



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
25 November
2016

Library News

Library user survey

The Law Library of Victoria is conducting a survey to assist with improving services for the legal community.

All answers will be completely confidential and will assist the Library in its efforts to consistently improve our performance.

Please take the time to [complete the survey online](#) (closes Monday 28 November).

Tour for legal professionals

13 December 2016, 1.15-2.15

This 60 minute tour of the Library facilities and history is targeted at the legal profession and those with a keen interest in libraries and law, exploring all four levels of the Library.

More information and RSVP: <https://lawlibrary.vic.gov.au/tours>

Events for 2017

The Law Library of Victoria is creating a calendar of events for 2017, and we are keen to hear from you! Email us with suggestions for events or speakers for 2017 at libraryevents@supcourt.vic.gov.au.

SUBSCRIBE TO THE LIBRARY BULLETIN

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

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



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

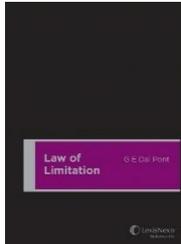
The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

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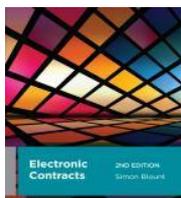
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New Books

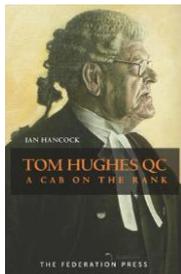
Following is a selection of new books in the Library collection. For details of more new books, see the Library Catalogue: https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/.



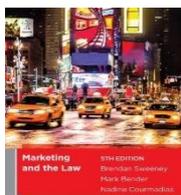
Dal Pont, Gino Evan, *Law of limitation*,
LexisNexis Butterworths, NSW, 2016
Call number: 347.94052 DAL (Supreme Court Library)



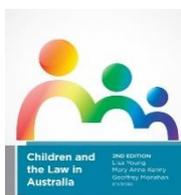
Blount, Simon, *Electronic contracts*,
2nd ed, LexisNexis Butterworths, NSW, 2015
Call number: 346.022 BLO.2 (Supreme Court Library)



Hancock, Ian, *Tom Hughes QC : a cab on the rank*,
The Federation Press, NSW, 2016
Call number: 340.092 HAN (Supreme Court Library)



Sweeney, Brendan J, *Marketing and the law*,
5th ed, LexisNexis Butterworths, NSW, 2015
Call number: 343.084 SWE.5 (Supreme Court Library)



Young, Lisa (editor), *Children and the Law in Australia*,
2nd ed, LexisNexis Butterworths, NSW, 2016
Call number: 346.0135 CHI.2 (Supreme Court Library)

Legislation

Victorian Bills

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

- [Administration and Probate and Other Acts Amendment \(Succession and Related Matters\) Bill 2016](#)
- [Climate Change Bill 2016](#)
- [Consumer Acts Amendment Bill 2016](#)
- [Resources Legislation Amendment \(Fracking Ban\) Bill 2016](#)
- [Urban Renewal Authority Victoria Amendment \(Development Victoria\) Bill 2016](#)
- [Wrongs Amendment \(Organisational Child Abuse\) Bill 2016](#)

Victorian Assents

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

- [Alpine Resorts Legislation Amendment Act 2016 No. 62/2016](#)
- [Child Wellbeing and Safety Amendment \(Oversight and Enforcement of Child Safe Standards\) Act 2016 No. 63/2016](#)
- [Powers of Attorney Amendment Act 2016 No. 64/2016](#)
- [Sentencing \(Community Correction Order\) and Other Acts Amendment Act 2016 No. 65/2016](#)
- [State Taxation Acts Further Amendment Act 2016 No. 66/2016](#)
- [Traditional Owner Settlement Amendment Act 2016 No. 67/2016](#)
- [Victorian Fisheries Authority Act 2016 No. 68/2016](#)



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:

- *State Taxation Acts Further Amendment Act 2016 No. 66/2016*
 - Sections 1, 2, 7-27, 29 of this Act came in by forced commencement on 16 November 2016 s. 2(1)

High Court Cases

CRIMINAL LAW - Appeal against conviction - Application of proviso - Where appellants convicted of murder arising out of joint criminal enterprise - Where evidence of exculpatory statement by one appellant wrongly left to jury as evidence of admission - Where remaining evidence circumstantial - Whether no substantial miscarriage of justice occurred. Criminal law - Summing-up - Where one appellant gave evidence - Where trial judge referred jury to aspects of appellant's evidence but did not summarise it - Whether appellant's case fairly left to jury. Criminal law - Admissibility of evidence - Where evidence that one appellant possessed handguns months prior to shooting - Whether evidence "discreditable conduct evidence" within meaning of s 34P(1) of Evidence Act 1929 (SA) - Whether open to conclude probative value of evidence substantially outweighed prejudicial effect.

WORDS AND PHRASES - "admissibility", "discreditable conduct evidence", "exculpatory assertion", "proviso", "substantial miscarriage of justice", "summing-up". Criminal Law Consolidation Act 1935 (SA), s 353(1). Evidence Act 1929 (SA), s 34P.

Castle, Tristan Kay v The Queen; Bucca, Jason Luke v The Queen

[\[2016\] HCA 46](#)

16/11/2016

TAXATION - Income tax - Residence of company - Income Tax Assessment Act 1936 (Cth), s6(1) - Where directors of appellant companies resident abroad - Where meetings of directors of appellants ostensibly held abroad - Where directors acted at direction of Australian resident who controlled appellants and made decisions then implemented by directors - Whether appellants residents of Australia for income tax purposes - Whether "central management and control" of appellants located abroad in place where boards of directors met - Whether, as question of fact and degree, real business and operations of appellants controlled and directed from Australia - Whether functions of appellants' boards of directors usurped - Effect of *Esquire Nominees Ltd v Federal Commissioner of Taxation* (1972) 129 CLR 177.

TAXATION - Income tax - Residence of company - Double taxation agreements - Tie-breaker provisions - Whether appellants entitled to protection from Australian income tax under relevant double taxation agreements - Whether "place of effective management" of appellant companies other than in Australia.

WORDS AND PHRASES - "Australian resident", "central management and control", "company's constitutional organs", "corporate residence", "formal organs", "place of effective management", "real business", "residency", "rubber-stamp", "superior or directing authority", "usurp". Income Tax Assessment Act 1936 (Cth), ss 6(1), 25A, Pt X. Income Tax Assessment Act 1997 (Cth), ss 6-5, 995-1. International Tax Agreements Act 1953 (Cth), Schedules 1, 15.

