



THE LAW LIBRARY OF VICTORIA

Library Bulletin

3 March 2017

Library News

General tour of the Supreme Court Library Tuesday 14 March, 1:15pm - 1:45pm

Opened in 1884, the Supreme Court Library is of legal, architectural, historical and social significance and has one of the largest law collections in the State. This 30 minute tour is recommended for those who want a brief introduction to the Library and its history, exploring the magnificent Ground and First Floors.

Switch On... in the Law Library: Setting Up Legal Alerts Tuesday 21 March, 1:15pm - 1:40pm

This session will highlight some of the best legal alerts that are freely available. We will demonstrate how to create alerts so you can stay up to date on the latest case law, legislation developments and legal news. These include alerts provided by the Law Library of Victoria, JADE, the High Court of Australia, TimeBase, the Victorian Government and a variety of social media channels.

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).

Updated Library website

At the Law Library of Victoria, we've recently refreshed [our website](#) to make it easier and faster to stay up-to-date.

You'll find links to what's new in the past 90 days, including [Acts that have been approved by Parliament](#), [Bills read for the second time](#) and [commencement dates](#).

View our [research guides](#), including [how to set up legal alerts](#) and [find unreported Victorian judgments](#). There's also a five-minute [video guide on how to find current Victorian legislation](#) in print and online - a great refresher that ranges from basic information through to a detailed account of everything you need to know.

There are summaries and links to full judgments of the [High Court of Australia](#), [Victorian Court of Appeal](#) and [Supreme Court of Victoria](#).

You'll find links to new books added to the collection, [indexed journal articles](#) and our comprehensive [Holdings List](#) (accessible from the Print Collections page), which shows you where to find items stored in print or online at the Supreme Court Library. Our [floor plans](#) will also help you locate print items at the Supreme Court Library.

Check what's coming up in our [Events calendar](#) and book your spot for tours, information sessions, music and more.

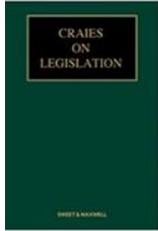
Need more help? [Ask a librarian](#) online, and explore what's new on [our website](#) today.

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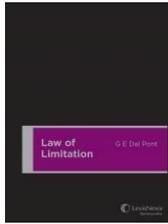
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New Books

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/.



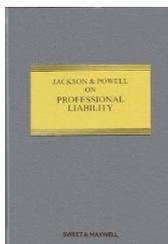
Craies, William, *Craies on Legislation*
11th ed., London, Sweet & Maxwell, 2017
Call number: 348.022 CRA.11 (Supreme Court Library)



Dal Pont, Gino, *Law of limitation*
Chatswood, NSW, Lexis Nexis, 2016
Call number: 347.94052 DAL (Supreme Court Library)



Francis, Brian, *The Oxford Handbook of sex offenses and sex offenders*
Oxford, Oxford University Press, 2017
Call number: 345.0253 OXF (County Court Library)



Jackson, Rupert M, *Jackson & Powell on professional liability*
8th ed., London, Sweet & Maxwell, 2017
Call number: 346.032 JAC.8 (Supreme Court Library)



Stubbs, Julie, *Australian violence: crime, criminal justice and beyond*,
Leichhardt, NSW, Federation Press, 2016
Call number: 364.15 AUS (Magistrates Court Library)

Legislation

Victorian Bills

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

- [Commercial Passenger Vehicle Industry Bill 2017](#)
- [Education and Care Services National Law Amendment Bill 2017](#)
- [Jury Directions and Other Acts Amendment Bill 2017](#)

Victorian Assents

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

- [Children Legislation Amendment \(Reportable Conduct\) Act 2017 No 4/2017](#)
- [Climate Change Act 2017 No 5/2017](#)



EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

The Supreme Court Library has the Argus newspaper from 1917 on display.

The page is turned daily and provides an insight into what was happening 100 years ago to the day.

A snapshot is provided via the Law Library of Victoria Twitter account. You can follow these tweets via @lawlibraryvic #argus1916

Proclamations

No Victorian Act proclamations have been made since the last Library Bulletin.

No Victorian Acts have come into operation by forced commencement since the last Library Bulletin.

High Court Cases

CRIMINAL LAW - Appeal against conviction - Directions to jury - Where discreditable conduct evidence admitted under s34P of Evidence Act 1929 (SA) - Relevance of discreditable conduct evidence - Whether trial judge adequately directed jury as to permissible and impermissible uses of discreditable conduct evidence in accordance with s34R.

CRIMINAL LAW - Appeal against conviction - Application of proviso - Criminal Law Consolidation Act 1935 (SA), s353(1) - Where majority of Full Court found miscarriage of justice occasioned by misdirection to jury - Where majority of Full Court divided as to whether misdirection occasioned substantial miscarriage of justice for purposes of applying proviso - Whether appeal could be dismissed pursuant to proviso.

WORDS AND PHRASES - "discreditable conduct evidence", "error of law", "opinion of majority", "permissible and impermissible use", "proviso", "substantial miscarriage of justice", "sufficiency of direction". Criminal Law Consolidation Act 1935 (SA), s349, s353(1). Evidence Act 1929 (SA), s34P, s34R.

Perara-Cathcart, Pedro v The Queen

[\[2017\] HCA 9](#)

01/03/2017

FAMILY LAW - Family Law Act 1975 (Cth) - Parenting orders - Where children taken overseas by father - Where children stayed with father overseas in breach of parenting orders - Where mother applied for order for return of children - Where children expressed preference to stay with father overseas - Where primary judge made interim orders for return of children to Australia and for living arrangements upon return - Whether erroneous to discount weight given to views expressed by children - Whether father's breach of parenting orders relevant to children's best interests - Whether necessary to ascertain children's views as to living arrangements - Whether parenting orders could be made in favour of strangers to proceedings.

