



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
9 June 2017

Library News

General tour of the Supreme Court Library
Tuesday 13 June, 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.

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 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

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).

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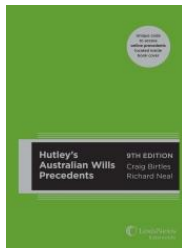
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New Books

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/.

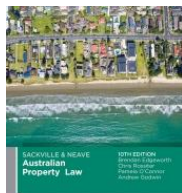
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



Birtles, Craig and Neale, Richard, *Hutley's Australian Wills Precedents* 9th ed., LexisNexis Butterworths, Chatswood, N.S.W., 2016
Call Number: 346.954 HUT.9 (Supreme Court Library)

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



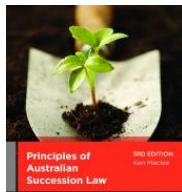
Edgeworth, Brendan, *Sackville & Neave Australian Property Law* 10th ed., LexisNexis Butterworths, Chatswood, N.S.W., 2016
Call Number: 346.04 SAC.10 (VCAT Library)

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



Gibson, Raymond, *Prosecuting*
Thomson Reuters, Pyrmont, N.S.W., 2017
Call Number 345.05042 GIB (Supreme Court Library)

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



Mackie, Ken, *Principles of Australian Succession Law* 3rd ed., LexisNexis Butterworths, Chatswood, N.S.W., 2017
Call Number 346.054 MAC.3 (Supreme Court Library)

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



Legislation

Victorian Bills

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

- [Environment Protection Bill 2017](#)
- [Oaths and Affirmations Bill 2017](#)
- [Parks and Crown Land Legislation Amendment Bill 2017](#)
- [Racing Amendment \(Modernisation\) Bill 2017](#)

Victorian Assents

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

- [Mineral Resources \(Sustainable Development\) Amendment \(Latrobe Valley Mine Rehabilitation Commissioner\) Act 2017, No. 22/2017](#)

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

CORPORATIONS LAW - Application for leave to appeal from Associate Judge - Application to set aside statutory demand dismissed by Associate Judge - Whether there was a 'supporting affidavit' filed and served within time - Leave refused.

Imagebuild Group P/L (ACN 142 525 924) v Fokust P/L (ACN 094 218 961)

Whelan JA and Almond AJA

[\[2017\] VSCA 131](#)

31/05/2017

COURTS AND JUDGES - Recusal application claiming apprehended bias - Judge refused to recuse himself - Whether judge correctly applied test in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 - Whether Judge made unsound findings of fact - *Robinson Helicopter Company Inc v McDermott* (2016) 331 ALR 550.

COURTS AND JUDGES - Statement of reasons for decision - Adequacy of reasons.

Melbourne City Investments P/L (ACN 161 046 304) v UGL Ltd (ACN 009 180 287)

Warren CJ, Tate and Whelan JJA

[\[2017\] VSCA 128](#)

02/06/2017

CRIMINAL LAW - Appeal - Conviction - Rape - Unreliable evidence - Evidence the reliability of which may be affected by ill-health or drug issues - Whether evidence of complainant was evidence of a kind that may be unreliable - Whether judge should have given direction that complainant's evidence was evidence of a kind that may be unreliable - Jury Directions Act 2015, s12, s14, s31 and s32 - Appeal against conviction of rape allowed.

CRIMINAL LAW - Appeal - Conviction - Rape - Whether guilty verdict was unreasonable or could not be supported by the evidence - Verdict not unreasonable or unsupportable by the evidence.

CRIMINAL LAW - Appeal - Sentence - Indecent assault (3 charges) - Total effective sentence of 3 years and 6 months - Earlier sentence of 24 months' imprisonment with 15 months wholly suspended for 3 other offences of indecent assault - Plea of guilty - Good prospects of rehabilitation - Delay - Totality - Whether sentence infringed totality principle in light of earlier sentence - Not reasonably arguable that totality principle infringed - Whether sentence manifestly excessive - Not reasonably arguable that sentence manifestly excessive - Application for leave to appeal against sentence refused.

Hudson, Arthur (a Pseudonym) v The Queen

Ashley, Beach, and Kaye JJA

[\[2017\] VSCA 122](#)

29/05/2017

CRIMINAL LAW - Appeal - Interlocutory appeal - Permanent stay - Compulsory examination of respondents before charge - Examination transcripts provided to investigators and prosecutors - Examinations unlawful - Dissemination of transcripts unlawful - Respondents subsequently charged - Derivative use of examination material - Whether fair trial possible - Whether reckless unlawfulness - Whether respondents suffered incurable forensic disadvantage - No prejudicial derivative use identified - No incurable unfairness - Appeal allowed - Stay order set aside.

