



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
4 August
2017

Library News

Switch On... in the Law Library: Using Twitter for legal research
Tuesday 15 August, 1:15pm - 1:40pm

Come along to our August session to find out who and how to follow the right people and organisations on Twitter, to keep up with the latest judgments, legal information, and disruption and innovation going on in the legal industry.

Lyrical Lunchtimes

Thursday 17 August, 1:15pm - 2:15pm

The Law Library of Victoria and BottledSnail Productions present Lyrical Lunchtimes, a series of classical concerts designed to provide an opportunity to relax and reflect in the beautiful surrounds of the Supreme Court Library.

BottledSnail Productions is a not-for-profit organisation that exists to give Melbourne lawyers a creative outlet. Cast, crew and committee members are almost exclusively drawn from Melbourne's legal profession.

Supreme Court Library tour

Tuesday 22 August, 1:15pm - 2:15pm

This 60 minute tour of the Library is targeted at the legal profession, exploring all four levels of the Library, and showcasing the range of current and historical resources and materials that are available in the collection.

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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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.

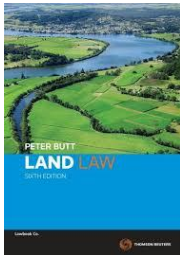
Members of the legal profession and the public can request any of the books to read on site at the Supreme Court Library.



Crofts, Thomas et al., *Sexting and young people*
Palgrave Macmillan, Hampshire, 2015
Call number: 344.0547 CRO (Supreme Court Library)

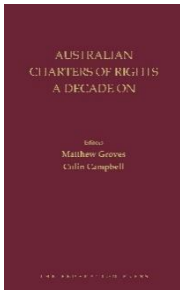


[Link to the book in the catalogue](#)



Edgeworth, Brendan, *Butt's land law*
7th ed, Thomson Reuters, Pyrmont, N.S.W., 2017
Call number: 346.043 BUT.7 (Supreme Court Library)

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



Groves, Matthew and Campbell, Colin (editors), *Australian Charters of Rights a decade on*
The Federation Press, Annandale, N.S.W., 2017
Call number: 342.085 GRO (Magistrates' Court Library)

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



Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*
Victorian Law Reform Commission, Melbourne, Victoria, 2017
Call number: LRC 94.56 R36 (Supreme Court Library)

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



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)

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 Acts have come into operation by forced commencement since the last Library Bulletin:

- *Corrections Legislation Amendment Act 2016, No. 57/2016*
 - Section 8 of this Act came in by forced commencement on 1 August 2017 s.2(3)
- *Tobacco Amendment Act 2016, No. 55/2016*
 - Sections 1-12 of this Act came in by forced commencement on 1 August 2017 s.2
- *Working with Children Amendment Act 2016, No. 72/2016*
 - Sections 4-21, 28-30 of this Act came in by forced commencement on 1 August 2017 s.2(2)

High Court Cases

No High Court cases were delivered this fortnight.

Victorian Supreme Court Cases

Court of Appeal

APPEAL - Whether order for remittal should be made - proceeding remitted to County Court of Victoria for re-trial.

Deal, Kathryn v Kodakkathanath, Father Pius (No 2)

Warren CJ, Ashley JA, and Digby AJA

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

25/07/2017

COSTS - Appeal successful - Whether costs of trial should be remitted to trial judge for determination - Whether issues-based costs order should be made.

Melbourne Linh Son Buddhist Society Inc v Gippsreal Ltd

Maxwell P, Kyrou JA, and Cameron AJA

[\[2017\] VSCA 198](#)

04/08/2017

CRIMINAL LAW - Appeal - Application for leave to appeal against interlocutory ruling - Coincidence evidence - Applicant indicted on 36 charges of intentionally causing a bushfire - Whether reasonably open for trial judge to admit evidence - Whether coincidence evidence can be relied upon to prove applicant deliberately lit fires - Whether multiple charges can be heard together - Similarities of fires - 'Significant probative value' of evidence as a whole outweighs prejudicial effect - Leave refused - Evidence Act 2008 (Vic) s98, s101.

