



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
1 September
2017

Library News

Supreme Court Library tour
Tuesday 12 September, 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.

Lyrical Lunchtimes
Thursday 21 September, 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.

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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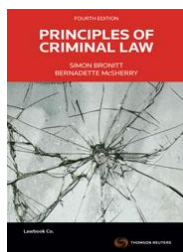
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New Books

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/.

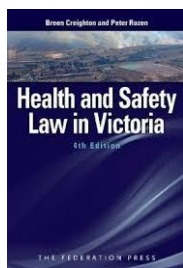
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



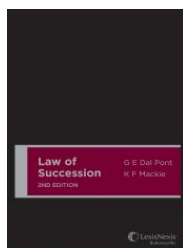
Bronitt, Simon and McSherry, Bernadette, *Principles of criminal law* 4th ed., Thomson Reuters (Professional) Australia, Pyrmont, N.S.W., 2017
Call number: 345 BRO.4 (County Court Library)

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



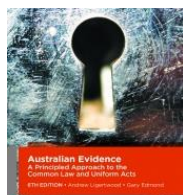
Creighton, Breen and Rozen, Peter, *Health and safety law in Victoria* 4th ed., Federation Press, Annandale, N.S.W., 2017
Call number: 344.0465 CRE.4 (Supreme Court Library)

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



Dal Pont, G.E. and Mackie, K.F., *Law of succession* 2nd ed., LexisNexis Butterworths, Chatswood, N.S.W., 2017
Call number: 346.052 DAL.2 (Supreme Court Library)

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



Ligertwood, Andrew and Edmond, Gary, *Australian evidence: a principled approach to the common law and uniform acts* 6th ed., LexisNexis Butterworths, Chatswood, N.S.W., 2017
Call number: 347.06 LIG.6 (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 [#argus1917](https://twitter.com/lawlibraryvic)

Legislation

Victorian Bills

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

- [Caulfield Racecourse Reserve Bill 2017](#)
- [Local Government \(Central Goldfields Shire Council\) Act 2017](#)
- [Long Service Leave Bill 2017](#)
- [Major Sporting Events Amendment \(AFL Grand Final Tickets\) Bill 2017](#)
- [Renewable Energy \(Jobs and Investment\) Bill 2017](#)
- [Residential Tenancies Amendment \(Long-term Tenancy Agreements\) Bill 2017](#)
- [Serious Sex Offenders \(Detention and Supervision\) Amendment \(Governance\) Bill 2017](#)

Victorian Assents

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

- [Commercial Passenger Vehicle Industry Act 2017](#) No. 35/2017
- [Local Government \(Central Goldfields Shire Council\) Act, 2017](#) No. 36/2017
- [Jury Directions and Other Acts Amendment Act 2017](#) No. 37/2017
- [Justice Legislation Amendment \(Court Security, Juries and Other Matters\) Act 2017](#) No. 38/2017
- [Public Administration Amendment \(Public Sector Communication Standards\) Act 2017](#) No. 39/2017

Proclamations

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

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

- Commercial Passenger Vehicle Industry Act 2017 No. 35/2017
 - Sections 1-8, 53-74, 80 of this Act came in by forced commencement on 23 August 2017 s.2(1)
- Jury Directions and Other Acts Amendment Act 2017 No. 37/2017
 - Sections 21, 23 of this Act came in by forced commencement on 30 August 2017 s.2(1)

- Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017 No. 38/2017
 - Part 1 (sections 1, 2), Parts 7, 8 (sections 53-63), Part 9 Divisions 3, 4 (sections 67-69), 6 (ss 72, 73), Part 10 (sections 74-99) of this Act came in by forced commencement on 30 August 2017 s.2(1)
- Local Government (Central Goldfields Shire Council) Act 2017 No. 36/2017
 - Sections 1-10 of this Act came in by forced commencement on 26 August 2017 s.2

High Court Cases

No High Court cases were delivered this fortnight.

Victorian Supreme Court Cases

Court of Appeal

CONTRACT - Construction of contract for sale of business - Special condition entitling purchaser to terminate contract after completion of due diligence - Whether condition required causal link between information obtained during due diligence and decision to terminate.

CONTRACT - Sale of business - Termination by purchaser - Measure of damages - Whether time for assessment of damages is date of breach, date of abandonment of application for specific performance or date of trial - Absence of evidence of value of business as at each of those dates - *Clark v Macourt* (2013) 253 CLR 1, *Ng v Filmlock Pty Ltd* (2014) 88 NSWLR 146 considered; *Johnson v Agnew* [1980] AC 367 distinguished.

EVIDENCE - Rule in *Browne v Dunn* (1893) 6 R 67 - Important allegation not put to applicant at trial.

APPEAL - Whether judge's findings, which were influenced by assessment of applicant's credit, should be disturbed on appeal - *Robinson Helicopter Co Inc v McDermott* (2016) 331 ALR 550 applied.

Broughton, David v B & B Group Investments P/L. B & B Group Investments P/L v Broughton, David

Kyrou JA, Ferguson JA, and McLeish JA

[\[2017\] VSCA 227](#)

31/08/2017

CRIMINAL LAW - Appeal - Conviction - Trafficking commercial quantity methylamphetamine - Whether verdict unsafe and unsatisfactory - Leave to appeal refused.

EVIDENCE - Evidence of precursor chemical - Evidence of phosphorous acid as ingredient in methylamphetamine manufacture - Whether evidence probative of trafficking commercial quantity - Whether probative as to knowledge - Whether evidence unfairly prejudicial - Adequacy of direction on evidence - Evidence Act 2008 s137.

CRIMINAL LAW - Appeal - Sentence - Trafficking commercial quantity methylamphetamine - Manifest excess - Leave to appeal refused.

Parks, Scott Andrew v The Queen

Maxwell P, Beach JA, and McLeish JA

[\[2017\] VSCA 232](#)

01/09/2017

CRIMINAL LAW - Appeal - Forfeiture - Pecuniary penalty order following drug trafficking conviction - Whether factual findings open on the evidence - No error - Whether judge erred in failing to take into account non-trafficking period in assessment of benefits - Crown concession - Appeal allowed - Pecuniary penalty order varied - Confiscation Act 1997.

Milk, Sarah v The Queen

Priest and Hansen JJA

[\[2017\] VSCA 217](#)

25/08/2017

CRIMINAL LAW - Appeal - Sentence - 1 charge of cultivate narcotic plant - 18 charges of use false document - 6 years' imprisonment with non-parole period of 4 years - Whether aggregate sentence manifestly excessive - Significant criminal history for dishonesty offences - Sentence within range - Appeal dismissed.