Bywater Investments Limited v Commissioner of Taxation; Hua Wang Bank Berhad v Commissioner of Taxation

[\[2016\] HCA 45](#)

16/11/2016

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Appeal - Application for leave to appeal - Jury trial - Jury verdict - Voluntary assumption of risk - Whether jury's answer to questions necessarily inconsistent - Whether jury's affirmative answer to voluntary assumption of risk question inconsistent with jury's affirmative answer to question of whether there was a breach of duty to warn or provide safety information that was a cause of injury - No necessary inconsistency - Application for leave to appeal granted - Appeal dismissed - Wrongs Act 1958 (Vic), s14B, s47, s50, s53, s54, s55 and s56.

TRADE PRACTICES - Consumer protection - Terms and conditions - Recreational services - Term of contract of recreational services - Exclusion clauses - Effect of exclusion clause - Whether exclusion clause void - Competition and Consumer Act 2010 (Cth), s139A and s60, s61 and s64 of Schedule 2 (the Australian Consumer Law) - Australian Consumer Law (Victoria), s60, s61 and s64 - Australian Consumer Law and Fair Trading Act 2012 (Vic), s22 - Australian Consumer Law and Fair Trading Regulations 2012, regulation 6 and schedule 2. ***Rakich, Clinton Sean v Bounce Australia Pty Ltd; Bounce Australia Pty Ltd v Rakich, Clinton Sean***

Ashley JA, Beach JA, and Riordan AJA

[\[2016\] VSCA 289](#)

25/11/2016

ACCIDENT COMPENSATION - Appeal - Application for leave to appeal - Workplace injury - Jury trial - Damages - Pain and suffering damages - Whether jury's assessment of pain and suffering damages manifestly inadequate - Evidence most favourable to the respondent - Jury's assessment of damages not manifestly inadequate.

ACCIDENT COMPENSATION - Appeal - Application for leave to appeal - Workplace injury - Jury trial - Contributory negligence - Whether contributory negligence open - Contributory negligence finding open to the jury - Assessment of contributory negligence - Jury assessed contributory negligence at 60 per cent - Whether assessment of contributory negligence of 60 per cent manifestly excessive - Assessment of contributory negligence not manifestly excessive - Application for leave to appeal refused.

Cook, Michelle Louise v Karden Disability Support Foundation (ABN 91 469 765 852)

Tate JA, Osborn JA, and Beach JA

[\[2016\] VSCA 263](#)

15/11/2016

ACCIDENT COMPENSATION - Appeal - Application for leave to appeal - Workplace injury - Serious injury application - Reliance on para (a) of definition of serious injury in s134AB(37) - Impairment of function of upper limb - Whether judge impermissibly took into account psychological or psychiatric consequences of physical injury - Application refused - Application of *Meadows v Lichmore Pty Ltd* [2013] VSCA 201 considered.

Victorian WorkCover Authority v Nguyen, Nga Thi Thu

Osborn JA, Priest JA, and Beach JA

[\[2016\] VSCA 284](#)

24/11/2016

CONTRACT - Appeal - Option to purchase land - Price to be determined by expert valuation - Specified assumption that applicable Precinct Structure Plan approved by Minister - Effect of assumption - Whether valuation made pursuant to contract - Leave to appeal granted - Appeal dismissed.

Adnow P/L (ACN 006 684 395) (as trustee for the Adnow Pension Fund) v Greenwells Wollert P/L (ACN 128 803 092)

Tate JA, Ferguson JA, and Kaye JA

[\[2016\] VSCA 282](#)

23/11/2016

CONTRACT - Trademark licensing agreement - Scope of contract - Whether trademarks identified in schedule to the contract include a refreshed mark subsequently adopted by industry body or future marks - Whether failure to include refreshed mark would lead to absurdity or futility - Admissibility of surrounding circumstances for purpose of construction of commercial contracts - Whether variation by subsequent conduct - Repudiation - Termination - *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337, *Electricity Generation Corporation v Woodside Energy Ltd* (2014) 251 CLR 640, *Mainteck Services Pty Ltd v Stein Heurtey SA* (2014) 89 NSWLR 633 and *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104, discussed.

INTELLECTUAL PROPERTY - Trademark licensing agreement - PINK LADY trademarks - Trademarks assigned to recipient in consideration for exclusive licence to use trademarks in territory - Whether implied term that recipient has obligation to re-assign trademarks following termination of licence.

Apple and Pear Australia Ltd (ACN 101 551 348) v Pink Lady America LLC

Tate JA, Ferguson JA, and McLeish JA

[\[2016\] VSCA 280](#)

23/11/2016

CRIMINAL LAW - Appeal - Conviction - Attempt to import commercial quantity of border controlled precursor - Whether conduct constituted 'dealing in connection with 'importation' of substance - *R v Tranter* (2013) 116 SASR 452; *El-Haddad v The Queen* (2015) 88 NSWLR 93, discussed.

CRIMINAL LAW - Appeal - Conviction - Whether judge erred in directing jury as to fault element for importing substance - *Afford v The Queen* (2016) 308 FLR 1, distinguished - Application for leave to appeal granted, appeal dismissed.

CRIMINAL LAW - Appeal - Sentence - Whether judge erred in taking into account quantum of border controlled precursor - Whether sentence manifestly excessive - Application for leave to appeal refused.

Brar, Kulbir Singh v The Queen

Redlich JA, Hansen JA, and McLeish JA

[\[2016\] VSCA 281](#)

22/11/2016

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Retrial - Whether failure to extend time for commencement of trial within statutory time limit - Whether trial a nullity - Criminal Procedure Act 2009, s212 - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Lies in record of interview as incriminating conduct - Whether failure to give proper notice - Whether error in admitting lies in record of interview as incriminating conduct - Whether failure to direct properly on incriminating conduct - Jury Directions Act 2013, s23(1) - Jury Directions Act 2015, s20(1) - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Retrial - Whether error in admitting recording of complainant's from previous trial - Criminal Procedure Act 2009, s381 - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Retrial - Directed acquittal on one charge at previous trial - Whether error in admitting evidence of circumstance founding previous charge as uncharged act - Leave to appeal refused.

CRIMINAL LAW - Appeal - Conviction - Sexual offences - Ground claiming aggregate of errors - Not appropriate to shelter complaints of discrete error under 'catchall' ground - No errors substantiated - Leave to appeal refused.

