



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
26 May 2017

Library News

Switch On... in the Law Library: Lawlex
Tuesday 20 June, 1:15pm-1:45pm

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.

Lawlex brings together legislation and parliamentary information in a single location. Linking through to authorised versions of legislation from all jurisdictions, Lawlex also provides links to explanatory material and Hansard. Come along and see how you can search the freely accessible parts of Lawlex.

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

SUBSCRIBE TO THE LIBRARY BULLETIN

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



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

has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone

03 9603 6282 for details.

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

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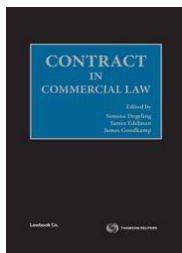
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New Books

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

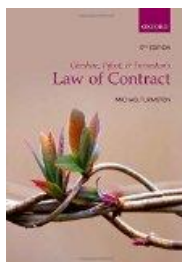
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



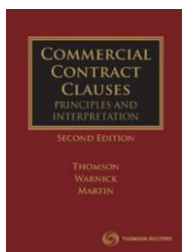
Degeling, Simone (editor), *Contract in commercial law*
Thomson Reuters, Pyrmont, N.S.W., 2016
Call Number: 346.03 CON (VCAT Library)

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



Furmston, Michael, *Cheshire, Fifoot and Furmston's law of contract*
17th ed, Oxford University Press, Oxford, U.K., 2017
Call Number 346.022 CHE.17 (Supreme Court Library)

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



Thomson, Joshua, *Commercial contract clauses: principles and interpretation*
2nd ed, Thomson Reuters, Pyrmont, N.S.W., 2016
Call Number 346.07 THO.2 (County Court Library)

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



Vout, Paul T. (editor), *Torts: the laws of Australia*
3rd ed, Thomson Reuters, Pyrmont, N.S.W., 2016
Call Number: 346.03 TOR.3 (VCAT Library)

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

Research guidance - Australian Authorised Reports

Authorised reports - a series of reports which has been given official approval by the Judiciary or the Council of Law Reporting for that jurisdiction. Each jurisdiction has one report series that is designated as authorised.

Unauthorised report series can be subject based or jurisdiction based.

Where possible, use the authorised version or citation.

(Refer to [Practice Note SC GEN 3](#) for further information)

If you have any questions about Australian Authorised Reports email llv@courts.vic.gov.au.

Court	Authorised Report Series	Abbreviation	Law Library of Victoria holdings
High Court	Commonwealth Law Reports 1903-	CLR	Hard copy / Westlaw AU
Federal Court	Federal Court Reports 1984-	FCR	Hard copy / Westlaw AU
Administrative Appeals Tribunal	Administrative Law Decisions 1976-	ALD	Hard copy
Supreme Court of Victoria	Victorian Reports 1957- Victorian Law Reports 1874-1956 Wyatt & Webb Reports 1861-1873	VR VLR VLR 1861-1873	Hard copy / Victorian Reports website Hard copy / AustLII** Hard copy / AustLII**
Supreme Court of New South Wales	New South Wales Law Reports 1971- State Reports NSW 1901-1970 New South Wales Law Reports 1856 - 1900	NSWLR SR NSW NSWLR	Hard copy / LexisNexis Hard copy / AustLII ** (1901-1950) Hard copy / AustLII **
Supreme Court of the Australian Capital Territory	Australian Capital Territory Law Reports 2007-	ACTLR	Hard copy / Westlaw AU
Supreme Court of Northern Territory	Northern Territory Law Reports 1991-	NTLR	Hard copy / Westlaw AU
Supreme Court of Queensland	Queensland Reports 1958- State Reports. Queensland 1902-1957	QdR St R Qd	Hard copy / LexisNexis (1974-) Hard copy
Supreme Court of South Australia	South Australian State Reports 1971- State Reports. South Australia 1920-1971 South Australian Law Reports 1863-1920	SASR SASR SALR	Hard copy / Westlaw AU Hard copy / AustLII** (1920-1950) Hard copy / AustLII **
Supreme Court of Tasmania	Tasmanian Reports 1979- State Reports Tasmania 1941-1978 Tasmanian Law Reports 1897-1940	Tas Tas TLR	R SR Hard copy / Westlaw AU (1991-) Hard Copy Hard Copy
Supreme Court of Western Australia	Western Australian Reports 1961- Western Australian Law Reports 1899-1959	WAR WALR	Hard copy / Westlaw AU (1963-) Hard copy

** AustLII provides scanned pdf versions of these authorised reports.



Legislation

Victorian Bills

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

- [Bail Amendment \(Stage One\) Bill 2017](#)
- [Children and Justice Legislation Amendment \(Youth Justice Reform\) Bill 2017](#)
- [Disability Amendment Bill 2017](#)
- [Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment \(Reform\) Bill 2017](#)
- [Justice Legislation Amendment \(Court Security, Juries and Other Matters\) Bill 2017](#)
- [Justice Legislation Amendment \(Protective Services Officers and Other Matters\) Bill 2017](#)
- [Sentencing Amendment \(Sentencing Standards\) Bill 2017](#)

Victorian Assents

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

- [Building Amendment \(Enforcement and Other Measures\) Act 2017 No. 21/2017](#)
- [Electricity Safety Amendment \(Bushfire Mitigation Civil Penalties Scheme\) Act 2017 No. 18/2017](#)
- [Family Violence Protection Amendment Act 2017 No. 19/2017](#)
- [Freedom of Information Amendment \(Office of the Victorian Information Commissioner\) Act 2017 No. 20/2017](#)

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.