Ng, Chung Hon v The Queen

Hansen and Coghlan JJA

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

21/08/2017

CRIMINAL LAW - Appeal - Sentence - Burglary, making threat to kill, common assault and criminal damage - Forgiveness - Relevance of forgiveness by complainant - Whether sentencing judge erred in treatment of issue of forgiveness - No relevant error in judge's treatment of issue of forgiveness - Offending objectively serious - Whether sentence of 3 years' imprisonment for burglary manifestly excessive - Whether total effective sentence of 4 years and 3 months' imprisonment manifestly excessive - Sentences not manifestly excessive - Appeal dismissed.

Doherty, Sean v The Queen

Beach, McLeish, and Coghlan JJA

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

25/08/2017

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Import commercial quantity of border controlled drug - Rolled-up charge - Ten separate importations - 3.2 times commercial quantity - Total effective sentence seven years and six months' imprisonment - Non-parole period four years - Whether manifestly inadequate - Plea of guilty - Significant role in criminal hierarchy - Considerable reward expected - Offending over period of months - Disadvantaged background - Rehabilitation - Comparable cases - Prosecutor's duty to assist sentencing judge to avoid appealable error - Whether silence productive of error - Whether residual discretion should be exercised - Appeal allowed - Parity considerations - Respondent resentenced - Director of Public Prosecutions (Cth) v De La Rosa (2010) 79 NSWLR 1; Director of Public Prosecutions (Cth) v Thomas (2016) 315 FLR 31 discussed - Criminal Code Act 1995 (Cth) s307.1.

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Possess commercial quantity of border controlled drug - 3.7 times commercial quantity - Attempt to possess marketable quantity of border controlled drug - 0.67 times commercial quantity - Total effective sentence five years' imprisonment - Non-parole period two years and six months - Whether manifestly inadequate - Plea of guilty - Trusted operative - Modest reward expected - Disadvantaged background - Comparable cases - Respondent released on parole while appeal pending - In full-time employment, stable relationship - Whether residual discretion should be exercised - Appeal dismissed - Criminal Code Act 1995 (Cth) ss 307.6, 307.8.

Director of Public Prosecutions [DPP] (Cth) v Masange, Kiza Mordacai. Director of Public Prosecutions [DPP] (Cth) v Kachunga, Gilbert

Maxwell P, Redlich JA, and Beale AJA

[\[2017\] VSCA 204](#)

30/08/2017

CRIMINAL LAW - Appeal - Sentence - Director's appeal - Indecent act with a child under 16 - Sentence of 3 months' imprisonment with a 2 year community correction order - Whether sentence manifestly inadequate - Whether sentence reflected gravity of offending against young child - Appeal allowed - Respondent resentenced to 2 years' imprisonment with non-parole period of 15 months.

Director of Public Prosecutions [DPP] v Courtney, Robert Edward

Kyrou JA, Hansen JA, and Coghlan JA

[\[2017\] VSCA 233](#)

01/09/2017

CRIMINAL LAW - Appeal - Sentence - Drug and firearm offences - State and Federal offences - Total effective sentence of 12 years' imprisonment with non-parole period of 8 years - Delay - Whether judge erred in approach to - Whether sentence manifestly excessive - Sentences on State charges of trafficking amphetamine and methylamphetamine manifestly excessive - Appeal allowed - Appellant resentenced to total effective sentence of 11 years' imprisonment with non-parole period 7 years.

CRIMINAL LAW - Appeal - Sentence - Drug and other offences - State and Federal offences - Total effective sentence of 9 years' imprisonment with non-parole period 6 years - Parity - Applicant played lesser role than co-offender - Appeal allowed - Appellant resentenced to total effective sentence of 7 years and 6 months' imprisonment with non-parole period 5 years.

Huynh, Phuong Huu v The Queen; Au, Allan Boontong v The Queen

Priest and Hansen JJA

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

25/08/2017

CRIMINAL LAW - Appeal - Sentence - Incitement to murder - Offender incited murder of de facto wife - Active participation by offender - Lured victim into danger - Sentence nine years' imprisonment - Non-parole period six years - Whether manifestly excessive - Highest sentence yet imposed for this offence - Characterised by Crown as approaching 'worst category' case - Objective seriousness in upper range - Prevalence of family violence - Gross breach of trust - High culpability - Severe victim impact - Appeal dismissed - *Louizos v The Queen* (2009) 194 A Crim R 223; *Natale v The Queen* [2011] VSCA 28 referred to - Crimes Act 1958 s321G, s321H.

CRIMINAL LAW - Sentencing - Principles - Consistency - Current sentencing practices for incitement to murder - Offences in upper range of seriousness - Whether current sentencing adequate - High degree of moral culpability - Disparity between sentences for murder, conspiracy to murder and incitement - Current sentencing too low and requires correction - *Ashdown v The Queen* (2011) 37 VR 341 applied - Sentencing Act 1991 s5(2)(b).

Kalala, Balenga v The Queen

Maxwell P, Redlich JA, and Osborn JA

[\[2017\] VSCA 223](#)

30/08/2017

CRIMINAL LAW - Appeal - Sentence - Intentionally cause serious injury - Sentence four years and three months' imprisonment, non-parole period two years and three months - Offender aged 19 - Whether sentence manifestly excessive - Whether principles concerning young offenders misapplied - Victim knocked unconscious - Offender repeatedly punched unconscious victim - Early plea of guilty - Prior good character - Good prospects of rehabilitation - General deterrence - Application refused.

Mansfield, Mitchell v The Queen

Maxwell P and Croucher AJA

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

29/08/2017

CRIMINAL LAW - Appeal - Sentence - Manifest excess - Importing commercial quantity of border controlled drug - Sentence of 7 years and 6 months' imprisonment - Non-parole period 5 years and 6 months - Whether sufficient weight given to offer of assistance and increased burden of imprisonment - Appeal dismissed.

Yip, Hon Pan v The Queen

Kyrou JA and Hansen JA

[\[2017\] VSCA 231](#)

01/09/2017

CRIMINAL LAW - Appeal - Sentence - Pleas of guilty - Obtain financial advantage by deception and negligently deal with proceeds of crime - Sentence of five years' imprisonment - Applicant sentenced on charges of negligently dealing with proceeds of crime as though for knowingly and dishonestly doing so - Role of judge when faced with conflict between agreed facts and negotiated charges - Whether sentence manifestly excessive - Appeal allowed - Applicant resentenced - R v De Simoni (1981) 147 CLR 383; R v Brown (1989) 17 NSWLR 472; R v Newman [1997] 1 VR 146 discussed - Crimes Act 1958 s81, s82, s193, s194, s195 and s321M; Drugs, Poisons and Controlled Substances Act 1981 s70, s71AC and s73.

