



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
28 April 2017

Library News

Switch On... in the Law Library: Finding the Law in the Law Library of Victoria

Tuesday 16 May, 1:15pm - 1:40pm

The Law Library of Victoria invites you to participate in our Switch On... information sessions. These twenty-five minute sessions are suited to judicial officers, court staff, legal professionals, law students, and anyone with an interest in law.

This session will introduce you to the legal information held in the collection. Learn about the comprehensive online and print legal resources available to you, and discover the hidden treasures held in this magnificent building.

General tour of the Supreme Court Library

Tuesday 9 May, 1.15pm-1:45pm

Take a tour and get to know the history and architecture of the Supreme Court Library. This 30 minute tour is recommended for those who want a brief introduction to the Library and its heritage, exploring the Ground and First Floors.

More information: <https://www.lawlibrary.vic.gov.au/services/events>.

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

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



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

03 9603 6282 for details. The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

Contents

New Books	3
Legislation	4
Victorian Bills	4
Victorian Assents	4
Proclamations	4
High Court Cases	5
Victorian Supreme Court Cases	6
Court of Appeal	6
Commercial Court	8
Common Law Division	10
Criminal Division	15
County Court of Victoria Cases	16
Articles	17
Administrative Law	17
Arbitration	17
Constitutional Law	17
Contract Law	17
Corporations Law	17
Courts	18
Criminal Law & Procedure	18
Evidence	19
Human Rights	19
Intellectual Property	19
Jurisprudence	19
Legal Profession	20
Medical Law	20
Practice & Procedure	20
Torts	20
Workers Compensation	20

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/.

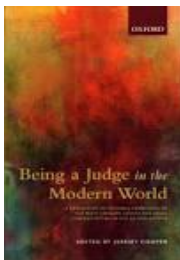
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

Members of the legal profession and the public can request any of the books to read on site at the Supreme Court Library.



Bower, Spencer, *Spencer Bower: Reliance-based estoppel*
London, Bloomsbury Professional 2017.
Call Number: 346.022 BOW.5 (VCAT Library)

[Link to the book in the catalogue](#)



Cooper, Jeremy (editor), *Being a Judge in the modern world*
Oxford UK, Oxford University Press, 2017
Call Number: 347.014 BEI (County Court Library)

[Link to the book in the catalogue](#)



Jackson, Justine, *Civil Procedure Vols. 1 & 2*
London, Sweet & Maxwell, 2017
Call Number 347.4102 CIV (Supreme Court Library)

[Link to the book in the catalogue](#)

Legislation

Victorian Bills

No Victorian Bills have received a second reading since the last Library Bulletin.

Victorian Assents

No Victorian Acts were assented to since the last Library Bulletin.

Proclamations

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

- *Building Legislation Amendment (Consumer Protection) Act 2016* No. 15/2016
 - Sections 3, 6-13, 14(2), 15, 59-68 came into operation on 26 April 2017 (SG94 27.3.2017)
- *Rooming House Operators Act 2016* No. 26/2016
 - Sections 1-93 came into operation on 26 April 2017 (SG57 7.3.2017)

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



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](https://twitter.com/lawlibraryvic) [#argus1917](https://twitter.com/lawlibraryvic)

High Court Cases

There were no High Court judgments delivered this fortnight.

Victorian Supreme Court Cases

Court of Appeal

CONTRACTS - Construction and interpretation of contracts - Whether Agreement for Lease incorporated Letter of Offer - Principles regarding when term will be implied or inferred well settled - *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337, *Grocon Constructors (Victoria) Pty Ltd v APN DF2 Project 2 Pty Ltd* [2015] VSCA 190, *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410.

CONTRACTS - Breach - Whether applicant had breached obligation to act reasonably and in good faith in resolving differences regarding cost of constructing store - No sufficient basis for findings of breach.

EVIDENCE - Inferences - Drawing adverse inferences in a civil case - Whether inferences drawn were open on the facts - Breach of the rule in *Browne v Dunn* - Failure by a party to put allegation to witness directly relevant to assessing whether inference is open - No sufficient basis for inferences and findings made - *Briginshaw v Briginshaw* (1938) 60 CLR 336, *Browne v Dunn* (1893) 6 R 67.

DAMAGES - Quantification of loss and damage - Damages for loss of opportunity - Court must ask whether there was a commercial opportunity of some value and whether opportunity would have been pursued - Court looks to what amount should be awarded having regard to prospects of success if opportunity pursued - Judge applied discount of 25 per cent - 25 per cent discount did not reflect high risk that not all options would be exercised - Risk warranted applying discount between 50 and 75 per cent.

EVIDENCE - Expert evidence - Whether Court bound to accept evidence of experts - Court should not take on role of expert - Court's role is to evaluate expert evidence critically - Not Court's role to bring third set of opinions to arena or piece together own evaluation - Where conflicting evidence Court may accept part of evidence and reject other parts - Court may make adjustments to conclusion of expert in some circumstances - Court may disregard non cogent expert evidence.

