - Good prospects of rehabilitation - Time in prison particularly onerous - Undertaking to give evidence against co-accused.

***Director of Public Prosecutions v O'Donnell, Daniel Thomas***

Emerton J

[\[2016\] VSC 390](#)

14/07/2016

CRIMINAL LAW - Sentence - Jury verdict - Obtaining financial advantage by deception - Two accuseds - Multiple counts - Large amounts of finance obtained from banks - False accounts presented to bank - Accuseds liable on basis on joint criminal enterprise with principal offender - No prior convictions - Accuseds otherwise of good character.

***Director of Public Prosecutions v Iliopoulos, Steve and Bariamis, Vasilis***

Kaye JA

[\[2016\] VSC 447](#)

09/08/2016

CRIMINAL LAW - Sentence - Manslaughter - Guilty plea - Assault on victim in course of a robbery - Victim elderly and frail - Victim assaulted in his own home - Victim left injured and alone - Prisoner did not participate in the physical assault but orchestrated the assault by another - Long history of substance abuse - Good work history and strong family support - Prospects of rehabilitation fair - Sentenced to nine years' imprisonment with a six year non-parole period.

***Director of Public Prosecutions v Philp, Garren John***

Emerton J

[\[2016\] VSC 486](#)

17/08/2016

CRIMINAL LAW - Sentence - Manslaughter - Guilty plea - Assault on victim in course of a robbery - Victim elderly and frail - Victim assaulted in his own home - Victim left injured and alone - Prisoner significantly younger than co-accused - Good family support and prospects of employment upon release - Longstanding drug abuse - Prior convictions - Prospects of rehabilitation only fair - Sentenced to nine years' imprisonment with a six year non-parole period.

***Director of Public Prosecutions v Brooks, Dean John***

Emerton J

[\[2016\] VSC 485](#)

17/08/2016

## Practice Court

TORT - Defamation - Interim injunction - Whether in aid of final relief - Whether justified by reference to discretionary decisions - Where balance of convenience lies - Whether damages adequate - Application to restrain publication of a report on A Current Affair to permit proposed plaintiffs to negotiate its content - Injunction refused.

***QBH Commercial P/L (ACN 163 992 498) & Anor v Nine Network Australia P/L***

John Dixon J

[\[2016\] VSC 441](#)

29/07/2016

## 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.

DEFAMATION - Limitation of actions - Application for extension of time within which writ may be issued pursuant to s23B of the Limitation of Actions Act 1958 - Whether it was “not reasonable in the circumstances for the plaintiff to have commenced an action ... within one year from the date of publication ...” - Publication concerned allegations about plaintiff’s daughter on news programs, internet video and Facebook page - Failure by solicitor for the plaintiff to issue proceedings within 12 months of publication - Proceedings issued within several days of the 12-month limitation period - attempts by plaintiff and her solicitors to resolve issues in dispute by pre-hearing settlement negotiations - delays and distractions brought about by related and unrelated litigation - Delays by solicitor and counsel - Difficulties encountered by plaintiff’s solicitors in filing writ electronically immediately prior to the 12-month limitation period

***Van Garderen v Channel Seven Melbourne Pty Ltd & Ors (Ruling)***

[\[2016\] VCC 953](#)

Judge O’Neill

08/07/2016

INSUFFICIENT ASSETS IN JURISDICTION - Problematic valuations; whether plaintiff’s action defensive.

***Scandi International Pty Ltd (ACN 082 473 747) & Anor v Larkfield Industrial Estate Pty Ltd (ACN 006 067 965)***

Judge Cohen

[\[2016\] VCC 1073](#)

28/07/2016

PRACTICE AND PROCEDURE - Application by second defendant for production of documents - objection by plaintiff on the basis of legal professional privilege - conflict of interest.