CRIMINAL LAW - Appeal - Sentence - Applicant convicted at trial of multiple charges of sexual penetration of child under 16 and indecent act with child under 16 - Sentence of 7 years' imprisonment with non-parole period of 5 years - Whether sentence manifestly excessive - Leave to appeal refused.

Davis, Mark (a pseudonym) v The Queen

Priest JA, Santamaria JA, and Cavanough AJA

[\[2016\] VSCA 272](#)

17/11/2016

CRIMINAL LAW - Appeal - Sentence - Application for leave to appeal against sentence - Conspiracy to import a commercial quantity of a border controlled drug - Role of offender as principal in conspiracy - Plea of guilty - Sentence of 18 years' imprisonment on conspiracy count - Whether sentence on count, total effective sentence or non-parole period manifestly excessive - Use of 'comparable cases' - Sentence not outside range - Application refused.

Vo, An Lanh v The Queen

Redlich JA, Beach JA, and Kaye JA

[\[2016\] VSCA 278](#)

23/11/2016

CRIMINAL LAW - Appeal - Sentence - Application for leave to appeal against sentence - One count each of trafficking a commercial quantity of a border controlled drug and conspiracy to import a commercial quantity of a border controlled drug - Principal offender in respect of two substantial drug businesses - Plea of guilty - Sentence of 25 years' imprisonment with a non-parole period of 18 years - Whether sentence manifestly excessive - Use of 'comparable cases' - Sentence not outside range - Application refused.

Lieu, Suky v The Queen

Redlich JA, Beach JA, and Kaye JJA

[\[2016\] VSCA 277](#)

23/11/2016

CRIMINAL LAW - Appeal - Sentence - Conspiring to import a marketable quantity of a border-controlled drug (heroin) - Sentence of imprisonment for 10 years with non-parole period of 7 years - Delay - Whether judge erred in rejecting delay as a mitigating factor - No error by judge in dealing with the elapse of time between offending and sentencing - Whether sentence manifestly excessive - Appellant's role in the conspiracy - Appellant's role above courier or mere intermediary - Appellant was a source of supply for co-conspirators - Sentence not manifestly excessive - Appeal dismissed.

Nguyen, Van Thi Hong v The Queen

Redlich JA, Beach JA, and Kaye JA

[\[2016\] VSCA 276](#)

23/11/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Parity - Aggravated burglary, recklessly causing injury - Home invasion - Offender armed with knife - Sentence of 3 years on aggravated burglary charge - Whether manifestly inadequate - Objective gravity - Current sentencing practice - Court previously identified need for sentences to increase - Whether sentence reflected change - Relevance of co-offender's sentence - Co-offender was instigator - Sentenced to 18 month community correction order - No appeal against co-offender's sentence - Offender's 3 year sentence manifestly inadequate - Appeal allowed - Resentencing constrained by parity - Resentenced to 4 years on aggravated burglary charge - Hogarth v The Queen (2012) 37 VR 658, DPP v Meyers (2014) 44 VR 486 applied.

Director of Public Prosecutions [DPP] v Bowden, Shane Scott

Maxwell P, Redlich JA, and Kyrou JA

[\[2016\] VSCA 283](#)

23/11/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Respondent found guilty of sexual penetration of a child under the age of 16 - Sentenced to adjourned undertaking for two years with conviction - Whether sentence manifestly inadequate - Clarkson v R (2011) 32 VR 361 considered.

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Residual discretion to dismiss appeal even where error identified - Position of prosecutor at plea - DPP v Holder (2014) 41 VR 467 and DPP v Karazisis (2010) 31 VR 634 considered.

Director of Public Prosecutions [DPP] v Abad, Franco

Warren CJ, Whelan JA, and Beale AJA

[\[2016\] VSCA 279](#)

22/11/2016

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Using a carriage service to procure a person under 16 years of age for sexual activity, using a carriage service to solicit child pornography material - Sentenced to Community Correction Order for 2½ years - Conditions requiring 250 hours unpaid work, mental health assessment and treatment, judicial monitoring - Specific error - Error acknowledged by judge in written reasons - Whether different sentence should be imposed - Mental illness - Deterioration of respondent's mental state - Adverse effect of Crown appeal - Respondent at liberty - Residual discretion exercised - Appeal dismissed - R v Gajjar (2008) 192 A Crim R 76; Director of Public Prosecutions (Cth) v Hiznikov (2008) 192 A Crim R 69 distinguished, Western Australia v Collier (2007) 178 A Crim R 310; R v Nahlous (2013) 228 A Crim R 503 considered - Criminal Code (Cth) s474.26(1), s474.19(1)(iv) - Criminal Procedure Act 2009 s289(1).

CRIMINAL LAW - Appeal - Sentence - Sentencing approach in Boulton v The Queen inapplicable to Commonwealth offences - Whether judge took into account principles in Boulton v The Queen - No error - Atanackovic v The Queen (2015) 45 VR 179, Boulton v The Queen (2014) 46 VR 308 considered.

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Residual discretion to dismiss appeal even where error identified - Adverse impact of appeal on respondent offender - Offender at liberty - Purpose of Crown appeals - Director of Public Prosecutions v Karazisis (2010) 31 VR 634; CMB v Attorney-General (NSW) (2015) 256 CLR 346 considered.

CRIMINAL LAW - Sentencing - Sentencing principles - Mental illness - Moral culpability - Offender suffering from bipolar disorder - Manic state - Causal link to offending - Whether moral culpability reduced - Whether involuntary impairment of mental functioning - Offender stopped taking prescribed medication - Offender aware of adverse effects of stopping medication - No reduction in moral culpability - Verdins v The Queen (2007) 16 VR 269 considered.

Director of Public Prosecutions [DPP] (Cth) v Boyles, Rowan (a pseudonym)

Maxwell P, Tate JA, and Osborn JA

[\[2016\] VSCA 267](#)

15/11/2016

CRIMINAL LAW - Appeal - Sentence - Judicial monitoring report obtained following plea hearing - Report provided to parties but not referred to by judge - Error in failing to do so - Appeal allowed - Matter remitted to County Court for resentencing.

Strangio, Bruno v The Queen

Priest JA and Kyrou JA

[\[2016\] VSCA 286](#)

23/11/2016

CRIMINAL LAW - Appeal - Sentence - Parity - Applicant and co-offender pleaded guilty to two charges of importation of marketable quantity of border controlled drug (methylamphetamine) - Whether open to judge to impose different sentences on applicant and co-offender - Guilty pleas - Relevantly similar personal circumstances - Different roles - Applicant organising importation with contacts in Iran - Co-offender arranging safe house in Australia - Principle of parity not infringed - Application for leave to appeal refused.

