



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
September 15  
2017

## Library News

### 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.

### Supreme Court Library tour

Tuesday 26 September, 1:15pm - 2:15pm

Take a tour and get to know the history, architecture and collection of the Supreme Court Library. This 60 minute tour 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.

For more information about these and other events, please email [libraryevents@supcourt.vic.gov.au](mailto:libraryevents@supcourt.vic.gov.au), or visit [www.lawlibrary.vic.gov.au](http://www.lawlibrary.vic.gov.au).

### 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](mailto:llv@courts.vic.gov.au)

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



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

03 9603 6282 for details.

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

# Contents

<b>Research guidance</b>		<b>3</b>
Round brackets v Square brackets	3	
Victorian Reports	3	
Medium Neutral Citation	3	
<b>New Books</b>		<b>4</b>
<b>Legislation</b>		<b>5</b>
Victorian Bills	5	
Victorian Assents	5	
Proclamations	5	
<b>High Court Cases</b>		<b>6</b>
<b>Victorian Supreme Court Cases</b>		<b>9</b>
Court of Appeal	9	
Commercial Court	15	
Common Law Division	17	
Criminal Division	24	
<b>County Court of Victoria Cases</b>		<b>26</b>
<b>Magistrates' Court of Victoria Cases</b>		<b>27</b>
<b>Articles</b>		<b>28</b>
Administrative Law	28	
Constitutional Law	28	
Courts	28	
Criminal Law & Procedure	28	
Evidence	28	
Family Law	29	
Human Rights	29	
Legal Profession	29	
Medical Law	29	
Practice & Procedure	29	
Technology	29	

# Research guidance

## Round brackets v Square brackets

It is essential when citing a case to use the correct brackets around the year, (round) or [square]. Understanding this difference in a case citation also ensures you correctly locate the volume containing the case on the shelf.

A case citation with round or square brackets is depended on the individual law report series published by the legal publishers and how the report series is then cited.

## Round brackets ()

Citations containing round brackets for the year indicate the law report series have a volume sequence and are not published in year order. For these citations you do not need to know the year of the case to locate the correct volume.

Muscat v Douglas (2006) 233 ALR 131

Attorney-General v Andrews (2007) 233 ALR 389

These two cases were both in volume 233 of the Australian Law Reports, even though the judgments were from different years.

## Square brackets []

Citations containing square brackets for the year indicate the year is an essential part of locating the right volume. Some law reports have more than one volume per year, numbered 1, 2, 3. So to find the correct volume containing your case you will need the year or you won't know if the case is in volume 1 or volume 3 for instance:

Cachi v Faluyi [2002] 1 All ER 192

This case is dated 27 June 2001 but was published in 2002.

## Victorian Reports

From 1956 to 1999 the Victorian Reports use square brackets for citations. Where multiple volumes were produced during a year, volume numbering started at 1 for each year [1991] 1 VR, [1992] 2 VR. From 2000 the Victorian Reports started continual numbering and so now use round brackets. (2000) 1 VR, (2001) 2 VR.

## Medium Neutral Citation

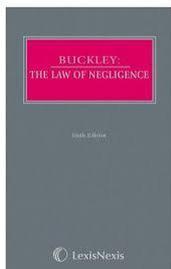
All judgments with medium neutral citations (i.e. unreported judgments) have square brackets, as the year is the essential part of the citation. Example: [2007] VSC 122.

## 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/](https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/).

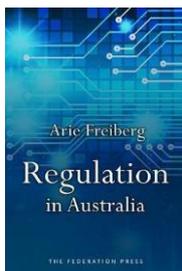
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



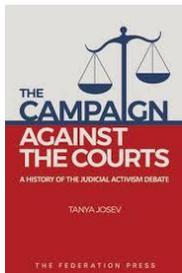
Buckley, Richard A., *Buckley: the law of negligence and nuisance*  
6<sup>th</sup> ed., LexisNexis, London, 2017  
Call number: 346.032 BUC.6 (Supreme Court of Victoria)

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



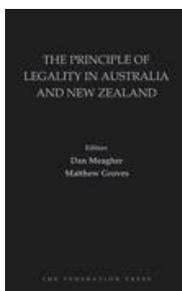
Freiberg, Arie, *Regulation in Australia*  
Federation Press, Annandale, N.S.W., 2017  
Call number: 348.025 FRE (VCAT Library)

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



Josey, Tanya, *The campaign against the courts*  
Federation Press, Annandale, N.S.W., 2017  
Call number: 347.012 JOS (County Court Library)

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



Meagher, Dan and Groves, Matthew (ed), *The principle of legality in Australia and New Zealand*  
Federation Press, Annandale, N.S.W., 2017  
Call number: 349.94 CRI (VCAT 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:

- [Corrections Legislation Further Amendment Bill 2017](#)

## Victorian Assents

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

- [Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017](#) No. 40/2017

## Proclamations

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

- Crimes Legislation Amendment (Public Order) Act 2017 No. 32/2017
  - Sections 1 - 13 of this Act came into operation on 13 September 2017 (SG303 12.9.2017)

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

- Electricity Safety Amendment (Bushfire Mitigation Civil Penalties Scheme) Act 2017 No. 18/2017
  - Section 1-7 of this Act came in by forced commencement on 1 September 2017 s.2(2)
- Family Violence Protection Amendment (Information Sharing) Act 2017 No. 23/2017
  - Section 28 of this Act came in by forced commencement on 1 September 2017 s.2(3)
  - Section 29 of this Act came in by forced commencement on 1 September 2017 s.2(4)
  - Section 30 of this Act came in by forced commencement on 1 September 2017 s.2(5)
- Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017 No. 20/2017
  - Sections 1-135 of this Act came in by forced commencement on 1 September 2017 s.2(3)

# High Court Cases

CONSTITUTIONAL LAW (Cth) - Legislative power of Commonwealth - Constitution, s75(v) - Where s503A of Migration Act 1958 (Cth) prevents Minister for Immigration and Border Protection from being required to divulge or communicate certain information to courts - Whether s503A requires courts to exercise judicial power in manner inconsistent with essential function of courts to find facts relevant to determination of rights in issue - Whether s501(3) and s503A(2) inconsistent with s75(v) of Constitution - Whether s503A(2)(c) denies High Court and Federal Court ability to enforce legislated limits of power - Whether s503A(2)(c) curtails capacity of court to discern and declare whether legal limits of power conferred on Minister observed.

MIGRATION - Jurisdictional error - Power of Minister to cancel visa on character grounds under s501(3) of Migration Act 1958 (Cth) - Where decisions to cancel visas took into account information purportedly protected from disclosure under s503A - Where Minister's understanding of s503A erroneous - Where error was as to whether Minister's decision would be shielded from review by court in so far as based on information protected from disclosure under s503A - Whether decisions invalid as consequence of error.

WORDS AND PHRASES - "authorised migration officer", "character test", "fact-finding", "gazetted agency", "judicial power", "national interest", "protected from disclosure", "protected information", "public interest immunity", "purported exercise of a power", "substantial criminal record". Constitution, s75(v), s77(i), s77(iii). Migration Act 1958 (Cth), s476A, s501, s501A, s501B, s501C, s503A, s503B.

