



THE LAW LIBRARY OF VICTORIA

Library Bulletin

16 September 2016

Library News

The Australian experiment with human rights charters Wednesday 21 September, 5.00-6.00pm

Chaired by the Honourable President Maxwell, Melbourne Laureate Professor Hilary Charlesworth will discuss the ACT Human Rights Act 2004 and the Victorian Charter of Human Rights and Responsibilities 2006.

A decade on, what can we learn from the operation of the ACT and Victorian legislation? How successful have these experiments proved in protecting human rights?

Please note: this event is presently booked out but there is a waiting list if you book via Eventbrite www.lawlibrary.vic.gov.au/events

“Switch on...” in the Law Library

We invite you to participate in our “Switch on...” information sharing sessions. Held on Tuesdays, these free 25 minute sessions are suited to judicial officers, court staff, legal professionals, and anyone with an interest in law. These sessions will:

- provide you with tips and tricks for using well-known resources
- refine your skills in quickly accessing information
- introduce you to lesser-known products.

“Switch on...” in the Law Library - Setting up Legal Alerts Tuesday 20 September, 1.15-1.45pm

This session will highlight some of the best legal alerts freely available and demonstrate how to set them up so you can stay up to date on the latest case law, legislation developments, and legal news.

For further information on library events: www.lawlibrary.vic.gov.au/events

SUBSCRIBE TO THE LIBRARY BULLETIN

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



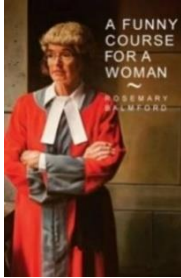
Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone 03 9603 6282 for details.

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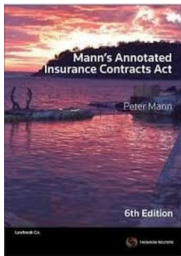
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New Books

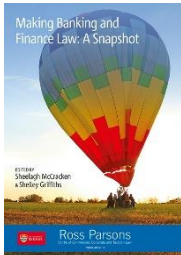
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/



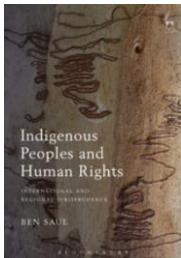
Balford, Rosemary, *A Funny Course for a Woman*
Arcadia, Victoria, 2013
Call number: LS 345.940092 BAL (Supreme Court Library)



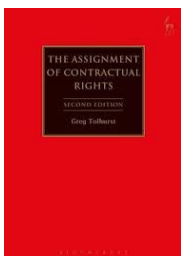
Mann, Peter, *Mann's Annotated Insurance Contracts Act*
7th ed., Thomson Reuters, NSW, 2016
Call number: 346.086 MAN.7 (Supreme Court Library & VCAT Library)



McCracken, Sheelagh (Ed.), *Making Banking and Finance Law : a Snapshot : Working Papers of the Academic Committee of the Banking and Financial Services Law Association*
Ross Parsons Centre of Commercial, Corporate and Taxation Law and the Faculty of Law, Sydney, 2015
Call number: 346.94082 MAK (Supreme Court Library)



Saul, Ben, *Indigenous Peoples and Human Rights : International and Regional Jurisprudence*
Hart Publishing, Oxford, 2016
Call number: 342.0872 SAU (Supreme Court Library)



Tolhurst, Greg, *The Assignment of Contractual Rights*
2nd ed., Hart Publishing, Oxford, 2016
Call number: 346.02 TOL.2 (Supreme Court Library)

Legislation

Victorian Bills

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

- [Alpine Resorts Legislation Amendment Bill 2016](#)
- [Child Wellbeing and Safety Amendment \(Oversight and Enforcement of Child Safe Standards\) Bill 2016](#)
- [Food Amendment \(Kilojoule Labelling Scheme and Other Matters\) Bill 2016](#)
- [Lord Mayor's Charitable Foundation Bill 2016](#)
- [Medical Treatment Planning and Decisions Bill 2016](#)
- [Victorian Fisheries Authority Bill 2016](#)

Victorian Assents

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

- [Crimes Amendment \(Sexual Offences\) Act 2016](#) No. 47/2016
- [Primary Industries Legislation Amendment Act 2016](#) No. 48/2016