ADMINISTRATIVE LAW - Statutory authority - Investigation of organised crime - Whether investigation validly authorised - Power of compulsory examination - Respondents compulsorily examined - Whether examinations authorised by statute - Whether power exercised for improper purpose - Australian Crime Commission Act 2002 s7A, s7C, s12, s17, s24A, s25A, s30.

Director of Public Prosecutions (Cth) v Galloway, Donald (a Pseudonym) & Ors (according to the Schedule attached) and Australian Criminal Intelligence Commission
Maxwell P, Redlich and Beach JJA

[\[2017\] VSCA 120](#)

25/05/2017

CRIMINAL LAW - Appeal - Sentence - Cultivation of a commercial quantity of cannabis - Applicant's role in offending - Characterisation of 'principal' offenders and 'ancillary' offenders - Characterisation of 'mid-range' offending - Not open to find applicant was 'principal' offender - Offending not 'mid-range' offending - Nguyen v The Queen (2016) 311 FLR 289 - Leave granted - Appeal allowed.

McClelland, Troy v The Queen

Ashley and Kaye JJA

[\[2017\] VSCA 124](#)

30/05/2017

CRIMINAL LAW - Appeal - Sentence - Drug offences - Cultivating a commercial quantity of a narcotic plant (cannabis L) - Theft - Sentenced to 3 years and 3 months' imprisonment with a non-parole period of 2 years - Whether manifestly excessive - Objective seriousness of offending in circumstances where appellant was crop sitter - Relevance of offender's role - No error - Appeal dismissed - R v Wong (2001) 207 CLR 584 - Nam Son Nguyen v The Queen (2016) 311 FLR 289 - R v Olbrich (1999) 199 CLR 270.

Nguyen, Quy v The Queen

Osborn and Santamaria JJA, and Croucher AJA

[\[2017\] VSCA 127](#)

02/06/2017

CRIMINAL LAW - Appeal - Sentence - Guilty plea - Seven offences committed in two incidents - Overall total effective sentence of 6 years' imprisonment, 4 years non-parole period - Whether judge erred in failing to apply Verdins principles 1, 3, 4 and 5 - Appellant suffered chronic paranoid schizophrenia - Appellant under influence of methamphetamine at time of second offending - Whether sufficient evidence that paranoid schizophrenia contributed to second offending - Appeal allowed - Re-sentenced to overall total effective sentence of 5 years' imprisonment, 3 years 4 months non-parole period - R v Verdins (2007) 16 VR 269; DPP v O'Neill (2015) 47 VR 395, applied.

Williams, Dwayne v The Queen

Redlich and McLeish JJA, and Croucher AJA

[\[2017\] VSCA 130](#)

05/06/2017

CRIMINAL LAW - Application for leave to appeal - Conviction - Murder - Joint criminal enterprise - Deceased attacked for coming to aid of another - Start of prosecutor's opening address focused on deceased's actions as 'Good Samaritan' and co-accused's guilty plea - Refusal by trial judge to discharge jury following prosecutor's opening address - High degree of necessity test - Whether substantial miscarriage of justice - No miscarriage - Leave refused.

CRIMINAL LAW - Application for leave to appeal - Sentence - Murder - Joint criminal enterprise - Sentence 24y - Non-parole period 18y - Parity - Same sentence imposed on co-offender - Whether sentencing judge properly distinguished personal circumstances of applicant and co-offender - No error by sentencing judge - Leave refused.

Terdputham, Thatiya v The Queen

Ashley, Ferguson, and Kaye JJA

[\[2017\] VSCA 123](#)

29/05/2017

CRIMINAL LAW - Sentence - Application for leave to appeal - Charges of manslaughter, theft and arson - 9 years' imprisonment on principal offence - Total effective sentence of 10 years' imprisonment with non-parole period of 8 years - Whether plea of guilty to manslaughter was a 'late plea' - Whether plea was entered at 'first reasonable opportunity' - Plea of guilty received mid-trial following significant damage to credit of key Crown witness - Cameron v The Queen (2002) 209 CLR 339 applied - s5(2)(e), s6AAA Sentencing Act 1991 - Application for leave to appeal refused.

Maybus, Luke Paul v The Queen

Osborn and Kaye JJA, and Croucher AJA

[\[2017\] VSCA 125](#)

30/05/2017

DEFAMATION - Internet page - Whether sufficient evidence for inference of publication to unknown individuals - Whether damages excessive given scope of publication - Leave to appeal refused.

McDonald, Michael v Dods, Colin

Warren CJ, Whelan JA, and Cameron AJA

[\[2017\] VSCA 129](#)

02/06/2017

JUDICIAL REVIEW - Application for leave to appeal from decision of Trial Division judge on judicial review of County Court decision dismissing appeal from Magistrates' Court - Traffic offences - Self-represented litigant not permitted to use the Bar table - Procedural fairness - Whether judge not permitting self-represented litigant to use the Bar table amounted to denial of applicant's right or a denial of procedural fairness or gave rise to an apprehension of bias - Inherent right of a judge to regulate the proceedings of his or her court - Application for leave to appeal refused.