***Khalifa v CP Action Workforce Pty Ltd & Ors (Ruling)***

Judge Kings

[\[2016\] VCC 1010](#)

19/07/2016

PRACTICE AND PROCEDURE - Garnishee summons - Money held in bank account in name of Judgment Debtor - Allegedly held on trust for Judgment Debtor’s husband - Discretion to make garnishee order absolute - Standard of proof

***State of Victoria v Li***

Judicial Registrar Tran

[\[2016\] VCC 1168](#)

15/08/2016

PROPRIETARY ESTOPPEL - Alleged promises by the deceased to leave property to the plaintiffs if they moved to his property and looked after he and his wife - Whether plaintiffs induced to move and do so - Whether there was reliance by the plaintiffs upon the deceased's promises - Whether the plaintiffs incurred detriment in doing so - Where the deceased, on his death, left the plaintiffs a mere restricted right of residence - Whether the deceased and later his executors held the property on a constructive trust for the plaintiffs - Whether the claim was barred pursuant to the Limitation of Actions Act 1958 - Whether the defence of laches, acquiescence and delay was open.

***Graham & Anor v McNab & Anor***

Judge Smith

[\[2016\] VCC 1128](#)

12/08/2016

STAY OF PROCEEDINGS - Whether Retail Leases Act 2003 applies; Whether subject matter "retail tenancy dispute"; whether alleged breach of contract for sale of business "retail tenancy dispute" within definition; whether VCAT has exclusive jurisdiction over part or all of subject of proceedings.

***Ampron Australia Pty Ltd v Quan Yang Investments Pty Ltd & Ors***

Judge Cohen

[\[2016\] VCC 1138](#)

10/08/2016

# Articles

## Aboriginals

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Aboriginals - Torres Strait Islanders - Insertion - Commencement - Constitution - Acknowledgment - History - Aspirations - Referendum - Australia

**Brennan, F.** "Contours and prospects for indigenous recognition in the Australian Constitution and why it matters." (2016) 90(5) ALJ 340-354.

## Alternative Dispute Resolution

---

Collaborative practice - Post separation settlement - Poverty - Low-income clients - Low income families - Current law - Risks - Integration - Ethical practice - Australia

**Gang, D.** "Collaborative practice and poverty: contextualising the process and accommodating the market." (2016) 27(3) ADR 158-167.

Disputants - Autism spectrum disorder - Asperger's syndrome - Impact on mediation - Mediators - Support - Strategies - Australia

**Doley, R.** "Working in ADR with disputants on the autism spectrum." (2016) 27(3) ADR 150-157.

Dispute resolution methods - Factors in Conflict analysis - Party goals - Dispute features - Dispute resolution advisors - Confidentiality - Meeting structure - Hybrid elements - Mode of communication - Ground rules - Australia

**Berman-Robertson, C. and H. Shurven.** "ADR process design: considerations for ADR practitioners and party advisors." (2016) 27(3) ADR 140-149.

Online dispute resolution technology - Comparison - Tradition ADR practices - New developments - Trans-national platforms - Australia

**Lancy, R.** "ADR and technology." (2016) 27(3) ADR 168-178.

## Arbitration

---

Transnational approach - Applicable law - Arbitration agreement - Comparative law - Conflict of laws - Comparative analysis - Singapore - UK

**Nazzini, R.** "The law applicable to the arbitration agreement: towards transnational principles." (2016) 65(3) ICLQ 681-703.

## Constitutional Law

---

Constitution - Statutory interpretation - Limits - Common law - Statutory enactment - Moderation - Statutory intention - judicial preference - Development - Common law - Reference to statute - Comparative analysis - UK - Australia

**Mason, A.** "The interaction of statute law and common law." (2016) 90(5) ALJ 324-339.

## Contract Law

---

Contracts - Formalism - Contextualism - Conceptualising contextual coherence - UK

**Tan, Z.** "Beyond the real and the paper deal: the quest for contextual coherence in contractual interpretation." (2016) 79(4) Modern L R 623-654.

Contracts - Good faith - Honesty - Jurisprudence - Performance - Yam Seng Pte Ltd v International Trade Corp Ltd - Bhasin v Hrynew - Comparative analysis - Canada - UK

**Tan, Z.** "Keeping faith with good faith? - the evolving trajectory Post -Yam Seng and Bhasin." [2016] (50) JBL 420-446.