High Court Cases

No High Court cases were delivered this fortnight.

Victorian Supreme Court Cases

Court of Appeal

CRIMINAL LAW - Appeal - Interlocutory appeal - Trial - Refusal of permanent stay - Indecent assault, rape sexual penetration of a child under 16 - Delay of 28-34 years since alleged offending - Complaint evidence - Death of complaint witnesses - Whether other potentially exculpatory evidence available - No enquiries made - Application for stay premature - Refusal of stay open - Application for leave to appeal refused.

Brewer, Jason (a Pseudonym) v The Queen

Maxwell P, Kyrou JA, and Croucher AJA

[\[2017\] VSCA 117](#)

24/05/2017

CRIMINAL LAW - Appeal - Refusal of application for permanent stay - Refusal to certify for interlocutory appeal - Application to review refusal to certify, whether risk of collusion by complainants, forced introduction of prejudicial material and delay created unacceptable unfairness in forthcoming trial - Premature application for stay - Evidence on collusion incomplete and conflicting - Ability to direct jury to reduce prejudicial effect of any evidence introduced - Limited disadvantage from death of witnesses resulting from delay - Application refused.

Jones, Milton (a Pseudonym) v The Queen

Whelan and Ferguson JJA, and Kidd AJA

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

16/05/2017

CRIMINAL LAW - Appeal - Sentence - Sexual penetration of child under 16 (6 charges), indecent act with child under 16 (6 charges) - Total effective sentence 7 years 7 months' imprisonment, non-parole period 5 years 3 months' imprisonment - Whether manifestly excessive - Persistent, exploitative offending - Plea of not guilty - Delay of six years - Considerations of fairness and rehabilitation - Whether reflected in sentence - No remorse or recognition of wrongfulness of offending - Current sentencing practices - Sentence moderate - Appeal dismissed.

Tones, David v The Queen

Maxwell ACJ, Redlich and Kyrou JJA

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

25/05/2017

CRIMINAL LAW - Evidence - Interlocutory appeals - Complainant unavailable to give evidence - Ruling that representations by unavailable witness were admissible pursuant to s65 the Evidence Act 2008 - Inability of accused to fully cross-examine witness - Whether danger that representations would be given undue weight - Complainant's representation supports evidence of principal witness for prosecution - Refusal to exclude evidence in the trial of Clarke and exclusion of the evidence as unduly prejudicial in the trial of Stanley and Wells - Representations having substantial probative value - s137 of the Evidence Act 2008 - Application for leave to appeal by Clarke refused - Applications for leave to appeal by the Director granted and the appeals allowed.

CRIMINAL LAW - Evidence - Reliability of representations of unavailable witness - s65(2)(c) of the Evidence Act 2008 - Reliability to be evaluated by reference to the circumstances in which each representation was made - Irrelevant that representations tend to support other evidence as to facts in issue - *Sio v The Queen* (2016) 90 ALJR 963; *Azizi v The Queen* 224 A Crim R 325.

Clarke, Archie (a Pseudonym) v The Queen; Director of Public Prosecutions [DPP] v Stanley, Stephen (a Pseudonym) and Wells, Nicholas (a Pseudonym)

Redlich JA and Beale AJA

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

18/05/2017

CRIMINAL LAW - Practice and procedure - Jury empanelment - Whether jury empanelment miscarried - Whether reasonable opportunity to view the faces of prospective jurors - *Theodoropoulos v The Queen* [2015] VSCA 354 distinguished - Whether procedure otherwise unacceptable - Leave granted - Appeal dismissed.

EVIDENCE - Admissibility - Evidence Act 2008 (Vic) s87 - Whether assertions admissible as having been made in furtherance of joint criminal enterprise - Whether probative value outweighed by prejudicial effect - Whether admissions resulted in an unfair trial - Leave granted - Appeal dismissed.

CRIMINAL LAW - Application for leave to appeal - Conviction - Directions to counsel by trial judge - Rule in *Shepherd v The Queen* (1999) 170 CLR 573 - Jury Directions Act 2015 (Vic) s61, s62 - No error by trial judge - Leave refused.

CRIMINAL LAW - Application for leave to appeal - Conviction - Refusal by trial judge to give further direction with respect to prosecutor's final address - No error by trial judge - Leave refused.

CRIMINAL LAW - Application for leave to appeal - Sentences - Attempt to possess a commercial quantity of an unlawfully imported border controlled drug - Relevance of role in joint criminal enterprise to sentencing - Whether sentences manifestly excessive - Leave refused.

Beqiri, Besim v The Queen; Hajko, Bruno v The Queen

Weinberg, Osborn, and Whelan JJA

[\[2017\] VSCA 112](#)

15/05/2017

INSURANCE - Appeal - Total and permanent disability policy - Construction of insurance policy - Businesslike interpretation - Whether construction posited by insurer so unjust as to suggest error - Liability to pay benefits not already accrued ceasing on termination of employment - Whether benefit had accrued at time of termination of employment - Time at which a benefit accrues - Benefit not already accrued when employment terminated - Appeal allowed.