Pun, Aung v The Queen

Redlich JA, McLeish JA, and Croucher AJA

[\[2017\] VSCA 219](#)

30/08/2017

CRIMINAL LAW - Appeal - Sentence - Recklessly causing injury and recklessly causing serious injury - Use of knife during fight - Perceived threat to family - Strong mitigatory factors - Aggregate sentence of 9 months' imprisonment with 2-year community correction order - Whether sentence manifestly excessive - Leave to appeal refused.

Hogan, Shannon v The Queen

Kyrou JA and Hansen JA

[\[2017\] VSCA 230](#)

01/09/2017

CRIMINAL LAW - Appeal - Sentence - Possession of unregistered general category handgun - 18 months with 9 months cumulated on other unrelated offences - Whether sentence manifestly excessive - Firearms Act 1996 s7B(1) - Appeal dismissed.

Saracevic, Bemir v The Queen

Hansen and Coghlan JJA

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

21/08/2017

CRIMINAL LAW - Appeal - Sentence - Robbery, aggravated burglary, trafficking drug of dependence - 12 months spent in residential rehabilitation facility prior to sentence - Evidence of rehabilitation - Plea of guilty - Total effective sentence six years' imprisonment - Non-parole period three years - Whether manifestly excessive - Mercy, how it may inform sentencing range - Whether error in approach to discretion to exercise mercy - Whether mercy conflated with principles in *Boulton v The Queen* (2014) 46 VR 308 - No error disclosed - *R v Osenkowski* (1982) 30 SASR 212; *El Achkar v The Queen* [2016] VSCA 209 considered.

CRIMINAL LAW - Appeal - Sentence - Whether failure to moderate sentence on account of time spent in residential rehabilitation facility - Appeal allowed - Resentenced to total effective sentence five years' imprisonment - Non-parole period two years and six months - *R v Delaney* (2003) 59 NSWLR 1; *Renshaw v The Queen* [2012] NSWCCA 91; *R v Eyles (No 3)* [2017] ACTSC 1 followed.

Akoka, Nathan v The Queen

Warren CJ, Kyrrou and Redlich JJA

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

25/08/2017

CRIMINAL LAW - Application for leave to appeal against conviction - Applicant convicted of indecent assault (one count) and rape (two counts) - Trial judge refused application for leave to lead evidence of complainant's prior conviction of loitering for purpose of sex work - Whether trial judge erred in refusing application for leave - Whether evidence of prior conviction is evidence as to the 'sexual activities' of complainant - Whether evidence of prior conviction is 'sexual history evidence' - Leave to appeal refused - Criminal Procedure Act 2009 s340, s342, s343, s349, Sex Work Act 1994 s13(2).

Gutierrez, Oscar Raul Diaz v The Queen

Whelan JA

[\[2017\] VSCA 228](#)

30/08/2017

CRIMINAL LAW - Application for leave to appeal against conviction - Attempted armed robbery (one charge) - Armed robbery (one charge) - Reckless conduct endangering life (one charge) - Identity of offender in issue - Prosecution led evidence from telecommunications officer as to geographic location of mobile phone at certain times - Whether trial judge erred in allowing evidence to be given by reference to statistical likelihood - Leave to appeal granted.

CRIMINAL LAW - Application for leave to appeal - Sentence - Theft (four charges) - Burglary (one charge) - Cumulation - Whether cumulation ordered renders total effective sentence manifestly excessive or as breach of totality principle - Leave to appeal refused.

Ward, Paul v The Queen

Whelan JA

[\[2017\] VSCA 222](#)

29/08/2017

CRIMINAL LAW - Leave to appeal - Sentence - Aggravated burglary - Armed robbery - Causing serious injury recklessly in circumstances of gross violence - Guilty pleas - Total effective sentence of 12 years imprisonment - Non-parole period of 9 years - Whether sentencing judge proceeded on adverse finding not open beyond reasonable doubt - Applicant in protective custody at time of sentence - Whether sentence manifestly excessive - Appeal grounds arguable - Leave to appeal refused as no reasonable prospect total effective sentence would be reduced - Criminal Procedure Act 2009 s280(1)(b).

Till, James v The Queen

Whelan JA

[\[2017\] VSCA 224](#)

29/08/2017

CRIMINAL LAW - Leave to appeal - Sentence - Making threat to kill - Arson - Guilty pleas - Total effective sentence 3 years imprisonment - Non-parole period of 2 years - Whether manifestly excessive - Youth of offender - Leave to appeal refused.

Kladaric, James Roy v The Queen

Whelan JA

[\[2017\] VSCA 225](#)

29/08/2017

CRIMINAL LAW - Sentencing - Application for leave to appeal - Conspiracy to defraud - Receiving a secret commission - Total effective sentence of eight years' imprisonment - Non-parole period of six years - Manifest excess - Gravity of offending - Parity - Leave to appeal granted.

Ooi, Albert Hoe v The Queen

Tate JA

[\[2017\] VSCA 221](#)

30/08/2017

NEGLIGENCE - Duty of care - Footballer injured on fence taking mark - Whether boundary line adequate distance from fence - Whether trial judge erred in analysis of evidence - Rehearing - Whether evidence establishes breach of duty of care - Competing inferences - Applications for leave to appeal granted - Appeals dismissed - Wrongs Act 1958 s14B - *Devries v Australian National Railways Commission* (1993) 177 CLR 472 - *Romeo v Conservation Commission (NT)* (1998) 192 CLR 431 - *NRMA Insurance Ltd v B & B Shipping and Marine Salvage Co Pty Ltd* (1947) 47 SR (NSW) 273. ***Beumaris Football Club; South Metro Junior Football League v Hart, Beau and Bayside City Council. And between: Bayside City Council v Hart, Beau; Beumaris Football Club and South Metro Junior Football League***

Osborn JA, Beach JA, and Kaye JA

[\[2017\] VSCA 226](#)

30/08/2017

PRACTICE AND PROCEDURE - Security for costs - Leave to appeal - By company and natural person as plaintiffs in proceeding - Company likely unable to pay costs order - Security sought against company only - Discretion to order - Supreme Court (General Civil Procedure) Rules 2015 r64.38(4).

Bodycorp Repairers P/L and Murdaca, Antonio v Australian Associated Motor Insurers Ltd trading as AAMI & Ors

Whelan and Hansen JJA

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

25/08/2017

ROADS - Principles for determining whether land dedicated as a public highway through long and continuous use by public - Laneway adjacent to applicants' land - Presumption of dedication arose - Presumption not rebutted by granting of easement over laneway to applicants and owners of land on other side of laneway.

