



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
28 September
2017

Library News

Tour of the Supreme Court Library
Tuesday 10 October, 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.

All are welcome and entry is free. To register please email libraryevents@supcourt.vic.gov.au.

Lyrical Lunchtimes
Thursday 19 October, 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.

For more information about Law Library of Victoria events, visit <https://www.lawlibrary.vic.gov.au/services/events>.

SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at llv@courts.vic.gov.au

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



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

03 9603 6282 for details. The book costs \$60 and there is a \$10 discount for members of the Royal Historical Society of Victoria (RHSV).

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New Books

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

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

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



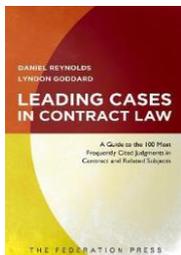
Dal Pont, G.E., *Law of charity*
2nd ed., LexisNexis Butterworths, Chatswood, N.S.W., 2017
Call number: 346.064 DAL.2 (Supreme Court of Victoria library)

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



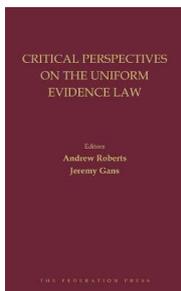
Newton, Gary and Conolly, Christopher, *Land acquisition*
7th ed., LexisNexis Butterworths, Chatswood, N.S.W., 2017
Call number: 343.0252 BRO.7 (Supreme Court of Victoria library)

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



Reynolds, Daniel and Goddard, Lyndon, *Leading cases in contract law*
Federation Press, Annandale, N.S.W., 2017
Call number: 347.06 CRI (VCAT library)

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



Roberts, Andrew and Gans, Jeremy (eds), *Critical perspectives on the uniform evidence law*
Federation Press, Annandale, N.S.W., 2017
Call number: 347.06 CRI (County Court of Victoria library and VCAT library)

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



Legislation

Victorian Bills

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

- [Fines Reform Amendment Bill 2017](#)
- [Firearms Amendment Bill 2017](#)
- [Gambling Regulation Amendment \(Gaming Machine Arrangements\) Bill 2017](#)
- [Planning and Environment Amendment \(Public Land Contributions\) Bill 2017](#)
- [Voluntary Assisted Dying Bill 2017](#)

Victorian Assents

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

- [Administration and Probate and Other Acts Amendment \(Succession and Related Matters\) Act 2017](#) No. 41/2017
- [Land Legislation Amendment Act 2017](#) No. 42/2017
- [Children and Justice Legislation Amendment \(Youth Justice Reform\) Act 2017](#) No. 43/2017
- [Domestic Animals Amendment \(Restricted Breed Dogs\) Act 2017](#) No. 44/2017
- [Justice Legislation Amendment \(Protective Services Officers and Other Matters\) Act 2017](#) No. 45/2017
- [Owner Drivers and Forestry Contractors Amendment Act 2017](#) No. 46/2017
- [Planning and Building Legislation Amendment \(Housing Affordability and Other Matters\) Act 2017](#) No. 47/2017
- [Worksafe Legislation Amendment Act 2017](#) No. 48/2017
- [Yarra River Protection \(Wilip-gin Birrarung murrong\) Act 2017](#) No. 49/2017

EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

The Supreme Court Library has the Argus newspaper from 1917 on display.

The page is turned daily and provides an insight into what was happening 100 years ago to the day.

A snapshot is provided via the Law Library of Victoria Twitter account. You can follow these tweets via [@lawlibraryvic](#) [#argus1917](#)

Proclamations

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

- Sex Offenders Registration Amendment (Miscellaneous) Act 2017 No. 25/2017
 - Sections 1-3, 49 of this Act came into operation on 23 September 2017 (SG314 19.9.2017)

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

- Land Legislation Amendment Act 2017 No. 42/2017
 - Sections 1-72 of this Act came in by forced commencement on 20 September 2017 s.2

High Court Cases

The following High Court cases were delivered this fortnight.

CONSTITUTIONAL LAW (CTH) - Appropriation of moneys from Consolidated Revenue Fund - Construction of Appropriation Act (No 1) 2017-2018 (Cth) - Where Finance Minister made determination under s10(2) of Appropriation Act (No 1) 2017-2018 (Cth) - Where determination sought to provide funding for postal survey - Whether s10 of Appropriation Act (No 1) 2017-2018 (Cth) invalid - Whether appropriation for purpose Parliament lawfully determined may be carried out.

STATUTES - Construction of Appropriation Act (No 1) 2017-2018 (Cth) - Power of Finance Minister to make determination under s 10(2) of Appropriation Act (No 1) 2017-2018 (Cth) - Whether determination made by Finance Minister authorised by s 10 - Whether Finance Minister satisfied urgent need for expenditure not provided for or insufficiently provided for because expenditure unforeseen - Whether Finance Minister erred in law by conflating satisfaction as to urgent need for expenditure with satisfaction as to expenditure being unforeseen - Whether s 10 limited by description of Appropriation Act (No 1) 2017-2018 (Cth) as Act for ordinary annual services of Government.

STATUTES - Delegated legislation - Validity - Whether direction to Australian Statistician exceeded power of Treasurer under s9(1)(b) of Census and Statistics Act 1905 (Cth) - Whether information to be collected statistical information - Whether information to be collected in relation to matters prescribed in s13 of Census and Statistics Regulation 2016 (Cth) - Whether Treasurer had power to specify from whom information to be collected - Whether s7A of Commonwealth Electoral Act 1918 (Cth) gave Australian Electoral Commission authority to assist Australian Bureau of Statistics in implementing direction.

CONSTITUTIONAL LAW (CTH) - Appropriation of moneys from Consolidated Revenue Fund - Standing to bring action for declarations and injunctions - Whether necessary or appropriate to determine if plaintiffs have standing - Standing of Member of House of Representatives - Standing of Senator - Standing of elector - Standing of incorporated body - Standing of association.

WORDS AND PHRASES - "Advance to the Finance Minister", "appropriation", "Australian Bureau of Statistics", "Australian Electoral Commission", "Australian Statistician", "Consolidated Revenue Fund", "departmental item", "Electoral Commissioner", "expenditure", "Finance Minister", "ordinary annual services of the Government", "plebiscite", "Treasurer", "unforeseen", "urgent need for expenditure".

Wilkie, Andrew Damien & Ors v The Commonwealth of Australia & Ors; Australian Marriage Equality & Anor v Minister for Finance Cormann, Mathias & Anor

[\[2017\] HCA 40](#)

28/09/2017

In the matter of questions referred to the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918 (Cth) concerning Roberts, Senator Malcolm

[\[2017\] HCA 39](#)

22/09/2017

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Application under s135BB of the Accident Compensation Act 1985 by representative of worker's estate - Worker commenced proceedings under s135A - Worker died before making application under s135BB(3) - Orders in s135BB(3) not made before worker died - Whether estate had a valid cause of action for purposes of s29(1) of the Administration and Probate Act 1958 - s135BB(3) does not impose a jurisdictional bar preventing a worker's claim from having been validly commenced - Appeal allowed.

ACCIDENT COMPENSATION - Application under s135BB of the Accident Compensation Act 1985 - Whether filing of generally endorsed writ satisfied requirement in s135BB(3) - Requirement in s135BB(3) not satisfied.