MLC Nominees P/L and MLC Ltd v Daffy, Kevin Adrian

Beach and McLeish JJA, and Keogh AJA

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

15/05/2017

LAND ACQUISITION AND COMPENSATION - Leave to appeal - Appeal - Loss attributable to disturbance - Whether costs of purchasing replacement land were 'the natural, direct and reasonable consequence' of the compulsory acquisitions - Whether consequence direct a question of fact - Whether open to court to make finding which it did - Whether the expression 'other than the purpose for which it was used at the date of acquisition' in s41(2) of the Land Acquisition and Compensation Act 1986 (Vic) is a reference to the physical use of the land at the date of acquisition - Whether basis for assessment of market value included the potential of the land to be used for a purpose other than the purpose for which it was used at the date of acquisition - Whether costs claimed constituted a cost that would necessarily have been incurred in realising the potential of the acquired land - Leave to appeal granted in part - Appeal dismissed.

Secretary to the Department of Economic Development, Jobs, Transport & Resources v Manor Lakes (Werribee) P/L (ACN 096 230 714); Secretary to the Department of Economic Development, Jobs, Transport & Resources v Manor Commercial Company P/L (ACN 096 230 714)

Warren CJ, Osborn and Ferguson JJA

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

18/05/2017

LIMITATION OF ACTIONS - Appeal - Personal injury claim - Claim for damages for alleged sexual assaults - Events alleged to have occurred almost 50 years ago - No limitation period - Whether proceeding should be stayed as an abuse of process - Limitation of Actions Act 1958, s27R.

PRACTICE AND PROCEDURE - Permanent stay - Abuse of process - Categories of abuse of process not closed - Abuse of process not confined to cases where defendant would not receive a fair trial - Claim brought in respect of events alleged to have occurred between children almost 50 years ago - Whether it would be manifestly unfair to defendant or would otherwise bring administration of justice into disrepute if claim proceeded - Primary judge refused application for stay - Plainly unjust to let action proceed - Application for leave to appeal granted - Appeal allowed - Permanent stay ordered.

Connellan, John v Murphy, Marita

Priest, Beach, and Kaye JJA

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

22/05/2017

PRACTICE AND PROCEDURE - Application for leave to appeal - Procedural orders in group proceeding - Case management - List of issues determined by trial judge - Dispute about list of issues - Whether particular questions will be answered - Admissibility of evidence - Course of the trial - Whether need for sub-group members to be identified - Whether issues hypothetical - Interlocutory discretionary decision on practice and procedure - Appellate restraint - Civil Procedure Act 2010, s47 and s48 - Supreme Court Act 1986, Part 4A - Application for leave to appeal refused.

Commonwealth of Australia and Kamasae, Majid Karami; G4S Australia P/L; Broadpectrum (Australia) P/L (previously Transfield Services (Australia) P/L) and Wilson Protective Services (PNG) Ltd

Osborn and Beach JJA

[\[2017\] VSCA 121](#)

26/05/2017

PRACTICE AND PROCEDURE - Costs - Whether grounds for respondent to pay appellants' trial costs on an indemnity basis - Whether rejection of two Calderbank offers was unreasonable - Whether grounds for respondent to pay appellants' costs of appeal on an indemnity basis - Costs of trial and appeal to be paid on a standard basis - Question of increasing Counsel's fees in excess of scale referred to Costs Court - Supreme Court (General Civil Procedure) Rules 2015, r63.34(3), r63.34(4).

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, Ferguson, and Kaye JJA

[\[2017\] VSCA 113](#)

18/05/2017

TRUSTS AND TRUSTEES - Costs - Administration proceeding - Judge found litigation was 'adversarial' between two sides of family - Order that trustee pay costs personally - Whether trustee's legal costs properly incurred - Whether costs discretion miscarried - Supreme Court (General Civil Procedure) Rules 2015 O 54 - Re Beddoe [1893] 1 Ch 547; Nolan v Collie (2003) 7 VR 287, referred to - Appeal allowed in part.

COURTS AND JUDGES - Reasons - Email from associate conveying judge's reasons for decision - Whether form of reasons appropriate - Soulemezis v Dudley Holdings Pty Ltd (1987) 10 NSWLR 247; Esso Australia Pty Ltd v Robertson [2005] VSCA 138, referred to.

Di Benedetto, Salvatore (in his personal capacity and as executor and trustee of the will and estate of Luigi Di Benedetto) v Kilton Grange P/L and Kobor, Susi

Ferguson and McLeish JJA, and Cameron AJA

[\[2017\] VSCA 119](#)

25/05/2017

Commercial Court

CORPORATIONS - Company subject to Deed of Company Arrangement - Where company is bare trustee - Uncertainty as to administrators' powers to dispose of trust property - Appointment of administrators as receivers of trust property - Supreme Court Act 1986 (Vic) s37 - Supreme Court (General Civil Procedure) Rules 2015 Order 39.

Western Port Holdings P/L (trading as Makesafe Traffic Management) (subject to a deed of company arrangement) (ACN 085 780 150); Ross, David Anthony in his capacity as joint and several deed administrator of Western Port Holdings P/L (trading as Makesafe Traffic Management) (subject to a deed of company arrangement) (ACN 085 780 150); Albarran, Richard in his capacity as joint and several deed administrator of Western Port Holdings P/L (trading as Makesafe Traffic Management) (subject to a deed of company arrangement) (ACN 085 780 150)

Kennedy J

[\[2017\] VSC 280](#)

23/05/2017

CORPORATIONS - Corporations Act 2001 (Cth), s459G - application to set aside statutory demand by reason of alleged genuine dispute in respect of the debt - alleged dispute found to be spurious and implausible - application dismissed.

