



## THE LAW LIBRARY OF VICTORIA

# Library Bulletin

17 March 2017

## Library News

### 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.

### Tours of the Supreme Court Library Thursday 30 March, 1:15pm - 2:15pm

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. The tours offer an opportunity to learn more about the Library and its place in the Supreme Court.

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

### SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at [llv@courts.vic.gov.au](mailto:llv@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.

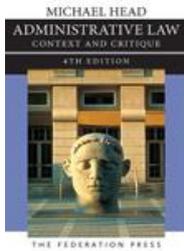
The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

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# New Books

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



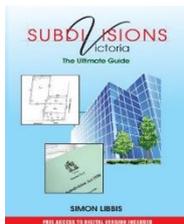
Head, Michael, *Administrative Law: Context and Critique*  
4<sup>th</sup> ed., Leichhardt, NSW, Federation Press, 2017  
Call number: 342.06 HEA.4 (VCAT Library)



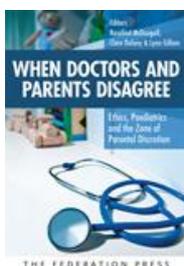
Lexis Nexis, *Australian Corporations Legislation 2017 Edition*  
Chatswood, NSW, Lexis Nexis, 2017  
Call number: 346.066.17 AUS (Supreme Court Library)



Libbis, Simon, *Conveyancing Victoria: The ultimate guide 2016-17*  
5<sup>th</sup> ed., Melbourne, Victoria, Hybrid Publishers, 2016  
Call number: 346.0438 LIB.5 (VCAT Library)



Libbis, Simon, *Subdivisions Victoria: The ultimate guide*  
2<sup>nd</sup> ed., Melbourne, Victoria, Hybrid Publishers, 2015  
Call number: 346.04377 LIB.2 (VCAT Library)



McDougall, Rosalind, *When doctors and parents disagree*  
Leichhardt, NSW, Federation Press, 2016  
Call number: 362.19892 WHE (Supreme Court Library)

# Legislation

## Victorian Bills

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

- [Family Violence Protection Amendment Bill 2017](#)
- [Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017](#)
- [Ports and Marine Legislation Amendment Bill 2017](#)

## Victorian Assents

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

- [Crimes Legislation Further Amendment Act 2017 No. 6/2017](#)
- [Heritage Act 2017 No. 7/2017](#)
- [Resources Legislation Amendment \(Fracking Ban\) Act 2017 No. 8/2017](#)

## 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](#) [#argus1917](#)

## Proclamations

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

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

- [Resources Legislation Amendment \(Fracking Ban\) Act 2017 No. 8/2017](#)
  - Sections 1-13 came in by forced commencement on 16 March 2017 s.2



## High Court Cases

CRIMINAL LAW - Procedure - Apprehension and detention - Reasonable grounds - Where appellant drinking alcohol in public place near shops selling alcohol - Where appellant intoxicated and behaving belligerently towards police - Where appellant apprehended on basis of police officer's belief that appellant would commit offence of drinking liquor in regulated place - Whether belief held on reasonable grounds - Whether policing experience valid basis for reasonable grounds for forming belief.

CRIMINAL LAW - Procedure - Apprehension and detention - Statutory powers of apprehension - Where appellant apprehended on basis of police officer's belief that appellant would commit offence of drinking liquor in regulated place - Where maximum penalty for offence forfeiture of liquor and issue of contravention notice - Whether decision to apprehend exceeded limits of apprehension power.

WORDS AND PHRASES - "likely to commit an offence", "policing experience", "reasonable grounds". Liquor Act (NT), s101U(1). Police Administration Act (NT), s128(1).

***Prior, Anthony v Mole, Robert***

[\[2017\] HCA 10](#)

08/03/2017

STATUTES - Interpretation - Acts Interpretation Act 1901 (Cth), s36(2) - Where first respondent's application for visa received and taken to be made on Monday 13 January - Where first respondent able to meet visa criteria in Migration Regulations 1994 (Cth) if first respondent held valid second visa at time of application - Where first respondent's second visa expired on Sunday 12 January - Whether s36(2) of Acts Interpretation Act allowed application to be assessed as if it had been made before expiry of first respondent's second visa.

WORDS AND PHRASES - "an Act requires or allows", "last day", "prescribed or allowed by an Act", "state of affairs", "thing to be done", "time of application". Acts Interpretation Act 1901 (Cth), s36(2). Migration Act 1958 (Cth), s31, s45, s46, s47, s65. Migration Regulations 1994 (Cth), Sched 2, cl 572.211.

***Minister for Immigration and Border Protection v Kumar, Yogesh & Ors***

[\[2017\] HCA 11](#)

08/03/2017

# Victorian Supreme Court Cases

## Court of Appeal

AGENCY - Undisclosed principal - Contract - Building contract executed by company controlled by applicants' son and respondents - Whether applicants party to building contract - Applicants bound as undisclosed principals.

BUILDING AND CONSTRUCTION - Registered building practitioner - Obligations under building contract - Whether respondents' obligations limited to supervisory function - Statutory warranty as to completion of works - *Mrocki v Mountview Prestige Homes Pty Ltd* [2010] VSC 624; *Mrocki v Mountview Prestige Homes Pty Ltd* [2012] VSCA 74, distinguished - Domestic Building Contracts Act 1995 s8.

CONTRACT - Building contract - Standard form contract - Subsequent agreement between applicants, respondents and third party company - Company undertook obligation to complete construction under 'existing building contract arrangements' - Whether agreement varied building contract - Whether agreement confined obligations of respondents to supervisory role.

JUDICIAL REVIEW - Tribunal made findings in alternative as to causation - Whether findings vitiated by error - Tribunal erred in identifying obligations of respondents under building contract - Error in identifying obligations necessarily affected causation analysis - Appeal allowed - Proceeding remitted to Tribunal.

JUDICIAL REVIEW - Nature of appeal under Victorian Civil and Administrative Tribunal Act 1998 s148 - Identification of questions of law - Notice of appeal not to be construed strictly - *Cosmopolitan Hotel (Vic) Pty Ltd v Crown Melbourne Ltd* (2014) 45 VR 771, 783 [48], 805 [165], applied.