***Graham, Aaron Joe Thomas v Minister for Immigration and Border Protection; Te Puia, Mehaka Lee v Minister for Immigration and Border Protection***

[\[2017\] HCA 33](#)

06/09/2017

CRIMINAL LAW - Criminal procedure - Jury directions - Standard of proof - Where jury directed that Crown required to prove accused's guilt not beyond any doubt but beyond reasonable doubt - Whether such direction error of law - Whether such direction productive of substantial miscarriage of justice.

WORDS AND PHRASES - "any doubt", "beyond reasonable doubt", "fanciful doubt".

***The Queen v Dookheea, Kritsingh***

[\[2017\] HCA 36](#)

13/09/2017

CRIMINAL LAW - Incitement - Aiding, abetting, counselling or procuring - Criminal Code 2002 (ACT), s45, s47 - Where respondent charged with offence of incitement - Where prosecution alleged that respondent intentionally urged another person to procure third person to commit offence of kidnapping - Where offence of kidnapping not committed - Whether respondent urged commission of offence - Whether offence of incitement to procure offence exists under Criminal Code - Whether aiding, abetting, counselling or procuring commission of principal offence a discrete offence.

WORDS AND PHRASES - "discrete offence", "incitement", "incitement to incite", "incitement to procure", "principal offence", "substantive offence". Criminal Code 2002 (ACT), Pt 2.4. Criminal Code (Cth), s11.4. Crimes Act 1914 (Cth), s5, s7A.

***The Queen v Holliday, Aaron James***

[\[2017\] HCA 35](#)

06/09/2017

CRIMINAL LAW - Offence of "[p]ersistent sexual exploitation of a child" - Criminal Law Consolidation Act 1935 (SA), s50 - Where offence comprised of two or more acts of sexual exploitation separated by not less than three days - Where jury required to be unanimous (or agreed by statutory majority) as to same two or more acts of sexual exploitation - Where alleged acts of sexual exploitation ranged from kissing in circumstances of indecency to inserting penis into complainant's mouth - Where jury returned general verdict of guilty by statutory majority - Where not known which alleged acts of sexual exploitation jury agreed had been proved by prosecution - Whether conviction uncertain - Whether judge should have requested special verdict - Whether, after general verdict returned, judge should have asked questions of jury to identify acts of sexual exploitation found to be proved - Whether appellant should have been sentenced on view of facts most favourable to appellant in circumstances where factual basis of jury's verdict unknown.

WORDS AND PHRASES - "acts of sexual exploitation", "actus reus", "course of conduct offence", "extended unanimity", "general verdict", "jury directions", "persistent sexual exploitation of a child", "special questions", "special verdicts". Criminal Law Consolidation Act 1935 (SA), s50.

***Chiro, Marco v The Queen***

[\[2017\] HCA 37](#)

13/09/2017

CRIMINAL LAW - Offence of "[p]ersistent sexual exploitation of a child" - Criminal Law Consolidation Act 1935 (SA), s50 - Where offence requires prosecution to prove two or more acts of sexual exploitation - Whether generalised nature of complainant's evidence meant that not possible to identify two or more acts of sexual exploitation - Whether no case to answer.

CRIMINAL LAW - Permission to appeal - Where orders made included granting application for permission to appeal - Whether majority of Court of Criminal Appeal failed to consider question of permission to appeal.

WORDS AND PHRASES - "acts of sexual exploitation", "distinct occasion", "distinct transaction", "double jeopardy", "extended unanimity", "no case to answer", "particularity", "particulars", "permission to appeal", "persistent sexual exploitation of a child" - Criminal Law Consolidation Act 1935 (SA), s50.

***Hamra, Stephen John v The Queen***

[\[2017\] HCA 38](#)

13/09/2017

MIGRATION - Protection visa - Complementary protection - Cruel or inhuman treatment or punishment - Meaning of "intentionally inflicted" - Degrading treatment or punishment - Meaning of "intended to cause" - Where Refugee Review Tribunal found appellants would likely be imprisoned for short period if returned to Sri Lanka - Where prison conditions in Sri Lanka may not meet international standards - Where definition of "cruel or inhuman treatment or punishment" in s5(1) of Migration Act 1958 (Cth) requires intentional infliction of pain or suffering - Where definition of "degrading treatment or punishment" in s5(1) of Migration Act requires intention to cause extreme humiliation - Whether Sri Lankan officials intend to inflict pain or suffering or cause extreme humiliation - Whether intention established by knowledge or foresight of pain or suffering or extreme humiliation.

WORDS AND PHRASES - "complementary protection regime", "cruel or inhuman treatment or punishment", "degrading treatment or punishment", "foresight of result", "intended to cause", "intention", "intentionally inflicted", "oblique intention". Migration Act 1958 (Cth), s5(1), s36. Criminal Code (Cth), s5.2(3).

***SZTAL v Minister for Immigration and Border Protection; SZTGM v Minister for Immigration and Border Protection***

[\[2017\] HCA 34](#)

06/09/2017

# Victorian Supreme Court Cases

## Court of Appeal

ACCIDENT COMPENSATION - Workers compensation - Serious injury - Impairment to the right and left shoulder - Whether substantial organic basis - Disentanglement - Pain and suffering - Loss of earning capacity - Whether trial judge failed to provide adequate reasons - Finding as to credibility of Applicant - Whether denial of procedural fairness - Application for leave to appeal refused - Accident Compensation Act 1985 s134AB - Mutual Cleaning & Maintenance Pty Ltd v Stamboulakis (2007) 15 VR 649 - Hunter v Transport Accident Commission [2005] VSCA 1 - Ucar v Nylex Industrial Products Pty Ltd (2007) 17 VR 492.

***Carbone, Ron v Toyota Motor Corporation Australia Ltd***

Osborn, Priest, and Kaye JJA

[\[2017\] VSCA 249](#)

12/09/2017

ADMINISTRATIVE LAW - Appeal pursuant to s148 Victorian Civil and Administrative Tribunal Act 1998 - Disciplinary action - Professional misconduct by building practitioner - Appeal from decision of Victorian Civil and Administrative Tribunal (VCAT) on review of Building Practitioners Board - Whether decision to suspend rather than cancel professional registrations consequent on findings that practitioner had failed to carry out professional duties in a manner envisaged by the Act resulting in 'real and apparent risk of injury or death to persons' and that practitioner was 'not a fit and proper person to practise as a building practitioner' vitiated by errors of law - Whether decision so unreasonable it lay outside range of decisions VCAT was authorised to make under s179 of the Building Act 1993 - Whether suspension manifestly inadequate to serve overriding purposes and objectives of Building Act 1993 and thereby failed to take into account relevant considerations - Building Act 1993 s178, s179 - Appeal dismissed.

***Victorian Building Authority v Tsaganas, Jim***

Tate, Osborn, and Kaye JJA

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

12/09/2017

APPEAL - Application for leave to appeal - Summary dismissal of claim by Victorian Civil and Administrative Tribunal during final hearing - Error of law arguable - Leave granted. ***Weber, Mark Paul v Deakin University; Elkadi, Hisham; den Hollander, Jane; Sweeney, Jane; Campbell, Malcolm; Mills, Anthony; Tivendale, Linda; Day, Trevor; Rooney, Shirley; Tinkler, Gwen; O'Donoghue, Michael and Young, Kate***

Whelan and Hansen JJA

[\[2017\] VSCA 250](#)

13/09/2017

CRIMINAL LAW - Appeal against sentence - Aggravated burglary and intentionally causing injury - Total effective sentence of 5 years and 6 months with non-parole period of 3 years and 3 months - Whether sentence manifestly excessive - Whether parity principle infringed - Appeal allowed - Resentenced to 4 years and 9 months with non-parole period of 2 years and 9 months.