Medussa Enterprises P/L (ACN 611 831 219) v Nationwide Concrete Pumping P/L (ACN 154 123 430)

Gardiner AsJ

[\[2017\] VSC 275](#)

24/05/2017

FUNDS IN COURT - Surplus proceeds from sale of land by mortgagee paid into Court - Application for payment out of Court - Plaintiff equitable chargee under lease agreement and guarantee and indemnity - Application opposed - Fourth defendant claiming competing equitable charge over land arising under equipment rental agreement - Whether plaintiff's charge and debt established - Plaintiff causing false issues to be raised - Plaintiff ultimately relying on judgment debt in lieu of proving sums due under lease agreement - Whether fourth defendant's charge and debt established - Whether plaintiff's charge is the better equity - Plaintiff entitled to funds in Court to the extent of judgment, interest pursuant to statute and legal costs, subject to deduction for wasted costs - Fourth defendant entitled to balance of the funds in Court.

Morris Finance Ltd (ACN 083 630 139) v Commonwealth Bank OF Australia (ACN 123 123 124); Uyanik, Erhan; Official trustee in bankruptcy as trustee of the bankrupt estate of Alameddine, Susan and Gogetta Equipment Funding P/L (ACN 124 102 647)

Derham AsJ

[\[2017\] VSC 260](#)

18/05/2017

PRACTICE AND PROCEDURE - Application for further discovery - Relevant communications between parties and advisers - Objections on grounds of oppression, overlap with existing orders - Relevant monthly financial statements - Whether expert evidence necessary - Further targeted categories of discovery justified - Application granted.

Slea P/L (ABN 16 081 276 811) v Connective Services P/L (ACN 107 366 496) , Connective Osn P/L (ACN 106 761 326), Millsave Holdings P/L (ACN 115 160 097), Connective Group P/L (ACN 162 397 060), Connective Broker Services P/L (ACN 161 731 111), Connective Lender Services P/L (ACN 161 731 460), Connective Funder Services P/L (ACN 161 732 645), Connective Group IP Holdings (No 1) P/L (ACN 165 282 084), Connective Group IP Holdings (No 2) P/L (ACN 165 281 925) and Haron, Mark Seamus

Almond J

[\[2017\] VSC 278](#)

24/05/2017

PRACTICE AND PROCEDURE - Application to stay a proceeding for an abuse of process - Who is the moving party - Can the litigation funder be the moving party - Improper purpose - Ulterior purpose for a purpose other than the vindication of rights - Permanently stayed.

PRACTICE AND PROCEDURE - Application to disallow this proceeding to continue as a group proceeding - Supreme Court Act 1986, s33N.

PRACTICE AND PROCEDURE - Application to re-open the abuse application and the s33N application - Plaintiff entered into a new funding agreement - Whether Plaintiff can rely on the new funding agreement - Interests of justice - Application refused.

EVIDENCE - Objection to evidence - Relevance - Opinion - Evidence Act 2008, s55, s56, s76 and s77 referred to.

Walsh, Joanne v WorleyParsons Ltd (ACN 096 090 158) (No 4)

Cameron J

[\[2017\] VSC 292](#)

26/05/2017

PRACTICE AND PROCEDURE - Client legal privilege - Privilege claim upheld after evidence filed - Subsequent withdrawal of claim of privilege due to earlier disclosure of document - Question of privilege re-opened - Disclosure waiver - Issue waiver - Derivative waiver - Certain documents held not to be privileged or to be produced by virtue of waiver - Evidence Act 2008 (Vic) s118, s119, s122 and s126.

Lamers, Andrew John v Lamers, Johannes Antonius and Orana Park P/L (ACN 087 109 895) (both in its own capacity and as trustee of the John Lamers Family Trust)

Lansdowne AsJ

[\[2017\] VSC 165](#)

03/04/2017

PRACTICE AND PROCEDURE - Setting aside of judgment - Declaration by Court that plaintiff equitable mortgagee of land of deregistered company - Plaintiff obtaining judgment that the mortgage secures debt and for possession - Company subsequently reregistered - Company applies to apply to set aside judgment - Principal issue whether company has a real prospect of establishing that it is not indebted to the Bank - Commercial Bills of exchange discounted by Bank - Whether Bills discounted by Bank and where the proceeds paid - Discrepancies raised by customer - Investigations and reconciliations of accounts by the Bank answer all the alleged discrepancies - Application refused - *Ying v Perpetual Trustees Victoria Ltd & Ors* [2012] VSCA 316; *Kaur v Kooner* [2013] VCC 1788.

Australia and New Zealand Banking Group Ltd (ABN 11 005 357 522) v Australian Securities and Investments Commission; Registrar of Titles and PBS Developments (Vic) P/L (ACN 133 252 883)

Derham AsJ

[\[2017\] VSC 288](#)

26/05/2017

PRACTICE AND PROCEDURE - VCAT - Application for summary dismissal - Application for costs on an indemnity basis - Scale of costs - Witness statements in lieu of pleadings - Powers of an acting judicial member - Reasons in preliminary form; VCAT Act 1998, ss 29, 75, 78 and 109 - *Martin v Fasham Johnson* [2007] VSC 54; *Sharp v the Canonical Administrators of St Monica's College Ltd* [2003] VCAT 42.

Pizza Fellas Pty Ltd (ACN 116 619 713) v Eat Now P/L (ACN 138 659 588) and Menulog P/L (ACN 120 943 615)

CROFT J

[\[2017\] VSC 226](#); [\[2017\] VCAT 589](#)

05/05/2017

Common Law Division

ADMINISTRATIVE LAW - Application for leave to appeal on question of law - Draft notice of appeal failed to state any question of law despite Applicant having been ordered to do so - No grounds of appeal with sufficient prospects of success to warrant the granting of leave to appeal - s148 Victorian Civil and Administrative Tribunal Act 1998 - s32, s42 Architects Act 1991 - regs r6, r14, r16 Architects Regulations 2004 - r4.11(1)(b) Supreme Court (Miscellaneous Civil Proceedings) Rules 2008.