Hunt, Tamara (a Pseudonym) v The Queen

Whelan and Coghlan JJA

[\[2017\] VSCA 196](#)

31/07/2017

CRIMINAL LAW - Application for leave to appeal sentence - Parity - Application refused.

Elakkoumi, Mahammed v Director of Public Prosecutions [DPP]

Whelan and Coghlan JJA

[\[2017\] VSCA 186](#)

18/07/2017

DEFAMATION - Costs of application for leave to appeal - Application refused - Whether indemnity costs ought to be ordered - Application for leave weak - Relevant offer of compromise prior to trial - Grounds abandoned - Indemnity costs ordered.

McDonald, Michael v Dods, Colin

Warren CJ, Whelan JA, and Cameron AJA

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

03/08/2017

ENVIRONMENT PROTECTION - Contamination of land - Clean up notices - Identity of polluter - Whether responsibility for pollution lies with successors to original occupier of the land - Whether industrial waste had been or appeared to be abandoned - Relevance of subjective knowledge - Whether evidence of actual intention of abandonment - Compensation - Liability to compensate subsequent occupier for costs of clean up - Environment Protection Act 1970 s1K, s4, s27A and s62A - Leave to appeal granted - Appeal allowed in part - Remitted to trial judge.

LIABILITIES - Transitional provisions - Contingent liabilities - Inchoate liabilities - *Crimmins v Stevedoring Industry Finance Committee* (1999) 200 CLR 1, followed - *R (National Grid Gas plc) v Environment Agency* [2007] 1 WLR 1780, considered - *Walters v Babergh District Council* (1983) 82 LGR 235, considered.

RETROSPECTIVITY - Events before enactment of legislation - Event giving rise to liability - Creation of new liability - Time of event creating liability - Public purpose - *Premier Building and Consulting Pty Ltd (recs apptd) v Spotless Group Ltd* (2007) 64 ACSR 114, considered.

STATUTORY INTERPRETATION - Environment Protection Act 1970 s62A - 'the person who has caused or permitted the pollution to occur' - 'any person who appears to have abandoned or dumped any industrial waste' - 'liabilities' - 'instrument' - 'waste' - 'environment' - 'abandon' - 'appears to have abandoned' - Interpretation of Legislation Act 1984 s9(2), s38 - Subordinate Legislation Act 1994 s3(1) - Legislative instrument - Meaning of 'other document' in Order in Council - Whether Act of Parliament an 'instrument'.

LOCAL GOVERNMENT - Order in Council - Constitution of new council - Transfer of contingent liability - Successor at law - Public interest - Power to make orders - Purpose of order to effect implementation of the restructuring of local government - Local Government Act 1989 s220Q, s220R and s220S.

DECLARATION - Discretion - Determination of a preliminary question - Supreme Court (General Civil Procedure) Rules 2005 r47.04 - Relevance of consent or acquiescence by a party to orders - Whether declaration prematurely made.

WORDS AND PHRASES - 'other document' - 'instrument' - 'causing pollution to occur' - 'the person who has caused or permitted the pollution to occur' - 'any person who appears to have abandoned or dumped any industrial waste' - 'liabilities' - 'instrument' - 'waste' - 'environment' - 'abandon' - 'appears to have abandoned'.

Yarra City Council v Metropolitan Fire and Emergency Services Board; Connolly Environmental (Aust) P/L (ACN 085 671 236); The State of Victoria and GHD P/L (ACN 008 488 373)

Warren CJ, Tate and Osborn JJA

[\[2017\] VSCA 194](#)

26/07/2017

PRACTICE AND PROCEDURE - Application for stay of proceedings - Failure to establish special circumstances - Unable to establish that compliance with the orders made below would render the appeal nugatory - Prejudice - Application refused.

Bisognin, Gino Andrew and Bisognin, Leah Joan v Hera Project P/L (ACN 163 685 041)

Tate and Kyrou JJA

[\[2017\] VSCA 195](#)

27/07/2017

Commercial Court

CORPORATIONS - Corporations Act 2001 (Cth), s459 - Graywinter affidavit - Whether genuine dispute raised in 21 day affidavit expressly, by necessary inference or available inference - Setting aside statutory demand for 'some other reason' does not include a genuine dispute.