ROADS - Dedication of land as a public highway - Statutory body - Principles for determining whether statutory body has power to dedicate land as a public highway - Whether dedication incompatible with statutory objects of body or purposes for which land vested in it - Whether dedication interfered with performance of body's statutory responsibilities - *E A Clark and Son Pty Ltd v The Melbourne Harbor Trust Commissioners* (1903) 29 VLR 467 considered.

ROADS - Para (ca) of definition of 'road' in Local Government Act 1989 s 3(1) - Definition of 'public road' in Road Management Act 2004 s 17 - Whether registration of laneway on local council's register of public roads sufficient to satisfy s 17(1)(e) of 2004 Act.

ROADS - Definition of 'road' in Local Government Act 1989 s 3(1) - Inclusive definition - Whether status of laneway as a public highway sufficient - Whether laneway 'a right of way' under para (b) of definition.

PRACTICE AND PROCEDURE - Whether applicants should be permitted to rely on a point not argued at trial.

Anderson, John Raymond and Anderson, Demitra v City of Stonnington and Victorian Rail Track

Warren CJ, Maxwell P and Kyrou JA

[\[2017\] VSCA 229](#)

1/09/2017

SUPERANNUATION - Appeal - Construction of superannuation trust deed and rules - Benefit entitlements - Whether recall payments made to members of defined benefit scheme are salary for the purpose of determining superannuation entitlements - Hospitals Superannuation Act 1988 - First Superannuation Act 1992 (NSW) - Practical and purposive approach to interpretation of superannuation schemes - Ansett Australia Ground Staff Superannuation Plan Pty Ltd v Ansett Australia Ltd (2002) 174 FLR 1; Stevens v Bell [2002] EWCA Civ 672, considered - Leave to appeal granted - Appeal dismissed.

FSS Trustee Corporation (ACN 118 202 672) v Eastaugh, Garry Robert and Alfred Health

Tate and Santamaria JJA, Keogh AJA

[\[2017\] VSCA 218](#)

29/08/2017

Commercial Court

COMPANIES - Winding up - Application for directions by liquidators of trustee company under s479(3) of the Corporations Act 2001 (Cth) - Application of s556 in doubt - Whether liquidators may have access to trust assets for remuneration, costs and expenses pursuant to trust principles in *Re Suco Gold Pty Ltd (in liq)* (1983) 33 SASR 99 and/or the salvage principles in *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 - Whether appropriate to make declaration under s1318(2) of the Corporations Act 2001 (Cth) or s67 of the Trustee Act 1958 (Vic) in respect of payments purportedly made under s556 - Appropriate priority between unsecured creditors and unitholders - Whether appropriate to deduct amount owed by unitholder pursuant to *Cherry v Boulton* (1839) 4 Myl & Cr 442; (1839) 41 ER 171.

In the matter of Mackie Group P/L (in liquidation) (ACN 006 524 456) (in its capacity as trustee of the Jupelina Unit Trust) Jess, Matthew James and Burness, Paul Andrew in their capacity as liquidators of Mackie Group P/L (in liquidation) (ACN 006 524 456) and Mackie Group P/L (in liquidation) (ACN 006 524 456) (in its capacity as trustee of the Jupelina Trust)

Kennedy J

[\[2017\] VSC 477](#)

01/09/2017

CORPORATIONS - Corporations Act 2001 (Cth), s459 - Application to set aside statutory demand by reason of alleged genuine dispute in respect of the debt - Plaintiff's case inconsistent with undisputed contemporaneous documents and records in relation to subject transactions - Finding that alleged dispute was not bona fide and was spurious - Plaintiff failed to establish the existence of genuine dispute - Application dismissed.

Soper Industries P/L (ACN 165 224 788) v Toll Transport P/L (ACN 006 604 191)

Gardiner AsJ

[\[2017\] VSC 524](#)

01/09/2017

CORPORATIONS ACT 2001 (Cth) - Application by liquidator for assessment of remuneration under Corporations Act 2001 (Cth) section 473(3) - Factors set out in section 473(10) - Complexity of liquidation - Time-based method of calculating remuneration.

CORPORATIONS ACT 2001 (Cth) - Relevant amendments occasioned by Insolvency Law Reform Act 2016 (Cth) - Insolvency Practice Schedule (Corporations) Division 60 - sections 60-10(1)(c) and 60-12 - Repeal of sections 473(3) and 473(10) - Timing of commencement of amendments - Other transitional arrangements.

CORPORATIONS REGULATIONS 2001 (Cth) - Regulations 10.25.01 and 10.25.02 - Deferred commencement machinery - Other transitional arrangements.

In the matter of Allston Homes P/L ACN 006 804 997 (in liquidation). Georges, George in his capacity as liquidator of Allston Homes P/L (In Liquidation) (ACN 006 804 997)

Hetyey JR

[\[2017\] VSC 500](#)

29/08/2017

CORPORATIONS - Claim for damages filed in County Court - Defendant company in liquidation - Creditors' voluntary winding up - Leave to proceed not sought - Prior to or at time of filing the County Court proceeding - Corporations Act 2001 (Cth) s500(2) - Discretion to grant leave to proceed - Limitation of action - Interference with substantive rights - Company subsequently deregistered - Application for reinstatement combined with the application for leave to proceed - Corporations Act 2001 (Cth), s601AH - Whether any utility.

In the matter of Fuji Fuels P/L (ACN 116 728 922)(in liq) (Deregistered). FF (R&D) P/L (ACN 132 746 340) v Australian Securities and Investments Commission

Randall AsJ

[\[2017\] VSC 482](#)

18/08/2017

CORPORATIONS - Company limited by guarantee - Resignation as director - Requirement for writing - Membership - Directors resolving to admit to membership based upon the nomination or wishes of deceased member - Constitution provided for membership to cease on death - Constitution required that applicant for membership must be proposed by another member - Application for membership to be made in writing and signed by the applicant and his or her proposer - Proposal contained in will - Proposer deceased - Irregularity - Corporations Act 2001 (Cth), s1322 - Validation.

Donkey Wheel Ltd (ACN 109 045 650) v Brunner, Mark Jonathan Irving

Randall AsJ

[\[2017\] VSC 462](#)

11/08/2017

CORPORATIONS - Whether to set aside statutory demand - Corporations Act 2001 (Cth), s459G - Whether affidavit accompanying originating process to set aside statutory demand is a supporting affidavit - Supporting affidavit filed outside of 21 day period - Whether supporting affidavit can be supplemented.

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

Efthim AsJ

[\[2017\] VSC 484](#)

24/05/2017

EVIDENCE - Privilege - Privilege against self-incrimination - Plaintiff's application for certificate - Whether plaintiff is compellable to give evidence in chief - Whether plaintiff "objects" - Application refused - Evidence Act 2008 (Vic), s128.