McSteen, Christopher v Architects Registration Board of Victoria

McDonald J

[\[2017\] VSC 276](#)

25/05/2017

ADMINISTRATIVE LAW - Victorian Civil and Administrative Tribunal ('VCAT') - Leave to appeal - Order dismissing application for breach of s8 of the Racial and Religious Tolerance Act 2001 - *Catch the Fire Ministries v Islamic Council* (2006) 15 VR 207 - Where article published in newspaper reporting comments as to links between Islamic teaching and terrorism - Whether the VCAT failed to consider content of the article as evidence of breach - Victorian Civil and Administrative Tribunal Act 1998 s148(1) - *Myers v Medical Practitioners Board of Victoria* (2007) 18 VR 48 - Application dismissed.

Sisalem, Aladdin v The Herald & Weekly Times P/L

Keogh J

[\[2017\] VSC 254](#)

18/05/2017

CONTEMPT - Breach of order restraining a former solicitor from engaging in legal practice - Plea of guilty - Prior conviction for the same conduct - Specific and general deterrence - Whether imprisonment warranted - Personal circumstances of defendant - Defendant sentenced to nine months' imprisonment with eight months suspended for two years.

Victorian Legal Services Board v Telfer, Cameron

J Forrest J

[\[2017\] VSC 248](#)

19/05/2017

COSTS - Third party notice purporting to join Republic of Nauru set aside - Whether Republic of Nauru a party to proceeding prior to order setting aside third party notice - Whether Court has power to order costs - Foreign States Immunities Act 1985 (Cth) s9; Supreme Court Act 1986 s3, s24; Fair Work Act 2009 (Cth) s570; Supreme Court (General Civil Procedure) Rules 2015 r11.04(1).

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

McDonald J

[\[2017\] VSC 284](#)

26/05/2017

CRIMES MENTAL IMPAIRMENT - Application for extended leave - Whether the safety of the applicant or members of the public will be seriously endangered as a result of the applicant being allowed extended leave - Whether granting application would be consistent with principle that applicant's freedom and personal autonomy should be kept to minimum consistent with safety of community - Whether applicant would be likely to endanger himself or any other person or people generally - Crimes (Mental Impairment and Unfitness to be Tried) Act 1977 (Vic) s57, s39 and s40.

In the matter of an application for extended leave pursuant to section 57 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) and In the matter of an application by L T B

Bell J

[\[2017\] VSC 282](#)

26/05/2017

CRIMINAL LAW - Mutual assistance in criminal matters on behalf of defendants - Federal terrorism-related offences - Committal proceeding - Prosecution prepared with assistance of foreign agency providing mutual assistance - Documents apparently going to credibility and reliability of main prosecution witness whose evidence was prepared in foreign country - Whether Attorney-General should make request for mutual assistance on behalf of defendant - Whether in interests of justice - Whether foreign county likely to refuse request - Whether documents otherwise available - Whether documents likely to be admissible evidence - Whether documents probative of likely issues - Whether accused would be unfairly prejudiced were document not available to court - Whether other considerations supported making of request - Human rights - Fair trial - Prosecutorial disclosure - 'equality of arms' - Mutual Assistance in Criminal Matters Act 1987 (Cth) s39A, Criminal Code 1995 (Cth) s102.7, Crimes (Foreign Incursions & Recruitment) Act 1978 (Cth) s7(1)(e), Criminal Procedure Act 2009 (Vic) ch 4, Charter of Human Rights and Responsibilities Act 2006 (Vic) s24 and s24, International Covenant on Civil and Political Rights art 14.

B A v Attorney-General of the Commonwealth and O'Neale, William

Bell J

[\[2017\] VSC 259](#)

23/05/2017

LANDLORD AND TENANT - Retail leases - Damaged premises - Burden of proof with respect to available statutory remedies - Currie v Dempsey [1967] 2 NSW 532; 86 WN (Pt 2) (NSW) 460 (FC) - Abrath v North Eastern Railway Co (1883) 11 QBD 440 - Charcoal Chicken & Souvlaki Xpress Pty Ltd v Stamatakos [2015] VCAT 1017 - Retail Leases Act 2003, s57.

Casa Di Iorio Investments P/L (ACN 153 217 933) v Guirguis, Mina

Croft J

[\[2017\] VSC 266](#)

19/05/2017

PRACTICE AND PROCEDURE - List of issues for determination at trial - Whether the Court has power to hear evidence and make findings other than in respect of the plaintiff's personal claims for damages for negligence and false imprisonment where no sub-group representative has been appointed under s33Q of Supreme Court Act 1986 - Consistent with scheme of pt 4A of Supreme Court Act 1986 and overarching purpose of Civil Procedure Act 2010 for Court not to be confined to hearing evidence and making findings in respect of plaintiff's personal claims in negligence and false imprisonment - Supreme Court Act 1986 s33C, s33H, s33N, s33R, s33ZB, s33ZF - Civil Procedure Act 2010 s7, s9.

Kamasae, Majid Karami v Commonwealth of Australia; G4S Australia P/L ; Broadspectrum (Australia) P/L; International Health and Medical Services P/L and Wilson Protective Services PNG Ltd

McDonald J

[\[2017\] VSC 272](#)

19/05/2017

PRACTICE AND PROCEDURE - Application by second defendant to join a third party out of time - medical negligence - Order 11 Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Civil Procedure Act 2010 (Vic) - Whether there is irreparable element of unfair prejudice caused by joinder of third party - Delay - Balance of relevant considerations - Application refused.