WORDS AND PHRASES - "best interests of the child", "judicial discretion", "parenting orders", "views expressed by the child". Family Law Act 1975 (Cth), s60CA, s60CC, s60CD, s60CE, s64C, s65C, s65D, s68L, s68LA.

Bondelmonte v Bondelmonte

[\[2017\] HCA 8](#)

01/03/2017

Victorian Supreme Court Cases

Court of Appeal

CONTEMPT - Alleged breach of undertaking with respect to payment into court - Construction of undertaking - Refusal to permit cross-examination in contempt hearing - Alleged denial of natural justice in accepting affidavit in absence of cross-examination - Alleged apprehended bias - Application for leave to appeal refused. ***Bodycorp Repairers P/L (ACN 068 589 408) v Oakley Thompson & Co P/L (ACN 092 053 239)***

Warren CJ, Tate and McLeish JJA

[\[2017\] VSCA 22](#)

22/02/2017

CONTRACT - Developers of adjoining land - Alleged agreement for one developer to contribute to the other's construction costs of a public road - Whether agreement reached - Whether 'offer' capable of acceptance - Whether agreement could be inferred - No agreement - Appeal allowed.

RESTITUTION - Work and labour done claim - Causation - Whether works performed at the request of the applicant - Relevance of benefit received - No proper basis for claim - *Lumbers v W Cook Builders Pty Ltd (in liquidation) (2008) 232 CLR 635*, applied - Appeal allowed.

Woolcorp P/L v Rodger Constructions P/L

Santamaria and Kyrou JJA, Elliott AJA

[\[2017\] VSCA 21](#)

21/02/2017

CRIMINAL LAW - Appeal - Conviction - Incest - Where complainant's evidence of sexual interest admitted as tendency evidence over objection - Directions on use of evidence - Whether evidence ultimately left to the jury as tendency evidence - Where defence counsel declined to request further directions - Leave to appeal refused - *IMM v The Queen (2016) 330 ALR 382*.

Sheppard, Darius Donald (a Pseudonym) v The Queen

Warren CJ, Priest JA, and Kidd AJA

[\[2017\] VSCA 36](#)

03/03/2017

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of child under 16, indecent act with child under 16 - Complainant aged between six and seven - Whether verdicts unsafe and unsatisfactory - Alleged inconsistencies in evidence during VARE and special hearing - Whether complainant retracted allegations under cross-examination - Whether jury bound to have doubt - Consideration of position of child complainant under cross-examination - Factors affecting assessment of child's answers - Verdicts not unsafe - Appeal dismissed.

CRIMINAL LAW - Trial - Course of evidence - Child witness - Cross-examination - Difficulties of comprehension - Obligation of fairness to witness - Importance of age-appropriate questions - Duty of trial judge to ensure fair trial - Defence counsel's obligation to accused - Rule in *Browne v Dunn* (1893) 6 R 67 - Procedural fairness - Content of obligation varies with age of witness - Benefits of pre-evidence hearings - Assessment of child's capacity - Sources of guidance for judges and practitioners - Evidence Act 2008 s41, s42.

CRIMINAL LAW - Appeal - Sentence - Sexual penetration of child under 16 (three charges), indecent act with child under 16 (three charges) - Victim aged between six and seven - Total effective sentence nine years' imprisonment, non-parole period seven years - Whether manifestly excessive - Serious offending - Breach of trust - Previous good character - Offender aged 68 - Sentences within range - Leave to appeal refused.

Ward, Roger (a Pseudonym) v The Queen

Maxwell P, Redlich JA, and Whelan JA

[\[2017\] VSCA 37](#)

03/03/2017

CRIMINAL LAW - Appeal - Conviction - Tendency evidence - Rape - Whether conduct towards victim, including text messaging, probative of a tendency to have a relevant sexual interest in the complainant and a willingness to act on that interest in respect of complainant - Whether conduct had significant probative value - Guilty passion evidence - Application for leave to appeal granted - Appeal dismissed - Evidence Act 2008, s97 and s101.

CRIMINAL LAW - Appeal - Sentence - Rape (1 charge), indecent act with child under 16 (3 charges) - Four complainants - Whether sentence of 9 years and 6 months with non-parole period of 7 years manifestly excessive - Not reasonably arguable that individual sentences, orders for cumulation, total effective sentence or non-parole period were manifestly excessive - Application for leave to appeal against sentence refused.

Thu, Aung v The Queen

Redlich, Beach, and McLeish JJA

[\[2017\] VSCA 28](#)

24/02/2017

CRIMINAL LAW - Appeal - Interlocutory appeal - Occupational health and safety - Alleged failure by employer to provide necessary instruction and training - Whether charge valid - Whether particulars of 'necessity' required - Charge ruled valid - Trial judge refused to certify for interlocutory appeal - Application to review refusal to certify - Application refused - *Baiada Poultry v Victorian WorkCover Authority* (2015) 257 IR 204 followed - Criminal Procedure Act 2009 s295, s296, sch 1, Occupational Health and Safety Act 2004 s21(1), s21(2)(e).

CRIMINAL LAW - Trial - Practice and procedure - Defence challenge to legal validity of charge - Importance of early identification of legal issues - Statutory obligation to raise questions of law before trial - Criminal Procedure Act 2009 s199, s200.

Downer EDI Works P/L (ACN 008 709 608) v The Queen

Maxwell P and Redlich JA

[\[2017\] VSCA 27](#)

23/02/2017

CRIMINAL LAW - Appeal - Sentence - Indecent act with child under age of 16 (8 counts), sexual penetration of child under 16 (3 counts) - Conviction following trial - Total effective sentence of 5 years and 6 months' imprisonment, 3 years non-parole - Whether sentence manifestly inadequate - Sentence wholly failed to reflect need for denunciation, punishment, general and specific deterrence and protection of community - Offending warranted substantially higher individual sentences and orders for cumulation - Appeal allowed - Resentenced to total effective sentence of 7 years and 6 months' imprisonment, 5 years non-parole.

