



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
11 November  
2016

### Library News

#### “Switch on...” in the Library: Victorian Reports Quick Guide 15 November 1.15-1.40pm

An introduction guide with tips on using the Victorian Reports website - browsing, searching, viewing reports, printing, bookmarking, and more.  
More information: <https://lawlibrary.vic.gov.au/events>

#### General tour of the Supreme Court Library 22 November, 1.15-1.45pm

This 30 minute tour is an introduction to the Library and its history, exploring the magnificent Main Reading Room and the First Floor.  
More information and RSVP: <https://lawlibrary.vic.gov.au/tours>

#### Twilight Songs under the Dome

24 November, 6pm for a 6.15pm start

BottledSnail Productions and the Law Library of Victoria present a live music event in the Library with proceeds donated to the Tristan Jepson Memorial Foundation.

Tickets are \$15 via <http://www.bottledsnail.com/twilightsongs>.

**Early Closing: Supreme Court Library - Friday 18 November, 2pm.**  
However, we will be providing a virtual library service throughout the afternoon. Please contact us, and we will endeavour to assist you.

<https://www.lawlibrary.vic.gov.au/location>.

#### The Law Library of Victoria user satisfaction survey

We would appreciate your participation by [completing the survey online](#).

#### 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.

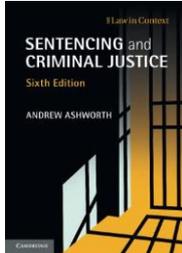
The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

# Contents

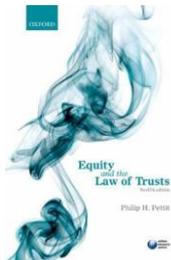
<b>New Books</b>	<b>3</b>
<b>Legislation</b>	<b>4</b>
Victorian Bills	4
Victorian Assents	4
Proclamations	5
<b>High Court Cases</b>	<b>6</b>
<b>Victorian Supreme Court Cases</b>	<b>8</b>
Court of Appeal	8
Commercial Court	10
Common Law Division	12
Criminal Division	15
<b>County Court of Victoria Cases</b>	<b>21</b>
<b>Articles</b>	<b>22</b>
Courts	22
Criminal Law & Procedure	22
Evidence	22
Human Rights	22
Legal Profession	22
Military law	22
Property Law	22
Torts	22

# New Books

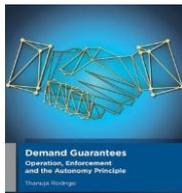
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: [https://courts.sdp.sirsidynix.net.au/client/en\\_AU/llv/](https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/)



Ashworth, Andrew, *Sentencing and Criminal Justice*  
Cambridge University Press, Cambridge, 2015  
Call number: 345.0772 ASH.6 (Supreme Court Library)



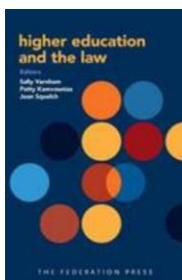
Pettit, Philip H, *Equity and the Law of Trusts*  
Oxford University Press, Oxford, 2012  
Call number: 346.004 PET.12 (Supreme Court Library)



Rodrigo, Thanuja, *Demand Guarantees: Operation Enforcement and the Autonomy Principle*  
Butterworths, NSW, 2016  
Call number: 346.074 ROD (Supreme Court Library)



Smith, Marcus, *DNA Evidence in the Australian Legal System*  
Butterworths, NSW, 2015  
Call number: 363.250994 SMI (Supreme Court Library)



Varnham, Sally; Kamvounias, Patty and Squelch, Joan (eds), *Higher Education and the Law*  
Federation Press, NSW, 2015  
Call number: 344.94074 HIG (Supreme Court Library)

# Legislation

## Victorian Bills

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

- [\*Creative Victoria Bill 2016\*](#)
- [\*Heritage Bill 2016\*](#)
- [\*Owner Drivers and Forestry Contractors Amendment Bill 2016\*](#)
- [\*Small Business Commission Bill 2016\*](#)

## Victorian Assents

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

- [\*Corrections Legislation Amendment Act 2016\*](#) No. 57/2016
- [\*Estate Agents Amendment \(Underquoting\) Act 2016\*](#) No. 58/2016
- [\*Land \(Revocation of Reservations - Regional Victoria Land\) Act 2016\*](#) No. 59/2016
- [\*Legal Profession Uniform Law Application Amendment Act 2016\*](#) No. 60/2016
- [\*Melbourne College of Divinity Amendment Act 2016\*](#) No. 61/2016



## EXHIBITIONS IN THE LIBRARY

### The Supreme Court & the 1990s

The 1990s was an era of dynamic change at the Supreme Court. Technological developments saw the creation of the Supreme Court website and databases to manage court records. The Court of Appeal was established and the Library was radically renovated.

This exhibition includes photos and information about significant cases and developments in the 1990s that effected the Court.