Ramadge, Stephen v Northern Health & Ors

Clayton JR

[\[2017\] VSC 281](#)

24/05/2017

PRACTICE AND PROCEDURE - Subpoena to produce client's documents served on a solicitor - Reasonable loss or expense incurred in complying with the subpoena under Supreme Court (General Civil Procedure) Rules 2015 r42.11 - What costs may be recovered as compliance costs - Onus of proof - Whether solicitor entitled to indemnity costs.

CONFIDENTIALITY - Effect of solicitor's duty of confidentiality to the client on subpoena obligations - Proper procedure to be adopted with respect to claim for confidentiality - Whether there is a right, without leave, to redact a subpoenaed document on the ground of confidentiality.

SUBPOENA TO PRODUCE DOCUMENTS - Principles relating to the scope of a subpoena - Right of issuing party to limit scope the subpoena - Importance of communications between the issuing party and the addressee to the subpoena - Proper procedure to be adopted to reduce compliance costs - Civil Procedure Act 2010 s9(g) - Law Institute of Victoria, Subpoenaed Documents Guidelines considered.

Hera Project P/L (ACN 163 685 041) v Bisognin, Gino Andrew and Bisognin, Leah Joan (No 4)

Riordan J

[\[2017\] VSC 270](#)

22/05/2017

PROPERTY - Application to declare rescission notice void - Purchaser's rescission notice - Satisfaction - Sale of Land Act 1962, s32(1), s32(2), s32D, s32H, s32K, s32K(4)(1) and (2).

McHutchison, Paula v Asli, Majid; Moneywest P/L (ACN 169 010 977)

Digby J

[\[2017\] VSC 258](#)

15/05/2017

PROPERTY - Contract for sale of land - Condition subsequent for registration of plan of subdivision to be achieved by specified date - Loss of right to terminate - Transformation of condition subsequent from one requiring performance by a specified time to one requiring performance within a reasonable time.

CONTRACT - Specific performance - Breach - Contract for the sale of land subject to registration of plan of subdivision - Obligation to use best endeavours to secure registration of plan of subdivision - Content of obligation to use best endeavours - Prevention principle discussed - Whether principle extends to acts that do not constitute contractual breaches - Whether acts of prevention by vendors - Whether purchasers entitled to specific performance - Whether relief should be conditional.

TRADE AND COMMERCE - Australian Consumer Law - Conduct 'in trade or commerce' - Whether representations concerning a subdivision of a residential property 'in trade or commerce' - Concrete Constructions (NSW) Pty Ltd v Nelson (1990) 169 CLR 594 applied - O'Brien v Smolonogov (1983) 53 ALR 107 discussed - Application of the re-enactment presumption.

Hera Project P/L (ACN 163 685 041) v Bisognin, Gino Andrew and Bisognin, Leah Joan (No 3)

Riordan J

[\[2017\] VSC 268](#)

22/05/2017

PROPERTY - Principles of construction - Did the contract for the sale of land expressly or impliedly entitle the purchaser to access to the property to undertake investigations of contamination for valuation purposes?

CONTRACT - Principles of the duty to co-operate - Did the duty to co-operate require the vendor to permit the purchaser to make investigations?

CONTRACT - Prevention principle - Did the vendor's refusal to permit investigations disentitle the vendor from exercising a right to rescind?

Simcevski, Kire v Dixon, Alan Robert and Registrar of Titles

Riordan J

[\[2017\] VSC 197](#)

19/04/2017

TRUSTS – Appointment of new trustee – Where trustee company deregistered and appointor bankrupt – Application by appointor’s trustee in bankruptcy for appointment of new trustee by the Court – Where no statutory standing – Inherent jurisdiction to appoint new trustee – Welfare of the beneficiaries – Where no evidence from beneficiaries – Where no new trustee appointed – Trustee Act 1958, s48 and s64.

In the matter of the Cooper Street Property Trust and In the matter of an application pursuant to s48 and s51 of the Trustee Act 1958. Woods, Robert Scott (as trustee of the bankrupt estate of Ergun Omer) (No 2)

McMillan J

[\[2017\] VSC 291](#)

26/05/2017

Criminal Division

CRIMINAL LAW - Application for bail - Refusal to accompany police to station for breath test - Unlicensed driving - Prima facie right to bail - Whether unacceptable risk - Extended criminal history - Serious health conditions - Bail granted.

In the matter of the Bail Act 1977 and In the matter of an application for bail by Blencowe, Stanley

T Forrest J

[\[2017\] VSC 273](#)

18/05/2017

CRIMINAL LAW - Sentence - Attempted murder - Victim sustained multiple stab wounds to upper chest and left hand - Offending occurred in context of relationship breakdown - Guilty plea entered at first reasonable opportunity - Mid-range example of offence of attempted murder - Limited degree of premeditation - No prior or subsequent convictions - Good prospects of rehabilitation - 9 years' imprisonment with non-parole period of 6 years.

The Queen v Hannarong, Charan

Beale J

[\[2017\] VSC 264](#)

18/05/2017

CRIMINAL LAW - Sentence - Manslaughter - Plea of guilty - Fight over drug debt - Sustained and brutal assault on deceased - Offending aggravated by post-offence conduct - Youthful offender - Traumatic and tragic childhood of offender - Relevance of offender’s deprived background - Bugmy v The Queen (2013) CLR 571 cited - Genuine remorse - Positive steps toward rehabilitation.