***Kiezenberg, Nick v The Queen***

Kyrou and Hansen JJA

[\[2017\] VSCA 235](#)

06/09/2017

CRIMINAL LAW - Appeal against sentence - Two breaches of a supervision order contrary to s160 of the Serious Sex Offenders (Detention and Supervision) Act 2009 - Aggregate sentence of 12 months' imprisonment with no non-parole period - Whether sentence manifestly excessive - Whether judge erred in rejecting opinion of forensic psychologist as to the reasons for the offending - Leave to appeal refused.

***McKenzie, Aaron (a Pseudonym) v The Queen***

Kyrou and Hansen JJA

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

08/09/2017

CRIMINAL LAW - Appeal against sentence - Using a carriage service to access child pornography and knowingly possessing child pornography - Total effective sentence of 4 years and 6 months' imprisonment with non-parole period of 2 years and 6 months - Whether judge erred in finding the offending was 'escalating' and objectively 'very serious' - Whether sentence manifestly excessive - Whether judge failed to apply Verdins limbs 1 and 4 - Appeal allowed - Resentenced to 3 years and 9 months' imprisonment with a non-parole period of 2 years.

***Dennis, Stephen v The Queen***

Kyrou and Hansen JJA

[\[2017\] VSCA 251](#)

14/09/2017

CRIMINAL LAW - Appeal - Interlocutory appeal - Rulings before trial as to admissibility - Applicant charged with offences of violence against complainant - Evidence of previous misconduct against complainant - Tendency evidence - Tendency notice - Specificity of tendency - Whether tendency evidence has significant probative value - Evidence of relationship and context - Whether evidence admissible as relationship or context evidence - Leave to appeal granted - Appeal allowed - Evidence Act 2008, s97, s101, s135 and s137.

***Henderson, Martin (a Pseudonym) v The Queen***

Beach, Ferguson, and Coghlan JJA

[\[2017\] VSCA 237](#)

06/09/2017

CRIMINAL LAW - Appeal - Sentence - Applicant pleaded guilty to three sexual offences against daughter - First and third charges each representative of two similar incidents - Applicant confessed to police before any complaint to police - Early pleas of guilty - No prior or subsequent convictions - Fair prospects of rehabilitation - Total effective sentence of seven years' imprisonment with non-parole period of four years and six months - Whether judge misapplied principles concerning representative charges - Whether error in imposing identical sentences on indecent act offences - Whether sentences manifestly excessive - Leave granted but appeal dismissed - R v CJK (2009) 22 VR 104 discussed.

***Calazzo, Adrian (a Pseudonym) v The Queen***

Redlich and Tate JJA, Croucher AJA

[\[2017\] VSCA 242](#)

11/09/2017

CRIMINAL LAW - Appeal - Sentence - Indecent act with child under 16 - Possession of child pornography - Weight to be given to full admissions - Doran discount - Complainant refusing to give statement - Offence known but proof of guilt dependent on confession - Need for transparency in applying discount to separate charges - Discount not apparent on both charges - Wrong maximum penalty considered - Appeal allowed - Appellant resentenced - R v Doran [2005] VSCA 271; Dawson v The Queen [2015] VSCA 166; Younan v The Queen [2017] VSCA 12 applied - JBM v The Queen [2013] VSCA 69; Latina v The Queen [2015] VSCA 102 discussed.

***Sharman, Connor (a Pseudonym) v The Queen***

Redlich and Tate JJA, Croucher AJA

[\[2017\] VSCA 241](#)

06/09/2017

CRIMINAL LAW - Appeal - Sentence - Two indictments - Burglary, theft, deal with proceeds of crime and related offences - Breach of bail - Totality - Whether judge erred in ordering total cumulation of total effective sentences on each indictment - Whether manifestly excessive - Deprived upbringing - Repeated serious offending over extended period - Extensive criminal history - Prior rehabilitation opportunities - No error - Appeal dismissed - Sentencing Act 1991 (Vic) s16(3C) - Bugmy v The Queen (2013) 249 CLR 571.

***Nicholson, Stephen William v The Queen***

Priest, Kaye, and Coghlan JJA

[\[2017\] VSCA 238](#)

06/09/2017

CRIMINAL LAW - Conviction - Application for leave to appeal against conviction - Attempted murder - Applicant stabbed victim 6 times - Whether conviction was unreasonable or could not be supported on the evidence - Intent - Whether jury could exclude beyond reasonable doubt the possibility that the applicant attacked the victim with an intent only to cause serious injury - Jury not bound to have a reasonable doubt about applicant's guilt - Application for leave to appeal against conviction refused - Criminal Procedure Act 2009, s276(1)(a).

***Byrne, Dwayne Michael v The Queen***

Priest, Beach, and Hansen JJA

[\[2017\] VSCA 253](#)

15/09/2017

CRIMINAL LAW - Interlocutory Appeal - Police search without warrant - Drug of dependence - Methylamphetamine - Searches of applicants and vehicle - Whether searches were conducted legally - Whether police had reasonable grounds of suspicion - Whether evidence obtained in illegal search admissible - Spectrum of improper conduct by police - Probative value of evidence obtained - Applications for leave to appeal dismissed - Drugs, Poisons & Controlled Substances Act 1981 s82 - Evidence Act 2008 s138 - Director of Public Prosecutions v Marijancevic (2011) 33 VR 440 - George v Rockett (1990) 170 CLR 104.

***Marshall Murray (a Pseudonym) v The Queen; Hale, Robert (a Pseudonym) v The Queen; Olsen, Shaun (a Pseudonym) v The Queen***

Priest, Beach, and Kaye JJA

[\[2017\] VSCA 236](#)

06/09/2017

CRIMINAL LAW - Sentence - Application for leave to appeal - Attempted armed robbery, attempted robbery and committing indictable offence while on bail - Total effective sentence of 3 years and 6 months' imprisonment with non-parole period of 2 years - Manifest excess - Whether individual sentences, total effective sentence or non-parole period were manifestly excessive - Manifest excess not reasonably arguable - Parity - Whether sentence on charge of attempted robbery infringed parity principle - Parity complaint not reasonably arguable - No reasonable prospect that Court of Appeal would reduce total effective sentence - Application for leave to appeal refused.

***Muuse, Bulaale v The Queen***

Beach JA

[\[2017\] VSCA 244](#)

08/09/2017

CRIMINAL LAW - Sentence - Application for leave to appeal - Defensive homicide - Sentence of 10 years' imprisonment - Non-parole period of seven years - Plea of guilty - Objective gravity of the offending - Relationship of serious violence, humiliation, and psychological abuse - Dependent personality disorder, post-traumatic stress disorder, depression and anxiety, youth, low IQ - Threat to kill family unless victim killed - Innocent victim - Whether a finding of chance to flee ignored context of threat and vulnerability - Whether judge erred in categorising the offending as falling towards the upper end of the range of seriousness - Foregone chance of acquittal - Co-operation - Whether reasonably arguable that manifestly excessive.