CRIMINAL LAW - Appeal - Sentence - Proportionality and totality - Whether principles of proportionality and totality permit reduction of individual sentences - Director of Public Prosecutions v Grabovac [1998] 1 VR 664, applied.

Director of Public Prosecutions [DPP] v Andrew John West (a pseudonym)

Redlich, Beach, and McLeish JJA

[\[2017\] VSCA 20](#)

21/02/2017

CRIMINAL LAW - Appeal - Sentencing - Manifest excess - Recklessly causing serious injury - Sentence of six years' imprisonment - Non-parole period four years - Membership of outlaw motorcycle gang relevant sentencing consideration - Premeditated attack - Attack in concert with co-offender - Attack continued while victim on ground - Broken arms and multiple facial injuries suffered - Applicant had significant history of violence - Current sentencing practice - Director of Public Prosecutions (Cth) v Thomas [2016] VSCA 237; Nam Son Nguyen v The Queen [2016] VSCA 332, cited - No inappropriate relativity between cases referred to and impugned sentence - Leave to appeal refused.

Sherwani, Hawre v The Queen

Redlich and Ferguson JJA

[\[2017\] VSCA 26](#)

23/02/2017

CRIMINAL LAW - Conviction - Applicant convicted of five charges of indecent assault and three charges of incest - Complainant was applicant's step-daughter - Verdicts said to be unreasonable and/or not supported by the evidence - Verdicts of guilty on two indecent assault charges said to be inconsistent with verdict of not guilty on rape charge - Verdict said to be unsafe by reason of forensic disadvantage suffered by applicant - Whether trial judge erred in failing to include all necessary matters in forensic disadvantage direction - Open to jury to accept complainant's evidence as credible - Plausible explanation for acquittal on rape charge - Trial judge's forensic disadvantage direction adequate - Leave to appeal refused.

Warren, Louis (a Pseudonym) v The Queen

Weinberg JA, Whelan JA, and Ferguson JA

[\[2017\] VSCA 35](#)

03/03/2017

CRIMINAL LAW - Sentence - Appellant convicted of aggravated burglary, common law assault, making threats to kill and contravening Family Violence Intervention Order (FVIO) - Sentenced to five years' imprisonment with non-parole period of three years - Whether judge erred in 'doubly punishing' appellant - Judge considered breach of FVIO as aggravating factor re aggravated burglary but separately sentenced appellant to cumulative term of three months for breach of FVIO - Cumulative sentence was double punishment - Appeal allowed - Sentence reduced to four years and nine months' imprisonment with non-parole period of two years and nine months.

Woods, Timothy v The Queen

Weinberg JA and Ferguson JA

[\[2017\] VSCA 34](#)

03/03/2017

CRIMINAL LAW - Sentence - Applicant pleaded guilty to charges of intentionally causing serious injury and theft - Applicant aged 18 when offences committed - Victim of stabbing suffered severed artery, massive blood loss and ongoing nerve damage - Applicant sentenced to three years and ten months' imprisonment with two year non-parole period - Whether sentence manifestly excessive - Whether Community Correction Order coupled with term of imprisonment should have been imposed - Sentence not manifestly excessive - Appeal dismissed.

May-Jordan, Jeremy v The Queen

Weinberg and Ferguson JJA

[\[2017\] VSCA 30](#)

28/02/2017

CRIMINAL LAW - Sentence - DPP appeal - Culpable driving causing death (two charges); negligently causing serious injury (one charge) - Total effective sentence 11 years' imprisonment with non-parole period of seven years and six months - Whether sentence manifestly inadequate - Offender youthful and had other mitigating circumstances - Purpose of Crown appeals to correct error of principle - Whether judge erred in not applying *Harrison & Rigogiannis v The Queen* (2015) 74 MVR 58 - Sentences within range - Appeal dismissed - *Harrison & Rigogiannis v The Queen* (2015) 74 MVR 58; *The Queen v Kilic* [2016] HCA 48 referred to.

Director of Public Prosecutions [DPP] v Trueman, Michael Patrick

Weinberg, Whelan, and Ferguson JJA

[\[2017\] VSCA 24](#)

23/02/2017

CRIMINAL LAW - Sentence - Election to renew application for leave to appeal against sentence - Applicant sentenced to five years and seven months' imprisonment with a non-parole period of three years and nine months on one charge each of armed robbery, making a threat to kill, intentionally causing injury and false imprisonment - Whether sentence manifestly excessive - Whether trial judge erred in classifying false imprisonment as one of worst possible examples of this offence - Application refused.

Lord, Aaron v The Queen

Tate and Priest JJA

[\[2017\] VSCA 29](#)

24/02/2017

EQUITY - Solicitors' entitlement to fruits of costs judgment in client's favour - Whether solicitors entitled to participation in taxation of costs - *Ex parte Patience, Makinson v The Minister* [1940] SR (NSW) 96, *Re Fuld* [No 4] [1968] P 727, *Fairfold Properties Ltd v Exmouth Docks Co Ltd* [1993] Ch 196 considered - Whether proceedings appropriate to determine allegation of fraud in costs judgment - *Wentworth v Rogers* [No 5] (1986) 6 NSWLR 534 considered - Whether judge's reasons inadequate.

LEGAL PRACTITIONERS - Costs disclosure - Whether alleged non-compliance a bar to recovery - Legal Profession Act 2004 s3.4.17, s3.4.41.

CONTRACT - Whether agreement between solicitors and client to cap costs and disbursements - Application for leave to appeal refused.