De Lutis, Paul v De Lutis, Colin & Ors

Elliott J

[\[2017\] VSC 505](#)

28/08/2017

PRACTICE AND PROCEDURE - Appeal from an Associate Justice to the Trial Division - Costs - Indemnity costs against a litigant in person - Where plaintiff's case was doomed to fail - Circumstances in which a first instance decision on costs ought to be disturbed - History of civil juries - Whether a party has a right or entitlement to a civil jury - *Bhagat v Royal and Sun Alliance Life Assurance Australia Ltd* [2000] NSWSC 159 - *Gerlach v Clifton Bricks Pty Ltd* (2002) 209 CLR 478 - *Vink v Tuckwell* (2008) 67 ACSR 547 - *Spotless Group Ltd v Premier Building and Consulting Pty Ltd* [2008] VSCA 115 - *Macedon Ranges Shire Council v Thompson* (2009) 170 LGERA 41 - *Matthews v SPI Electricity Pty Ltd* (Ruling No 8) (2012) 35 VR 643 - *Quach v Health Care Complaints Commission (No 2)* [2015] NSWCA 311 - *Neil v Nott* (1994) 68 ALJR 509 - Commonwealth Constitution 1901 s80 - Supreme Court (General Civil Procedure) Rules 2015 r47.02.

Raptis, Thanasis v City of Melbourne and 333 Choice Properties P/L

Croft J

[\[2017\] VSC 488](#)

30/08/2017

PRACTICE AND PROCEDURE - Application for extension of freezing orders - No material adduced in opposition - Extension granted with appropriate amendments given pre-existing orders under the Confiscation Act 1997 (Vic) - Supreme Court (General Civil Procedure) Rules 2015 O37A.

Deputy Commissioner of Taxation v Arico, Antonio and Arico, Antonia

Kennedy J

[\[2017\] VSC 453](#)

07/08/2017

PRACTICE AND PROCEDURE - Consideration of separate hearings or split trial - Risk of cross-examining the same witness twice on issues of credit - Appropriateness of all issues of credit being heard at the same time - Consideration of meaning of 'objective' intention.

Adaz Nominees P/L (ACN 006 228 119) as trustee for The Rado No 2 Trust and others according to the Schedule v Castleway P/L (ACN 131 870 481) as trustee for The Castleway Trust and another according to the Schedule

Robson J

[\[2017\] VSC 517](#)

28/08/2017

PRACTICE AND PROCEDURE - Mode of trial - Separate or split determination of liability before trial on quantum of damages - Applicable considerations - Joint venture dispute - Substantial issues on liability - Claim for account of profits - Order made to separate trial of liability and quantum for separate determinations - Supreme Court (General Civil Procedure) Rules 2015, r47.04.

Paz Stone P/L v Crocitti, Vincenzo; Marsili, Guilio; Top Cat Installations P/L and Stone Innovations Australia P/L

Mukhtar AsJ

[\[2017\] VSC 492](#)

25/08/2017

PRACTICE AND PROCEDURE - Summary judgment - Whether defence and counterclaim disclose a reasonable defence and cause of action and the defect cannot be cured by amendment - Defendant has no real prospect of success - Civil Procedure Act 2010 s61, s62 and s63 - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27 - Effect of promissory note proffered by defendant - Australian and New Zealand Banking Group Limited v Evans, Evans v Esanda Finance Corporation Limited [2016] NSWSC 1742 - Application for summary judgment allowed - Court's approach where defendant is unrepresented - Trkulja v Markovic [2015] VSCA 298.

Between: Permanent Custodians Ltd (ACN 001 426 384) v Sanders, Warren Bruce (by counterclaim) And Between: Sanders, Warren Bruce v Permanent Custodians Ltd (ACN 001 426 384); Australian First Mortgage P/L (ACN 079 790 364); ING Bank (Australia) Ltd (ACN 000 893 292); Dover, Steven; Grippo, Tracey; Apikian, Sonia and Gadens Lawyers (ABN 29 991 935 627)

Matthews JR

[\[2017\] VSC 516](#)

01/09/2017

Common Law Division

ADMINISTRATIVE LAW - Administrative decisions - Victorian Civil and Administrative Tribunal ('VCAT') - Jurisdiction of the VCAT under the Domestic Building Contracts Act 1995 - Leave to appeal - Extension of time - Delay - Unrepresented litigant in VCAT hearing - Failure to pay amounts in consent order - Misunderstanding whether sole director and registered building practitioner personally liable - Domestic Building Contracts Act 1995 s55(1)(a) - Victorian Civil and Administrative Tribunal Act 1998 s93, s148(1) - Application dismissed.

Falaras, Spiros v Gouletsas, Ilias

Keogh J

[\[2017\] VSC 495](#)

31/08/2017

APPEALS - Application for leave to appeal and appeal of a decision of VCAT to suspend a medical practitioner's registration to practise - Question of Law - Whether Tribunal made findings that were not open on the evidence - Health Practitioner Regulation National Law (Vic) Act 2009, s156(1)(a)(ii) - Secretary to the Department of Premier and Cabinet v Hulls [1999] 3 VR 331 applied - S v Crimes Compensation Tribunal [1998] 1 VR 83 applied - Kozanoglu v Pharmacy Board of Australia [2012] 36 VR 656 applied - Victorian Civil and Administrative Tribunal Act 1998, s148 - Leave to appeal granted, appeal dismissed.

Al Raheb, Dr Eiman v Medical Board of Australia

Ierodiamonou AsJ

[\[2017\] VSC 494](#)

24/08/2017

APPLICATION TO DISCHARGE A JURY - Negligence - Jury trial - Principles applicable to discharging a jury - Closing address of defendant's counsel - Loss of opportunity to lead evidence - Significant prejudice suffered by the plaintiff - Continuation of trial by judge alone - Obligations under the Civil Procedure Act 2010 (Vic) - Halligan & Ors v Curtain & Ors [2013] VSC 124 - Reza v Summerhill Orchards Ltd (2013) 37 VR 204 - Trevor Roller Shutter Services Pty Ltd v Crowe [2011] VR 249.

Love, Darren v Transport Accident Commission

Zammit J

[\[2017\] VSC 491](#)

23/08/2017

COSTS - Appeal from ruling of Associate Justice dismissed - Whether Court should make costs order in favour of non-party - No exceptional circumstances warranting a costs order to be made in favour of non-party - Supreme Court Act 1986 s24.