Masters Home Improvement P/L (formerly Shellbelt P/L) (ABN 21 066 891 307) and Woolworths Ltd (ABN 000 014 675) v North East Solution P/L ACN 129 466 851

Santamaria JA, Ferguson JA, and Kaye JA

[\[2017\] VSCA 88](#)

27/04/2017

CRIMINAL LAW - Appeal - Conviction - Culpable driving causing death and dangerous driving causing death or serious injury - Alternative offences under s318 and s319 and governed by s422A(1) of the Crimes Act 1958 - King v The Queen (2012) 245 CLR 588 applied - Reference to 'merited criminal punishment' should not be part of directions in future - Comparison with civil liability may be helpful in directing juries as to s318(2)(b) - Juries to be otherwise directed in accordance with R v De'Zilwa (2002) 5 VR 408 - Whether judge misdirected jury as to the sequence in which they should deliberate - Observations on the applicability of Stanton v The Queen (2003) 198 ALR 41 - R v Williamson (1807) 3 C & P 635, R v Bateman (1925) 19 Cr App R 8, Andrews v Director of Public Prosecutions [1937] AC 576, R v McCready [1967] VR 325, R v Horvath [1972] VR 533, R v Lucas [1973] VR 693, R v Stephenson [1976] VR 376, Nydam v The Queen [1977] VR 430, R v Shields [1981] VR 717, Wilson v The Queen (1992) 174 CLR 313, Simms v The Queen (2008) 148 A Crim R 433, R v De Montero (2009) 25 VR 694, LLW v The Queen (2012) 35 VR 372, Patel v The Queen (2012) 247 CLR 531, Medici v The Queen (2013) 39 VR 350, Smith v The Queen (2013) 39 VR 336, Vo v The Queen (2013) 39 VR 543, R v Wolter (No 2) (2015) 302 FLR 1 discussed - No substantial miscarriage of justice as conviction for culpable driving inevitable - Appeal dismissed.

Bouch, Ian Bruce v The Queen

Redlich JA, Weinberg JA, Whelan JA, Priest JA, and Ferguson JA

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

20/04/2017

CRIMINAL LAW - Appeal - Sentence - Dangerous driving causing serious injury (2 charges) - Reckless endangerment (1 charge) - Applicant sentenced to twelve months' imprisonment with two year Community Correction Order - Whether judge's treatment of applicant's remorse denied procedural fairness - Applicant's forensic choice to adduce further evidence of remorse obstructed - Breach of procedural fairness - Whether speed an aggravating factor - Level of moral culpability - Applicant resentenced to eight months' imprisonment with two year Community Correction Order and fine.

Lennon, James Brian v The Queen

Weinberg JA, Santamaria JA, and Kidd AJA

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

20/04/2017

CRIMINAL LAW - Offences - Elements - Occupational health and safety - Discrimination against employees - Employer alleged to have threatened adverse action against employees for raising safety issue - Whether offence requires proof of employee's 'genuine belief' regarding safety issue - Whether necessary to prove reasonable grounds for belief - Whether proof of 'threat' requires proof of intended effect on victim - Occupational Health and Safety Act 2004 s76, s77. CRIMINAL LAW - Practice and procedure - Questions of law reserved - Case stated - Whether questions necessary to answer - Whether issues in dispute - Hypothetical questions inappropriate - Requirement for concise statement of facts - DPP (Cth) v JM (2013) 250 CLR 135 applied - Criminal Procedure Act 2009 s302, s305, s306. WORDS AND PHRASES - 'raised an issue or concern about health or safety', 'threatens'.

Director of Public Prosecutions [DPP] v Acme Storage P/L (a Pseudonym)

Maxwell P, Weinberg JA, and Priest JA

[\[2017\] VSCA 90](#)

28/04/2017

DEFAMATION - Application for leave to appeal - Summary judgment - Whether applicant's defamation proceeding had a real, as opposed to fanciful, chance of success - Imputations - Whether imputations relied upon by applicant were capable of being conveyed - Applicant's proceeding did not have real chance of success - No error by primary judge - Proposed appeal does not have any real prospect of success - Application for leave to appeal refused - Defamation Act 2005 - Civil Procedure Act 2010, s63.

Pham, Quan v Legal Services Commissioner

Osborn JA and Beach JA

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

20/04/2017

TAXATION - Land tax - Exemption for land 'used primarily for primary production' - Registered proprietors alleged land cultivated pursuant to oral crop share farming agreement - Whether land cultivated 'for the purpose of selling the produce of cultivation' - Relevance of subjective intentions of land user to whether land cultivated for requisite purpose - *Martin v Federal Commissioner of Taxation* (1953) 90 CLR 470; *Leda Manorstead Pty Ltd v Chief Commissioner of State Revenue (NSW)* (2011) 85 ATR 775; *Chief Commissioner of State Revenue (NSW) v Metricon Qld Pty Ltd* [2017] NSWCA 11, considered - Land Tax Act 2005 s64, s66(c) - Leave to appeal granted, appeals dismissed.

CDPV P/L & Ors (according to the attached schedule) v Commissioner of State Revenue

Tate JA, Santamaria JA, and McLeish JA

[\[2017\] VSCA 89](#)

27/04/2017

Commercial Court

CONTRACT - Sale of petrol station business - Contamination found - Side agreement making provision for vendor to complete remediation works and assign lease - Works not commenced - Election to assign lease - Whether breach of agreement in failing to commence and complete works and for failure to do all things necessary to assign lease - Construction of terms of agreement - certainty of terms - Delay in election - Whether agreement varied - whether waiver of rights - Whether valid election - Whether termination by reason of negotiations towards/entry into subsequent direct lease with landlords.