Bendigo Central Pharmacy P/L (ACN 163 433 120) v Kwan, William Anderson

Randall AsJ

[\[2017\] VSC 419](#)

21/07/2017

CORPORATIONS - Application to set aside statutory demand under sections 459G and 459J of Corporations Act (2001) (Cth) by reason of alleged genuine disputes and offsetting claim - Debt the subject of demand allegedly assigned to defendant prior to service of demand - Plaintiff not given any notice of the assignment prior to service of demand and demand and accompanying affidavit made no reference to alleged assignment - Demand set aside for 'some other reason' pursuant to s459J - *Condor Asset Management v Excelsior Eastern Ltd (2005) 56 ACSR 223* applied.

JJ Armstrong P/L (ACN 075 084 687) v Hamptee P/L (ACN 613 621 408)

Gardiner AsJ

[\[2017\] VSC 427](#)

26/07/2017

CORPORATIONS - Corporations Act 2001 (Cth), s459G - Statutory demand - Application to set aside - Costs order - Judgment debt - Whether defective by reason of failure to serve accompanying affidavit - Whether creditor has standing to serve - Costs orders obtained against debtor - Quantifying an off-setting claim - Only support is the director's contention as to quantum attributable to costs orders - Action to set aside underlying judgment by reason of fraud - Summary dismissal in favour of creditor - Appeal pending - Claim against principal proponent of fraud continuing - Off-setting claim - Some other reason - Corporations Act 2001 (Cth), s459J - Abuse of process - Cross examination in s459G applications - Recusal.

Body Corporate Repairers P/L (ACN 068 589 408) v Oakley Thompson & Co P/L (ACN 092 053 239)

Randall AsJ

[\[2017\] VSC 435](#)

31/07/2017

COSTS - Jurisdiction to award costs against non-parties - Section 24 of the Supreme Court Act 1986 (Vic) - Discretion to award costs against non-parties - Whether plaintiff corporation used as a front for individuals behind the litigation - Whether benefit to non-parties sufficient to justify an award of costs against them - Whether it is in the interests of justice to order non-parties pay costs.

COSTS - Whether solicitors should be liable for costs - Rule 63.23 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Section 29 of the Civil Procedure Act 2010 (Vic).

COSTS - Whether litigants in person and litigation guardian can claim certain expenses - Meaning of 'costs' - Section 24 of the Supreme Court Act 1986 (Vic).

CORPORATIONS - Whether costs order can be made against non-parties - Availability of a security of costs order against a corporation - Section 1335 of the Corporations Act 2001 (Cth).
Colbart P/L v Parsons, Kate (as litigation guardian for Kevin Francis Gerraty); Parsons, Kate (as litigation guardian for Rosemarie Cecila Gerraty); Gerraty, Francine Marie and Chambeyron P/L (No 2)

Robson J

[\[2017\] VSC 410](#)

03/08/2017

ESTOPPEL - Issue estoppel - Whether alternative findings legally indispensable to Tribunal decision - Findings form one of two essential issues for determination - Blair v Curran (1939) 62 CLR 464; Mitsubishi Motors Australia Ltd v Harbord (1997) 69 SASR 75 discussed and applied - Held: legally indispensable.

ESTOPPEL - Issue estoppel - Privity of interest - Objects of a discretionary trust - Whether applicant beneficiaries privies of the trustee in prior Tribunal hearing - Whether trustee represented applicants' legal interests - Ramsay v Pigram (1968) 118 CLR 271; Tomlinson v Ramsey Food Processing (2015) 256 CLR 507 - Held: no privity of interest.

ABUSE OF PROCESS - Whether challenging alternative findings in later proceeding constituted abuse - Alternative findings plainly wrong - Applicant wife to be considered separately to husband - Tomlinson v Ramsey Food Processing (2015) 256 CLR 507 considered - Held: no abuse of process.

TRUSTS - Whether executed transfer of land from trustee to beneficiaries of discretionary trust both constituted distribution in specie of trust property and the conveyance of an equitable interest in the land - Whether separate document constituting or evidencing trust distribution required - Provisions of trust deed did not require trust distribution to be made in writing - Held: no separate document required; Transfer of land constituted or evidenced both trust distribution and transfer of land.