PRACTICE AND PROCEDURE - Application for recusal - Basis unclear - Actual or apprehended bias - Whether applicant entitled to have matter dealt with by judges who had not previously found against him - Manner in which proceedings conducted - No basis for application - Application refused.

Goldberg, David v Stocker, Deryck Geoffrey and County Court of Victoria

Osborn, Beach, and Kaye JJA

[\[2017\] VSCA 126](#)

02/06/2017

Commercial Law Division

ADMINISTRATIVE LAW - Judicial review - Delay in commencing proceeding - Extension of time - Supreme Court (General Civil Procedure) Rules 2015 (Vic) - O 56 - r56.02(3).

ADMINISTRATIVE LAW - Building and Construction Industry Security of Payment Act 2002 (Vic) - Natural justice - Whether lack of appearance of procedural fairness in adjudication process amounts to breach of natural justice.

BUILDING AND CONSTRUCTION - Claim for relief in the nature of certiorari quashing an adjudication determination - Whether adjudicator denied respondent natural justice - The Hickory principle (*Hickory Developments Pty Ltd v Schiavello (Vic) Pty Ltd & Anor* (2009) 26 VR 112, 143 [142] considered - Building and Construction Industry Security of Payment Act 2002 (Vic) s21.

Minesco P/L (as trustee for the Tarcisco Cremasco Unit Trust) (ABN 63 609 431 256) v Anderson Sunvast Hong Kong Ltd and Jones, Thomas

Vickery J

[\[2017\] VSC 299](#)

02/06/2017

ADMINISTRATIVE LAW - Judicial Review - Determination of an Adjudicator appointed under the Building and Construction Industry Security of Payment Act 2002 (Vic) - Withdrawal of payment claim - Duplication of Final Payment Claim in respect of the same reference date - Whether error of law amounting to jurisdictional error - Certiorari sought - Building and Construction Industry Security of Payment Act 2002 (Vic), s14(6) and s14(8).

Melbourne Steel Erectors P/L (ACN 140 972 998) v M&I Samaras (No 1) P/L (ACN 007 988 516); M&I Samaras (No 2) P/L (ACN 007 988 525); M&I Samaras (No 3) P/L (ACN 007 988 534) and Thyer, David (in his capacity as adjudicator appointed under s20(1) of the Building and Construction Industry Security of Payment Act 2002 (Vic)

Digby J

[\[2017\] VSC 308](#)

30/05/2017

CONTRACT - Deed of Settlement - Term required performance of an order made by the Victorian Civil and Administrative Tribunal - Breach - Specific Performance - Damages.

Retire One Day P/L v Sullivan Property P/L

Judd J

[\[2017\] VSC 243](#)

10/05/2017

CONTRACT - Partnership - Remuneration of partner - Interest on capital - Actual terms - Implied terms - Limitation of Actions Act 1958 - Taking of accounts - Agreed period for accounting.

Uren, Bruce Norman v Uren, Noel Murray

Judd J

[\[2017\] VSC 265](#)

25/05/2017

LANDLORD AND TENANT - Construction of market rent review provisions - Nature and purpose of market rent review provisions - Applicable principles of construction - Relationship between different provisions of a lease (including market rent review provisions and percentage rent review provisions) - Australian Broadcasting Commission v Australian Performing Right Association Ltd (1973) 129 CLR 99 - Electricity Generation Corporation v Woodside Energy Ltd (2014) 251 CLR 640 - Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd (2015) 256 CLR 104 - Growthpoint Properties Australia Ltd v Australian Pacific Airports (Melbourne) Pty Ltd [2014] VSC 556 - Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd (2017) 91 ALJR 486.

Point Cook Community Entertainment Facility P/L (ACN 123 118 187) v Geelong Football Club Ltd (ACN 005 150 818)

Croft, J

[\[2017\] VSC 313](#)

09/06/2017

PAYROLL TAX - Charitable institution - Public benefit - Dominant purpose - Telecommunications Dispute Resolution Service - Nature of characterisation - Effective activities for benefit of members of the public - Statute of Charitable Uses 1601 (Eng) (Statute of Elizabeth) - Payroll Tax Act 2007, s48(1) and (2) - Taxation Administration Act 1997, Part 4 and Part 10 - Taxation Administration Act 1997, s96.