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

Proclamations

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

- [Access to Medicinal Cannabis Act 2016](#) No. 20/2016
 - Part 2 (sections 10-12), Part 4 (sections 14-19), Parts 6-8 (ss 39-60), sections 79, 94-98, 101-120, 125, 134, 136-142, Part 14 (sections 143-152) came into operation on 14 September 2016 (VGG S284 13.9.2016)
- [Justice Legislation \(Evidence and Other Acts\) Amendment Act 2016](#) No. 38/2016
 - Sections 1-11, 15 came into operation on 12 September 2016 (VGG S278 6.9.2016)
- [National Parks and Victorian Environmental Assessment Council Acts Amendment Act 2016](#) No. 44/2016
 - Sections 1-32 came into operation on 7 September 2016 (VGG S278 6.9.2016)

High Court Cases

CONSTITUTIONAL LAW (CTH) - Legislative power - Franchise - Power of Parliament to regulate exercise of entitlement to enrol to vote - Provisions of Commonwealth Electoral Act 1918 (Cth) precluding consideration of claims for enrolment or transfer of enrolment and amendment of Electoral Rolls during "suspension period" from 8pm on day of closing of Electoral Rolls until close of polling for election - Whether burden on constitutional mandate that Parliament be "directly chosen by the people" - Whether burden justified by substantial reason - Relevance of *Roach v Electoral Commissioner* (2007) 233 CLR 162; [2007] HCA 43 and *Rowe v Electoral Commissioner* (2010) 243 CLR 1; [2010] HCA 46.

WORDS AND PHRASES - "adequacy in its balance", "burden", "constitutional mandate of popular choice", "directly chosen by the people", "franchise", "necessity", "obvious and compelling alternative", "reasonably appropriate and adapted", "structured proportionality", "substantial reason", "suitability". Constitution, s7, s10, s24, s30, s51(xxxvi). Commonwealth Electoral Act 1918 (Cth), s94A(4), s95(4), s96(4), s101, s102(4), s103A(5), s103B(5), s118(5).

Murphy, Anthony John & Anor v Electoral Commissioner & Anor

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

05/09/2016

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Damages - Interest - Damages in the nature of interest - Claim governed by s 134AB of Accident Compensation Act 1985 - Award of pain and suffering damages - Whether damages in nature of interest payable on award of pain and suffering damages - Eccles v Taylor [1995] 2 VR 482 applied - Application for leave to appeal granted - Appeal dismissed - Transport Accident Act 1986, s93(15) - Accident Compensation Act 1985, s134AB(34).

Starr, Glenn Stanley v Greenfreight (Services) P/L (ABN 44 004 674 462)

Osborn, Beach, and Kaye JJA

[\[2016\] VSCA 213](#)

09/09/2016

ADMINISTRATIVE LAW - Judicial review - Appeal - Medical panel - Reasons - Adequacy of reasons - Whether reasons of medical panel adequate - Trial judge held medical panel's reasons inadequate - Reasons adequate - Application for leave to appeal granted - Appeal allowed.

ACCIDENT COMPENSATION - Workplace Injury - Referral to medical panel - Challenge to medical panel's determination - Trial judge quashed medical panel's determination - Trial judge erred in quashing medical panel's determination - Application for leave to appeal granted - Appeal allowed.

Spotless Facility Services P/L v Trpceva, Lenka; Farnbach, Peter; Firestone, Andrew; Cullen, Neil; Gibson, Andrew; Gibbons, Peter

Osborn, Beach and Ferguson JJA

[\[2016\] VSCA 217](#)

15/09/2016

CONTRACT - Deed of settlement - Representative proceedings - Deed varied terms of loans between group members and respondent - Clause 5.18.2 provided that proof of amount owing under loans 'sufficiently evidenced by an affidavit' from respondent's solicitor - Whether respondent required to prove that loan principal was advanced - Whether agreement settling representative proceedings required to be construed beneficially in favour of group members - Dobbs v National Bank of Australasia Ltd (1935) 53 CLR 643; Permanent Trustee Co Ltd v Gulf Import & Export Co [2008] VSC 162, considered.

EVIDENCE - Loan statements provided by director of respondent exhibited to solicitor's affidavit - Whether statements constituted 'business records' - Evidence Act 2008 s69.

PRACTICE AND PROCEDURE - Respondent not party to one of several representative proceedings resolved by deed of settlement - Whether respondent could acquire rights against group members under deed of settlement - Supreme Court Act 1986 s33V, s33ZB, s33ZF.

Bryne, Gerard Laurence v Javelin Asset Management P/L

Hansen, Ferguson and McLeish JJA

[\[2016\] VSCA 214](#)

13/09/2016

CRIMINAL LAW - Appeal - Conviction - On summary charges being indictable offences, transferred by Magistrates' Court to County Court - Guilty pleas - Sentenced - No power to transfer - Convictions set aside - Summary charges transferred to Magistrates' Court.