Perakis, Maria (as executrix on behalf of the estate of the late Sotirios Perakis) v Secretary to the Department of Transport, Planning and Local Infrastructure

Warren CJ, Osborn and Kaye JJA

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

22/09/2017

ACCIDENT COMPENSATION - Workplace injuries - Statutory compensation scheme - Claims assessment and management - Claim by worker for compensation - Authority subrogated to employer's rights - Employer disputed fact of claimant's employment - Authority rejected claim on other grounds - Claimant instituted proceedings against employer - Whether Authority subrogated to employer's right to defend proceeding - Whether right of subrogation dependent on proof that claimant was employed - Appeal allowed - Workplace Injury Rehabilitation and Compensation Act 2013 s71(4), s493(1).

JUDICIAL REVIEW - Magistrates' Court proceeding - Claim by worker against employer - Authority defending proceeding pursuant to right of subrogation - Employer intervened to dispute right of subrogation - Interlocutory ruling by magistrate - No right of appeal - Authority sought judicial review - Whether appropriate procedure - Fragmentation - Circumventing legislative policy - Magistrates' Court Act 1989 s109, Supreme Court (General Civil Procedure) Rules 2015 O 56.

WORDS AND PHRASES - 'employer', 'worker'.

Victorian WorkCover Authority v BSA Ltd; Nikolovski, Alen and The Magistrates' Court of Victoria

Maxwell P, Osborn and Kaye JJA

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

28/09/2017

ADMINISTRATIVE LAW - Judicial review - Decision required applicant to cease undertaking a distance education course while in custody - Decision never implemented and reversed prior to trial - Judge held that question of legality of decision was rendered hypothetical and dismissed proceeding - Application for leave to appeal refused.

PRACTICE AND PROCEDURE - Applicant alleged that respondent and her legal practitioners had engaged in conduct which, if true, would have constituted breaches of overarching obligations under Civil Procedure Act 2010 - Allegations lacked substance.

Minogue, Craig v Jan Shuard (in her capacity as the Correctional Services Commissioner)

Kyrou and Kaye JJA

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

22/09/2017

CONTRACT - Action for debt - Debtor alleging oral agreement to discharge debt and substitute loan to related corporation - Subsequent bank transactions of debtor and related corporation consistent with alleged agreement - Conflicting oral evidence - Findings adverse to credit of participants in conversation - Finding parties did not reach agreement - Appellate review of findings of fact - Fox v Percy (2003) 214 CLR 118; Robinson Helicopter Co Inc v McDermott (2016) 90 ALJR 679, applied - Appeal dismissed.

COURTS AND JUDGES - Reasons - Failure to make findings of fact - Delay between hearing of evidence and delivery of reasons for judgment - Whether reasons adequate - Expectation Pty Ltd v PRD Realty Pty Ltd (2004) 140 FCR 17; Franklin v Ubaldi Foods Pty Ltd [2005] VSCA 317; Hunter v Transport Accident Commission [2005] VSCA 1, referred to - Appeal dismissed.

EVIDENCE - Rule in Browne v Dunn (1894) 6 R 97 - Note of witness not referring to agreement alleged by witness to have been made three days earlier - Finding adverse to witness in respect of omission - Omission not put to witness in cross-examination - Note put into evidence by witness - Rule in Browne v Dunn not infringed - No denial of procedural fairness - Philippiadis v Transport Accident Commission (2016) 74 MVR 289, followed.

Food and Beverage Australia Ltd and Total Beverage Australia P/L v Andrews, Gregory Stuart (as liquidator of Holt Norman & Co P/L (in liquidation)) and Holt Norman & Co P/L (in liquidation)

Redlich, Santamaria, and McLeish JJA

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

21/09/2017

CONTRACT - Breach - Damages for distress, anxiety and depression - Whether damages recoverable - Whether damages for distress, anxiety and depression amount to 'non-economic loss' in respect of 'injury' under Wrongs Act 1958 pt VBA - Baltic Shipping Company v Dillon (1993) 176 CLR 344; Thomas v Powercor Australia Ltd [2011] VSC 586.

CONTRACT - Breach - Damages for inconvenience - Whether damages recoverable - No recovery where no physical inconvenience alleged - Whether Wrongs Act 1958 pt VBA applies to damages claim for inconvenience alone - Inconvenience not 'injury' for purposes of Wrongs Act 1958 pt VBA - Clarke v Shire of Gisborne [1984] VR 971; Boncristiano v Lohmann [1998] 4 VR 82; Thomas v Powercor Australia Ltd [2011] VSC 586.

CONTRACT - Breach - Loss of income and opportunity damages - Remoteness of damages - Defendant aware plaintiff borrowed to expand business - Plaintiff sold part of business to meet loan repayments following breach - Whether loss of income of existing business foreseeable - Burns v MAN Automotive (Aust) Pty Ltd (1986) 161 CLR 653.

CONTRACT - Damages - Basis for award of damages as between compensation and restitution - Whether unjust to recover less in compensation than amount admitted to be owed in restitution - Adjustment of damages to reflect admission of appropriate quantum.

ESTOPPEL - Issue estoppel - Single proceeding against two defendants conducted by separate trials - Whether defendants privies for purposes of estoppel - Defendants parties at all times and no question of privity arises - Defendants liable under different contracts - Whether subsequent trial raised issues resolved in earlier trial - No findings in first trial necessary to determine second trial.

PRACTICE AND PROCEDURE - Abuse of process - Single proceeding against two defendants conducted by separate trials - Whether reasonable justification for conducting second trial - Procedure adopted to accommodate one defendant's illness - Each trial directed only at respective liability of relevant defendant - No oppression or unfairness to defendant in second trial.

Archibald, Kevin v Powlett, Rachael

Redlich, Osborn, and McLeish JJA

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

21/09/2017

CONTRACT - Offer and acceptance - Exchange of emails - Whether parties made binding contract - Whether parties intended to be immediately bound by what they had agreed - Whether agreement contemplated execution of formal deed of settlement and releases.

CONTRACT - Appeal - Judge's finding that parties' agreement contemplated execution of formal deed of settlement before agreement became binding - Whether Judge's finding was correct - Judge's finding correct - Application for leave to appeal granted - Appeal dismissed.

Queensland Phosphate P/L and Paradise Phosphate Ltd v Korda, Mark Anthony and Shepard, Craig Peter (as joint and several liquidators of Legend International Holdings Inc (in liquidation))

Tate and Beach JJA, Sifris AJA

[\[2017\] VSCA 269](#)

26/09/2017

CORPORATIONS - Receivers appointed under charge - Remuneration - Deeds of appointment and indemnity - Each provided for cap of \$15,000 plus GST - Separate indemnity for receivers that defence of litigation at mortgagee's request be 'at the expense' of mortgagee - Construction - Whether cap applied to indemnity - If so, whether mortgagee waived reliance on cap.

EQUITY - Equitable lien - Receivers - Care, preservation and realisation of assets - Entitlement to lien - Uncertainty as to whether any amount that could attract lien - Inquiry.

PRACTICE AND PROCEDURE - Application to amend reply to allege waiver refused on first day of trial - Reasons for judgment found waiver established - Procedural fairness denied.