## Proclamations

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

- *Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016 No. 10/2016*
  - Part 8 Division 1 (sections 89 to 93) came into operation on 31 October 2016. Part 9 (sections 175 to 180) and Schedule 1 came into operation on 1 November 2016 (VGG S325 25.10.2016)
- *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016 No. 32/2016*
  - Part 3, sections 19-29 of this Act came into operation on 31 October 2016 (VGG S319 18.10.2016)
- *Gene Technology Amendment Act 2016 No. 43/2016*
  - Sections 1-18 of this Act came into operation on 1 November 2016 (VGG S319 18.10.2016)

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

- *Corrections Legislation Amendment Act 2016 No. 57/2016*
  - Sections 1-7, 9-15, 17 of this Act came in by forced commencement on 3 November 2016 s.2(1)
- *Legal Profession Uniform Law Application Amendment Act 2016 No. 60/2016*
  - Sections 1- 12 of this Act came in by forced commencement on 3 November 2016 s.2

# High Court Cases

ADMINISTRATIVE LAW - Constitutional writs - Where plaintiff made admissions in proceedings in Federal Court of Australia that, because of operation of s793 of Fair Work Act 2009 (Cth), it could be taken to have contravened s500 of Act by conduct of its officers - Where, after judgment reserved in proceedings in Federal Court, plaintiff applied for leave to file application for leave to withdraw admissions and amend pleadings - Where leave refused - Whether decision to refuse leave amenable to appeal - Whether decision to refuse leave vitiated by jurisdictional error because of judge's failure to reach concluded view as to operation of s793 - Whether final judgment imposing penalties for contraventions of s500 on basis of admissions vitiated by jurisdictional error - Whether plaintiff denied procedural fairness. Practice and procedure - High Court of Australia - Original jurisdiction - Constitutional writs - Where plaintiff applied for order to show cause why relief in the nature of prohibition, mandamus and certiorari should not be granted - Where first defendant moved on summons seeking order pursuant to r25.03.3(a) of High Court Rules 2004 (Cth) that application be dismissed - Considerations relevant to exercise of discretion to dismiss application - Availability of constitutional writs where Court's original jurisdiction invoked before exhaustion of statutory rights of appeal. Words and phrases - "administrative decision", "certiorari", "constitutional writs", "constructive failure to exercise jurisdiction", "error of law on the face of the record", "inappropriate invocation of jurisdiction", "jurisdictional error", "leave to file", "leave to withdraw admissions", "mandamus". Constitution, s75(v). Fair Work Act 2009 (Cth), s500, s793. Federal Court of Australia Act 1976 (Cth), s24(1)(a), s24(1E). High Court Rules 2004 (Cth), r25.03.3

***Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate***

[\[2016\] HCA 41](#)

28/10/2016

ESTOPPEL - Anshun estoppel - Where appellant provided loans to investors to fund investments in managed investment schemes - Where appellant placed in liquidation - Where group proceeding against appellant under Pt 4A of Supreme Court Act 1986 (Vic) by lead plaintiff on behalf of himself and group members alleging misrepresentations and failure to disclose information about risks - Where respondents group members in group proceeding - Where group proceeding unsuccessful - Where subsequent proceedings by appellant against respondents seeking recovery of outstanding principal and interest - Where respondents pleaded number of defences in recovery proceedings - Whether lead plaintiff in group proceeding respondents' privy - Whether defences precluded by reason of estoppel which arises by reference to principle in Port of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589. Practice and procedure - Whether defences sought to be raised in recovery proceedings an abuse of process.

WORDS AND PHRASES - "abuse of process", "Anshun estoppel", "control", "estoppel", "group member", "group proceeding", "lead plaintiff", "opt out notice", "privy", "unreasonable". Supreme Court Act 1986 (Vic), Pt 4A.

***Timbercorp Finance P/L (in liquidation) v Collins, Douglas James & Anor; Timbercorp Finance P/L (in liquidation) v Tomes, John Charles***

[\[2016\] HCA 44](#)

09/11/2016

INCOME TAX - Assessable income - Where taxpayer participated in employee incentive profit participation agreement - Taxpayer granted claim to deferred compensation calculated on basis of company profit - Amount payable under agreement to taxpayer on termination of employment and execution of declaration of assignment and release - Whether amount income according to ordinary concepts or capital gain.

WORDS AND PHRASES - "deferred compensation", "Genussscheine", "incentive profit participation agreement", "ordinary income", "pecuniary account". Income Tax Assessment Act 1936 (Cth), s26(e). Income Tax Assessment Act 1997 (Cth), s6-5(1), (4). Swiss Code of Obligations, Art 657.

***Blank, Vaughan Rudd v Commissioner of Taxation***

[\[2016\] HCA 42](#)

09/11/2016

WORKERS COMPENSATION - Safety, Rehabilitation and Compensation Act 1988 (Cth), s5A(1) - Meaning of injury - Where employee suffered aggravation of mental condition in reaction to perceived consequence of failure to obtain promotion - Whether aggravation suffered "as a result of" reasonable administrative action. Words and phrases - "as a result of", "'common sense' approach to causation", "disease", "injury". Safety, Rehabilitation and Compensation Act 1988 (Cth), s5A, s5B.

***Comcare v Martin, Peta***

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

09/11/2016

# Victorian Supreme Court Cases

## Court of Appeal

CRIMINAL LAW - Appeal - Conviction - Evidence - Evidence of lies - Relevance of lies - Admissibility of evidence of lies - Culpable driving causing death - Accused's explanation for collision - Explanation for collision given at scene of collision - Explanation false - Whether evidence of explanation relevant - Whether evidence of explanation admissible - No objection taken to relevance and admissibility at trial - Forensic choice by accused's counsel - Evidence relevant and admissible - Judge's charge about evidence unduly favourable to accused - Application for leave to appeal refused.

***Gill, Jobandeep v The Queen***

Redlich JA, Beach JA, and Kyrou JA

[\[2016\] VSCA 261](#)

04/11/2016

CRIMINAL LAW - Appeal - Sentence - Grooming by youth worker - Crimes Act 1958 s49B(2) - Indecent assault and possession of child pornography - Victim 14 year old with intellectual disabilities - Combined sentence of eight months' imprisonment with two year Community Correction Order including treatment and unpaid community work - Whether manifestly excessive - Whether judge erred in treating indecent assault and child pornography as conduct also constituting grooming - Grooming charge involved persistence and cruelty - Objective gravity of grooming - Breach of trust and responsibility for child in applicant's care - Sentence not manifestly excessive - Leave refused.