CRIMINAL LAW - Appeal - Sentence - Trafficking simpliciter in methylamphetamine and other summary charges - Sentenced to 8 years for trafficking and a total effective sentence of 8 years and 6 months and a non-parole period of 5 years and 6 months - Manifest excess - Resentenced to 6 years and 6 months on trafficking charge and a total effective sentence overall of 6 years and 10 months and a non-parole period of 4 years and 3 months.

Short, Jessica v The Queen

Weinberg and Hansen JJA

[\[2016\] VSCA 210](#)

07/09/2016

CRIMINAL LAW - Appeal - Sentence - Election to renew application for leave to appeal against sentence - Indecent assault (9 counts), gross indecency (3 counts), sexual penetration of a person under 16 and possession of child pornography - Guilty plea - Offences committed against students or former students of school at which applicant was housemaster - Applicant 74 years old at time of sentence - Whether judge took proper account of applicant's age - Whether sentences manifestly excessive - R v RLP (2009) 213 A Crim R 461, discussed - Application for leave to appeal granted, appeal dismissed

Buckley, John Hamilton v The Queen

Redlich, Weinberg and McLeish JJA

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

14/09/2016

CRIMINAL LAW - Appeal - Sentence - Negligently causing serious injury (by driving) - Two charges - Sentenced to six years' imprisonment (charge 1), four years and six months (charge 2) - Total effective sentence seven years and six months - Driver not in proper control - Sleep-deprived - 'Rebound' effect of methylamphetamine - Unsafe driving over 2.4 kilometres - Collided with stationary vehicle - Whether sentence manifestly excessive - Judge not constrained by previous sentencing practice - Application for leave to appeal refused - Harrison v The Queen (2015) 74 MVR 58 applied.

Halket, Jason v The Queen

Maxwell ACJ, Redlich and McLeish JJA

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

14/09/2016

CRIMINAL LAW - Appeal - Sentence - Persistent sexual abuse of child under 16 (2 charges), incest (2 charges) - Two victims - Victims step-daughters of applicant - Victims aged between 11 and 18 - Plea of guilty - Offending caused a pregnancy for one victim, which was terminated - Impact on victims - Sentenced to total effective sentence of 15 years' imprisonment with a non-parole period of 10 years - Whether manifestly excessive - Whether offending against one victim objectively less serious, requiring a lesser sentence - All sentences within range - Application for leave to appeal refused.

Talbot, Gabe (a pseudonym) v The Queen

Weinberg and Osborn JJA

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

14/09/2016

CRIMINAL LAW - Appeal - Sentence - Trafficking in methylamphetamine - Two transactions - Relatively small quantities - Sentence two years and eight months' imprisonment, non-parole period 16 months - Whether manifestly excessive - Whether unreasonable disparity with co-offenders' sentences - Exceptional evidence of rehabilitation - Whether combination sentence within range - Crown concession of error - Appeal allowed - Resentenced to eight months' imprisonment with two year Community Correction Order.

El Achkar, Mohammed v The Queen

Maxwell ACJ and Weinberg JA

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

02/09/2016

CRIMINAL LAW - Appeal - Sentencing - Director's appeal - Four charges of indecent act with a child under 16, four charges of sexual penetration of a child under 16, one charge of knowingly possess child pornography - Two victims - Respondent the step-grandfather of the victims - Original total effective sentence of 6 years' imprisonment - Approach to totality - Sentencing judge moderated and cumulated individual sentences - Sentence manifestly inadequate - Respondent resentenced to 8 years' imprisonment.

Director of Public Prosecutions v Clunie, Ethan (a pseudonym)

Maxwell ACJ, Osborn and Santamaria JJA

[\[2016\] VSCA 216](#)

14/09/2016

CRIMINAL LAW - Application for leave to appeal against sentence - Applicant pleaded guilty to recklessly causing serious injury and to two charges of failing to answer bail - Sentenced to 4 years' imprisonment on charge 1 and 2 months' imprisonment cumulative on charges 2 and 3 - Unprovoked attack upon victim - Two punches to the face resulting in permanent injury and ongoing psychological effects - Relevance of rehabilitation for young offender - Prospect of deportation - Judge concluded that applicant not suitable for Community Correction Order by reason of past failure to comply with Court orders - Sentence within range - Leave to appeal refused.