LOSS AND DAMAGE - Whether losses suffered by reason of alleged breaches - Whether loss restricted to economic value of contract - Whether failure to mitigate.

BANK GUARANTEE - Whether plaintiff entitled to apply bank guarantee and retention amount towards damages pursuant to side agreement - Whether alternatively claims for damages can be set off against vendor's claims to guarantee/retention amounts pursuant to Corporations Act 2001 (Cth) s553C - Whether calling on bank guarantee was a void disposition under Corporations Act 2001 (Cth) s468.

United Petroleum P/L (ACN 085 779 255) v Bonnie View Petroleum P/L (in liquidation) (ACN 110 006 052) and Coad, Thomas; Duin, Vicki Dianne; Van Breugel, Anthony Craig Kennedy J

[\[2017\] VSC 185](#)

21/04/2017

PRACTICE AND PROCEDURE - Application for recusal - Actual or perceived bias - Personal, profession and financial relationships - Self-represented litigant - Application dismissed.

Jafari, Kourosh (on his own behalf and as trustee of the Essence Unit Trust) v 23 Developments P/L (ACN 112 616 976) & Ors; Jafari, Kourosh (on his own behalf and as trustee of the Essence Unit Trust) v Alderuccio, John and Alderuccio, Bruno (trading as Alderuccio Solicitors) & Anor

Elliott J

[\[2017\] VSC 193](#)

07/04/2017

PRACTICE AND PROCEDURE - Costs - Application for indemnity costs - Special circumstances that justify award of indemnity costs - Defendant raised obstacles to payment of debt forcing plaintiffs to issue proceeding - Defendant continued to defend proceeding in wilful disregard of known facts and clearly established law - Proceeding entirely unnecessary - Indemnity costs awarded.

DECLARATORY RELIEF - Jurisdiction - Discretion - Declaration sought as to legal basis for debt - No dispute between parties that debt was owing - Hypothetical dispute as to a future matter - Inappropriate to grant declaratory relief - Supreme Court Act 1986 (Vic), s36.

Specialist Australian Security Group P/L (in liquidation) (ACN 094 807 173) & Ors v Onwatch P/L (ACN 110 557 090)

Elliott J

[\[2017\] VSC 184](#)

06/04/2017

PRACTICE AND PROCEDURE - Liquidator's application for separate trial of question - Determination of separate question after trial - Application granted - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r47.04.

Jafari, Kourosh (on his own behalf and as trustee of the Essence Unit Trust) v 23 Developments P/L (ACN 112 616 976) & Ors; Jafari, Kourosh (on his own behalf and as trustee of the Essence Unit Trust) v Alderuccio, John and Alderuccio, Bruno (trading as Alderuccio Solicitors) & Anor

Elliott J

[\[2017\] VSC 201](#)

21/04/2017

PRACTICE AND PROCEDURE - Security for costs of appeal from decision of Associate Justice under r77.06 Supreme Court (General Civil Procedure) Rules 2005 - Impecunious appellant - Inherent jurisdiction of the Supreme Court to order security for costs - Relevant discretionary factors - Security ordered.

In the matter of Atwell & Co P/L (ACN 106 264 055) (in liquidation) Between: Atwell, Morag (a bankrupt) and Turner, Dennis Anthony & Targett, Luke Christopher (in their capacities as joint and several liquidators of Atwell & Co P/L (ACN 106 264 055) (in liquidation) Atwell & Co P/L (ACN 106 264 055) (in liquidation)

Kennedy J

[\[2017\] VSC 212](#)

27/04/2017

TRUSTS AND TRUSTEES - Unit Trust - Interpretation of Trust Deed - Breach of Trust Deed - Units improperly issued in breach of Trust Deed and Unitholders Agreement - No informed consent or agreement for issue of discounted units - No basis to depart from strict terms of Trust Deed.

EQUITY - Breach of fiduciary duty - No power or basis to issue units at a discount - Knowing receipt of trust property.

EQUITY - Laches and acquiescence - Leave to amend defence refused as defence will fail - Lack of clean hands - Unconscionable for defendants to derive benefit from their own wrongdoing.

AGREEMENT - Whether claims compromised by Finalisation Agreement - Whether concluded agreement reached.

ESTOPPEL - Equitable estoppel - Representation as to future conduct - Assumption induced by or arising out of conduct - Defendant suffered detriment by relying on assumption - Plaintiff estopped.

CIVIL PROCEDURE - Limitation periods - Limitation of Actions Act 1958 (Vic), s21(1)(a) - Issue of discounted units fraudulent - Claims not statute barred.

TRADE PRACTICES - Misleading or deceptive conduct - Representation as to basis on which unitholders would hold units - Meaning conveyed was misleading or deceptive - Fair Trading Act 1999, s9 (Vic).