***Fraser, Maureen and Fraser, Desmond v Sperling, Guntram and Kastner, Heidi***

Maxwell P, Santamaria and McLeish JJA

[\[2017\] VSCA 53](#)

17/03/2017

CORPORATIONS - Application to set aside statutory demand - Settlement of group proceedings relating to collapse of managed investment schemes - Respondent's investment in schemes financed by loans assigned to applicant - Whether 'genuine dispute' or 'offsetting claim' established - Whether case presented short point of law - Corporations Act 2001 (Cth) s459G.

PRACTICE AND PROCEDURE - Group proceedings - Settlement - Whether deed of settlement precluded respondent from advancing genuine dispute or offsetting claim not litigated in group proceedings - Supreme Court Act 1986 s33V, s33ZB, s33ZF - *Byrne v Javelin Asset Management Pty Ltd* [2016] VSCA 214; *Timbercorp Finance Pty Ltd (in liq) v Collins* (2016) 339 ALR 11, discussed.

COURTS AND JUDGES - Orders - Interpretation - Whether orders approving settlement may be read down to avoid exceeding jurisdiction - *New South Wales v Kable* (2013) 252 CLR 118, discussed.

PRACTICE AND PROCEDURE - Group proceedings - Opting out - Evidence opt out notice completed and sent - Respondent's name not on Court list of persons opting out - Whether contention that respondent opted out of proceeding constituted 'genuine dispute' - Onus on respondent - Sufficiency of evidence - No genuine dispute established - Appeal allowed.

PRACTICE AND PROCEDURE - Application to adduce further evidence - Application made in support of request for declaratory relief as to effect of deed of settlement on all group members - Application refused.

***Bendigo and Adelaide Bank Ltd v Pekell Delaire Holdings P/L***

Santamaria, Ferguson and McLeish JJA

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

17/03/2017

CORPORATIONS - Corporations Act 2001 (Cth) s588FF - Supreme Court (Corporations) Rules 2013 r1.10 and r2.7 - Supreme Court (General Civil Procedure) Rules 2015 r3.02.

PRACTICE AND PROCEDURE - Extension of time for service - Whether Court has power under Supreme Court (General Civil Procedure) Rules 2015 r3.02 to extend time for service in Supreme Court (Corporations) Rules 2013 r2.7 - Interpretation of Supreme Court (Corporations) Rules 2013 r1.10 and r2.7 - Does Supreme Court (Corporations) Rules 2013 r2.7 'otherwise provide' (within the meaning of r1.10) for the extension of time for service to preclude reliance on Supreme Court (General Civil Procedure) Rules 2015 r3.02?

PRACTICE AND PROCEDURE - Discretion to extend time for service - Whether judge erred in exercise of discretion.

***Horne, Stirling Lindley and Vrsecky, Petr (in their capacity as joint and several liquidators of Australian Property Custodian Holdings Ltd (ACN 095 474 436) (receivers and managers appointed) (controllers appointed) (in liquidation)) & Ors (according to the attached schedule) v Retirement Guide Management P/L (ACN 125 225 390) & Ors (according to the attached schedule)***

Warren CJ, Tate and Beach JJA

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

16/03/2017

CRIMINAL LAW - Appeal - Conviction - Applicant convicted by jury of three charges of sexual penetration of a child under 16 and one charge of indecent act with a child under 16 - Whether complainant's credibility and reliability were such that jury should have had a reasonable doubt as to applicant's guilt - Open to jury to accept complainant's evidence as credible - Application for leave to appeal granted - Appeal dismissed.

CRIMINAL LAW - Application for leave to appeal - Conviction - Whether trial judge erred in refusing to allow cross-examination of the complainant about sexual activity unrelated to the charges - Evidence did not have substantial relevance to fact in issue - Lancaster v The Queen (2014) 44 VR 820, distinguished - Criminal Procedure Act 2009 (Vic) s342, s349 - Application for leave to appeal refused.

CRIMINAL LAW - Application for leave to appeal - Conviction - Whether trial judge erred in allowing evidence to be admitted - Whether trial judge ought to have considered reliability of evidence - Witness' account initially elicited by leading questions from informant - Evidence to be taken at its highest - Trial judge cannot assess credibility or reliability of evidence - IMM v The Queen (2016) 90 ALJR 529, applied - Evidence Act s137 - Application for leave to appeal refused.

***Furness, Duane Barry v The Queen***

Weinberg, Whelan and Ferguson JJA

[\[2017\] VSCA 40](#)

06/03/2017

CRIMINAL LAW - Appeal - Sentence - Multiple serious armed robberies - Manifest excess - Full and frank admissions made - Without admissions insufficient evidence to charge - R v Ellis (1986) 6 NSWLR 603, R v Doran [2005] VSCA 271, JBM v The Queen [2013] VSCA 69, Adamson v The Queen (2015) 47 VR 268, applied - Guilty plea at early stage - Youthful offender - No prior convictions - Good prospects of rehabilitation - Current sentencing practice - R v Kilic [2016] HCA 48, applied - Abdou and Chebib v The Queen [2015] VSCA 359, Kruzenga v The Queen [2014] VSCA 10, DPP v Ghazi [2015] VSCA 188, considered - Sentence of 9 years and 9 months manifestly excessive - Applicant resentenced to 7 years' imprisonment.

***Yunan, Nours v The Queen***

Redlich and Ferguson JJA

[\[2017\] VSCA 12](#)

10/02/2017

CRIMINAL LAW - Appeal - Serious sex offender - Supervision order - Unacceptable risk - Degree of risk that offender will reoffend - Consequences if risk eventuates - Offender assessed as 'moderate' risk - Judge concluded 'far more probable than not' that he would not reoffend - Grave harm likely to result from sexual offending - Whether unacceptable risk - Judge revoked supervision order - Whether 'plainly wrong' - Conclusion reasonably open - Appeal dismissed - Nigro v Secretary to the Department of Justice (2013) 41 VR 359 applied - Serious Sex Offenders (Detention and Supervision) Act 2009 s9, s97, s101.