Gippsreal Ltd v Ross, David Anthony and Albarran, Richard

Warren CJ, Kyrou and Hansen JJA

[\[2017\] VSCA 257](#)

20/09/2017

COSTS - Application for leave to appeal against a decision refusing judicial review refused - Unrepresented applicant - Costs awarded to the second respondent fixed at \$7500.

Jack Cai v The County Court of Victoria; Michelle Corbett of the Traffic Camera Office

Priest and Beach JJA

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

27/09/2017

COSTS - Multiple issues raised on appeal - Partial success on appeal - Whether successful party entitled to issues-based costs order - *Marriner v Australian Super Developments Pty Ltd* [2016] VSCA 141, discussed.

Yarra City Council v Metropolitan Fire & Emergency Services Board; Connolly Environmental (Aust) P/L; The State of Victoria; GHD P/L (ACN 008 488 373) (No 2)

Warren CJ, Tate and Osborn JJA

[\[2017\] VSCA 255](#)

20/09/2017

CRIMINAL LAW - Appeal - Conviction - Manslaughter - Death of child in 2005 caused by abdominal injuries - Trial not held until 2016 - Principal prosecution evidence constituted by hearsay account of child aged four years at time of death - Conviction dependent on credibility and reliability of hearsay account - Whether jury able to exclude reasonable hypothesis consistent with innocence - Whether verdict unsafe and unsatisfactory - Appeal allowed - Judgment of acquittal entered - Criminal Procedure Act 2009 s277(1)(b).

Debresay, Mussie v The Queen

Priest, Beach, and Kaye JJA

[\[2017\] VSCA 263](#)

21/09/2017

CRIMINAL LAW - Appeal - Conviction - Murder - Hearsay evidence - Whether statements made to police on night of offending admissible - Whether unreliable witness warning inadequate - No error - Leave to appeal refused - Evidence Act 2008 (Vic) s59, s62, s66.

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Murder - Offender sentenced to 22 years' imprisonment with non-parole period 18 years after trial - Whether manifestly inadequate - Cold-blooded killing - No remorse - Appeal allowed - Resentenced to 28 years' imprisonment with non-parole period 24 years - Post-offence conduct - Whether uncharged attempts to pervert course of justice constituted aggravating circumstances - R v De Simoni (1981) 147 CLR 383; R v Newman and Turnbull [1997] 1 VR 146; DPP v England [1999] 2 VR 258 discussed.

Semaan, Alexander John v The Queen; Director of Public Prosecutions [DPP] v Semaan, Alexander John

Priest, Beach, and Hansen JJA

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

21/09/2017

CRIMINAL LAW - Appeal - Refusal of application for permanent stay of proceedings - Refusal to certify for interlocutory appeal - Sexual offences - Delay in prosecuting offences - Alleged offending occurred more than four decades earlier - Unavailability of evidence and witnesses - Whether combination of delay and unreliability of the complainant as a witness justified grant of permanent stay - Whether irremediable prejudice to accused - Application for leave to appeal granted - Appeal allowed - Permanent stay ordered.

Green, Joel (a Pseudonym) v The Queen

Priest, Kaye, and Coghlan JJA

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

28/09/2017

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Common assault - Total effective sentence of two years and six months' detention in a Youth Justice Centre - Whether judge erred in assessment of offence gravity - Whether judge erred in considering objective gravity of confrontational aggravated burglary precluded community correction order ('CCO') - Role of consistency in sentencing and individualised justice in instinctive synthesis - Youth and excellent prospects of rehabilitation required consideration of non-custodial sentence - Specific error - Appeal allowed - Appellant resentenced to time served in Youth Justice Centre and a CCO - Boulton v The Queen (2014) 46 VR 308; Hogarth v The Queen (2012) 37 VR 658 discussed.

Bradshaw, Joel v The Queen

Warren CJ, Kyrou and Redlich JJA

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

26/09/2017

CRIMINAL LAW - Appeal - Sentence - Application for leave to appeal - Multiple charges of trafficking in a drug of dependence - Possess a drug of dependence - Possess tablet press - Possess traffickable quantity of unregistered firearms - Handling stolen goods - Total effective sentence of six years and four months' imprisonment - Non-parole period of four years - Cumulation between two indictments - Offending on second indictment occurred while on bail for offences on first indictment - Whether reasonably arguable that sentence manifestly excessive - Application for leave to appeal refused.

Quadara, Domenic v The Queen

Tate JA

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

20/09/2017

CRIMINAL LAW - Appeal - Sentence - Commonwealth and State drug trafficking offences - Parity - Whether sentence imposed on individual charge demonstrated unacceptable disparity with co-offender - Judge required to apply principle of totality - No error - Whether manifestly excessive - Leave refused - *Lowe v The Queen* (1984) 154 CLR 606, *Green v The Queen* (2011) 244 CLR 462.

Nguyen, Hai Duc v The Queen

Priest, Kaye, and Coghlan JJA

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

21/09/2017

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Family violence - Sexual assault; stalking (two charges); attempt to pervert the course of justice; contravention of family violence intervention order intending to cause harm or fear for safety; making threat to kill - Aggregate sentence of 16 months' imprisonment - Whether sentence manifestly inadequate - Whether judge erred in imposing aggregate sentence - Appeal allowed - Re-sentenced to 2 years and 11 months' imprisonment with non-parole period of 2 years.

Director of Public Prosecutions [DPP] v Lade, Jackson (a Pseudonym)

Priest, Hansen, and Coghlan JJA

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

21/09/2017

CRIMINAL LAW - Appeal - Sentence - Making unauthorised decoder available online - Causing unauthorised access to encoded broadcasts by way of trade - Applicant effectively ran Melbourne card-sharing Pay TV piracy network - Sentenced to 15 months' imprisonment to be released on recognisance release order for 18 months after serving 10 months' imprisonment - Whether manifestly excessive - Parity - Whether manifest lack of appropriate relativity with interstate co-offender sentenced to 18 months' imprisonment wholly suspended, released on a recognisance to be of good behaviour for 18 months on condition of \$1,000 surety - Applicant convicted of two continuing offences cf. interstate co-offender convicted of one offence on a single agreed date - Further offending of interstate co-offender taken into account pursuant to s16BA of the Crimes Act 1914 (Cth) - Appeal allowed - Sentence of imprisonment confirmed; order that applicant be released on a recognisance release order after 164 days being the total time served to date - Copyright Act 1968 (Cth) s135ASG, s135ASJ - Attorney-General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1991 No. 1 of 2002 (2002) 56 NSLWR 146 referred to.

De Lorenzo, William v Director of Public Prosecutions [DPP] (Cth)

Osborn and Coghlan JJA

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

25/09/2017

CRIMINAL LAW - Appeal - Sentence - Plea of guilty - Aggravated burglary - Sentence of 4 years and 1 month's imprisonment - Whether manifestly excessive - Applicant was 21 years old at time of offending - Whether youth given sufficient weight by sentencing judge - Question of possible deportation - Appeal dismissed.

Rooney, Brandon Robert v The Queen

Coghlan and Osborn JJA

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

28/09/2017

CRIMINAL LAW - Application for leave to appeal against sentence - False imprisonment - Extortion with a threat to inflict injury - Sentenced to total effective sentence of 5 years and 6 months' imprisonment with a non-parole period of 3 years and 8 months - Whether individual sentences and total effective sentence manifestly excessive - Whether sentencing judge gave too much weight to the applicant's criminal record in assessing the applicant's prospects of rehabilitation - Crimes Act 1958 s27, s320 - Leave refused.