Bullhead P/L (ACN 130 124 088) v Brickmakers Place P/L (ACN 128 994 749) & Ors
Sifris J

[\[2017\] VSC 206](#)

21/04/2017

Common Law Division

ADMINISTRATIVE LAW - Victorian Civil and Administrative Tribunal ("VCAT") - Leave to appeal - Order that the Respondent not be required to pay the Applicant's costs - Where application to adjourn refused - Whether denial of natural justice - Whether the VCAT reasons for decision inadequate - *State of Victoria v Turner* [2009] VSC 66 - Whether the VCAT properly constituted - Whether discretion as to costs order miscarried - Victorian Civil and Administrative Tribunal Act 1998 sch 1 cls 46E, 46F - Whether application validly made by Respondent - Leave refused.

Muto, Milvan Frank v Shepparton City Council

Keogh J

[\[2017\] VSC 210](#)

21/04/2017

COSTS - Application for leave to appeal and appeal from the Victorian Civil and Administrative Tribunal - Applicants successful - Application for orders that the named respondents pay the applicants' costs of the appeal - Respondents did not participate in the appeal - Whether costs order should be made against non-participating party - Practice Note SC CL 8 in the Valuation, Compensation and Planning List - Appeal Costs Act 1998 (Vic) s4 - Application for costs dismissed.

Couttie, Anthony and Couttie, Dora v Bayside City Council & Ors

Emerton J

[\[2017\] VSC 181](#)

12/04/2017

EQUITY - Whether solicitors have equitable lien over fruits of costs judgment in client's favour in a previous proceeding - Declaratory relief - Applicable principles - Declaratory relief granted - Consequential orders made - Ex parte Patience; Makinson v The Minister (1940) 40 SR (NSW) 96; Worrell v Power & Power (1993) 46 FCR 214; Trkulja v Efron [2014] VSCA 76; Oakley Thompson & Co Pty Ltd v Maisano (No 2) [2015] VSC 210.

DLA Piper Australia v Official Receiver of Singapore as the Liquidators of Windemac Pte Ltd (in liquidation) (and others according to schedule)

Derham AsJ

[\[2017\] VSC 216](#)

27/04/2017

EVIDENCE - Discovery - Public Interest Immunity - Production of documents characterised as foreign relations documents - Interpretation of Evidence Act 2008 (Vic) s130, s131A ('Act') - Ku-ring-gai Council v Gary West as delegate of the Acting Director General, Office of Local Government [2017] NSWCA 54; Matthews v SPI Electricity Pty Ltd & Ors (No 11) [2014] VSC 65 and Murdesk Investments Pty Ltd v Secretary to the Department of Business and Innovation [2011] VSC 436 referred to.

EVIDENCE - Discovery - Whether documents of the Australian Red Cross (ARC) concerning the conditions of Christmas Island detention centre detainees covered by immunity - Whether documents relate to 'matters of state' - Whether disclosure would harm Australia's foreign relations - More broadly whether disclosure of the class of documents would prejudice the proper functioning of the ARC and Commonwealth to address humanitarian issues arising in detention centres - Whether the public interest in disclosure is outweighed by the public interest in protecting the relationship of confidence between the ARC and the Commonwealth - D v National Society for the Prevention of Cruelty to Children [1978] AC 171; Australian Statistician v Leighton Contractors Pty Ltd (2008) 36 WAR 83 referred to - Ryan v State of Victoria [2015] VSCA 353 referred to and applied - Kamasae (No 7) referred to and distinguished.

EVIDENCE - Discovery - Immunity from disclosure of documents - Whether documents immune as a 'class' or owing to their 'contents' - Found appropriate to treat documents as a 'class' insofar as disclosure will prejudice the public interest regardless of contents - Inspection of documents warranted in order undertake balancing exercise under s130 of the Act - Documents materially relevant to issues in a significant proceeding - Balancing exercise favours non-disclosure.

A S by her litigation guardian Arthur, Marie Theresa and Minister for Immigration and Border Protection, Commonwealth of Australia and International Health And Medical Services P/L (ABN 40 073 811 131), Serco Australia P/L (ABN 44 003 677 352)

Daly AsJ

[\[2017\] VSC 162](#)

12/04/2017

JUDICIAL REVIEW - Review of VCAT decision - Whether Tribunal gave adequate reasons - Whether path of reasoning disclosed - Whether reasons allow for inferences to be drawn as to the findings of the Tribunal - Whether recitation of the law is sufficient - Secretary to the Department of Justice v YEE [2012] VSC 447 referred to and applied - Insufficient reasons given.

OWNERS CORPORATIONS - Owners Corporations Act 2006 (Vic) s12, s47, s48 s50, s52, s53, s165, s167 - Defendant owners corporation passed special resolutions to install fire alarm system to allow residential use of some lots - Premises otherwise used for industrial purposes in industrial zone - Plaintiff occupied lot for industrial purpose - Whether any benefit to plaintiff - Whether owners corporation has power to enter onto lot to install fire alarm system - Liability for costs of installation - Whether alarm service is a 'system' or 'alteration to common property' such as to enable the owners corporation to impose a levy upon lot owners - Powers of VCAT under s165 - Powers under s165 not 'at large' - Christ Church Grammar School v Bosnich (2010) 34 VAR 23 followed and applied.