STAMP DUTY - Whether transfer of land gave effect to a sale or trust distribution - Held: effective distribution - Whether transfer exempt from duty under Exemption (10), Heading V, Schedule 3 of Stamps Act 1958 - Re Ralara Pty Ltd v Comptroller of Stamps (Vic) (1992) 24 ATR 1133 discussed - Held: exempt from duty - Appeal allowed.

Mondous, Souhail & Anor v Commissioner of State Revenue

Hargrave J

[\[2017\] VSC 416](#)

26/07/2017

INSURANCE - Home building insurance - Building damaged by storm causing inundation by hailstones and rain - Inundation led to 'heave' of the clay soil beneath the foundation slab of the building - Policy covered storm damage subject to exclusion for 'soil movement' - Whether damage caused by heave excluded as 'soil movement' - Meaning of 'heave' - Held: heave constituted soil movement and exclusion applies.

Guastalegname, Nunzia v Australian Associated Motor Insurers Ltd (ABN 92 004 791 744) (trading as AAMI)

Hargrave J

[\[2017\] VSC 420](#)

02/08/2017

Common Law Division

APPEAL - Appeal of order of the County Court striking out an appeal from the Family Division of the Children's Court - Section 430D of the Children, Youth and Families Act 2005 (Vic) - Whether physical attendance of the appellant necessary upon hearing of an appeal against an order of the Children's Court where legal representation is present - Appearance of counsel in the absence of the party sufficient - Matters of procedural fairness - Appeal allowed - Order of County Court set aside - Appeal remitted to County Court for determination.

S M v County Court of Victoria & Ors

Bongiorno JA

[\[2017\] VSC 440](#)

03/08/2017

APPEAL - Leave to appeal from Magistrates' Court of Victoria - Final Notice issued by the Commissioner of Taxation - Income Tax Assessment Act 1936, s162 - Taxation Administration Act 1953, s8C(1)(a), s8ZL - Income Tax Regulations 1936, Regs 36, 37A and 40 - Acts Interpretation Act 1901 (Cth), s29 - Criminal Procedure Act 2008 (Vic), s272 - Interpretation of Legislation Act 1984 (Vic), s49 - Evidence Act 2008 (Vic), s160.

Guss, Joseph v Storace, Eddie (Australian Taxation Office)

Digby J

[\[2017\] VSC 396](#)

26/06/2017

APPEAL - Requirement of leave to appeal from the Victorian Civil and Administrative Tribunal - Necessity to show question of law - General assertion of a denial of natural justice - General reference to Charter of Human Rights and Responsibilities Act 2006 - No question of law identified - Leave to appeal refused - Victorian Civil and Administrative Tribunal Act 1998, s148.

Maiga, Moctar v Port Phillip Housing Association Ltd

Digby J

[\[2017\] VSC 441](#)

25/07/2017

JUDICIAL REVIEW - Application for orders in the nature of certiorari and mandamus - Remedies - Futility - Discretion - Certiorari granted.

ROADS - Deregistration of a public road from Council's register of public roads - Need for decision that the road is no longer reasonably required for general public use - Procedural fairness - Private rights of access - Policy decisions - Privative clause - Construction of privative clause - Road Management Act 2004 (Vic) s3, s4, s5(2), s7-10, s17, s19, s36, s39, s40, s101.

LOCAL GOVERNMENT - Discontinuance of a public highway - Statutory procedures - Compliance with procedure for submissions - Predisposition - Unreasonableness - Adequacy of reasons - Absence of an intelligible path of reasoning - Local Government Act 1989 (Vic) s98, s205, s206, s207A, s223, sch10 cl 3.

PROCEDURE - Certiorari - Extension of time under r56.02(3) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Whether special circumstances exist.