Telecommunications Industry Ombudsman Ltd (ACN 057 634 787) v Commissioner of State Revenue

Croft J

[\[2017\] VSC 286](#)

01/06/2017

PRACTICE AND PROCEDURE - Application for an order that a Group Member be registered for entitlement - Settlement of a group proceeding alleging breach of continuous disclosure obligations under Corporations Act 2001 (Cth), s674, s674(2) and s1041H - Settlement approved - Subsequent application to be registered as a Registrant in the Settlement Scheme in respect of any entitlement to a share of the distribution of the Fund established pursuant to Terms of Settlement - Supreme Court Act 1986, s33ZA(4) and s33ZF - Application allowed.

Camping Warehouse Australia P/L (ACN 097 355 578) (formerly Mountain Buggy Australia P/L) v Downer EDI Ltd (ACN 003 872 848)

Digby J

[\[2017\] VSC 295](#)

02/06/2017

PRACTICE AND PROCEDURE - Application of slip rule to mistaken word in Judgment - Rule 36.07 Supreme Court (General Civil Procedure) Rules 2015 applied.

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) (Ruling No 5) (Slip Rule)

Vickery J

[\[2017\] VSC 211](#)

24/04/2017

PRACTICE AND PROCEDURE - Application that two proceedings be heard sequentially - Supreme Court (General Civil Procedure) Rules 2015 r9.12 - Whether common questions of fact or law - Risk of inconsistent findings - Risk of adverse credit findings giving rise to prejudice in second proceeding - Prejudice occasioned by delay - Application refused.

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 327](#)

09/06/2017

PRACTICE AND PROCEDURE - Application to amend statement of claim - Adequacy of pleading accessorial liability under the second limb of Barnes v Addy - Allegation of knowing assistance - Application refused.

SUMMARY JUDGMENT - No real prospect of success - Civil Procedure Act 2010 s63.

Nicholson Street P/L (ACN 069 104 089) (receivers and managers appointed) (in liquidation) & Ors v Letten, Mark Ronald & Anor

Judd J

[\[2017\] VSC 307](#)

02/06/2017

PRACTICE AND PROCEDURE - Discovery - Commercial proceeding - Judge managed list - Extensive existing discovery in this proceeding - Extensive history of interlocutory steps - High costs already incurred in respect of discovery - Foreign proceeding - Commenced without notice - Seeking discovery and sworn testimony - Substantial overlap between documents sought in foreign proceeding and documents already discovered - Whether local processes for discovery exhausted - Civil Procedure Act 2010 (Vic), s7, s8, s9, s20, s24, s55.

PRACTICE AND PROCEDURE - Discovery - Defendants commenced proceeding for discovery pursuant to 28 USC § 1782 without notice - Application for retrospective approval refused.

INJUNCTIONS - Anti-suit injunction - Application to prevent further steps being taken in foreign proceeding - Whether commencement of foreign proceeding consistent with obligations under Civil Procedure Act 2010 (Vic) - Whether foreign proceeding interferes with case management and the court's control over its own processes - Injunction granted.

Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors (No 2)

Elliott J

[\[2017\] VSC 283](#)

25/05/2017

PRACTICE AND PROCEDURE - VCAT - Application for costs - Costs thrown away - Extent of "damnification" - VCAT Act 1998, s109 - Martin v Fasham Johnson [2007] VSC 54; Earnshaw v Loy (No 2) [1959] VR 252.

Pizza Fellas P/L (ACN 116 619 713) v Eat Now P/L (ACN 138 659 588) and Menulog P/L (ACN 120 943 615) (No 2)

Croft J

[\[2017\] VSC 296](#); [\[2017\] VCAT 786](#)

01/06/2017

Common Law Division

ADMINISTRATIVE LAW - Plaintiff's appeal of Coroner's decision to refuse to re-open the investigation - Whether the Coroner made any error of law - Whether it is necessary or desirable in the interests of justice to allow the appeal - Test for 'new facts and circumstances' in s77(3)(a) - Meaning of 'appropriate' in s77(3)(b) - Appeal dismissed - Hecht v Coroners Court of Victoria [2016] VSC 635 - Coroners Act 2008 (Vic), s84, s87, s87A.

Mortimer, Stephanie Lorraine v West, Iain (in his role as Deputy State Coroner) (Refusal to re-open investigation)

Macaulay J

[\[2017\] VSC 293](#)

29/05/2017

COSTS - Application by plaintiff to restrain the defendant's previous solicitors from acting for defendant - Plaintiff seeks costs from the defendant's previous solicitors on an indemnity basis - Defendant's previous solicitors seek costs of responding to application.

Molnar, Andras v Butas, Zoltan (in his capacity as the executor of the estate of Rozalia Wright, deceased)

McMillan J

[\[2017\] VSC 298](#)

29/05/2017

COSTS - Application for grant of leave to discontinue proceedings against third party with no order as to costs - Exercise of discretion as to costs - Liability of defendant for costs of third party where claim not pursued - Civil Procedure Act 2010 (Vic) - Supreme Court (General Civil Procedure) Rules 2015 (Vic).