Energy Technology Australia P/L v Owners Corporation PS 439401J

Daly AsJ

[\[2017\] VSC 145](#)

06/04/2017

LEGAL PRACTITIONERS - Application to remove defendant's name from roll of persons admitted to legal profession - Defendant failed to file a tax return for 11 years - Defendant not a fit and proper person and likely to remain so for the indefinite future - Order made removing defendant's name from roll - Legal Profession Uniform Law Application Act 2014 sch 1 s23(1).

Victorian Legal Services Commissioner v Henderson, Morris George

McDonald J

[\[2017\] VSC 202](#)

24/03/2017

PLANNING & ENVIRONMENT - Application for leave to appeal and appeal from the Victorian Civil and Administrative Tribunal under s148 of the Victorian Civil and Administrative Tribunal Act 1998 - Tribunal ordered that a planning permit issue to construct a multi-level apartment building in the Mount Buller Village - Impact on views from neighbouring premises - Imposition of a condition limiting the height of the proposal in order to effect a reasonable sharing of views - Whether the condition lacked an evident and intelligible justification - Whether Design and Development Overlay imposed a mandatory height limit - Whether the Tribunal misconstrued an earlier Tribunal decision in relation to the same land - Leave to appeal granted - Appeal dismissed.

Abercrombie, Shadda v Salter Architects and Minister for Planning

Emerton J

[\[2017\] VSC 180](#)

12/04/2017

PRACTICE AND PROCEDURE - Application for further discovery - Objection to production of redacted parts of discovered document - Objection on basis of relevance to pleading - Whether particulars of negligence in pleading sufficient to warrant discovery - Whether redaction justified - Production ordered with redaction of identifying details - Application granted in part - Civil Procedure Act 2010 (Vic), s7, s55.

Allon, Edward Clark v RMIT University

Clayton JR

[\[2017\] VSC 203](#)

19/04/2017

PRACTICE AND PROCEDURE - Further and better particulars required - Particulars served one week late - Whether order requiring particulars related to timing or to adequacy of particulars - Whether counterclaim should be struck out or summary judgment awarded for failure to provide adequate particulars - Civil Procedure Act 2010 (Vic) s51, s62, s63.

PRACTICE AND PROCEDURE - Whether defence ought to be limited to non-admissions and denials - Civil Procedure Act 2010 (Vic) s51.

PRACTICE AND PROCEDURE - Summary dismissal - Whether claim has no reasonable prospects of success - Whether questions are matters for trial.

PRACTICE AND PROCEDURE - Plaintiff (employee) retained documents belonging to defendant (employer) after end of employment - Whether delivery up should be ordered - Whether necessary for discovery - Civil Procedure Act 2010 (Vic) s9, s55.

LIMITATION OF ACTIONS - Limitation of Actions Act 1958 (Vic) s5, s27 - Claim for payment of fees owing under contract of employment - When cause of action accrued - Whether payment for work done is owing at completion of work or when a demand for payment is made - *Coburn v Colledge* [1897] 1 QB 702 - Whether limitation period postponed - Whether limitation question is appropriately determined at interlocutory stage - Whether loss was 'contingent' - *Wardley Australia Ltd v Western Australia* (1992) 175 CLR 514.

EMPLOYMENT - Long Service Leave Act 1992 (Vic) s57, s72, s153, s154, s160, s168 - Whether Supreme Court has jurisdiction over claims for unpaid long service leave - Whether jurisdiction conferred on Magistrates' Court is exclusive - Constitution Act 1975 (Vic) s85.

EMPLOYMENT - Whether private individual may seek imposition of a penalty under Long Service Leave Act 1992 (Vic) s72 - Whether penalty a 'prosecution' for an 'offence' under that Act - Action sought penalty in excess of amount owing and motivated by punishment.

WORDS AND PHRASES - 'Prosecution' - 'Offence'.

Bannon, Paul v Nauru Phosphate Royalties Trust and between Nauru Phosphate Royalties Trust and Bannon, Paul (No 3)

Ierodiaconou AsJ

[\[2017\] VSC 214](#)

26/04/2017

PRACTICE AND PROCEDURE - Security for costs - No apparent material assets - Jurisdiction enlivened - Stultification and burden of proof - Whether proceeding defensive in nature - Amount and form of security - Security for costs ordered - Supreme Court (General Civil Procedure) Rules 2015, r62.02 - Corporations Act 2001 (Cth), s1335(1).

Bodycorp Repairers P/L v GDG Legal P/L and DSG Legal P/L

Matthews JR

[\[2017\] VSC 200](#)

19/04/2017

PRACTICE AND PROCEDURE - Subpoena to non-party before trial - Production to Prothonotary - Application to set aside subpoenas - Applicable test - Whether documents sought relevant to issues in dispute - Whether legitimate forensic purpose in seeking the documents - *Webb v Wheatley* applied - *Volunteer Fire Brigades Victoria v Country Fire Authority* applied - Subpoena set aside - Supreme Court (General Civil Procedure) Rules 2015 r42A.01, r42.04.