***The Secretary to the Department of Justice and Regulation v Fletcher, Robin Angas***

Maxwell P, Redlich and Beach JJA

[\[2017\] VSCA 44](#)

10/03/2017

CRIMINAL LAW - Application for leave to appeal - Conviction - Indecent act with a child under 16, sexual penetration of a child under 16 and incest - Fresh or new evidence - New evidence of telephone records, bank statement and pay slip - Evidence could have been adduced at trial - New evidence does not raise reasonable doubt of guilt - No substantial miscarriage of justice established - Leave to appeal refused.

CRIMINAL LAW - Application for leave to appeal - Sentence - Indecent act with a child under 16, sexual penetration of a child under 16 and incest - Applicant sentenced to a total effective sentence of 10 years and three months' imprisonment with non-parole period eight years - Whether sentence manifestly excessive - Leave to appeal refused.

***Bowden, Toby (a Pseudonym) v The Queen***

Maxwell P, Priest JA, and Kidd AJA

[\[2017\] VSCA 46](#)

10/03/2017

CRIMINAL LAW - Application for leave to appeal - Conviction - Rape - Whether verdict unsafe and unsatisfactory - Inconsistencies in complainant's account of the offending - Inconsistencies in complainant's account of peripheral matters - Deficiencies and delay in evidence of complaint - Where oath-on-oath case - Where evidence given of text messages that were not themselves produced - Application for leave to appeal refused.

***Bullmore, David Nigel v The Queen***

Warren CJ, Priest JA, and Kidd AJA

[\[2017\] VSCA 41](#)

08/03/2017

CRIMINAL LAW - Conviction - Applicant convicted of two of four charges of rape - Two complainants - Verdict on one charge said to be unreasonable and/or not supported by the evidence - Verdict of guilty on same charge of rape said to be inconsistent with verdicts of not guilty on other rape charges involving same complainant - Open to jury to accept complainant's evidence as credible - Reasonable explanation for acquittal on two rape charges and conviction on one - Leave to appeal refused.

***Inia, Hengihengi v The Queen***

Redlich, Weinberg and McLeish JJA

[\[2017\] VSCA 49](#)

16/03/2017

CRIMINAL LAW - Interlocutory appeal - Pending trial for murder - DNA evidence - Whether evidence relevant - Whether probative value of evidence outweighed by risk of unfair prejudice - Evidence ruled inadmissible - No error by trial judge - Evidence Act 2008, s55(1) and s137 - Criminal Procedure Act 2009, s295 and s297 - Leave to appeal refused.

***Director of Public Prosecutions [DPP] v Massey, Tom (a Pseudonym)***

Weinberg, Priest and Ferguson JJA

[\[2017\] VSCA 38](#)

06/03/2017

EDUCATION - Teachers - 'Misconduct' - Complaint made against teacher - Failure of principal to communicate clearly and inform complainant of outcome of investigation did not amount to 'misconduct'.

STATUTES - Interpretation - Meaning of 'misconduct' under Education and Training Reform Act 2006 - Conduct of 'a lesser standard than a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher' - To be assessed by the standard of an informed member of the public and informed members of the teaching profession - 'Misconduct' involves unacceptable, improper or blameworthy behaviour that warrants admonition - Education and Training Reform Act 2006 s2.6.1 - Parr v Nurses Board of Victoria (1998) 16 VAR 118; Vissenga v Medical Practitioners Board of Victoria (2004) VCAT 1044; Pillai v Messiter (No 2) (1989) 16 NSWLR 197 referred to.

ADMINISTRATIVE LAW - Appeal on error of law from Victorian Civil and Administrative Tribunal - No error of law established - Appeal dismissed.

***Victorian Institute of Teaching v O'Byrne, Anthony***

Kyrou and Ferguson JJA

[\[2017\] VSCA 43](#)

09/03/2017

EQUITY - Fiduciary duties - Alleged joint venture - Application by defendant for summary judgment or dismissal or striking out - Whether plaintiff must plead facts which show an interest of theirs was vulnerable to the exercise of a special power or discretion - Whether action should be dismissed for non-compliance with an order - Applications dismissed by primary judge - No real prospect of success - Application for leave to appeal refused.

PRACTICE AND PROCEDURE - Application for leave to appeal from refusal to order further and better particulars and costs order - No substantial injustice - Leave to appeal refused.

***Dog at the Bridge P/L (ACN 154 906 377) v Bridge Bar Investments P/L (ACN 154 906 377) and McMurray, Byrn***

Whelan and Beach JJA

[\[2017\] VSCA 45](#)

07/03/2017

LEGAL PROFESSION - Costs - Tax invoices - Whether invoices itemised bills - Invoices included attendance schedules with varying descriptions of work performed - Focus of legislative definition of 'itemised bill' under Legal Profession Act 2004 was on amenability to review by Costs Court - To be capable of review by Costs Court bill must specify in sufficient detail work done and amounts charged - Whether bill has sufficient detail to be assessed on case by case basis and in context - Invoices and attachments included sufficient information to satisfy requirements for itemised bills - Legal Profession Act 2004 Div 7 Pt 3.4.

***Alderman, Piper v Smoel, Kerryn Linda and Wooster, Susan Carolyn (in their capacity as the trustees of the Morris Family Superannuation Fund)***

Beach and Ferguson JJA, and Cameron AJA

[\[2017\] VSCA 42](#)

09/03/2017

PRACTICE AND PROCEDURE - Stay pending payment of interlocutory costs - Applicant made several unsuccessful applications for leave to amend statement of claim - Applications occasioned delay and wasted costs, and attended by administrative errors - Applicant did not pay interlocutory costs ordered to be taxed immediately - Associate judge ordered proceeding be stayed pending payment of interlocutory costs pursuant to Supreme Court (General Civil Procedure) Rules 2005 r63.03(3) - Whether test in *Gao v Zhang* (2005) 14 VR 380 continues to apply following introduction of Civil Procedure Act 2010 and Supreme Court (General Civil Procedure) Rules 2005 r63.20.1 - Whether judge erred by failing to apply *Cox v Journeaux* [No 2] (1935) 52 CLR 713, 720 - Whether discretion to order stay miscarried - Leave to appeal granted, appeal dismissed.