Pulitano Pastoral P/L (ACN 128 937 913) v Mansfield Shire Council

Garde J

[\[2017\] VSC 421](#)

27/07/2017

PLANNING - Existing use rights - Advertising signs - Real and substantial purpose - 15 year period of continuous use - Characterisation of the purpose of the use - Real and substantial purpose - Graffiti - Cessation of the use for two years - Interpretation of cl 63.11 of Melbourne Planning Scheme - Planning and Environment Act 1987 (Vic) s6(3), (4), Melbourne Planning Scheme cls 22.07, 37.04, 52.05, 63.01, 63.02, 63.04-63.06, 63.11 and 73.

Octopus Media P/L (ACN 102 851 703) v Melbourne City Council

Garde J

[\[2017\] VSC 429](#)

28/07/2017

PLEADINGS - Defamation trial - Applications to have defences of triviality and partial justification removed from jury - Further proposed Hore-Lacy amendments - Defence of justification simpliciter - Defamation Act 2005, s22, s25, s33.

Wilson, Rebel Melanie Elizabeth v Bauer Media P/L & Anor

John Dixon J

[\[2017\] VSC 356](#)

27/07/2017

PRACTICE AND PROCEDURE - Application for discovery pursuant to r29.05.1 and r29.09(2) of Supreme Court (General Civil Procedure) Rules 2015 - s28 of Evidence (Miscellaneous Provisions) Act 1958 (Vic) - s26, s29 and s55 of Civil Procedure Act 2010 (Vic) - medical records - where medical records of deceased relevant - whether medical records are in possession of plaintiff in individual or representative capacity - whether privilege applies - whether privilege waived - unfairness to defendants if privilege maintained.

White, Deborah Anne v Arbuthnot Sawmills P/L & Ors

Clayton JR

[\[2017\] VSC 443](#)

04/08/2017

PRACTICE AND PROCEDURE - Medical negligence claim - Leave sought by defendant to adduce additional expert evidence on first day of five week trial - Opinion evidence going to causation - Whether leave should be granted - Adjournment - Whether trial date should be vacated - Overarching purpose - Civil Procedure Act 2010, s7-9, Supreme Court (General Civil Procedure) Rules 2015, O. 44.

Pierides, Jamie v Monash Health

John Dixon J

[\[2017\] VSC 426](#)

20/07/2017

PROCEEDS OF CRIME - Order for examination - Principles to be applied in exercising discretion to make an order for examination discussed - Whether examination is for a substantially collateral purpose?

COMPULSORY EXAMINATION OF SUSPECT - Non-disclosure of compulsorily acquired material - Principles of statutory interpretation and principles of non-disclosure in relation to compulsory examinations discussed - Risk of prejudice to a fair trial - Should a non-disclosure order be made with respect to the examination of the person suspected of (but not charged with) a criminal offence?

COMPULSORY EXAMINATION OF NON-SUSPECT - Use of material compulsorily acquired from a third party in the prosecution of another person - Should a non-disclosure order be made with respect to the examination of the person not suspected of a criminal offence - Do the fundamental principle and companion rule protect an accused person from the use of material compulsorily acquired from a third party? - Proceeds of Crime Act 2002 (Cth) s266A considered. *In the matter of the Proceeds of Crime Act 2002 (Cth) and In the matter of the suspects, Wen, Phillip; Ji, Jun; Xiao, Yu; Xie, Bei; Yan-Ye, Xiao and Ye, Wei Min and of property suspected to be proceeds and/or an instrument of a serious offence and of an application by the Commissioner of the Australian Federal Police and In the matter of Yuan, Hongying.*

Riordan J

[\[2017\] VSC 391](#)

04/07/2017

PROPERTY LAW - Sale of land - Subdivision of land - Reasonable access to lot - Sale of Land Act 1962 s9AD considered.

Hera Project P/L (ACN 163 685 041) v Bisognin, Gino Andrew and Bisognin, Leah Joan

Riordan J

[\[2017\] VSC 383](#)

29/07/2017

VALUATION AND COMPENSATION - Amendment to Hume Planning Scheme - Public Acquisition Overlays imposed on Applicants' property - Applicants entered contract of sale of property - Delay in settlement - Whether costs of sale, capital gains tax advice and the value of lost opportunity in the form of interest foregone on the proceeds of sale constitute financial loss suffered as a natural, direct and reasonable consequence of the reservation - Whether 'the value of land' in s104 of the Planning and Environment Act 1987 means 'value to the owner' - Planning and Environment Act 1987 s98, s99(b), s101, s104 and s106; Land Acquisition and Compensation Act 1986 s35, s37.