Bannon, Paul v Nauru Phosphate Royalties Trust and between Nauru Phosphate Royalties Trust and Bannon, Paul (Subpoena Objection)

Ierodiaconou AsJ

[\[2017\] VSC 213](#)

26/04/2017

PRACTICE AND PROCEDURE - Summary judgment application - s63 Civil Procedure Act 2010 - No real prospect of success - Defendant's summary judgment application successful on the basis that the proceeding is statute barred under s5 of the Limitation of Actions Act 1958 - Plaintiff's application to restrain the defendant's solicitors from acting refused - Whether affidavits made on information and belief should be admitted - Whether the court should order a party to attend for cross examination - Supreme Court (General Civil Procedure) Rules 2015, r22.18, r22.21.

Bodycorp Repairers P/L (ACN 068 589 408) v Holding Redlich

Macaulay J

[\[2017\] VSC 215](#)

10/04/2017

STANDING to seek review under s198(1)(a) of the Legal Profession Uniform Law 2014 (Vic). CONSIDERATION of s170(1)(a) and 'commercial client' - Jurisdiction of the Costs Court - Breaches of Civil Procedure Act 2010 (Vic) - Costs of the proceeding.

In the matter of Section 198(1)(a) of the Legal Profession Uniform Law Application Act (2014). Jasmin Solar P/L v Fitzpatrick Legal P/L (ABN 61 925 524)

Wood AsJ

[\[2017\] VSC 220](#)

27/04/2017

TESTATOR'S FAMILY MAINTENANCE - Application under Part IV of Administration and Probate Act 1958 (Vic), s91 - Application by adult son of the deceased - Whether testator failed to make adequate provision for the claimant's proper maintenance and support - further provision ordered.

Part IV of the Administration and Probate Act 1958. In the matter of the estate of Genevieve Davison, deceased. Between Davison, Marc Dominic v Kempson, Peter Ruston (as administrator of the estate of Genevieve Davison, deceased) Davison, Remy Olivier Gallon and Davison, Pascale Francoise Anne

Zammit J

[\[2017\] VSC 173](#)

20/04/2017

Criminal Division

CRIMINAL LAW - Sentence - Murder - Jury verdict - Contract killing - Joint criminal enterprise - 'Gangland' related killing - Prior convictions for serious armed robberies - Subsequent convictions for serious offending - Importance of protection of community, general deterrence and denunciation - Current sentencing practices.

Director of Public Prosecutions [DPP] v Asling, Stephen John

Kaye JA

[\[2017\] VSC 191](#)

21/04/2017

APPEAL - Appeal against magistrate's order granting bail - Respondent charged with very serious driving offences arising out of police pursuit in stolen car - Respondent on two grants of police bail for similar (albeit less serious) charges and two community correction orders ('CCOs') for unrelated matters - Prior convictions for breaching bail conditions - Respondent admitted drug use but was not administered drug treatment on CCOs, despite conditions requiring such treatment - Respondent's grandmother offered residence, support and surety; spoke of respondent's resolve to reform; and promised to report any failure to comply with bail conditions - Favourable assessment by Court Integrated Services Programme - Surety - Strict bail conditions imposed - Whether, on material before him, open to magistrate to fail to be satisfied that, if bailed, there was an unacceptable risk respondent would commit further offences - Appeal dismissed - Bail Act 1977 (Vic), s4 & s18A - *Beljajev v DPP (Vic) & DPP (Cth)* (Unreported, Full Court, Supreme Court of Victoria, Young CJ, Crockett and Ashley JJ, 8 August 1991); *Fernandez v DPP* (2002) 5 VR 374.

Director of Public Prosecutions [DPP] (Vic) v Johnstone, Stephen

Croucher J

[\[2017\] VSC 116](#)

03/03/2017

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.

COSTS - Application for indemnity costs - Where plaintiff pursued case contrary to known facts - Where party abandoned allegations at trial.

LCY Pty Ltd v Ma (No. 2)

[\[2017\] VCC 403](#)

Judge Cosgrave

12/04/2017

COSTS - Calderbank offer - Defendant made Calderbank offers to the plaintiff - Offers refused - Test whether refusal of offer was unreasonable in the circumstances.

Hewitt v Count Financial Limited (No. 2)

[\[2017\] VCC 405](#)

Judge Cosgrave

12/04/2017

Articles

Administrative Law

Judicial review - Definition of reasonableness - Wednesbury unreasonableness - Hu and Ors v Immigration and Protection Tribunal - NZ
Rodriguez Ferrere, M. "Redefining reasonableness." [2017] (March) NZLJ 67-70.

Public law - Private law - Values - Principles - Reason - Control of power - Hong Kong
Allsop, J. "Values in law: how they influence and shape rules and application of law." [2016] LAWASIA J 125-136.

Arbitration

Farmers - Mandatory mediation - Legislation deficiencies - Varga v Commonwealth Bank of Australia - Farm Debt Mediation Act 2011 (Vic) - Victoria
Kennedy, B. "Debt and distress." (2016) 90(12) LIJ 30-33.

Constitutional Law

Grant of statehood - Commonwealth - Terms and conditions - Representation - Express limitations - Executive - Legislative authority - Constitution 1901 (Cth), s 121-122 - Northern Territory
Mildren, D. "Current constitutional and political obstacles to a grant of statehood for the Northern Territory." (2017) 91 (2) ALJ 94-101.