Kalepo, Samuel v The Queen

Weinberg and Osborn JJA

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

14/09/2016

CRIMINAL LAW - Interlocutory appeal by Crown - Applicant facing two charges of incest involving biological sister - Prosecution seeks to lead other acts of misconduct as a child as 'context evidence' - *HML v The Queen* (2008) 235 CLR 334; *IMM v The Queen* (2016) 330 ALR 382 considered - Whether exclusion of 'context evidence' substantially weakens prosecution case - Trial judge rules against admissibility - Whether error in treating presumption of *doli incapax* as relevant when assessing admissibility of proposed uncharged acts - Presumption not relevant in way in which invoked - Criminal Procedure Act s295(3)(a) - Appeal allowed - Matter remitted to trial judge for reconsideration in accordance with reasons of Court of Appeal.

Director of Public Prosecutions [DPP] v Martin, Peter (a pseudonym)

Redlich, Weinberg and McLeish JJA

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

14/09/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Applicant pleaded guilty to trafficking small quantities of methylamphetamine - Sentencing judge erred in several respects in course of sentencing - Crown concession properly made - Applicant resentenced.

Vincent, Jarrod v The Queen

Weinberg and Hansen JJA

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

07/09/2016

CRIMINAL LAW - Sentence - Application for leave to appeal - Attempting to possess smuggled tobacco - Defrauding the revenue - Sentence of imprisonment of two years and six months, with release on recognizance after 12 months - Whether sentencing judge denied the applicant procedural fairness - Whether sentencing judge mischaracterised the applicant's role - No error established - Sentence not manifestly excessive - Leave to appeal refused.

Hussein, Khaled v The Queen

Priest and Santamaria JJA

[\[2016\] VSCA 212](#)

07/09/2016

SOLICITORS - Company liquidator requested documents from company's solicitor - Documents not provided - Legal Profession Act 2004 conferred jurisdiction on Victorian Civil and Administrative Tribunal in respect of 'civil disputes' - Whether dispute between person and legal practitioner in relation to provision of legal services to the person by the legal practitioner - Whether liquidator acted as agent of company when requesting documents - Legal Profession Act 2004 s4.2.2 - Corporations Act 2001 (Cth) s530B.

SOLICITORS - Client request for file - Entitlement of solicitor to retain documents - *Wentworth v De Montfort* (1988) 15 NSWLR 348, discussed.

PRACTICE AND PROCEDURE - Costs - Substantive dispute resolved by consent except as to costs - Tribunal made indemnity costs order against applicant - Whether Tribunal erred in exercise of costs discretion - Victorian Civil and Administrative Tribunal Act s109 - Appeal allowed - No order as to costs in Tribunal.

Champion, Michael John v Rohrt, Richard Trygve

Santamaria and McLeish JJA

[\[2016\] VSCA 215](#)

13/09/2016

Commercial Court

CONTRACT - Formation - Intention to create legal relations for sale of business - *Masters v Cameron* (1954) 91 CLR 353 - Document stated 'This Offer is intended to be legally binding upon the Vendor and the Purchaser' and was 'Executed as an Agreement' - Where plaintiff purchaser sought specific performance of the contract - Where defendant alleged agreement to negotiate, rather than sell - Contemplation of future 'formal' contract of sale - Failure of parties to agree to 'formal' terms - The relevance of the post agreement communications - Vendor later signs contract with third party.

Verrocchi, Mario and Bassaly, Anthony v Messinis, Theo

Riordan J

[\[2016\] VSC 490](#)

17/08/2016

CORPORATIONS - Application for further remuneration by special purpose liquidator appointed in liquidation of responsible entity of managed investment scheme - Application for determination of prospective remuneration for the remaining period of special purpose liquidator's appointment - Determination made that remuneration should be determined in the amount requested including that sought prospectively.

In the Matter of Traditional Values Management Ltd; Hewitt, Andrew Stewart Reed in His Capacity as Special Purpose Liquidator of Traditional Values Management Ltd (In Liquidation) (Special Purpose Liquidator Appointed) (ACN 055 106 100)

Gardiner AsJ

[\[2016\] VSC 520](#)

07/09/2016

EQUITY - Declaration - Whether utility in grant of declaratory relief - *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 - *Bass v Permanent Trustee Company Ltd* (1999) 198 CLR 334 - *CGU Insurance Ltd v Blakeley* (2016) 327 ALR 564 - *FQM Australia Nickel Pty Ltd v Bullen* (2011) 191 FCR 261.

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

Croft J

[\[2016\] VSC 528](#)

09/09/2016

EVIDENCE - Hearsay exception in civil case - Maker of the representations already called to give evidence and has completed his evidence - Evidence Act 2008 (Vic) s64(3) - Principles in application of s64(3) - Width of the exception - First-hand hearsay - Likely to have little probative value - Particular circumstances of the case considered to ensure fairness in the trial process - Hearsay representations admitted.