A S (by her litigation guardian Marie Theresa Arthur) v Minister for Immigration and Border Protection; Commonwealth of Australia; International Health and Medical Services P/L; and Serco Australia P/L

Forrest J

[\[2017\] VSC 300](#)

09/06/2017

COSTS - Where family provision proceeding compromised - Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin (1997) 186 CLR 622 - Whether conduct of parties unreasonable - Where plaintiff substantially successful - Whether defendant beneficiary should pay costs of plaintiff and the executor of the estate - No point of principle.

In the matter of Part IV of the Administration and Probate Act 1958 and In the matter of the will and estate of Seng Hpa, Lynette Pearl, deceased. Between: Seng Hpa, Reginald (by his litigation guardian Zanda Dinsdale) v Walker, Debra Lynne (as executor of the will and estate of Lynette Pearl Seng Hpa, deceased) and Walker, Traycie Louise

McMillan J

[\[2017\] VSC 320](#)

08/06/2017

CRIMINAL LAW - Confiscation of property - Tainted property - Whether 'carve out' available to applicant under Confiscation Act 1997 (Vic) - Equitable interest - Whether the applicant was 'in any way involved in the commission of the Schedule 2 offence'.

CRIMINAL LAW - Confiscation of criminal proceeds - Whether applicant's bank account was tainted - Derived from parents criminal offending.

TRUSTS - Presumption of advancement - Whether presumption arises in father-son relationship - Gift - Parties purchasing property in joint names - Unequal contributions - Whether *Calverley v Green* mortgage liability principle should be applied mechanically in cases of criminal offending - Constructive trust for applicant in cases of innocent parties only.

Pham, Son Thanh v Director of Public Prosecutions for Victoria [DPP] (Vic)

T Forrest J

[\[2017\] VSC 261](#)

19/05/2017

CRIMINAL LAW - Crimes mental impairment - Application for variation of custodial supervision order to non-custodial supervision order - Application granted.

In the matter of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) and In the matter of an application by C P

Hollingworth J

[\[2017\] VSC 294](#)

31/05/2017

JUDICIAL REVIEW - Medical Panel - Procedural fairness - Failure to provide employer with opportunity to address finding - Employer and worker agree that procedural fairness denied - Orders in the nature of certiorari and mandamus granted.

Country Care P/L v Murphy, Dr David ; Axtens, Dr Rani; Leidl, Mr Stephen; King, Dr John G and Haeusler, Kerryn

Ginnane J

[\[2017\] VSC 309](#)

31/05/2017

JUDICIAL REVIEW - Medical Panel - Threshold for non-economic claim - Amendment to threshold - Retrospective effect - Panel applied wrong threshold - Opinion quashed - Remitted for redetermination - Wrongs Act 1958 Part VBA; Wrongs Amendment Act 2015 s11.

COSTS - Defendant adopting a Hardiman approach during proceeding - Cost consequences.

Williams, Melinda v Coles Supermarkets Aust P/L; Gibbons, Associate Professor Peter (Deputy Convenor of Medical Panels); Medical Panel (constituted by Mr John Bourke & Mr Roy Carey) and Bevendale P/L

Ginnane J

[\[2017\] VSC 318](#)

06/06/2017

PRACTICE AND PROCEDURE - Interrogatories - Rule 30.12 of Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Non-compliance with orders - Delay - Usefulness of interrogatories - Missing document - Potential vacation of trial date - Application allowed.
Pierides, James (a minor who sues by his Litigation Guardian Emile Pierides) v Monash Health (formerly known as Southern Health)

Clayton JR

[\[2017\] VSC 326](#)

09/06/2017

PROBATE - Application for revocation of grant of probate - Where applicant required to file particulars of grounds of revocation - Where applicant delayed in making application - Whether applicant established prima facie case - Where particulars of grounds are speculative, vague and circumstantial - In the Will of Lamont (1881) 7 VLR (I) 86 - Re Kouvakas; Lucas v Konakas [2014] NSWSC 786.

Re Watson. Between: Raitman, Norman v Ivey, Wayne Leslie

McMillan J

[\[2017\] VSC 322](#)

08/06/2017

PROBATE - Intestacy - De facto relationship - s51(1) Administration and Probate Act 1958 (Vic) - Applicant former domestic partner of deceased - Nature of relationship - Factors indicating a domestic relationship - Considerations to be taken into account under s35(2) Relationships Act 2008 (Vic) - Revocation of letters of administration.