***Rozenblit, Boris v Vainer, Michael and Vainer, Alexander***

Whelan, Kyrou, and McLeish JJA

[\[2017\] VSCA 52](#)

17/03/2017

SUMMARY JUDGMENT - Misleading and deceptive conduct - Promises in written contract alleged to be misleading conduct - Whether contractual promise a representation - Whether claim has no prospect of success - Civil Procedure Act 2010 s62, s63.

PRACTICE AND PROCEDURE - Application for summary judgment - Leave to appeal - No substantial injustice - Supreme Court Act 1986 s14C.

***RCR Energy P/L (ACN 080 753 680) and RCR Tomlinson Ltd (ACN 008 898 486) v WTE Co-Generation P/L (ACN 142 284 820) and Visy Energy P/L (ACN 115 133 321)***

Weinberg, Whelan, and Santamaria JJA

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

16/03/2017

TOWN AND COUNTRY PLANNING - Heritage buildings, places and objects - Application for an order in the nature of mandamus - Property registered on Victorian Heritage Register - Scope of the Court's power to compel removal of the property where no relevant application made under the Heritage Act 1995 for its removal - Heritage Act 1995 s15, s19, s42, s54, s64 - Application for leave to appeal refused.

***Maria Joanne Rajendran (by her Litigation Guardian Anashuya Lewis) v The Heritage Council and The Executive Director employed under Part 2 of the Heritage Act 1995 (Vic)***

Tate, Priest and Santamaria JJA

[\[2017\] VSCA 48](#)

16/03/2017

## Commercial Court

ALTERNATIVE DISPUTE RESOLUTION - Expert determination clause - Whether clause a submission to arbitration - Held: no submission - Shoalhaven City Council v Firedam Civil Engineering Pty Ltd (2011) 244 CLR 305; In re Dawdy and Hartcup (1885) 15 QBD 426; In re Carus-Wilson and Greene's Arbitration (1886) 18 QB 7 applied.

ALTERNATIVE DISPUTE RESOLUTION - Expert determination clause - clause uncertain and thus unenforceable - WTE Co-Generation & Anor v RCR Energy Pty Ltd & Anor [2013] VSC 314 discussed and explained.

ALTERNATIVE DISPUTE RESOLUTION - Expert determination clause - Application for stay of proceeding based on clause - Multiplicity of proceedings - Wide disputes involving questions of expert knowledge and mixed fact and law - No procedural instructions to expert - Stay refused - Zeke Services Pty Ltd v Traff, c Technologies Ltd [2005] 2 Qd R 563; Dance with Mr D Ltd v Dirty Dancing Investments Pty Ltd [2009] NSWSC 332 [54] discussed and applied.

***Raskin, Rebecca v Mediterranean Olives Estate Ltd (ACN 091 024 396) & Ors***

Hargrave J

[\[2017\] VSC 94](#)

08/03/2017

ARBITRATION - Application for a stay of court proceedings in favour of arbitral proceedings - Application to set aside arbitral award - Whether arbitral award final where all issues referred to arbitration not determined - Extent to which correction and interpretation provisions of the legislation are applicable where arbitrator decides, expressly, not to determine an issue - Extent to which arbitrator's mandate subsists - Johnson v Latham (1850) 19 LJQB 329 - Gatoil International Inc v National Iranian Oil Company (unreported, 22 February 1990, EWCA) - Administration of Norfolk Island v SMEC Australia Pty Ltd (2004) NFSC 1 - CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK [2011] 4 SLR 305 - TCL Air Conditioner (Zhongshan) Company Ltd v Castel Electronics Pty Ltd (2014) 232 FCR 361 - BLC v BLB [2014] 4 SLR 79 - Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd [2016] SGHC 238 - Commercial Arbitration Act 2011, s5, s14, s32, s33 and s34 - Arbitration Act 1996 (Eng), s 68.

***Lysaght Building Solutions P/L t/as Highline Commercial Constructions (ACN 103 232 444) v Blanalko P/L (ACN 005 822 926) ; Blanalko P/L (ACN 005 822 926) v Lysaght Building Solutions P/L t/as Highline Commercial Constructions (ACN 103 232 444)***

Croft J

[\[2017\] VSC 97](#)

10/03/2017

**CORPORATIONS** - Defendants guaranteed loan to company of which they are directors - Plaintiff claims amount owed under guarantee - Administrators appointed to company under pt 5.3A Corporations Act 2001 (Cth) - Company subsequently wound up and administrators appointed as liquidators - Liquidators commence and complete sale of real property owned by company.

**NEGLIGENCE** - Defendants claim sale of real property at an undervalue and negligence in conduct of the sale - administrator/liquidator owed a duty of care to avoid causing pure economic loss - Duties of administrators/liquidators - Whether duty owed to guarantors of company debt by administrators/liquidators - Salient features discussed - *Mills & Ors v Sheahan* (2007) 99 SASR 357; *Brookfield Multiplex Ltd v Owners-Strata Plan No 61288* (2014) 254 CLR 185 applied - *Marsh v Baxter* (2015) 49 WAR 1 considered.

**AGENCY** - Whether administrators/liquidators agents of the plaintiff creditor - *Medforth v Blake* [2000] Ch 86; *Bank of Western Australia v Abdul* [2012] VSC 222; *State Bank of NSW v Chia* (2000) 50 NSWLR 587 applied - No agency found.

**CONSUMER LAW** - Whether unconscionable conduct on the part of the Administrators/Liquidators under s21 of the Australian Consumer Law ('ACL') - ACL inapplicable as conduct not 'in connexion with' supply of relevant services - no unconscionable conduct either under statutory provisions or under the general law in equity. *Perpetual Nominees Ltd (ACN 000 733 700) v McGoldrick, Ian Andrew and Bentley, Frederique Simone and between McGoldrick, Ian Andrew and Bentley, Frederique Simone v Perpetual Nominees Ltd (ACN 000 733 700) and Racso P/L (ACN 007 107 253) (in liquidation) and Arnautovic, Sule (in his capacity as liquidator of Racso P/L (ACN 007 107 253) (in liquidation)) and Crisp, Glenn Anthony (in his capacity as liquidator of Racso P/L (ACN 007 107 253) (in liquidation))*

Vickery J

[\[2017\] VSC 78](#)

16/03/2017

**PRACTICE AND PROCEDURE** - Application to amend defence in course of final address - Cross application to plead a reply to amended defence - Cross application to amend statement of claim in response to amended defence - Balancing of competing claims of prejudice in exercise of discretion - Case management issues in exercise of discretion.