Barilla, Rosa Agata and Barilla, Salvatore Fortunato v Roads Corporation

Emerton J

[\[2017\] VSC 349](#)

01/08/2017

WILLS AND ESTATES - Application for grant of probate of will - Two later informal documents said to be wills - Suspicious circumstances - High level of vulnerability and advanced age of testator - Lack of evidence of execution of informal documents - Direct evidence of testamentary intentions - Lack of rationality of informal documents - Inconsistency of informal documents - Opportunity for influence over testator - Secret storage of the informal documents - Past reliance by testator on legal practitioners - Loss of the original of the second informal document - Burden of proof - *Briginshaw v Briginshaw* (1938) 60 CLR 336; *Timbury v Coffee* (1941) 66 CLR 277; Wills Act 1997 (Vic) s9.

In the matter of the Will of Hobbs, Christa Renate deceased (in the Will called Christal Renate Hobbs): Frahm, Kurt Rudiger v Davis, Janice Mary

Garde J

[\[2017\] VSC 424](#)

27/07/2017

Costs Court

COSTS - Application for leave to make an application for review of solicitor's costs out of time - Legal Profession Act 2004, s3.4.38(6) - Reasons for delay - Whether it is fair and just for the application for review to be dealt with after 12 month period - Cost disclosure obligations - Legal Profession Act 2004, s3.4.19 and s3.4.16.

Hadjiantonakis, Daniel & Ors v Madgwicks (a firm) (ABN 82 199 611 971)

Digby J

[\[2017\] VSC 397](#)

13/06/2017

Criminal Division

CRIMINAL LAW - Application for bail - Attempting to import commercial quantity of cocaine - Applicant prima facie entitled to bail under the Bail Act 1977 - Whether applicant 'unacceptable risk' of failing to answer bail - Parity with co accused, a number of whom were granted bail - Strong ties to the community despite absence of Australian citizenship - Conditions able to be imposed to reduce risk of absconding - Statutory presumption in favour of bail not rebutted - Bail granted - Bail Act s4(1) - Criminal Code Act 1995 (Cth) s11.1 and s307.1.

In the matter of the Bail Act 1977 v In the matter of an Application for bail by Saputra, Bambang

Lasry J

[\[2017\] VSC 433](#)

28/07/2017

CRIMINAL LAW - Sentence - Manslaughter - Plea of guilty - Relevance of offender's ill health to sentencing - Parity between co-offenders - 10 years' imprisonment - Non-parole period of 7 years and 6 months.

The Director of Public Prosecutions [DPP] v Mitchell, Terry Darren

Elliott J

[\[2017\] VSC 423](#)

27/07/2017

CRIMINAL LAW - Sentence - Murder - Aggravated burglary - Intentionally causing serious injury - Pleas of guilty - Murder occurred 11 days after other offences - Both incidents involved knife attacks - Mid-range examples of murder and aggravated burglary - High-range example of intentionally causing serious injury - Serious violent offender - Good prospects of rehabilitation - Parsimony and totality - Total effective sentence of 29 years - Non-parole period of 22 years.

The Queen v Bain-Singh, Christian

Beale J

[\[2017\] VSC 431](#)

28/07/2017

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 - Plaintiff unsuccessful in jury trial for damages for personal injury - Application by defendant for judgment and costs on an indemnity basis following rejection of an offer of compromise - Matters to be considered - Whether rejection of offer unreasonable in the circumstances.