Parliamentary sovereignty doctrine - Prerogative authority - Territorial constitution - Pluralism - R (on the application of Miller and Dos Santos) v Secretary of State for exiting the European Union and associated references - UK
Elliott, M. "Miller and the modern British Constitution." [2017] (Mar) Counsel 24-26.

Contract Law

Documents signing electronically - Cloud based platforms - Process - Legislation requirements met - Electronic Transactions Act 1999 (Cth) - Corporations Act 2001 (Cth) s 127 - Australia
Loxton, D. "Not worth the paper they're not written on? Executing documents (including deeds) under electronic documentation platforms: part A." (2017) 91 (2) ALJ 133-152.

Corporations Law

Company directors - Personal liability - Common law - Statutory business judgment rules - Directors protection - Corporations Act 2001 (Cth), s180(2) - Australia - USA - South Africa
du Plessis, J. and J. Mathiopoulos. "Defences and relief from liability for company directors: widening protection to stimulate innovation." (2017) 31(3) Aust Jnl of Corp Law 287-318.

Director - Duty of care - Duty of diligence - Fiduciary duty - Non-fiduciary duty - Permanent Building Society Pty Ltd (in liq) v Wheeler - Australia
Buckingham, M. "A company director's duty of care and diligence: fiduciary or non-fiduciary?" (2017) 31(3) Aust Jnl of Corp Law 370-385.

Directors liability - Statutory business judgment rule - Directors protection - ASIC v Mariner - Corporations Act 2001 (Cth), s180(2) - Australia
Harris, J. and A. Hargovan. "Still a sleepy hollow? Directors' liability and the business judgment rule." (2017) 31(3) Aust Jnl of Corp Law 319-343.

Directors - Statutory duty - Care - Diligence - Cyber resilience fluency - Digital literacy - Digital disruption - Manage - Direct - Risk - Impact on business - Palkon v Holmes - Australia

Voogt, T. "Tall trees and digital literacy: lessons from Palkon v Holmes." (2017) 31(3) Aust Jnl of Corp Law 344-369.

Courts

Abuse victims - Facility dogs - Reduction of stress - Calming witnesses - Courts - Victoria
Derkley, K. "A case for canine counsel." (2016) 90(12) LIJ 21-22.

Children's Court - Independent judicial scrutiny - Best interests of the child - Reform - Carney Review - Care by Secretary orders - Family reunification orders - Permanent care orders - Children, Youth & Families (Permanent Care & Other Matters) Amendment Act 2014 (Vic) - Victoria
Ward, F. "Diminishing powers." (2017) 91(4) LIJ 36-39.

Criminal Law & Procedure

Adolescent family violence - Complex co-occurring problems - Legal responses - Better outcome - Support services - Accommodation - Therapeutic services - Police response - Court options
Savvas, E. and A. Jeronimus. "Troubled teens." (2017) 91(4) LIJ 40-43.

Adult Parole Board - Reform - Violent offenders - Sexual offenders - Community safety - Victoria
Ford, C. "Operation public confidence." (2016) 90(12) LIJ 15-18.

Breach of statutory duty - Corruption - Mens rea - Misconduct - Public office - UK
Gillespie, A. "Reforming misconduct in public office." [2017] (4) Crim L R 270-291.

Citation of authorities - Sentencing - Guidelines - UK

Harris, L. "Sentencing: R v Thelwall (Kenneth)." [2017] (3) Crim L R 240-243.

Confidential information - Disclosure - Hearings in Chambers - Individual applications - National security - Public interest - UK

Tausz, D. "Restriction of use of sensitive material: R (on the application of Yam) v Central Criminal Court." [2017] (3) Crim L R 235-237.

Convictions - Criminal records - Disclosure - Rehabilitation - France

Padfield, N. "Disclosing criminal records." [2017] (4) Crim L R 251-252.

Criminal procedure - Custody officers - Police detention - Police powers - Suspects - UK

Dehaghani, R. "Automatic authorisation: an exploration of the decision to detain in police custody." [2017] (3) Crim L R 187-202.

Death penalty - Ronald Ryan - 50th anniversary - Abolition - Victoria

Laster, K. "Remembering Ronald Ryan." (2017) 90(13) LIJ 19-21.

Exploitation of persons - Criminalisation - Jurisprudence - UK

Collins, J. "Exploitation of persons and the limits of the criminal law." [2017] (3) Crim L R 169-186.

Joint enterprise - Appeals against conviction - Criminal intent - Extension of time - Jury directions - Unsafe convictions - R v Johnson (Lewis) - Jogee - UK

Hargreaves, D. "Joint enterprise: R v Johnson (Lewis)." [2017] (3) Crim L R 216-221.

Criminal legislation - Non-fatal offences - Reform - Sentencing - Assault - Problems - Offences against the Person Act 1861 (UK) - UK

Eugenicos, A. "Should we reform the Offences against the Person Act 1861?" (2017) 81(1) Crim L J 26-32.

Litigation guardians - Legislative clarity - Presumption of legal capacity - Standard of capacity - Evidence of capacity - Assessing capacity - Appointing litigation guardians - Children's Court - Lack of scheme - Victoria
Mansfield, S. "Parents lacking capacity." (2017) 91(4) LIJ 32-35.