Bodycorp Repairers P/L (ACN 068 589 408) v Oakley Thompson & Co P/L (ACN 092 053 239) (No 2)

Warren CJ, Tate and McLeish JJA

[\[2017\] VSCA 23](#)

22/02/2017

NEGLIGENCE - Applicant alleged discrimination, victimisation, bullying, humiliation and isolation by various employees of the respondent in the course of her employment as a teacher at a State Secondary College - Negligence and breach of statutory duty - Pain and suffering damages and economic loss flowing from breach of duty of care - Injuries include Adjustment Disorder with Anxiety and Depressed Mood and various physical sequelae - Foreseeability of psychiatric injury - Content of the duty of care - Nature and extent of duty of care owed by school authorities - Whether primary judge erred in finding that injury not foreseeable and no breach of duty - Crown Proceedings Act 1958 s23 - *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44.

PROCEDURE - Procedural fairness - Applicant alleged that certain documents not discovered by respondent - Whether findings of trial judge would have differed if documents produced.

PROCEDURE - Self-represented litigants - Whether trial judge failed to provide adequate assistance to applicant - Whether applicant denied procedural fairness.

Pateras, Mary v State of Victoria

Santamaria and Beach JJA

[\[2017\] VSCA 31](#)

01/03/2017

PRACTICE AND PROCEDURE - Costs - Security for costs - Application for security for costs - Applicant for leave to appeal impecunious - Unpaid costs orders - Whether security would stifle a reasonably arguable claim - Grounds for ordering security - Application granted - Security for costs ordered.

Bodycorp Repairers P/L (ACN 068 589 408) v Maisano, Anuniziato Enzo (also known as Michael Maisano and Michael Mason) & Ors

Beach JA and Cameron AJA

[\[2017\] VSCA 39](#)

03/03/2017

PRACTICE AND PROCEDURE - Negligence suit against solicitors - Settlement agreement - Scope of the advocate's immunity - Summary dismissal - Significance of special leave to appeal having been granted in *Attwells v Jackson Lalic Lawyers Pty Ltd* (2016) 331 ALR 1 - Effect of subsequent decision in *Attwells* on negligence suit - Whether judge should have deferred determination of summary dismissal application - Leave to appeal granted - Appeal allowed.

Spralja, Steve v Bullard, David Ernest and Bullard, Anthony David (trading as 'Bullards' (a firm)) and Casement, Glenn and Scarfo, Michael

Tate JA, Ferguson JA, and McLeish JA

[\[2017\] VSCA 32](#)

03/03/2017

Commercial Court

CORPORATIONS - Oppression - Relief pursuant to s233(e) of Corporations Act 2001 (Cth) - Company to purchase shares - Valuation of shares - Methodology - Fair and reasonable value determined by application of a discount to net asset value - Wide discretion.

Between Strategic Management Australia AFL P/L (ACN 146 799 162) and Precision Sports & Entertainment Group P/L (ACN 169 978 755) & Ors (according to the attached schedule) and between Pickering, Liam Michael and Strategic Management Australia AFL P/L (ACN 146 799 162) & Anor (according to the attached schedule); and between Chillimia P/L (ACN 114 860 365) & Anor (according to the attached schedule) and Strategic Management Australia AFL P/L (ACN 146 799 162) & Ors (according to the attached schedule)

Sifris J

[\[2017\] VSC 35](#)

24/02/2017

COSTS - Access to money in court - Final Order - Applications for costs - Application of moneys paid into Court as security for costs - Indemnity costs - Liquidator's costs - Reserve Costs - Orders sought for access to the records of the insolvent defendant - Costs awarded to the plaintiff/respondent - payable by third party.

Fanniesab P/L (ACN 120 335 195) v Futistasera P/L (ACN 120 336 192)

Digby J

[\[2017\] VSC 58](#)

22/02/2017

COSTS - Test cases - Indemnity costs - Whether successful plaintiff should be paid its costs by the defendants - Whether indemnity costs a 'penalty' - Successful defendant - Sanderson order.

Timbercorp Finance P/L (in liquidation) (ACN 054 581 190) v Collins, Douglas James & Ors; Timbercorp Finance P/L (in liquidation) (ACN 054 581 190) v White, Peter John & Anor (No 2)

Judd J

[\[2017\] VSC 65](#)

28/02/2017

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 (No 3)

Judd J

[\[2017\] VSC 62](#)

28/02/2017

PRACTICE AND PROCEDURE - Application to join party to proceedings - Rule 9.06(b) Supreme Court (General Civil Procedure) Rules 2015 - Application for injunctive relief - Injunction to restrain payment of assigned debts - Contempt application - Inherent Jurisdiction of the Court - Order 75, Part 3, Supreme Court (General Civil Procedure) Rules 2015 - Appointment of Administrators - s436C Corporations Act 2001 (Cth) - Company in administration - Preserve action of subject matter of litigation, provision of information, provision of accounts, assignment of debts, PPSR, company in administration, secured creditors

Mair, Nelson Keith Robertson and Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed) and between Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed), Herringbone P/L (ACN 135 481 953) (Administrators Appointed), Rhodes & Beckett Group P/L (ACN 135 008 801), Van Laack Australia Holdings P/L (ACN 159 334 460), Van Laack GmbH and Mair, Nelson Keith Robertson, Luxury Retail No 1 P/L (ACN 166 798 723), Luxury Retail Group P/L (ACN 604 195 717), Balnaring Holdings P/L (ACN 118 886 669); Balnaring Holdings P/L (ACN 118 886 669) as trustee for the Balnaring Trust and Van Laack Australia Holdings P/L (ACN 159 334 460) and Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed), Rhodes & Beckett Group P/L (ACN 135 008 801), Van Laack GmbH

Digby J

[\[2017\] VSC 54](#)

17/02/2017

PRACTICE AND PROCEDURE - Discovery and Inspection of discovered documents - Objection to inspection on grounds of client legal privilege and public interest immunity - Whether earlier determination of client legal privilege in the context of the subpoena of documents is a bar to further application to inspect the documents - Not a bar to further determination - Tenth Vandy Pty Ltd v Natwest Markets Australia Pty Ltd [2006] VSC 170; Strategic Management Australia AFL Pty Ltd v Precision Sports & Entertainment Group Pty Ltd [2015] VSC 717.