Shahbazi, Shahrouz v The Queen

Kaye JA and McLeish JA

[\[2016\] VSCA 270](#)

16/11/2016

CRIMINAL LAW - Application for leave to appeal against conviction - Rape - Primary issue absence of consent - Severance - Whether coincidence evidence correctly admitted - Application dismissed - Evidence Act 2008, s98, s101.

Hashi, Abdirizak Jama v The Queen

Ashley JA, Ferguson JA, and Beale AJA

[\[2016\] VSCA 288](#)

25/11/2016

CRIMINAL LAW - Application for leave to appeal against sentence - Applicant Kieawkaew sentenced to 3 years' imprisonment for cultivating a narcotic plant in a commercial quantity and, with cumulation for other charges, to total effective sentence of 3 years and 3 months' imprisonment with non-parole period of 1 year and 6 months - Crown concessions that sentence for cultivation charge manifestly excessive and that sentence on a summary charge erroneous due to judge being misinformed about maximum penalty - Applicant Kieawkaew resentenced to 2 years and 6 months' imprisonment on cultivation charge - Total effective sentence of 2 years and 9 months' imprisonment with non-parole period of 1 year and 3 months.

CRIMINAL LAW - Application for leave to appeal against sentence - Applicant Nguyen sentenced to 3 years' imprisonment for cultivating a narcotic plant - Judge warned counsel she would not accept statements made by counsel about the respective roles of applicants regarding cultivation of narcotic plant in absence of evidence - No evidence adduced - No error by judge - Applicability of Verdins limbs 5 and 6 - Parity principle applied consequent upon resentencing of applicant Kieawkaew - Applicant Nguyen resentenced to 2 years and 6 months' imprisonment with non-parole period of 1 year and 6 months.

Kieawkaew, Esma v The Queen; Nguyen, Hong Quan v The Queen

Redlich JA and Kyrou JA

[\[2016\] VSCA 269](#)

16/11/2016

CRIMINAL LAW - Sentence - Appeal - Arson and attempting to obtain property by deception - Intended insurance fraud - Procedural fairness - Applicant relied in mitigation on childhood abuse - Error by judge in rejecting submission on abuse without warning of his intention to do so - Leave to appeal granted - Appeal dismissed.

Beevers, Roslyn v The Queen

Priest JA and Santamaria JA

[\[2016\] VSCA 271](#)

17/11/2016

PRACTICE AND PROCEDURE - Application for leave to appeal against leave to amend statement of claim - Trial judge granted leave following an application during final submissions - Principles to be applied on interlocutory appeal from a discretionary decision relating to practice and procedure - Insufficient doubt attending the decision below - Application dismissed.

PLEADINGS AND PARTICULARS - Plaintiff failed to particularise damage - The effect of the failure to prove a particular.

Swan Hill Chemicals P/L (ACN 144 706 258) v MA & J Tripodi P/L (ACN 083 150 136)

Santamaria JA and Riordan AJA

[\[2016\] VSCA 264](#)

14/11/2016

STATUTORY INTERPRETATION - Search warrants - Power of Magistrates' Court to order return of seized items - Challenge to finding of absence of power - Whether power under s78(6) of the Magistrates' Court Act 1989 covers items seized during execution of warrant, but not named or described in warrant - Common law extension of search and seizure on a search warrant - Whether items were seized 'under a search warrant' - Appeal allowed - Crimes Act 1958, s465 - Magistrates' Court Act 1989, s75, s76, s78

Siddique, Mohamed v Martin, Michael and Magistrates' Court of Victoria

Tate JA, Ferguson JA, and Cavanough AJA

[\[2016\] VSCA 274](#)

18/11/2016

TRUSTS - Trust deed - Amendments - Trustee's application for approval of amendments to trust deed - Application supported by all beneficiaries - Amendments would expand class of beneficiaries - Whether potential unborn beneficiaries would be adversely affected - Judge took into account potential impact on unborn beneficiaries - Issue not raised with parties - Denial of procedural fairness - Appeal allowed - Proceeding remitted to Trial Division for hearing before different judge - Trustee Act s63, s63A.

W E Pickering Nominees P/L as trustee of the W E Pickering Family Trust & Ors (According to the schedule) v Pickering, Jacqueline Robyn & Ors (According to the schedule)

Maxwell P, Tate JA, and Kyrou JA

[\[2016\] VSCA 273](#)

16/11/2016

PRACTICE AND PROCEDURE - Service of originating process interstate - Form 1 notice required by Service and Execution of Process Act 1992 (Cth) - Magistrates' Court Registry entered default judgment - Form 1 notice not referred to in affidavit of service - Whether Magistrates' Court Registry empowered to enter default judgment - Whether Magistrate's failure to set aside default judgment unreasonable.

Carron Investments P/L v Lang, George and The Magistrates' Court of Victoria

Warren CJ and Ferguson JA

[\[2016\] VSCA 287](#)

24/11/2016

Commercial Court

CONSUMER LAW - Defendant engaged in unsolicited consumer agreements by way of door-to-door sales of cleaning services of carpets, drapes and furniture - Defendant failed to comply with requirements of the Australian Consumer Law (Vic) (ACL (Vic)) applicable to unsolicited consumer agreements.

CONSUMER LAW - Application for declarations of breach of the ACL (Vic) pursuant to Part 2.2 and s 216 of the Australian Consumer Law & Fair Trading Act 2012 (Vic) (ACLAFTA) or s36 of the Supreme Court Act 1986 (Vic) - Application for consequential relief reserved.

CIVIL PROCEDURE - Application for summary judgment under s63 of the Civil Procedure Act 2010 (Vic).

Director of Consumer Affairs Victoria v Donald, David James

Robson J

[\[2016\] VSC 683](#)

15/11/2016

CORPORATIONS ACT 2001 (Cth) - Winding up - Termination or stay of liquidation - Corporations Act 2001 (Cth) section 482(1) - Assessment of remuneration of liquidator - factors set out in Corporations Act 2001 (Cth) section 473(10) - Treatment of GST - assessment of costs and expenses of liquidator including legal costs - Treatment of GST.