Brown, Mark v The Queen

Osborn and Coghlan JJA

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

22/09/2017

EQUITY - Remedies - Specific performance - Availability of specific performance to enforce non-contractual obligations - Oral agreement for sale of property between parents and son - Where specific performance sought as remedy for estoppel and constructive trust claims - Where trial judge awarded specific performance of agreement.

COURTS AND JUDGES - Procedural fairness - Entitlement to fair trial - Where claim in contract not clearly pleaded - Where pleading used language of specific performance to describe remedies by way of estoppel and constructive trust - Where applicants at trial treated case as one of estoppel and constructive trust - Where trial judge awarded specific performance of agreement - Whether denial of procedural fairness - *Water Board v Moustakas* (1994) 180 CLR 491 and *Suvaal v Cessnock City Council* (2003) 200 ALR 1 applied.

Cresswell, Charles James and Cresswell, Gail Anne v Cresswell, Corey

Santamaria and McLeish JJA, and Keogh AJA

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

28/09/2017

ESTOPPEL - Issue estoppel - Whether pleading an abuse of process due to issue estoppel arising from findings in past Federal Court decision - Whether findings legally indispensable to decision - Where findings relate to subject matter of oral agreement and scope of parties' entitlements under agreement - Whether issue estoppel precluded applicant from asserting beneficial ownership over certain stock - *Blair v Curran* (1939) 62 CLR 464 discussed and applied.

ESTOPPEL - Issue estoppel - Material that court may consider in determining issues in previous proceedings - Where no pleadings in previous proceedings - Where court considered reasons, evidence, written submissions and transcript of oral argument to determine issues - *Murphy v Abi-Saab* (1995) 37 NSWLR 280 applied.

Milfoil P/L v Commonwealth Bank of Australia Ltd

Tate, Whelan, and Santamaria JJA

[\[2017\] VSCA 256](#)

21/09/2017

JUDICIAL REVIEW - Statutory Interpretation - Transitional provisions - Building Practitioners Board issued notices of inquiry into allegations against registered building practitioner - Hearing not commenced - Act amended to abolish Building Practitioners Board - Transitional provisions empowered Board to complete inquiries which commenced before specified date - Whether inquiry commenced before that date - Inquiry is a process and involves more than single event of hearing - Appeal dismissed - Building Act 1993, Building Legislation (Consumer Protection) Act 2016.

Ross, Brian Douglas v Building Practitioners Board and Victorian Building Authority

Kyrou, Ferguson, and McLeish JJA

[\[2017\] VSCA 274](#)

28/09/2017

PRACTICE AND PROCEDURE - Amendment of statement of claim - Amendment refused and proceeding dismissed at first instance - Leave to appeal - Barnes v Addy - Knowing assistance - Leave to appeal granted - Appeal allowed - Leave to amend granted.

SUMMARY JUDGMENT - No real prospect of success on basis that if leave to amend refused, no further amendment possible - Proceeding dismissed at first instance - Civil Procedure Act 2010 (Vic) s63 - Appeal - Leave to amend granted - Order of dismissal set aside.

Nicholson Street P/L (ACN 069 104 089) (receivers & managers appointed) (in liquidation) & Ors v Lane, Paul James

Beach, Hansen, and Coghlan JJA

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

26/09/2017

VALUATION OF LAND - Land tax - Site value - Highest and best use - Public infrastructure - Railway station and transport interchange - Planning restrictions - Capacity of land to yield monetary return - Potentiality of land - State of Victoria sole hypothetical purchaser - Whether comparable sales method applicable - Whether Tribunal acted as expert - Whether valuation decision reasonably open - No error of law - Appeal dismissed - Valuation of Land Act 1960 s5A.

Public Transport Development Authority and Civic Nexus P/L v Commissioner of State Revenue

Warren CJ, Maxwell P, and Kaye JA

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

22/09/2017

Commercial Court

BUILDING CONTRACTS - Construction dispute - Adjudication - Adjudication Certificate - Satisfaction of the requirements of the Building and Construction Industry Security of Payment Act 2002 (Vic), s28Q and s28R - Entry of judgment under the Building and Construction Industry Security of Payment Act 2002 (Vic), s28R.

In the matter of an application by Austral Precast (Vic) P/L for judgment to be entered pursuant to s28R of the Building and Construction Industry Security of Payment Act 2002 (Vic). Austral Precast (Vic) P/L (ACN 145 070 837) v Australia Cenvic Construction P/L (ACN 608 196 747)

Digby J

[\[2017\] VSC 582](#)

26/09/2017

CORPORATIONS - Application to set aside statutory demand pursuant to s459G of the Corporations Act 2001 (Cth) - Genuine dispute as to whether debt due and payable at date of service of the statutory demand - Demand set aside - No order as to costs.

Kevlah P/L (ACN 059 928 915) v Vic Mix P/L (ACN 149 268 226)

Gardiner AsJ

[\[2017\] VSC 571](#)

22/09/2017

CORPORATIONS - External administration - Application for further extension of convening period of company in administration pursuant to s447A of the Corporations Act 2001 (Cth) - Administrators required to carry out extensive investigations prior to compiling their report to creditors for purpose of consideration at second meeting of creditors, in particular comparison of the outcome that would be achieved for creditors by implementation of proposal by related parties as compared with a liquidation of the company - Further extension of convening period warranted together with ancillary orders.

Wight, Barry (in his capacity as joint and several administrator of each of Acquire Learning P/L (ACN 168 523 279) (administrators appointed) Acquire Learning & Careers P/L (ACN 159 509 323) (administrators appointed) and Acquire Retail P/L (ACN 167 927 693) (administrators appointed))

Gardiner AsJ

[\[2017\] VSC 572](#)

22/09/2017

CORPORATIONS - Scheme of Arrangement - Merger of companies - Role of the Court - Competition condition - Exclusivity Clauses - Reimbursement clauses - s411 Corporations Act 2001 (Cth).

In the matter of Tatts Group Ltd (ACN: 108 686 040) and Tatts Group Ltd (ACN: 108 686 040)

Sifris J

[\[2017\] VSC 552](#)

18/09/2017

LEGAL PRACTITIONERS - Solicitors - Application to restrain plaintiff from continuing to retain solicitors in the proceeding - Solicitors likely to be material witnesses on controversial issues - Possibility of solicitors being exposed to suit - *Kallinicos v Hunt* (2005) 64 NSWLR 561 - Costs.

Reardon, Rosemary v Digney, Paul Joseph; Digney, David Anthony and Digney, John Francis Almond J

[\[2017\] VSC 574](#)

25/09/2017

PRACTICE AND PROCEDURE - Pleading - Application to amend third party statement of claim after principal proceeding largely determined - Leave granted.