***Sawyer-Thompson, Bonnie Kate v The Queen***

Tate JA

[\[2017\] VSCA 234](#)

04/09/2017

CRIMINAL LAW - Sentence - Application for leave to appeal - Importing commercial quantity of border controlled drug - Possessing marketable quantity of border controlled drug - Sentence of 10 years' imprisonment for importation and 5 years for possession, possession sentence to commence 3 years before expiration of importation sentence (TES 12 years) - Manifest excess - Double punishment - Whether drugs subject of possession charge were also subject of importation charge - Drugs subject of possession charge not subject of importation charge - No double punishment - Sentence not manifestly excessive - Application for leave to appeal refused - Criminal Code 1995 (Cth), s307.1, s307.6 and s311.4.

***Lim, Yih Wen v The Queen***

Beach JA

[\[2017\] VSCA 246](#)

08/09/2017

CRIMINAL LAW - Sentence - Applications for leave to appeal against sentence - Attempting to traffic a commercial quantity of a controlled drug (209 kg of pure methamphetamine) - Sentences of 13 years' imprisonment with non-parole period of 9 years - Co-offender sentenced to 10 years' imprisonment with non-parole period of 7 years - Manifest excess - Whether sentences manifestly excessive - Parity - Whether parity principles infringed - Whether error in fixing non-parole period - Errors not reasonably arguable - Complaints of manifest excess not reasonably arguable - Applications for leave to appeal against sentences refused.

***Vi v The Queen; Lach v The Queen***

Beach JA

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

15/09/2017

CRIMINAL LAW - Sentence - Recklessly causing serious injury - False imprisonment - Making threat to kill - Serious offending by 23 year old against domestic partner in presence of children - Judge assessed prospects of rehabilitation as 'cloudy' - Total effective sentence of eight years' imprisonment - Non-parole period of five years and six months - Whether principles related to youthful offenders should have been applied - Judge took all relevant sentencing factors into account and balanced appropriately - Sentence was not manifestly excessive - *Azzopardi v The Queen* (2011) 35 VR 43 - Sentencing Act 1991.

***Nolan, Shannon v The Queen***

Beach, Ferguson, and Coghlan JJA

[\[2017\] VSCA 240](#)

06/09/2017

CRIMINAL LAW - Sentence - Whether sentence manifestly excessive - Applicant pleaded guilty to 29 charges which mostly involved dishonesty offences - Applicant was 21 years old at the time of offending and heavy ice user - Applicant had good record - Judge considered principles related to young offenders tempered by 'serious nature and grand scale' of offending - Sentence not manifestly excessive - Judge considered all relevant factors - *Azzopardi v R* (2011) 35 VR 43 - Sentencing Act 1991.

***Hancock, Drew v The Queen***

Beach, Ferguson, and Coghlan JJA

[\[2017\] VSCA 239](#)

06/09/2017

JUDGMENTS - Principles for setting aside judgment obtained by fraud - *Wentworth v Rogers* [No 5] (1986) 6 NSWLR 534 considered.

PRACTICE AND PROCEDURE - Summary dismissal of application to set aside judgment allegedly obtained by fraud - Whether principles for setting aside judgment for fraud misstated and misapplied - Whether judge failed to properly consider alleged malpractice of legal advisers - Whether matters relied upon were 'fresh facts' - Whether the alleged fraud satisfied the principles for setting aside original judgment - Leave to appeal granted but appeal dismissed.

***Bodycorp Repairers P/L (ACN 068 589 408) v Maisano, Anuniziato Enzo (also known as Michael Maisano and Michael Mason); Oakley Thompson & Co P/L (ACN 092 053 239); Cawthorn, Peter QC; Australian Associated Motor Insurer (ACN 004 791 744), trading as "AAMI"; Martin, Barry; Munro, Scott; Melton Bodyworks (ACN 006 317 219); and Broadbent, Jeremy***

Whelan, Kyrrou, and Hansen JJA

[\[2017\] VSCA 252](#)

15/09/2017

PRACTICE AND PROCEDURE - Application for stay of order pending special leave application - Whether substantial prospect that special leave to appeal will be granted - Balance of convenience - Where applicant seeks stay of order requiring applicant to execute withdrawal of caveat over title to land - Where land is subject to development proposal - Where first respondent's ability to service or refinance loan facilities is prejudicially affected by caveat - No material to satisfy court that applicant will provide undertaking as to damages - Application dismissed with costs.

***Lam, Hau v Lam, Phung Thuong and Pacific Far East P/L (ACN 071 762 420)***

Santamaria and Kaye JJA

[\[2017\] VSCA 247](#)

11/09/2017

PRACTICE AND PROCEDURE - Costs - Costs of application for leave to appeal and appeal - Whether costs should be on an indemnity basis - Offer of compromise at trial - Calderbank offer on appeal - Unsuccessful appellants obtaining less favourable judgments at first instance and on appeal than terms offered in offer of compromise and Calderbank offer - Relevance of reasonableness of not accepting Calderbank offer - Whether it was unreasonable for unsuccessful appellants to refuse Calderbank offer - Not unreasonable for unsuccessful appellants to refuse Calderbank offer - Costs ordered to be paid on the standard basis.

***Beaumaris Football Club; South Metro Junior Football League v Hart, Beau and Bayside City Council. And between: Bayside City Council v Hart, Beau; Beaumaris Football Club and South Metro Junior Football League (No 2)***

Osborn, Beach, and Kaye JJA

[\[2017\] VSCA 245](#)

08/09/2017

## Commercial Court

CONTRACTS - Building Contract - Whether incorrect exclusion of non-claimable second class variations - Whether the Construction Contract contained a method for resolving disputes within the meaning of s10A(3)(d)(ii) of the Building and Construction Industry Security of Payment Act 2002 (Vic) - SSC Plenty Road v Construction Engineering [2016] VSCA 119 - SSC Plenty Road v Construction Engineering [2015] VSC 631 - Branlin Pty Ltd v Totaro [2014] VSC 492.

ADMINISTRATIVE LAW - Judicial review - Decision of adjudicator appointed under the Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether certiorari should be granted to quash the decision.

***Contract Control Services P/L (ACN 007 453 965) v Department of Education and Training and (ABN 52 705 101 522) and Tonkin, Max (as adjudicator in an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic) between Contract Control Services P/L and Department of Education and Training)***

Digby J

[\[2017\] VSC 507](#)

30/08/2017

CORPORATIONS - Corporations Act 2001 (Cth) - Section 459G application to set aside a statutory demand - Section 459E(3) - Affidavit accompanying statutory demand - Affidavit sworn a day prior to the date of the statutory demand - Section 459J(1)(b) - Some other reason to set aside statutory demand - Conflicting authorities - Decision of intermediate appellate court.

***Stellar Projects (Vic) P/L (ACN 600 804 073) v Cambridge Plumbing P/L (ACN 063 801 909)***

Randall AsJ

[\[2017\] VSC 532](#)

08/09/2017

CORPORATIONS - Statutory derivative action - Director selling corporation's assets to a related corporation - Consideration for sale limited to indemnity for corporation's liabilities - Leave granted on conditions.