CRIMINAL LAW - Sentencing - Whether judge erred in finding applicant's prospects of rehabilitation only 'reasonable' - Lack of insight into offending - Psychologist considered ongoing treatment necessary - Finding that prospects 'reasonable' open to sentencing judge.

***Waldon, Cameron v The Queen***

Redlich JA

[\[2016\] VSCA 260](#)

20161103

CRIMINAL LAW - Application for leave to appeal against conviction - Applicant convicted of 3 charges of indecent act with child under 16 (his biological daughter), 1 charge of incest and 1 charge of common law assault - Whether inconsistencies and other features of complainant's evidence rendered verdicts unreasonable or unable to be supported having regard to the evidence - Ground not made out.

CRIMINAL LAW - Application for leave to appeal against conviction - Whether judge erred in admitting into evidence two statements by complainant that she lost her virginity to applicant during one of the charged events - Ground not made out - Application for leave to appeal refused.

***Spence, Wayne (a pseudonym) v The Queen***

Redlich JA, Beach JA, and Kyrou JA

[\[2016\] VSCA 265](#)

11/11/2016

PRACTICE AND PROCEDURE - Appeal - Interlocutory appeal - Case management - Stay - Commercial dispute - Claim for repayment of debt - Amount outstanding exceeded \$90 million - Counterclaim alleged sale of secured assets at undervalue - Judge stayed counterclaim - Overarching purpose - Objects of case management - Appeal from exercise of discretion - No error of principle - Conclusions well open - Leave to appeal refused - Civil Procedure Act 2010 s7-9, s49.

***Littore, Vincent and Littore, David & Ors (according to the schedule) v Rabobank Australia Ltd (ACN 001 621 129) & Ors (according to the schedule)***

Maxwell P and Weinberg JA

[\[2016\] VSCA 258](#)

26/10/2016

PRACTICE AND PROCEDURE - Application for extension of time - Reasons for delay - Delay caused principally by default of legal practitioners - Explanation sufficient in circumstances - Prospects of success - Application for leave to appeal not shown to be futile - Application granted.

***Kambouris, Polyxeni (also known as Jenny Kambouris) v Kiatos, Con***

McLeish JA and Riordan AJA

[\[2016\] VSCA 266](#)

11/11/2016

WILLS AND ESTATES - Incorporation of schedule referred to in Will - Bequests to testator's children subject to abatement if schedule incorporated into Will - Whether incorporation of schedule altered legal effect of Will - Whether issue estoppel prevented primary judge's incorporation of schedule - Whether natural justice denied in proceedings below - Application for leave to appeal dismissed.

COSTS - Cross-application by executors against costs order by primary judge - Application made out of time - Application for extension of time refused.

***Rockman, Zachary and Rockman, Rachel (by their litigation guardian Lynette Anne Rockman) v Fast, John & Ors***

Warren CJ, Tate JA, and Ferguson JA

[\[2016\] VSCA 262](#)

09/11/2016

## Commercial Court

**BUILDING CONTRACTS** - Construction dispute - Payment claim - Judicial review of adjudication determination - Whether s28R of the Building and Construction Industry Security of Payment Act 2002 is engaged to require the plaintiff to make payment into Court - Whether the plaintiff is entitled to proceed with the judicial review of the adjudication determination in circumstances where it has not complied with order of the Court providing for payment of moneys into Court - Building and Construction Industry Security of Payment Act 2002 s28R.

***Raw Build Pty Ltd (ACN 159 255 142) v JBK Industries Pty Ltd (ACN 106 713 115)***

Vickery J

[\[2016\] VSC 547](#)

09/09/2016

**CORPORATIONS** - Corporations Act 2001 (Cth) s471A, s553, s588M, s1322 - Winding-up of corporation - Insolvent trading - GST debts incurred while insolvent - Deputy Commissioner of Taxation provided amended proofs of debt - Commissioner is the only creditor - Director objected to assessment by Commissioner - Liquidator refused to lodge objection on behalf of taxpayer - Director lodged objection on behalf of taxpayer - Whether leave should be granted to permit objection to be lodged by director - Whether leave should be granted nunc pro tunc - Whether tax is no longer payable because of Taxation Administration Act 1953 (Cth) s105-50 - Whether tax amount remains payable after four years if taxpayer is in liquidation - Input tax credits - Principles relevant to grant of leave to director of company in liquidation - Prejudice to creditors in granting leave - Prospects of success - Leave granted.

***Vasudevan, David Raj as official Liquidator of Tomker P/L (In Liquidation) (ACN 132 233 946); Tomker P/L (In Liquidation) (ACN 132 233 946) and Liangos, Thomas also known as Liangos, Tom and J & T Refrigerated Transport P/L (ACN 144 793 493); Vege-Fresh (Werribee) PTY LTD (ACN 081 125 297); Dimitriadis, Jim***

Randall AsJ

[\[2016\] VSC 656](#)

02/11/2016

**LOAN AGREEMENTS** - Construction of loan agreements - Nature of security agreed - Extent to which personal guarantees agreed to be provided.

**MORTGAGES** - Extent to which mortgages agreed to be supported by personal guarantees - Mistake in execution of mortgage documents by guarantor - Mortgagee's duty on sale of mortgaged property with respect to guarantors - Effect of sale of mortgage property by private treaty with no public advertising or advertising regime where specialised regime may be required for a hotel and motel property - Impairment of security - Sale of mortgage property without prior valuation - Significance or otherwise of post-mortgagee's sale valuation with respect to mortgagee's duty on sale.