Contracts - Terms - Intention - Interpretation - Rectification - Singapore

**Tan, D.** "Divergent interpretations? Leases and contractual interpretation in Singapore and the UK." [2016] (50) JBL 409-419.

Definition clauses - Exclusion clauses - Statutory interpretation - Unfair Contract Terms Act 1977 (UK) - UK

**White, J.** "Defining "Exclusion" Clauses and Excluding "Defining" Clauses: the need to clarify the scope of the Unfair Contract Terms Act 1977." [2016] (50) JBL 373-387.

## Corporations Law

---

Board of directors - Amendments - Company's constitution - Challenged - Shareholders rights - Oppressed - Conflict of interest - Wilmar Sugar Australia Ltd v Queensland Sugar Ltd - Corporations Act 2001 (Cth), s232 - Queensland - Australia

**Baxt, R.** "An interesting "intersection" between competition law and corporate law: The re-regulation of the Queensland sugar industry." (2016) 90(5) ALJ 294-296.

Companies - Foreign investors - Enforcement rules - Overseas Investment Office - Chief Executive of Land Information New Zealand v Carbon Conscious New Zealand Ltd Overseas Investment Act 2005 (NZ) - New Zealand

**Rose, R.** "Too clever by half - Court's first Overseas Investment Act penalties decision warns against circumvention attempts." [2016] July NZLJ 213-215.

Company directors - Legal risks - Standards - Comparative analysis - Australia - UK  
**Batrouney, E.** "Are the legal risks faced by company directors in Australia intolerable." [2016] 159 VBN 68-70.

Health and safety - Directors Liability - Definition of officer - Due diligence - Amendments - Health and Safety at Work 2015(NZ) - New Zealand

**Campbell, M. and R. McVeagh.** "Due diligence and the Health and Safety at Work Act: a brave new world?" [2016] July NZLJ 218-222.

Regulatory analysis - Terminology - Frameworks - Functions - Case studies - Comparative analysis - USA - UK - EU

**Petrin, M.** "Regulatory analysis in corporate law." (2016) 79(4) Modern L R 537-574.

## Courts

---

Coronial autopsy - Counselling - Telephone communication - Next of kin - Adelaide - Australia

**Langlois, N. and K. Smith.** "Follow-up calls to next of kin relating to coronial autopsies." (2016) 56(3) Med Sci Law 242-243.

## Criminal Law & Procedure

---

Legislation - Cyberterrorism - Definition - Economic cyberterrorism - Environmental cyberterrorism - Comparative analysis - Terrorism Suppression Act 2002 (NZ) New Zealand - UK - USA

**Levenberg, K.** "Panic in the cloud: cyberterrorism in legislation." [2016] July NZLJ 231-235.

Sentencing - Family violence - Sentencing principles - Common offences - Legislative initiatives - New South Wales - Australia  
**Gombu, A.e.al.** "Sentencing for domestic violence." (2016) no. 45 June Sentencing Trends & Issues 1-39.

## Employment Law

---

Constructive dismissal - Resignation - Employee - Employers - UK

**Walker, T.** "The human touch." (2016) 166(7707) NLJ 10.

## Family Law

---

Families - Dispute resolution - Children - Witnesses - Evidence - Australia - United States

**Conlan, C.** "War and peace: balancing the forensic needs of unhappy family." [2016] 159 VBN 38-41.

International disputes - Child abduction - Child retention - Surrogacy - Child support - Property settlements - Validity of foreign marriages - Validity of foreign divorces - Australia

**Parker, A.** "International family law in the spotlight." [2016] 159 VBN 48-51.

## Human Rights

---

International law - Empirical research - Philosophy of science - Social science - UK  
**McGrogan, D.** "The problem of causality in international human rights law." (2016) 65(3) ICLQ 615-644.

Refugees - Asylum seekers - Offshore detention - Deterrent - Treatment - Legal framework - Nauru - Manus Island - Papua New Guinea - Australia  
**McBeth, A.** "Offshore processing." [2016] 159 VBN 43-46.