Gorman and Kelly Commercial Real Estate P/L (ACN 063 958 449) and Gorman and Kelly Commercial Property Management P/L (ACN 085 622 975) v Peluso, Sandro and Brjzovsky, Jesse (No 2)

McDonald J

[\[2017\] VSC 481](#)

21/08/2017

COSTS - Offers of compromise - Non-disclosure of relevant documents - Failure to discover relevant documents in earlier proceeding - 'High-handed' conduct - Indemnity costs ordered - National Australia Bank Ltd v Petit-Breuilh (No 2) [1999] VSC 395 considered.

Hera Project P/L (ACN 163 685 041) v Bisognin, Gino Andrew and Bisognin, Leah Joan (No 7)

Riordan J

[\[2017\] VSC 439](#)

29/06/2017

COSTS - Proceeds of crime - Applications for examination - Non-disclosure order - Relevance of evidence of negotiations - Relevance of form of proposed order - Whether costs should be taxed forthwith.

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. (No 2)

Riordan J

[\[2017\] VSC 502](#)

29/08/2017

COSTS - Whether costs should be taxed immediately or when proceeding has ended - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r63.20.1 - Dale v Clayton Utz (No 3) [2013] VSC 593 - Setka v Abbott (No 2) [2013] VSCA 376.

Cicmilovic, Daniela v Renwick, Peter Gerard (as Executor of the Estate of Veronica Smagala, deceased) and Registrar of Titles

McMillan J

[\[2017\] VSC 498](#)

29/08/2017

COSTS - Where plaintiff and defendant seek costs from a non-party - Where non-party from a related proceeding acted unreasonably and caused costs and delay in this proceeding - Supreme Court (General Civil Procedure Rules) 2015, r63.02 - Bischof v Adams [1992] 2 VR 198 - Re Bonlac Foods Ltd [2001] VSC 75.

Richards, Eva v Tiernan, Damien (who is sued as executor of the will of the deceased, Schaja Ruschinek)

McMillan J

[\[2017\] VSC 497](#)

25/08/2017

DEFAMATION - Offers to make amends - Whether offer capable of acceptance - Application for defendants to pay expenses reasonably incurred - Defamation Act 2005 (Vic) s17(2) - Pingel v Toowoomba Newspapers Pty Ltd [2010] QCA 175 - Ballas v Theophilos (No 2) (1957) 98 CLR 193.

In the matter of Sections 17(2)(a), 17(2)(b) and 17(3)(b) of the Defamation Act 2005 (Vic). Between Barrow, David Charles v Ackland, Richard Alan. And In the matter of Sections 17(2)(a), 17(2)(b) and 17(3)(b) of the Defamation Act 2005 (Vic). Between Barrow, David Charles v Gibson, Judith Clare

Matthews JR

[\[2017\] VSC 485](#)

02/08/2017

DEFAMATION - Pleading - Publication of radio interview - Whether material published is capable of giving rise to imputation pleaded in further amended statement of claim - Franchise Central & Ors v Fairfax Media & Anor [2011] VSC 379 - Whether pleading is impermissibly vague - Trkulja v Google Inc LLC [2010] VSC 226 - Whether imputation pleaded represented the final distillation of the alleged defamatory meaning.

Tsamis, Martha v The State of Victoria

Keogh J

[\[2017\] VSC 496](#)

31/08/2017

DEFAMATION - Pleadings - Application to strike out statement of claim - Whether imputation of hypocrisy capable of arising - Whether elements of hypocrisy sufficiently temporally connected - *McMillan v the Federal Capital Press of Australia Pty Ltd* [2016] ACTSC 286 - Whether pleading impermissibly rolls up allegations - Whether pleading is impermissibly vague - *Trkulja v Google Inc Llc* [2010] VSC 226 - Whether pleading is impermissibly ambiguous - Supreme Court (General Civil Procedure) Rules 2015 r23.02(c) - Civil Procedure Act 2010 s48.

Fenn, Ashley and Ethan Affordable Housing Ltd (ACN 135 818 245) v Australian Broadcasting Corporation

Keogh J

[\[2017\] VSC 486](#)

31/08/2017

JUDICIAL REVIEW - Criminal Law - Application for order in the nature of certiorari quashing orders made by the County Court of Victoria finding the plaintiff guilty of contravening the Long Service Leave Act 1992, sub-s72(2) - Whether error on the face of the record or jurisdictional error - *Craig v South Australia* (1995) 184 CLR 163; *Gurappaji v Tonkin* [2015] 45 VR 324.

INDUSTRIAL LAW - Long Service Leave Act 1992 - Entitlement to long service leave after 10 years continuous employment with one employer - Failure to pay long service leave entitlements on the day the employment ended - Limitation period for prosecution for contravention one year - Prosecution commenced more than one year after the day the employment ended - Whether continuing offence - Whether jurisdiction in the Industrial Division of the Magistrates' Court of Victoria under the Long Service Leave Act 1992 - *R v Industrial Appeals Court; Ex part Barelli's Bakeries Pty Ltd* [1965] VR 615; *R v Industrial Appeals Court; Ex parte Circle Realty Pty Ltd* [1980] VR 459.

Joseph, David v Worthington, Jayne (Department of Economic Development, Jobs, Transport and Resources) and The County Court of Victoria

Derham AsJ

[\[2017\] VSC 501](#)

29/08/2017

JUDICIAL REVIEW - Decision of VCAT - Building dispute involving 'cost plus contract' and provision of estimate - Alleged misleading and deceptive conduct in provision of estimate - Whether failure to consider evidence of inducement and loss given 'cost blowout' - Whether failure 'to apply the law of negligence' - Whether question of law raised in relation to alleged common law claim for delay damages - Whether discretion miscarried in refusing amendment - No merit to the extent any question of law was raised - Leave refused - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148.

Gaycel P/L (ACN 007 425 621) and 1A Enfield St, St Kilda P/L (ACN 145 050 255) v Heski Carpenters P/L (ACN 102 685 745) and Eski, Amet

Kennedy J

[\[2017\] VSC 450](#)

18/08/2017

LEGAL PRACTITIONERS - VCAT recommendation that lawyer's name be removed from the roll of practitioners - Application that practitioner's name be removed - Professional misconduct - Dealings with clients and other solicitors - Failing to provide full explanation of his conduct to the Legal Services Commissioner - Failing to comply with previous orders of VCAT - Previous professional disciplinary history - Order that practitioners name be removed from the roll - Legal Profession Uniform Law s23(1)(c). ***Victorian Legal Services Commissioner v Spaulding, Lewis James (No 3)***

Ginnane J

[\[2017\] VSC 510](#)

28/08/2017

PERSONAL INJURY - Foreign State Immunity - Separate entities - Foreign States Immunities Act 1985 (Cth) - Jurisdiction of Supreme Court - Motor vehicle accident in Fiji - Whether judgment in default of appearance be permitted to stand given terms of s9 of the Foreign States Immunities Act 1985 (Cth) - Whether Attorney-General and Commissioner of Police are foreign States for the purposes of the Act - Consideration of sections 3, 9, 13 and 22 of the Act.