PUBLIC INTEREST IMMUNITY - Applicable principles - Whether document subject to immunity from production - Evidence Act 2008 (Vic), s130.

CLIENT LEGAL PRIVILEGE - Whether Australian Government Solicitor's Report created for dominant purpose of giving legal advice and privileged - Document not produced for that dominant purpose and not privileged - Document may be redacted as it contains legal advice and may refer to material the subject of PII - s118 Evidence Act 2008 (Vic).

Between: Heckler & Koch GmbH v Faxtech P/L trading as Point Trading and between: Faxtech P/L trading as Point Trading and Heckler & Koch GmbH and The Commonwealth of Australia

Derham AsJ

[\[2016\] VSC 697](#)

22/11/2016

WINDING UP - Appointment of special purpose liquidators to investigate antecedent transactions - Suitability of existing liquidators to undertake task - Whether appointment desirable particularly in circumstances where creditor only prepared to fund proposed special purpose liquidators to undertake such task - Scope of the appointment.

In the matter of CTM Training Solutions P/L (in liquidation) ACN 108 102 263 and Southern Education Training P/L (in liquidation) ACN 084 742 745 Between The State of Victoria (In the Right of the Department Of Education And Training) and CTM Training Solutions P/L (in liquidation) ACN 108 102 263 (and others according to the schedule)

Sifris J

[\[2017\] VSC 47](#)

24/02/2017

Common Law Division

COSTS - Calderbank offer - Offer to walk away or to capitulate - Not unreasonable for plaintiff to reject defendants' offer.

Victorian WorkCover Authority v O'Brien, Kevin Edward & Ors

J Forrest J

[\[2017\] VSC 68](#)

24/02/2017

CRIMINAL LAW - Judicial review - Practice and Procedure - Applications before judge in County Court of Victoria for orders reinstating struck out appeals from sentences of Magistrates' Court of Victoria - Applicants self-represented - Whether judge ensured fair trial by giving them due advice and assistance - Relationship between that duty and human rights to equality and fair hearing - Equal access to justice - Criminal Procedure Act 2009 (Vic) s267(3), Charter of Human Rights and Responsibilities Act 2006 (Vic) s6(2)(b), s8(3) and 24(1), Supreme Court (General Civil Procedure) Rules 2005 (Vic) O 56.

HUMAN RIGHTS - Equality - Fair hearing - Equal access to justice - Daughter and mother sentenced in Magistrates' Court for offences - Appeals to County Court struck out - Applications made for orders reinstating appeals - Applicants self-represented - Daughter an invalid pensioner with disability and mother her carer - Applications dismissed - Human rights applying to hearings in court and tribunals - Application and scope of procedural dimension of right to equality - Application and scope of right to fair hearing - Whether judge made adjustments and accommodations to hearing procedure to ensure daughter did not suffer discrimination by reason of disability - Whether judge ensured that daughter and mother effectively participated in and thereby obtained fair hearing - 'equality of arms' - Charter of Human Rights and Responsibilities Act 2006 (Vic) s6(2)(b), s8(3) and s24(1).

Matsoukatidou, Maria v Yarra Ranges Council ; Matsoukatidou, Betty v Yarra Ranges Council

Bell J

[\[2017\] VSC 61](#)

28/02/2017

DOMESTIC BUILDING CONTRACTS - Decision of VCAT - Application to appeal on questions of law - Domestic Building Contracts Act 1995 s53, Victorian Civil and Administrative Tribunal Act 1998, s148.

DOMESTIC BUILDING CONTRACTS - Written contract - Repudiation - Assessment of damages - Whether contract contained a 'time is of the essence' condition - Scope of contract building works - Whether oral term that building work would create watertight roof - Order setting-off the damages orders in two proceedings - Whether jurisdiction to make set off order when person affected not a party to both proceedings.

PROCEDURAL FAIRNESS - Finding that contract contained a mutual mistake as to parties to contract - Finding that party to contract an agent for undisclosed principal - Subsequent order setting-off of damages ordered in two proceedings - Parties not heard on the possibility of the findings or resulting set-off order - Denial of procedural fairness

Versa-Tile P/L (ACN 000 987 002) v 101 Construction P/L (ACN 124 812 139) (in liquidation); Raiz, Danny v 101 Construction P/L (ACN 124 812 139) (in liquidation)

Ginnane J

[\[2017\] VSC 73](#)

28/02/2017

JUDICIAL REVIEW - Plaintiff charged with murder - Magistrate's compulsory procedure order that plaintiff provide a DNA sample - Whether valid exercise of power or discretion - Alleged errors in exercise of power or discretion - Existing DNA sample as a result of order in 2005 - Whether valid exercise of power - Statutory obligation to reasons and state evidence relied on - Whether error on face of the record - Crimes Act 1958 s464T(3), 464ZE(1)(a)

Marrogi, George v The Magistrates' Court of Victoria and Salerno, Detective Senior Constable Julio

Ginnane J

[\[2017\] VSC 80](#)

NEGLIGENCE - Duty of care - Breach of duty of care - Private horse training facility owned by the Defendants - Jockey suffers serious injury while riding track work - Working racehorses in the dark - Adequacy of lighting of training track - Compensation payments made by Victorian WorkCover Authority - Section 138 of the Accident Compensation Act 1985 (Vic) - Breach of common law duty - Causation - Proof of causation - Standard of proof.