**GUARANTEES** - Impairment of security - Discharge of guarantor.

***Webster Investments P/L v Anderson, Gary James & Ors: Webster Investments P/L v North Star Developments P/L & Ors***

Croft J

[\[2016\] VSC 620](#)

09/11/2016

PRACTICE AND PROCEDURE - Application to amend statement of claim - Adequacy of pleading accessorial liability under the second limb of *Barnes v Addy* - Allegation of knowing assistance - Application refused.

***Nicholson Street P/L (ACN 069 104 089) (receivers and managers appointed) (in liquidation) & Ors v Letten, Mark Ronald & Anor***

Judd J

[\[2016\] VSC 678](#)

10/11/2016

PRACTICE AND PROCEDURE - Case management - Stay - Commercial dispute - Claim for repayment of debt - Amount outstanding exceeded \$90 million - Counterclaim alleged sale of secured assets at undervalue - Overarching purpose - Objects of case management - Civil Procedure Act 2010 s7-9, s49.

***Rabobank Australia Ltd (ACN 001 621 129) & Ors v Littore, Vincent & Ors***

Hargrave J

[\[2016\] VSC 673](#)

22/07/2016

PRACTICE AND PROCEDURE - Open justice principle - Exceptions - Privacy and Confidentiality - Countervailing considerations - Administration of Justice - Inherent jurisdiction of Court - Open Courts Act 2013.

***Strategic Management Australia AFL P/L (ACN 146 799 162) and Precision Sports & Entertainment Group P/L (ACN 169 078 755) & Ors (According to the attached Schedule) and between Pickering, Liam Michael; Strategic Management Australia AFL P/L (ACN 146 799162) & Anor (According to the attached Schedule)***

Sifris J

[\[2015\] VSC 717](#)

15/11/2015

TRUSTS AND TRUSTEES - Whether payments made to members of defined benefit scheme recalled to duty when rostered on call are salary for the purpose of determining superannuation entitlements - Whether periods of recall duty to be included in formula for determining period of service - First State Superannuation Act 1992 (NSW); Supreme Court (General Civil Procedure) Rules 2015 r16.01, r18.01, r54.02.

***FSS Trustee Corporation v Eastaugh, Garry Robert and Alfred Health***

McDonald J

[\[2016\] VSC 636](#)

04/11/2016

WINDING UP - Appointment of special purpose liquidators with wide powers of investigation - Whether prior involvement precludes appointment - Whether special purpose liquidators fall within definition of auditor and precluded from appointment.

***The State of Victoria (in the right of the Department Of Education and Training) v Goulburn Administration Services Limited (In Liquidation) (ACN 095 943 543) (and others according to Schedule 1)***

Sifris J

[\[2016\] VSC 654](#)

04/11/2016

## Common Law Division

ADMINISTRATIVE LAW - Judicial review - O 56 Supreme Court (General Civil Procedure) Rules 2015 - Accident Compensation Act 1985 - Workplace Injury Rehabilitation and Compensation Act 2013 - Review of Medical Panel opinion - Panel considered information beyond statement of agreed facts in the joint statement - Procedural fairness.

***Venture Campbellfield v Isitman, Kemal; Gibson, Andrew; Fish, David; Lietl, Steven***

T Forrest J

[\[2016\] VSC 665](#)

08/11/2016

CONTRACT - Whether terms of a construction and engineering contract, relating to performance of an engineering plant once completed, capable of giving rise to misleading or deceptive conduct if breach of s52 of the Trade Practices Act 1974 (Cth) or s18 of the Australian Consumer Law - Not established that the claim has no real prospect of success - Observations on the risk inherent in construction and engineering projects and the role of a contract in allocation of risk - Need to construe any actionable representations in the context of the contract read as a whole.

***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) and between RCR Tomlinson P/L (ACN 008 898 486); RCR Energy P/L (ACN 080 753 680) v WTE Co-Generation P/L (ACN 142 284 820); Visy Paper P/L (ACN 005 803 234)***

Vickery J

[\[2016\] VSC 674](#)

10/11/2016

CORPORATIONS - A director (Mr Crewe) of the corporation in liquidation (Akron) was engaged to provide management consultant services to Akron - The director (Mr Crewe) was also the sole director of Crewe Sharp, a corporation that provided management consultancy services.

CORPORATIONS - Liquidators claim against Mr Crewe as director and against Crewe Sharp as alleged shadow director of Akron for failing to prevent the company from incurring debts whilst insolvent - s588(2) of the Corporations Act 2001 (Cth) (Corporations Act).

CORPORATIONS - Whether Crewe Sharp was a shadow director of Akron - s9 Corporations Act - Crewe Sharp (the alleged shadow director) being the employer of the director (Mr Crewe).

INSURANCE - Liquidators claim for a declaration that the insurer of Mr Crewe and of Crewe Sharp (the corporation that employed the director), was liable to indemnify the insureds for the claims by the liquidators against Mr Crewe and Crewe Sharp.

PRACTICE AND PROCEDURE - Whether the liquidators had standing to seek the declaration against the insurer of Mr Crewe - Consideration of s117 Bankruptcy Act 1966 (Cth) - Whether purported assignment by Mr Crewe to the liquidators of Akron of whatever rights and entitlements Mr Crewe had under the policy of insurance he had with the insurer, was sufficient to give the liquidators standing.

INSURANCE - Whether the professional indemnity insurance policy issued by the insurer was engaged by the liquidators' claim against Mr Crewe and Crewe Sharp under s588(2) of the Corporations Act.