Between Attorney-General of Victoria on the relation of The Presbyterian Church of Victoria Trusts Corporation. The Presbyterian Church of Victoria Trusts Corporation and Anstee, Dorothy Rae; Nuske, James Frederick; Evans, Bruce Charles; Holman, Helen Anne and Kerss, Paul Lindsay as Trustees of the Scots' Church Properties Trust and as Trustees of the Assembly Hall of the Presbyterian Church of Victoria and Hearn, Harry Meares

Sifris J

[\[2017\] VSC 520](#)

15/09/2017

PRACTICE AND PROCEDURE - Pleadings - Application to strike out parts of statement of claim - Supreme Court (General Civil Procedure) Rules 2015, r23.02 - Held: Application allowed in part.
EQUITY - Fiduciary duties - Duty of a promoter to potential investors - Whether alleged prescriptive duty of utmost candour and honesty arguable - *Elders Trustee and Executor Co Ltd v E G Reeves Pty Ltd* (1987) 78 ALR 193, *United Dominions Corporation v Brian* (1985) 157 CLR 1, *Catt v Marac Australia Ltd* (1986) 9 NSWLR 639, *Fitzwood Pty Ltd v Unique Goal Pty Ltd (in liq)* (2001) 188 ALR 586 considered - Held: Arguable claim.

EQUITY - Breach of fiduciary duties - Third party's knowing assistance of breach - Whether express pleading of dishonest breach by fiduciary necessary - *Singtel Optus Pty Ltd v Almad Pty Ltd* [2014] 87 NSWLR 609 applied - Held: Pleading of dishonesty required.

Babcock & Brown DIF III Global Co-Investment Fund, LP and DIF III GP Ltd v Babcock & Brown International P/L (ACN 108 617 483) & Ors (According to the schedule annexed)

Hargrave J

[\[2017\] VSC 556](#)

19/09/2017

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 - Application for summary judgment allowed.

Perpetual Trustees Victoria Limited (ACN 004 027 258) v Sanders, Warren Bruce; Sanders, Warren Bruce v Perpetual Trustees Victoria Ltd (ACN 004 027 258); Australian First Mortgage; Challenger Mortgage Management P/L; Dover, Steven; Grippio, Tracey; Pike, Matthew and Strang, Kemp

Matthews JR

[\[2017\] VSC 555](#)

15/09/2017

Common Law Division

ACCIDENT COMPENSATION - Plaintiff suffered injury as a consequence of a motor vehicle accident with an unidentified vehicle and driver - Plaintiff seeking damages against the Transport Accident Commission pursuant to s96 of the Transport Accident Act 1986 - Whether unidentified driver was negligent - Physical injury - Neuropathic pain - Psychiatric injury - Plaintiff suffering from post-traumatic stress disorder and severe chronic adjustment disorder with depression - Pre-existing physical and psychiatric conditions - Plaintiff awarded damages - s96 of the Transport Accident Act 1986.

Darren Love v Transport Accident Commission (No 2)

Zammit J

[\[2017\] VSC 584](#)

28/09/2017

ADMINISTRATION AND PROBATE - Where question arises as to composition of class of intestacy beneficiaries - Whether administrators should pursue further enquiries - Whether deceased admitted paternity - Status of Children Act 1974, s7(1) - Supreme Court (General Civil Procedure) Rules 2015, r54.02.

In the matter of the estate of A C, deceased and In the matter of an application pursuant to r54.02 of the Supreme Court (General Civil Procedure) Rules 2015. Application by: M M and N N

McMillan J

[\[2017\] VSC 576](#)

22/09/2017

APPEAL - Victorian Civil and Administrative Tribunal - Applicant studying to become an exercise physiologist and intending sometimes to work with children in sporting and like contexts - Application for working with children check - Decision of deputy president refusing to grant assessment notice - Applicant on parole for serious drug offences but found to be rehabilitated and of no direct risk of harm to children - Application refused because of indirect risk to children generally should applicant relapse into drug-related activity - Whether deputy president properly evaluated nature and extent of that risk - Whether properly or at all considered whether giving an assessment notice would not pose an unjustifiable risk to safety of children - Whether considered necessary causal connection between any such generalised risk and child-related work that applicant might lawfully perform by reason of being given the notice - Delay in instituting application for leave to appeal - Whether time should be extended - Relevant considerations - 'unjustifiable risk to the safety of children', 'pose', 'giving the assessment notice' - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1), (2) and (5), Working with Children Act 2005 (Vic) s13(2), s26B(1).

P Q R v Secretary, Department of Justice and Regulation

Bell J

[\[2017\] VSC 514](#)

26/09/2017

CHARITABLE TRUST - Powers under Salvation Army (Victoria) Property Trust Act and the Trust Deed - Judicial Advice - Rule 54.02 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Proposed transactions approved.

In the matter of the Salvation Army (Victoria) Property Trust Act 1930 and an application for judicial advice concerning the Salvation Army Social Work Trust. Between: The Salvation Army (Victoria) Property Trust (ABN 143 615 169) and Attorney General for the State of Victoria

Sifris J

[\[2017\] VSC 553](#)

15/09/2017

CRIMINAL LAW - Appeal on a question of law - Crown appeal - Whether assertion that 'undue weight' given to evidence a proper question of law - Whether open to Magistrate to dismiss the charges - Whether Magistrate bound to convict - Appeal dismissed.

In the matter of an Appeal on a Question of Law pursuant to Section 272 Criminal Procedure Act 2009. Director of Public Prosecutions [DPP] (on behalf of Senior Constable Daniel Seath) v Burns, Darren

Riordan J

[\[2017\] VSC 570](#)

22/09/2017

FIDUCIARY DUTIES – Where first defendant owed duties as plaintiff’s attorney – Where third defendant owed duties as trustee – Where plaintiff alleges breach of fiduciary duties against defendants – Where all defendants knowingly assisted and benefited from breaches of duty – Dishonest and fraudulent design – Barnes v Addy (1874) LR 9 Ch App 244.

INTEREST – Awards of interest – Where plaintiff entitled to interest on funds used by defendants in breach of duties – Whether plaintiff entitled to compound interest – Rate of interest to be awarded – Date from which interest accrued – Supreme Court Act 1986, s60 – Talacko v Talacko [2009] VSC 579.

COSTS – Indemnity costs – Whether ‘special or unusual features’ warrant special costs order – Where defendants’ conduct during proceeding justifies award of indemnity costs to the plaintiff – Supreme Court (General Civil Procedure) Rules 2015, r63.28.

Ash, Graham Barry (by his administrator, Suzanne Lyttleton) v Ash, Vanessa Maria and Grimm, Bradley and G.B. Ash & Co P/L (ACN 005 479 792) (as trustee of the Eighth Gombak Nominees P/L Superannuation Fund and G.B. Ash Family Trust)

McMillan J

[\[2017\] VSC 569](#)

26/09/2017

LEGAL PRACTITIONERS - Application that practitioner's name be removed - Professional misconduct - Solicitor convicted of serious crimes involving fraud - Order that practitioners name be removed from the roll - Legal Profession Uniform Law 2014 s23(1)(b).

Victorian Legal Services Board v Angeleri, Denis

J Forrest J

[\[2017\] VSC 566](#)

20/09/2017

OCCUPATIONAL HEALTH AND SAFETY - Workplace incident - Investigation of suspected contravention of Act or regulations - Notices issued by the VWA requiring the giving of information and the production of documents - Whether Notices valid - Whether reasonable excuse for non-compliance with Notices - Occupational Health and Safety Act 2004 s9, s100, s111, s131, s132.