*Ying Mui P/L (ACN 009 992 449) & Ors; Amore Corporation P/L (ACN 097 964 175); Hoh, Kiang Po (also known as George Hoh); Hoh, Han Keyet; and Sharikat Ying Mui SDN BHD v Hoh, Frank Kiang Ngan; Hoh, Pooi Yoke Lim; Hoh, Lynn Yook Lien; Hoh, Ian Han Lok; Lokit Investments P/L (ACN 006 855 741); Lumarkye P/L (ACN 131 575 785); Frosthollow P/L (ACN 151 816 401); Olrey P/L (ACN 140 494 319) (No 4)*

Vickery J

[\[2017\] VSC 85](#)

06/03/2017

PRACTICE AND PROCEDURE - Application to extend time within which to apply to set aside judgment and to set aside judgment pursuant to Supreme Court (General Civil Procedure) Rules 2015, r3.02 and r49.02(2) - Plaintiffs failed to appear and trial - Plaintiffs assert that they were unaware of trial date - Whether they received notification from their lawyer informing them of trial date - Application of overarching obligations under Civil Procedure Act 2010 - Applicable tests for extension of time and setting aside judgment considered - Application to extend time refused - Application to set aside judgment refused.

**Between: TSC NOMINEES P/L (ACN 125 216 702); Mihalitsis, Chris; Mihalitsis, Bill v Canham Commercial Interiors P/L; Canham, Trevor And Between: Canham, Trevor; Canham Commercial Interiors P/L; Mihalitsis, Chris; Mihalitsis, Bill; TSC Nominees P/L (ACN 125 216 702)**

Derham AsJ

[\[2017\] VSC 86](#)

07/03/2017

PRACTICE AND PROCEDURE - Costs - Interlocutory application to vary confidentiality regime applying to documents discovered and produced by non-party pursuant to discovery application and subpoena - Confidentiality regime established by agreement to protect interests of non-party and facilitate effective and efficient discovery and production of documents relevant to issues in the proceeding - Non-party joined as a defendant to counterclaim - Application by defendant/plaintiff by counterclaim to vary confidentiality regime and have produced for inspection documents in respect of which party claims client legal privilege and public interest immunity - Defendant/plaintiff by counterclaim partly successful - Appropriate order as to costs in favour of defendant/plaintiff by counterclaim.

**Between: Heckler & Koch GmbH v Faxtech P/L (ACN 007 154 234) trading as Point Trading and between: Faxtech P/L trading as Point Trading and Heckler & Koch GmbH and The Commonwealth of Australia**

Derham AsJ

[\[2017\] VSC 96](#)

10/03/2017

UNJUST ENRICHMENT - Third party fraudster caused plaintiffs' funds to be paid by mistake to fourth defendant - Fourth defendant a volunteer recipient - Fourth defendant a wagering company - Fourth defendant credited stolen funds to client's betting account and allowed client to bet away stolen funds on international sporting events - Defence of change of position based on acceptance of bets and payment of winnings - Whether fourth defendant acted in good faith when accepted bets and made payments - Held: (1) fourth defendant wilfully and recklessly failed to make such enquiries as an honest and reasonable person would have made in the circumstances, and thus had knowledge of the fraud, prior to accepting bets; (2) change of position defence rejected; (3) fourth defendant liable to restore stolen funds to plaintiffs - Australian Finance Services Leasing Pty Ltd v Hills Industries Ltd (2014) 253 CLR 560, 568 [1], 593 [66]-[67], 602-3 [97]-[98], 625-6 [157]; Southage Pty Ltd v Vescovi (2015) 321 ALR 383, 399 [65]; Foskett v McKeown [2001] 1 AC 102, 129 (Millett LJ), 108-9 (Lord Browne-Wilkinson), 115 (Lord Hoffman) discussed and applied.

UNJUST ENRICHMENT - Whether other defendants who indirectly received traceable proceeds of the stolen funds as volunteers are liable to make restitution - Held: in the absence of change of position defence, other defendants liable as indirect recipients - Fistar v Riverwood Legion & Community Club Ltd (2016) 91 NSWLR 732, 746 [62]-[64] applied.

TRUSTS - Innocent recipient of stolen funds by fourth defendant - Fourth defendant a volunteer - Fourth defendant became constructive trustee of funds when obtained sufficient knowledge of fraud - Whether other defendants who received traceable proceeds of stolen

funds as volunteers also liable to account as trustees - Held: defendant recipients held traceable proceeds of stolen funds on trust for the plaintiffs - *Black v S Freedman & Co* (1910) 12 CLR 105; *Heperu Pty Ltd & Ors v Belle* (2009) 76 NSWLR 230, 253 [92], 264-8 [145]-[163]; *Fistar v Riverwood Legion & Community Club Ltd* (2016) 91 NSWLR 732, 746 [62]-[64] discussed and applied.

TRUSTS - Knowing receipt of trust funds - Knowing assistance in breach of trust - Whether defendants had sufficient knowledge to become liable for knowing receipt of trust funds or knowing participation in breaches - Held: defendants had requisite knowledge at relevant times - *Baden v Société Générale pour Favouriser le Développement du Commerce et de l'Industrie en France SA* [1993] 1 WLR 509, 575-6 [250]; *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 163-4 [171]-[178] discussed and applied.