INSURANCE - Whether the insurer was entitled to deny liability through non-disclosure or misrepresentations of the insureds - s21 and s26 Insurance Contracts Act 1984 (Cth).

**Blakeley, Ross; Ryan, Michael; & Olde, Quentin (as joint and several liquidators of Akron Roads P/L (in liquidation) and Akron Roads P/L (in liquidation) v Crewe, Trevor Paul; Sill, Robert Mark; Sill, John Martin; Crewe Sharp P/L (ACN 066 670 013); CGU Insurance Ltd (ACN 004 478 371)**

Robson J

[\[2016\] VSC 657](#)

11/11/2016

COSTS - Judicial review of a Medical Panel decision - Order 56 Supreme Court (General Civil Procedure) Rules 2015 - Whether or not an appeal for purposes of Appeals Costs Act 1998 - Error of Medical Panel no fault of first defendant - Indemnity certificate granted.

**Venture Campbellfield v Isitman, Kemal; Gibson, Andrew; Fish, David; Lietl, Steven**

T Forrest J

[\[2016\] VSC 680](#)

08/11/2016

JUDICIAL REVIEW - Medical negligence - Defendant broke ankle playing football - Alleged misapplication of plaster cast on broken ankle - Whether Panel failed to take into account and disregard impairment from an unrelated injury or cause, namely the football injury - Whether Panel misconstrued the requirement for an evidentiary basis for a pre-existing impairment - Whether Panel took an irrelevant consideration into account - Whether Panel misdirected itself in applying s28LL(3) of the Wrongs Act 1958 - Wrongs Act 1958, s28LB, s28LE, s28LF, s28LH, s28LL & s28LN.

**Central Gippsland Health Service v Cooper, Devon & Ors**

Emerton J

[\[2016\] VSC 658](#)

04/11/2016

JUDICIAL REVIEW - Medical negligence claim - Medical Panel's determination as to degree of impairment - Whether finding of 'operative fractures' without evidentiary basis - Whether Panel misdirected itself in applying s28LL(3) of the Wrongs Act 1958 - Jurisdictional error - Error of law on the face of the record - Statutory amendment of whole-person impairment threshold - Whether new threshold applies - Supreme Court (General Civil Procedure) Rules 2015 O 56; Wrongs Act 1958 s28LH, s28LL(3), s28LZG, s28LZS.

STATUTES - Interpretation - Amending legislation - Effect on proceedings when Medical Panel assessment involves jurisdictional error - Interpretation of Legislation Act 1984 s14(2); Wrongs Amendment Act 2015 s28 LZS (2).

***Tan, Dr Caroline v Associate Professor Peter Gibbons (and others according to the attached Schedule)***

Ginnane J

[\[2016\] VSC 652](#)

02/11/2016

PRACTICE AND PROCEDURE - Case management conference - Progress of the Settlement Distribution Scheme - Orders made that an initial distribution from the settlement distribution fund be made to Group Members.

***Downie, Erin v Spiral Foods P/L (ACN 006 292 780) ; Muso Co. Ltd; Marusan-Ai Co. Ltd***

J Forrest J

[\[2016\] VSC 675](#)

08/11/2016

PRACTICE AND PROCEDURE - Claim in relation to alleged sexual offences committed at a school - Application by defendants for leave to issue a subpoena under s 33C of the Evidence (Miscellaneous Provisions) Act 1958 (Vic) ('EMPA') to compel disclosure of a treating psychologist's file - Substantial disclosure of psychologist's reports and records to the defendants as part of a consensual pre litigation claims process.

EVIDENCE - Whether principles of waiver associated with legal professional privilege and 'medical privilege' apply to confidential communications under s33B of the EMPA - Not resolved - Elliott v Tippett (2008) 20 VR 195 referred to - Whether making of allegations in the proceeding amounts to conduct inconsistent with the maintenance of confidentiality - Mann v Carnell (1999) 201 CLR 1 and DSE (Holdings) Pty Ltd v Intertan Inc and Anor (2003) 127 FCR 499 referred to and applied - No issue waiver by making allegations of fact in the proceeding.

EVIDENCE - Whether disclosure of substantial proposition of psychologist's notes and reports is inconsistent with maintenance of confidentiality in the remaining confidential communications in psychologist's file - Whether disclosure amounts to 'consent' under s32E(1)(a) of the EMPA - Reports and records provided as part of an agreed claims process - Balance of records record communications for a therapeutic purpose - No waiver.

EVIDENCE - Requirements of s 32D of the EMPA - Whether documents 'will have substantial probative value to a fact in issue in the proceeding' - Threshold test - James Baker (a pseudonym) v R [2015] 323 applied - Whether evidence can be obtained by any other means - Public interest considerations - Limited disclosure ordered. Note: on 3 November 2016 the Court made orders on the application of the plaintiff, permitting the publication of this judgment (and a report or summary of this judgment) pursuant to s 4(1C) of the Judicial Proceedings Reports Act 1958 (Vic).

***Skarbek, Janusz v The Society Of Jesus In Victoria & Ors (according to the attached schedule)***

Daly AsJ

[\[2016\] VSC 622](#)

26/10/2016

PRACTICE AND PROCEDURE - Group proceedings - Progress of the Settlement Distribution Scheme - Concerns of a Group Member regarding the conduct of a review assessment - Amendment of the Settlement Distribution Scheme - Appointment of an independent expert by the Scheme Administrator to audit the administration in particular respects - Supreme Court Act 1986 s33V.