APPEALS - Appeals on questions of law from Magistrate's orders - Fines without conviction for non-compliance with VWA statutory notices requiring the giving of information and production of documents - Appeal dismissed - Criminal Procedure Act 2009 s272.

Aurora Construction Materials P/L (ACN 126 837 483) and Epping Transport P/L (ACN 126 847 587) v De Luca, Stacey (Victorian WorkCover Authority)

Ginnane J

[\[2017\] VSC 573](#)

22/09/2017

PRACTICE AND PROCEDURE - Appeal from orders of Victorian Civil and Administrative Tribunal - Suppression order sought preserving anonymity of applicant and family to protect family from distress and embarrassment - Applicant contended he would be reasonably deterred from participating in proceeding if no order made - Whether necessary to prevent real and substantial risk of prejudice to proper administration of justice - Whether enforcement of existing pseudonym order represented reasonably available other means of doing so - Contempt of court - Whether news media organisation free to publish name of applicant despite pseudonym order where his identity was independently ascertained - Whether doing so would frustrate purpose of order - Presumption in favour of disclosure of information - Principles of open justice and free communication of information - Relationship between suppression orders and pseudonym orders - Inherent jurisdiction of court to make such orders - Application of Open Courts Act 2013 (Vic) to making suppression orders - 'pseudonym order', 'proceeding suppression order' - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1), Working with Children Act 2005 (Vic) s13(2) and s26B(1), Open Courts Act 2013 (Vic) s4, s13, s17 and s18, Charter of Human Rights and Responsibilities Act 2006 (Vic) s7(2), s15 (2) and (3) and s24(1) and (2).

P Q R v Secretary, Department of Justice and Regulation

Bell J

[\[2017\] VSC 513](#)

26/09/2017

PRACTICE AND PROCEDURE - Application by defendant for an order requiring submission of plaintiff's explanted lung for testing - Consideration of applicable powers of the Court - Production of a thing - Civil Procedure Act 2010 (Vic) s9, s47 and s55 - Supreme Court (General Civil Procedure) Rules 2015 (Vic) o33, r34.01, 37.01 and 40.12 - *De Simone v Legal Services Board*, unreported, Supreme Court of Victoria (30 January 2015) - *Doodeward v Spence* (1908) 6 CLR 406 - *Hanks v Johnston* (No 3) [2016] VSC 629 - *Pecar v National Australia Trustees Ltd*, unreported, Supreme Court of NSW (27 November 1996) - *Roche v Douglas* (2000) 22 WAR 331 - *S v Minister for Health* [2008] WASC 262 - *Stace v Commonwealth* (1989) 51 SASR - Application granted on basis of r 37.01 - Explanted lung is 'property' for the limited purposes of r37.01 - Alternate bases under r34.01 and s47 of the Civil Procedure Act 2010 (Vic) - The production and testing of the lung is conducive to the effective and complete determination of the issue.

James, David v Seltsam P/L and Amaca P/L

Zammit J

[\[2017\] VSC 506](#)

30/08/2017

PRACTICE AND PROCEDURE - Freezing order - Risk of dissipation of assets - Pre-existing liabilities including non-secured loan to third party - Application refused - Order 37A of the Supreme Court (General Civil Procedure) Rules 2005.

Charalambous, Lois v Burgess, Raymond Claude

Zammit J

[\[2017\] VSC 550](#)

14/09/2017

PRACTICE AND PROCEDURE - Medical negligence claim - Duties of legal practitioners to court - Failure to disclose existence of expert evidence in a timely manner - Leave sought by defendant to adduce additional expert evidence - Leave should be granted - Civil Procedure Act 2010, s7-9 - Supreme Court (General Civil Procedure) Rules 2015, Order 44.

Pierides, Jamie v Monash Health

Zammit J

[\[2017\] VSC 564](#)

21/09/2017

PRACTICE AND PROCEDURE - Vexatious litigant - Application for leave to commence an action against the Auditor General for the State of Victoria - Allegation that funds raised by Corrections Victoria and G4S Custodial Services from tobacco levies were not expended on the purposes for which they were imposed - Vexatious Proceedings Act 2014 (Vic) s29, s54, s55, s56, s58, s63, s91 - Audit Act 1994 (Vic) s3, s8 - Constitution Act 1975 (Vic) 94B(6).

Knight, Julian v The Auditor-General for the State of Victoria

Keogh J

[\[2017\] VSC 567](#)

22/09/2017

Costs Court

PRACTICE AND PROCEDURE - Security for costs - Application for security for costs by respondent to appeal - Appellant a corporation - Inherent jurisdiction of the Court - Reason to believe appellant will not be able to pay costs of respondent if unsuccessful in the appeal - Security for costs ordered - Lines v Tana Pty Ltd [1987] VR 641; Ritter v North Side Enterprises Pty Ltd (1975) 132 CLR 301; Rajski v Computer Manufacture & Design Pty Ltd [1982] 2 NSWLR 443; Livingspring Pty Ltd v Kliger Partners (2008) 20 VR 377; Colmax Glass Pty Ltd v Polytrade Pty Ltd [2013] VSC 311.

PRACTICE AND PROCEDURE - Notice to produce - Documents called for relating to the retainer of the solicitor and counsel for the respondent to the appeal - Whether any legitimate forensic purpose - Application of indemnity principle - No legitimate forensic purpose - Notice to produce set aside - Environment Protection Authority v Caltex Refining Co Pty Ltd (1993) 178 CLR 477; Jefferson Ford Pty Ltd v Ford Motor Co of Aust Pty Ltd [2007] VSC 450; Crown Joinery Pty Ltd v Lyleho Pty Ltd [2007] VSC 214, Shaw v Yarranova Pty Ltd [2011] VSCA 655; Woolworths Ltd v Svajcer [2013] VSCA 270; Webb v Wheatley [2015] VSC 153.

ACN 096 450 770 (Formerly AJH Lawyers P/L) v Mathieson Nominees P/L and Mathieson, Ian

Derham AsJ

[\[2017\] VSC 559](#)

20/09/2017

Criminal Division

CRIMINAL LAW - Application for bail - Applicant charged with trafficking a large commercial quantity of heroin and dealing with proceeds of crime - Whether exceptional circumstances demonstrated - Whether applicant poses unacceptable risk of failing to surrender himself into custody - Lengthy and unacceptable delay - Exceptional circumstances not shown as applicant had admitted having trafficked large commercial quantity, and disputed only total quantum alleged and period of offending - Applicant had close ties outside jurisdiction and access to significant assets - Applicant unacceptable risk - Bail refused.