In the matter of the Estate of Hamidovic, Nail (Deceased). Jasarevic, Jasmin v Nesovanovic, Rada

Zammit J

[\[2017\] VSC 267](#)

05/06/2017

RECEIVERSHIP OF A LEGAL PRACTICE - Appointment of receivers to law practice pursuant to Legal Profession Act 2004 s 5.5.1 - Receivers commenced and then settled a proceeding to recover amounts taken in breach of trust - Distribution of settlement sum to former clients of the law practice.

In the matter of an Application by the Legal Services Board for the appointment of a Receiver for the Law Practice of Forster, David, an Australian legal practitioner trading under the name Hollows Lawyers, pursuant to s 5.5.1 of the Legal Profession Act 2004. Between: Legal Services Board (ABN 82518945610) v Forster, David

Emerton J

[\[2017\] VSC 279](#)

07/06/2017

Criminal Division

CRIMINAL LAW - Sentence - Manslaughter - Early plea of guilty - Excellent prospects of rehabilitation - Remorse - Violence within relationship - General deterrence - Sentenced to 7 years' imprisonment with minimum of 4 years and 9 months - 218 days pre-sentence detention.

The Queen v Masatora, Lindsay

T Forrest J

[\[2017\] VSC 277](#)

24/05/2017

CRIMINAL LAW - Sentence - Manslaughter - Guilty plea - Drug use - Reasonably good prospects of rehabilitation - Sentenced to 10 years' imprisonment with minimum of seven years - 342 days pre-sentence detention.

The Queen v Lamblin, Karl

T Forrest J

[\[2017\] VSC 306](#)

31/05/2017

CRIMINAL LAW - Sentence - Murder - Infanticide - Attempted murder of surviving child - Pleas of guilty - Mother causing the death of three children - Background of deprivation - Mental state - Verdins principles - Common ground that some principles apply - Evidence of mood disorder - Evidence of Post-Traumatic Stress Disorder - Remorse - Plea signifies some remorse - Unwillingness to acknowledge intention - Prospect of Deportation - Refugee - Difficult and traumatic history in South Sudan - Life imprisonment, whether appropriate.

The Queen v Guode, Akon

Lasry J

[\[2017\] VSC 285](#)

30/05/2017

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.

COSTS - Discretion of the Court to award costs.

Zelmanovich v Vahgelt (No 2)

[\[2017\] VCC 686](#)

Judge Lewitan

02/06/2017

DEFAULT JUDGMENT - Summary judgment - Costs.

Koncept Developments Pty Ltd v Kumar & Ors

[\[2017\] VCC 671](#)

Judge Cosgrave

30/05/2017

NEGLIGENCE - Allegation of contributory negligence.

Johnston v VWA (Ruling)

[\[2017\] VCC 713](#)

Judge Saccardo

31/05/2017

PRACTICE AND PROCEDURE - Application for leave to discontinue a proceeding - Costs on discontinuance - Plaintiff seeking an order that the defendant pay costs on discontinuance - Rules 63A.15 - Whether court should "otherwise order".

Wilbur v Bengasino (No 2)

[\[2017\] VCC 632](#)

Judge Woodward

25/05/2017

PRACTICE AND PROCEDURE - Costs - Calderbank offer and offer of compromise - Whether the plaintiff unreasonably failed to accept offers - "Mixed success" by parties - No order made - *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No. 2)* [2005] VSCA 298 and *Chen v Chan* [2009] VSCA 233 applied.

Heaney Enterprises Pty Ltd v. Just Cuts Franchising Pty Ltd (No. 2)

[\[2017\] VCC 654](#)

Judge Anderson

31/05/2017

STATEMENT OF CLAIM - Application to stay statement of claim - Abuse of process.

Darragh v Gloria McDonough and Barry McDonough

[\[2017\] VCC 665](#)

Judge Lewitan

02/06/2017

SUMMARY JUDGMENT - Defendants' application for summary judgment - Application to set aside judgment on the basis of fraud - Witness immunity - Advocates immunity - Conspiracy to give and procure false evidence.

Bodycorp Repairers Pty Ltd and Murdaca v Maisano & Ors

[\[2017\] VCC 631](#)

Judge Lewitan

29/05/2017

Magistrates' Court of Victoria Cases

WORKCOVER - Accident Compensation Act 1985 - Injury - Whether total or substantial recovery of left shoulder injury - Alleged mental type injury secondary to physical injury - Whether work materially contributed to mental condition - Long prior history of psychological stressors - Causation - Whether plaintiff has work capacity - Vocational assessments and suitable employment - No current work capacity likely to continue indefinitely - Plaintiff's claim successful.

Harrison v Forty Eighth Snowman Pty Ltd

[\[2017\] VMC 7](#)

Magistrate Ginnane

31/05/2017

WORKCOVER - Workers Compensation - Medical and like service - Application for dishwasher appliance - Foreshadowed referral to medical panel - Jurisdiction - Accident Compensation Act 1985 s3, s5 "medical and like service" "personal and household service", 99(1)(a), 99(2)(c), 99(12)(b), 99(13).