YING MUI P/L (ACN 009 992 449) and Ors; Amore Corporation P/L; Hoh, Kiang Po (Also Known As George Hoh); Hoh, Han Keyet; Sharikat Ying Mui Sdn Bhd v Hoh, Frank Kiang Ngan and Ors; Hoh, Pooi Yoke Lim; Hoh, Lynn Yook Lien; Hoh, Ian Han Lok; Lokit Investments P/L; LUMARKYE P/L (ACN 131 575 785); Frosthollow P/L (ACN 151 816 401); Olrey P/L (ACN 140 494 319)

Vickery J

[\[2016\] VSC 531](#)

05/09/2016

LEASES AND TENANCIES - Covenant - Renewal, for - Renewal for, once only - Lease renewed - Whether covenant for renewal incorporated in supplementary lease - Rent - Whether designated improvement rent payable during renewed term - Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd (2015) 256 CLR 104 - Plumrose Ltd v Real and Leasehold Estates Investment Society Ltd [1970] 1 WLR 52 - Cobram Laundry Services Pty Ltd v Murray Goulburn Co-operative Co Ltd [2000] VSC 353 - Elesanar Constructions Pty Ltd v Queensland (2007) ANZ ConvR 369.

EQUITY - Rectification - Whether relevant common intention established - Plumrose Ltd v Real and Leasehold Estates Investment Society Ltd [1970] 1 WLR 52 - Ryledar Pty Ltd v Euphoric Pty Ltd (2007) 69 NSWLR 603 - Pukallus v Cameron (1982) 180 CLR 447 - Cobram Laundry Services Pty Ltd v Murray Goulburn Cooperative Co Ltd [2000] VSC 353 - Newey v Westpac Banking Corporation [2014] NSWCA 319.

PRACTICE AND PROCEDURE - Costs - Informal Calderbank offer - Factual matrix known to the parties at the time of making the offer - Legal basis which was ultimately relied upon not foreshadowed prior to the expiration of the offer - Not unreasonable to reject the offer. *In the Matter of HEA Australia Pty Ltd: Australian Pressure Vessel Heads (2011) P/L (ACN 150 111 452) v HEA Australia P/L (ACN 104 888) and Locker Group (ACN 004 353 922) (First Interlocutory Applicant) and KNM P/L (ACN 095 215 75) (Second Interlocutory Applicant)*

Randall AsJ

[\[2016\] VSC 529](#)

02/09/2016

TAXATION - Land tax - Permanent place of residence exemption - Assessment to land tax - Objection - Reference to VCAT - Assessments withdrawn - Reassessments issued in same amounts - Whether valid - Terms of withdrawal agreement - Whether power to issue assessments spent - Interpretation of Legislation Act 1984 s40(a); Taxation Administration Act 1997 s8, s9, s13, s14, s62, s63; Land Tax Act 2005 s51, s54.

JUDICIAL REVIEW - Assessments of land tax issued under Taxation Administration Act 1997 - Assessments withdrawn - Reassessments issued in same amounts - Whether reassessment power spent - Interpretation of Legislation Act 1984 s40; Taxation Administration Act 1997 s8, s9, s13, s14, s62, s63.

STATUTORY INTERPRETATION - Land tax assessment - Withdrawal - Reassessments - Whether reassessments authorised by statute - Exercise of power from time to time as occasion requires - Interpretation of Legislation Act 1984 s40 (a); Taxation Administration Act 1997 s8, s9, s13, s14.

Vasiliades, Celeste v Commissioner of State Revenue

Ginnane J

[\[2016\] VSC 544](#)

09/09/2016

TRUST AND TRUSTEES - Judicial Advice - Whether trustee has proper basis to defend proceeding - Whether appropriate to fund defence out of assets of the trust - Supreme Court (General Civil Procedure) Rules 2015 Vic r54.02

In the Matter of an Application By Primary Securities Ltd (ACN 089 812 635) (In its Capacity as Responsible Entity of the Phillip Island Resort Scheme (ARSN 155 658 307)) For Judicial Advice and Directions Under Rule 54.02 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic)

Kennedy J

[\[2016\] VSC 536](#)