Director of Public Prosecutions [DPP] v Bogart-Mott, Elvis Oscar

Kaye JA

[\[2017\] VSC 262](#)

19/05/2017

CRIMINAL LAW - Sentence - Murder - Jury verdict - Shooting in public street - Offender mistakenly believed that victim had just stabbed offender's friend - Little premeditation - Mid-range example of the offence of murder - Deprived and abusive upbringing - Criminal antecedents - Some prospects of rehabilitation, given relative youth - Importance of just punishment, denunciation and deterrence (general and specific) - 21 years' imprisonment with non-parole period of 17 years.

The Queen v Barker, Dylan

Beale J

[\[2017\] VSC 271](#)

19/05/2017

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.

EXPERT EVIDENCE - Allegation of bias - Summary judgment application - Expert valuation of livestock - Whether actual or apprehended bias on part of expert - Whether no real prospect of success.

The Gull Lexington Group v Laguna Bay (Banongill) Agricultural

[\[2017\] VCC 525](#)

Judge Marks

09/05/2017

PRACTICE AND PROCEDURE - Costs - Calderbank offers - Offers made shortly prior to and during the trial - Offers open for acceptance for limited time - Offeree a self-represented litigant in poor health with many demands upon her by reason of the trial process - Offeree's failure to accept the offers not "unreasonable" - Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No. 2) [2005] VSCA 298 applied.

ACN 131 110 220 Pty Ltd v Lakic & Anor (No 4)

[\[2017\] VCC 464](#)

Judge Anderson

28/04/2017

PRACTICE AND PROCEDURE - Costs - Where leave granted to join party and amend statement of claim accordingly - Where applicant fails to amend within time limit - Whether further leave should be granted to join party.

COSTS - Apportionment of costs - Whether successful party's costs should be reduced on issues it failed on - Whether pre-judgment interest should be awarded.

Davey Nominees Pty Ltd & Anor v Miot & Ors

[\[2017\] VCC 562](#)

Judge Cosgrave

12/05/2017

PRACTICE AND PROCEDURE - Interlocutory injunction - Plaintiffs' website "taken over" by disgruntled creditors - Statements published on website alleging criminal behaviour and serious misconduct by the plaintiffs, its director and others associated with them - Tort of injurious falsehood alleged - Whether sufficient evidence to establish a serious question to be tried as to the falsity of the statements on the website.

ImageBuild Group Pty Ltd & Anor v Cidec Pty Ltd & Ors

[\[2017\] VCC 615](#)

Judge Anderson

23/05/2017

PRACTICE AND PROCEDURE - Stay of judgment where appeal foreshadowed - Whether threshold for allowing stay under County Court Civil Procedure Rules (2008) r66.16 is satisfied - Presumption that Judgment Creditor be entitled to judgment - Court not satisfied on submissions that a stay be given.

Classic Finance Pty Ltd v Cielo Publishing & Ors

[\[2017\] VCC 636](#)

Judge Woodward

24/05/2017

Articles

Listed below are articles indexed by the Library from journals added to our collection over the last two weeks.

Members of the Judiciary and Court staff please contact your Court Librarian if you require copies. Members of the Legal Profession and the public can view the journals in the Supreme Court Library.

Administrative Law

Migration - Cancellation - Refusal - Visa applications - Minister - Discretion - Character test - Risk of harm - Migration Act 1958 (Cth), s501 - Australia
Justice Perry. "Risk of harm", relevant considerations and s 501: wrangling the Minister's discretion." (2017) 91(4) ALJ 268-275.

Admiralty Law

Rescue vessel - Moral duty - Save human life at sea - Deviation - Charter terms - Navigation Act 2012 (Cth), s181(1) - Merchant Shipping Act 1894 (UK), s422 - Carriage of Goods by Sea Act (Cth), s7(1) - Australia
Cremean, D. "Deviation to save life at sea." (2017) 91(4) ALJ 280-283

Banking Law

Money - Medium of exchange - Store of value - Unit of account - Virtual currencies - Bitcoin - Crypto currencies - Private law - UK
Green, S. "The meaning of money." (2017) 44(4) Brief 12-18.

Courts

Technology - E-judiciary - Touchscreen laptops - Case management system - Cloud platform - Pilot programme - Criminal courts - Digital case system - iPads - Virtual hearings - UK
Pender, N. "21st century justice: the UK herculean efforts to modernise its court system." (2017) 44(4) Brief 23

Criminal Law & Procedure

Change in law - Application - Extension of time - Appeal against conviction - Substantial injustice - Possession - False identity documents - Refugees - UK
Hungerford-Welch, P. "Appeal against conviction R v Ordu (Mehmet)." (2017) (5) Crim L R 396-399.

Possession - Offensive weapon - Bladed article - Has with him - Proximity - R v Henderson - Criminal Justice Act 1988 (UK), s139 - UK
"Possession is only ninth tenths of the law. What constitutes the final ingredient to 'have' a blade 'with him' in a public place?" (2017) 81(2) J Crim L 88-91.

Court rules - Criminal procedure - Internet - Parole - Summary convictions - Virtual courts - UK
Padfield, N. "The Prisons and Courts Bill." (2017) (5) Crim L R 343-344.

Criminal evidence - Forensic evidence - Reliability - Validity - USA
Ward, T. et al. "Forensic science, scientific validity and reliability : advice from America." (2017) (5) Crim L R 357-378.