REAL PROPERTY - Torrens system title - Indefeasibility of title - Real estate purchased with traceable proceeds of stolen funds - Whether natural defendants obtained title to real estate as a result of fraud, so that the statutory exception to indefeasibility applies - One natural defendant had actual knowledge of both the fraud and the use of the stolen funds before property purchased with traceable proceeds - Other natural defendant had actual knowledge of fraud but not of use of proceeds of stolen funds to complete the purchase - Held: fraud exception applied to both natural defendants - Knowledge of first mentioned defendant brought home to other defendant on agency principles - *Bahr v Nicolay (No 2)* (1988) 164 CLR 604, 614; *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 163 [174]; *Macquarie Bank Ltd v Sixty Fourth Throne Pty Ltd* [1998] 3 VR 133, 143-4; *Cassegrain v Cassegrain* (2015) 254 CLR 425, 437-45 discussed and applied.

REAL PROPERTY - Torrens system land - Indefeasibility of title - Real estate purchased with traceable proceeds of stolen funds - Whether plaintiffs have in personam remedy against defendant proprietors of land so as to fall within exception to the indefeasibility principle - Held: in personam exception established - *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 169 [193]; *Bahr v Nicolay (No 2)* (1988) 164 CLR 604, 637-8, 653 discussed and applied.

EQUITY - Tracing - Plaintiffs' stolen funds mixed in bank account containing funds of others with beneficial claims on money in account - Whether first-in first-out rule in Clayton's case should be applied - Prospect that all other beneficial claims satisfied by time of judgment - Held: (1) Clayton's case inappropriate for use as tracing method; (2) Court required further evidence to determine appropriate tracing method and amount - *Re Global Finance Group Pty Ltd (in liq); Ex Parte Read and Herbert* (2002) 26 WAR 385, 406-411 [93]-[120]; *Heperu Pty Ltd & Ors v Belle* (2009) 76 NSWLR 230, 256-7 [112]-[114], 259 [121]; *Re Sutherland: French Caledonia Travel Service Pty Ltd (in liq)* (2003) 59 NSWLR 361 discussed and applied.

GAMBLING - Whether stolen funds 'paid to a person as or on account of a wager or bet' placed in Victoria - Bets placed in New South Wales - Whether Gambling Regulation Act 2003 (Vic) s2.6.3 applied to bets - Held: section not intended to have extra-territorial operation and thus inapplicable - Gambling Regulation Act 2003 (Vic) s2.6.3, Interpretation of Legislation Act 1984 (Vic) s48(b) - *Horgan v Sieber* [1976] Qd R 25 discussed.

***Sino Iron P/L (ACN 058 429 708) & Cape Preston Port Company P/L (ACN 147 842 153) v Worldwide Wagering P/L (a company incorporated in Norfolk Island with a registered number 01/12) (and others according to the Schedule)***

Hargrave J

[\[2017\] VSC 101](#)

15/03/2017

## Common Law Division

ADMINISTRATIVE LAW - Judicial review of an opinion of a medical panel - jurisdictional error - Statutory interpretation - Meaning of 'further or additional employment or work' - Remitter to Convenor of Medical Panels - Civil Procedure Act 2010 (Vic), s9 - Accident Compensation Act 1985 (Vic), s93CD(4) - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) - Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Colonial Range Pty Ltd v CES-Queen (Vic) Pty Ltd.

***DEK Rendering P/L v Gaffy, Ross & Ors***

J Forrest J

[\[2017\] VSC 53](#)

08/03/2017

CONTRACT - Alleged agreement between siblings for the purchase of shares of the plaintiff in family investment vehicle - Authority to enter contract - Whether accountant had actual or ostensible authority to make an offer on behalf of the majority shareholders of the company - Whether representations made as to the authority of the accountant - Freeman & Lockyer v Buckhurst Part Properties (Mangal) Ltd [1964] 2 QB 480 referred to.

CONTRACT - Existence of contract - Whether 'proposal' made by the company's accountant constituted a binding offer capable of acceptance - Existence of a contract inferred from conduct of the parties.

***Birdsey, Jennifer Anne v Vincent, Susan Lee and Gunn, Gregory Neil William (who are sued both personally and in their capacity as executors of the Estate of Norma Joan Barrett, deceased)***

Daly AsJ

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

28/02/2017

COSTS - Certification of counsel's fees - Indemnity costs awarded - Scale of Costs - Supreme Court (General Civil Procedure) Rules 2015.

***Stone, Joseph v Miller, Katherine***

T Forrest J

[\[2017\] VSC 69](#)

10/03/2017

COSTS - Substantive application for interlocutory injunctive relief resolved by consent - Costs reserved - Application by Plaintiff for costs - Supreme Court (General Civil Procedure) Rules r. 63.02, 63.22 - Sections 7(1), 22- 26 Civil Procedure Act 2010 - Overarching purpose and obligations - MPA Motors Pty Ltd and anor v D&L Schmidt Pty Ltd, Ferny Sky Pty Ltd and ors v Capital Finance Australia considered - Whether Plaintiff acted in accordance with overarching obligations in initiating proceedings - Costs denied.

***Crowe Horwath (Aust) P/L (ACN 006 466 351) v Lawson, Richard***

Ierodiaconou AsJ

[\[2017\] VSC 118](#)

17/03/2017

COSTS - Unsuccessful plaintiffs - Whether costs should follow the event - Principles to be applied in awarding costs in public interest litigation - Whether litigation in the public interest - No circumstances warranting departure from the usual order as to costs.

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

Riordan J

[\[2017\] VSC 87](#)

28/02/2017

COSTS - Where beneficiary seeks his costs be paid personally by trustees - Where trustees seek their costs be paid from the trust - National Trustees Executors & Agency Company of Australasia Ltd v Barns (1941) 64 CLR 268 - Nolan v Collie (2003) 7 VR 287 - Trustee Act 1958, s36(2) - Supreme Court (General Civil Procedure) Rules 2015, r63.26

***Defina, Philip v Matina, Joseph and Barbieri, Theresa***

McMillan J

[\[2017\] VSC 106](#)

16/03/2017

COSTS - Where proceeding not resolved by contest - Where plaintiff seeks costs to be paid personally by defendants - Where defendants seek each party bear their own costs - Whether defendants acted unreasonably - Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin (1997) 186 CLR 622.