***Matthews, Carol Ann v Ausnet Electricity Services P/L (formerly SPI Electricity P/L) (ACN 064 651 118) and others according to the Schedule; Ausnet Electricity Services P/L (formerly SPI Electricity P/L) (ACN 064 651 118) v ACN 060 674 580 P/L and others according to the Schedule; ACN 060 674 580 P/L v Ausnet Electricity Services Pty Ltd (formerly SPI Electricity P/L) (ACN 064 651 118) and others according to the Schedule annexed to other rulings of the Court***

J Forrest J

[\[2016\] VSC 583](#)

29/09/2016

SUCCESSION LAW - Compromise of probate proceeding - Approval of compromise - Further proceeding by another claimant alleging interest in estate after compromise of probate proceeding - Compromise of subsequent proceeding subject to approval - Whether compromise should be approved - Whether contravention of overarching obligations of claimant - Civil Procedure Act 2010, s18, s41, s42 - Supreme Court (General Civil Procedure) Rules 2015, r15.08

***Lufor, Micha v Gooriah, Cynthia ; Latchman, Mirella Christiane Aurore v Lufor, Micha (who is sued as administrator of the estate of Varunadwfewa Gooriah deceased)***

McMillan J

[\[2016\] VSC 659](#)

04/11/2016

## Criminal Division

APPLICATION FOR RENEWAL OF DETENTION ORDER - Consideration of the risk of the respondent committing a relevant offence - Progress of rehabilitation and treatment - Suitability of Corella Place for the management of the risk - Suitability of a supervision order - Detention order to remain in force.

***In the matter of the Serious Sex Offenders (Detention and Supervision) Act 2009 and In the matter of an application under s 45 of the Act for renewal of a detention order between The Director of Public Prosecutions [DPP] and CGM***

Coghlan JA

[\[2016\] VSC 661](#)

04/11/2016

CRIMINAL LAW - Application for bail - Threats to kill - Threats to inflict serious injury - False imprisonment - Criminal damage - Unlawful assault - Prior convictions - Previous threats and breaches of bail conditions - Whether an unacceptable risk - Bail Act 1977 (Vic), s4(1) and (2) - Bail refused.

***IN THE MATTER of the Bail Act 1977 (Vic) and IN THE MATTER of an application for bail by Jamie Edwards***

Elliott J

[\[2016\] VSC 672](#)

28/10/2016

CRIMINAL LAW - Bail - Dishonesty, drug and driving offences - Unacceptable risk that the applicant will commit offences on bail or endanger the safety or welfare of members of the public - Bail refused - Bail Act 1977 s4(2)(d)(i).

***In the Matter of the Bail Act 1977 and In the Matter of an Application for Bail by Kirsty Lumley***

Priest JA

[\[2016\] VSC 663](#)

03/11/2016

CRIMINAL LAW - No case submission on behalf of third accused in relation to Charge 3 - Attempting to pervert the court of justice - Whether crime scene had been altered - Whether accused knew or believed crime scene had been altered - Whether accused put police onto a false trail of evidence or participated in putting police onto a false trail of evidence - No case submission rejected (Ruling No 13).

***The Queen v Semaan, Alexander ; Semaan, Hanna; Beljulji, Megan (Ruling 13)***

Beale J

[\[2016\] VSC 668](#)

08/11/2016

CRIMINAL LAW - Offences - First accused (D1) charged with murder (Charge 1) - Second accused (D2) and third accused (D3), the sister and girlfriend of D1, both charged with two counts of attempting to pervert the course of justice in relation to the criminal proceedings against D1 (Charges 2 & 3) - The prosecution (P) alleges that D1 shot and killed the deceased, V - D1's defence is that unknown intruder shot and killed V - P alleges that D2 and D3, knowing or believing D1 shot and killed V, interfered with a witness (W) who says he saw D1 shoot V (Charge 2) - P also alleges that D2 and D3, knowing that the crime scene had been altered, requested police to re-examine crime scene with a view to police finding false evidence intended to exculpate D1 (Charge 3).

EVIDENCE - Rulings 1, 2 & 3 - In trial of D2, objection taken to the admissibility of evidence of several statements by D2 on night of shooting to a relative and the police indicating or allegedly indicating that she believed D1 had shot and killed V - Whether evidence irrelevant (s56(2) Evidence Act 2008) and/or probative value outweighed by risk of unfair prejudice (s137 Evidence Act 2008) - Application of common law unfairness discretion also considered - Statements to relative ruled admissible (Rulings 1 & 2) - statements to police excluded (Ruling 3) on basis of irrelevance.

EVIDENCE - In trial of D2, objection also taken to admissibility of answers given in record of interview (ROI) with fourth accused (D4), whose trial was severed by agreement - In ROI, D4 sets out content of telephone conversations between him and D2 which are relevant to Charge 2 - P not proposing to call D4 in trial of D2 - Whether D4's statements in the ROI are inadmissible hearsay (s 59(1) Evidence Act 2008) - Evidence excluded on that basis.

SEVERANCE - D2 seeks separate trial from D1 - Criminal Procedure Act 2009, s 193 - Whether jury may be overwhelmed in trial of D2 by evidence led by P in trial of D1 - Evidence admissible to prove D1 shot V also admissible in trial of D2 - Where evidence not cross admissible, directions capable of curing any risk of prejudice.

SEVERANCE - D3 seeks separate trial from D2 if evidence of D2's statements on night of shooting that D1 killed V admitted in trial of D2 - Criminal Procedure Act 2009, s193 - Whether unacceptable risk that jury will use statements made by D2 on the night of the shooting that she believed D1 had shot and killed V as evidence against D3, even though P does not rely on these statements in trial of D3 - Jury directions capable of curing any such risk.