***Aaron J Homes P/L v Damjanovic, Simone Joy and Damjanovic, Nebojsa Paul***

Riordan J

[\[2017\] VSC 541](#)

13/09/2017

EQUITABLE CHARGE - Claim that debt was secured by a charge over all assets of debtor - Whether there was an agreement to charge - Whether terms of a guarantee and indemnity are enforceable to give an equitable charge of the chargee's property, or whether terms are ambiguous so as to make the charging clause vague for uncertainty - Consideration of whether the terminology 'will charge' demonstrates an immediate intention to create a charge - Whether future acquired property can be subject to a charging clause - Whether an equitable charge gives chargee a right to vacant possession of real property.

***Carter Holt Harvey Woodproducts (Australia) P/L and Naja David & Ors. And Between: Byrnes, Matthew James and Hewitt, Andrew Stewart Reed in their capacity as joint and several receivers and managers of Amerind P/L (receivers and managers appointed) (in liquidation) Morgan, Brent Leigh (in his capacity as liquidator of Amerind P/L (in liquidation) (receivers and managers appointed) Amerind P/L (in liquidation) (receivers and managers appointed) and Carter Holt Harvey Woodproducts (Australia) P/L***

Robson J

[\[2017\] VSC 499](#)

06/09/2017

PRACTICE AND PROCEDURE - Appeal from Associate Justice - Application by mortgagees for summary judgment - Whether claim has real prospect of success - Civil Procedure Act 2010, s63 and s64.

MORTGAGES AND SECURITIES - Application of Farm Debt Mediation Act 2011 - Enforcement and waiver - Capitalisation of interest, effect with respect to enforcement - Almond Land Pty Ltd v Geoffjoy Enterprises Pty Ltd [2014] VCC 196 - Silkdale Pty Ltd v Long Leys Pty Ltd (1995) 7 BRP 14,414; (1995) 2 ACCR 33 - Sibard Pty Ltd v AGC (Advances) Ltd (1992) 6 BPR 13,178 - Bank of New South Wales v Brown (1983) 151 CLR 514 - Farm Debt Mediation Act 2011, s37(a).

***Muranna Park P/L (ACN 086 934 045) Zerbe, Garry John; Octavius Securities and Investments P/L (ACN 138 228 243) v Southern Mortgages Ltd (ACN 089 763 413) DD & D Securities Ltd (ACN 089 684 346) Bendigo and Adelaide Bank Ltd (ACN 068 049 178)***

Croft J

[\[2017\] VSC 522](#)

13/09/2017

## Common Law Division

ADMINISTRATIVE LAW - Application for leave to appeal on questions of law - No grounds of appeal with sufficient prospects of success to warrant the granting of leave to appeal - Victorian Civil and Administrative Tribunal Act 1998 s148 - Planning and Environment Act 1987 s60(1)(a), s84B(2)(a).

***Tow, Kin and Neal, David v Anodin, Armand and Anodin, Patricia***

McDonald J

[\[2017\] VSC 549](#)

15/09/2017

ADMINISTRATIVE LAW - Judicial review of an opinion of a medical panel - Extension of time - Rule 56.02 Supreme Court (General Civil Procedure) Rules 2015 - Jurisdictional error - Adequacy of reasons - Whether panel failed to have regard to, or explain why it disregarded, nerve conduction study results - Minister for Aboriginal Affairs v Peko-Wallsend (1986) 162 CLR 24 - Ryan v The Grange at Wodonga Pty Ltd & Ors [2015] VSCA 17 - Wingfoot Australia Partners Pty Ltd v Kocak (2013) 252 CLR 480.

***Blacker, Jacob v The Partnership of Boss Trailers and W & L Lennox P/L (trading as Boss Waterproofing) & Ors***

Keogh J

[\[2017\] VSC 538](#)

12/09/2017

ADMINISTRATIVE LAW - Judicial review - Prison administration - Application for review of decision to refuse 'supervised internet access' for purpose of filing application for special leave to High Court - Whether remedies sought available - Whether any grounds for review in any event - Whether discretion should be exercised to refuse any relief - Whether any unlawful conduct pursuant to the Charter of Human Rights and Responsibilities Act 2006 (Vic) in respect of right to fair hearing/adequate facilities under s23 or s24 - Whether case should be dismissed in any event on the basis that application should be determined by the High Court.

***Rich, Hugo v Howe, Jonathon (acting in his capacity as the general manager of H.M. Prison Barwon and for Corrections Victoria)***

Kennedy J

[\[2017\] VSC 483](#)

14/09/2017

CONTRACT - Penalties - Deposit equal to 5% of purchase price - Specification that on breach by purchaser, 10% of purchase price 'absolutely forfeited' - Obligation to pay further 5% not liquidated damages - Whether unenforceable as a penalty - Additional sum 'forfeited' unenforceable - Amended 'REIV 2014 Contract' - *Luu v Sovereign Developments Pty Ltd* (2006) 12 BPR 23,629; *Iannello v Sharpe* (2007) 69 NSWLR 452, *Kazacos v Shuangling International Development Pty Ltd* (2016) 18 BPR 36,353 applied. PROPERTY - Contract for the sale of land - Failure to settle - Default of purchaser - Whether deposit ought be returned under s49(2) of the Property Law Act 1958 (Vic) - Principles to be applied in exercising discretion under s49(2) - *Poort v Development Underwriting (Victoria) Pty Ltd* [1976] VR 779; *Havyn Pty Ltd v Webster* (2005) 12 BPR 22,837; *Midill (97PL) Ltd v Park Lane Estates Ltd* [2009] 1 WLR 2460 considered.

***Simcevski, Kire v Dixon, Alan Robert (by Original Proceeding) And between: Dixon, Alan Robert v Simcevski, Kire and Registrar of Titles (by Counterclaim) (No 2)***

Riordan J

[\[2017\] VSC 531](#)

08/09/2017

COSTS - Class action legal costs - Relationship between r63.34(3) and r63.48 of the Supreme Court (General Civil Procedure) Rules 2015.

GROUP PROCEEDING - Supreme Court Act 1986, Part 4A.

***Williams, Steven Elliot v AusNet Electricity Services P/L (ACN 064 651 118); Hume City Council; Active Tree Services P/L (ACN 002 919 299); Homewood Consulting P/L (ACN 113 595 430). And Between: AusNet Electricity Services P/L (ACN 064 651 118) v Williams, Steven Elliot; Hume City Council; Active Tree Services P/L (ACN 002 919 299) and Homewood Consulting P/L (ACN 113 595 430)***

Wood AsJ

[\[2017\] VSC 528](#)

04/09/2017

CRIMINAL LAW - Crimes Mental Impairment - Application for extended leave - Whether the safety of the applicant or members of the public will not be seriously endangered - Application granted - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), s39, s40, s57.