F. Basile & Associates P/L (in liquidation) (ACN 005 866 955) ; Philip Newman in his capacity as liquidator of F. Basile & Associates P/L (in liquidation) (ACN 005 866 955)

Hetyey JR

[\[2016\] VSC 690](#)

17/11/2016

COSTS - Plaintiffs failing on main issue but successful on second issue - Importance of both issues to operation of Estate Agents Act 1980 - Issues based costs award appropriate.

Secretary to the Department of Justice and Regulation & Ors (according to the attached Schedule) v Century 21 Australia Pty Ltd (ACN 159 923 743)

Ginnane J

[\[2016\] VSC 687](#)

15/11/2016

Common Law Division

ADMINISTRATIVE LAW - Appeal pursuant to s84 of the Coroners Act 2008 (Vic) - Application pursuant to s77 to set aside findings - Interests of justice s87A - Question of law s87 - New facts and circumstances - Test for new facts and circumstances under s77 - Discretion of coroner to set aside findings - Senior next of kin not notified of potential for adverse findings - Denial of procedural fairness.

Werner and Hecht, Cecile v The Coroners Court of Victoria

J Forrest J

[\[2016\] VSC 635](#)

17/11/2016

ADMINISTRATIVE LAW - Application for leave to appeal from the Victorian Civil and Administrative Tribunal - Estate agent - Breaches of Estate Agents Act 1980 (Vic) and Estate Agents (Professional Conduct) Regulations 2008 (Vic) - Error of law affecting consideration of general deterrence - Tribunal order set aside by consent - Estate Agents Act 1980 (Vic) s79(1); Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148

Mcdonald, Aaron v Director of Consumer Affairs Victoria

Garde J

[\[2016\] VSC 703](#)

24/11/2016

ADMINISTRATIVE LAW - Application to quash decisions imposing conditions upon the referral of medical questions to Convenor of Medical Panels - Primary judge imposed conditions at the behest of plaintiffs - Relief refused on discretionary grounds - Workplace Injury Rehabilitation and Compensation Act 2013 s274, s303, s304 - Supreme Court (General Civil Procedure) Rules 2015 O 56.

HW Greenham & Sons P/L & Anor (in accordance with the attached Schedule) v Bruns, Shane Andrew & Ors (in accordance with the attached Schedule)

McDonald J

[\[2016\] VSC 669](#)

21/11/2016

COMMON LAW - Valuation, Compensation & Planning - Determination of separate questions - Subdivision planning permit requiring the registration of restrictions on the new titles - Expiry of conditions in subdivision planning permit upon the issue of new titles - Creation of building envelopes in neighbourhood design plan - Whether any implied prohibition on removal of native vegetation by reason of the imposition of building envelopes - 'Reading in' principles - Meaning of 'building' and 'appurtenance' - Transfer of Land Act 1958 (Vic) s42 & s88 - Subdivision Act 1988 (Vic) s3 - Planning and Environment Act 1987 (Vic) s60(2) & s173.
Manderson, Warwick Alexander v Wright, Vicki Louise

Emerton J

[\[2016\] VSC 677](#)

11/11/2016

COSTS - Appeal from decision of Victorian Civil and Administrative Tribunal rejecting appellant's complaint that respondent had breach Information Privacy Principles - Leave to appeal granted because grounds were reasonably arguable and their determination was in public interest - Appeal dismissed - Whether appellant should pay respondent's costs of appeal - Whether usual order as to costs should be made - Whether sufficient reasons for ordering otherwise - Significance of context that appellant was reasonably pursuing vindication of legitimate private interests in relation to personal privacy and human rights - Where making usual order as to costs may represent unreasonable impediment to individuals of modest means wanting to commence future appeals having substantial merit and in the public interest - Information Privacy Act 2000 (Vic), Supreme Court Act 1986 (Vic) s24(1).

Jurecek, Lara v Director, Transport Safety Victoria

Bell J

[\[2016\] VSC 695](#)

18/11/2016

COSTS - Separate but related appeals from Associate Judge and Magistrates' Court on questions of law - No errors identified or established - Appeals dismissed.

Weber, Mark Paul v Deakin University & Ors ; Weber, Mark Paul v Deakin University & Ors

McMillan J

[\[2016\] VSC 679](#)

09/11/2016

COSTS - Whether second to fifth defendants should pay plaintiff's costs of application for extension of time - Extension of time application necessitated findings as to the strength of plaintiff's challenge to jurisdiction of Victorian Civil and Administrative Tribunal to make strike out order - Second to fifth defendants ordered to pay plaintiff's costs on standard basis - Victorian Civil and Administrative Tribunal Act 1998 s77(1), s77(3); Federal Court of Australia Act 1976 (Cth) s32; Supreme Court (General Civil Procedure) Rules 2015 O 56, r63.14.

Bashour, Katherine v Victorian Civil and Administrative Tribunal [VCAT] & Ors (in accordance with the attached Schedule)

McDonald J

[\[2016\] VSC 666](#)

09/11/2016

CRIMES MENTAL IMPAIRMENT - Application for variation of custodial supervision order to non-custodial supervision order - Whether release of applicant on non-custodial supervision order would seriously endanger safety of applicant or members of the public - Whether applicant has completed a period of 12 months extended leave and complied with the conditions of that leave - Whether granting application would be consistent with principle that applicant's freedom and personal autonomy should be kept to minimum consistent with safety of community - Whether applicant would be likely to endanger himself or any other person or people generally - Whether court has obtained and considered reports of medical practitioner and person having supervision of the applicant - Crimes (Mental Impairment and Unfitness to be Tried) Act 1977 (Vic) s32(2)-(3), s39(1), s40(1), (2)(a) and (ab).

In the matter of an application for variation of a custodial supervision order to a non-custodial supervision order pursuant to section 31 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) and In the matter of an application by J T
Bell J

[\[2016\] VSC 681](#)

23/11/2016

JUDICIAL REVIEW AND APPEALS - Appeal from an Associate Judge under Supreme Court (General Civil Procedure) Rules 2015 r 77.06 - Associate Judge refused leave to appeal from the Victorian Civil and Administrative Tribunal - Whether Associate judge took into account irrelevant considerations or failed to take relevant considerations into account - Whether procedural fairness - Credible business records - Validity of possession order - Residential Tenancies Act 1997 s261 - Victorian Civil and Administrative Tribunal Act 1998 s148 - Supreme Court Act 1986 s17(3) - Appeal dismissed.

Rossi, Sabrina v Peng, Xiaodong

Emerton J

[\[2016\] VSC 505](#)

26/08/2016

LANDLORD AND TENANT - Covenant concerning tenant's works - Tenant with right under Option Deed to purchase shares in Landlord - Tenant's request to demolish building - Landlord's discretion - Condition that tenant provide security for diminution in value of land - Whether unreasonable refusal - Declarations.