Rights - Freedoms - Commonwealth laws - Law reform - Australian Border Force Act 2015 (Cth) - Maritime Powers Act 2015 (Cth) - Counter-Terrorism Amendment (Foreign Fighters) Act 1914 (Cth) - Australia  
**Kunc, F.** "Rights and freedoms: an important report and a recent speech." (2016) 90(5) ALJ 284.

## Insurance Law

---

Insurance law - Fair presentation - Warranties and fraud - Professional indemnity - Insurance Act 2015 (UK) - UK  
**Hertzell, D.** "The law of 'fair presentations'." (2016) 160(29) Sol J 20-23.

## International Law

---

Public law - Private law - Private commercial law conventions - Cape Town Convention 2001 - Protocols - UK  
**Goode, R.** "Private commercial law conventions and public and private international law: the radical approach of the Cape Town Convention 2001 and its protocols." (2016) 65(3) ICLQ 523-540.

Travel law - Customs checks - Air travel - Roaming charges - Medical care - Water standards - Duty free goods - Package travel regulations - UK - European Union  
**Morris, J.** "Where to now for EU travel law?" (2016) 160(29) Sol J 34-35.

## Judges

---

Personalia - Justice Andrew Keogh - Appointment - Supreme Court of Victoria - Australia  
**Szydzik, M.** "Silence all stand." [2016] 159 VBN 83-84.

Personalia - Justice Betty June King - Retirement - Supreme Court of Victoria - Australia  
**"The Honourable Betty June King."** [2016] 159 VBN 83.

## Legal Aid

---

Access to justice - Legal aid - Public commitment - UK  
**Robins, J.** "Are we still a civilised society?" (2016) 160(29) Sol J 38.

## Legal Education

---

Legal profession - Education - Legal ethics - Professional Regulation bodies - Engagement - Courts - Tribunals - Community Legal Centres - Intra-Professional training - Courts - Critical thinking - Problem-solving - Australia  
**McKeon, A.** "How should academia, the practising profession and the courts assist each other in the education of Australian lawyers?" (2016) 90(5) ALJ 355-360.

## Legal History

---

Supreme Court - Tasmania - Oldest court - Caselaw - Appeals - High Court - Tasmania - Australia  
**Estcourt, S.** "Links with Canberra: Tasmanian cases in the High Court." (2016) 90(5) ALJ 291-293.

## Legal Profession

---

Conduct - Etiquette - Barristers - Misuse of position and description - Private advantage - Private dispute - Private email account - Legal Professional Uniform Conduct (Barristers) Rules 2015 (Vic), r 10 - Australia  
Horgan, S. "Use of the professional qualification and post nominals." [2016] 159 VBN 94-95.

Court dress - Barristers - Wigs - History - Victoria - Australia  
Schoff, G. "Farewell to the wig." [2016] 159 VBN 38-41.

Discrimination - Women Barristers - Sexual discrimination - Harassment - Bullying - UK  
Rogers, M. "Sexual harassment and discrimination still rife at Bar." (2016) 160(28) Sol J 10-11.

Employment - Job sharing - Judicial registrars - County Court - Victoria - Australia  
Costello, G. and J. Wheelahan. "Seeing double: Judicial Registrars Burchell and Tran." [2016] 159 VBN 38-41.

Language - Development - Experience - Australia  
Burnside, J. "Boilerplate: a bit about words." [2016] 159 VBN 90-91.

Law firms - Client expectations - UK  
Patel, B. "Legal innovation: the future client." (2016) 160(28) Sol J 15.

Personalia - Hon Peter W Young - Retirement - Editor - Australian Law Journal - Australia  
Kirby, M. "Retirement of the Hon Peter W Young AO QC: Seventh Editor of the Australian Law Journal." (2016) 90(5) ALJ 316-323.

## Medical Law

---

Carbon monoxide poisoning - Fatalities - Toxicology - Legal counsel - Expert witnesses - USA  
Galatsis, K. "Engineering evidence for carbon toxicity cases." (2016) 56(3) Med Sci Law 184-189.

Forensic psychiatry - High security - Patients psychiatric care - Legal system - Appeal - Detention - Excessive security - Mental Health (Care and Treatment) (Scotland) Act 2003 - Scotland - UK

Slater, A. et.al. "Appeals against detention in excessive security (outcomes of appeals against detention in conditions of excessive security in Scotland)." (2016) 56(3) Med Sci Law 172-177.