Draft criminal code - Law making - Judiciary - Law reform - Response - Court decisions - Public controversy - Scotland
Chalmers, J. "Developing Scots criminal law." [2017] (1) Juridical Review 33-37.

Homicide - Manslaughter - Unlawful act - Dangerousness - Foreseeable risk of some harm - Church test - Wilson test - Comparative analysis - Australia - Canada - UK

Storey, T. "Unlawful and dangerous: a comparative analysis of unlawful act manslaughter in English, Australian and Canadian law." (2017) 81(2) J Crim L 143-160.

Manslaughter - Gross negligence - Culpability - UK

Lodge, A. "Gross negligence manslaughter on the cusp: the unprincipled privileging of harm over culpability." (2017) 81(2) J Crim L 125-142.

Motor vehicles - Driverless cars - Automated vehicles - Insurance - Design - Legislation changes - Law reform - Australia

Cullen, D. "The legal impact of driverless vehicles." (2017) 31 LSJ 28-29.

Unlawful act - Manslaughter - Moral luck - Intention - Negligence - Heedlessness - UK
Leigh, G. "Deconstructing unlawful act manslaughter." (2017) 81(2) J Crim L 112-124.

Employment Law

Employment - Tribunal - Decisions - Searchable database - Confidentiality clauses - Employees concerns - Litigants in person - Free legal resource - Precedential consistency - UK

Bryden, C. and M. Salter. "Decision time." [2017] 167(7744) NLJ 9-10.

Vicarious liability - Rules - Salmond test - Widen recovery - Intentional torts - Employees - Child abuse - Lister v Heselley Hall - Matis v Pollock - Mohamud v WM Morrison Supermarkets - UK

Pawlowska, C. "Goodbye to vicarious liability's close connection test." (2017) 161(17) Sol J 20-23.

Human Rights

Disability discrimination - Hearing impaired - Jury duty - Convention on the Right of Persons with Disabilities - Practitioner guidelines - Lyons v Queensland - NSW
Spencer, D.e.al. (2017) 31 LSJ 28-29.

Human trafficking - United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children - ASEAN - Convention against trafficking in Person especially women and children - Exploitation - Effective punishment of traffickers - Assist victims - Promote co-operation - South-East Asia
Piotrowicz, R. "ASEAN takes on trafficking in human beings." (2017) 91(4) ALJ 284-295.

Insurance Law

Insurance policy - Interpretation - Faulty workmanship exclusions - Loss arising - Scratching glazed surfaces - Australia
Mead, P. "Contract works insurance : faulty workmanship exclusions and scratched glass claims." (2017) 28(2) Insurance L J 120-132.

Total permanent disability - Common form - Meaning of unlikely ever - Percentage formula test - Highly likely - Unable ever - Australia
Enright, W. "TPD - Degree of certainty - Unlikely ever - never say never." (2017) 28(2) Insurance L J 109-119.

Legal Profession

Artificial intelligence - Disruptive technologies - Blockchain technology - Cognitive computing - Collaboration - UK
Marston, C. "The rise of robo lawyer." (2017) 161(16) Sol J 20-23.

Judiciary - History - Personalia - Chief Justice David Malcolm - Supreme Court of Western Australia - WA
French, R. "The changing face of Judicial leadership: a Western Australia perspective." (2017) 91(4) ALJ 322-331.

Media Law

Freedom of speech - Communication - Social media - Sentencing - Complexity of cases - Misuse of media - Tasmania
Estcourt, S. "Social media and sentencing." (2017) 91(4) ALJ 266-267.

Medical Law

Voluntary euthanasia - Physician assisted suicide - Assisted suicide - Assisted dying - Informed consent - Free choice - Law reform - NSW
Cowdery, N. "A dignified ending." (2017) 31 LSJ 28-29.

Practice & Procedure

Access to justice - Court processes - Judicial function - Litigation - Legal profession - SA
Justice Hinton. "Access to justice through the courts." (2017) 39(4) LSB 18-19.

Costs - Statutory prescribed costs - Disclosure obligations - Failure to comply - Impediment to cost recovery - Disciplinary sanction - Breach of contract - Breach of fiduciary duty - Australia.
Dal Pont, G.P., P. and J. Clough. "Non-disclosure at one's peril." (2017) 44(4) Brief 6.

Property Law

Adverse possession - Applications - Proprietorship register - Registered land - Title to land - Transfer of title - Variation - UK
Pawlowski, M. and J. Brown. "Adverse possession and the transmissibility of possessory rights : the dark side of land registration." [2017] (2) Conv 116-131.

Enforcement - Enfranchisement - Fee simple - Freeholds - Long leases - Positive covenants - UK
Jessel, C. "Leasehold enlargement and positive covenants." [2017] (2) Conv 132-157.

Torts

Defamation - Defence - Triviality - Meaning of harm - Post publication conduct - Law reform - Smith v Lucht - Dennis Denuto - Defamation Act 2005 (Qld), s33 - QLD - Australia
Fox, D. "The gist of the triviality defence." (2017) 37(5) Proctor 12-15.

Trusts

Charities - Not-for-profit - Charitable purposes test - Definition of charity - Public benefits - Indirect - Regulation - Charities Act 2005 (NZ) - New Zealand - Australia
Barker, S. and R. Ng. "Indirect public benefit." [2017] (April) NZLJ 97-104.

Charities - Trustees - Obligation - Not to profit - Trust position - Good governance - Prasad v Parai - Adlam v Savage - NZ
von Dadelszen, M. et al. "Charitable trustees profiting at the expense of charities." [2017] (April) NZLJ 105-106,114.

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

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Law Library of Victoria

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