Andrenacci v Australian Pacific Airports (Melbourne) Pty Ltd (Ruling No 2)

[\[2017\] VCC 864](#)

Judge O'Neill

14/07/2017

CRIMINAL APPEAL - Statutory interpretation - Appeal against conviction and sentence imposed by the Magistrates' Court - Request for information under cover of s60(1) of the Road Safety Act about the identity of the driver (appellant) had nothing to do with any investigation of an alleged breach of the Road Safety Act - Informant's sole purpose in making the request was to circumvent the appellant's expressed wish to exercise his right to remain silent in response to police questioning about indictable offences - The alleged thefts - Whether, in these circumstances, the request for information as to the identity of the driver was a valid exercise of power under s60(1) of the Road Safety Act - Whether, when issuing the request, purportedly under cover of s60(1) of the Road Safety Act, the informant was "acting in the execution of duty" as that phrase should be construed in the context in which it appears.

Moreno (A Pseudonym) v Grey (Ruling)

[\[2017\] VCC 942](#)

Judge Morrish

14/07/2017

PRACTICE AND PROCEDURE - Summary judgment - No real prospect of success - Plaintiff failed to comply with default notice - Plaintiff failed to make discovery.

Malander v Papadakis

[\[2017\] VCC 961](#)

Judge Cosgrave

19/07/2017

Magistrates' Court of Victoria Cases

No Magistrates' Court of Victoria cases were received this fortnight.

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

Judicial review - Empirical analysis - Law reform - Government policy - Legal aid - Rule of law - UK.
Clayton, R. "Reforming JR." [2017] (Jul) Counsel 30-31.

Constitutional Law

Parliamentarian - Disqualification - Australian Constitution s 44 - Re Culleton [No 2] - Re Day [No2] - Australia.
Stubbs, M. "Ensuring loyalty to the public: the High Court's decision to disqualify Day & Culleton from Parliament." (2017) 39(6) LSB 7-9.

Contract Law

Consumer protection - Digital content - Supply of goods - Damage in transit - Trader liability - Consumer Rights Act 2015 (UK) - EU - UK.
Krebs, J. "'Twixt cup and lip: liability of traders under consumer contracts for digital content damages in transit.'" [2017] (5) JBL 376-386.

Discharge for breach - Express conferral of a right to terminate - Common law right to terminate - Express definition - Express conferral - Payment clause - Stocznia Gdanska SA v Latvian Shipping Co (No 3) (Lacto) - Kumait Rocks Co v AMN Bulkcarriers Inc (The Astra) - UK - Australia.
Carter, J. W. and W. Courtney. "Breach of condition and express termination right: a distinction with a difference." (2017) 133 (July) LQR 395-415.

Courts

High Court of Australia - Judges - Court dress - Robes - Wigs - Bill Haycock - Australia.
Kljun, S. "A short history of High Court robes." (2017) 39(6) LSB 14-15.

Superior courts - Judges - Appointment process - Commonwealth countries - Australia.
Ward, A. "High Courts & judicial appointments across the Commonwealth." (2017) 39(6) LSB 12-13.

Criminal Law & Procedure

Appeals against conviction - Failure to disclose - Fresh evidence - Prosecution disclosure - Unsafe convictions - Garlans - Pendleton - Stafford v DPP - Criminal Appeal Act 1966 (UK) - UK.
Blaxland, H. "Sappers and underminers: fresh evidence revisited." [2017] (7) Crim L R 537-542.

Causation - Legal theory - Direct causation - Indirect causation - Omission and other non-interventions - Non-normative form of causation - Torts - R v Hughes - UK.
Simester, A. P. "Causation in (criminal) law." (2017) 133 (July) LQR 416-441.

Diminished responsibility - Substantially impaired - Jury directions - Manslaughter - Mental disorder - Murder - Golds - Squelch - Conroy - Blackman - UK.
Gibson, M. "Diminished responsibility in Golds and beyond: insights and implications." [2017] (7) Crim L R 543-553.

Parliamentary privilege - Codification of parliamentary privilege - Interaction of parliamentary privilege and the criminal law - Prosecution of Lord Hanningfield - Chaytor - UK.

Saunders, J. "Parliamentary privilege and the criminal law." [2017] (7) Crim L R 521-536.

Sentencing guidelines - Guilty plea - Fraud - Deferred prosecution agreement - Criminal Finances Act 2017 (UK) - Unexplained wealth orders - UK.

Gribbin, C. "Welcome clarity on early guilty pleas." (2017) 161 (23) Sol J 33-34.

Equity

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