Vale, Irwin v Daumeke, Amani; Commissioner of Police (of the Fiji Police Force); Attorney General of Fiji; Prasad, Virendra and Sun Insurance

J Forrest J

[\[2017\] VSC 467](#)

22/08/2017

PLANNING AND ENVIRONMENT - Application for leave to appeal and appeal from the Victorian Civil and Administrative Tribunal under s148 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) - Acquisition of residential units - Land Acquisition and Compensation Act 1986 (Vic) s36 - Two notices of acquisition gazetted - Whether the notices require the units and the common property to be valued separately - Construction of notices of acquisition - Applying the 'technical meaning' of words - Whether the Tribunal erroneously construed the notices - Owners Corporation Act (Vic) s11, s14 - Subdivision Act 1988 (Vic) s27A, s31, s31A, s32 - Transfer of Land Act 1958 (Vic) s27 - Application for leave to appeal granted and appeal allowed.

The Secretary to the Department of Economic Development, Jobs, Transport and Resources v Lee, Kin (and others according to the Schedule)

Emerton J

[\[2017\] VSC 504](#)

30/08/2017

PRACTICE AND PROCEDURE - Application for approval of settlement of group proceeding - Supreme Court Act 1986 Part 4A - Whether terms of settlement are fair and reasonable - Whether settlement distribution scheme is fair and reasonable - Whether amount for legal fees and disbursements reasonable - 'Mickleham bushfire class action' - Settlement approved but quantum of costs not approved.

Williams, Steven Elliot v AusNet Electricity Services P/L (ACN 064 651 118) & Ors (according to Schedule)

Emerton J

[\[2017\] VSC 474](#)

28/08/2017

PRACTICE AND PROCEDURE - Approval of compromise of a person under a disability - Obtaining copies of documents filed in a proceeding - Presumption in favour of inspection of all documents on a court file - Rule 28.05(2) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Open Courts Act 2013 (Vic) - Civil Procedure Act 2010 (Vic) - Confidentiality of some documents kept on court file - Whether genuine public interest in material - Redaction of parts of the order approving the compromise - Confidentiality of materials used in support of the application for approval of compromise - Continuation of pseudonym order.

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

J Forrest J

[\[2017\] VSC 476](#)

24/08/2017

PRACTICE AND PROCEDURE - Victorian Civil and Administrative Tribunal - Natural justice - Whether conduct of proceeding causing disadvantage - Criteria for determination of proceeding in the absence of appearance by respondent - Victorian Civil and Administrative Tribunal Act 1998 s78, s97, s98 and s102.

Primrose Meadows P/L (ACN 089 757 755) v River View P/L (ACN 071 155 943)

Croft J

[\[2017\] VSC 487](#)

30/08/2017

PROPERTY LAW - Application under s49(1) Property Law Act 1958 - Meaning of condition enuring for the benefit of the purchaser under Sale of Land Act 1962 s27(2) - Whether rescission notice is ineffective?

STATUTORY INTERPRETATION - Applicable principles - Beneficial legislation for protection of purchasers of land.

CONTRACT - Principles of interpretation of commercial contracts - Categories of contractual terms - Implication of terms.

In the matter of section 49(1) of the Property Law Act 1958 (Vic). Aurumstone P/L (ACN 167 090 388) v Yarra Bank Developments P/L (ACN 082 918 027) (as trustee for the Paul Lofitis Unit Trust No 2)

Riordan J

[\[2017\] VSC 503](#)

29/08/2017

REMEDIES - Orders made in furtherance of specific performance - Issue estoppel - Time for compliance extended to allow unsuccessful party to make an application for a stay.

Hera Project P/L (ACN 163 685 041) v Bisognin, Gino Andrew and Bisognin, Leah Joan (No 6)

Riordan J

[\[2017\] VSC 438](#)

29/06/2017

TRUSTS, EQUITY AND PROBATE - Defendant given power of attorney for elderly parents - Defendant appointed as administrator of her father's estate under Guardianship and Administration Act 1986 (Vic) Part 5 - Defendant borrowed money from her father and mother - Written loan agreements - Whether loans forgiven - Defendant withdrew moneys from mother's and father's bank accounts to use for her own purposes - Whether defendant must repay money to father's estate.

In the matter of the Estate of Ryan, Ronald Keith. Between Ryan, Ronald Keith (who sues by his Administrator Brett Ronald Ryan) v Ryan, Karen June (in her own capacity and as attorney pursuant to enduring powers of attorney granted by Ronald Keith Ryan and Shirley Jean Ryan on 22 July 2011, as former Administrator of the Estate of Ronald Keith Ryan and as Executor of the Deceased Estate of Shirley Jean Ryan)

Emerton J

[\[2017\] VSC 490](#)

30/08/2017

WILLS AND ESTATES - Application by plaintiff to have an unsigned and unwitnessed will admitted to probate - Whether original will lost and presumption of revocation 'animo revocandi' applies - Whether testator intended the unsigned and unwitnessed informal will to be his will - Wills Act 1997, s7, s9 - Re Stuckey [2014] VSC 221.

PRACTICE AND PROCEDURE - Whether notice pursuant to s67 Evidence Act 2008 is reasonable - Notice served three business days prior to hearing - Puchalski v R - Singh v New Ridge Property Group Pty Ltd - Whether s9(3) Wills Act 2008 overrides the hearsay provisions of the Evidence Act 1997 - Provisions of respective Acts to be read together.

In the matter of the Will and Estate of Westwood, Donald Alfred, deceased. Cook, Susan Gail v Westwood, John Frederick and Doyle, Lynette Mary

Ierodiaconou AsJ

[\[2017\] VSC 509](#)

31/08/2017

Criminal Division

CRIMINAL LAW - Application for bail - Aggravated burglary and other offences - Applicant in 'show cause situation', having been charged with aggravated burglary and indictable offence in the course of which the use of a firearm was threatened - Whether parity with co-offender who had been granted meant bail should be granted - Whether unacceptable risk of committing an offence whilst on bail and endangering the safety or welfare of members of the public - Applicant facing serious charges - Co-offender played lesser role in offence and had dependent children - Bail refused.