Victorian WorkCover Authority v O'Brien, Kevin Edward & Ors

J Forrest J

[\[2017\] VSC 39](#)

17/02/2017

PRACTICE AND PROCEDURE - Application for adjournment on first day of trial - Counsel for plaintiff had submitted at final directions hearing without proper foundation that trial was ready to proceed - Plaintiff seeking further discovery immediately prior to commencement of trial - Plaintiff seeking to rely upon further expert reports filed immediately prior to trial - Prejudice to plaintiff if precluded from relying upon additional expert reports.

Tragas, Konstantinos v Bob Jane Corporation P/L

McDonald J

[\[2017\] VSC 74](#)

24/02/2017

PRACTICE AND PROCEDURE - Application for summary dismissal - Negligent misrepresentation and misleading and deceptive conduct alleged against Commonwealth - Whether conduct of the Commonwealth in promoting and administering Home Insulation Program carrying on a business or in trade or commerce - Whether no real prospect of success - Application for summary judgment dismissed.

PRACTICE AND PROCEDURE - Application for summary dismissal - Unconscionable conduct alleged against Commonwealth - Whether plaintiffs at a special disability - Not possible to discern basis for alleged disability or how it was taken advantage of - Pleading deficient - Plaintiffs' claim struck out with leave to re-plead.

GROUP PROCEEDINGS - Class action - Whether claims of potential group members who already entered into deed with regard to loss substantially the subject of this proceeding can be maintained - No evidence that any such potential plaintiff seeks to set deed aside - Whether 'just and convenient' - Group re-defined.

Roo Roofing P/L & Anor v The Commonwealth of Australia

John Dixon J

[\[2017\] VSC 31](#)

23/02/2017

PRACTICE AND PROCEDURE - Vexatious litigant - General litigation restraint order - Whether judgments and orders in earlier proceedings inadmissible by reason of s91 Evidence Act 2008 - Judgments and orders admissible - Defendant persistently and without reasonable grounds commenced and conducted vexatious proceedings - Vexatious Proceedings Act 2014 s3, s28, s29 - Evidence Act 2008 s91 - Supreme Court Act 1986 s21 - Supreme Court Act 1935 (SA) s39(5) - Federal Court of Australia Act 1976 (Cth) s37AM, s37AO - Bankruptcy Act 1966 (Cth) s58(1)(b), s60(2), s116(2)(g) - Supreme Court (General Civil Procedure) Rules 2005 r23.01.

Attorney-General for the State of Victoria v Garrett, Andrew

McDonald J

[\[2017\] VSC 75](#)

02/03/2017

PROBATE - Application for grant of representation in Victoria - Where deceased left handwritten note disposing of monetary assets in Victoria but not all assets or any assets in the People's Republic of China - Where note written in Chinese language and executed in the People's Republic of China - Wills Act 1997, s7, s9, s17, s18.

PRIVATE INTERNATIONAL LAW - Choice of law - Succession - Where deceased is an Australian citizen - Where deceased resided in the People's Republic of China since 2003 - Whether deceased intended to reside there permanently or for an indefinite time - Domicile of choice - Where all assets of the deceased's estate are movable - Whether will executed in conformity with internal law of People's Republic of China - Whether estate falls on intestacy - Domicile Act 1982 (Cth), s10, s11, s12 - Domicile Act 1978, s9, s10, s11 - *Re Fuld's Estate (No 3)* [1968] P 675; [1965] All ER 776 - *Harrison v Harrison* [1953] 1 WLR 865 - *Hyland v Hyland* (1971) 18 FLR 461 - *Ross v Ellison or Ross* [1930] AC 1.

In the matter of the Will and Estate of Tang, Ming Zheng (also known as Tang Ming Zheng and James Tang), deceased Zhang, Bi Xia (also known as Zhang Bi Xia)

McMillan J

[\[2017\] VSC 59](#)

24/02/2017

STATUTORY INTERPRETATION - Principles - Meaning of ambiguity - Literal or grammatical meanings - Alternative constructions - Purpose of the statute - Constitution of the Municipal Association of Victoria - Appointment by a council of a councillor of another council to represent the first-mentioned council - Whether such appointment valid under Municipal Association of Victoria Act 1907 (Vic).

Darebin City Council and Ross, Councillor Coral v Municipal Association of Victoria

Riordan J

[\[2017\] VSC 51](#)

20/02/2017

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL APPEAL - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148 - Application for extension of time - Delay in obtaining transcript of hearing - Reasonable attempts made - Leave for extension of time granted - Contract of sale of horse - Whether horse of acceptable quality - Guarantee provisions under s54 of the Australian Consumer Law (Victoria) - Error by VCAT member in approach to determination of claim - No consideration of whether sale in trade or commerce - Application for leave to appeal and appeal allowed - Orders of VCAT set aside - Remitted to VCAT for rehearing.

Boogs, Tracey Heidi v Missen, Nicole Maree

J Forrest J

[\[2017\] VSC 50](#)

15/02/2017

WILLS & ESTATES - Executor's commission - Where applicant seeks commission of 3 per cent - Relevance of significant legal and professional costs incurred by estate - 1.5 per cent on corpus and 0.5 per cent on income commission awarded - Administration and Probate Act 1958 (Vic), s65 - Trustee Act 1958 (Vic), s77.

In the matter of the Will and Estate of Macleod, Donald Ratcliffe, deceased and In the matter of section 65 of the Administration and Probate Act 1958 an application by: Carroll, James Francis

Ierodiaconou AsJ

[\[2017\] VSC 67](#)

23/02/2017

Criminal Division

CRIMINAL LAW - Bail - Applicant charged with inter alia contravening family violence intervention order - Whether applicant required to show cause - Statutory interpretation - Meaning of 'violence' - Whether unacceptable risk - Bail granted - Bail Act 1977 s4(4)(ba). *In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Swain, Darryl*

Jane Dixon J
[\[2017\] VSC 55](#)
17/02/2017

CRIMINAL LAW - Sentence - Murder - Multiple stab wounds - Defenceless victim attacked in family home - Early plea of guilty - Youthful offender - 22 years' imprisonment - Non-parole period of 17 years.