***In the matter of an application under s57(1) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 and In the matter of an application for extended leave by "G A D"***

Macaulay J

[\[2017\] VSC 515](#)

01/09/2017

CRIMINAL LAW - Judicial review - Probationary driver fail to display P plate - County Court judge set aside conviction and sentence in appeal from Magistrates' Court - Whether error on the face of the record - Whether honest and reasonable mistake as to presence of P plate relevant to proof of offence - Declaration that Proudman v Dayman 'defence' not available - Remitted to County Court for decision according to law - Road Safety (Drivers) Regulations 2009 reg 55(1).

WORDS AND PHRASES - 'strict liability', 'absolute liability'.

***Director of Public Prosecutions [DPP] (on behalf of Steven Emil Kokas) v Stanojlovic, Robert and County Court of Victoria***

Jane Dixon J

[\[2017\] VSC 540](#)

12/09/2017

CRIMINAL LAW - Jurisdiction and powers of County Court - Appeal from Magistrates' Court - Alternative charges - Plaintiff convicted and sentenced by Magistrates' Court - Alternative charge dismissed - Appeal against conviction and sentence on principal charge - Nature of appeal to County Court - Hearing de novo - Whether County Court has jurisdiction to convict of a charge dismissed in accordance with s51(1) of the Interpretation of Legislation Act 1984 (Vic)?

ORDERS - Whether a charge dismissed not on the merits is an interlocutory or final order?

CRIMINAL PROCEDURE - Does County Court have power to correct an unintended error by the Magistrate? Criminal Procedure Act 2009 (Vic) s254, s256 and s412 considered.

ADMINISTRATIVE LAW - Admissibility of transcript of Magistrates' Court proceeding to determine whether there was a jurisdictional error of County Court.

***Keech, William v The County Court of Victoria and Duffy, Francis John***

Riordan J

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

04/09/2017

DAMAGES - Termination of contract of employment by reason of employee's acceptance of employer's repudiation of contract - Damages assessed by comparing financial position of employee if employer had not engaged in repudiatory conduct with his financial position as consequence of termination of employment.

***Crowe Horwath (Aust) P/L (ACN 006 466 351) v Loone, Anthony***

McDonald J

[\[2017\] VSC 548](#)

15/09/2017

DEFAMATION - Defences - Qualified privilege - Extent of questions for jury - Statutory qualified privilege - Issue of reasonableness under s30(1)(c) left to jury - Common law qualified privilege - Correcting the record in respect of celebrity entertainment news - Whether community of interest - Privilege defeated by jury finding of malice - Defamation Act 2005 (Vic), s22, s24, s30.

DEFAMATION - Damages - Statutory cap - Whether applicable where circumstances of publication aggravated the plaintiff's damage - Interpretation of statutory provision - Whether defendant aggravated the plaintiff's damage in circumstances of publication - Defamation Act 2005 (Vic), s35.

DEFAMATION - Damages - Trial by jury - Eight publications stating plaintiff was a serial liar and had lied about her name, age and other aspects of her personal life and background - Defences of justification, triviality and qualified privilege not made out - Seriousness of imputations - Mass media and internet distribution - Grapevine effect - Whether aggravated damages warranted by conduct in publication and since publication - Mitigating factors - Defamation Act 2005 (Vic), s34, s38, s39.

DEFAMATION - Damages - Special loss claimed - Plaintiff a successful Hollywood actress - Whether plaintiff lost opportunity for further film roles - Causation - Circumstantial case - Grapevine effect and special damages considered - Remoteness - Assessment of existence of the chance - Assessment of the value of the lost opportunity - Andrews damages.

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

John Dixon J

[\[2017\] VSC 521](#)

13/09/2017

JUDICIAL REVIEW - Magistrates' Court order made by a judicial registrar - Some grounds for judicial review summarily dismissed - Trial on remaining grounds - Allegations of fraud not made out - No error in Judicial Registrar not advertng in his reasons to a matter not put by the plaintiff to the defendant in cross examination - Error of law on the face of the record by Judicial Registrar in making a finding in his reasons for which there was no evidence.

JUDICIAL REVIEW - Consideration of discretionary refusal of judicial review - Whether a more favourable outcome on rehearing reasonably possible - Failure to utilise other mechanisms for review and appeal - Magistrates' Court Notice of Arbitration said arbitration would be conducted by a magistrate - Notice of Order Made ambiguous as to whether the arbitration was conducted by a magistrate or a judicial registrar - Plaintiff did not know that the arbitration had been conducted by a judicial registrar until after this proceeding commenced - Failure to seek review of the judicial registrar's order by a magistrate not a reason to refuse judicial review - Plaintiff unrepresented and no evidence of any prejudice to the defendants by reason of plaintiff pursuing judicial review rather than appeal on a question of law - Facts in *Kuek v Victoria Legal Aid and anor* 3 VR 289 distinguished - Approach in *Hoe v Manningham City Council* [2013] VSC 195 applied - Judicial review granted - Magistrates' Court Act 1989 (Vic) s16K - Magistrates' Court (Judicial Registrars) Rules 2015 (Vic), r16.

***White, Gregory v Ropata, Stewart and The Magistrates' Court of Victoria***

Lansdowne AsJ

[\[2017\] VSC 518](#)

04/09/2017

JUDICIAL REVIEW - Practice and Procedure - Dispute between building owners and architect - Owners suing architect for damages in Magistrates' Court and architect's counterclaim for fees - Owners seeking stay of Magistrates' Court proceeding alleging VCAT had jurisdiction to determine a domestic building dispute - Stay application dismissed - Owners also seeking transfer of proceeding to County Court - Judicial review of Magistrate's decision - Application by architect to dismiss judicial review proceeding - Whether judicial review proceeding an abuse of process or lacked utility - Domestic Building Contracts Act 1995 s57; Civil Procedure Act 2010 s7(2), s19, s24, s25, s28.

BUILDING CONTRACTS - Dispute between building owners and architect - Owners' proceeding in Magistrates' Court for damages and architect's counterclaim for fees - Owners' application to stay Magistrates' Court proceeding because VCAT had jurisdiction - Stay application dismissed - Judicial review of Magistrate's decision - Domestic Building Contracts Act 1995 s57.

PRACTICE AND PROCEDURE - Judicial review proceeding - Summons to dismiss on grounds that proceeding lacked utility or was an abuse of process.

***Radojevic, Dragan and Radojevic, Ivana v JDA Design Group P/L (ACN 129 690 008) trading as JDA Architects and the Magistrates' Court of Victoria***

Ginnane J

[\[2017\] VSC 554](#)

15/09/2017

PARDON - Plaintiff wrongly imprisoned - Whether Part 9C of the Corrections Act 1986 applies to the payment of damages and legal costs to the Plaintiff - Eastman v DPP (ACT) (2003) 214 CLR 318 - Barton v Commonwealth (1974) 131 CLR 477.

***Goodenough, Clive Belmont v State of Victoria***

Keogh J

[\[2017\] VSC 543](#)

13/09/2017

PRACTICE AND PROCEDURE - Application by the first defendant for summary judgment under s63 of the Civil Procedure Act 2010 or pursuant to the inherent jurisdiction of the Court - Application granted.