09/09/2016

TRUSTS - Advance of \$500,000 to first defendant together with execution of an application for units in a unit trust-whether advance induced by misleading and deceptive conduct to the effect that advance would be a “short term loan”- whether funds recoverable under trust deed in any event- Trade Practices Act 1975 (Cth) s52, Fair Trading Act 1999 (Vic) s9 Land Venture - advances of funds to second defendant pursuant to a land venture arrangement- whether a joint venture agreement- terms of agreement- whether plaintiff established that it was entitled to lost profits for breach of agreement/breach of fiduciary duty- alternatively whether funds invested recoverable pursuant to an “account stated”.
The Really Good Company Pty Ltd (ACN 052 239 871) (as Trustee for The Monos Family Trust) v MAE Pacific Pty Ltd (ACN 107 155 902) (as Trustee for The MAE Pacific Unit Trust) (and others according to the schedule)

Kennedy J

[\[2016\] VSC 517](#)

14/09/2016

Common Law Division

ADMINISTRATIVE LAW - Application for judicial review of decision of medical panel - Whether medical panel ignored relevant considerations or had regard to irrelevant considerations - No error of law.

Cicarevic , Zarko v Sheehan, Anthony & Ors

Macaulay J

[\[2016\] VSC 530](#)

05/09/2016

ADMINISTRATIVE LAW - Judicial review - Application for order in the nature of certiorari quashing orders made by the Magistrates' Court of Victoria sentencing the plaintiff as a Registrable Offender - Meaning of 'offending' - Meaning of 'sexual safety' - Whether the evidence allowed the first defendant to make a finding against the plaintiff beyond reasonable doubt - Whether the first defendant's finding was illogical, irrational and not based on findings or inferences of fact supported by logical grounds - Sex Offenders Registration Act 2004 s11, s34(4) - Supreme Court (General Civil Procedure) Rules 2005, Order 56 - Lednar v Magistrates' Court [2000] VSC 549 - Bowden v R (2013) 44 VR 229 - Znotins v Harvey [2015] ACTSC 241.

Blyss, Raymond William v the Magistrates' Court of Victoria

Zammit J

[\[2016\] VSC 548](#)

13/09/2016

ADMINISTRATIVE LAW - Victorian Civil and Administrative Tribunal ('VCAT') - Application for leave to appeal to the Supreme Court - Whether questions of law - Challenges to findings of fact - Whether real or significant argument that VCAT fell into error - Significant argument on some questions of law - Leave granted - Victorian Civil and Administrative Tribunal Act 1998 ('VCAT Act'), s148(1)(b).

ADMINISTRATIVE LAW - VCAT - Appeal on a question of law - Whether VCAT made an error of law - Whether finding of fact open on the evidence - Finding open on the evidence considered as a whole - Whether appellant denied procedural fairness - Whether Tribunal must warn the tenant of the need to apply for reasons - Whether Tribunal unfairly sided with the landlord by adducing evidence - No denial of procedural fairness in the circumstances - Appeal dismissed.

LANDLORD AND TENANT - Notice to vacate - Landlord to occupy rented premises immediately after the termination date - Whether notice to vacate validly given - Residential Tenancies Act 1997, s258, s319, s322 and s330.

Tsolacis, George v Pappas, Theodora (Dorothy)

Derham AsJ

[\[2016\] VSC 549](#)

13/09/2016

CONTEMPT APPLICATION - Civil contempt - Non-compliance with enforcement order - Breach of Court order - Capability of compliance - Casual or accidental and unintentional - Wilful disobedience - Supreme Court (General Civil Procedure) Rules 2015 (Vic) rr66.05, 75.06 - National Australia Bank v Juric [2001] VSC 375 - Advan Investments Pty Ltd v Dean Gleeson Motor Sales Pty Ltd [2003] VSC 201 - Scott v Evia Pty Ltd [2007] VSC 15 - Pattison v Bell [2007] FCA 137 - Moira Shire Council v Sidebottom Pty Ltd & Anor [2015] VSC 577.

Moira Shire Council v Sidebottom Group P/L (ACN 102 558 869) and Australian Rubber Manufacturers Pty Ltd (ACN 086 752 329)

Zammit J

[\[2016\] VSC 546](#)

15/09/2016

EVIDENCE - Tendency evidence - Common law action for damages for psychiatric injury - Admissibility - Whether significantly probative of a fact in issue - IMM v The Queen (2016) 90 ALJR 529 applied - Evidence admissible - Evidence Act 2008 (Vic), s97(1), s100(1).

Wearne, Gaylene v State of Victoria

John Dixon J

[\[2016\] VSC 526](#)

02/09/2016

JUDICIAL REVIEW AND APPEALS - Appeal against investigation findings of Coroner - Application to set aside investigation findings of Coroner - Appeal made out of time - Leave to appeal out of time due to exceptional circumstances not granted - Appeal against subsequent determination of State Coroner refusing to reopen an investigation - Appeal to the Supreme Court on a question of law - No error of law identified in respect of determination - Appeal made by a person with sufficient interest - held not necessary or desirable in the interests of justice to allow appeal - appeal dismissed - Coroners Act 2008 s83, s84(1), s86, s87A.