Camperdown Dairy International P/L (ACN 168 442 206) v The Camperdown Cheese Company P/L (ACN 102 694 673)

Ginnane J

[\[2016\] VSC 693](#)

17/11/2016

NEGLIGENCE - Solicitor - Scope of solicitor's duty of care in relation to purchase of interest in hotel business, including shares, and signing of guarantee - Whether solicitor breached duty of care - Whether failure to advise of defects in the structure of the partnership deed executed in relation to purchase - Whether failure to advise of defects in company search in alleged conversations immediately prior to the signing of the guarantee - Whether breaches caused losses - Part X of the Wrongs Act 1958 (Vic) - Whether alleged losses suffered, in particular, whether alleged loss suffered by reason of finding of Emmett J in *Frauenstein v Farinha* [2007] FCA 1953 that the shares obtained were liable to be set aside - Whether the causes of action are statute barred pursuant to s5(1)(a) of the Limitation of Actions Act 1958 (Vic) - Whether any liability should be reduced by reason of the provisions of Part IVA of the Wrongs Act 1958 (Vic) - Contributory negligence.

Equal 54 Pty Ltd (ACN 063 125 477) v Galimberti, Dennis (and others according to the attached schedule)

Kennedy J

[\[2016\] VSC 588](#)

17/11/2016

PRACTICE AND PROCEDURE - Group proceedings - Application to discontinue proceedings - Proceedings not yet served - Whether Court approval required - Whether notice to group members and defendants should be dispensed with - Supreme Court Act 1986, Part 4A, s33V and s33X.

Laine, Kirsti Margaret v Thiess Pty Ltd (ACN 010 221 486); Beetson, Anthony v SunWater Limited (ACN 131 034 985)

John Dixon J

[\[2016\] VSC 689](#)

15/11/2016

REAL PROPERTY - Restrictive covenant - Restriction to 'not more than one dwelling house and outhouses' - Burdened land contiguous to unburdened land - Common ownership - Proposal to develop both lots as one - Proposal to erect three level block of 21 apartments - Presence of some multi-unit development in the greater neighbourhood - Whether modification to covenant to allow apartment development of proposed larger scale 'will not substantially injure the persons entitled to the benefit of the restriction' - No objectors joined as parties - Scale and imposition of proposed development exceeds degree of changes in neighbourhood - Onus not discharged - Application refused - Property Law Act 1958 (Vic), s84(1)(c).

REAL PROPERTY - Application to remove restrictive covenant - Beneficiaries expressing opposition out of court but not willing to attend court and be joined as defendants - Function of the Court in unopposed applications - Plaintiff's onus of proof - Exposure of facts and opinion from town planner on ultimate issue - Adoption of facts by Court - Non-adoption of opinion from underlying facts.

In the matter of an application pursuant to section 84 of the Property Law Act 1958 for the modification of a restrictive covenant by Andrew Morihovitis

Mukhtar AsJ

[\[2016\] VSC 684](#)

14/11/2016

WILLS AND ESTATES - Application to admit informal will to probate - Whether deceased intended the informal will to be her will - Where origin of informal document uncertain - Standard of proof - *Fast v Rockman* [2013] VSC 18 - *Briginshaw v Briginshaw* (1938) 60 CLR 336 - Wills Act 1997, s9 - Evidence Act 2008, s140.

In the matter of the Will of Sanders, Ann deceased. Application by Petropolous, Kerry Ann and Shand, Keith Daryl

McMillan J

[\[2016\] VSC 694](#)

18/11/2016

Criminal Division

APPEAL - Bail - Appeal by the DPP against Magistrate's order granting bail - Respondent, aged 20, charged with two counts of culpable driving causing death - Respondent allegedly drove into intersection against a red light well in excess of speed limit, crashing into another car turning into the intersection, killing both occupants - Whether magistrate manifestly wrong in failing to conclude that, if bailed, there was an unacceptable risk of flight by respondent to Lebanon - Respondent lived in Australia for only 12 months - No extradition treaty between Australia and Lebanon - Magistrate's decision and order open on material before that court - Whether new evidence relevant to determining whether magistrate's decision in error - Court entitled to have regard to new evidence only if magistrate's decision vitiated by error - Appeal dismissed - Bail Act 1977 (Vic), s18A - *Beljajev v DPP (Vic) & DPP (Cth)* (Unreported, Full Court of the Supreme Court of Victoria, Young CJ, Crockett and Ashley JJ, 8 August 1991); *Fernandez v DPP (Vic)* (2002) 5 VR 374.

Director of Public Prosecutions [DPP] (VIC) v Hassan, Mohamad

Croucher J

[\[2016\] VSC 465](#)

28/06/2016

CRIMINAL LAW - Application for bail - Applicant charged with trafficking drugs of dependence (heroin and methyl-amphetamine), possession of drugs of dependence (heroin, methyl-amphetamine and cannabis) and dealing with property suspected of being proceeds of crime - Applicant in a 'show cause' position - Whether, if granted bail, applicant would present an unacceptable risk of committing an offence while on bail - Bail granted.

Ly, Trang v Sekoa, Senior Constable Adam

Croucher J

[\[2016\] VSC 688](#)

25/05/2016

CRIMINAL LAW - Application for bail - Bail Act 1977 - Murder charge - Exceptional circumstances - Strength of Crown case - Good character - No prior convictions - Family support - Delay - No unacceptable risk - Surety - Bail granted.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Lee, Andrew William

Emerton J

[\[2016\] VSC 343](#)

20/06/2016

CRIMINAL LAW - Bail - Determination in relation to a child - Case adjourned for preparation of report - Where non-custodial sentence likely - Bail granted - Conditions of bail - Bail Act 1977 (Vic), s3B and s4(1).

In the matter of the Bail Act 1977 (Vic) and In the matter of an Application for Bail by S L

Elliott J

[\[2016\] VSC 682](#)

17/11/2016

CRIMINAL LAW - Pre-trial ruling - Sections 90 and 137 of the Evidence Act 2008 - Admissibility of admissions made during record of police interview - Whether circumstances in which admissions were obtained unfair to the accused - Whether questions asked during record of police interview amounted to cross examination.