***Sherwell, Cheryl Ann v Young, Gregory James and Young, Vicki Ann***

McMillan J

[\[2017\] VSC 115](#)

17/03/2017

EVIDENCE - Franchise agreement - Franchisees' recurrent obligation to franchisor to pay licence fees according to reported trading - Production of invoice with statement of money due and payable without revelation of underlying calculation of amount sought - Whether mere production of invoice and evidence of non-payment is legal proof of claim.

COSTS - Costs of party in a proceeding - Bases of assessment of costs - Standard basis or indemnity basis - Contractual stipulation about extent of enforcement costs in a judicial proceeding - Court's discretion to order costs consonant with enforcement clause - Whether discretion disqualified by failure to explicitly plead special claim for costs in accordance with enforcement clause - What amounts to sufficient pleading or notice of special costs claim.

***BB Australia P/L v Constanti, Constantine and Constanti, Angela***

Mukhtar AsJ

[\[2017\] VSC 114](#)

17/03/2017

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

LANDLORD AND TENANT - Tenant's request to demolish building - Landlord's conditions - Commercial context - Tenant with right to purchase shares in Landlord - Whether unreasonable withholding of consent - Appropriate declarations.

***Camperdown Dairy International P/L (ACN 168 442 2006) v The Camperdown Cheese Company P/L (ACN 102 694 673) (No 2)***

Ginnane J

[\[2017\] VSC 107](#)

16/03/2017

HABEAS CORPUS - Plaintiff remanded in custody to appear before Magistrate - Hearing of remand warrant adjourned - Plaintiff seeks release from police custody - Supreme Court (General Civil Procedure) Rules, r 57.03.

***Stewart, Kyle v Magistrates' Court of Victoria and Chief Commissioner of Police***

McMillan J

[\[2017\] VSC 110](#)

15/03/2017

SUCCESSION LAW - Where the deceased died intestate leaving a wife but no children - Where the deceased's wife survived the deceased but died on the same day as the deceased - Entitlement to deceased's intestate estate.

WILLS AND ESTATES - Where deceased's wife allegedly killed the deceased - Where deceased's wife was not tried for alleged crime - Whether deceased's wife morally culpable for deceased's death so as to invoke forfeiture rule - *Edwards v State Trustees Limited* [2016] VSCA 28.

PRACTICE AND PROCEDURE - Where Court appointed amicus curiae to represent the interests of the deceased's wife's estate to assist in the determination of the issues - Civil Procedure Act 2010, s7.

***Lal, Amrit and Kiran, Asha***

McMillan J

[\[2017\] VSC 81](#)

03/03/2017

## Criminal Division

CRIMINAL LAW - Application for bail - Charge of trafficking large commercial quantity of drug of dependence (methamphetamine) - Alternative charge of possession - Applicant, aged 24, alleged to be knowing participant in transport from NSW to Victoria of four kilograms of drugs secreted in boot of car driven by boyfriend - Applicant admitted suspicion that there may be drugs in car but denied actual knowledge - Applicant dual citizen of Australia and Malaysia - Whether exceptional circumstances justifying bail - Whether applicant, if bailed, presents unacceptable risk of failing to appear - No prior criminal history - Weak prosecution case on knowledge of quantity of drugs - Delay of eighteen months until trial - Real risk that applicant may spend more time in custody awaiting trial than likely sentence - Parents offered equity in their home as surety - Bail granted, with surety and on strict conditions - Bail Act 1977 (Vic), s4; Drugs, Poisons and Controlled Substances Act 1981 (Vic), s70, s71, s71AA & s73 and Part 3 of Schedule 11; DPP Reference No 1 of 2004; R v Nguyen (2005) 12 VR 299.

***In the matter of an Application for Bail by Chang, Beatrice Between: Chang, Beatrice v Director of Public Prosecutions [DPP]***

Croucher J

[\[2017\] VSC 92](#)

01/03/2017

CRIMINAL LAW - Bail - Kidnapping, false imprisonment, making threat to kill, intentionally causing injury, recklessly causing injury, theft, trafficking drug of dependence, possessing drug of dependence, assault in company and using dangerous article - Show cause situation - Serious offences - No previous history of violence - No negative bail history - Significant factors supporting grant of bail subject to strict conditions - Bail granted subject to strict conditions.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Kelly, Brett***

Beach JA

[\[2017\] VSC 99](#)

10/03/2017

CRIMINAL LAW - Murder - Compensation - Sister of deceased - Application for extension of time for making application - Delay - Whether in the interests of justice to extend time - Sentencing Act 1991 pt 4 div 2 - Moresco & Ors v Budimir [2015] VSC 51 and Marceta v Efandis [2016] VSC 265 considered.

CRIMINAL LAW - Murder - Compensation - Application for compensation order - Whether prejudice to Respondent's rehabilitation - Respondent's financial circumstances.

***Hunt, Julie v Akkus, Orhan***

Jane Dixon J

[\[2017\] VSC 79](#)

07/03/2017

CRIMINAL LAW - Bail - Murder - Requirement to show 'exceptional circumstances' - Whether exceptional circumstances made out - Whether unacceptable risk of failing to answer bail or interfering with witnesses - Exceptional circumstances not shown - Bail refused.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Sam, Sofia***

Beach JA

[\[2017\] VSC 91](#)

08/03/2017

CRIMINAL LAW - Sentence - Child homicide - Plea of guilty - Relative youth - Presence of remorse - Reasonable prospects of rehabilitation - Sentence of nine years and six months - Non-parole period of six years and six months.

***Director of Public Prosecutions [DPP] v Woodford, Harley***

Jane Dixon J

[\[2017\] VSC 108](#)

24/02/2017

CRIMINAL LAW - Sentence - Manslaughter - Theft - Burglary - Guilty plea - Gunshot wound - Young offender - 10 years imprisonment - Non-parole period of 6 years and 6 months - Crimes Act 1958 (Vic), s74, s76(1).

***Director of Public Prosecutions [DPP] v Robinson, Brandon***

Elliott J

[\[2017\] VSC 56](#)

09/03/2017

CRIMINAL LAW - Sentence - Murder - Offender staying in deceased's house - Dispute over money taken by deceased - Deceased stabbed three times with knife - Longstanding drug and alcohol addictions - Borderline personality disorder - Prior convictions, including for violence - Some remorse - Sentenced to term of imprisonment of 20 years, with non-parole period of 16 years.