ADMINISTRATIVE LAW - Judicial review - Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 - Where the applicant applied for judicial review of the decision of the County Court of Victoria to dismiss the appeal of a decision of the Magistrates' Court of Victoria made pursuant to s49(1) (c) of the Road Safety Act 1986 (Vic) - Application that judge was biased, threatening towards counsel, exercised 'judicial misconduct' or evidence was inadmissible under s33 of the Evidence Act 2008 - Grounds of review include denial of procedural fairness, or question as to whether decision maker was irrational, illogical and/or unreasonable - First Defendant's application for summary dismissal - No evidentiary basis for grounds of review - No real prospects of success.

***Audish, Jina v Cross, Constable Jasmine and Judge (Patrick) County Court of Victoria***

Daly AsJ

[\[2017\] VSC 529](#)

10/05/2017

PRACTICE AND PROCEDURE - Application for an extension of time to issue a proceeding under Part IIA of the Wrongs Act 1958 - Whether the plaintiff received advice on the limitation period for his claim - Whether the plaintiff's former solicitors were negligent in advising the plaintiff - Whether just and reasonable to extend time - Whether the Defendant would suffer any material prejudice - *Tsiadis v Patterson* (2001) 4 VR 114, *Prince Alfred College Inc v ADC* (2016) 258 CLR 134, *Davies v Nilsen* [2015] VSC 584 and *Mackenzie v Positive Concepts Pty Ltd & Anor* [2016] VSC 259 relied upon - Limitation of Actions Act 1958, s27K and s27L.

***Bucic, Marin v Arnej P/L***

Ierodiaconou AsJ

[\[2017\] VSC 508](#)

07/09/2017

PRACTICE AND PROCEDURE - Application for evidence to be taken overseas - Elderly Plaintiff diagnosed with mesothelioma allegedly caused by inhalation of asbestos in the course of employment in Victoria - Plaintiff ordinarily resident overseas - Whether video link of evidence on commission is appropriate - Interests of justice in giving evidence on one occasion only - Section 7 of the Foreign Evidence Act 1994 (Cth) - Sections 7 and 9 of the Civil Procedure Act 2010 (Vic).

***Laurent, Kenneth Martin v Unilever Australia Ltd (ACN 004 050 828)***

J Forrest J

[\[2017\] VSC 527](#)

05/09/2017

PRACTICE AND PROCEDURE - Application for leave to proceed under s55 of the Vexatious Proceedings Act 2014 - Application to set aside conviction for contempt obtained in absence of the respondent - Relevant principles - Application to extend time within which to apply to set aside orders - Relevant principles - Respondent deliberately did not attend trial - Absence of bona fide defence on the merits - Rules 1.05(1), 3.02, 15.03, 45.03 and 49.02 of the Supreme Court (General Civil Procedure) Rules considered. VEXATIOUS LITIGANTS - Application of Vexatious Proceedings Act 2014 to a person declared a vexatious litigant under s21 of the Supreme Court Act 1986.

CONTEMPT - Application of r49.02 of the Supreme Court (General Civil Procedure) Rules 2015 to contempt proceedings - Whether Court has jurisdiction over contemptuous emails sent from outside the jurisdiction.

MENTAL HEALTH - Fitness to plead - Application of Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 to contempt proceedings - Contempt an indictable offence - Whether the respondent's mental health is an adequate explanation for his failure to attend trial and bring application to set aside orders.

HANDICAPPED PERSON - Application of rules with respect to appointment of litigation guardians to contempt proceedings - Whether the respondent was a handicapped person within the meaning of O 15 of the Supreme Court (General Civil Procedure) Rules 2005 - Whether the failure to appoint a litigation guardian makes the proceeding voidable at the option of the handicapped person - Whether a disability under O 15 of the Supreme Court (General Civil Procedure) Rules 2005 was akin to unfitness to plead under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 - Whether a failure to appoint a litigation guardian invalidates the proceeding.

***The Queen (on the application of the Attorney-General of the State of Victoria) v Slaveski, Lupco (by his litigation guardian Tania Slaveski)***

Riordan J

[\[2017\] VSC 526](#)

05/09/2017

PRACTICE AND PROCEDURE - Application to amend amended statement of claim - Whether proposed amendments disclose causes of action or are embarrassing - Whether proposed amendments plead causes of action that accrued more than 6 years before the commencement of the proceeding - First defendant previously pleaded statute of limitations as a defence to the claims - Proposed amendments opposed on the basis that they plead statute barred causes of action.

PRACTICE AND PROCEDURE - Application for summary judgment on the basis that causes of action pleaded and proposed to be pleaded are statute barred - Whether no real prospect that causes of action are not statute barred - Whether the proceeding should proceed to trial in the exercise of the Court's discretion under the Civil Procedure Act 2010, s64 - Wardley Australia Ltd v Western Australia (1992) 175 CLR 514.

***J G & J A Williamson Holdings P/L (ACN 007 453 652) v Hindle, David and Ian Cloak t/as Billings Cloak (ABN 60 621 611 083)***

Derham AsJ

[\[2017\] VSC 534](#)

11/09/2017

PRACTICE AND PROCEDURE - Application to amend pleadings - Institutional abuse - Whether pleadings sufficiently particularised - Allegations of actual or constructive knowledge of abuse - Allegations of foreseeability of risk of harm - Case management - Civil Procedure Act (2010) (Vic) s7 - Application granted in part.

***Skarbek, Janusz v The Society of Jesus in Victoria (ACN 004 238 948) & Ors***

Clayton JR

[\[2017\] VSC 545](#)

13/09/2017

PRACTICE AND PROCEDURE - Group Proceeding - Application for approval of settlement of group proceeding - Relevant considerations - Whether settlement fair and reasonable and in the interests of group members as a whole - Approval granted - Supreme Court Act 1986 (Vic), s33V, Part 4A.

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

Macaulay J

[\[2017\] VSC 537](#)

06/09/2017

## Criminal Division

CRIMINAL LAW - Application for bail - Show cause - Applicant not receiving adequate treatment for schizophrenia in custody - Significant criminal history linked to applicant's mental illness and polysubstance abuse - Bail granted on a provisional basis and subject to the implementation of an inpatient treatment order under the Mental Health Act 2014 (Vic) - Subsequent breaches of bail conditions - Absconding from mental health facility to which Applicant was bail - Application for bail revocation - Bail revoked - No adequately secure facility available capable of treating the Applicant while on remand - High risk of reoffending - Application subject to future judicial monitoring.

***In the matter of the Bail Act 1977 and In the matter of an Application for bail revocation re Silcock, Kaleb***

Lasry J

[\[2017\] VSC 536](#)

08/09/2017

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Prohibited Person Possess Firearm - Plea of guilty - Unintended discharge of firearm causing death of de-facto - Familiarity with firearms - Matters in mitigation - Sentence of 9 years and 2 months imprisonment with non-parole period of 6 years.

***The Director of Public Prosecutions [DPP] v Osborn, Brandon Leigh***

Keogh J

[\[2017\] VSC 535](#)

08/09/2017

CRIMINAL LAW - Sentence - Manslaughter - Guilty plea - Elements of provocation and self-defence said to be mitigating factors - Offender suffered from post-traumatic stress disorder - Prearranged confrontation in public place between offender and victim - Offender wielded semi-automatic shotgun and fired at least five shots in general direction of victim - Victim shot in back - Verdins principles invoked - Objective gravity of offence high - Sentence of ten years' imprisonment with non-parole period of six years and six months.