The Queen v Zandipour, Kyle

Lasry J

[\[2016\] VSC 278](#)

03/02/2016

CRIMINAL LAW - Sentence - Murder - Offender believed victim was responsible for burglary and theft at his home - Offender, in company with two others, broke into victim's home and attacked the sleeping victim with a bat - Victim produced a knife and the offender used it to stab the victim twenty-one times - Accepted by prosecution that offender intended to inflict really serious injury but not to cause death - Offender affected by 'ice' at the time of offending - Use of ice neither mitigating or aggravating - Mid-range example of the offence of murder - Plea of guilty - Remorse - Reasonable prospects of rehabilitation - Relevant prior convictions - Sentenced as a serious violent offender - s6D, s6F Sentencing Act 1991.

The Queen v Parry, Daniel Nathan

Beale J

[\[2016\] VSC 685](#)

11/11/2016

CRIMINAL LAW - Sentences (following trial) for two offences of obtaining, and one of attempting to obtain, financial advantage by deception - Art fraud - Pursuant to agreements from 2007, S created three paintings in style of Brett Whiteley's Lavender Bay series, which G arranged to sell as if genuine works by artist in 1988 - Blue painting sold for \$2.5 million, Orange painting for \$1.1 million; Through the Window painting offered for sale for \$950,000 but not sold - Purchaser of Orange refunded by art dealer JP; but purchaser of Blue not refunded - Continuing criminal enterprise provisions - G now aged 61; minor criminal history; otherwise previous good character; extra-curial punishment through destruction of career as art dealer; very good prospects of rehabilitation; substantial delay between offending, prosecution and sentence - S now aged nearly 68; no criminal history; previous good character; extra-curial punishment through destruction of career as art conservator; no funds received by him; automatic forfeiture of \$1.25 million of lawfully-acquired property; precarious mental health; risk of deportation; very good prospects of rehabilitation; delay - Parity considerations - Sentencing purposes - Current sentencing practices - Parsimony - Totality - Total effective sentence on G of five years' imprisonment with non-parole period of two years and six months - Total effective sentence on S of three years' imprisonment with ten months to be served immediately and 26 months suspended for three years - Crimes Act 1958 (Vic), s82 & s321P; Sentencing Act 1991 (Vic), s5, s6, s6G-6J, s27, s109 & s110; Confiscation Act 1997 (Vic), s15 & s30; Migration Act 1958 (Cth), s501 & s501CA.

CRIMINAL LAW - Applications for compensation following verdict - AP, purchaser of Blue, lost \$2.5 million as a result of the offence - Whether dismissal (by consent) of AP's civil action in NSW against art dealer AA, who had joined G as cross-defendant, impacts on application - Whether JP, art dealer, who refunded purchaser of Orange, losing \$990,000 in consequence, suffered loss of property 'as a result of the offence' - Whether any amount of compensation ordered should be apportioned differently between G and S, given G received all funds and S received none - Whether G and S should be made jointly and severally liable - Whether applications raise matters of such complexity as to warrant refusal, leaving applicants to other processes - Applications refused - Sentencing Act 1991 (Vic), s86.

CRIMINAL LAW - Applications to stay sentence pending determination of proposed appeal against conviction - Guilty verdicts alleged to be unsafe - Prasad invitation rejected by jury - Cogent evidence that paintings existed in 1988 - Strong argument that verdicts are unsafe - Precarious mental health of S - Rare and exceptional circumstances - In interests of justice to order stay - Stays ordered until applications for bail pending appeal determined by Court of Appeal - Criminal Procedure Act 2009 (Vic), s276(1)(a) & s309.

The Queen v Gant, Peter Stanley; Siddique, Mohamed Aman

Croucher J

[\[2016\] VSC 662](#)

04/11/2016

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.

CONTRACT - Written agreement for the production and supply of alcoholic beverages - Process for the ordering of the product - Whether obligation to supply if procedures not followed - Subsequent agreement for a credit limit - Consequences if invoices not paid within 60 day trading terms or in excess of credit limit - Extent of purchaser's ability to set-off claims in respect of supply of defective product or non-supply of orders.

Wine Insights Pty Ltd v OneBev Pty Ltd

Judge Anderson

[\[2016\] VCC 1603](#)

18/11/2016

JOINT VENTURE - Purchase of land and construction of 58 apartments as student accommodation - Informal arrangement between friends generally recorded in emails - Profit of joint venture distributed to one party in six payments as project management fees - Claim for repayment of part of these payments, as GST on sales of apartments wrongly included in the calculation of profit - Whether restitution should be ordered because of the party's change of position - Dispute as to basis upon which interest on advances by other party was charged to the project and used to calculate the profit.

Laidlaw Holdings Pty Ltd & Anor v Fieschi & Ors

Judge Anderson

[\[2016\] VCC 1598](#)

18/11/2016

PRACTICE AND PROCEDURE - Interest - Contribution by co-guarantors - Equitable compensation - "Sum certain" recovered - "Demand of payment" made - Whether "good cause is shown to contrary" - Section 58 Supreme Court Act 1958.

Zenith 500 Pty Ltd v Stavrakis and Alexopoulos (No. 2)

Judge Anderson

[\[2016\] VCC 1626](#)

10/11/2016

PRACTICE AND PROCEDURE - Multitude of proceedings and applications arising from orders and judgments - Summary of events to date and likely steps necessary before all issues are concluded.

ACN 131 110 220 Pty Ltd v. Lakic & Ors (No. 2)

Judge Anderson

[\[2016\] VCC 1672](#)

14/11/2016

Articles

Aboriginals

Water rights - Traditional Owner Settlement Act 2010 (Vic) (TOS) - Native Title Act 1993 (Cth) - Victoria - Australia
O'Bryan, K. "Victoria's Traditional Owner Settlement Act and indigenous management of water resources: an improvement on the Native Title Act or more of the same?" (2016) 8(26) *Indigenous L B* 21-25.

Administrative Law

Public authorities - Legitimate expectations - Contracts - Policies - Consistency - Equality - Almost-contracts - UK
Williams, R. "The multiple doctrines of legitimate expectations." (2016) 132 (October) *LQR* 639-663.

Contract Law

Estoppel - Promise - Walton Stores (Interstate) Ltd v Maher - Crown Melbourne Ltd v Cosmopolitan Hotel (Vic) Pty Ltd - Victoria - Australia
Handley, K. "Walton Stores today." (2016) 90(9) *ALJ* 625-630.

Interpretation - Theory - Clauses - Payments - Intention - Ultimate net loss - Investors Compensation Scheme Ltd v West Bromwich Building Society - UK
McLauchlan, D. "A better way of making sense of contracts." (2016) 132 (October) *LQR* 577-594.