***The Director of Public Prosecutions [DPP] v Schiller, Alicia Jade***

Hollingworth J

[\[2017\] VSC 98](#)

17/03/2017

CRIMINAL LAW - Sentence - Murder - Plea of Guilty - Whether Verdins applies to schizotypal or borderline personality disorder - Applicability of O'Neill factors with where Verdins is found not to apply - Prospects of rehabilitation.

***Director of Public Prosecutions [DPP] v Horneshaw, Anna***

Jane Dixon J

[\[2017\] VSC 111](#)

15/03/2017

CRIMINAL LAW - Sentence - Two co-accused charged with same offences - Attempted arson (two charges) by throwing Molotov cocktails at separate premises - Theft of motor car - Prohibited person possess firearm - Criminal damage by shooting fence - Recklessly causing injury by shooting police officer in head - Reckless conduct endangering another police officer by same shot - Arson of stolen motor car - Accused threw Molotov cocktails at two premises mistakenly believing homes belonged to others - Two days later, accused returned to first of target addresses in stolen car and fired gun twice at fence - As accused moved to second target address, police detected, pursued and cornered them - As they fled, accused fired gun at police car at close range, causing pellets to strike driver to head and to endanger passenger - Several pellets remain lodged under policeman's skin - Accused dumped and burnt stolen car - Unknown which of accused fired gun or drove car - Joint criminal enterprise - Accused just released from long prison sentences - Extensive criminal histories - Pleas of guilty - Relative youth - Only guarded prospects of rehabilitation - Risk of institutionalization - Importance of general deterrence, specific deterrence, denunciation, just punishment, protection of community and rehabilitation - Absent pleas of guilty and other mitigating factors, offences involving shooting at police would attract maximum penalties - Sentenced as serious arson offenders on some counts - Parity - Totality - On one accused, total effective sentence of eight years' imprisonment with non-parole period of six years and two months - But for pleas of guilty and other mitigating factors, total effective sentence of ten years' imprisonment with non-parole period of eight years and two months - On other accused, total effective sentence of seven years and ten months' imprisonment with non-parole period of six years - But for pleas of guilty, total effective sentence of nine years and ten months' imprisonment with non-parole period of eight years - Sentencing Act 1991 (Vic), s5, s6AAA, s6A-6F & s18.

***The Queen v Liszczak, Sam & Phillips, Rodney***

Croucher J

[\[2017\] VSC 103](#)

14/03/2017

## 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.

CONFISCATIONS - Ex parte orders - constitutional validity of s26(4) - whether power to declare another judge's order invalid - whether residual implied power to order rehearing of ex parte application for restraining order despite s42.

***Opal Storm PTY LTD, Thilini Maheshika EKANAYAKE, ACN 128564312 PTY LTD and Nayanaka Arjuna SAMARAKOON v COMMISSIONER OF THE AUSTRALIAN FEDERAL POLICE***  
[\[2017\] VCC 210](#)

Judge Cohen  
14/03/2017

# Articles

## Contract Law

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Doctrine of mistake - Offer and acceptance - No mistake as to terms - Mistaken identity - Other contracting party - Shogun Finance v Hudson - UK

**Brodsky, S.** "Void or voidable: an erroneous approach to the law of mistake?" [2016] 24 RLR 108-128.

## Courts

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Children's court - Youth offending - Recidivist offenders - Violent crimes - Sentencing - Rehabilitation - Connection to family - Access to education and training - Victoria

**Justice Chambers,** "According to law." (2017) 91(3) LIJ 22-23.

## Criminal Law & Procedure

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Bail justice system - Night court - Magistrates - Bourke Street - Law reform proposals - Victoria

**Ford, C.** "Night court a 'first step': the role of the bail justices is under scrutiny in the wake of the Bourke street attack." (2017) 91(3) LIJ 19-21.

Criminal justice system - Offending patterns - Youth violence - Young offenders - Youth advocates - Victoria

**Derkley, K.** "Lawyers fear youth crackdown." (2017) 91(3) LIJ 15-18.

## Family Law

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Islamic law - Sharia tribunals - Family law - Marriage formalities - Privatisation - Family justice - Developments - UK

**Sandberg, R. and S. Thompson.** "The Sharia law debate: the missing family law context." (2016) 177 Law & Justice 181-192.

## Human Rights

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Court of Protection - Vulnerable people - Judiciary - Participant's views - Participation in court hearings - Practice Direction 2A - Court informed of participant situation - UK  
**Eyre, E.** "Voices of vulnerable people." (2017) 161(6) Sol J 20-23.

## Legal Profession

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Judiciary - Work environment - Employment conditions - Resignation - UK

**Rogers, M.** "Judges consider quitting over poor pay and pensions." (2017) 161(6) Sol J 8.

## Restitution

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Action for account - Common law - History - Legal sources - Personable liability - UK  
**Dempster, H.** "A closer look at account and money had and received." [2016] 24 RLR 47-107.

Pitt threshold of mistake - Rescind - Mistaken voluntary disposition by deed - Pitt threshold application - Law of unjust enrichment - Restitution - Mistaken gifts - Proprietary restitution - Pitt v Holt - UK

**Dodds, I.** "Recovery for mistaken dispositions: possible effects of Pitt v Holt." [2016] 24 RLR 129-144.

Unjust enrichment - Theoretical roots of necessity - Doctrinal roots of necessity - Category 1 cases - Pre-existing relationship between parties - Category 2 cases - Unjust enrichment law - Defendant's liability - UK  
**Day, W.** "Against necessity as a ground for restitution." [2016] 24 RLR 26-46.

## Trusts

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Charitable trusts - Religious purposes -  
Presumption of public benefit - Charity  
commission - Gilmour v Coats - UK  
**Meakin, R. "Gilmour v Coats revisited: a  
study in the law of public benefit in charity  
law today." (2016) 177 Law & Justice 157-  
180.**

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