Police officers - Attacks on police officers - Victims - Resistance against law enforcement - Sentencing standards - Mitigating circumstances - Aggravating circumstances - UK - Germany
Isfen, O. and R. Rauxloh. "Police Officers as victims: sentencing standards and their justifications in England and Germany." (2017) 81(1) Crim L J 33-49.

Restorative justice - Child protection proceedings - Children - Vulnerable families - Family violence - Children's Court - Victoria
Magistrate Zemljak. "Restorative justice in the Children's Court." (2017) 91(4) LIJ 24-25.

Sentencing - Community Corrections Orders - Intrinsically punitive - Sentencing principles - Boulton v The Queen - Victoria
Venice, H. "No 'get out of jail free' card." (2016) 90(12) LIJ 38-41.

Sentencing - Statistical information - SACStat database - Victoria
Jeffreys, C. "Statistically speaking." (2016) 90(12) LIJ 34-37.

Technology - Driverless cars - Damages claims - Insurance - Design - Regulations - Vulnerable road users - Software development - Australia
Minogue, K. "Into the future: the ultimate joy ride." (2017) 90(13) LIJ 26-29.

Youth detention centres - Overcrowding - Understaffing - Punitive culture - Lack of rehabilitation - Safety - Staff - Offenders - Victoria
Derkley, K. "Trouble in 'juvie'." (2017) 91(4) LIJ 20-22.

Evidence

Appeal - Client conviction - Fresh evidence - New evidence - Miscarriage of justice - Case law principles - Victoria
Farrell, K. "New or fresh: a big difference." (2017) 90(13) LIJ 42-45 .

Evidence - Out of court - Vulnerable witnesses - Children - Cross-examination - Advocacy training - Judiciary - Legal profession - Youth Justice and Criminal Evidence Act 1999 (UK), s28 - UK
Drew, S. and L. Gibbs. "A united approach." [2017] (Mar) Counsel 30-31.

Human Rights

Immigration - Government policy - Extraterritorial detention - Processing of asylum seekers - Constitution 1901 (Cth), ss 51(xix), (xxvii) - Human rights standards - Australia
Lester, E. "Internationalising Constitutional law: an inward looking outlook." (2016) 42(2) Aust Feminist L J 321-349

Intellectual Property

Domain names - Disputes - Arbitration - Uniform Domain Name Dispute Resolution Policy - Claims procedures - Evidence - Victoria
Brown, N. "What's in a name?" (2016) 90(12) LIJ 27-29.

Jurisprudence

Rule of Law - Theory - Practice - Independent judiciary - Judicial review - Singapore
Menon, S. "The rule of law: the path to exceptionalism." [2016] LAWASIA J 115-124.

Legal Profession

Judicial legacy - Justice Susan Crennan - Collegiality - Judicial farewell speeches - Masculinist character of the law - Legal institutions - Australia

McLoughlin, K. "Collegiality is not compromise: Farewell Justice Crennan, the consensus women." (2016) 42(2) *Aust Feminist L J* 241-271.

Judiciary - Appointments - Diversity - UK
Crosse, E. "Who is to judge?" (2017) 167(7738) *NLJ* 8.

Medical Law

Donor conception laws - Donor conceived people - Information - Donors - Victoria
Johnson, L. "Anonymity and the right to know." (2016) 90(12) *LIJ* 25.

Medical treatment - Cannabis - History - Therapeutic usage - Seriously ill children - Eligible patients - Access to Medicinal Cannabis Act 2016 (Vic) - Victoria
Litleton, E. "Easing the pain." (2017) 91(4) *LIJ* 29-31.

Practice & Procedure

Alternative justice systems - Fraud - Punishment - Fixed penalty justice regulators - Regulatory administrative justice - Fraudster registers - UK

Button, M. "Fraud & punishment." (2017) 167(7737) *NLJ* 18-20.

Torts

Libel law - Media platforms - Twitter - Defamatory tweets - Serious harm - Damages - Costs - UK

"Don't get bitter on twitter." (2017) 167(7738) *NLJ* 5.

Transport accidents scheme - Serious injury - County Court - Streamlined procedures - Victoria

Lombard, M. and S. Thorn. "The gateway to serious injury." (2017) 90(13) *LIJ* 34-37.

Workers Compensation

Workplace - Sexual harassment - Compensation - Injury - Loss - Damage - Collins v Smith - Mathews v Winslow Constructors - Victoria

McCarthy, T. and S. Fitzgerald. "Increasing the tariff." (2017) 90(13) *LIJ* 30-33.

INFORMATION SESSIONS

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

If you have suggestions for future information sessions, please send them to llv@courts.vic.gov.au

Visit our website for upcoming events lawlibrary.vic.gov.au



LIBRARY FACTS

- The Law Library of Victoria is regarded as a library of national significance and is one of the largest law collections in the state, containing over 120,000 volumes.
- The oldest book in the collection is Statham's Abridgement of 1489, a case law digest.
- The largest portrait in the library is of John Schutt, the first librarian, who died in office after 54 years in the position.

Law Library of Victoria

210 William Street
Melbourne VIC 3000

About the Law Library of Victoria

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

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

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

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

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

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

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

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

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