Corporations Law

Directors - Due care - Statutory business judgment rule - Acoustic separation - Conduct rule - Decision rule - Australian Securities and Investments Commission v Rich - ASIC v Mariner Corporation Limited - Corporations Act 2001 (Cth) - Australia
Ricci, S. and J. Miyairi. "The abstract void in practice: has the statutory business judgment rule changed the 'acoustic separation' between conduct and decision rules for directors' duty of care?" (2016) 31(1) *Aust Jnl Corp Law* 107-131.

Insolvency - Liquidators - Fiduciary duties - Statutory duties - Agent - Officer of the court - Sydlow Pty Ltd (in liq) v T G Kotselas Pty Ltd - Corporations Act 2001 (Cth) - Australia
Nosworthy, B. and C. Symes. "The liquidator: a hybrid of agent, fiduciary and officer." (2016) 31(1) *Aust Jnl Corp Law* 65-79.

Insolvency - Liquidators - Self-interest - Remuneration - Creditors - Hall v Poolman - Re On Q Group (in liq) - Re AAA Financial Intelligence Ltd - AAA Financial Intelligence Ltd (in liq) [No 2] - Corporations Act 2001 (Cth) - NSW - Australia
Thompson, A. "Liquidator remuneration, creditor dividends and the public interest: recent NSW Supreme Court decisions and the continuing need for reform." (2016) 90(9) *ALJ* 649-662.

Privilege - Legal professional privilege - Corporate communications - In-house lawyers - Admissibility - Officer - Dominant purpose test - Shafron v Australian Securities and Investments Commission - High Court - Corporations Act (Cth), s9, s180 - Australia
Stern, S. "Protection of corporate communications from regulators and litigants." (2016) 31(1) *Aust Jnl Corp Law* 132-161.

Courts

Courtrooms - Design - Furniture - ACT - Australia
Cork, H. "Courtroom design: from the defendant's seat to the bar table." (2016) 41(3) *Alt L J* 202-203.

Judicial decisions - Precedent - District Court - Federal Court - Tribunal - Valentine v Eid - Knight v Raddie - Hull v Australian Postal Corporation - Australia
Jones, O. "Should lower court judges bind magistrates and tribunals?" (2016) 90 (9) 663-674.

Criminal Law & Procedure

Accountability - Discretion - Guilty pleas - Plea-negotiations - Prosecutor - Transparency - Victoria - Australia
Flynn, A. "Plea negotiations, prosecutors and discretion: an argument for legal reform." (2016) 49(4) A & NZ J Crim 564-582.

Law reform - Empirical study - Research analysis - Victoria - Australia
Hanley, et al. "Improving the law reform process: opportunities for empirical qualitative research?" (2016) 49(4) A & NZ J Crim 546-563.

Penal reform - Rehabilitation revolution - Prisons - Politics - Government - UK
Brown, D. "Finding diamonds in the rough and helping them shine." (2016) 41(3) Alt L J 155-159.

Sexual assault - Children - Witness intermediaries - Children's champion - Pre-recorded cross-examination - NSW - Australia
Cooper, P. "A double first in child sexual assault cases in NSW." (2016) 41(3) Alt L J 191-194.

Sentencing - Life sentences - Indeterminate sentences - Justification - Minimum term - Parole Boards - UK
Padfield, N. "Justifying indefinite detention - on what grounds?" [2016] (1) Crim LR 797-822.

Evidence

Experts - Adversarial proceedings - Comparative law - Court appointed assessors - Right to a fair trial - Denmark - England - Wales
Ostergaard, J. "An assessor on the tribunal: how a court is to decide when experts disagree." (2016) 35(4) CJQ 319-341.

Human Rights

Hate speech - Free speech - Anti-Semitism - Racial Discrimination Act 1975 (Cth), Pt 11A, s18C - Australia
Sackville, R. "Anti-Semitism, hate speech and Pt 11A of the Racial Discrimination Act." (2016) 90(9) ALJ 631-648.

Terrorism - Citizenship - Special intelligence operations - Journalists - Media - Freedom of speech - Public interest - Independent Monitor - Australian Security Intelligence Organisation (ASIO) - Australian Security Intelligence Organisation Act 1979 (Cth), s35P - Australia
Hardy, K. and G. Williams. "Special intelligence operations and freedom of the press." (2016) 41(3) Alt LJ 160-165.

Insurance Law

Utmost good faith - Duties - Misrepresentation - Non-disclosure - Fair representation - Law reform proposal - Insurance Act 2015 (UK) - Australia - UK
Soyer, B. and A. Tettenborn. "Mapping (utmost) good faith in insurance law - future conditionals." (2016) 132 (October) LQR 618-638.

Medical Law

Medical negligence - Breach of duty - Decision making - Hindsight bias - Bias - Bolam test - Bolam v Friern Hospital Management Committee - Bolitho v City and Hackney Health Authority - UK
Barton-Hanson, J. and R. Barton-Hanson. "Bolam with the benefit of hindsight." (2016) 56(4) Med Sci Law 275-284.

Restitution

Unjust enrichment - Assumpsit - Lord Mansfield - Moses v Macferlan - Implied contract - Restitutionary principle - History - Australia
Chief Justice Allsop. "Restitution: some historical remarks." (2016) 90(8) ALJ 561-578.

Succession Law

Mutual wills - Agreement - Minimum requirements - Reliance - UK

Liew, Y. "The ambit of the mutual wills doctrine." (2016) 132 (October) LQR 664-677.

Torts

Negligence - Nuisance - Damages - Genetically modified crops - Environment protection - Agricultural industry - Biotechnology - Food crops - Marsh v Baxter - Perre v Apand - Gene Technology Act (Cth) - Genetically Modified Crop Free Areas Act 2003 (WA) - Western Australia - Australia
Vernon, F. "Marsh v Baxter." (2016) 43(1) Brief 21-27.

Rights - Loss - Wrong and ensuing losses - Loss as wrong - Consequential loss - Models - Terminology - Alternatives - UK
Descheemaeker, E. "Unravelling harms in tort law." (2016) 132 (October) LQR 595-617.

Trusts

Charities - Not-for-profit - Regulation - Legislation - Australian Charities and Not-for-profits Commission (ACNC) - Law reform proposal - Repeal - New Zealand - Australia
Vaughan-Williams, J. "The future of charity regulation in Australia: complexities of change." (2016) 37(1) Adel L R 219-246.

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210 William Street
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