In the matter of the Bail Act 1977 (Vic) and In the matter of an application for Bail by 'M O' (a pseudonym)

Weinberg AP

[\[2017\] VSC 557](#)

18/09/2017

CRIMINAL LAW - Bail - Extortion with threat to injure, stalking, harass witness, use of a carriage service to harass and attempt to pervert the course of justice - Applicant in 'show cause' position - Whether unacceptable risk of failing to answer bail or interfering with witnesses - Bail refused. *In the matter of the Bail Act 1977 and In the matter of an Application for Bail by El Sayed, Bassem*

Zammit J

[\[2017\] VSC 563](#)

21/09/2017

CRIMINAL LAW - Bail - Kidnapping, intentionally causing injury, recklessly causing injury, unlawful imprisonment, unlawful assaults (multiple counts), making threat to kill, threatening to inflict serious injury, unlawful assault with a weapon, reckless conduct placing person in danger of death - Show cause situation - Serious offending - No prior criminal history - Offending during a 12-hour period - Show cause situation - Whether unacceptable risk - Factors supporting grant of bail subject to strict conditions - Bail granted subject to strict conditions.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Easson, Shane

Beach JA

[\[2017\] VSC 565](#)

20/09/2017

CRIMINAL LAW - Bail - Threat to kill, threat to commit sexual offence, using controlled weapon without lawful excuse, recklessly cause injury, intentionally cause injury, common law assault, false imprisonment - Show cause situation - Whether unacceptable risk - Unacceptable risk - Cause not shown - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Oksuz, Inan

Beach JA

[\[2017\] VSC 588](#)

28/09/2017

CRIMINAL LAW - Bail - Trafficking a commercial quantity of a drug of dependence - Firearms charges - Using or procuring the use of intimidation - Requirement to show 'exceptional circumstances' - Whether exceptional circumstances made out - Whether an unacceptable risk of committing an offence while on bail, endangering the safety or welfare of members of the public or interfering with witnesses - Exceptional circumstances not made out - Unacceptable risk of committing an offence while on bail - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Casale, Saverio

Beach JA

[\[2017\] VSC 568](#)

21/09/2017

CRIMINAL LAW - Murder - Evidence - Admissibility of evidence that the deceased called the accused a paedophile or a 'tamp' - Evidence Act 2008 s55, s135 and s137.

The Queen v Brown, Hugh

Beale J

[\[2017\] VSC 589](#)

23/05/2017

CRIMINAL LAW - Sentence - Conspiracy to defraud the State of Victoria - Receiving secret commission - Awarding government contracts in excess of \$17M to related companies with conflict of interest - Offences occurred over seven year period - Key player - Plea of guilty - Undertaking to give evidence against co-offenders - Other mitigating circumstances - Total effective sentence 9 years with a minimum of 6 years and 3 months.

The Queen v Wells, Barry John

John Dixon J

[\[2017\] VSC 575](#)

25/09/2017

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Intentionally causing injury - Upper-range examples of offences - Offender and unknown co-offender pursued victims in a car chase for about 5 kilometres before assaulting them - Provocation - Deceased fired a shot at offender before car chase - Plea of guilty at first reasonable opportunity - Remorse - Additional hardship of imprisonment - Guarded prospects of rehabilitation - Total effective sentence of 10 years and six months imprisonment - Non-parole period of seven years.

The Queen v Orfanidis, Christopher

Beale J

[\[2017\] VSC 586](#)

26/09/2017

CRIMINAL LAW - Sentence - Two charges of intentionally causing serious injury, one charge of intentionally causing injury, and one charge of theft - Guilty plea - Random attacks on victims - Two offences involved stabbing unarmed victims numerous times in or near their homes - Serious ongoing consequences for victims - Offender suffers from serious mental illness with psychotic symptoms - Prospects of rehabilitation guarded at best - Sentenced as serious violent offender - Protection of community paramount consideration in sentencing - Sentenced to total effective sentence of 14 years' imprisonment with non-parole period of 11 years.

The Queen v Thackray, John Samuel

Weinberg JA

[\[2017\] VSC 561](#)

20/09/2017

CRIMINAL LAW - Sentence - Murder - 'Cold case' - Premeditated killing - Victim stabbed in neck and body burned - Motive for killing financial gain - Absence of remorse - Prospects of rehabilitation said to be good - Relative youth of offender at time of offending - Sentenced to 25 years' imprisonment with non-parole period of 21 years.

The Queen v Lavery, Christopher John

Weinberg JA

[\[2017\] VSC 587](#)

28/09/2017

CRIMINAL LAW - Sentence - Murder - Jury verdict - Offender stabbed friend and flatmate in his flat - Single stab wound - Offender sought help for victim immediately after stabbing - Little premeditation - Low-range example of the offence of murder but offender sentenced as a serious violent offender - Long-term drug and alcohol addiction - Guarded prospects of rehabilitation - 21 years' imprisonment with non-parole period of 17 years.

The Queen v Brown, Hugh

Beale J

[\[2017\] VSC 590](#)

21/09/2017

Practice Court

CRIMINAL LAW - Conviction - Order of imprisonment by County court of Victoria - Application for writ of habeas corpus - Writ of habeas corpus not available - Rich v Secretary to the Department of Justice (2011) 33 VR 437.

PREROGATIVE WRITS - Habeas corpus - Availability.

Dudley, Keith Irvine v Governor, Hopkins Correctional Centre Ararat & Ors

J Forrest J

[\[2017\] VSC 580](#)

20/09/2017

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.

CONTRACT - Loan to a company - Secured by the issue of a convertible note - Conflicting versions of events.

Healthybook Living Pty Ltd v Heurston Group PLC

[\[2017\] VCC 1313](#)

Judge Anderson

20/09/2017

COSTS

JJ Armstrong Pty Ltd v Hope St Student Accommodation Pty Ltd (No 2)

[\[2017\] VCC 1317](#)

Judge Woodward

15/09/2017

PRACTICE AND PROCEDURE - Enforcement of judgment against Plaintiff - Instalment order - Applications for varied or substituted instalment orders refused - Warrant of seizure and sale issued - Applicant (Plaintiff) filed an affidavit with incorrect information in relation to the value of his house property - Applicant had previously entered into a contract for the sale of the property for a higher sum - Order made setting aside warrant of seizure and sale - Order revoked and settlement of sale of property only to be permitted on condition that judgement satisfied - Plaintiff permitted to make further application to set aside warrant of seizure and sale on proper affidavit material.

Refaat v Barry (No 2)

[\[2017\] VCC 1375](#)

Judge Anderson

26/09/2017

Magistrates' Court of Victoria Cases

No Magistrates' Court of Victoria cases were received for the bulletin 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

Flexibility rule - Administrative officials - Legislative intent - Participation - R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs - British Oxygen Co. v Minister of Technology - UK
Perry, A. "The flexibility in administrative law." (2017) 76(2) Cambridge LJ 375-398.

Jurisprudence - Legal theory - Authority - Invalidity - Ahmed v HM Treasury - Hoffman LaRoche v Secretary of State for Trade and Industry - UK
Adams, T. "The standard theory of administrative unlawfulness." (2017) 76(2) Cambridge LJ 289-310.

Admiralty Law

Containerisation - Shipping law - Ports - Vessels - Admiralty Act 1988 (Cth), s19 - Law reform proposals - Comparative analysis - South Africa - Australia
Cremean, D. "Slot charters and surrogate ship arrest." (2017) 91(8) ALJ 632-635.

Computer Law

Confidential information - Data protection - Digital storage - Trade secrets - Big data - Cybersecurity - Computer hackers - Cyber pirates - Intellectual property - Comparative law - EU - Germany - UK
Beale, A. et al. "The protection of data in our digital age." [2017] 6 JBL 461-472.

Constitutional Law

Constitutional rights - Proportionality - Judicial review - Absolute validity - Weight formula - Human rights - UK
Alexy, R. "The absolute and the relative dimensions of constitutional rights." (2017) 37(1) Oxford JLS 31-47.