Forensic science - Equine blood - Bloodstain pattern analysis - Aged blood - UK

Larkin, B. and C. Banks. "Exploring the applicability of equine blood to bloodstain pattern analysis." (2016) 56(3) Med Sci Law 190-199.

Suicides - Psychotropic drugs - Antidepressants - UK

Zhinchin, G. et al. "The relationship between the prescription of psychotropic drugs and suicide rates in adults in England and Wales." (2016) 56(3) Med Sci Law 205-209.

## Practice & Procedure

---

Legal drafting - Tenants notice to quit application - Housing Act 1988 (UK), s21 -UK  
Johns, H. "There's a right way - and a wrong way - to draft a notice." (2016) 160(28) Sol J 29

## Property Law

---

Conveyancing - Parties - Deposits paid via instalments - Case law - Secondary payments - Deposits - Unenforceable penalties - Rana v Dalla Costa - Australia  
Bentley, N. "Contracts for the sale of land - when does a deposit paid via instalments constitute a penalty." (2016) 25(1) APLJ 40-54.

Digital footprint - Property - Recognition - Legal framework - Proprietary rights - Treatment after death - Australia

McDonnell, E. "Proprietary rights in the online world: is a digital footprint property." (2016) 25(1) APLJ 69-75.

Land transactions - Foreign investment review board - Definition foreign person - Amended categories of Australian land - Notifiable action - Exemption certificates - New fees - Enforcement provisions - Australia

**Dixon, B.** "Land transactions and the new Australian foreign investment regime." (2016) 25(1) APLJ 55-68.

Property rights - Resource consents - Hampton v Canterbury Regional Council - Resource Management Act 1991(NZ) - New Zealand

**Gibbons, T.** "Resource consents and property." [2016] July NZLJ 218-222.

Property settlement - Traditional paper settlement - Terminate contract - Remedies - Electronic settlement process - What constitutes - Ready willing and able - Revisions - Standard contracts - Sale of land - Comparative analysis - New South Wales - Queensland - Australia

**Christensen, S. and Duncan, W.** "To tender or not to tender: when is a party ready, willing and able for electronic settlement." (2016) 25(1) APLJ 22-39

Registration - Lease - Torrens system - Leasehold estate - Indefeasible - Indefeasibility - Protection - Rights - Integral - Leasehold estate - Mercantile Credits Ltd v Shell company of Australia Ltd - Travinto Nominees Pty Ltd v Vlattas - Australia

**Carruthers, P. and N. Skead.** "Rights to renew and to purchase in registered leases: Part 1 - A case of bad timing for rights to renew." (2016) 25(1) APLJ 1-21.

Single title - Multi- dwelling units - Retirement villages - Mixed use premises - Multi use premises - Repairs - Renovation - Demolition - Replacement - Body corporate - Individual responsibility - Collective responsibility - Law Reform - New Zealand  
**Finn, J. et al.** "Repairs, renovation, restoration, demolition or replacement of multi-dwelling units on a single title." [2016] July NZLJ 208-212, 235.

## Taxation Law

---

Taxation - Solicitors - Second-hand commercial property transactions - Capital allowances Act 2001 (UK), s187A-187B - Finance Act 2012 (UK), s43, Sch 10 - UK  
**Oliver, A.** "Dodging a bullet: how to avoid costly property tax mistakes." (2016) 160(28) Sol J 20-23.

## Torts

---

Accident compensation - Personnel Injury - Accident Compensation Act 2001 (NZ), ss18-38, s20 - Law reform - New Zealand  
**Marten, B.** "ACC's cover provision need a makeover." [2016] July NZLJ 213-215.

Contributory negligence - Empirical study - Cases - success rate - Average discount - Employers liability - Occupiers liability - Professional negligence - Claimant age - Claimant gender - Negative findings - UK  
**Goudkamp, J. and D. Nolan.** "Contributory negligence in the Twenty-First century: an empirical study of first instance decisions." (2016) 79(4) Modern L R 575-622.

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