*The Queen v Floyd, Lachlan James*

Weinberg AP

[\[2017\] VSC 546](#)

13/09/2017

## 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 - Building contract - Dates for and of practical completion - General damages for delay - Agreement to fix delay damages - Intention to create legal relations - Common intention - Consideration - Assessment of damages for defects and uncompleted work - Final claim certificate.

***JJ Armstrong Pty Ltd v Hope St Student Accommodation Pty Ltd***

[\[2017\] VCC 1247](#)

Judge Woodward

08/09/2017

CONVERSION - Goods manufactured in Sri Lanka and shipped to Australia - Defendant freight forwarder sold goods to third party relying on commercial lien - Did either plaintiff own the goods at the time - Effect of lien - Were goods converted.

***Auluulu International (PVT) Ltd & Anor v G.S. Logistics Pty Ltd***

[\[2017\] VCC 1204](#)

Judge Marks

29/09/2017

COSTS - Calderbank offer - Short time for acceptance.

***Oliver Hume (Vic) Pty Ltd v Santa Monica (Aust) Pty Ltd (No 2)***

[\[2017\] VCC 1239](#)

Judge Woodward

05/09/2017

PRACTICE AND PROCEDURE - Expert witness - Sufficiency of report.

***Tungsten Hardfacing Pty Ltd v Hagedorn & Ors***

[\[2017\] VCC 1279](#)

Judge Anderson

11/09/2017

STATUTORY INTERPRETATION - Real estate agent appointed to sell property under an exclusive sales authority - Agent sued clients for commission - Whether exclusive sales authority omitted statement required by s49A(4)(c) of the Estate Agents Act 1980 (Vic) - Whether strict or substantial compliance required.

***Advisory Services Pty Ltd v Augustin & Anor***

[\[2017\] VCC 1195](#)

Judge Marks

29/09/2017

# Magistrates' Court of Victoria Cases

Following is a selection of cases recently handed down in the Magistrates' Court of Victoria.

WORKERS COMPENSATION - Accident Compensation Act 1985 - Physical assault at work - Psychiatric injury - 130 week notice of termination - Whether current work capacity - Whether if no current work capacity not likely to continue indefinitely - Prior conviction for fraud - Failing to report work while in receipt of payments of compensation under the Act - Serious injury application - Untruthful affidavit - Nature of statutory compensation under Act as opposed to common law proceeding for damages - Need to assess all evidence of capacity as opposed to adopting a blanket approach to credit - Whether worker's untruthfulness and dishonesty renders him unreliable in account of current capacity - Nominal evidence by defendant by way of previous vocational assessment - Identification of certain jobs - No current work capacity likely to continue indefinitely - Plaintiff's claim successful - Notice of termination set aside.

***Hosny v Victoria Racing Club Ltd***

[\[2017\] VMC 15](#)

Magistrate P. Ginnane

08/09/2017

# Articles

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

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

## Administrative Law

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Judicial review - Legal history - Grounds approach - Statutory approach - Administrative Decisions (Judicial Review) Act 1977 (Cth) - Australia.

**Bateman, W. and L. McDonald.** "The normative structure of Australian administrative law." (2017) 45(2) Fed L Rev 153-179.

## Constitutional Law

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Constitutional review - High Court - Separation of powers - Judicial deference - Proportionality review - McCloy v New South Wales - Australia.

**Henckels, C.** "Proportionality and the separation of powers in constitutional review: examining the role of judicial deference." (2017) 45(2) Fed L Rev 181-197.

## Courts

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Business and Property courts - Chancery Division - Queen's Bench - Lord Justice Briggs - Civil courts structure review - Judicial reform - Regional hearings - UK.  
**Pepperall, E., QC.** "New courts mean business: simple rebrand or first step to a modernising merger?" [2017] (Aug) Counsel 21-22.

eCourts - eTrials - Technology - Artificial intelligence - Remote evidence - Legal proceedings - Costs - Practice Note SC GEN 5: Guidelines for the use of technology - Federal Court Practice Note Technology and GPN TECH: Electronic court file - Australia.

**Lambert, J.** "Into the future." (2017) 91(9) LSJ 34-37.

Judges notes - Privacy - Data Protection Act 1998 (UK) - UK.

**Aishthorpe, A.** "Judges' notes and the right to personal data." (2017) 161(30) Sol J 12-13.

## Criminal Law & Procedure

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Human rights - Evidence - Prosecution - Victims' rights - Judicial review - Da Silva v United Kingdom - Code for Crown Prosecutors. 7th, 2013 (UK) - European Convention on Human Rights, Art. 2,3,4,8 - UK.

**Rogers, J.** "A human rights perspective on the evidential test for bringing prosecutions." [2007] (9) Crim L R 678-695.

Privacy - Data retention - Disclosure - Serious offences - Multiple convictions - Enhanced criminal record certificates - Proportionality - Public protection - DNA - Prospective employers - European Convention on Human Rights, Art. 8 (ECHR) - S v United Kingdom - R v Secretary of State for the Home Department - UK.

**Campbell, L.** "Criminal records and human rights." [2017] (9) Crim L R 696-702.

## Evidence

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Expert evidence - Concurrent evidence - NSW.

**Arneil, J. and J. Cooke.** "The case for concurrent evidence" (2017) 36 LSJ 26-27.

## Family Law

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Divorce - Attitudes - Domestic violence - Henry Lawson - Australia.

**Davies, K.** "Divorce: have attitudes really changed?" (2017) 36 LSJ 40-43.

## Human Rights

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Hate speech - Free speech - Eric Heinz - Democracy - Legitimacy - Legal theory - UK.

**Greene, A. and R. Simpson.** "Tolerating hate in the name of democracy." (2017) 80(4) MLR 746-765.

Victorian Charter of Human Rights and Responsibilities - National Charter of Rights - Law reform proposals - Prison - Juvenile detention - Aboriginal detention - Aged care - Immigration detention - Australia.

**Williams, G. and D. Reynolds.** "Victoria leads on human rights." (2017) 91(9) LIJ 24.

## Legal Profession

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Personalia - Chief Justice Marilyn Warren - Supreme Court of Victoria - Women - Leadership - Achievements - Law schools - Victoria.

**Ross, N.** "Revolutionary road: Victorian Chief Justice Marilyn Warren reflects on her 14 years at the helm." (2017) 91(9) LIJ 22-23.

## Medical Law

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Coroners - Natural death - Unnatural death - Death certificate - International Classification of Diseases Code - Coroners and Justice Act 2009 (UK) - UK.

**Harris, A.** "'Natural' and 'unnatural' medical deaths and coronial law: A UK and international review of the medical literature on natural and unnatural death and how it applies to medical certification and reporting deaths to coroners." (2017) 57(3) Med Sci Law 105-114.

## Practice & Procedure

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Leave to appeal - Revocation - Statutory power - Supreme Court - NZ.

**Mijatov, T.** "Give and take: revocation of leave to appeal to the Supreme Court of New Zealand." [2017] (August) NZLJ 237-240.

## Technology

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Artificial intelligence - Legal personality - UK.

**Kidman, D. and S. Turner.** "Electronic persons: time for a new legal personality?" (2017) 167(7758) NLJ 14.

## INFORMATION SESSIONS

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