Director of Public Prosecutions [DPP] v Baea, Sigaragh
Elliott J
[\[2017\] VSC 40](#)
28/02/2017

CRIMINAL LAW - Sentence - Reckless conduct endangering life - SM ejected KD, heavily intoxicated, from her premises - Accused, also present, believed KD had behaved violently and inappropriately towards SM, his sister - While crossing busy road nearby, accused punched KD to head, who fell onto roadway - Accused went to footpath but, as he turned back to assist, passing car struck and killed KD - Accused faced two uncompleted trials on manslaughter before matter settled as plea of guilty to reckless conduct endangering life - Prior and subsequent appearances for violence - Failed to comply with community correction order ("CCO") imposed for other offending - Assessed as unsuitable for further CCO - Plea of guilty - Remorse - Youth - Delay - Reasonable to good prospects of rehabilitation - General deterrence, denunciation, just punishment, community protection and rehabilitation - Parsimony - Sentenced to CCO for 18 months, with conditions, including judicial monitoring - But for plea of guilty, sentence of nine months' imprisonment plus CCO for 18 months, with same conditions - Sentencing Act 1991 (Vic), s5 & s6AAA and Part 3A; Crimes Act 1958 (Vic), s22.

The Queen v Majok, David
Croucher J
[\[2017\] VSC 72](#)
27/02/2017

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.

BUILDING CONTRACT - Payment claim response took account of previously certified liquidated damages - Whether liquidated damages wrongly deducted from claim - Adjudicator's determination in favour of claimant - Subsequent judgment entered by the Court for the adjudicated amount - Review application lodged by respondent - Monies paid by respondent into its solicitors' trust account - Intended as payment into a "designated trust account" of "alleged excluded amounts" pursuant to section 28B(6) of the Building and Construction Industry Security of Payments Act 2002 (Vic) - Procedural defects in the review application meant it was not considered on its merits - Whether monies in solicitors' trust account held on the trusts created by section 28F(2) of the Act - Whether monies in trust should be paid to the claimant in satisfaction of its entitlements under the judgment.
May Constructions (Residential) Pty Ltd v GPZ Pty Ltd and 38 Williams Road Pty Ltd
[\[2017\] VCC 54](#)
Judge Anderson
17/02/2017

CONTRACT - An individual entering into an agreement referred in correspondence and discussions to the business entity as All Trade Training - No mention was made that there was a company All Trade Training Pty Ltd - Whether the agreement was with the individual or the company - Sections 153(1), 88A and 144 of the Corporations Act 2001 (Cth).
Certified Skills Victoria Pty Ltd v Reeves & Anor
[\[2017\] VCC 37](#)
Judge Anderson
10/02/2017

INSTALMENT ORDER - Application for instalment order; section 6 Judgment Debt Recovery Act 1984.
Mavidis v Wells and Neilson
[\[2017\] VCC 81](#)
Judge Lewitan
10/02/2017

INTEREST - Damages awarded in separate Supreme Court proceeding involving an unrelated party - Basis for the award of damages was the likelihood that judgment (with interest) would be awarded in this proceeding - Whether interest should be awarded to give effect to the decision in the Supreme Court.
ACN 131 110 220 Pty Ltd v Lakic & Anor
[\[2017\] VCC 75](#)
Judge Anderson
15/02/2017

LANDLORD AND TENANT - Construction of lease and deed of assignment - Where continuing obligation of former tenant for outgoing where lease assigned - Where ambiguous clause - Where notice of estimated outgoing not given.

Meteorite Property (Bourke Street) Pty Ltd v New Concept Investment Pty Ltd & Ors

[2017] VCC 119

Judge Marks

23/02/2017

PROCEDURE - Discretion to set aside implied undertaking - Factors governing release from the undertaking - Admissibility of evidence in related proceedings - Giving effect to the administration of justice whether there is a superior public interest in admitting the evidence - Application of legislative provisions.

Deputy Commissioner of Taxation v Reardon

[2017] VCC 99

Judicial Registrar Tran

20/02/2017

TRUST DEED - Daughter seeks transfer of property by mother to her, relying on Trust Deed - Mother alleges life interest in property - Interpretation of Trust Deed - Whether creation of life interest by way of estoppel - Whether detriment suffered.

Lorenz v Riffat

[2017] VCC 110

Judge Marks

22/02/2017

Articles

Arbitration

Family mediation - Practical benefits - Participants - Decision making - Voluntary - Practical incentives - UK
Gilig, J. "Family mediation: making the process mainstream." (2017) 161(3) Sol J 20-23.

Contract Law

Claims - Fraudulent misrepresentation - Mis-selling - Forms of alleged fraud - Evidence - Property Alliance Group v Royal Bank of Scotland - UK
Duncan, S. "A high hurdle." (2017) 167(7731) NLJ 13-14.

Courts

Mental health - Offenders - Magistrates Court - Powers - Processes - Examination orders - Treatment when complaint is dismissed - Jurisdiction - Mental Health Act 2016 (Qld) - QLD
Cooper, A. "Sanity in the Magistrates Court: act heralds a better approach to mentally ill offenders." (2017) 37(1) Proctor 20-21.

Criminal Law & Procedure

Common law - Historic offences - No punishment without law - Sentencing guidelines - Sexual offences - Young offenders - UK
Harris, L. and S. Walker. "Old law and young offenders: sentencing and the limits of article 7." [2017] (2) Crim L R 78-92.

Criminology - Time served - Recidivism - Prison - USA
Mears, D. et al. "Criminology: recidivism and time served in prison." (2016) 106(1) J Crim L & Criminol 83-124.