***The Queen v Semaan, Alexander ; Semaan, Hanna; Beljulji, Megan (Rulings 1 & 6)***

Beale J

[\[2016\] VSC 124](#)

04/04/2016

CRIMINAL LAW - Offences - First accused (D1) charged with murder (Charge 1) - Second accused (D2) and third accused (D3), the sister and fiancé of D1, both charged with two counts of attempting to pervert the course of justice (Charges 2 & 3) in relation to the criminal proceedings against D1 - The prosecution (P) alleges that D1 shot and killed the deceased, V - D1's defence is that unknown intruder shot and killed V - P alleges that D2 and D3, knowing or believing D1 shot and killed V, interfered with a witness who says he saw D1 shoot V (Charge 2) - P also alleges that D2 and D3, knowing that the crime scene had been altered, requested police to re-examine crime scene with a view to police finding false evidence intended to exculpate D1 (Charge 3).

EVIDENCE - D1 challenges admissibility of a previous representation by YK to police officer, S, on night of shooting - Previous representation by YK was to the effect that D1 was still in possession of a gun - Firsthand hearsay - Previous representation not a formal or informal proof of evidence caught by s 66(3) of the Evidence Act 2008 - Admissible under s66 of the Evidence Act 2008 - No unfair prejudice that would enliven s 137 of the Evidence Act 2008 or the Haddara discretion (Ruling No 8).

EVIDENCE - D1 challenges admissibility of previous representation by YK to police officer, K, on night of shooting - Previous representation by YK was to the effect that D1 pointed a gun at YK - First hand hearsay - Previous representation not a formal or informal proof of evidence caught by s66(3) of the Evidence Act 2008 - Admissible under s66 of the Evidence Act 2008 - No unfair prejudice that would enliven s137 of the Evidence Act 2008 or the Haddara discretion (Ruling No 9).

EVIDENCE - D1 and D3 challenge the admissibility of previous representation by MK, sister of YK, to NS, sister of D1, on night of shooting - Previous representation by MK was to the effect that D1 pointed a gun at everyone in his bungalow - NS claims to have no recollection of speaking to MK but, in a recorded conversation on the night, she told a detective, C, of the previous representation by MK - NS confirmed at a Basha hearing that it was her voice on the recording made by C and that she had the recorded conversation with C - If NS gives evidence in line with the evidence she gave on the Basha hearing, evidence of MK's previous representation will be admissible under s66 of the Evidence Act 2008 - No unfair prejudice that would enliven s 137 of the Evidence Act 2008 or the Haddara discretion (Ruling No 10).

***The Queen v Semaan, Alexander; Semaan, Hanna; Beljulji, Megan (Rulings 8, 9, & 10)***  
Beale J

[\[2016\] VSC 226](#)

11/05/2016

CRIMINAL LAW - Sentence - Murder - Offender (D1) shot and killed a family friend, in backyard of offender's family home - D1 on parole at time - Summary offence of breach of parole - Impact of offending on victims - D1 affected by 'ice' at the time of offending - Evidence insufficient for a finding that D1 was psychotic at time of offence - Use of ice neither mitigating or aggravating - Mid-range example of the offence of murder - History of mental health problems in context of drug abuse - Significant prior convictions - Poor prospects of rehabilitation - Need for just punishment, denunciation and specific and general deterrence - s78A Corrections Act 1986 - s242 Criminal Procedure Act 2009 - Iddon & Crocker (1987) 32 A Crim R 315 - Redenbach (1991) 52 A Crim R 95 - Sebalj [2006] VSCA 106 - Pyke [2006] VSCA 265.

CRIMINAL LAW - Sentence - Attempt to pervert the course of justice - Offender (D2) pressured eyewitness to the murder by D1 to change his police statement - Mid-range example of offence - Imprisonment harder for offender because of separation from disabled daughter - Prior convictions for deception offences - Reasonable prospects of rehabilitation - Importance of general deterrence.

CRIMINAL LAW - Sentence - Attempt to pervert the course of justice - Two counts - Offender (D3) was a party to pressuring eyewitness to the murder by D1 to change his police statement - Mid-range example of offence - D3 also a party to putting police onto a false trail of evidence - Low-range example of offence - No prior convictions - History of drug use - Family support - Good prospects of rehabilitation - Importance of general deterrence.

***The Queen v Semaan, Alexander ; Semaan, Hanna; Beljulji, Megan***

Beale J

[\[2016\] VSC 667](#)

04/11/2016

CRIMINAL LAW - Sentence - Recklessly endangering life - Plea of guilty - Remorse - Mental state - Verdins principles not relied on - Prospect of deportation - Section 6AAA Sentencing Act 1991.

***The Queen v Young, Andre Wayne***

Lasry J

[\[2016\] VSC 646](#)

28/10/2016

CRIMINAL LAW - Sentence - Two charges of attempted murder - One charge of attempting to pervert the course of public justice - Accused attacked two Shire Council employees with metal pipe - Asked fiancé to dispose of his boots whilst on remand - Serious violent offender - Total effective sentence of 11 years and 6 months' imprisonment with non-parole period of 7 years and 6 months.

***Director of Public Prosecutions [DPP] v Black, Jonas***

Jane Dixon J

[\[2016\] VSC 564](#)

24/10/2016

EVIDENCE - Unfavourable witness - Application by prosecution (P) under s38 of the Evidence Act 2008 for leave to cross-examine its own witness, MK - No dispute that MK's evidence unfavourable to P regarding events on 1 and 2 December 2014 - P aware that MK's evidence was likely to be unfavourable - Application not made by P until re-examination of MK - None of the accused would have conducted their cases differently if application had been made earlier - No unfair prejudice to accused in granting application - Application granted (Ruling No 11).