Milunovic v Logical Industrial

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

Magistrate Wright

18/05/2017

WORKCOVER - Termination of weekly payments after 104 weeks - Plaintiff sustained closed head injury and psychiatric injury in truck accident on 6 September 1988 - Weekly payments terminated on 22 March 2016 on basis he had a current work capacity or if no current work capacity it was not likely to last indefinitely - Somatic symptom disorder.

Kane v VWA

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

Magistrate Garnett

06/06/2017

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.

Aboriginals

Constitutional recognition - Aboriginal - Torres Strait Islander peoples - Constitutional ban - Racial discrimination - Racial Discrimination Act 1975 (Cth) - Australia

Lino, D. "Thinking outside the Constitution on indigenous constitutional recognition: entrenching the Racial Discrimination Act." (2017) 91(5) ALJ 350-359.

Constitutional recognition - Indigenous peoples - Australian state - Mutually respectful relationship - Reform - Symbolic model - Indigenous representative body model - Australia
Morris, S. and N. Pearson. "Indigenous constitutional recognition: paths to failure and possible paths to success." (2017) 91(5) ALJ 350-359.

Intellectual property - Cultural rights - Artistic works - Copyright - Substantial reproduction - Art protocols - Anthropological records - Deepening History Protocol - National Indigenous Cultural Authority - Milpururru v Indofurn - Australia

Janke, T. "Ensuring ethical collaborations in indigenous art and records management." (2017) 91(5) ALJ 375-380.

Arbitration

Court's powers - Interim relief - Domestic - Foreign - Proceedings - Discovery Geo v STP - NZ

Wass, J. "Interim relief in support of foreign arbitrations and judicial proceedings." [2017] (May) NZLJ 134-138.

Computers

Privacy - Telecommunication metadata - Telstra - Mobile data network - Personal information - Two step test - Privacy Commissioner v Telstra Corporation Ltd - Privacy Act 1988 (Cth) - Australia

Lee, T. and P. Catania. "Watching the watchman: Full Federal Court rejects Australian Privacy Commissioner's stance on metadata." (2017) 91 Computers & Law 14-16.

Constitutional Law

Parliament - Digitalisation - Historical records - First Legislative Council - NSW
Bennett, D. "New historical resources of NSW laws." (2017) 29(4) JOB 34.

Contract Law

Agency - Actual authority - Agents - Powers and duties - Apparent authority - Attribution - Corporate liability - UK - NZ

Watts, P. "Actual authority: the requirement for an agent honestly to believe that an exercise of power is in the principal's interest." (2017) (4) JBL 269-281.

Contractual discretion - Good faith - Conflict - Freedom of contract - Public discretion - Statutory discretion - Comparative analysis - UK - NZ - Australia - Canada

Campbell, S. and W. Williams. "Fetters upon the exercise of contractual discretion." [2017] (May) NZLJ 141-147.

Restraint of trade - Interlocutory injunctions - Validity of the clause - Special circumstances - Victoria
Dean, R. "The ties that bind." (2017) 91(6) LIJ 44-47.

Courts

Court reporters - Professional journalists - Media - Trials - Social media - Aggrieved parties - Pressure groups - Distorted reporting - Attacks on judiciary - Public education - Transparency Project's Family Court Reporting Watch - UK
Langdon, A. "Court in the act." [2017] (May) Counsel 5.

Extended court sittings - Impact - Parents - Women - Evaluation criteria - Pilot program - UK
Courts to sit late into the evening under flexible hours proposal. [2017] (May) Counsel 7.

Online Courts - Stages - Pre-action protocol procedures - Stage 1 - Court process last resort - Dispute resolution - UK
Ahmed, M. and C. Pennells. "Online courts take the stage." (2017) 167(7746) NLJ 18-19.

Contract Law

Cash detention powers - Police - Avoidance - Criminal restraint order - Property freezing orders - Parliamentary intention - R (on the application of Bunnvale Limited) v the Central Criminal Court - Proceeds of Crime Act 2002 (UK), Pt. 2, Pt. 5 Ch. 3 - UK
Nakhwal, J. and N. Queree. "Cashing in: the High Court has rejected a novel use of POCA 2002's cash seizure powers." (2017) 167(7745) NLJ 13-14.

Equity

Equitable remedies - Illegality - Principles - Public interest - Binding decision - Example - HMRC tax fraud - Illogicality - Patel v Mirza - UK
Strauss, N. "The illegality principle: Patel (2)." [2017] (May) Counsel 27-28.

Family Law

Forced marriage - Family Court of Australia - Remedies - 18 years and under - Marriage declared void - Child protection procedures - Marriage Act 1961 (Cth), s23B - Australia
Walczak, C. and N. Udorovic. "Does it really happen in Australia?" (2017) 91(6) LIJ 32-35.