Criminology - Wrongful conviction - Prosecutors - Crime victims - Prevention - Real perpetrator - Escapes conviction - Costs - USA
Bishop, J. and M. Osler. "Prosecutors and victims: why wrongful convictions matter." (2015) 105(4) J Crim L & Criminol. 1031-1047.

Deaths - Poor care - Abuse - Neglect - Hospitals - Care homes - Criminal offence - Wilful neglect - R v Sheppard - Criminal Justice and Courts Act 2015 (WA), s44 - WA
Akhtar, Z. "Wilful neglect." (2017) (Feb) Counsel 35-36.

Elder abuse - Prevent - Identify - Respond - National consistency - Substitute decision-making - Financial - Property - Centrelink - Law reform proposals - Australia
McLean, S. "Reform proposals target elder abuse." (2017) 37(1) Proctor 26-28.

Evidence - Eye witness reliability - Identifications - In-court identifications - Memory - Suggestiveness - Legal frameworks - State v Henderson - State v Lawson - USA
Kaplan, A. and J. Puracal. "Who could it be now? Challenging the reliability of first time in-court identifications after State v Henderson and State v Lawson." (2015) 105(4) J Crim L & Criminol. 947-991.

Offenders - Mentally ill offenders - Recidivism rates - Prison - Treatment - Rehabilitation - Community transitions - SA
Esposito, M. "Lack of clinical treatment leading to repeat offending." (2017) 39(1) LSB 29-30.

Equity

Statutory definition - Charity - Presumption - Public benefit - Impact - No-presumption provision - Poverty - Fee-charging independent schools - Religion - Charities Act 2006 (UK) - UK

Synge, M. "Charity and the myth of the presumptions." (2017) 10(3) J Eq 189-212.

Torrens system mortgages - Mortgagor's right to redeem - Indefeasible Torrens mortgage - In personam exception - Unconscionability doctrines - Statutory protection for mortgagor - Australian Securities and Investment Commission Act 2001 (Cth) - Australia

Skead, N. et al. "Analysing mortgagor protections in equity and under statute: a Torrens perspective." (2017) 10(3) J Eq 155-188.

Evidence

Expert witnesses - Advocates for a party - Judicial appointed experts - Creditability - Sentiment for neutral experts - Daubert v Merrell Dow Pharmaceuticals Inc - Federal Rules of Evidence 1972 (USA), 706 - USA

Domitrovich, S. "Fulfilling Daubert's gatekeeping mandate through court appointed experts." (2016) 106(1) J Crim L & Criminol. 35-48.

Forensic evidence - Scientific evidence - Judicial decision making - Juries - USA

Koehler, J. and J. Meixner. "An empirical research agenda for the forensic sciences." (2016) 106(1) J Crim L & Criminol. 1-34.

Forensic evidence - Scientific illiteracy - Legal profession - Duty - Scientific evidence - Reviewing convictions - Prosecution's proof - Maryland v Kulbicki - USA

Epstein, J. "Looking backwards at old cases: when science moves forward." (2016) 106(1) J Crim L & Criminol. 49-58.

Forensic science - Information - Training - Research - Articles - Web resources - Associations - Organizations - USA

Henderson, C. and D. Botluk. "Sleuthing scientific evidence information on the internet." (2016) 106(1) J Crim L & Criminol. 59-82.

Memory distortion - Intoxicated participants - Allegations of sexual assault - Misinterpretations - Sexual consent - USA

Davis, D. and E. Loftus. "Remembering disputed sexual assault encounters: a new frontier for witness memory research." (2015) 105(4) J Crim L & Criminol. 811-851.

Legal Profession

Personalia - Lord Atkin - Biography - Donoghue v Stephenson - Liversidge v Anderson - UK

Applegarth, P. "What Lord Atkin did for us - what we can do in his memory." (2017) 37(1) Proctor 15.

Media Law

Free speech - Freedom of expression - Freedom of the press - Media - Self-regulation - Leveson Enquiry - Judicial review - UK

Evans, T. "The battle over press regulation." (2017) 161(4) Sol J 17.

Medical Law

Human life - Value - Sanctity - Quality of life - New principle - Reverence for life - Margaret Brazier - Suzanne Ost - UK

Heywood, R. and A. Mullock. "The value of life in English law: revered but not sacred?" (2016) 36(4) Legal studies 658-682.

Private law courts - De minimis threshold - Condition precedent - Infliction - Mental harm - Adoption - Criminal law courts - Non-physical injury - Expert testimony - Mental health professionals - Categorical legal questions - Diagnostic manual DSM-V - Specific diagnostic guidelines - Necessity - UK

Orr, R. "Speaking with different voices: the problems with English law and psychiatric injury." (2016) 36(4) *Legal studies* 547-565.

Practice & Procedure

High volume cases - Running inquiries - Example - Child abuse inquiry - Mass of data - Disclosed material - Case plan - Information technology - Paperless office - Databases - Information back-up - UK

Weatherby, P. "Lessons from preparing a big case." (2017) (Feb) *Counsel* 25-27.

Taxation

Environmental tax measures - Effectiveness - Policy applications - Group Delphi - Australia

Stoianoff, N. and M. Walpole. "Tax and the environment: an evaluation framework for tax policy reform - group Delphi study." (2016) 31(4) *ATF* 693-716.

Torts

Occupiers' liability - Vicarious liability - Close connection test - *JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust* - *Mohamud v WM Morrison Supermarkets PLC* - *Bellman v Northampton Recruitment Ltd* - *Fletcher v Chancery Supplies Ltd* - *Debell v Dean and Chapter of Rochester Cathedral* - UK

Ganapathy, V. "The boundaries of liability." (2017) 161(3) *Sol J* 34-35.

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