Somerville, Moira Catherine v Coroners Court of Victoria

Ierodiaconou AsJ

[\[2016\] VSC 543](#)

08/09/2016

JUDICIAL REVIEW AND APPEALS - Appeal from Victorian Civil and Administrative Tribunal - Claim by tenant for compensation for breach of s 68 of Residential Tenancies Act 1997 (Vic) - Obligation of landlord to 'ensure that the rented premises are maintained in good repair'. LANDLORD AND TENANT - Content of obligation of landlord to ensure rented premises are maintained in good repair - Meaning of 'ensure' - Meaning of 'maintain' - Meaning of 'good repair' - Standard of good repair not referable to condition of premises at commencement of tenancy or level of rent payable - *Gration v C. Gillan Investments Pty Ltd* (2005) 2 QdR 267 and *Kneuppel v Zarpas* [2004] SADC 162 referred to - In order to 'maintain premises in good repair' it is necessary to put premises in good repair - *Payne v Haine* (1847) 16 M&W 541, *Proudfoot v Hart* (1890) 25 QBD 42 referred to - 'Repairs' v 'improvements' *Australian Mutual Provident Society v 400 St Kilda Road Pty Ltd* [1990] VR 646 followed - Landlord and tenant cannot contract out of their obligations and duties under the Act - Section 1, s27(1) of the Residential Tenancies Act 1997 (Vic) - Appeal allowed.

APPEALS FROM TRIBUNALS - Findings of fact where there was no evidence to support the finding - Decision illogical - Finding of fact where parties had not been provided with an opportunity to address the finding - *Commissioner of the Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 referred to and applied - Appeal allowed.

PRACTICE AND PROCEDURE - Whether permissible for tribunal member to make a global finding that landlord had complied with repair obligations - *Mulligan v National Disability Insurance Agency* (2015) 146 ALD 418 referred to - Imposition of inflexible rule regarding conduct of VCAT proceedings undesirable - Ground of appeal not made out.

Shields, Vikki v Peter Deliopoulos

Daly AsJ

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

07/09/2016

NEGLIGENCE - Duty of care - Existence and content of common law duty - Whether plaintiff exercising reasonable care for own safety - Plaintiff tripped and fell over raised stormwater pit whilst crossing reserve at night - Neither likelihood nor magnitude of danger presented by stormwater pit obvious to a person in position of plaintiff - *Gosling v Lorne Foreshore Committee of Management Inc & Anor* [2009] VSCA 228 - Plaintiff's failure to take reasonable care for own safety in jogging rather than walking across the reserve was not relevant to obviousness of risk.

NEGLIGENCE - Statutory duty - Statutory construction - Whether defendant owed statutory duty to plaintiff in its role as 'road authority' under the Road Management Act 2004 s40 - Whether reserve in which plaintiff fell and suffered injury 'pathway' or 'roadside' as defined in Road Management Act 2004 - Consideration of statutory text - Ordinary and natural meaning - Provision in context of Act as a whole - *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 cited.

NEGLIGENCE - Duty of care - Defences - Breadth of operation of s 107 of the Road Management Act 2004 - Whether Road Management Act 2004 s107 protects the defendant when performing a role other than 'road authority' - Whether section 107 provides a defence where the defendant otherwise owed a statutory or common law duty to the plaintiff as infrastructure manager.

NEGLIGENCE - Breach - Proper identification of risk of harm - Lack of prior complaint not determinative - Defendant in breach of common law and statutory duties as road authority and infrastructure manager by failing to take precautions in response to the hazard presented by the raised stormwater pit.

Clarke, Steven Graham v Greater Shepparton City Council

Keogh J

[\[2016\] VSC 542](#)

08/09/2016

PROBATE - Application for revocation of a grant of probate - Standing of applicants to make application - *Re Egan* [1963] VR 318 - *In re Gillard* [1949] VLR 378 - *Onus v Alcoa Australia Limited* (1981) 149 CLR 27 - *Re Culina; Poulos v Pellicer* [2004] NSWSC 504 - *Nicholson v Kollias* [2005] VSC 473 - *Van Wyk v Albon* [2011] VSC 120 - *Griffiths v Lewis* [2013] VSC 609 - *Re Kouvakas; Lucas v Konakas* [2014] NSWSC 786.