Contract Law

Penalties doctrine - Legitimate interests - Threshold test - Equitable - Common law - Andrews v Australia and New Zealand Banking Group (Ltd.) - Paciocco v Australia and New Zealand Banking Group Ltd - Parking Eye Ltd v Beavis - Cavendish Square Holdings BV v Makdessi - Australia - UK
Tiverios, N. "A restatement of relief against contractual penalties (II): a framework for applying the Australian and English approaches." (2017) 11(2) Jnl Eq 185-218.

Courts

Australian Court of Appeal - Law reform proposals - Chief Justice Marilyn Warren - Speech to Australian Bar Association - Court hierarchy - High Court - Intermediate appellate courts - Australian judicial system - Farah Constructions v Say-Dee - Australia
Rajanayagam, S. "The case against a National Court of Appeal." (2017) 91(8) ALJ 670-682.

Employment Tribunal fees - Unlawful - Constitutional rights - Executive power - UNISON v Lord Chancellor - UK
Glyn, C. "For the many, not the few." (2017) (September) Counsel 16-17.

Inquiries - Judge-led inquiries - Judiciary - Public confidence - Trust - Accountability - Mass media - UK
Qureshi, K. "Restoring confidence." (2017) (September) *Counsel* 21-22.

Sitting hours - Out of hours courts pilot - Reform - Flexible hours - Court system - HM Courts and Tribunals - UK
Van der Luit-Drummond, J. "Bar Council and Law Society lack confidence in flexible courts." (2017) 161(32) *Sol J* 8.

Criminal Law & Procedure

Child offenders - Offender anonymity - Children's rights - Human rights - Public interest - Media - Research study - Juvenile justice - R v William Cornick - James Bulger - R v Home Security, ex p Venables and Thomson - Childrens Act 1989 (UK) - Children and Young Persons Act 1933 (UK) - United Nations Convention on the Rights of the Child - UK
Fitz-Gibbon, K. and W. O'Brien. "The naming of child homicide offenders in England and Wales: the need for a change in law and practice." (2017) 57(5) *Brit. J Criminol.* 1061-1079.

Community service orders - Penalties - Rehabilitation - Sentencing rationales - Female offenders - Judicial discretion - Crime and Courts Act 2013 (UK), Criminal Justice Act 2003 (UK) - Comparative analysis - Australia - UK
Freer, E. "Punishment and rehabilitation: uneasy bedfellows under section 44 of the Crimes and Courts Act 2013." (2017) 50(3) *A & NZ J Crim* 449-455.

Conditional intention - Future intention - Ulterior intention - Mens rea - Offenders - UK
Child, J. "Understanding ulterior mens rea: future conduct intention is conditional intention." (2017) 76(2) *Cambridge LJ* 311-336.

Criminalisation - Public wrongs - Political theory - Responsibility - UK
Edwards, J. and A. Simester. "What's public about crime?" (2017) 37(1) *Oxford JLS* 105-133.

Organised crime - Unlawful associations - Mafia - Criminal justice - Violence - Drug trafficking - National security - Model Criminal Code - Australian Crime Commission - Criminal enterprises - Comparative analysis - Italy - USA - Australia
Sergi, A. "Countering the Australian 'ndrangheta: the criminalisation of mafia behaviour in Australia between national and comparative criminal law." (2017) 50(3) *A & NZ J Crim* 321-340.

Police - Criminal process - Statutory commissions - Rights - Self-incrimination - X7 v Australian Crime Commission - X7 v The Queen - Lee v NSW Crime Commission - Lee v The Queen - R v OC - Australia
Bathurst, T. and S. Schwartz. "Crime commissions and compulsory examinations: whither the right to silence?" (2017) 91(8) *ALJ* 642-654

Evidence

Tendency evidence - Admissibility - Evidence Act 1995 (NSW), s97 - Robert Hughes - Hey Dad! - High Court - Velkoski v The Queen - Australia
Higgins, R. "Recent cases - Hughes v The Queen." (2017) 91(8) *ALJ* 636-638.

Human Rights

Bangladesh - Rana Plaza building collapse - Factory workers - Foreign workers - Exploitative labour practices - Australian business supply chains - Law reform proposals - Research study - United Nations - Protect Respect and Remedy framework - Modern Slavery Act 2015 (UK) - Criminal Code, Division 270 (Cth) - Australia
Piccolo, R. and C. Moodies. "Modern slavery at home and abroad: what responsibilities should Australian businesses have?" (2017) 39(8) *LSB* 34-36.

Insurance Law

Insurance brokers - Financial planners - Financial product advice - Duty of care - Insurance Contracts Act 1984 (Cth), s29(3) - Australian Financial Services Licence - Commonwealth Financial Planning Ltd v Couper - Swansson v Harrison - Australia
Fielder, H. "Personal advice on insurance products: the duty to advice on disclosure obligations and legal risks." (2017) 28(3) Insurance LJ 195-208.

Insurance clauses - Insurance Contracts Act 1984 (NSW), s45 - Lambert Leasing Inc v QBE Insurance - Zurich Australian Insurance Ltd v Metals & Minerals Insurance Pte Ltd - Nicholas v Wesfarmers Curragh Pty Ltd - NSW - Australia
Williams, D. "Lambert Leasing and the emasculation of s 45 of the Insurance Contracts Act 1984." (2017) 28(3) Insurance LJ 137-160.

Legal Profession

Personalia - Lord Chief Justice of the Supreme Court David Neuberger - Judges - Role of judges - Access to Justice - Courts - Human rights - Brexit - EU - UK
Gilg, J. "Lord Neuberger: bringing the common law out of the shadows." (2017) 161(32) Sol J

Legislation

Statutory interpretation - Adjudication - Legal reasoning - Political authority - Legislation - Legislative decisions - UK
Rosen, A. "Statutory interpretation and the many virtues of legislation." (2017) 37(1) Oxford JLS 134-162.

Practice & Procedure

Class actions - Common fund order - Funder's fees - Litigation funding agreements - Risks - Access to justice - Money Max Int v QBE Insurance Group - Australia
Legg, M. "Ramifications of the recognition of a common fund in Australian class actions: an early appraisal." (2017) 91(8) ALJ 655-669.

Trusts

Express trusts - Discretionary trusts - Beneficial ownership - McPhail v Doulton - Re Denley's Trust Deed - Australia - NZ - UK
Palmer, J. and C. Rickett. "The revolution and legacy of the discretionary trust." (2017) 11(20) Jnl Eq 157-184.

Express trusts - Settlers - Beneficiaries - Rights - Intention - Australia - UK
Liew, Y. and C. Mitchell. "The creation of express trusts." (2017) 11(2) Jnl Eq 133-156.

Proprietary claims - Third parties - Knowing receipt - Restitution - Unjust enrichment - Equitable regime - Trustee - Diplock v Wintle - UK
Salmons, D. "Claims against third-party recipients of trust property." (2017) 76 (2) Cambridge LJ 399-429.

INFORMATION SESSIONS

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- Library news and events
- New books and index of articles received by the Library
- Victorian legislative updates
- Recent High Court of Australia, Victorian Court of Appeal, Supreme Court Trial Division and County Court judgments.

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