EVIDENCE - Unfavourable witness - Application by P under s38 of the Evidence Act 2008 for leave to cross-examine its own witness, YS - No dispute that evidence of YS unfavourable to P and that YS had made prior inconsistent statements in his police statement - Application made by P during evidence in chief of YS but prosecution had known for months that YS might resile from his police statement - Application opposed by second accused (D2) on basis that notice of application was not given at earliest opportunity and that she would be unfairly prejudiced - No suggestion that D2 would have conducted her case differently if notice had been given earlier - No unfair prejudice to D2 - Application granted (Ruling No 12).

*The Queen v Semaan, Alexander ; Semaan, Hanna; Beljulji, Megan (Rulings 11 & 12)*  
Beale J

[\[2016\] VSC 552](#)

08/11/2016

# 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.

COSTS - Calderbank offer - legal principles - whether rejection of offer was unreasonable in the circumstances - whether costs should be awarded against a non-party.

***Vlahos v Vlahos Pty Ltd (No. 3)***

Judge Cosgrace

[\[2016\] VCC 1619](#)

7/11/2016

# Articles

## Courts

---

Juries - Jury deliberations - Verdicts - Research study - Scotland - UK  
**Chalmers, J. and F. Leverick.** "How should we go about jury research in Scotland?" [2016] (10) Crim L R 697-713.

Juries - Jury trials - Social media - County Court - Victoria - Australia  
**Ross, N.** "How to protect jury trials." (2012) 90(11) LIJ 20-22.

## Criminal Law & Procedure

---

Criminal justice - Women - Domestic violence - Sexual violence - Australia  
**Justice Bell.** "The protection of women in the administration of criminal justice in Australia." (2016) 28(9) JOB 85-88.

## Evidence

---

Expert evidence - Admissibility - Reliability - Relevancy - Impartiality - Law reform proposal - Criminal Procedure Rule (UK) Part 19 - Criminal Practice Direction (UK) Part 19A - UK  
**Stockdale, M. and A. Jackson.** "Expert evidence in criminal proceedings: current challenges and opportunities." (2016) 80(5) Crim L J 344-363.

Expert evidence - Miscarriage of justice - Training - Expert evidence training - Barristers - Lawyers - Law reform proposal - Criminal Procedure Rules (UK) Part 19 - Criminal Practice Direction (UK) Part 19A - UK  
**Davies, G. and E. Piasecki.** "No more laissez faire? Expert evidence, rule changes and reliability: can more effective training for the bar and judiciary prevent miscarriages of justice?" (2016) 80(5) Crim L J 327-343.

## Human Rights

---

Privacy - Tort - Revenge porn - Victims - Giller v Procopets - Wilson v Ferguson - Australia  
**Raina, R.** "Revenge porn: is it time for a statutory privacy tort?" (2016) 90(11) LIJ 30-33.

## Legal Profession

---

Personalia - Justice Maree Kennedy - Appointment - Supreme Court of Victoria - Victoria - Australia  
**Justice Maree Kennedy** (2016) 90(11) LIJ 24.

## Military law

---

Armed forces - Military justice - Court martial - Disciplinary proceedings - Offences - UK  
**Grady, K.** "Disciplinary offences at the court martial." [2016] (10) Crim L R 714-737.

## Property Law

---

Airbnb - Residential tenancy - Tenant - Landlord - Exclusive possession - Subletting - Swan v Uecker - Residential Tenancies Act 1997 (Vic) - Victoria - Australia  
**Swannie, B.** "Total control or exclusive possession?" (2016) 90(11) LIJ 26-29.

## Torts

---

Food labelling - Organic - Genetically modified (GM) - Certification - Exports - Marsh v Baxter - WA - Australia  
**Silver, J.** "Certified organic." (2016) 90(11) LIJ 34-37.

## INFORMATION SESSIONS

The Law Library of Victoria hosts regular information sessions on how to use specific legal research databases.

If you have suggestions for future information sessions, please send them to [llv@courts.vic.gov.au](mailto:llv@courts.vic.gov.au)

Visit our website for upcoming events [lawlibrary.vic.gov.au](http://lawlibrary.vic.gov.au)



## About the Law Library of Victoria

Since the 1850s, the legal profession in Victoria has funded a library to enhance the administration of justice.

The Law Library of Victoria builds upon this proud history and continues this role today. It provides access to authoritative legal information to ensure that the law is applied accurately, effectively and fairly.

The Library is an integral resource for the Victorian Courts and VCAT, as well as for the legal profession and the community.

The Library provides services that support the administration of justice in Victoria.

- We collate and curate the best range of legal information resources for our constituents.
- We assist with reference and research support, and improve skills in using legal resources across the community.
- We improve access to justice for all Victorians by providing access to legal resources for our members.

The Library Bulletin is a free fortnightly information service provided by the Law Library of Victoria for judicial officers, members of the legal profession and anyone with an interest in the law. It is compiled by Library staff and includes the following content:

- Library news and events
- New books and articles received by the Library
- Victorian legislative updates
- High Court, Supreme Court of Victoria Court of Appeal and Trial Division judgments.

The Library Bulletin is prepared within a quick turnaround time. All attempts are made to ensure accuracy, however readers are advised to verify information contained in the Library Bulletin against information from original sources. If you do see an error or omission, please contact us at [llv@courts.vic.gov.au](mailto:llv@courts.vic.gov.au).

The Library Bulletin is provided on the basis that readers will assume full responsibility for making their own assessment of the information provided. This service does not provide legal advice. No liability will be accepted as a result of any reliance on this service.

## Law Library of Victoria

210 William Street  
Melbourne VIC 3000