Human Rights

Charter of Human Rights - Individual cause of action - Remedies provision - Law reform - Victoria
Swannie, B. "Rights without remedies." (2017) 91(6) LIJ 36-39.

Immigration law

Detention centres - Nauru - Manus Island - Whistleblowing - Legal barriers - Criminal liability - Civil liability - Summary dismissal - Professional liability - Employer liability - Law reform - Confidentiality clauses - Australian Border Force Act 2015 (Cth), Pt 6 - Crimes Act 1914 (Cth), s70 - Australia
Shmerling, T. et al. "Operation secret borders: what we don't know can hurt us." (2017) 91(6) LIJ 24-27.

Legal Profession

Youth courts - Bar standard board - Youth justice system reviews - Key competencies - Compulsory registration - UK
Hanmer, O. "Youth advocacy: driving up standards." [2017] (May) Counsel 23-24.

Legislation

Statutory interpretation - Common law rights - Brexit case - Withdrawal from a treaty - Implied limit on prerogative - Notice - Domestic law - Principle of legality - UK

Justice Basten. "Statute, the common law and Brexit." (2017) 91(5) ALJ 414-418.

Practice & Procedure

Non-parties - Adversely affected - Judgment - Court orders - Judicial criticism - Appeal - Procedural unfairness - Reputation consequences - MA Holdings Ltd v George Wimpey UK Limited and Tewkesbury Borough Council - RE W (a child) - UK

Wheal, R. and R. Copcutt. "An uphill struggle." (2017) 167(7746) NLJ 17.

Property Law

Personalia - Sir Robert Torrens - Land registration system - Australia - UK

Butt, P. "Memorial to Sir Robert Torrens." (2017) 91(5) ALJ 401-405

Succession

Testator - Family maintenance - Litigation - Jurisdiction - Foreign probate - Foreign property - Claim out of time - Duty to a prospective claimant - Settlement without beneficiary's consent - Clawing back - Victoria

Barton, P. "Ancillary issues." (2017) 91(6) LIJ 40-43.

Torts

Consumer law - Statutory causation - Definition - Factual links - Causal inquiry - Applicable test - Principles - Statutory scheme - Common law - Australian Securities and Investment Commission Act 2001 (Cth) - Corporations Act 2001 (Cth) - Australia

Bant, E. and J. Paterson. "Statutory causation in cases of misleading conduct: lessons from and for the common law." (2017) 24(1) Torts L J 1-31.

Defamation - Search engine providers - Google - Publisher - Search results - Defamatory meaning - Autocomplete predictions - Defamatory meaning - Google v Trkulja - Victoria

English, J. and M. Hafeez-Baig. "Liability of search engine providers in defamation." (2017) 24(1) Torts L J 83-94

Insurance - Compulsory third party motor accident schemes - National injury insurance schemes - Law reform - Automated vehicles - Public roads - Threshold definitions - Accident - Personal injury - Fault based systems - Australia

Brady, M. et al. "Automated vehicles and Australian personal injury schemes." (2017) 24(1) Torts L J 32-63.

Medical negligence - Mental harm - Compensation - Thresholds - Test - Claimant personal circumstances - Law reform - Wrongs Act 1958 (Vic) - Wrongs Amendment Act 2015 (Vic) - Victoria

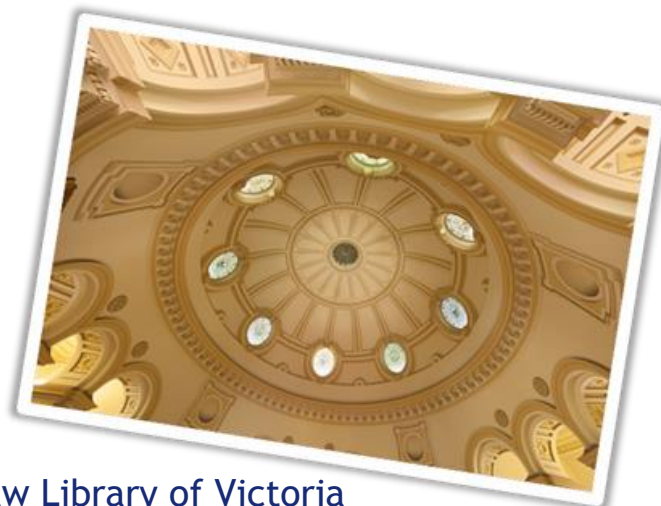
Popa, T. "Righting wrongs: lawyers' reflections on the amendments to the Wrongs Act 1958 (Vic) on medical negligence and mental harm claims." (2017) 24(1) Torts L J 64-82.

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