In the matter of the Bail Act 1977 (Vic) and In the matter of an application for Bail by Kremmos, Constantinos

Weinberg ACJ

[\[2017\] VSC 512](#)

29/08/2017

CRIMINAL LAW - Application for bail - Bail refused by magistrate who imposed short term of imprisonment - Applicant lodged appeal against sentence to County Court and sought bail pending appeal - Magistrate erred in holding that applicant required to show "exceptional circumstances" - Position of applicant differed from that of offender sentenced in County Court - Prima facie entitlement to bail - Bail not opposed - Bail granted.

In the matter of the Bail Act 1977 (Vic) and In the matter of an application for Bail by Searancke, Tyson

Weinberg JA

[\[2017\] VSC 489](#)

22/08/2017

CRIMINAL LAW - Sentence after trial for murder - Manslaughter by unlawful and dangerous act - Offending aggravated by offender arming himself with firearm when prohibited person - Weight given to offer to plead guilty to manslaughter - Remorse - Nine years imprisonment with seven years non-parole period.

Director of Public Prosecutions [DPP] v McDonald, Scott

Jane Dixon J

[\[2017\] VSC 465](#)

14/08/2017

CRIMINAL LAW - Sentence - Murder - Incitement to murder - Pleas of guilty - Victim abducted and tortured - Prisoner on the sex offender register - Offences committed whilst on parole - Remorse - Subjective and objective elements - Poor prospects of rehabilitation - Serious violent offender - Community protection - Sentence of life imprisonment - Non-parole period - Considerations in fixing - Minimum term - Declined - Prisoner sentenced to life without parole - Sentencing Act 1991 (Vic) s6F and s11.

The Queen v Cardamone, Michael

Lasry J

[\[2017\] VSC 493](#)

25/08/2017

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.

CONTRACTS - Agreement to share estate agent's commission - Whether obligation to share arose - Application of rule in *Jones v Dunkel* - Whether commission payment prohibited by Estate Agents Act 1980 (Vic).

Oliver Hume (Vic) Pty Ltd v Santa Monica (Aust) Pty Ltd

[\[2017\] VCC 1138](#)

Judge Woodward

23/08/2017

PRACTICE AND PROCEDURE

Commonwealth Bank of Australia v Tahiri & Anor

[\[2017\] VCC 1160](#)

Judge Woodward

23/08/2017

PRACTICE AND PROCEDURE - Application to amend defence and counterclaim and to join further parties - Conspiracy allegations - Necessary elements - Leave given to make some of the amendments sought and to join one of the proposed further parties.

Scandi International Pty Ltd & Anor v Larkfield Industrial Estate Pty Ltd

[\[2017\] VCC 1153](#)

Judge Marks

22/08/2017

PRACTICE AND PROCEDURE - Pre-trial discovery - Application by plaintiff for discovery of documents.

Young v Elliott & Anor (Ruling)

[\[2017\] VCC 1135](#)

Judge Cosgrave

18/08/2017

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 power - State Parliaments - State Courts - Parliamentary privilege - Institutional integrity - Supervision - Commonwealth Constitution - *Kable v Director of Public Prosecutions (NSW)* - Australia.

Carney, G. "The exercise of judicial power by State Parliaments." (2017) 44(2) *Aust Bar Rev* 204-220.

Ministerial diary - Freedom of information - Disclosure - Transparency - Freedom of Information Act 2000 (UK) - UK.

Dobson, N. "Whose diary is it anyway?" (2017) 167(7756) *NLJ* 14-15.

Courts

Artificial intelligence - Technology - Forecasting - Data analytics - Legal services - Legal education - Judicial decision making - Expert systems - Machine learning - Australia.

Moses, L. (2017) 91(7) *ALJ* 561-574.

Juries - Jury trials - UK.

Rogers, M. "Hallett LJ: Use juries in 'serious' cases only." (2017) 161(21) *Sol J* 9.

Criminal Practice & Procedure

Judicial review - Reasonableness standard - Prosecutorial discretion - James Spigelman Oration 2016 - UK - Canada - NSW - Australia.

Justice Virginia Bell. "Judicial legitimacy and the limits of review." (2017) 44(7) *Brief* 8-13.

Murder - Manifestly unjust - Court of Appeal - Standards of justice - Three strikes - *R v Harrison*; *R v Turner* - Sentencing Act 2002 (NZ), s102, s86 - NZ.

Condor, T. "Manifestly unjust." [2017] (July) *NZLJ* 213-317.

Non-adversarial justice - Therapeutic jurisprudence - Civil justice system - Family Violence Courts - Second International Conference on Non-adversarial Justice: Integrating Theory and Practice - WA - Australia.

Justice W. Martin. "Reflecting on the practice of non-adversarial justice." (2017) 44(7) *Brief* 39-44.

Sentencing - Rehabilitation - Instinctive synthesis - Transparency - Consistency - Methodology - Law reform proposals - NZ - Australia.

Bagaric, M. and T. Alexander. "Taking rehabilitation seriously in sentencing: transforming it from an expedient to a sentencing principle." (2017) 27(3) *NZULR* 654-689.

International Law

Nuclear weapons - Marshall Islands - *Marshall Island v UK* - International Court of Justice - UK.

Alvarez-Jimenez, A. "The international law gaze: *Marshall Island v United Kingdom*." [2017] (July) *NZLJ* 222-226.

Legal Education

Technology - Legal profession - Legal academia - Study - Legal research - Courts - Australia.

Size, R. "Taking advantage of advances in technology to enhance the Rule of Law." (2017) 91(7) *ALJ* 575-587.

Practice & Procedure

Courts - Binding decisions - NSW District Court - Court of Criminal Appeal NSW - Fleming v White - Keramaniakis v Wagstaff - NSW - Australia.

Jones, O. "Should Supreme Courts bind District Courts?" (2017) 44(2) Aust Bar Rev 126-143.

Jury verdicts - Appeals - Negligence - Breach of duty - Common practice - Mercer v Commissioner for Road Transport and Tramways - Australia.

Lunney, M. "Common practice, breach of duty and jury trials: the history of Mercer v Commissioner for Road Transport and Tramways (1936)." (2017) 44(2) Aust Bar Rev 144-159.

Property Law

Torrens system - In personam - Immediate indefeasibility - Australia.

Gummow, W. "The in personam exceptions to Torrens indefeasibility." (2017) 91(7) ALJ 549-560.

Torts

Contract - Concurrent liability - Concurrence - Incident rules - Henderson v Merrett Syndicates Ltd - Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd - Wellesley Partners LLP - Australia - UK.

Yihan, G. and M. Yip. "Concurrent liability in tort and contract: an analysis of interplay, intersection and independence." (2017) 24(2) Torts L J 148-172.

Twitter - Libel - Harassment - Lord McAlpine of West Green v Bercow - UK.

Aamodt, A. "Media law update." (2017) 167(7755) NLJ 13-14.

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