PRACTICE AND PROCEDURE - Separate question as to standing of applicants to revoke the grant of probate - Separate question as to standing of applicants to bring claim on behalf of estate - Supreme Court (General Civil Procedure) Rules 2015, r47.04(a) - Civil Procedure Act 2010, Parts 2.3, 2.4, 4.4.

Hughes, Lachlan Owen Stuart and Sles, Kerrie Louise (as executors of the will of Douglas William Gardiner, deceased) v Gardiner, James Alexander & Ors (in accordance with the attached schedule)

McMillan J

[\[2016\] VSC 541](#)

09/09/2016

PROCEEDS OF CRIME - Application for revocation of a restraining order - Property purchased with money suspected of being proceeds of money laundering at Casinos - Whether any ground exists on which to make a restraining order - Whether in the interests of justice to make order - Application dismissed - Proceeds of Crime Act 2002 (Cth), s19, s42(5).

Ma, Hongjie v Commissioner of the Australian Federal Police

John Dixon J

[\[2016\] VSC 553](#)

16/09/2016

VALUATION, PLANNING & COMPENSATION LIST - Application for leave to appeal an order of the Victorian Civil and Administrative Tribunal - Minister for Planning granted a planning permit for the development of two sites under the Melbourne Planning Scheme - Identification of the responsible authority under cl61.01 of the Melbourne Planning Scheme - Whether permit application involved one development or two - Whether the tribunal failed to correctly address the jurisdictional fact to be found - Whether the Tribunal applied the wrong test - Whether irrelevant consideration taken into account - Whether Tribunal erred in law by arriving at a conclusion not open to it - Planning and Environment Act 1987 s173 - Civil Procedure Act 2010 - Appeal dismissed.

Forum Theatre Holdings P/L v Melbourne City Council & Anor

Emerton J

[\[2016\] VSC 534](#)

06/09/2016

WILLS AND ESTATES - Application to remove executors and trustees - Conflict of interest and duty - Administration and Probate Act 1958, s34 - Trustee Act 1958, s48.

Denby, Lynne Maree v Power, Damien James and Philippa Mary Power (both personally and in their capacity as executors of the will and estate of Peter Gerard Power, deceased)

McMillan J

[\[2016\] VSC 535](#)

06/09/2016

Criminal Division

CRIMINAL LAW - Major Crime (Investigative Powers) Act 2004 (Vic) s43A, s43B - evidence given to Chief Examiner subject to restricted publication direction made under s43(1) of the Act - application by Chief Commissioner of Police under s43A of the Act for release of restricted evidence to person charged with offence - whether the court has power to make restricted evidence available under s43A of the Act for the purpose of assisting the prosecution of a person charged with an offence - whether the evidence should be made available in the interests of justice - *The Chief Examiner v Mary Brown* (a pseudonym) [2013] VSCA 167.

In the matter of an application pursuant to s 43A Major Crime (Investigative Powers) Act 2004 (Vic) by Chief Commissioner of Police

Macaulay J

[\[2014\] VSC 679](#)

02/10/2014

CRIMINAL LAW - Sentence - Attempted murder - Accused stabbed wife repeatedly to neck with knife, lacerating jugular vein - Victim survived but suffers debilitating psychological and physical harm - Objectively grave offence but very low moral culpability - Accused's behaviour caused by deluded thoughts, precipitated by schizophrenia, that victim was trying to kill him by poisoning - Corresponding reduction in weight to general deterrence, specific deterrence, curial denunciation and just punishment - Plea of guilty despite strong defence of mental impairment - Some remorse - No prior convictions but history of domestic violence - Impact of schizophrenia on hardship of imprisonment - Illness now controlled by anti-psychotic medication - Very good prospects of rehabilitation - Sentence of seven years' imprisonment with non-parole period of four years - But for plea of guilty, sentence of ten years' imprisonment with non-parole period of seven years - But for mental illness and plea of guilty, sentence in order of 12 to 14 years' imprisonment.

The Queen v Sandhu, Sukhwinder Singh

Croucher J

[\[2016\] VSC 516](#)

29/08/2016

County Court of Victoria Cases

Commercial Division case (no catchwords supplied)

Fodor v Simudvarac & Ors

Judge Davis

[\[2016\] VCC 1304](#)

25/08/2016

PRACTICE AND PROCEDURE - Application to set aside default judgment entered in December 2004 - Application to set aside judgment made in January 2005 dismissed in May 2005 - Summary judgment entered for the plaintiff in December 2005 in subsequent Supreme Court proceeding arising from the same matters - No further relevant material filed in present application - Application dismissed.

GE Finance Australasia Pty Ltd v Abbott

Judge Anderson

[\[2016\] VCC 1345](#)

13/09/2016

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